NO. 24-38

IN THE

Supreme Court of the United States

BRADLEY LITTLE, in his official capacity as Governor of the State of Idaho; MADISON KENYON; MARY MARSHALL, ET AL.,

Petitioners,

v.

LINDSAY HECOX; JANE DOE, with her next friends Jean Doe and John Doe,

Respondents.

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

BRIEF FOR PETITIONERS

KRISTEN K. WAGGONER
JAMES A. CAMPBELL
JOHN J. BURSCH
LINCOLN DAVIS WILSON
CHRISTOPHER P. SCHANDEVEL
CAROLINE C. LINDSAY
ALLIANCE DEFENDING FREEDOM
440 First Street NW
Suite 600
Washington, DC 20001
Counsel for Petitioners

RAUL R. LABRADOR
ATTORNEY GENERAL
ALAN M. HURST
SOLICITOR GENERAL
Counsel of Record
JAMES E.M. CRAIG
MICHAEL A. ZARIAN
OFFICE OF THE IDAHO ATTORNEY GENERAL
700 W. Jefferson St. #210
Boise, ID 83720
(208) 332-3548
alan.hurst@ag.idaho.gov
Counsel for State Petitioners

QUESTION PRESENTED

Whether laws that seek to protect women's and girls' sports by limiting participation to women and girls based on sex violate the Equal Protection Clause of the Fourteenth Amendment.

PARTIES TO THE PROCEEDING

State Petitioners Bradley Little; Debbie Critchfield (replacing Sherri Ybarra); Individual Members of the State Board of Education; Boise State University; Jeremiah Shinn (replacing Marlene Tromp); Independent School District of Boise City, #1; Lisa Roberts (replacing Coby Dennis); Individual Members of the Board of Trustees of the Independent School District of Boise City, #1; and Individual Members of the Idaho Code Commission were (or, in some cases, their predecessors in office were) Defendants in the district court and Appellants in the Ninth Circuit. Intervenor Petitioners Madison Kenyon and Mary Marshall were Intervenors in the district court and Appellants in the Ninth Circuit. Petitioners are all individuals or public entities that have no stock, and no parent or publicly held companies have any ownership interests in them.

Respondent Lindsay Hecox is a natural person who was Plaintiff in the district court and Appellee in the Ninth Circuit. Jane Doe, with her next friends Jean Doe and John Doe, voluntarily withdrew from the case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

Constitutional Provisions

Statutes

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

STATEMENT OF JURISDICTION

The Ninth Circuit entered its amended judgment on June 14, 2024, nearly four years after the district court enjoined Idaho's Fairness in Women's Sports Act. Lower courts had jurisdiction under 28 U.S.C. 1331 and 28 U.S.C. 1292(a). This Court has jurisdiction under 28 U.S.C. 1254(1) and granted certiorari on July 3, 2025.

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

The Equal Protection Clause states, "[N]or shall any State … deny to any person within its jurisdiction the equal protection of the laws."

Relevant provisions of the Idaho Fairness in Women's Sports Act are reprinted in the Petition Appendix at 263a–67a.

INTRODUCTION

This case presents a simple question: Does the Equal Protection Clause allow states to protect fairness and safety by reserving women's sports for females? Common sense says yes. The Ninth Circuit said no, holding that Idaho's Fairness in Women's Sports Act unlawfully discriminates based on sex and transgender status.

That decision distorts the law and the science. The Equal Protection Clause allows sex-based classifications if they are substantially related to achieving important government interests. Idaho's statute easily clears that hurdle. On average, men are faster, stronger, bigger, more muscular, and have more explosive power than women. For female athletes to compete safely and excel, they deserve sex-specific teams. Even Respondent Hecox wants women's teams to exist; Hecox just wants to redefine "women" based on gender identity rather than biology. But in sports, biology matters, not gender identity. So Idaho's sex-based line is correct *and* constitutional.

The Ninth Circuit disagreed. Although the Act does not classify based on gender identity, the Ninth Circuit adopted Hecox's redefinition of sex and held that the sex-based distinction in Idaho's law inflicts "proxy discrimination" against those who identify as transgender. Pet.App.33a. Next, the Ninth Circuit held that transgender status is a quasi-suspect class. Pet.App.36a. Finally, the Ninth Circuit held that the Act fails means-end scrutiny because the law "appears unrelated" to furthering athletic opportunities for female athletes but instead "perpetuate[s] invidious, archaic, and overbroad stereotypes." Pet.App.55a (citation modified).

Each holding is error. The Act's use of a biological definition of sex does not constitute proxy discrimination against people who identify as transgender, nor does gender identity qualify as a quasi-suspect class; people whose gender identity differs from their sex are not a discrete group composed of individuals with an obvious and immutable characteristic akin to race or sex. The Act advances Idaho's goals under intermediate scrutiny because males have long-lasting physiological advantages that persist after hormone suppression, affecting their speed, strength, and endurance in ways that compromise the fairness and safety of female athletic competitions.

The Equal Protection Clause does not forbid laws that recognize real, relevant biological differences between the sexes, and it does not define sex based on gender identity. It does forbid laws that are arbitrary or irrational and intended to harm some disfavored group. But Idaho's law is none of those. The law reflects a legitimate, evidence-based judgment about how to protect equal opportunities for female athletes. The Ninth Circuit's contrary view transforms equal protection from a shield against unjust discrimination into a sword that harms women and girls and imperils the future of women's sports.

With increasing frequency, female athletes have been sidelined from their own teams, championship competitions, and winners' podiums. That is why the NCAA and U.S. Olympic Committee recently changed their policies to mirror those of Idaho and the 26 other states that have enacted similar laws. The Constitution permits what this trend recognizes: female athletes deserve the chance to compete and win in their own sports. This Court should reverse.

STATEMENT OF THE CASE

I. Lost opportunities for female athletes

Petitioners Madison Kenyon and Mary Marshall ran on the women's track and cross-country teams at Idaho State University. Both worked hard to achieve the best times. Yet in 2019, they lost—by a significant margin—to June Eastwood, a male athlete who identified as female. Pet.App.21a. That surprised no one; Eastwood competed on the men's team the year before and recorded times that would have broken national women's records. Kenyon felt "frustrated and defeated"; Marshall felt her hard work did "not matter." Exs. A & B to Memo. in Support of Mot. to Intervene, *Hecox* v. *Little*, No. 1:20-cv-0018 (D. Idaho), ER524–37.

This has become a common refrain. Across the country, female athletes are competing against and losing to males who identify as women. From 2017 through 2019, two male high-school athletes who identified as girls won 13 Connecticut girls' state-championships and took more than 68 opportunities to advance to exclusive higher-level competitions. Pet.5. A few years later, a male swimmer who identified as a woman won the NCAA Division I Championships in the women's 500-yard freestyle—beating two female Olympians. Greg Johnson, *Thomas Concludes Spectacular Season with National Title*, Penn Today (Mar. 20, 2022), perma.cc/WKH2-65ND. And a male swimmer at Ramapo College has been setting school records after switching to the women's team. Amanda Wallace, *Transgender Swimmer at Ramapo College Faces Criticism After Breaking School Record*, NorthJersey.com (Feb. 20, 2024), perma.cc/P3MZ-BWCH.

That's not all. In Washington, a male high-school track athlete who identified as a girl won back-to-back state titles in the 400-meter dash. Shane Lantz, *WA transgender athlete Verónica Garcia repeats as state track champion*, The Seattle Times (May 31, 2025), perma.cc/9CW3-RRMG.

In Canada, a male high-school triple-jump participant who identified as a girl won the Ontario Relays Invitation "by a staggering eight feet" over female competitors. Emily Crane, *Trans high school track star sparks fury after winning girls' triple jump by staggering 8 feet*, New York Post (Mar. 4, 2025), perma.cc/K656-KL63.

In Oregon, a male high-school track athlete who identified as a girl took first place in the 200-meter and 400-meter races at the Portland Interscholastic League Championship, finishing more than 8 seconds ahead of female competitors in the 400 meters after winning the girls' state title in the 200-meter race the previous year. Tom Joyce, *Oregon transgender state champ track runner dominating once again*, The Lion (Mar. 21, 2025), perma.cc/2D42-M6AM.

In New Hampshire, a male high-school track athlete who identified as a girl won two state high-jump championships and a state championship for girls' indoor track. Tom Joyce, *Track and Field in 2024*, Splice Today, perma.cc/9ZZQ-QGZS.

And in Maine, a male high-school athlete who identified as a girl won an 800-meter girls' state title and also medaled at the state meets for girls' cross country and Nordic skiing. *Ibid.*

A recent United Nations report summed it up: as of August 2024, "over 600 female athletes in more than 400 competitions [worldwide] have lost more than 890 medals in 29 different sports" to "males who identify as women." United Nations: Report of the Special Rapporteur (A/79/325), *Violence against women and girls, its causes and consequences* 5 (Aug. 27, 2024), perma.cc/8LEU-VAVC.

II. Differences between males and females that necessitate separate sports teams.

Scientifically speaking, none of the male athletes' success in female competitions is surprising. Since Congress passed Title IX in 1972, women's sports have enjoyed astonishing growth, with girls' participation in high-school sports increasing more than 1,000%, *Fast Facts: Title IX*, Nat'l Ctr. for Educ. Stat., https://perma.cc/Z5R5-CLSQ, and new professional women's leagues being founded for basketball, soccer, and other sports. Before Title IX, women made up only 16% of college athletes; today that number is nearly 50%. *Quick Facts about Title IX and Athletics*, Nat'l Women's L. Ctr. (June 21, 2022), https://perma.cc/ASX7-FWZX.

This success would not have been possible without competitions designated specifically for women and girls. As the Ninth Circuit acknowledged in 1982, "males would displace females to a substantial extent if they were allowed to compete" against females in sports. *Clark ex rel. Clark* v. *Ariz. Interscholastic Ass'n*, 695 F.2d 1126, 1131 (9th Cir. 1982). That conclusion has been proven correct by the intervening 43 years of scientific research.

A. Males have well-documented performance advantages over females in almost all athletic contests.

As documented by numerous studies, the average adult male is larger, stronger, and faster than the average adult female. Males are generally stronger than females in almost all muscle groups, "with an overall mean difference of 73% depending on the muscle groups and exercises being compared." Expert Decl. of Dr. Gregory Brown, ¶¶ 18–32, *Female Athletes United* v. *Minnesota*, Dkt#8-2 (May 20, 2025) (citations omitted), perma.cc/3Z8K-4Z6S [hereinafter Brown.Decl.]; accord J.A.425–49.[1]

Males generally run 10–13% faster than females by every measure and with a variety of study populations. Brown.Decl. ¶¶ 33–47. The average male jumps both higher and farther than the average female, with "males outperforming[ing] females by 40–173% in all matched age groups from 15–69 years old." *Id.* ¶¶ 48–54. On average, males throw, hit, and kick faster and farther than females. *Id.* ¶¶ 55–62. Males also exhibit faster reaction times than females, demonstrating 4–6% quicker reactions in a ruler-drop test by the age of 4 or 5. *Id.* ¶¶ 63–66.

---

[1] Dr. Brown filed an expert report below. See J.A.409–539. But due to the pace of proceedings, that report, filed on June 18, 2020, is now more than five years old. To provide the Court with the most up-to-date information, this Statement cites a more recent report that Dr. Brown filed in similar litigation in Minnesota. See also Brown Expert Rebuttal, perma.cc/38G4-DC7E. Although the Court may take judicial notice of the public research materials cited in these reports, as explained in the Argument, *infra*, Idaho does not need the Court to accept the updated information to prevail here.

"[T]he large performance, anatomical, and physiological advantages possessed by males—rather than social considerations or considerations of identity—are precisely *the primary reason* that most athletic competitions are separated by sex." *Id.* ¶ 16.

B. Males have large anatomical and physiological differences that explain performance advantages over females.

These documented performance advantages are explicable by anatomy and physiology. J.A.449–67. The average male is taller and heavier than the average female. Brown.Decl.¶¶ 71–75. In professional basketball, for instance, the average NBA player is more than 6 inches taller and 40 pounds heavier than the average WNBA player. *Id.* ¶ 73. Males also have larger and longer bones, stronger bones, and different bone configuration. *Id.* ¶¶ 76–83. Regarding bone configuration, "different angles resulting from the female pelvis lead[] to decreased joint rotation and muscle recruitment[,] ultimately making them slower." *Id.* ¶ 81. Consistent with the strength differential, males have much larger muscle mass than females. *Id.* ¶¶ 84–92. Conversely, females have proportionately more body fat, which is "in general a negative for athletic performance." *Id.* ¶ 93.

Moving from the anatomical to the physiological, males on average can metabolize and release energy to muscles at a higher rate due to their larger heart and lung size and higher hemoglobin concentrations. *Id.* ¶¶ 99–108. "[M]en are also able to circulate more blood per second than are women." *Id.* ¶ 106. Together, those attributes give males "a much more efficient cardiovascular and respiratory system." *Id.* ¶ 108.

When measuring the maximum rate an individual can consume oxygen during aerobic exercise, males on average score 50% higher than females, 25% higher when normalized for body weight. *Id.* ¶ 108.

C. After puberty, testosterone suppression does little to diminish the male athletic advantage.

Post-pubertal testosterone suppression does not substantially eliminate the male athletic advantage. Brown.Decl. ¶¶ 231–356; J.A.468–84. Empirical studies show that "males retain a strong performance advantage even after lengthy testosterone suppression." Brown.Decl. ¶¶ 234–66. Numerous papers show this. *Id.* ¶ 235. And they include specific studies of hand-grip strength, *id.* ¶¶ 236–45, arm strength, *id.* ¶¶ 246–50, leg strength, *id.* ¶¶ 251–54, and running and swimming speed, *id.* ¶¶ 255–66.

That's because testosterone suppression does not reverse important male physiological advantages obtained during puberty. *Id.* ¶¶ 267–300. Nor do cross-sex hormones substantially reduce the physical advantages gained once a boy becomes a man. *Id.* ¶ 269. Male advantages "depend not only on *current* circulating testosterone levels in the individual, but on the 'exposure in biological males to much higher levels of testosterone during growth, development, and throughout the athletic career.'" *Id.* ¶ 269. These irreversible advantages include skeletal configuration, *id.* ¶ 271, cardiovascular and respiratory advantages, *id.* ¶ 272–78, and muscle mass, *id.* ¶¶ 279–87.

Importantly, studies of males who suppress testosterone for prostate-cancer treatment show that resistance training may counteract some of the

modest loss of muscle mass and strength associated with testosterone suppression. *Id.* ¶¶ 295–300. And international experts "are increasingly recognizing that suppression of testosterone in a male after puberty has occurred does not substantially reverse the male athletic advantage." *Id.* ¶¶ 301–56. Cece Telfer, one of the male athletes from Connecticut who competed as a girl, continued to achieve the same race times even after transitioning and completing a year of hormone therapy. ER480–82.

Far from eliminating athletic advantages, testosterone suppression does not even guarantee low testosterone. Respondent's expert, Dr. Safer, refers to "Endocrine Society Guidelines" for treating males who identify as female, and those guidelines recommend "circulating testosterone levels to a typical female range at or below 1.7 nmol/L." J.A.233. Safer says such levels are "consistent with" the "testosterone levels achieved by medically treated" males who identify as female. *Ibid.* But Safer does not define "consistent with," and the study he cites doesn't show that males who identify as female can consistently lower their testosterone levels to within the targeted female range. Instead, the study concluded that even though "patients from the highest suppressing quartile could reliably achieve [the targeted level] on average, the *other three quartiles* would unlikely be able to achieve this level." Jennifer J. Liang, et al., *Testosterone Levels Achieved by Medically Treated Transgender Women in a United States Endocrinology Clinic Cohort*, 24(2) Endocrine Practice 14 (2018) (emphasis added), http://bit.ly/3If65Yy. One quarter of the participants were "unable to achieve *any* significant testosterone suppression" over a 12-month period. *Id.* (emphasis added).

D. Even before puberty, boys have athletic advantages when compared to girls of similar ages and training.

Many people assume that pre-pubertal boys have no significant athletic advantage over girls. But "this is not true." Brown.Decl. ¶ 109. "Scientific research and real-world examples of physical fitness and sports performance indicate that boys run faster, jump further, swim faster, and throw further than same-aged girls even before the onset of puberty." *Ibid.* Consider 9- to 10-year-old boys and girls. At the 50th percentile, average boys complete 14.8% more sit-ups in 60 seconds than girls, perform a 30-foot shuttle run 5.1% faster than girls, achieve 5.4% longer distances in the standing long jump, run a 50-yard dash 4.7% faster, complete a 600-yard run 13.1% faster, and run 13.4% farther in a 9-minute run. *Id.* ¶ 111.

Looking at historical data, "male prepubertal sex-based advantages in physical fitness have persisted for more than five decades in spite of the tremendous improvements in access to, and acceptance of, female sports." *Id.* ¶ 112. "[I]t is clear that boys perform better than girls on tests of muscular strength, muscular power, speed, and endurance even before puberty." *Ibid.* Moreover, "pre-pubertal athletic differences are statistically significant, competitively meaningful, biologically based, and found across a wide range of sports and age groups." *Id.* ¶¶ 109–53. The explanation for these differences is that pre-pubertal boys' bodies are different from pre-pubertal girls' bodies. *Id.* ¶¶ 193–202. On average, boys have more lean mass, a higher maximal oxygen consumption, and larger heart volumes, among other things. *Id.* ¶ 194. By age six, boys even have stronger bones than girls. *Id.* ¶ 195.

E. Puberty blockers do not erase male advantages.

Because pre-pubertal boys have built-in physical advantages over pre-pubertal girls, puberty blockers cannot erase male advantages. Brown.Decl. ¶¶ 203–22. In one study, two years of puberty blockers followed by six years of cross-sex hormones for males "increased body fat" but "did not eliminate the sex-based differences in lean body mass." *Id.* ¶ 204; accord ¶¶ 205–07 (other studies confirming that result). In another, "males who followed a normal course of puberty suppression followed by cross-sex hormone therapy reached an adult height at or near their predicted (male) height in the absence of such therapy." *Id.* ¶ 210. In yet another, males who took puberty blockers "experienced 31.7% greater increases in strength than would be expected for similarly aged females." *Id.* ¶ 213. In sum, advocating to allow boys who identify as girls "to compete in girls' sports only if puberty blockers are used is not advocating from a position based on evidence." *Id.* ¶ 222.

* * *

In short, "[a]t the level of (a) elite, (b) collegiate, (c) scholastic, and (d) recreational competition, men, adolescent boys, or male children, have an advantage over equally aged, gifted, and trained women, adolescent girls, or female children in almost all athletic events." Brown.Decl., p. 147; J.A.413. That advantage is not eliminated by testosterone suppression, and when the district court said that point was "not clear," Pet.App.238a, it clearly erred (though that makes no difference to this Court's decision).

Faced with this growing evidence, numerous sports have amended their policies to preserve women's sports for females regardless of a male's gender identity or history of testosterone suppression.

- The National Association of Intercollegiate Athletics (NAIA), which governs the athletic programs of hundreds of small colleges and universities, spent two years reviewing research and meeting with experts before announcing that only female athletes would be allowed to compete in female events. NAIA Transgender Task Force, perma.cc/83PC-9V65.
- World Athletics, the global governing body for track and field, cross-country running, and similar sports, implemented mandatory genetic testing for women's sports after a year's work "studying developments in law, science, sports and society." World Athletics, *World Athletics introduces SRY gene test for athletes in female category*, Athletics Africa (July 30, 2025), perma.cc/SJ5C-L97G.
- World Boxing likewise examined "data and medical evidence from an extensive range of sources and consulted widely with other sports and experts" before deciding to require genetic testing for women's boxing. World Boxing, *World Boxing to introduce mandatory sex testing for all boxers that want to participate in its competitions* (June 6, 2025), perma.cc/FJ54-RR3H.

- World Rugby implemented a similar if slightly less restrictive policy after funding independent experts that reviewed nearly 50 peer-reviewed studies, concluding that men retained significant physical advantages even after years of hormone suppression. World Rugby, *Transgender Women Guidelines*, perma.cc/D6RG-54NX.

The NCAA and the U.S. Olympic Committee decided this year to join that growing consensus, prompted by Executive Order 14,201, 90 Fed. Reg. 9,279 (Feb. 5, 2025). NCAA, *Participation Policy for Transgender Student-Athletes* (Feb. 6, 2025), perma.cc/52GC-VTTK; USOPC, *U.S. Olympic and Paralympic Committee Policy* § 3.3 (June 18, 2025), perma.cc/9PLR-ZBJQ. The Olympic Committee noted that its new policy aimed to "ensure that women have a fair and safe competition environment. USOPC, *Policy*.

III. The Idaho Fairness in Women's Sports Act

Idaho anticipated these problems and joined the consensus early. In 2020, Idaho state representative Barbara Ehardt—who had coached women's college basketball for 15 years—introduced Idaho's Fairness in Women's Sports Act. As she explained, the law was necessary because boys who identified as girls had begun competing in female athletic competitions and were taking opportunities from female competitors. J.A.105–12. She specifically mentioned the experience of female athletes beaten by the two male runners in Connecticut, J.A.108, but also noted that male athletes were competing in women's sports "all over the country," J.A.107.

Males' inclusion in female athletic competitions concerned the legislators because they considered it unfair. Citing Supreme Court precedent, two cases from lower courts, and half-a-dozen scholarly and popular articles, they adopted legislative findings following the science summarized above:

- "There are 'inherent differences between men and women,'" and "these differences 'remain cause for celebration.'" Idaho Code § 33-6202(1) (quoting *United States* v. *Virginia*, 518 U.S. 515, 533 (1996)).
- A number of these inherent differences give men a natural advantage in athletic competitions. In particular, "[m]en generally have 'denser, stronger bones, tendons, and ligaments' and 'larger hearts, greater lung volume per body mass, a higher red blood cell count, and higher haemoglobin.'" *Id.* § 33-6202(3) (quoting Neel Burton, *The Battle of the Sexes*, Psychology Today (July 2, 2012)).
- Men's higher testosterone gives them further advantages: different "body fat content, the storage and use of carbohydrates, and the development of type 2 muscle fibers, all of which result in men being able to generate higher speed and power during physical activity." *Id.* § 33-6202(4) (quoting Doriane Lambelet Coleman, *Sex in Sport*, 80 Law and Contemporary Problems 63, 74 (2017)).

While most of the legislature's findings addressed the athletic advantages of males in general, one subsection mentioned male athletes who identified as female, finding that such athletes' advantage from natural testosterone "is not diminished through the use of puberty blockers and cross-sex hormones." *Id.* § 33-6202(11). It cited a study from Sweden: "even 'after 12 months of hormonal therapy,' a man who identifies as a woman and is taking cross-sex hormones 'had an absolute advantage' over female athletes." *Ibid.* (quoting Tommy Lundberg, et al., *Muscle strength, size and composition following 12 months of gender-affirming treatment in transgender individuals: retained advantage for the transwomen*, Karolinksa Institutet (Sept. 26, 2019)).

Because of males' irreversible athletic advantages, the legislature mandated "[s]ex-specific teams" to "provid[e] opportunities for female athletes to demonstrate their skill, strength, and athletic abilities while also providing them with opportunities to obtain recognition and accolades, college scholarships, and the numerous other long-term benefits that flow from success in athletic endeavors." *Id.* § 33-6202(12). Or, as Rep. Ehardt told the committee: "[T]his bill is about preserving opportunities for girls and women." J.A.110.

While the Act was under consideration, COVID-19 was declared a global pandemic on March 11. The legislature stayed in session another nine days to conclude its business, enacting more than 200 laws in that period. 2020 Enacted Legislation – Idaho State Legislature, perma.cc/P87T-E248. One of them was the Act, which passed 24–11 in the senate and 54–16 in the house. It was signed into law on March 30.

The Act protects women's sports by requiring public schools and institutions of higher education to designate each of their sponsored sports teams for: (1) "[m]ales, men, or boys"; (2) "[f]emales, women, or girls"; or (3) "[c]oed or mixed." Idaho Code § 33-6203. The Act allows all students to compete in male or coed sports. But girls' and women's sports "shall not be open to students of the male sex." *Id.* § 33-6203(2).

If a student athlete's sex is disputed, the school or institution of higher education that sponsors the team or sport must ask the student for "a health examination and consent form or other statement signed by the student's personal health care provider." *Id.* § 33-6203(3). "The health care provider may verify the student's biological sex *as part of a routine sports physical examination* relying only on one (1) or more of the following: the student's reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels." *Ibid.* (emphasis added). The statute gives schools and leagues no say in deciding which health care provider the student consults or which verification method the provider employs. Both decisions are left to the student. See *ibid.*

IV. Proceedings below

Respondent Lindsey Hecox and Plaintiff Jane Doe sued, claiming the Fairness in Women's Sports Act violated the Fourteenth Amendment's Equal Protection Clause and Title IX. Hecox is a male who identifies as a woman and wished to compete on the Boise State University women's track and cross-country teams. Pet.App.20a.

When suit was filed, Jane Doe was a female high-school athlete who challenged the Act's sex-verification provision. *Ibid.* Her claims are now moot.

The Idaho Attorney General's Office defended the Act; Madison Kenyon and Mary Marshall intervened to help defend it. Pet.App.21a.

The district court preliminarily enjoined enforcement. It said the Act "on its face discriminates between cisgender athletes, who may compete on athletic teams consistent with their gender identity, and transgender women athletes, who may not." Pet.App.232a–33a. For the court, "the physiological differences" between males and females "do not overcome the inescapable conclusion that the Act discriminates on the basis of transgender status." Pet.App.233a. The court said the Act failed heightened scrutiny because no male athletes had yet won women's events *in Idaho*, and sports equality "is not jeopardized" by letting males who suppress their testosterone play on women's teams. Pet.App.239a–41a.

The Ninth Circuit affirmed. Pet.App.61a. The panel adopted a subjective definition of sex based on gender identity and held that laws drawing sex-based distinctions in schools are "proxy discrimination" against transgender athletes. Pet.App.33a. The panel also said transgender status is at least a quasi-suspect class. Pet.App.36a. Applying heightened scrutiny, the panel said categorically excluding males from female athletics was not substantially related to the state's goals of "women's equality" and "fairness in female athletic teams"—in fact, it "undermine[d]" them. Pet.App.40a (distinguishing *Clark ex rel. Clark* v. *Arizona Interscholastic* Ass'n, 695 F.2d 1126, 1131–32 (9th Cir. 1982) (*Clark I*)).

The panel held the Act unconstitutional and (originally) affirmed the injunction preventing Idaho from enforcing its Act against *anyone,* not just Hecox. Pet.App.132. Some months later, while the Ninth Circuit was considering Petitioners' en banc petition, this Court stayed a similarly universal injunction in *Labrador* v. *Poe*, 144 S. Ct. 921 (2024). Given *Poe*, the *Hecox* panel amended its opinion and mooted the en banc petition. It also directed the district court to reevaluate the injunction's scope on remand. Pet.App.58a. Even so, the panel hinted that a universal injunction might be proper, rejecting Petitioners' argument that "the preliminary injunction would necessarily be overbroad as a matter of law if it extends to nonparties despite the district court's dismissal of [Hecox]'s facial challenge." *Ibid.*

On remand, the district court narrowed the injunction to prohibit enforcement against Hecox only. Order Modifying Prelim. Inj., *Hecox* v. *Little*, No. 1:20-cv-00184 (D. Idaho Aug. 22, 2024), ECF No. 138. But the state defendants remained bound by the panel decision. Within a few weeks, the Ninth Circuit reaffirmed its commitment to *Hecox*, applying the case to invalidate a similar Arizona law. *Doe* v. *Horne*, 115 F.4th 1083 (9th Cir. 2024).

SUMMARY OF THE ARGUMENT

The NCAA, U.S. Olympic Committee, and 27 states have made the logical decision that preserving fairness and safety in women's sports requires that male athletes cannot compete against females no matter how the male athletes identify. Contra Pet.App.16a & n.5, 48a n.14, and 59a. That's because male athletes have numerous recognized physical and physiological advantages over females that begin before puberty and persist despite reduced circulating testosterone. The Court should not second-guess those legislative judgments and constitutionalize a requirement that males who identify as women must be allowed to compete against—and beat—female athletes in women's sporting events.

Idaho's Fairness in Women's Sports Act is a constitutionally permissible sex-based classification. It is a sex-based classification because it distributes benefits and burdens on the basis of sex. And it is constitutionally permissible because it is substantially related to Idaho's important interest in promoting female athletic opportunities.

This otherwise constitutional sex-based classification does not become unconstitutional just because it defines "male" and "female" by objective sex rather than subjectively felt gender identity. To the contrary, the Act's assumptions about sex are shared by scientists, the framers of the Fourteenth Amendment, and this Court's own sex-discrimination precedents. As numerous cases have acknowledged, sex is biological and immutable, and it causes the inherent and enduring differences between men and women that made Idaho's Act necessary.

Because Hecox does not challenge Idaho's sex-based classification but rather the definition of "sex" that Idaho chose to use, this case is an under-inclusiveness challenge, and Idaho's law is subject only to rational-basis review. The Act easily satisfies that deferential standard.

Hecox calls instead for heightened scrutiny because the Fairness in Women's Sports Act allegedly classifies based on gender identity. But that's wrong. The Act's operative provisions do not mention gender identity, and its application never turns on how anyone identifies. The Act was motivated by physical and physiological differences between the sexes—not a desire to harm males who identify as women. And it is not proxy discrimination because it is aimed at the universally acknowledged unfairness of males competing against females—not some irrational object of disfavor.

In any event, classifications based on gender identity do not trigger heightened scrutiny. A person's gender identity is not obvious or immutable. People who identify as transgender are not discrete or insular, and they have not been subject to a history of de jure discrimination and political powerlessness. In today's America, they have substantial representation and power, both in politics and elsewhere.

Finally, there is no fair way for males to compete with females in most sports, and testosterone suppression does not solve the problem. Because women's and girls' sports are not safe and fair when males compete, the Fairness in Women's Sports Act is constitutional no matter the level of scrutiny.

ARGUMENT

I. Equal Protection Clause jurisprudence protects "sex" as an objective trait rooted in biology—not a subjective concept based on gender identity.

The Fourteenth Amendment's text does not mention sex, gender identity, or discrimination based on either trait. U.S. Const. amend. XIV. But this Court has long evaluated discrimination claims under the Equal Protection Clause and recognized sex as a protected characteristic. *United States* v. *Virginia*, 518 U.S. 515, 532-33 (1996) (collecting cases). Both science and precedent confirm that this characteristic refers to a fixed, objective biological reality: the state of being either male or female.

"Sex" is defined by the "inherent" and "enduring" "[p]hysical differences between men and women," differences that "remain cause for celebration." *Id.* at 533. Sex is binary, objective, and defined by inherent and unalterable characteristics in male and female genetics; every cell of the body is coded with sex chromosomes that drive physical and physiological differences between males and females as confirmed even by prominent medical and health organizations that support rights based on transgender status. *E.g.*, Aditi Bhargava, et al., *Considering Sex as a Biological Variable in Basic & Clinical Studies: An Endocrine Society Scientific Statement*, Endocrine Rev. (Mar. 11, 2021) ("*Sex* is a biological concept.… [A]ll mammals have 2 distinct sexes.… Sex is dichotomous, with sex determination in the fertilized zygote stemming from unequal expression of sex chromosomal genes."), perma.cc/V99Y-PJP2; *Understanding Transgender People, Gender Identity & Gender Expression*, Am.

Psych. Ass'n (July 8, 2024) (sex "refers to one's biological status as either male or female, and is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy"), perma.cc/PN4Y-QZQ3.

Conversely, gender identity is a subjective concept that "refers to a person's deeply felt, internal and individual experience of gender, which may or may not correspond to the person's physiology or designated sex at birth." *Gender & Health*, World Health Org., perma.cc/EP5S-SYR6. Many people who identify as transgender do not identify as either sex but instead as both sexes, neither sex, or something else entirely. A recent summary catalogues at least 72 gender identities, including many non-binary ones. Shaziya Allarakha, *What are the 72 Other Genders?*, Med. Net (medically reviewed Feb. 9, 2024), perma.cc/W9WH-R26F. And transgender advocacy groups like the Human Rights Campaign explain that someone can adopt a "fluid or unfixed gender identity." Glossary of Terms, Hum. Rts. Campaign (May 31, 2023), perma.cc/7NPV-RPCT.

Consistent with science, this Court has recognized "sex" as an objective characteristic that is a fundamentally "distinct concept" from an individual's subjective "gender identity" and resulting "transgender status." *Bostock* v. *Clayton Cty., Ga.*, 590 U.S. 644, 669 (2020); see *United States* v. *Skrmetti*, 145 S. Ct. 1816, 1824 (2025) (to identify as "transgender" means that one's "gender identity does not align with their biological sex"). Sex is binary, see, *e.g., Ballard* v. *United States*, 329 U.S. 187, 193 (1946), while gender identity involves "a huge variety," *L.W.* v. *Skrmetti*, 83 F.4th 460, 487 (6th Cir. 2023).

Sex also is "immutable" and "determined solely by the accident of birth," *Frontiero* v. *Richardson*, 411 U.S. 677, 686 (1973) (plurality), while gender identity "is not necessarily immutable" and "is not definitively ascertainable at the moment of birth," *Skrmetti*, 83 F.4th at 487 (citation modified). "Sex is an essential part of vertebrate biology," while "gender is a human phenomenon." Bhargava, *supra*. "[S]ex often influences gender, but gender cannot influence sex." *Ibid.*

Despite this overwhelming evidence and precedent supporting an objective understanding of "sex," the Ninth Circuit conflated the term with "gender identity" as the foundation for its equal-protection analysis. The panel wrongly asserted that this Court's objective understanding was "likely an oversimplification of the complicated biological reality of sex and gender." Pet.App.30a. Under the Equal Protection Clause, the court suggested, sex must be understood to "encompass[] the sum of several biological attributes, including … gender identity." *Ibid.* (quoting Hecox's purported expert). Citing an amicus brief, the court surmised that it "appears likely that there is some biological explanation—such as gestational exposure to elevated levels of testosterone—that causes" some people to identify as transgender. Pet.App.31a.

This radical redefinition of sex conflicts with this Court's equal-protection precedents, which address sex in binary, biological terms. For example, this Court has recognized: "To give a mandatory preference to members of *either* sex over members of *the other* … is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment." *Reed* v. *Reed*, 404 U.S. 71, 76 (1971) (emphases added).

The Court has also explained that the Equal Protection Clause forbids "invidious discrimination against the members of *one* sex or *the other*." *Geduldig* v. *Aiello*, 417 U.S. 484, 496–97, n.20 (1974) (emphases added). The "*two* sexes," the Court has declared, are not fungible; a community made up exclusively of *one* sex is different from a community composed of *both*." *Virginia*, 518 U.S. at 533 (citation modified). Indeed, the whole point of "sex-based" classifications is to address "differences between men and women". *Skrmetti*, 145 S. Ct. at 1828. The immutable, objective nature of sex is part of the reason why sex is subject to heightened scrutiny. See *Frontiero*, 411 U.S. at 686; *Virginia*, 518 U.S. at 533 (analogizing heightened scrutiny for sex classifications to race and national-origin classifications).

The Court's more recent decisions have acknowledged the daylight between the objective, biological reality of sex and the subjective nature of gender identity. Last Term, *Skrmetti* discussed sex classifications and transgender classifications in two separate sections of its equal-protection analysis, declining to address whether the latter was subject to heightened scrutiny. *Id.* at 1828–34. If sex encompasses gender identity, then *Skrmetti*'s analysis makes no sense.

Of course, our sex-based differences cannot be erased by anyone's subjective gender identity. To hold otherwise would "fail to acknowledge even our most basic biological differences," which "risks making the guarantee of equal protection superficial, and so disserving it." *Tuan Anh Nguyen* v. *I.N.S.*, 533 U.S. 53, 73 (2001).

The Ninth Circuit brushed aside these differences, erroneously suggesting that the law has been superseded by science, and the Constitution requires Idaho to divide its sports based on circulating testosterone (which can be suppressed), not immutable sex. Pet.App.59a–60a. In response to Idaho's choice to allow sex verification based on naturally circulating, unsuppressed testosterone, the panel scoffed: "[T]he drafters of the Fourteenth Amendment would have had no concept of what 'endogenously produced testosterone levels' meant in 1868." Pet.App.29a n.9.

That's not the relevant inquiry. The question is what the ratifiers would have understood "sex" to mean when they enacted the Fourteenth Amendment—not whether they understood how "sex" might be verified "in terms of modern scientific theory." *St. Francis Coll.* v. *Al-Khazaraji*, 481 U.S. 604, 609–10 (1987) (interpreting § 1981, which Congress passed the same year as the Fourteenth Amendment); accord, *e.g.*, *Shaare Tefila Congregation* v. *Cobb*, 481 U.S. 615, 617–18 (1987) ("the question before us is not whether Jews are considered to be a separate race by today's standards, but whether, at the time § 1982 was adopted [by the same Congress that proposed the Fourteenth Amendment], Jews constituted a group of people that Congress intended to protect").

And in nineteenth-century America, sex was understood in objective, binary terms based on an individual's role in reproduction. *E.g.*, Female, Webster's International Dictionary of the English Language 551 (rev. and enl. ed., listing issues of 1864, 1879, & 1884), available at HathiTrust, Record No. 100598138 (last visited Aug. 25, 2025) ("An individual of the sex which conceives and brings forth young, or (in a wider sense) which has an ovary and produces

ova."); Male, *id.* at 886 ("Of or pertaining to the sex that begets or procreates young, or (in a wider sense) to the sex that produces spermatozoa, by which the ova are fertilized ...."). The Ninth Circuit's decision revolutionizes constitutional jurisprudence by inviting courts to invoke "scientific" expert opinion to subvert and displace existing constitutional bedrock as reflected in decades of this Court's precedent.

Moreover, redefining "sex" to include "gender identity" in equal-protection cases jeopardizes innumerable laws, including "sex-based medical laws or regulations, even where such rules would be best medical practice." *Skrmetti*, 145 S. Ct. at 1839 (Thomas, J., concurring). The Court should reject the Ninth Circuit's attempt to rewrite the constitutional definition of "sex."

II. Hecox's challenge to the Act's definition of sex is subject to and satisfies rational-basis review.

Below, Hecox did not claim that assigning sports teams based on sex violates the Equal Protection Clause. Pet.App.45a. The Ninth Circuit understood as much: "whether a sex-based classification was constitutionally permissible[] is not in dispute here. [Hecox] does not challenge the exclusion of ... males from female-designated sports." *Ibid.*

That narrows the dispute significantly. Hecox is not alleging sex discrimination but rather underinclusiveness—that sex should be defined based on gender identity and the category of "female" should be expanded to include males who identify as women.

Because Hecox is not challenging the Act's sex-based classifications, heightened scrutiny does not apply. "This Court has never suggested that mere reference to sex is sufficient to trigger heightened scrutiny." *Skrmetti*, 145 S. Ct. at 1829 (citing *Nguyen*, 533 U.S. at 64). And applying heightened scrutiny to the Act's definition of sex "would be especially inappropriate" here because fair competition and safety in sports "are uniquely bound up in sex." See *id.* So Hecox's underinclusiveness challenge warrants only rational-basis review.

This Court has not considered a case challenging the government's definition of sex. But lower-court cases challenging classifications based on race and national origin illustrate the way the analysis should proceed. Consider *Jana-Rock Construction, Inc.* v. *New York Dep't of Econ. Dev.*, 438 F.3d 195 (2d Cir. 2006). There, a plaintiff challenged a New York statute for minority-owned businesses that excluded "Spanish [and] Portuguese" from its definition of "Hispanic" people. *Id.* at 200. The plaintiff—a business owner "whose parents were born in Spain"—challenged the State's refusal to classify him as "Hispanic." *Id.* at 199, 200, 205.

The Second Circuit explained that heightened scrutiny "is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decisionmaker for the use of [a classification] in that particular context." *Id.* at 210 (quoting *Grutter* v. *Bollinger*, 539 U.S. 306, 327 (2003)). "Once it is established that the government is justified" in using a classification, heightened scrutiny "has little utility in supervising the government's definition of its chosen categories." *Ibid.*

Put differently, heightened scrutiny's purpose "is to ensure that the government's choice to use racial classifications is justified, *not* to ensure that the *contours* of the specific … classification that the government chooses to use are in every particular correct." *Ibid.* (emphasis added). Accordingly, such challenges to class definitions are subject only to "rational basis review." *Id.* at 212; accord, *e.g.*, *Peightal* v. *Metro. Dadd Cnty.*, 940 F.2d 1394, 1409 (11th Cir. 1991) (applying rational-basis review to alleged underinclusive definition of "Hispanic"); cf. *Katzenbach* v. *Morgan*, 384 U.S. 641, 656–57 (1966) (applying rational-basis review to Congress's decision to prohibit English-literacy voting requirements for foreign-language educated citizens who attended "American-flag" schools, such as those in Puerto Rico, but did not extend that benefit to those educated in schools outside the United States); *Pers. Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 277–78 (1979) (rejecting challenge to veteran's preference statute where statute's veteran distinction was "legitimate"); *Lehr* v. *Robertson*, 463 U.S. 248, 268 n.27 (1983) (applying rational basis in father's equal-protection challenge to "the manner in which the statute distinguishes among classes of fathers").

The same principles apply here. Idaho passed the Act to advance girls' and women's athletic opportunities and promote fairness and safety in girls' and women's sports. Hecox does not challenge the Act's sex-based line, but rather its definition of "sex" as objectively male and female, based on biology and not gender identity. To put it in the Second Circuit's terms, Hecox does not challenge the sex classification, only its "contour[s]." *Jana-Rock*, 438 F.3d at 210. So rational-basis review applies.

Under that standard, this Court will uphold the Act if there is "any reasonably conceivable state of facts that could provide a rational basis" for the statutory lines. *Skrmetti*, 145 S. Ct. at 1835 (quoting *FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 313 (1993)). Provided there are "'plausible reasons' for the relevant government action," a court's "'inquiry is at an end.'" *Ibid.* (quoting *Beach Communications*, 508 U.S. at 313–14). As explained in Part IV, *infra*, the Fairness in Women's Sports Act easily passes that standard.

III. The Fairness in Women's Sports Act does not unlawfully discriminate based on transgender status.

Misled by its redefinition of sex, the Ninth Circuit erred in treating the Act as discriminating against those who identify as transgender. The Act makes no such classification—not in its text, not by implication, and not through its purpose.

Further, the class of individuals who identify as transgender lacks any of the essential characteristics of a suspect or quasi-suspect class. That means a law that *did* classify based on transgender status would be subject only to rational-basis review.

A. The Act does not discriminate based on transgender status.

None of the Act's operative provisions classify based on whether someone identifies as transgender. Quite the opposite. The Act prevents male athletes from playing on female sports teams and allows female athletes to play on male sports teams *irrespective* of any athlete's gender identity.

The Act's classifications are based on "biological sex" alone. Idaho Code § 33-6203. And, as the Ninth Circuit acknowledged, the law "does not use the word 'transgender' in the definition" of "biological sex." Pet.App.33a. The statutory definition parallels this Court's understanding of sex as binary, inherent, and biological. See Argument § I, *supra*.

Yet the Ninth Circuit held that the Act classified based on transgender status because its purpose was "to categorically ban" trans-identifying men from female teams. Pet.App.26a. While the Act's "definition of biological sex" used "seemingly neutral criteria," those criteria did not leave any way for transgender-identifying men to qualify as female and participate in female sports. Pet.App.33a. The defining criteria were "so closely associated with the disfavored group that discrimination on the basis of such criteria is, constructively, facial discrimination against the disfavored group," which the Ninth Circuit termed "[p]roxy discrimination." *Ibid.* (citation omitted).

The Ninth Circuit was correct on one point: the Idaho Legislature did intend to preserve women's sports for female athletes. This means that males who identify as women must participate on men's or coed teams. And it also means that males *who identify as men* must participate on men's or coed teams. Male athletes are treated the same, no matter how they identify. The correct question is not whether the legislature intended to exclude anyone, but, as argued in II., *supra*, whether the legislature had valid reasons to define sports teams by sex rather than gender identity. It surely did.

This Court's proxy discrimination precedents agree. Proxy discrimination does not occur whenever "neutral criteria" are "closely associated with the disfavored group." Contra Pet.App.33a. Instead, proxy discrimination occurs only when laws target "an *irrational* object of disfavor" that is "engaged in exclusively or predominantly by a particular class of people," so that "an intent to disfavor that class can readily be presumed." *Bray* v. *Alexandria Women's Health Clinic*, 506 U.S. 263, 270 (1993) (emphasis added). Thus, "[a] tax on wearing yarmulkes is a tax on Jews," *ibid.*, and laws that regulate ritual sacrifices of animals target Santeria, *Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 534 (1993). The irrationality of the classification is key. If laws were considered proxy discrimination merely because they restrict behavior more often associated with one group than with others, then a proxy-discrimination claim would be a disparate-impact suit by another name. Cf. *Washington* v. *Davis*, 426 U.S. 229, 242 (1976) ("[d]isproportionate impact" alone does not make laws unconstitutional). Because it is unusual for legislatures to pass obviously irrational laws, true proxy-discrimination cases are "rare," *Vill. of Arlington Heights* v. *Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977) (collecting cases).

This case is not one of them. A tax on yarmulkes (the paradigmatic example of proxy discrimination) implies an intent to disfavor Jews because anti-Semitism is the only plausible motivation for a legislature to tax yarmulkes more than other headwear. In contrast, no intent to disfavor anyone can be inferred when a law assigns sports teams by sex. Males' sex gives them an unfair advantage, so legislatures naturally use sex as the dividing line.

Aside from the legislature's use of sex to assign sports teams, the Ninth Circuit's only bases for finding a classification based on transgender status were (1) the legislative findings' two-sentence discussion of puberty blockers and cross-sex hormones, and (2) the legislative history showing the Act was motivated by stories about male athletes who beat female athletes. Pet.App.26a–27a. At no point in the legislative findings or history were males who identified as women treated differently from males who identified as men.

The legislative findings begin with ten subsections about the differences between males in general and females in general, without once mentioning gender identity. Only the eleventh subsection mentions gender identity, and only to explain why males who identify as female are similarly situated to other males and should be treated the same: "The benefits that natural testosterone provides to male athletes [are] not diminished through the use of puberty blockers and cross-sex hormones." Idaho Code § 33-6202(11).

As for legislative history, it is true that only male athletes who identified as women were mentioned as taking girls' and women's opportunities. But there's an obvious reason: other males do not compete in girls' and women's sports because the NCAA and other organizations generally prohibit it, and the fight over the constitutionality of such policies was won more than 40 years ago. *E.g.*, *Clark I*, 695 F.2d at 1128, 1132. The legislators focused on transgender-identifying male athletes because they were legislating during the period after the NCAA and other organizations generally limited women's competitions to females but before they applied that policy to males who identified as women.

To be sure, the Act has a disparate impact on males who identify as female. But that's not enough to trigger heightened scrutiny, as this Court recognized in *Feeney*. That case concerned Massachusetts' absolute veterans' preference in government hiring, under which no non-veteran could be hired for a job if a qualified veteran applied. 442 U.S. at 259. Because, at the time, very few women had served in the armed forces, the preference effectively disqualified most women from most positions it covered. *Id.* at 269–71.

The *Feeney* Court still found no sex-based classification. All parties agreed that the statute's "basic distinction between veterans and nonveterans" was "legitimate" and based on "worthy" "goals." *Id.* at 277–78. Further, the distinction between veterans and nonveterans was "neutral in the sense that it [was] not [sex]-based." *Id.* at 274. Given that background, the Massachusetts Legislature's awareness that the law would have a disparate impact on women was insufficient to show an intent to exclude women because the effect was "an unavoidable consequence of a legislative policy that has in itself always been deemed to be legitimate." *Id.* at 279 n.25. The knowledge of disparate impact "fails to ripen into proof" of bad intent. *Ibid.*

To trigger heightened scrutiny, then, Massachusetts would have needed to legislate "at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Id.* at 279. And "nothing in the record demonstrate[d]" that the legislature had advanced the interests of veterans with the "collateral goal" of limiting women's opportunities. *Ibid.*

So too here. All parties agree that Idaho's basic distinction between male and female athletes is legitimate and serves the important goal of promoting female athletic opportunity. Pet.App.239a. Further, the statute is neutral in that its application never turns on anyone's gender identity. Because only females can compete on women's teams, "there is a 'lack of identity' between transgender status" and those the Act affects. *Skrmetti*, 145 S. Ct. at 1833.

As in *Feeney*, the Idaho legislature may have been aware of the disparate impact its legislation would have on male athletes who identified as women. But as in *Feeney*, this disparate impact was "essentially an unavoidable consequence" of pursuing a legitimate goal: preserving women's sports from males with unfair biological advantages. *Feeney*, 442 U.S. at 279 n.25. So the legislature's awareness fails to "ripen into proof" that the legislature acted "'because of,' not merely 'in spite of,'" its effect on people who identify as transgender. *Id.* at 279 & n.25.

The actual "proof" in the legislative record reaffirms the Act's obvious purpose: to protect women. Rep. Ehardt, the bill's sponsor, insisted the law was "designed to do one thing"—"protect opportunities for girls and women," lest they become "spectators in [their] own sports." J.A.105; see also J.A.110–12. Rep. Ehardt emphasized "this is not about identification or how we feel," but the "physical advantages the boys and men have" that make competition against women unfair. J.A.109. Nothing in the record suggests this was mere "pretext" or that the Act's actual objective was to target transgender identity. Cf. Pet.App.26–27a, 34a–35a. The law is not a gender-identity classification for the purpose of harming males who identify as women.

B. Rational-basis review applies to laws that distinguish based on transgender status.

Because Hecox cannot show discrimination based on transgender status, the Court's analysis can stop here. But in any event, the class of those who identify as transgender is not a suspect or quasi-suspect class that would warrant heightened review.

1. Individuals who identify as a gender different from their sex are not a suspect or quasi-suspect class.

The Court's modern equal-protection framework flows out of the famous footnote in *Carolene Products* suggesting that "prejudice against discrete and insular minorities" might warrant elevated review of laws that classify against them. *Schuette* v. *Coal. to Def. Affirmative Action*, 572 U.S. 291, 325, 327 (2014) (Scalia, J., concurring) (quoting *United States* v. *Carolene Products*, 304 U.S. 144, 152–53, n.4 (1938)). Historically, this Court has limited that review to a narrow set of classifications, those "based on race, sex, and alienage." *Skrmetti*, 145 S. Ct. at 1850 (Barrett, J., concurring). It has never recognized a class of those who identify as transgender. In fact, the list of protected classes has remained "virtually closed" for nearly 50 years as the Court "has repeatedly declined" to add to it. *Ibid.* (Barrett, J., concurring) (citation omitted). There is no basis to deviate from that history here.

Recognizing a protected class requires the group to "exhibit obvious, immutable or distinguishing characteristics that define them as a discrete group" that, "[a]s a historical matter, [has] been subjected to discrimination" and is "a minority or politically powerless." *Lyng* v. *Castillo*, 477 U.S. 635, 638 (1986).

Those elements are lacking here.

First, the proposed class is not immutable. Suspect-class treatment flows only to groups whose membership is "defined by a trait that is definitively ascertainable at the moment of birth," *Skrmetti*, 145 S. Ct. at 1851 (Barrett, J., concurring) (citation omitted), because members of those groups "tend to 'carry an obvious badge" of their membership in the suspect class, *id.* at 1863 (Alito, J., concurring in part) (quoting *Mathews* v. *Lucas*, 427 U.S. 495, 506 (1976)). Here, the proposed classification arises only where subjective, innate gender identity conflicts with sex. Pet.App.13a; *Skrmetti*, 145 S. Ct. at 1824. The internal, subjective nature of this class means that members do not "carry an obvious badge" of their identity. *Skrmetti*, 145 S. Ct. at 1863 (Alito, J., concurring). As the Ninth Circuit put it, even "scientists are not fully certain why some people identify as transgender." Pet.App.31a.

That "some transgender individuals 'detransition' later in life" proves that gender identity is mutable. *Skrmetti*, 145 S. Ct. at 1851 (Barrett, J., concurring). This Court has refused to create suspect classes for poverty or immigration status because their boundaries are amorphous and their membership is fluid. *San Antonio Indep. Sch. Dist.* v. *Rodriguez*, 411 U.S. 1, 28 (1973); *Plyler* v. *Doe*, 457 U.S. 202, 220 (1982). Here too, the Court cannot impose heightened scrutiny for transgender status since "persons can and do move into and out of the class." *Skrmetti*, 145 S. Ct. at 1861 (Alito, J., concurring).

Second, the proposed group is not "discrete." *Skrmetti*, 145 S. Ct. at 1851–52 (Barrett, J., concurring) (citation modified). As noted, there are dozens of purported (and fluid) gender identities, including identification as both genders, neither gender, and everything in between—even males who identify as female but do not change their appearance or take any other steps at all to present as female. "The boundaries of the group, in other words, are not defined by an easily ascertainable characteristic that is fixed and consistent across the group." *Id.* at 1852 (Barrett, J., concurring).

Third, the "history of de jure discrimination" that led this Court to recognize other suspect classes is lacking here. *Skrmetti*, 145 S. Ct. at 1853 (Barrett, J., concurring). The Court recognized race as a protected class because of widespread legal discrimination against Black people, first with slavery and then with Jim Crow—in voting, transportation, schools, and public accommodations. See, *e.g.*, *Brown* v. *Board of Education*, 347 U.S. 483, 487–488 (1954); *Watson* v. *Memphis*, 373 U.S. 526, 528 (1963). Likewise, women lacked the right to vote until the 20th century, and even then, they faced laws that limited their participation in many aspects of society. See *Virginia*, 518 U.S. at 531.

These classes had "such a position of political powerlessness" that they required "extraordinary protection from the majoritarian political process." *Skrmetti*, 145 S. Ct. at 1816 (Alito, J., concurring) (quoting *Rodriguez*, 411 U.S. at 28). But no comparable showing of "widespread and conspicuous discrimination" can be made for transgender status. *Id.* at 1866 (Alito, J., concurring).

Fourth, the lack of a comparable historical record of de jure discrimination also suggests that those who identify as transgender are not politically powerless. See *Skrmetti*, 145 S. Ct. at 1854–55 (Barrett, J., concurring). While Black people were "widely impeded" by laws preventing them from voting or "serving in public office," *id.* at 1862 (Alito, J., concurring), that has never been true for people who identify as transgender. Instead, they have made substantial inroads as well-known celebrities like Caitlyn Jenner, members of Congress like Sarah McBride, and high-level federal officials like Rachel Levine. Their interests have been advocated by scores of large law firms. See *Skrmetti*, 83 F.4th at 487.

Those efforts have seen results. The prior administration celebrated Transgender Day of Visibility on Easter Sunday and added gender-identity provisions throughout federal programs. White House, A Proclamation on Transgender Day of Visibility (Mar. 29, 2024), perma.cc/RZD9-7Y2F; Exec. Order No. 13,988, 86 Fed. Reg. 7,023 (Jan. 20, 2021). Meanwhile, state governments have enacted a variety of protections for transgender status. *E.g.*, Cal. Educ. Code § 221.5(f) (West 2021); 775 Ill. Comp. Stat. 5/1-103(O-1) (2025); N.Y. Leg. S2475B (2023); Or. Rev. Stat. § 659A.030 (2023); Mass. Gen. Laws ch.12 § 11I 1/2 (2025); Va. Code Ann. § 38.2–3449.1 (2020); Wash. Rev. Code Ann. § 28A.642.080 (2024).

To be sure, people who identify as transgender are still a minority. But that's true of "a variety of other groups" that do not qualify for suspect or quasi-suspect status. *City of Cleburne, Tex.* v. *Cleburne Living Ctr.*, 473 U.S. 432, 445 (1985). It's not enough to make transgender status a protected class.

2. Constitutionalizing protection for people who identify as transgender risks upending long-settled laws.

Recognizing the first new protected class in many decades would put courts "in the business of closely scrutinizing legislative choices," in many sensitive areas, "from access to restrooms to eligibility for boys' and girls' sports teams." *Skrmetti*, 145 S. Ct. at 1852–53 (Barrett, J., concurring) (citation modified). That "should set off alarm bells." *Id.* at 1852.

And there are intractable problems with using this case as the vehicle to recognize a new protected class. Again, Hecox does not seek to overturn classifications that separate sports by sex; Hecox wants to uphold the sex-based lines drawn by those classifications. See Pet.App.45a.

Instead, Hecox invokes transgender status to *redefine* the criteria for those classifications as different from their traditional meaning—substituting gender identity for sex. Affirming that theory would require courts to decide whether to allow men who identify as female to sleep in women's domestic-abuse shelters or shower with inmates in women's prisons. Forcing lower courts to apply intermediate scrutiny to these and similar situations risks upending long-established sex-based lines and policies. The Court should refuse to undertake that radical transformation and the many problems it portends.

IV. The Act permissibly classifies based on sex to account for enduring physical differences between men and women.

Though Hecox does not challenge the Act's classification between men's and women's sports, the Act does draw a sex-based line. Only females are allowed to play on women's and girls' sports teams, whereas members of both sexes can play on male and coed sports teams. Idaho Code § 33-6203(2). That readily withstands even heightened scrutiny.

"[W]hile detrimental gender classifications by government often violate the Constitution, they do not always do so [because] there are differences between males and females that the Constitution necessarily recognizes." *Michael M.* v. *Superior Ct. of Sonoma Cnty.*, 450 U.S. 464, 478 (1981) (Stewart, J., concurring). These "differences between men and women" are "physical," "inherent," and "enduring." *Virginia*, 518 U.S. at 533 (citation modified). And "we have come to appreciate" that they "remain cause for celebration, but not for denigration of members of either sex or for artificial constraints on an individual's opportunity." *Ibid.* So, consistent with the Equal Protection Clause, "sex classifications may be used to compensate women for particular economic disabilities they have suffered, to promote equal employment opportunity, [and] to advance full development of the talent and capacities of our Nation's people." *Ibid.* (citation modified) (collecting cases).

For a law to pass heightened scrutiny, "it must be established at least that [1] the challenged classification serves important governmental objectives and that [2] the discriminatory means employed are substantially related to the achievement of those objectives." *Nguyen*, 533 U.S. at 60 (citation modified). If that test is met, the Act does not violate the Fourteenth Amendment regardless of whether it is treated as a sex-based or gender-identity-based classification.

A. States have an important interest in promoting equal opportunities and safety for female athletes.

The Fairness in Women's Sports Act preserves female-only teams to "promote sex equality" in sports. Idaho Code § 33-6202(12). "Sex-specific teams accomplish this by providing opportunities for female athletes to demonstrate their skill, strength, and athletic abilities," allowing them "to obtain recognition and accolades, college scholarships, and the numerous other long-term benefits that flow from success in athletic endeavors." *Ibid.*

Hecox "do[es] not dispute that these are important governmental objectives." Pet.App.239a; accord Br.in.Opp.16. And the Ninth Circuit agrees that "promoting equality of athletic opportunity between the sexes" is a "legitimate and important governmental interest." *Clark I*, 695 F.2d at 1131; Pet.App.40a. Thus, the first prong of intermediate scrutiny is satisfied.

B. Reserving women's sports teams for female athletes is substantially related to achieving the State's interest.

On the second prong, this Court has held that "classifications by gender … must be substantially related to achievement" of the State's important interests. *Craig* v. *Boren*, 429 U.S. 190, 197 (1976). Applying that prong, the Court has rejected "archaic and overbroad generalizations" about the financial position of women and "outdated misconceptions concerning the role of females in the home" as improper bases for sex-based classifications. *Id.* at 198–99 (citation omitted).

"Underlying these decisions is the principle that a legislature may not 'make overbroad generalizations based on sex which are entirely unrelated to any differences between men and women or which demean the ability or social status of the affected class." *Michael M.*, 450 U.S. at 469 (plurality opinion of Rehnquist, J.) (quoting *Parham* v. *Hughes*, 441 U.S. 347, 354 (1979) (plurality opinion of Stewart, J.)). Conversely, the Court has upheld classifications based on real and enduring biological differences between the sexes.

For example, in *Michael M.*, the Court upheld a statutory-rape law that made "men alone criminally liable for the act of sexual intercourse" with underage victims. 450 U.S. at 466 (plurality). A man charged with violating the law challenged it under the Equal Protection Clause, arguing it was "underinclusive" because it did not "hold the female as criminally liable as the male" and "overbroad" because it prohibited sex "with prepubescent females" who were "incapable of becoming pregnant." *Id.* at 473, 475.

Applying intermediate scrutiny, this Court rejected both arguments and upheld the law because it "reasonably reflect[ed] the fact that the consequences of sexual intercourse and pregnancy fall more heavily on the female than on the male." *Id.* at 476 (plurality); accord *id.* at 483 (Blackmun, J., concurring in the judgment) (explaining his vote to uphold the "gender-based classification" under intermediate scrutiny). Writing for a four-justice plurality, Justice Rehnquist explained that the Court had "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." *Id.* at 469 (plurality).

The justices did not have to "be medical doctors to discern that young men and young women are not similarly situated with respect to the problems and the risks of sexual intercourse." *Id.* at 471. "Only women may become pregnant," so a legislature aiming to prevent teenage pregnancies could "attack the problem … directly by prohibiting a male from having sexual intercourse with a minor female." *Id.* at 471, 472. "[S]uch a statute," the Court held, "is sufficiently related to the State's objectives to pass constitutional muster." *Id.* at 472–73. Almost all the "significant harmful and inescapably identifiable consequences of teenage pregnancy fall on the young female." *Id.* at 473. So the legislature was "well within its authority … to punish only the participant who, by nature, suffers few of the consequences of his conduct." *Ibid.* What's more, the risk of pregnancy provides a "substantial deterrence to young females," but "[n]o similar natural sanctions deter males." *Ibid.* "A criminal sanction imposed solely on males thus serves to roughly 'equalize' the deterrents on the sexes." *Ibid.*

The same reasoning supports the same result here. The Act's prohibition on male athletes playing on female teams "is not invidious, but rather realistically reflects the fact that the sexes are not similarly situated in certain circumstances." *Id.* at 469 (plurality). Courts do not have to "be medical doctors to discern that young men and young women are not similarly situated" when it comes to athletic abilities based on size, strength, speed, and stamina, see *id.* at 471, or to realize that these differences derive from athletes' objective biology, not their subjective gender identities. And the science the Idaho legislature relied on in its legislative findings supports its commonsense conclusions:

- "Men generally have 'denser, stronger bones, tendons, and ligaments' and 'larger hearts, greater lung volume per body mass, a higher red blood cell count, and higher haemoglobin.'"
- "Men also have higher natural levels of testosterone, which affects traits such as hemoglobin levels, body fat content, the storage and use of carbohydrates, and the development of type 2 muscle fibers, all of which result in men being able to generate higher speed and power during physical activity."
- These "biological differences … 'explain the male and female secondary sex characteristics which develop during puberty and have lifelong effects, including those most important for success in sport: categorically different strength, speed, and endurance.'"

- Males' numerous athletic advantages are "not diminished through the use of puberty blockers and cross-sex hormones."

Idaho Code § 33-6202(3)–(5), (11) (quoting Neel Burton, *The Battle of the Sexes*, Psychology Today (July 2, 2012), and Doriane Lambelet Coleman & Wickliffe Shreve, *Comparing Athletic Performances: The Best Elite Women to Boys and Men*, Duke Law Ctr. for Sports L. & Pol'y).

A sex separation "imposed solely on males thus serves to roughly 'equalize' the [athletic opportunities for] the sexes." *Michael M.*, 450 U.S. at 473 (plurality). That's enough to make the Act "sufficiently related to the State's objectives to pass constitutional muster." *Ibid.*

This Court's decision in *Nguyen* further confirms that conclusion. There, the Court upheld a federal statute that imposed "a set of requirements on the children of citizen fathers born abroad and out of wedlock to a noncitizen mother that [were] not imposed under like circumstances when the citizen parent [was] the mother." 533 U.S. at 60. Applying intermediate scrutiny, the Court held that the statute's differential treatment was justified by two important government interests: (1) "assuring that a biological parent-child relationship exists," and (2) ensuring that the child and citizen parent have an opportunity to develop "the real, everyday ties that provide a connection between child and citizen parent and, in turn, the United States." *Id.* at 62, 64–65.

As to both, the Court held that the statute was substantially related to advancing them due to the biological reality that mothers, not fathers, give birth. *Id.* at 62–70. The statute "addresse[d] an undeniable difference in the circumstance of the parents at the time a child is born." *Id.* at 68. For the mother, the biological "relation is verifiable from the birth itself." *Id.* at 62. And "the opportunity for a meaningful relationship … inheres in the very event of birth," which confirms for the mother "that the child is in being and is hers" and provides "an initial point of contact with him." *Id.* at 65.

None of that is necessarily true for the father, who "need not be present at the birth." *Id.* at 62. Even if he is, "that circumstance is not incontrovertible proof of fatherhood." *Ibid.* Beyond that, "it is not always certain that a father will know that a child was conceived, nor is it always clear that even the mother will be sure of the father's identity." *Id.* at 65.

"Principles of equal protection do not require Congress to ignore this reality." *Id.* at 66. Nor do these differences "result from some stereotype, defined as a frame of mind resulting from irrational or uncritical analysis." *Id.* at 68. "[A]t the moment of birth … the mother's knowledge of the child and the fact of parenthood have been established in a way not guaranteed in the case of the unwed father." *Ibid.* "This is not a stereotype." *Ibid.* "The difference between men and women in relation to the birth process is a real one, and the principle of equal protection does not forbid Congress to address the problem at hand in a manner specific to each gender." *Id.* at 73.

So too here. Male and female athletes "are not similarly situated with regard to" athletic abilities. *Id.* at 63. "The difference between men and women in relation to [male puberty] is a real one." *Id.* at 73. "The evidence is unequivocal that starting in puberty, in every sport except sailing, shooting, and riding, there will always be significant numbers of boys and men who would beat the best girls and women in head-to-head competition." Idaho Code § 33-6202(10) (quoting Doriane Coleman, et al., *Pass the Equality Act, But Don't Abandon Title IX*, Washington Post (Apr. 29, 2019)). As a result, "the principle of equal protection does not forbid [Idaho] to address the problem at hand in a manner specific to each gender." *Nguyen*, 533 U.S. at 73.

The same would be true if the Act classified by gender identity, and for the same reasons. Gender identity is irrelevant to sports. Biologically speaking, males who identify as women are still males and have all the same advantages of height, weight, heart and lung capacity, hip configuration, reaction time, and so on. See Statement §§ II.A, II.B, & II.D, *supra*.

Consequently, every justification for limiting women's teams to females applies equally no matter how a male identifies except when a particular advantage can be eliminated through medical treatment. And medical treatment can at most mitigate a few of the unfair advantages—it does not eliminate any of them, and many are not affected at all. See Statement §§ II.C & II.E, *supra*.

Notably, "when applying heightened scrutiny, [courts] 'must accord substantial deference to the predictive judgments' of legislative bodies." Pet.App.50a (quoting *Turner Broad. Sys., Inc.* v. *FCC*, 512 U.S. 622, 665 (1994). So it makes no difference if there was "little anecdotal evidence at the time of the Act's passage" that males identifying as female were displacing women in sports. Pet.App.48–50a. Such displacement was just starting to happen, and Idaho expected the phenomenon to spread quickly. It did. That's why, although the NCAA and the U.S. Olympic and Paralympic Committee did not have categorical rules when the Ninth Circuit issued its amended opinion in the summer of 2024, see Pet.App.48a–49a n.14, they have them today—and they mirror Idaho's Act. NCAA, *Participation Policy for Transgender Student-Athletes*, *supra*; USOPC, *U.S. Olympic and Paralympic Committee Policy*, *supra*.

* * *

"[T]he Equal Protection Clause does not mean that the physiological differences between men and women must be disregarded." *Michael M.*, 450 U.S. at 481 (Stewart, J., concurring). "While those differences must never be permitted to become a pretext for invidious discrimination, no such discrimination is presented by this case." *Ibid.* "The Constitution surely does not require a State to pretend that demonstrable differences between men and women do not really exist." *Ibid.* The Court should reject that notion again and uphold the validity of women's sports.

C. The Ninth Circuit's blinkered focus on a small subset of males turns intermediate scrutiny on its head.

As discussed, Hecox did not object to male and female sports teams. Hecox challenged the Act's requirement that males who identify as women play on men's or coed teams, arguing that this policy "is not substantially related" to the State's "interest in protecting women based on asserted competitive advantages." Mem. in Supp. of Mot. for Prelim. Inj. at 18, *Hecox* v. *Little*, 479 F. Supp. 3d 930 (D. Idaho 2020).

The court below took the bait, concluding that the Act "applies broadly to many students who do not have athletic advantages over cisgender female athletes," Pet.App.42a, based on the unsupported notion that puberty blockers might reduce males' physiological advantage, Pet.App.238a. Because the record did not "*ineluctably* lead to the conclusion that *all*" men who identify as women have an advantage over women, the Ninth Circuit held it unconstitutional. Pet.App.48a (emphasis added).

That approach inverts the intermediate scrutiny framework. Rather than look to the entire class affected by the Act's sex-based classification to assess whether it was substantially related to the State's interests—as intermediate scrutiny requires—the courts below looked only to a small subset of the affected class and asked whether the Act advanced the State's interests *as applied to them*. Pet.App.48a; accord Br.in.Opp.18. In essence, the lower courts transmogrified intermediate into strict scrutiny.

That's wrong. Intermediate scrutiny does not require the State to engage in perfect line-drawing to advance its interests. Because "absolute necessity is

not the standard," States can draw lines that "represent trade-offs between equality and practicality." *Clark I*, 695 F.2d at 1131–32. And this Court has made that point repeatedly:

- In *Kahn* v. *Shevin*, the Court upheld a tax exemption for widows while rejecting the dissent's view it could have been drafted "more precisely," 416 U.S. 351, 356 n.10 (1974), by excluding "widows of substantial economic means," *id.* at 360 (Brennan, J., dissenting).
- In *Rostker* v. *Goldberg*, the Court held that women could be excluded from selective-service registration because, even if "a small number … could be drafted for noncombat roles," Congress "did not consider it worth the added burdens." 453 U.S. 57, 81 (1981).
- In *Metro Broadcasting, Inc.* v. *FCC*, the Court held that a classification need not be accurate "in every case" to survive intermediate scrutiny if it advances the government's interest "in the aggregate." 497 U.S. 547, 579 (1990), *overruled on other grounds*, *Adarand Constructors, Inc.* v. *Peña*, 515 U.S. 200, 227 (1995).
- And in *Michael M.*, the Court held that a statutory-rape law was substantially related to the goal of reducing teenage pregnancy even though it made "unlawful sexual intercourse with prepubescent females, who are, by definition, incapable of becoming pregnant." 450 U.S. at 466, 475 (plurality).

Finally, in *Nguyen* the Court upheld the stricter requirements for citizen fathers while conceding that Congress could have excused compliance "when an actual father-child relationship [was] proved." 533 U.S. at 69. Congress chose not to make that exception, "perhaps because of the subjectivity, intrusiveness, and difficulties of proof that might attend an inquiry into any particular bond or tie." *Ibid.* But a statute survives intermediate scrutiny "so long as it is substantially related to the achievement of the governmental objective in question." *Id.* at 70 (citation modified). And none of this Court's "cases have required that [it] must be capable of achieving its ultimate objective in every instance." *Ibid.*

This Court applies the same analysis outside the equal-protection context, too. In other areas, this Court evaluates a law under intermediate scrutiny based on "the overall problem the government seeks to correct, not on the extent to which it furthers the government's interests in an individual case." *Ward* v. *Rock Against Racism*, 491 U.S. 781, 801 (1989); accord, *e.g.*, *United States* v. *Edge Broad. Co.*, 509 U.S. 418, 427 (1993) (intermediate scrutiny does not depend on "whether the governmental interest is directly advanced as applied to a single person or entity").

With the proper framework, Idaho's Act easily satisfies intermediate scrutiny no matter the purported classification. Even assuming the State *could* have advanced its interest in promoting fairness and safety in sports without designating *all* male athletes for male or coed teams—for example, by making an exception for prepubescent male athletes, or using some more precise proxy for athletic ability—that's not the question.

The State "did neither here, perhaps because of the subjectivity, intrusiveness, and difficulties of proof that might attend an inquiry into any particular" child's experience with puberty or athletic skill. *Nguyen*, 533 U.S. at 69. That was the legislature's choice to make.

Hecox's theory makes sex-designated sports practically impossible. If Idaho must justify its Act on each application, Idaho would have to allow many males *who identify as male* into women's sports. After all, many males may take medication that lowers their testosterone levels, or have some disability that lessens their athletic ability, or have naturally low athletic abilities. But just as Idaho can require these males to compete on men's teams regardless of whether each individual possesses unfair advantages over females, Idaho may require the same of Hecox.

The same logic sustains the legislature's choice of specific sex-verification procedures. Idaho Code § 33-6203(3). The challenge to those procedures became moot when Doe finished high school and left Idaho, and Hecox never alleged any injury that could establish standing to challenge them. Regardless, the Constitution "does not require that [the State] elect one particular mechanism from among many possible methods of establishing [sex], even if that mechanism arguably might be the most scientifically advanced method." *Nguyen*, 533 U.S. at 63. Provided the procedures represent a "reasonable conclusion by the legislature that the satisfaction of one of several alternatives will suffice to establish" biological sex, as the procedures the Idaho legislature selected do, the Constitution is satisfied. *Ibid.* That's certainly true here, where nothing more than a routine sports physical is required. Idaho Code *Id.* § 33-6203(3).

* * *

The issue in this case is not whether the Fairness in Women's Sports Act "could have been drafted more wisely, but whether the lines chosen by the [Idaho] Legislature are within constitutional limitations." *Kahn*, 416 U.S. at 356 n.10. Under a proper application of intermediate scrutiny—regardless of whether the law is treated as a sex-based classification or a classification based on gender identity—the Ninth Circuit should not have asked whether the record "*ineluctably* lead[s] to the conclusion that *all*" men who identify as women have an advantage over women. Pet.App.48a (emphasis added).

This Court's "gender-based classification equal protection cases" have never "required that the statute under consideration must be capable of achieving its ultimate objective in every instance." *Nguyen*, 533 U.S. at 70. A substantial relationship is enough. *Ibid.* The Court should reject the Ninth Circuit's transformation of the Court's intermediate-scrutiny test into something that looks just like strict scrutiny. And the Court should uphold the validity of women's sports.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

KRISTEN K. WAGGONER
JAMES A. CAMPBELL
JOHN J. BURSCH
LINCOLN DAVIS WILSON
CHRISTOPHER P. SCHANDEVEL
CAROLINE C. LINDSAY
ALLIANCE DEFENDING FREEDOM
440 First Street NW
Suite 600
Washington, DC 20001
Counsel for Petitioners

RAUL R. LABRADOR
ATTORNEY GENERAL
ALAN M. HURST
SOLICITOR GENERAL
Counsel of Record
JAMES E.M. CRAIG
MICHAEL A. ZARIAN
SEAN M. CORKERY
GADER WREN
JADEN STEEVES
OFFICE OF THE IDAHO ATTORNEY GENERAL
700 W. Jefferson St. #210
Boise, ID 83720
(208) 332-3548
alan.hurst@ag.idaho.gov
Counsel for State Petitioners

SEPTEMBER 2025