

No. 26-5488

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STEPHANIE LYNNE BROWN, as mother, guardian,
and next friend of minor K.M.K.; in her own capacity,
Plaintiff-Appellant,

v.

WASHINGTON INTERSCHOLASTIC ACTIVITIES ASSOCIATION, ET AL.,
Defendants-Appellees.

On Appeal from the U.S. District Court
for the Western District of Washington
Case No. 3:26-cv-05616-DGE

**APPELLANTS STEPHANIE LYNNE BROWN AND K.M.K.'S
OPENING BRIEF**

JAMES A. CAMPBELL
JULIE MARIE BLAKE
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176
(571) 707-4655
jcampbell@ADFlegal.org
jblake@ADFlegal.org

JACOB P. WARNER
JONATHAN A. SCRUGGS
KATHERINE L. ANDERSON
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
jwarner@ADFlegal.org
jscruggs@ADFlegal.org
kanderson@ADFlegal.org

JOHN J. BURSCH
ZACHARY E. TYREE
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
(616) 450-4235
jbursch@ADFlegal.org
ztyree@ADFlegal.org

NATALIE D. THOMPSON
ALLIANCE DEFENDING FREEDOM
7250 Dallas Parkway, Suite 700
Plano, TX 75024
(469) 894-8700
nthompson@ADFlegal.org

ABIGAIL ST. HILAIRE
ELLIS, LI & MCKINSTRY PLLC
1700 Seventh Avenue, Suite 1810
Seattle, WA 98101
(206) 682-0565
asthilaire@elmlaw.com

Counsel for Appellants Stephanie Lynne Brown and K.M.K.

DISCLOSURE STATEMENT

As natural persons, Stephanie Lynne Brown and K.M.K. have no parent corporation and no stockholders.

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiffs-Appellants Stephanie Lynne Brown and K.M.K. respectfully request oral argument. Defendants have adopted and implemented a policy that requires K.M.K. to compete against biological males¹ in high-school sports and under which Defendants refuse to honor Brown's request to opt K.M.K. out of such matches or otherwise notify Brown when K.M.K. is slated to face a male. K.M.K. already had to wrestle a male opponent more powerful than her without her or Brown's knowledge or consent; she allowed herself to be pinned after the opponent sexually assaulted her.

That violates both Brown's constitutional parental rights and K.M.K.'s rights under Title IX. And absent a preliminary injunction from this Court, Brown and K.M.K. will continue suffering irreparable harm—deprived of constitutional rights and high-school-sports opportunities, respectively. Oral argument would assist this Court in resolving these important constitutional and statutory questions.

STATEMENT OF JURISDICTION

Brown and K.M.K. brought claims pursuant to Title IX and the U.S. Constitution under 42 U.S.C. § 1983. The district court had original jurisdiction under 28 U.S.C. §§ 1331 and 1343. On August 23, 2026,

¹ Appellants occasionally use the adjective “biological” for clarity. But there is, of course, no other kind of “male.”

the district court denied Plaintiffs' motion for a preliminary injunction. On August 25, 2026, Plaintiffs timely filed a notice of appeal.

This Court has jurisdiction under 28 U.S.C. § 1292(a)(1) to review the district court's order denying Brown and K.M.K.'s motion for a preliminary injunction.

STATEMENT OF THE ISSUES

The issues on appeal are:

1. Whether the district court erred in denying Plaintiff Stephanie Brown's motion for a preliminary injunction to protect her constitutional rights to direct her daughter's care, upbringing, and education when Defendants' policy pits her daughter against biological males in high-school athletics without notice or consent.

2. Whether the district court erred in denying Plaintiff K.M.K.'s motion for a preliminary injunction to vindicate her rights under Title IX to equal athletic opportunity—not to be discriminated against on the basis of sex—when Defendants' policy would force her to compete against males with inherent athletic advantages.

PERTINENT STATUTES AND REGULATIONS

The relevant constitutional provisions, statutes, and regulations are attached as an addendum to this brief.

INTRODUCTION

No girl should have to choose between playing the sports she loves and her safety. But Washington forces female athletes to compete on unsafe, uneven playing fields. Recognizing the inherent biological differences between boys and girls, Washington long had a protected category for girls' sports. Yet it adopted policies allowing certain males—those who identify as girls—to compete on girls' teams and refusing to notify parents when their daughters face males. The result? High-school females must face males with inherent advantages, while males get to compete against physiological counterparts on fair footing. And parents cannot make decisions to protect their daughters' health and safety.

Plaintiffs K.M.K. and her mother Stephanie Brown have suffered the consequences. K.M.K., a high-school wrestler and soccer player, had to face a stronger biological male in a wrestling match last season without her or her mother's knowledge or consent. K.M.K. allowed herself to be pinned after her male opponent sexually assaulted her.

Defendants-Appellees Washington Interscholastic Activities Association, the Office of the Superintendent of Public Instruction (OSPI) and its superintendent Chris Reykdal, and the Puyallup School District insist that is all fine. They demand that K.M.K. continue competing against biological males—even the same male. And they refuse to give Brown notice if K.M.K. is matched against males or allow Brown to opt K.M.K. out of such matches without penalty.

That policy violates Brown’s constitutional rights to direct her daughter’s care and upbringing. Under a long line of Supreme Court decisions, Brown is entitled to notice and opt out when K.M.K. is scheduled to compete against male athletes. *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (per curiam) (citing cases). Indeed, a “straightforward application” of those decisions “dictate[s]” Brown’s likely success. *Id.* at 499 (Barrett, J., concurring).

Defendants’ gender-identity-participation policy also discriminates based on sex in violation of Title IX. *West Virginia v. B.P.J.*, 146 S. Ct. 2356, 2371–72 (2026). But under Defendants’ policy, K.M.K. must compete against males who have inherent athletic advantages—posing safety risks and competitive disadvantages—while males get to compete against their physiological counterparts on a level playing field. That treats girls worse than boys, as K.M.K.’s experience shows.

Absent a preliminary injunction, Brown will continue to be deprived of her constitutional rights, and K.M.K. will miss another season of high-school sports—and the equal opportunity Title IX guarantees—because of Defendants’ unlawful policies. The public interest favors preserving Brown and K.M.K.’s rights, and Defendants can easily return to the sex-separated sports system that they long maintained and state law explicitly allows. This Court should reverse and direct the entry of a preliminary injunction.

STATEMENT OF THE CASE

A. Washington builds girls' wrestling for females.

WIAA sponsored no girls' sports until 1967. 5-ER-835. That year, it adopted its first rules for girls' athletics, and over the decades that followed, it added girls' teams sport by sport. 5-ER-835.

Wrestling came late. The sport had long been male-dominated, and the few girls who participated usually had to wrestle boys because no girls' events existed. 5-ER-805. Those girls and their parents understood they would face boys, and they agreed to assume that risk. 5-ER-806. Washington finally made girls' wrestling an official high-school sport in 2007. 5-ER-805.

The reason was no secret. WIAA's assistant executive director said that the goal was to grow girls' wrestling so females could have a space just for them: "We need to have girls wrestling girls and guys wrestling guys." 5-ER-806. The sport took off. About 3,500 athletes now wrestle on the girls' side in Washington, and about 10,000 on the boys' side. 5-ER-806. And wrestling is a no-cut sport in every weight class. 5-ER-806.

WIAA still runs the sport by sex. It sets 14 male weight classes and 14 distinct female weight classes. 4-ER-762. It fixes a minimum wrestling weight at 7% body fat for males and 12% for females. 4-ER-767. Its position statement calls for "separate and equal programs for boys and girls" and directs that, where both teams exist, boys play on the boys' team and girls on the girls' team. 4-ER-764. And any team

made up of boys and girls counts as a boys' team that may compete only against other boys' teams. 4-ER-764.

B. WIAA layers a gender-identity rule on top of its sex-based athletic structure.

Onto that structure, WIAA layered Rule 18.16.0, which allows students to compete consistent with their gender identity. 5-ER-834. That rule provides that athletes “will participate in programs consistent with their gender identity or the gender most consistently expressed.” 4-ER-715. No cross-sex hormone, puberty blocker, or physical element is required to invoke this gender-identity policy; instead, WIAA defines gender identity as a person’s “innate sense of their own gender.” 4-ER-765. Once a student declares his or her identity and a school grants eligibility, that status continues for the rest of the student’s participation. 4-ER-715.

Schools may not contest that claim. WIAA instructs them *not* to ask a student for “proof of gender.” 5-ER-835. OSPI requires WIAA and each district to follow the same course, and the District has adopted the policies OSPI demands. 5-ER-831–32.

And no one tells the other side. WIAA’s rules provide no notice to other students, their parents, or opposing teams when a student of the opposite sex competes under the rule, and none is given. 5-ER-835. The District interprets its policies to forbid staff from telling parents when their daughters will compete against males. 5-ER-831.

C. No student wrestles without a parent's signature.

The District treats wrestling as dangerous. Policy 2151 lists wrestling among the “contact sports”—those “in which the major activity involves bodily contact.” 4-ER-779. The same policy requires each participant and parent to sign a statement acknowledging the risk of injury. 4-ER-778. The District’s athletic handbook makes that signature the price of admission: no student may turn out for any sport until an athletic registration is on file bearing a “[p]arent permission and acknowledgment of risk signature.” 4-ER-791. The District warns parents about concussions, requires baseline concussion screening for wrestlers, and warns about sudden cardiac arrest. 4-ER-794, 796.

None of those forms asks a parent to accept that girls’ wrestling requires wrestling a male. 4-ER-778, 791. Stephanie Brown has never consented to that. 5-ER-862.

D. K.M.K. enters the Lady Jag Kickoff.

K.M.K. started wrestling at four, after watching her three older brothers compete. 5-ER-807. She plays soccer too, but wrestling is her favorite sport, and she is good at it. 5-ER-807. By her sophomore year at Rogers High School, she ranked first in the 190-pound class on the junior-varsity girls’ team—one spot from varsity, the same rank she had held as a freshman. 5-ER-808. She returned that fall eager to sharpen her skills and to spend the season with her teammates. 5-ER-808.

Her season opened on a Saturday in December 2025 at the Lady Jag Kickoff, a WIAA- and District-sponsored tournament sanctioned and advertised for girls' wrestling at local rival high school Emerald Ridge. 5-ER-808–09. K.M.K. wrestled her way to a fifth and final match. The winner would take third place; the loser, fourth. 5-ER-809.

Her opponent came from Emerald Ridge. K.M.K. and her mother did not know that opponent, and they understood that wrestler to be female. 5-ER-809. K.M.K.'s coach and a WIAA tournament official confirmed the pairing and sent her to the mat. 5-ER-809. The Emerald Ridge coach sent his wrestler. 5-ER-809. No one told K.M.K. or Brown that her opponent was male. 5-ER-809.

E. K.M.K.'s male opponent sexually assaults her.

K.M.K. thought her technique was the better of the two. But she noticed at once that her opponent was “stronger and more powerful.” 5-ER-809.

She began the second period on top, a favorable position. 5-ER-809. Then the male reached between her legs and pushed his fingers hard through her singlet, her spandex shorts, and her underwear, penetrating her vagina for several seconds and causing great pain. 5-ER-809–10. She tried to push the male off. She could not. 5-ER-810. Her mother, just across the mat, could not see what was happening but knew immediately something was wrong. 5-ER-810.

No legal move in wrestling puts a hand into a girl's vagina. 2-ER-177–78; 5-ER-811. The male's act of digital vaginal penetration was a flagrant foul and criminal conduct. So K.M.K. stopped trying to win. About a minute later, with K.M.K. attempting to concede, the male groped her a second time. Seconds later, she let herself be pinned to end the match and the assault. 5-ER-810.

The pin gave the male the win, third place, the podium spot, the medal, and help toward qualifying for league and state tournaments. K.M.K. took fourth and nothing else. 5-ER-810–11. Her coaches walked away. 5-ER-811. She ran to her mother sobbing. 5-ER-811. A coach from another team then told her that her opponent was male. 5-ER-812.

Months later, the District's Title IX investigator reviewed two videos of the match and concluded that the opponent "likely touched" K.M.K.'s vagina "with force in the first instance, such that it caused her discomfort." 1-ER-010; 2-ER-168.

F. K.M.K. is driven from her favorite sport.

Brown emailed K.M.K.'s coaches the next school day. She wrote that K.M.K. had been "Oil Checked" (a slang term that refers to a wrestler inserting his fingers inside his opponent), that the conduct was "100% not ok," that a male doing it was "an even bigger issue," and that K.M.K. "will absolutely not compete against this student again." 1-ER-

008; 5-ER-874. Coach Scott answered that she had not known the opponent was male and would not have put K.M.K. on the mat had she known. 5-ER-813. Scott asked for the video, and Brown sent it. 5-ER-813.

Rogers's principal learned of the report the same day. He understood Brown's complaint to be that a male wrestler "placed fingers in her daughter's private parts." 2-ER-172. Asked whether he took that to mean penetration, he answered: "I did. But that's wrestling." 2-ER-172.

Weeks passed with no word. In early January, K.M.K. and her mother decided—to ensure K.M.K.'s safety—that she would not return to the team that season. 1-ER-011; 5-ER-814. She has not competed in any WIAA or District sport since. 5-ER-827.

State law requires school officials and employees to report suspected abuse or assault within 48 hours. But the District didn't report anything to law enforcement for nearly two months—and only after the media picked up the story. 1-ER-012; 5-ER-819. The District opened a Title IX investigation in late February, and that investigation remains unfinished. 1-ER-014; 5-ER-827.

G. Brown seeks notice and opt out but is refused.

In late March, Brown asked the District for supportive measures. Two matter here. She asked for an assurance that K.M.K. "will not have

to compete against any biological males ... without penalty”—no suspensions, no removal, no extra reps, no loss on her record. 4-ER-784. And Brown asked for notice to her and to K.M.K. before any male competes on K.M.K.’s team or an opposing team in her weight class. 4-ER-784.

The District’s Title IX Coordinator answered a week later. On competing against males, he wrote that WIAA rules, state regulations, OSPI rules, and district policy let students compete by gender identity, and that “the only remedy the district can offer is that [K.M.K.] would be able to forfeit any such matches without any adverse consequences imposed by the district.” 4-ER-781. On notice, he wrote that FERPA, WIAA rules, and district policies require the District to keep a student’s gender-identity information confidential. 4-ER-782.

So the District told Brown that K.M.K. may sit out matches against males if she happened to know her opponent is male in advance. But the District would not schedule around such a match, tell Brown one was coming, or withdraw K.M.K. itself. 4-ER-781–82.

WIAA’s rules already make room for withdrawal. Entry runs through a weigh-in form filed before the match, and a wrestler “not appearing on the current WIAA weigh-in form will NOT be permitted to compete.” 4-ER-768. WIAA excuses certain withdrawals for “injury, illness, religious observance or unforeseen events,” treating only other withdrawals as violations. 4-ER-735.

The risk to K.M.K. has not passed. The same male opponent who assaulted K.M.K. remains enrolled at Emerald Ridge and eligible to compete in girls' wrestling this season. 1-ER-024. There is every reason to believe he will. A second male wrestler at Emerald Ridge also competes on the girls' team at 235 pounds, the class just above K.M.K.'s, and K.M.K. sometimes weighs in above 190. 5-ER-821. Teams within the same District wrestle each other several times a season. 1-ER-023. K.M.K. transferred to another high school in the District and will compete again in her junior and senior seasons if this Court grants relief.

H. Defendants know what their policy is doing to girls.

K.M.K.'s report did not provide the first warning to Defendants.

A male athlete won WIAA girls' track-and-field state titles in 2024 and 2025. Girls from Tumwater High School protested. WIAA acknowledged the protest and changed nothing. 5-ER-851.

A Shelton High School girls' basketball team fielded a male in 2025. Two Tumwater players refused to take the floor out of concern for their safety, and a girl on an opposing team was hurt when the male player tackled her. The U.S. Department of Education opened a Title IX investigation. WIAA changed nothing. 5-ER-852–53.

In addition, school boards and athletes have filed complaints. Kennewick's board filed a Title IX complaint against Reykdal, OSPI, and WIAA; Central Valley, Eastmont, and Warden filed their own. 5-

ER-843. Two runners forced to race a male filed against OSPI, and a parents' network filed for an eighth-grade girl in the same position. 5-ER-843. Two girls met with Reykdal in person to tell him what the policy had cost them. 5-ER-844. Reykdal ignored them, noting he is "absolutely committed" to the policy. 5-ER-845.

In addition, efforts at reform have been rebuffed. At least 13 member school boards asked WIAA to reserve girls' teams for females. 5-ER-852. OSPI pressed WIAA not to change the policies, and WIAA twice declared the membership's votes on the proposal "advisory." 5-ER-852. Its executive director said he hoped critics would "spend that time and energy where they can make a real impact." 5-ER-853.

OSPI did more than hold the line. It audited every district in the state for compliance with its gender-identity policies and sent corrective-action letters to those that balked. 5-ER-846. When Tumwater, Mead, Kennewick, and Moses Lake declined to adopt the model policy or asked WIAA to protect girls' teams, OSPI told them they were breaking state law and raised the prospect of enforcement—including the loss of state money—under RCW 28A.642.050. 5-ER-846–48. Most of the holdouts gave in. 5-ER-848. A few did not. 5-ER-848.

Two experts below explained the physical stakes. Dr. Gregory Brown identified the traits most strongly tied to success in wrestling— isometric and dynamic strength, anaerobic power, muscular endurance,

aerobic endurance, and body composition—and males’ inherent advantage as to each of them. 3-ER-384–97. Dr. Chad Carlson concluded that no matter how males identify or what drugs they take, letting them compete against females “must be expected to create predictable, identifiable, increased, and unequal risks of injuries to the participating women.” 4-ER-648.

I. Brown and K.M.K. sue and are denied a preliminary injunction restoring their federal rights.

Brown and K.M.K. sued in June. 5-ER-799. Brown claims that WIAA, Reykdal, and the District are violating her right to direct her daughter’s care and upbringing by refusing either to keep K.M.K. out of matches against males or to tell her when one is set. 5-ER-860–63. K.M.K. claims that WIAA, OSPI, and the District are violating Title IX by putting males on girls’ teams. 5-ER-857–59. They moved for a preliminary injunction. Defendants opposed. 1-ER-018.

The court held that both Plaintiffs “have established Article III standing.” 1-ER-026. Brown’s injury, it explained, is fairly traceable to Defendants’ policies, and a ruling conferring opt-out rights would redress it. 1-ER-022–23. K.M.K.’s injury is imminent because the District’s wrestling schedule and the continued presence of two male wrestlers at Emerald Ridge make a future matchup likely. 1-ER-024–26.

But the district court denied the preliminary injunction. On parental rights, the court recast Brown’s claim as one “to direct the administration of extracurricular student sports activities” and “to obtain private, sensitive information about other students,” found no authority for such a right, and said Brown was using her parental right “as a sword (dictating the conduct of the school) rather than as a shield (choosing to remove her child from certain scenarios she deems inappropriate).” 1-ER-005, 030. It never analyzed whether the District’s refusal survives strict scrutiny.

On Title IX, the court held that K.M.K. alleged only disparate impact, 1-ER-035–36; the record was “inconclusive” on whether male participation creates a known or obvious risk, 1-ER-005, 043; equal opportunity turns on “resources devoted to supporting female participation in sports,” not “individual performances in a particular match or event,” 1-ER-005; and the Spending Clause bars liability for want of clear notice, 1-ER-052–57. Then it denied the motion. 1-ER-064.

Brown and K.M.K. appealed. 5-ER-875. The district court denied an injunction pending appeal. 2-ER-067–71. Brown and K.M.K. then moved this Court for an injunction pending appeal, and that motion remains pending. The clock is running. K.M.K. is already missing the girls’ soccer season, which is well underway. 4-ER-755. And girls’ wrestling opens this fall. 4-ER-762.

SUMMARY OF ARGUMENT

I. This Court should grant Brown an injunction to protect her parental rights. Parents hold a fundamental right to direct the care, upbringing, and education of their children. That right includes decisions on child safety. And it applies at school. Brown asks to make one such decision here: whether her 15-year-old daughter wrestles a male. That decision belongs to her alone.

The District told Brown that K.M.K. may sit out matches against males without penalty. Then Defendants refused every means of doing so. They won't schedule around the match. They won't tell Brown one is coming. And they won't withhold K.M.K. on their own. An opt-out Defendants will not implement is no opt-out at all.

The district court let that refusal stand. It recast Brown's claim as a demand to run a school program and to obtain other students' private information, held no such right exists, and stopped. That's wrong. Brown claims no authority over another student, seeks no student's records, and asks for no control over any program. She asks only to direct her daughter's care by excusing her from matches against males.

Defendants cannot justify their refusal. Their asserted interests do not reach the relief Brown seeks, which requires disclosing no protected information. And Defendants can satisfy Brown's right two ways: They can withdraw K.M.K. from matches Brown has not authorized or tell her when one is coming. They refuse both.

Wrestling season opens this fall, and soccer season has begun. Unless this Court acts, K.M.K. must exit sports or compete on terms her mother refuses. No later act restores a season spent on the sidelines. An injunction only asks Defendants to honor a decision they already agree is Brown's to make.

II. This Court should also grant K.M.K. an injunction on her Title IX claim. She is likely to succeed on the merits. Defendants' policy discriminates on the basis of sex in violation of Title IX. The statute provides clear notice that funding recipients cannot treat girls worse than boys—*i.e.*, deny girls equal athletic opportunities. But that is just what Defendants' policy does by requiring girls to compete against males with inherent biological advantages. The policy places girls at “severe” safety risks and “serious” competitive disadvantages, as the Supreme Court just explained. *B.P.J.*, 146 S. Ct. at 2371–72. K.M.K.'s experience exemplifies those harms—she lost a match against a stronger male opponent after he sexually assaulted her. The district court's conclusion that allowing boys to play against girls does not present safety and competitive harms contradicts the Supreme Court's reasoning and the record here.

Defendants intended to treat girls worse than boys. First, the policy—which eliminates all-girls' teams but not all-boys' teams—is not neutral. In addition, the factual circumstances show that Defendants regarded girls' sports as less important—less worthy of protection—

than boys' sports. Finally, Defendants have been deliberately indifferent to the sex discrimination their policy has caused and continues to cause. They disregarded repeated Title IX complaints and media reports detailing the safety and fairness harms girls have suffered from being forced to compete against males, leading to K.M.K.'s harms in this case.

The remaining preliminary-injunction factors also favor K.M.K. She will suffer irreparable harm absent an injunction. As multiple circuits have held, the loss of once-in-a-lifetime opportunities to compete in high-school sports constitutes an irreparable injury. *E.g.*, *Mid Vt. Christian Sch. v. Saunders*, 151 F.4th 86, 96 (2d Cir. 2025). Also, the public interest “favors applying federal law correctly,” *Small v. Avanti Health Sys., LLC*, 661 F.3d 1180, 1197 (9th Cir. 2011), and “ensuring that students” like K.M.K. “do not lose out on valuable athletic opportunities,” *Mid Vt.*, 151 F.4th at 96. K.M.K. should not be required to subject herself to further sex discrimination as the price for competing in high-school athletics when Defendants can easily return to a system in which all students compete consistent with their sex.

This Court should reverse the district court's denial of a preliminary injunction.

STANDARD OF REVIEW

This Court reviews the denial of a preliminary injunction for an abuse of discretion but reviews *de novo* all issues of law. *Meinecke v. City of Seattle*, 99 F.4th 514, 521 (9th Cir. 2024).

ARGUMENT

Brown and K.M.K. are entitled to a preliminary injunction because (1) they are “likely to succeed on the merits”; (2) they are “likely to suffer irreparable harm in the absence of preliminary relief”; (3) “the balance of equities tips in [their] favor”; and (4) an injunction serves the “public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under this Court’s “sliding scale” approach, the elements “are balanced, so that a stronger showing of one element may offset a weaker showing of another.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (citation modified).

When, as here, the hardship balance “tips sharply” in Plaintiffs’ favor and the other two *Winter* factors are met, Plaintiffs need only show “‘serious questions’ on the merits.” *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 683–84 (9th Cir. 2023) (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–32, 1134–35 (9th Cir. 2011)). Here, they easily do.

I. This Court should grant Brown a preliminary injunction to protect her parental rights.

In contact and competitive sports like wrestling and soccer—where athletes grapple and collide—girls and their parents deserve to know if they are competing against males. That’s why Brown seeks a prohibitory injunction. She asks the District to withdraw her daughter from matches against males or tell her when such a match is scheduled so she may withdraw K.M.K. herself. This relief is materially indistinct from that ordered in *Mahmoud v. Taylor*, in which the Supreme Court directed a school to notify parents before certain books were “to be used in any way” and to honor parents’ directions to excuse their children from that instruction. 606 U.S. 522, 569 (2025). The District told Brown that K.M.K. may sit out matches; then Defendants refused every way of realizing that. Soccer season has already begun; wrestling season opens in weeks. Unless this Court acts, a mother’s decision affecting her child’s safety will be made for her by state officials.

A. Brown is likely to succeed on the merits.

Parents have a fundamental right to direct “the care, custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality). That right applies “at school” and “during school hours,” and it ensures that parents cannot “be shut out of participation in decisions”

affecting their child’s health and wellbeing. *Mirabelli*, 607 U.S. at 497.² “Parents can and must make those judgments” even when children are “in adolescence.” *Parham v. J.R.*, 442 U.S. 584, 603 (1979). A State may not override a parent’s decision unless the state policy is “narrowly tailored to serve a compelling state interest.” *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (citation modified).

The District says K.M.K. may “forfeit” matches against males without “adverse consequences imposed by the district.” 4-ER-781. The qualifier “imposed by the district” does the work. WIAA relabels that promise a “penalty-free athletic forfeit option,” but never says which penalty is waived or who waives it. 2-ER-314. The forfeit was “the only remedy the district can offer”—and the District gave no way to exercise the forfeit: The District will not schedule around a match pitting K.M.K. against a male, tell Brown one is coming, or withdraw K.M.K. on its own. 4-ER-781–82. So Defendants tell Brown she may keep K.M.K. from wrestling males while refusing her the means to do so. An opt-out that Defendants will not implement is no opt-out at all.

That refusal is unlawful. The district court erred at the threshold. It recast Brown’s claim as a demand to run a school program and to obtain private “information about other students,” 1-ER-005, then faulted

² The district court said *Mirabelli*’s assessment was “preliminary.” 1-ER-028. But *Mirabelli* was “dictated by existing law,” 607 U.S. at 499 (Barrett, J., concurring), and no Justice doubted that the right exists, *id.* at 507 (Kagan, J., dissenting).

Brown for using parental rights “as a sword” rather than “as a shield.” 1-ER-030. But the court defined “a shield” as “choosing to remove her child from certain scenarios she deems inappropriate.” 1-ER-030. That is all Brown asked for: tell her when the match is coming, and let her withdraw K.M.K. without a penalty. Having redrawn the claim, the court held no such right exists and stopped. 1-ER-030–32. It never asked whether refusing Brown notice and a penalty-free withdrawal serves a compelling interest or is tailored to one.

Defendants can’t make that showing: Nothing compels a State to keep a mother in the dark about whether her daughter will wrestle or play soccer against a male.

1. Brown has a fundamental right to direct her daughter’s care, upbringing, and education.

The Fourteenth Amendment precludes states from abridging fundamental rights that are “deeply rooted in this Nation’s history and tradition.” *Glucksberg*, 521 U.S. at 720–21 (citation modified). The right of fit parents to direct their children’s “upbringing”—a right “established beyond debate as an enduring American tradition,” *Wisconsin v. Yoder*, 406 U.S. 205, 231–32 (1972)—“is perhaps the oldest of the fundamental liberty interests recognized by” the Supreme Court, *Troxel*, 530 U.S. at 65. Parents have the right “to direct the upbringing and education of [their] children”—because the “child” belongs to them, not “the State.” *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925); accord *Prince v.*

Massachusetts, 321 U.S. 158, 166 (1944) (“[T]he custody, care and nurture of the child reside first in the parents.”).

The Supreme Court’s precedent recognizes that parents’ rights “to make decisions concerning the care, custody, and control of their children,” *Troxel*, 530 U.S. at 66—to “mak[e] life’s difficult decisions,” *Parham*, 442 U.S. at 602—reach a wide range of issues. These include decisions about a child’s education, *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) (learning a foreign language); *Pierce*, 268 U.S. at 534–35 (attending a private school), a child’s religious upbringing, *Yoder*, 406 U.S. at 218 (attending high school); *Mahmoud*, 606 U.S. at 550 (opt out from LGBTQ curriculum), the people who may visit or spend time with a child, *Troxel*, 530 U.S. at 65–66, 70 (grandparent visitation rights), and a child’s physical and mental health and safety, *Parham*, 442 U.S. at 602 (institutionalization for mental-health care); *Mirabelli*, 607 U.S. at 497 (secret-social-transition policies at school). Just recently, the Supreme Court applied that right to two new settings in *Mahmoud* and *Mirabelli*, refusing to “confine[]” parental rights to the facts of prior cases. *Mahmoud*, 606 U.S. at 558; see *Henry v. Sheriff of Tuscaloosa Cnty.*, 180 F.4th 1294, 1305 (11th Cir. 2026) (en banc) (discussing the scope of this right).

Brown’s parental-rights claim fits comfortably within the right that the Supreme Court has recognized. Children, “even in adolescence,

... are not able to make sound judgments concerning many decisions, including” how to avoid harm, so “[p]arents can and must make those judgments,” *Parham*, 442 U.S. at 603, including about physical risks their children face at school, *Mirabelli*, 607 U.S. at 497. Just as the decision whether a child should undergo a social gender transition at school falls into that category, *id.* so too does whether a 15-year-old girl wrestles a male.

The district court held otherwise for two primary reasons. Each fails.

First, the court misunderstood the right Brown claims. It said Brown seeks “to direct the administration of extracurricular student sports activities,” wielding her right “as a sword (dictating the conduct of the school).” 1-ER-005, 030.

As support, the district court relied on *Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020). The district court saw “no meaningful difference” between the two cases because in both, it thought, a parent was trying “to ‘dictat[e] how schools conduct their operations.” 1-ER-029. But the policy in *Barr* already allowed an opt-out for students to access a private restroom; the plaintiffs there wanted more: an order “requiring the District to mandate that students use only the bathrooms [and other facilities] that match their biological sex.” *Barr*, 949 F.3d at 1220. That does seek to dictate school operations for all students, and the holdings tracked it: no right to “determine the bathroom policies of the

public schools,” *id.* at 1218, or “to direct school administration more generally,” *id.* at 1231.

Brown, by contrast, asks only that her own daughter be excused from matches against males. That request, unlike the request in *Barr*, does not seek any broader mandate regarding high-school sports or administration. *Contra id.* at 1218, 1231. And viewed rightly, it fits squarely within the parental right that the Supreme Court’s cases have recognized. *Mirabelli*, 607 U.S. at 497.

The Supreme Court’s decision in *Mahmoud* shows the way. The district court stated *Mahmoud*’s rule correctly but then placed Brown on the wrong side of it. *Mahmoud*, the court explained, let parents “opt their own children out of a ‘particular educational requirement’” but conferred no right to “micromanage the public school curriculum.” 1-ER-030 (quoting 606 U.S. at 568). The court then put Brown on the unprotected side of this line because she “seeks more than the right to remove her daughter from athletic competitions”—she also seeks notice. 1-ER-030. But *Mahmoud* ordered notice. The injunction there required officials to “notify [the parents] in advance” whenever the books would be used and to let them “have their children excused from that instruction.” 606 U.S. at 569. *Mahmoud* refused to make parents “rely on after-the-fact reports by their ... children.” *Id.* at 560. Such a rule gives parents “no substantive control over” school administration. *Id.* at 568.

Plus, Brown asks for excusal first—meaning she may never need the notice that *Mahmoud* required.

Second, the district court said that Brown seeks to obtain private “information about other students.” 1-ER-005. But Brown does not seek any information about any other students, and Defendants could opt K.M.K. out of a match without revealing anyone else’s protected information. *See infra* at 29. So her request, again unlike the request in *Barr*, does not “bring [her] into collision with rights asserted by ... other[s].” *Barr*, 949 F.3d at 1232 n.19 (citation modified). More fundamentally, though, the district court’s reasoning “mistake[s]” one reason why a state might be allowed to “burden” a fundamental right under strict scrutiny “for a reason why the right isn’t fundamental in the first place.” *Henry*, 180 F.4th at 1319. Questions about tailoring and the appropriate remedy belong at a different stage of the analysis.

The district court thought that recognizing Brown’s right would expand the law. 1-ER-031. Not so. As in *Mirabelli*, Brown seeks a straightforward application of the oldest fundamental right consistent with the Supreme Court’s well-established case law.

2. Defendants infringe Brown’s right by withholding the means to exercise that right.

Brown cannot withhold her daughter from a match she does not know is coming and that Defendants will not tell her about. 1-ER-015; 4-ER-781–82. Nor will they withhold K.M.K. on their own. What Brown

has is not a choice but an ultimatum: remove K.M.K. from sports altogether or send her in blind.

That infringes Brown's rights. In *Mahmoud*, a school board's curriculum, "combined with its decision to withhold notice to parents and to forbid opt outs," burdened the parents' rights. 606 U.S. at 550. Withholding notice was not incidental to that holding; it was half of it.

Nothing materially differs here. Defendants hold the information that Brown needs to make a decision the Constitution assigns to her, yet they keep it to themselves. A right she cannot exercise is not a right she retains.

Barr shows the difference a real alternative makes. Again, the objecting parents there could avoid the exposure they opposed and opt their children out: the district supplied privacy stalls, a single-user bathroom, and the nurse's office, and this Court rested in part on those "alternative options" to respect the rights asserted. 949 F.3d at 1219, 1225. Brown has nothing comparable. Under the policies, there are no girls-only sports. And Brown cannot have K.M.K. avoid a match she never learns about or that Defendants refuse to withhold K.M.K. from on their own.

Defendants answer that wrestling is a privilege and that Brown may keep her daughter out of the sport. But that is not a right preserved; it is a right surrendered. Brown claims no entitlement to a roster spot, a weight class, or a title. She claims a right to decide, and a

State may not condition her daughter’s access to a public benefit on giving up that right. *See Mahmoud*, 606 U.S. at 561, 569. *Barr* supports Brown again: the unconstitutional-conditions argument failed there only because the asserted right was unprotected to begin with. 949 F.3d at 1225 n.12.

The District’s rules confirm the point. No student may declare for a sport without a parent’s written permission and acknowledgment of risk. 4-ER-791. Defendants already treat Brown’s consent as the gatekeeper to the mat. They cannot now say her decision about what happens there carries no constitutional weight.

3. Defendants cannot justify their refusal under strict scrutiny.

Defendants must prove their actions are “narrowly tailored to serve a compelling state interest.” *Glucksberg*, 521 U.S. at 721 (citation modified). They can’t.

Start with the interests. Defendants say their refusal ensures privacy, safety, and nondiscrimination. But those “broadly formulated interests” do not suffice. *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021) (quoting *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 431 (2006)). “The question ... is not whether” Defendants have “a compelling interest in enforcing” those interests “generally, but whether” they have a compelling interest in denying Brown her

right to direct her daughter's care and upbringing by providing the notice and opt out that Brown requests. *Id.* They do not.

Privacy falls short. Brown does not ask for a name, record, roster, or status—only that K.M.K. not wrestle a male. Defendants can accomplish that and disclose no protected information. For one thing, Defendants could notify Brown that her daughter is matched to wrestle a male because disclosing someone's "sex" reveals only "innocuous biographical data" that implicates no privacy right. *Doe v. Bonta*, 101 F.4th 633, 636–37 (9th Cir. 2024) (citation modified). For another, Defendants could just notify Brown when K.M.K. is scheduled for a match outside her consent without saying anything about sex. Or Defendants could withhold K.M.K. on their own without telling anybody anything except that K.M.K. had an excused withdrawal. Defendants need not choose the most revealing notice; they may choose less.

Defendants invoke FERPA, but FERPA conditions federal funds, 20 U.S.C. § 1232g(b)(1); it does not shrink Fourteenth Amendment rights. "[S]tatutes do not alter the protections afforded by the Constitution itself." *Barr*, 949 F.3d at 1232. In addition, FERPA creates no privately enforceable right. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 287 (2002). And it excludes disclosures made "in compliance with judicial order." 20 U.S.C. § 1232g(b)(2)(B). A funding condition that creates no rights and yields to a court order is not an interest of the highest order.

The safety point adds nothing. It's downstream from the alleged privacy interest and isn't compelling for the same reasons.

Nor is the nondiscrimination interest. Washington law prohibits gender-identity discrimination in schools, and Brown's parental-rights claim does not challenge that. Brown asks only that her daughter be withdrawn from a match with no penalty. No one is excluded, benched, or denied a place, and the opposing athlete takes the win. A nondiscrimination rule is not offended when a school treats one no differently.

Next is tailoring. So long as Defendants "can achieve" their legitimate "interests in a manner that does not burden" Brown's rights, they "must do so." *Fulton*, 593 U.S. at 541. Here, they can.

Brown is entitled to notice and opt-out without the penalty of exiting sports entirely. *See Mahmoud*, 606 U.S. at 569; *Mirabelli*, 607 U.S. at 497. Defendants say disclosing an opponent's sex risks revealing private information. But again, such notice reveals no constitutionally protected information. *Bonta*, 101 F.4th at 637. And the District can say a match falls outside Brown's consent without naming an opponent, noting a status, or giving a reason. That releases no student education record or its contents. 20 U.S.C. § 1232g(b)(1). Regardless, the objection reaches only one of the ways the District can honor Brown's right.

Given that Brown knows K.M.K. may someday be assigned to wrestle males, and Defendants know she objects, Defendants could also

simply not send K.M.K. to wrestle males, as noted. That tracks the accommodation the District offers (in theory). Its Title IX Coordinator wrote that K.M.K. may forfeit matches against a male “without any adverse consequences.” 4-ER-781. So the District accepts that K.M.K. may sit out matches, that doing so is workable, and that it will impose no penalty. Yet it withholds implementation—the means to keep a 15-year-old off the mat rather than making her refuse before a crowd.

Nothing stops Defendants. Entry is by form and precedes the match: wrestlers “not appearing on the current WIAA weigh-in form will NOT be permitted to compete,” and each school files that form with a match official beforehand. 4-ER-769, 774. Schools hold wrestlers out for illness, injury, grades, attendance, and discipline. 4-ER-788, 791, 793. Holding a student out because her mother has withdrawn consent requires no new procedure. Nor does it require unavailable information. Defendants do not say they *cannot* learn a student’s sex. A policy of not asking is a choice, and the government cannot avoid an accommodation it has designed itself out of delivering. *See Mahmoud*, 606 U.S. at 567.

Defendants’ rules bend in every direction but Brown’s. Withdrawal is excused for “injury, illness, religious observance or unforeseen events”—a list WIAA leaves open because an unforeseen event “can include, but not be limited to,” the examples given. 4-ER-735. Competition requirements themselves can be “exempted by the appropriate level,”

under a rule that names no criteria, prescribes no procedure, and affords no appeal. 4-ER-734. This “robust ‘system of exceptions’” undermines any claim that one more accommodation would be “infeasible or unworkable.” *Mahmoud*, 606 U.S. at 567 (citation modified).

Nor must Defendants impose a penalty. The District disclaims doing so. 4-ER-781. And WIAA excuses withdrawal on the four grounds above, including withdrawals mid-event—as it must, since injuries typically arise there. 4-ER-735. So a penalty-free withdrawal is not something Brown asks Defendants to invent. Their rules already provide it.

The religious-observance exemption proves the point. Injury and illness describe incapacity. An unforeseen event describes circumstance. Religious observance describes a belief: an athlete who can compete and declines on conviction. WIAA shields even “intentional” forfeiture on that ground. 4-ER-735. So WIAA already excuses withdrawal based on conviction. Brown’s parental right deserves equal respect.

These exemptions govern postseason play, where the stakes run the highest and a State Championship berth is on the line. 4-ER-734–35. That Defendants excuse non-participation there—but claim they cannot excuse it in a regular-season match—gets the analysis backward. An interest too weak to compel a state qualifier cannot compel a midseason dual, much less override a mother’s constitutional right.

Nor is this directing “school policy.” 1-ER-031. What parents may not direct is curriculum, school hours, examinations, hiring, “the extra-curricular activities offered at the school,” or dress codes. *Barr*, 949 F.3d at 1231 (citation modified). Whether a single wrestler is entered in a single bout is none of those. It is the question a parent’s signature has always answered.

The District’s asserted interests, whatever their weight, cannot carry this refusal. If notice is the problem, the District can withdraw K.M.K. and disclose nothing. If withdrawal is the problem, it can tell Brown and let her decide. What it cannot do is refuse both and call that narrow tailoring. Excluding K.M.K. is no answer: A school “cannot purport to rescue one group of students from stigma and isolation by stigmatizing and isolating another.” *Mahmoud*, 606 U.S. at 568.

In short, Defendants offered Brown an “accommodation” but denied a way to implement it. Brown is likely to succeed on her parental-rights claim.

B. The remaining injunction factors favor Brown.

Likelihood of success on the merits is the “most important” factor, especially in cases involving constitutional rights. *Baird v. Bonta*, 81 F.4th 1036, 1041 (9th Cir. 2023). As with other constitutional rights, the denial of parental rights “constitutes irreparable harm.” *Mirabelli*, 607 U.S. at 497. And upholding those rights and “children’s safety is the

overriding equity.” *Id.*; see *Baird*, 81 F.4th at 1042. Soccer has begun, and wrestling starts this fall. Unless this Court acts, K.M.K. must either stay on the sidelines of her sports or wrestle and play soccer on terms her mother has refused. No later judgment can restore a season spent on the sidelines. An injunction requires Defendants only to honor a decision they already agree is Brown’s to make. *Supra* Part I.A.

II. This Court should grant K.M.K. a preliminary injunction on her Title IX claim.

K.M.K. also satisfies the test for a preliminary injunction.

A. K.M.K. is likely to succeed on the merits.

1. Title IX unambiguously forbids treating females worse than males.

Title IX forbids “discrimination” or “den[ial]” of “benefits” by federal-education funding recipients “on the basis of sex.” 20 U.S.C. § 1681(a). Title IX and its implementing regulations use “sex” to mean “biological sex.” *B.P.J.*, 146 S. Ct. at 2371. Indeed, the term “cannot plausibly be interpreted to refer to anything” else. *Id.*

“Discrimination” means treating similarly situated groups differently without a reasonable basis. See *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 174 (2005) (“being subjected to differential treatment”); *CSX Transp., Inc. v. Ala. Dep’t of Revenue*, 562 U.S. 277, 286–87 (2011) (collecting sources).

Title IX’s athletics regulations confirm the same thing. Although the original statute did not explicitly single out sports from other school programs or activities, the Javits Amendment did, confirming Congress’s intent that Title IX governs sports and authorizing “reasonable provisions considering the nature of particular sports.” *B.P.J.*, 146 S. Ct. at 2370 (quoting Educ. Amends. of 1974, Pub. L. No. 93-380, § 844, 88 Stat. 484, 612 (1974)).

And what is reasonable “must and does” account for the “reality” that allowing males to compete in girls’ sports “*necessarily* displaces or disadvantages” female athletes. *Id.* at 2372. Consistent with this reality and the statutory text, the regulations generally prohibit funding recipients from providing “athletics separately” based on sex. 34 C.F.R. § 106.41(a). But, “[n]otwithstanding” that generic prohibition, schools may establish “separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.” *Id.* § 106.41(b). Through it all, the overarching principle remains “equal athletic opportunity,” including effective accommodation, “for members of both sexes,” *id.* § 106.41(c)—“[n]o person” may be “treated differently” based on “sex,” *id.* § 106.41(a).

Sex-separated sports teams do not violate that prohibition—indeed, they are the typical mechanism for *providing* equal athletic opportunity. Title IX “authorizes separate men’s and women’s sports teams” “because of the biological differences between the sexes.” *B.P.J.*, 146 S.

Ct. at 2371, 2373. Those “inherent physical differences,” which the regulations “plainly recognized,” justify sex-separated teams to “reduce the risk of physical injury and ensure fair competition.” *Id.* at 2371–72. In fact, “[w]ithout a gender-based classification in competitive contact sports, there would be a substantial risk that boys would dominate the girls’ programs and deny them an equal opportunity to compete.” *Id.* at 2371 (quoting *O’Connor v. Bd. of Educ. of Sch. Dist. 23*, 449 U.S. 1301, 1307 (1980) (Stevens, J., in chambers)); *id.* at 2367 (maintaining a single team for each sport that is “equally open to female and male athletes ... would deny equal opportunity to female athletes”). But other “different[ial]” “treat[ment]” of boys and girls—like distinctions that fail to provide “equal athletic opportunity”—violates the statute. 34 C.F.R. § 106.41(a), (c).

The upshot: Title IX permits separation of males and females based on basic biological distinctions but forbids unequal treatment.

2. Defendants violated the prohibition on sex discrimination.

a. The policy discriminates on the basis of sex in violation of Title IX.

Defendants long maintained sex-separated sports teams to ensure equal opportunity for girls and boys under Title IX. 5-ER-836. The current policy nominally maintains sex-separated sports but authorizes

some males—those who identify as girls—to play on girls’ teams, undermining the sex-separated system and denying girls the benefits of a female-only team. 4-ER-715, 764–65.

The policy treats girls (and girls’ sports) worse than boys (and boys’ sports). Boys have “inherent physical advantages” over girls in sports, including “height, weight, strength, speed, endurance, jumping ability, and the like.” *B.P.J.*, 146 S. Ct. at 2374; 3-ER-336–37, 346–47, 352–72, 374–84; 4-ER-603–13. So the policy means boys can make—and dominate—girls’ teams, like wrestling (as happened here) or soccer. *B.P.J.*, 146 S. Ct. at 2372; 3-ER-384–97; 2-ER-239. Meanwhile, boys continue to enjoy the same fair, effectively single-sex teams as before because girls have little chance to make a boys’ team and no inherent advantage if they do. Girls, on the other hand, are denied the benefit of a forum of their own.

That makes girls’ high-school sports in Washington unfair and unsafe. Letting boys play on girls’ teams puts “female athletes at a serious disadvantage.” *B.P.J.*, 146 S. Ct. at 2372; 3-ER-525–26; 2-ER-276–79. “[B]ecause sports are generally zero sum,” permitting a boy to join a girls’ team “*necessarily* displaces or disadvantages a female athlete—replacing her on the roster, knocking her out of the starting lineup, reducing her playing time, depriving her of a medal, and the like.” *B.P.J.*, 146 S. Ct. at 2372; 3-ER-336–37, 384–97, 523. It also poses “particularly se-

vere” “safety risks” for girls in “contact sports,” like wrestling and soccer. *B.P.J.*, 146 S. Ct. at 2372, 2375; 3-ER-373–74; 4-ER-577–81, 585–86, 623, 627, 647–50. “Even if only one or a few males were to play on a ... girls’ team,” that would still harm “specific individual female athletes” and might deter others from playing in the first place. *B.P.J.*, 146 S. Ct. at 2375; 2-ER-193.

The policy has tilted the playing field for girls’ sports and only girls’ sports. Boys have effectively all-male teams, which offer boys a level field on which to compete with others who have no inherent advantages. And now some boys can also play on girls’ teams based on gender identity. Girls, meanwhile, are denied the benefit of all-female teams; they must compete against boys with inherent biological advantages.

In the words of the statute, that discriminates on the basis of sex. *See Arana v. Bd. of Regents of Univ. of Wis. Sys.*, 182 F.4th 670, 687 (7th Cir. 2026) (Brennan, J., concurring) (“Title IX unambiguously forbids biological males from competing in women’s sports.”).

It also violates the Javits Amendment and the plain language of the regulations. To account for the inherent biological differences between boys and girls, Defendants generally provide “athletics separately” based on sex. *Contra* 34 C.F.R. § 106.41(a). But after the policy change, Defendants do not provide “separate teams for ... each sex.” *Id.* § 106.41(b). Instead, the policy rests in an unlawful middle ground: It

maintains effectively male-only teams *and* authorizes males to compete on girls' teams when doing so accords with gender identity. 4-ER-715, 764–65. That exception defeats the only valid basis for sex-separated teams—the inherent advantages of boys over girls. 34 C.F.R. § 106.41(b).

And as explained, the policy denies girls the benefit of fair opportunities of their own and does not provide “equal athletic opportunity.” *Id.* § 106.41(c). It “treat[s]” girls “differently”—and less favorably—than boys. *Id.* § 106.41(a); *see A Policy Interpretation: Title IX and Intercollegiate Athletics*, 44 Fed. Reg. 71,413, 71,418 (Dec. 11, 1979) (“selection of sports” provision requires separate girls’ team for contact sports where (1) girls’ opportunities were historically limited, (2) girls have sufficient interest and ability). That, too, is a Title IX violation.

K.M.K., an experienced and gifted wrestler who also plays soccer, endured this unequal treatment firsthand when she was forced to compete against a male. 5-ER-807. Wrestling is physically demanding. When you add the strength and power difference of a male opponent, the risks to a girl aren’t just unfair—they’re dangerous. 2-ER-190; 3-ER-384–97. As explained, a “stronger and more powerful” male opponent sexually assaulted K.M.K., pushing through three layers of clothing to penetrate her vagina for several seconds. 5-ER-809–10. Horrified and in pain, K.M.K. tried to give up and, after the opponent groped her

again, allowed herself to be pinned—losing the match, the third-place prize, and the higher qualifying status. 5-ER-810–11.

The trauma from the assault, fear for her safety, and school officials’ failure to address the issue led K.M.K. to withdraw from the team for the rest of the year—and to stop playing soccer and wrestling under the current policy, which could lead to similar unfair and unsafe matchups against males. 5-ER-812–14.

The district court wrongly concluded otherwise. The district court said that *B.P.J.* reserved the question whether Defendants must separate sports like wrestling based on sex. 1-ER-39. But that doesn’t mean the court could ignore what *B.P.J.* said. The decision is clear that Title IX addresses “biological sex” and requires “equal opportunity” for boys and girls, and that boys have “inherent physical advantages” over girls based on biology that “*necessarily*” place girls at “particularly severe” “safety risks” and a “serious” competitive “disadvantage.” 146 S. Ct. at 2367, 2371–72, 2374. That reasoning answers the question here, as the harms to K.M.K. confirm.

The district court said there was a fact question whether boys participating in girls’ sports “increases the risk of physical injury [or] competitive disadvantage to girls.” 1-ER-42. But *B.P.J.* could not have been clearer. “[S]afety risks” from “allowing biological males to play on women’s and girls’ sports teams” are “particularly severe in contact sports” like wrestling and soccer. 146 S. Ct. at 2372, 2375. And when it

comes to competitive fairness, letting boys play “*necessarily* displaces or disadvantages a female athlete.” *Id.* at 2372. Were it otherwise, the regulation’s allowance for sex-separated teams would *not* be reasonable and would be “unlawful.” *But see id.* (holding that regulation *is* reasonable and lawful for these reasons).

The district court discounted that reasoning because “*B.P.J.* does not identify what evidence supported these statements.” 1-ER-40 n.10. But a district court is not free to reject the Supreme Court’s reasoning. *Trump v. Cook*, 146 S. Ct. 2234, 2253 (2026) (“the lower courts have no choice but to follow our lead”); *see Trump v. Barbara*, 146 S. Ct. 2438, 2457 (2026) (the “reasoning underlying the holding” of Supreme Court decisions binds lower courts) (citation modified). And the Supreme Court determined as a matter of law, consistent with longstanding precedent and common sense, that males’ “inherent physical advantages”—which “*necessarily*” create “severe” “safety risks” and “serious” competitive “disadvantages” for girls—are a “reality” that transcends any factual record. *B.P.J.*, 146 S. Ct. at 2372, 2374 (citing *United States v. Virginia*, 518 U.S. 515, 533 (1996)). Moreover, the record here is stronger than the record in *B.P.J.* because the experts (who were the same in both cases) surveyed more detailed and intervening evidence here. *E.g.*, 3-ER-338–39; 4-ER-578–81.

The district court’s nitpicking and discounting of the evidence was misguided. For example, the district court talked about the effects of

puberty blockers, 1-ER-42–43, but Defendants’ policy does not require males to use puberty blockers, nor is there any evidence that K.M.K.’s male opponent did. The district court also noted that women have a higher rate of injury than men even without males competing on women’s teams, 1-ER-42, 58–59, as if (contrary to the expert’s clear conclusion) competing against men wouldn’t significantly increase that rate, 4-ER-585. And the court discounted one study on which K.M.K.’s experts relied because it was about rugby rather than wrestling or soccer, 1-ER-42–43—as though wrestling and soccer were not both high-contact sports—and ignored other studies about contact sports more generally, 4-ER-579–80, 649–50.

Most surprising, the district court said K.M.K.’s experts did not conclude that allowing boys to compete in girls’ sports would “*necessarily* put her at an increased risk of harm.” 1-ER-043, 058–59; *contra B.P.J.*, 146 S. Ct. at 2372 (it “*necessarily* displaces or disadvantages a female athlete”). That is incorrect. Dr. Brown said “males possess substantial advantages in each” of “the physiological characteristics that contribute most directly to wrestling success.” 3-ER-396–97; *see* 3-ER-336. Dr. Carlson said boys’ participation in girls’ sports “must be expected to create predictable, identifiable, increased, and unequal risks of injuries to the participating women.” 4-ER-648; *see* 4-ER-585, 623,

627. The district court’s appeal to debated policy questions and deference to states, 1-ER-41, disregards Congress’s contrary judgment in the text of Title IX and the “reality of sports,” *B.P.J.*, 146 S. Ct. at 2372.

The district court also confusingly rejected K.M.K.’s argument on the regulations. The court acknowledged that an effective-accommodation claim under 34 C.F.R. § 106.41(c)(1) concerns “the *opportunity* to participate in athletics.” 1-ER-38 (quoting *Mansourian v. Regents of Univ. of Cal.*, 602 F.3d 957, 964–65 (9th Cir. 2010)). That claim also involves the “selection of sports,” 34 C.F.R. § 106.41(c)(1), and requires a separate girls’ team for contact sports where (1) girls’ opportunities were historically limited and (2) girls have sufficient interest and ability, 44 Fed. Reg. at 71,418; *see Berndsen v. N.D. Univ. Sys.*, 7 F.4th 782, 787 (8th Cir. 2021) (“the agency expressly gives institutions *different* ways to comply with the *different* obligations”). Those are the arguments K.M.K. made, 5-ER-830, 836–38, 841, 855–56, 859, yet the district court treated her argument as being about resource sufficiency under a different part of the regulations, 1-ER-044; *see* 34 C.F.R. § 106.41(c)(2)–(10).

The district court also said a violation of the regulations does not violate the statute, citing *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998). 1-ER-038. But *Gebser*, which addressed a regulation that required setting up a grievance procedure, did not establish a categorical rule. While that particular provision did not “purport to

represent a definition of discrimination under the statute,” 524 U.S. at 292, the differential-treatment bar of § 106.41(a) and equal-opportunity guarantee of § 106.41(c) undoubtedly do, *B.P.J.*, 146 S. Ct. at 2370–72 (detailing special history of Title IX athletics regulations). A violation of those regulatory provisions is a Title IX violation.

At bottom, the district court concluded that K.M.K.’s rights were not violated because she was on the team and because the District “provided separate wrestling teams for boys and girls—albeit subject to the [gender-identity] policy.” 1-ER-38–39. But a team with males *and* females is not what Title IX or its implementing regulations mean by sex-separated teams. *See B.P.J.*, 146 S. Ct. at 2371 (“sex” means “biological sex and not gender identity”). And K.M.K.’s ability to *join* the team is not enough. She wants what Title IX guarantees—a fair shot to compete and “win.” *Id.* at 2381. Not any “particular *results*,” 1-ER-044, but “equal opportunities” to reach those results, 34 C.F.R. § 106.41(c); *B.P.J.*, 146 S. Ct. at 2367. The policy denies her that.

b. Defendants intended to treat girls worse than boys.

Title IX’s private right of action extends to claims of “intentional sex discrimination.” *Jackson*, 544 U.S. at 173. Disparate treatment occurs when a defendant “treats persons less favorably ‘because’ of their sex”—*i.e.*, the defendant “intended to treat women differently.” *Female Athletes United v. Ellison*, 172 F.4th 1019, 1028 (8th Cir. 2026) (“FAU”)

(citation modified); see *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009). A defendant “need not have intended to violate Title IX or acted out of animus.” *FAU*, 172 F.4th at 1028.

A policy intentionally discriminates on the basis of sex if (1) the classification is not neutral—*i.e.*, it is covertly or overtly based on sex—or (2) if the adverse effects of the policy permit an inference of intent based on all the circumstances. *United States v. Skrmetti*, 605 U.S. 495, 516 (2025) (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)). K.M.K. satisfies both routes.

1. The policy is not neutral because it denies girls benefits and subjects them to discrimination based on sex under Title IX. Context and common sense reveal that the policy “cannot be explained on a neutral ground.” *Steiger v. U.S. R.R. Ret. Bd.*, 761 F.2d 1428, 1431 (9th Cir. 1985). Both before and after WIAA adopted the policy, it has maintained sex-separated teams to provide equal opportunity for girls given boys’ “inherent physical advantages in sports.” *B.P.J.*, 146 S. Ct. at 2374 (citing *Virginia*, 518 U.S. at 533). Before the policy, recognizing that girls have no leg up over boys and were historically excluded from many sports, *all* girls were already allowed to compete on a boys’ team if there was no girls’ team. 4-ER-764. And WIAA deems any team with boys and girls a boys’ team that can only compete against other boys’ teams. 4-ER-764. Boys, on the other hand, have not needed (or been given) the same reciprocity. 4-ER-764.

But now—because of the policy—girls’ sports are open to females *and* some males. And because of those males’ inherent athletic advantages, they now have *greater* athletic opportunities than girls. Disfavoring girls like this in the sports context—where well-known physical differences necessarily matter—qualifies as intentional sex discrimination, as *B.P.J.* recognized. *B.P.J.*, 146 S. Ct. at 2372 (“Allowing a biological male athlete to compete on a girls’ team *necessarily* displaces or disadvantages a female athlete”). In fact, the policy places *only* females at a disadvantage—which distinguishes this case from *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 275 (1979), where the veterans preference harmed “significant numbers” of men and women who were not veterans. There is no way to view the policy other than that it gives boys an advantage over girls in sports.

2. The record also shows that discriminatory intent was a motivating factor behind the policy’s adoption and implementation. *Avenue 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 504 (9th Cir. 2016). Discerning discriminatory intent “demands a sensitive inquiry into” all existing “circumstantial and direct evidence.” *Arlington Heights*, 429 U.S. at 266. That includes a policy’s discriminatory impact; the historical background; the sequence of events leading up to the challenged decision; and the administrative history. *Id.* at 266–68; *see Avenue 6E*, 818 F.3d at 504.

Disparate impact. The policy undisputedly has an effect only on girls. That is because, as all Defendants know, boys have inherent biological advantages over girls in sports—which led to the passage of Title IX and adoption of sex-separated sports in the first place. 5-ER-836–40. That clear, known disparate impact favors an inference of intentional discrimination. *See Arlington Heights*, 429 U.S. at 266. Indeed, “when the adverse consequences of a law upon an identifiable group are as inevitable as the gender-based consequences” of the policy, “a strong inference that the adverse effects were desired can reasonably be drawn.” *Feeney*, 442 U.S. at 279 n.25. There are few consequences more foreseeable than boys’ dominance in girls’ sports. *B.P.J.*, 146 S. Ct. at 2367, 2372.

Historical background. Washington has recognized the “deleterious effect” caused by the “[i]nequality in the educational opportunities afforded women and girls” in its “public schools.” RCW 28A.640.010. Until 1967, WIAA sponsored no girls’ sports. 5-ER-835. Gradually, WIAA added girls’ teams, creating a consciously sex-separated system. In 2007, WIAA finally established girls’ wrestling. 5-ER-836.

WIAA still maintains nominally separate teams—with separate championships—for boys and girls. 4-ER-745–65. And it has adopted different standards for girls’ and boys’ sports, including in wrestling. 4-ER-767; 5-ER-850–51. All of that is driven by a recognition of the physical differences between boys and girls and the history of girls’ exclusion

from sports—to “provide students of both sexes an equal opportunity.” 4-ER-764.

Yet Defendants gave that up with the policy, choosing to revert to a system without a female-only category and leave Title IX’s regulatory safety harbor. That “history of discrimination against girls’ high school sports” leads to a “reasonabl[e] perce[ption]” that Defendants, in adopting and implementing the policy, “regarded girls’ sports as less worthy of consideration and support than boys’ sports.” *Soule v. Conn. Ass’n of Schs.*, 755 F. Supp. 3d 172, 199 (D. Conn. 2024). Defendants would not adopt a policy that would upend boys’ sports.

Sequence of events. The sequence of events leading to the policy change points the same direction. As explained, Defendants knew and understood the inherent differences between boys and girls and established designated girls’ teams to account for that difference. But in 2007, WIAA’s executive director worked “quickly” with staff to adopt the initial gender-identity policy. Jayda Evans, *Ten years on, WIAA’s transgender policy keeps conversation going*, Seattle Times (Apr. 4, 2017), perma.cc/C6GZ-R689. That version of the policy included *some* safeguards intended to reduce fairness and safety concerns for girls—surgeries before puberty, hormone therapy, and a waiting period. *Id.* But officials quickly revised the policy, establishing a process where a liaison would present an individual case to a WIAA panel for approval. *Id.* By 2016, WIAA’s Handbook eliminated that requirement too. *Id.*

The current policy has no safeguards to protect girls or girls’ sports—males can compete on girls’ teams consistent with their “innate sense of their own gender” or “the gender most consistently expressed.” 4-ER-715, 765. Eliminating safeguards likewise reflects a disregard for girls and girls’ sports.

Administrative history. The way Defendants implemented the policy—disregarding evidence of harm and undermining petitions to change the policy—also shows that Defendants intended to treat girls different.

Since Defendants made the policy change, they have ignored mountains of evidence—complaints from parents, female athletes, and schools; media reports; U.S. Department of Education investigations—that confirm what they knew to be “reality”: boys will injure or disadvantage girls if allowed to play in girls’ sports. *B.P.J.*, 146 S. Ct. at 2372; 5-ER-843–55. For example, four school districts filed Title IX complaints against OSPI, Superintendent Reykdal, and/or WIAA about harms to girls from the policy. 5-ER-843. Two individual female athletes and one parents’ network also filed complaints. 5-ER-843–44. In addition, media extensively covered a male runner who won back-to-back WIAA girls’ track-and-field championships in 2024 and 2025 and a male basketball player who sidelined girls reasonably fearing for their safety and evidently injured one female who played anyway. 5-ER-843–44.

Despite all that, Defendants have made clear they will stick by the policy and punish schools that do not. School boards and others have put forward proposed amendments to WIAA's policy to protect girls and girls' sports. 5-ER-852. Defendants have rebuffed those proposals. For example, Superintendent Reykdal said he was "absolutely committed" to the policy, and WIAA's Executive Director suggested those trying to change the policy "spend that time and energy where they can make a real impact." 5-ER-845, 853; *see* 5-ER-842–50, 852–54.

Defendants have argued that state law requires the policy, insisting that the proposed amendments be treated as merely advisory. 5-ER-843–44. But Washington law is clear that "[s]chools may provide separate teams for each sex." RCW 28A.640.020(1)(c); WAC 392-190-025(2). Defendants' alleged "rebuff[ing]" of complaints and "attempt[s] to stifle further complaints," alongside their resort to an indefensible alternative motive, further suggests that Defendants do not care about girls' sports as much as boys' sports. *Soule*, 755 F. Supp. 3d at 199. That "attitude" is "antithetical to ... Title IX's nondiscrimination mandate." *Id.*

Viewed together, K.M.K.'s evidence shows that Defendants acted at least in part because they did not care about girls' sports as much as boys' sports. *Id.*; *see Feeney*, 442 U.S. at 279.

The district court concluded that K.M.K.'s claim sounds only in disparate impact. But the court did not engage the evidence K.M.K. put forward, instead saying that "Plaintiffs point to no record evidence that

shows Defendants acted with the *intent* to treat girls differently.” 1-ER-035. As just catalogued, that’s far from true. And K.M.K. need not “square” this argument with the fact that the policy divides based on gender identity, 1-ER-035—even a purportedly facially sex-neutral policy can be intentionally discriminatory on the basis of sex. *Arlington Heights*, 429 U.S. at 266; *Avenue 6E*, 818 F.3d at 504. This one is.

c. Defendants were deliberately indifferent.

The evidence shows that Defendants were deliberately indifferent to the sex discrimination the policy has caused and continues to cause. A plaintiff can state a claim of intentional discrimination under Title IX by alleging that a defendant acted with deliberate indifference—*i.e.*, it has a policy of disregarding reports of sex discrimination that creates a “heightened risk” of discrimination that is “known or obvious” and the plaintiff suffers discrimination as a result. *Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1112 (9th Cir. 2020); *see A.J.T. ex rel. A.T. v. Osseo Area Schs.*, 605 U.S. 335, 345 (2025). A defendant is liable even if it did not have prior knowledge of—or respond with indifference to—the specific discrimination the plaintiff suffered. *Karasek*, 956 F.3d at 1112.

Defendants were deliberately indifferent. To begin, in enacting and standing by the policy, they disregarded the “reality” of male athletic advantage and the harms it causes females. *B.P.J.*, 146 S. Ct. at 2372; *see* 5-ER-834, 836, 838–40, 850–51. Beyond that, Defendants also

disregarded numerous reports of sex discrimination the policy caused to female athletes in Washington—establishing a distinct policy of deliberate indifference to those reports.

OSPI and Reykdal. Two school boards and two school districts filed Title IX complaints against OSPI and Reykdal, arguing that the policy harms girls. 5-ER-843. Two female athletes and a parents’ network filed similar complaints, again highlighting the harms to girls from the policy. 5-ER-843–44. Two other female athletes met with Reykdal to explain the harms they suffered from a male participating in the girls’ basketball league. 5-ER-844. The media extensively covered instances of boys displacing girls in Washington sports. A male named V.G. won the state championship in girls’ track and field events in 2024 and 2025. 5-ER-051. Two girls refused to play a basketball team that included a male, and one girl on an opposing team was injured when the male player tackled her. 5-ER-852.

OSPI and Reykdal refused to do anything about the discrimination. Worse than just ignoring the complaints, they bullied school districts that deviated from the policy to protect girls, leading to a U.S. Department of Education investigation. 5-ER-846–48. And OSPI and Reykdal pressured WIAA not to change the policy after individual member schools proposed amendments. 5-ER-852. Superintendent Reykdal acknowledged the policy is “a big issue” but has remained “absolutely committed” to it. 5-ER-845.

WIAA. WIAA was named in at least some of the Title IX complaints filed by schools and athletes raising the harms to girls from the policy. 5-ER-843–44. WIAA knew about males displacing females in athletic competitions and championships, one of which led to a U.S. DOE investigation. 5-ER-851–52. WIAA was also engaged in discussions with member schools trying to change the policy to protect girls and girls’ sports. 5-ER-852–54. At every turn, WIAA pushed back—disregarding the complaints, insisting that the proposed policy amendments protecting girls be treated as advisory, and even telling those in favor of the amendments that they should spend their time doing something that would “make a real impact.” 5-ER-850–55.

The District. The District would have known of the Title IX complaints and media coverage of boys displacing girls. 5-ER-843–44, 851–52, 855. But it stood by the policy and allowed K.M.K.’s male opponent to compete.

Defendants’ policies—which allow males to compete on girls’ teams based on gender identity and consistently disregard the resulting discrimination—led to the discrimination against K.M.K. here. She had to wrestle against a stronger, more powerful male opponent at the Lady Jag tournament, who sexually assaulted and then defeated her. That violates Title IX. *See Karasek*, 956 F.3d at 1112–14; *Simpson v. Univ. of Colo. Boulder*, 500 F.3d 1170, 1173–84 (10th Cir. 2007). And absent a preliminary injunction, history stands to repeat itself.

The district court said there was “no evidence Defendants had received reports about K.M.K.’s opponent that would have put Defendants on notice that K.M.K. could encounter a heightened risk of injury.” 1-ER-043. But Defendants “need not have had actual knowledge of a specific instance of [sex discrimination] or responded with deliberate indifference to that [discrimination] before ... liability may attach.” *Karasek*, 956 F.3d at 1112. And contrary to the district court’s conclusory statement that “there is no evidence in the record Defendants were aware of [a heightened risk of injury or a competitive disadvantage],” 1-ER-046, the record is replete with reports of girls in Washington suffering those harms because males were allowed to play in girls’ sports, *see supra* at 12–13, 49–50, 52–53. Defendants’ decisions to double down on the policy despite that known discrimination—leading to K.M.K.’s harms—constitutes deliberate indifference in violation of Title IX.³

³ The injunction should extend to WIAA. WIAA is subject to suit under Title IX because WIAA exercises control over athletic programs ceded to it by school districts pursuant to a state statute, establishing binding rules and imposing penalties on school districts. RCW 28A.600.200; *see B.P.J. v. W. Va. State Bd. of Educ.*, 98 F.4th 542, 554 (4th Cir. 2024), *rev’d on other grounds*, *B.P.J.*, 146 S. Ct. 2356; *Williams v. Bd. of Regents of Univ. Sys. of Ga.*, 477 F.3d 1282, 1294 (11th Cir. 2007); *Horner v. Ky. High Sch. Athletic Ass’n*, 43 F.3d 265, 272 (6th Cir. 1994). And WIAA set the eligibility rules for high-school sports at issue here, under OSPI’s direction. 4-ER-715.

3. The Spending Clause poses no barrier to relief.

The district court also concluded that Defendants lacked sufficient notice that the policy violates Title IX and therefore cannot be liable. 1-ER-052–57. That’s wrong.

Defendants had clear notice. Because spending legislation is contractual, Congress must provide notice of the conditions to which those accepting federal money agree. *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 371–74 (2025). The inquiry focuses on “clear statutory language.” *Id.* at 383 n.8. Just as Title IX “proscribes” harassment and retaliation “with sufficient clarity to satisfy *Pennhurst*’s notice requirement,” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999); *Jackson*, 544 U.S. at 174–75, 182–83, it also clearly prohibits treating biological girls worse than biological boys, *B.P.J.*, 146 S. Ct at 2371 (Title IX’s reference to sex “cannot plausibly” refer to anything but “biological sex”); *see Arana*, 182 F.4th at 687 (Brennan, J., concurring). The regulations confirm as much, barring funding recipients from “treat[ing]” any “person” “differently” based on sex and guaranteeing “equal athletic opportunity.” 34 C.F.R. § 106.41(a), (c).

The district court said that *B.P.J.* was no help because it was decided “[o]nly recently” and the question was “open” before that decision. 1-ER-056. But when the Supreme Court construes a statute, it says what the statute has “*always* meant.” *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 313 n.12 (1994). So Title IX—“continuously since the date

when it became law,” *id.*—has unambiguously barred treating girls worse than boys, *B.P.J.*, 146 S. Ct. at 2371.⁴

The district court also said that *B.P.J.* did not address whether a state “may *allow* biological males who identify as female to participate on girls’ and women’s sports teams.” 146 S. Ct. at 2367 n.1; *see* 1-ER-056–57. But no matter the answer to that broad question in the abstract, Title IX is clear that Defendants cannot treat girls worse than boys in sports. And that’s what they’re doing here—forcing K.M.K. to wrestle against stronger, more powerful males and taking away an opportunity to compete on a fair playing field like boys can.

A district court in this circuit recently dismissed on clear-notice grounds the federal government’s complaint challenging California’s gender-identity sports-participation policy. *United States v. Cal. Interscholastic Fed’n*, No. 8:25-cv-01485, 2026 WL 2575930, at *1 (C.D. Cal. Aug. 31, 2026). But that decision does not counsel a different conclusion here. The United States’ theory in that case demanded a “per se,” “categorical” rule requiring biological sex separation, *id.* at *6–7, consistent with the Supreme Court’s clear direction that allowing boys to participate in girls’ sports “*necessarily*” disadvantages girls. *B.P.J.*, 146 S. Ct.

⁴ As two judges recently explained, the notice standard does not impose a “clearly established” standard “resembling qualified immunity.” *Soule v. Conn. Ass’n of Schs., Inc.*, 90 F.4th 34, 61 (2d Cir. 2023) (en banc) (Menashi, J., concurring); *Arana*, 182 F.4th at 687 (Brennan, J., concurring).

at 2372; *id.* at 2367 (maintaining one team for each sport “equally open to female and male athletes ... would deny equal opportunity to female athletes”). By contrast, K.M.K. seeks no categorical rule here. *California Interscholastic* held that “Title IX, the Javits Amendment, [and regulatory provisions]” clearly “require equal treatment,” 2026 WL 2575930, at *8—just what K.M.K. was denied.⁵

* * *

In short, K.M.K. is likely to succeed on the merits. Defendants have adopted, implemented, and stood by the policy that led K.M.K. to be matched against a male wrestling opponent without her knowledge. That more-powerful male assaulted her and then pinned her. While K.M.K. had no chance to compete on a level playing field, boys in Washington get just that. That violates Title IX.

B. K.M.K. will suffer irreparable harm absent an injunction.

Absent this Court’s swift intervention, K.M.K. will suffer irreparable harm. High-school athletics are once-in-a-lifetime opportunities. K.M.K. is now in her junior year—the soccer season is well underway

⁵ That some courts wrongly interpreted Title IX to require gender-identity-participation policies does not—contrary to the district court’s reasoning in *California Interscholastic*, 2026 WL 2575930, at *8–9—suggest a lack of clear notice. As explained, clear notice turns on statutory language. And Title IX’s text has clearly prohibited treating girls worse than boys since enactment.

without her, and the wrestling season soon will be too—and is “*necessarily* displace[d] or disadvantage[d]” by the biological males allowed to compete. *B.P.J.*, 146 S. Ct. at 2372.

As other courts have held, “[t]hose lost opportunities constitute irreparable harm.” *Mid Vt.*, 151 F.4th at 96 (similar policy deprived girls’ basketball team “opportunities to participate in [Vermont] sports and to pursue athletic scholarships”); *see, e.g., McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 302 n.25 (2d Cir. 2004) (girls’ soccer team could not “play in the fall season, which deprives them the chance for Regional and State Championship competition”); *Roberts v. Colo. State Bd. of Agric.*, 998 F.2d 824, 833 (10th Cir. 1993) (athletes lost “the opportunity to play softball”).

The district court’s contrary conclusion rested on its view that K.M.K. has not shown she would “suffer a competitive disadvantage” or “a greater risk of harm” from being forced to compete against boys. 1-ER-058. As explained, that was wrong as a matter of law and fact. *See supra* at 40–44.

C. The equities and public interest favor K.M.K.

In taking Title IX funds, Defendants agreed to abide by the law’s nondiscrimination requirement. *Gebser*, 524 U.S. at 286. The public’s true interest “favors applying federal law correctly.” *Small*, 661 F.3d at 1197. There is also “a strong public interest in ensuring that students”

like K.M.K. “do not lose out on valuable athletic opportunities.” *Mid Vt.*, 151 F.4th at 96. If K.M.K. wants to participate in high-school athletics, she must play against biological males. She has already suffered a heartbreaking defeat and an unconscionable sexual assault; she should not be required to subject herself to further discrimination as the cost of competing.

Defendants, by contrast, provided sex-separated sports for decades and can easily resume doing so. And if the policy were enjoined, all biological males could continue to compete on male-designated teams.

CONCLUSION

The Court should reverse the district court’s decision denying a preliminary injunction.

Dated: September 22, 2026

Respectfully submitted,

By: /s/ John J. Bursch

JAMES A. CAMPBELL
JULIE MARIE BLAKE
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176
(571) 707-4655
jcampbell@ADFlegal.org
jblake@ADFlegalo.org

JACOB P. WARNER
JONATHAN A. SCRUGGS
KATHERINE L. ANDERSON
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
jwarner@ADFlegal.org
jsruggs@ADFlegal.org
kanderson@ADFLlegal.org

JOHN J. BURSCH
ZACHARY E. TYREE
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
(616) 450-4235
jbursch@ADFlegal.org
ztyree@ADFlegal.org

NATALIE D. THOMPSON
ALLIANCE DEFENDING FREEDOM
7250 Dallas Parkway, Suite 700
Plano, TX 75024
(469) 894-8700
nthompson@ADFlegal.org

ABIGAIL ST. HILAIRE
ELLIS, LI & MCKINSTRY PLLC
1700 Seventh Avenue, Suite 1810
Seattle, WA 98101
(206) 682-0565
asthilaire@elmlaw.com

Counsel for Appellants Stephanie Brown and K.M.K.

STATEMENT OF RELATED CASES

Under Ninth Circuit Local Rule 28-2.6, Appellants are aware of one other related case in this Court. In *Mirabelli v. Bonta*, No. 25-8056, this Court is considering an appeal of an order granting summary judgment to parents who brought parental-right claims challenging California policies that deprived parents of notice and opt-out rights when their children expressed signs of gender incongruence at school. Appellants rely on the Supreme Court's decision in that case vacating a stay of the district court's injunction pending appeal. *Mirabelli v. Bonta*, 607 U.S. 492 (2026) (per curiam).

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2026, I electronically filed the foregoing Opening Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate ACMS system. I certify that all participants in the case are registered ACMS users, and that service will be accomplished by the ACMS system.

/s/ John J. Bursch

John J. Bursch

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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ADDENDUM

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U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

20 U.S.C. § 1681(a)
Sex

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

* * *

34 C.F.R. § 106.41
Athletics

(a) General. No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) Separate teams. Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(c) Equal opportunity. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment and supplies;
- (3) Scheduling of games and practice time;
- (4) Travel and per diem allowance;
- (5) Opportunity to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;

- (7) Provision of locker rooms, practice and competitive facilities;
- (8) Provision of medical and training facilities and services;
- (9) Provision of housing and dining facilities and services;
- (10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Assistant Secretary may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

RCW 28A.640.010 **Purpose-Discrimination Prohibited**

Inequality in the educational opportunities afforded women and girls at all levels of the public schools in Washington state is a breach of Article XXXI, section 1, Amendment 61, of the Washington state Constitution, requiring equal treatment of all citizens regardless of sex. This violation of rights has had a deleterious effect on the individuals affected and on society. Recognizing the benefit to our state and nation of equal educational opportunities for all students, discrimination on the basis of sex for any student in grades K-12 of the Washington public schools is prohibited.

RCW 28A.640.020(1)(c)

**Regulations, guidelines to eliminate discrimination--Scope--
Sexual harassment policies**

- (1) The superintendent of public instruction shall develop regulations and guidelines to eliminate sex discrimination as it applies to public school employment, counseling and guidance services to students, recreational and athletic activities for students, access to course offerings, and in textbooks and instructional materials used by students.

* * *

(c) Specifically with respect to recreational and athletic activities, they shall be offered to all students without regard to sex. Schools may provide separate teams for each sex. Schools which provide the following shall do so with no disparities based on sex: Equipment and supplies; medical care; services and insurance; transportation and per diem allowances; opportunities to receive coaching and instruction; laundry services; assignment of game officials; opportunities for competition, publicity and awards; scheduling of games and practice times including use of courts, gyms, and pools: PROVIDED, That such scheduling of games and practice times shall be determined by local administrative authorities after consideration of the public and student interest in attending and participating in various recreational and athletic activities. Each school which provides showers, toilets, or training room facilities for athletic purposes shall provide comparable facilities for both sexes. Such facilities may be provided either as separate facilities or shall be scheduled and used separately by each sex.

The superintendent of public instruction shall also be required to develop a student survey to distribute every three years to each local school district in the state to determine student interest for male/female participation in specific sports.

* * *