No. 16-273

IN THE

Supreme Court of the United States

GLOUCESTER COUNTY SCHOOL BOARD,

Petitioner,

v.

G.G., BY HIS NEXT FRIEND AND MOTHER, DEIRDRE GRIMM,

Respondent.

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

BRIEF FOR MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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September 27, 2016

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INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are 114 Members of the United States Senate and the United States House of Representatives. The Appendix to this Brief sets forth a complete list of *amici curiae.*

As Members of Congress, *amici* have a compelling interest in the proper resolution of this case. Under our tripartite system, Congress is tasked with writing the laws and the Executive has the responsibility to enforce them. This case arises from yet another instance of the Obama Administration effectively rewriting a federal law through an informal agency directive. In so doing, the Department of Education ("Department") seized power that Article I vests in Congress and undermined the rule of law. In short, *amici* have a strong interest in ensuring that the Executive faithfully interprets and enforces the laws of the United States as written.

That concern is especially acute with respect to the dispute that prompted this litigation. Whether and how to address the issue of gender identity—particularly in the educational setting—is a sensitive issue that requires the kind of careful deliberation that only the legislative process can provide. As evidenced by the 2009 federal hate crimes law and recent amendments to the Violence Against Women Act, Congress—not an administrative

1. Pursuant to this Court's Rule 37.6, counsel for *amici curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici curiae* or their counsel has made a monetary contribution to the preparation or submission of this brief. Both parties have consented to the filing of this brief.

agency—is best equipped to confront this challenging issue in a way that thoughtfully addresses the privacy and religious liberty concerns it raises. As a consequence, *amici* urgently need the Court's intervention. If Title IX and other federal civil-rights laws are to protect against discrimination on the basis of "gender identity," it must be the People's elected representatives that reach that significant policy judgment.

SUMMARY OF THE ARGUMENT

This appeal clearly warrants the Court's review. As Petitioner explains, the administrative law issues this case raises have divided the lower courts. *See* Petition ("Pet.") 26-32. Even more importantly, the Fourth Circuit "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). As the Court's decision to recall the mandate and stay the ruling below reflects, the importance of this case is undeniable. The Fourth Circuit's ruling impacts state and local governments, schools, other recipients of federal funding, and millions of individuals throughout the country. Billions of dollars of federal funding are at stake. Moreover, the Petition raises pressing legal issues that need this Court's attention.

The Fourth Circuit's decision is also indefensible on the merits. *First*, the Fourth Circuit permitted the Department to rewrite Title IX's prohibition on "sex" discrimination to achieve the agency's policy preferences. Title IX provides that "[n]o person … shall, on the basis of sex … be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). The ordinary meaning of

"sex" at the time the statute was passed referred to the physiological distinctions between males and females. No member of Congress or the public would have understood "sex" to encompass "gender identity." The Fourth Circuit, which itself called the Department's construction "novel," did not disagree. Petition Appendix ("Pet. App.") 23a. This understanding ought to be decisive. No theory of agency deference allows the Department to override Title IX's plain terms.

Additional principles of statutory interpretation confirm the Fourth Circuit's error. The Department's interpretation would eviscerate Title IX's protections for schools "maintaining separate living facilities for the different sexes." 20 U.S.C § 1686. The legislative history shows that Congress aimed to protect women from sex-based discrimination; gender identity appears nowhere in the legislative history. And, when Congress does want to create protections on the basis of "gender identity," it knows how to do so. *See, e.g.*, 42 U.S.C. § 13925(b)(13)(A) (separately protecting "sex" and "gender identity" in the Violence Against Women Act).

Second, the Department's letter is not entitled to *Auer* deference. Even if *Auer* deference remains viable, it is inapplicable here because the agency's pronouncement violated the Administrative Procedure Act's ("APA") notice-and-comment command. Agency rules that have the force and effect of law must be promulgated through notice-and-comment procedures. There can be no doubt that this rule imposes binding obligations on recipients of federal funding. That has been the Administration's aim from the outset.

Even if the Department had followed notice-and-comment procedures, however, *Auer* deference still would be inappropriate because Congress did not delegate to the Department the authority to resolve this issue. The underlying regulation the Department is interpreting is little more than a restatement of the statute itself. The Court has held that such "parroting" regulations are not owed deference because they do not fulfill the function that animates the doctrine: the agency is not using its expertise to fill a statutory gap. Indeed, the Department issued a parroting regulation here because Congress left it no gap to fill. Whether to afford protection under Title IX on the basis of "gender identity" is a policy question of vast political, social, and economic significance. Congress did not cede the power to make that important judgment to the Department.

Third, and last, the Department's interpretation of Title IX violates the Spending Clause. The Spending Clause prevents Congress from surprising recipients of federal funds with retroactive conditions. A statute must provide clear notice of the obligation that entities will endure by accepting federal funding. The Department's novel interpretation of Title IX does not even come close to meeting this requirement. Congress never intended for "sex" to include the term "gender identity" let alone made that intention clear. As the Court has held, constitutional avoidance supersedes agency deference. Accordingly, the serious Spending Clause problem with the Department's interpretation requires reversal.

ARGUMENT

I. Title IX's Ban On "Sex" Discrimination Does Not Encompass Gender Identity.

The Department's interpretation of Title IX's ban on "sex" discrimination is untenable. The law provides, in relevant part, that "[n]o person ... 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." 20 U.S.C. § 1681(a). It further provides that "nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act ... from maintaining separate living facilities for the different sexes." *Id.* § 1686. Interpreting "sex" to include "gender identity" is irreconcilable with Title IX's plain meaning.

Because Title IX does not define "sex," the term's ordinary meaning controls. *See Burrage v. United States*, 134 S. Ct. 881, 887 (2014). When Congress enacted Title IX, the ordinary meaning of "sex" encompassed biological sex—not gender identity. As Judge Niemeyer explained, "virtually every dictionary definition of 'sex' referred to the *physiological* distinctions between males and females, particularly with respect to their reproductive functions." Pet. App. 54a (collecting sources). The statutory inquiry can end there. The "preeminent canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" *BedRocs Ltd., LLC v. United States,* 541 U.S. 176, 183 (2004) (alteration in original) (quoting *Conn. Nat'l Bank v. Germain*, 503

U.S. 249, 253-54 (1992)). The Department may disagree with Congress's decision to confine Title IX's protections to biological sex. But "federal agencies may not ignore statutory mandates or prohibitions merely because of policy disagreement with Congress." *In re Aiken Cty.*, 725 F.3d 255, 260 (D.C. Cir. 2013).

The Fourth Circuit's interpretation also conflicts with the "broader structure" of Title IX. *King v. Burwell*, 135 S. Ct. 2480, 2492 (2015). Construing Title IX's ban on "sex" discrimination to encompass gender identity would defeat Congress's determination that recipients of federal funds may have separate living facilities for "the *different* sexes." 20 U.S.C. § 1686 (emphasis added). If the Department's interpretation were correct, it would be impossible to enforce Section 1686 as written. Title IX did not use the same term to mean biological sex, *i.e.*, different sexes, and also gender identity, *i.e.*, people of the same sex who identify as the opposite biological sex. Basic principles of statutory interpretation require "sex" to "be construed uniformly throughout Title IX and its implementing regulations." Pet. App. 50a (Niemeyer, J., dissenting) (citing *Sullivan v. Stroop,* 496 U.S. 478, 484 (1990)). The Department's novel construction violates that rule.

Title IX's legislative history confirms that "sex" means biological sex. Congress's focus was on protecting women from discrimination. *Texas v. United States*, No. 7:16-CV-00054-O, 2016 WL 4426495, at *2 (N.D. Tex. Aug. 21, 2016) ("The legislative history shows Congress hailed Title IX as an indelible step forward for women's rights."). During the debates, however, there was concern that Title IX would bar educational institutions from maintaining separate

intimate facilities. *See, e.g.*, 117 Cong. Rec. 30,407 (1971); 118 Cong. Rec. 5807 (1972). Senator Bayh, for example, proposed that Title IX be amended "to permit differential treatment by sex" in "instances where personal privacy must be preserved." 118 Cong. Rec. 5807. Representative Thompson also voiced concern about men and women using the same intimate facilities and proposed that Title IX be amended to preserve the ability to have "separate living facilities for the different sexes." 117 Cong. Rec. 39,260 (1971). These concerns resulted in Congress passing Section 1686. *See id.* at 39,263. This legislative history is incompatible with the Department's conclusion that "sex" discrimination under Title IX encompasses gender identity. No member of the Congress that debated and enacted this statute shared that novel view.

Last, "Congress knows how to" statutorily protect gender identity "when it wants to." *Atl. Sounding Co. v. Townsend*, 557 U.S. 404, 416 (2009) (quoting *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 106 (1987)). The 2009 federal hate crimes law, for example, applies to "gender identity." 18 U.S.C. § 249(a)(2). The 2013 reauthorization of the Violence Against Women Act similarly affords statutory protection based on "sex" and "gender identity." 42 U.S.C. § 13925(b)(13)(A). Therefore, it would be inappropriate to presume that "Congress, by its silence, impliedly approved" of statutory protection for gender identity in Title IX. *United States v. Powell*, 379 U.S. 48, 55 n.13 (1964). This is further proof that Title IX's ban on "sex" discrimination, by its plain terms, encompasses only biological sex.

II. The Department's Interpretation Of Title IX To Include Gender Identity Is Not Entitled To *Auer* Deference.

The Fourth Circuit nevertheless rejected this common-sense interpretation of Title IX under the guise of *Auer* deference. Pet. App. 18a-25a. For all the reasons set forth in the petition, however, *Auer* deference should be reconsidered. Pet. at 18-25. There is no constitutional, statutory, or institutional justification for deferring to an agency's interpretation of its own regulation. But even if *Auer* deference ultimately is retained, it is inapplicable here. First, the Department failed to comply with the APA's notice-and-comment requirement. Second, as the regulation reveals and the letter confirms, Congress did not delegate to the Department the authority to decide this highly sensitive issue.

A. The Department failed to comply with the notice-and-comment requirement of the APA.

Even the possibility of deference to an agency's interpretation presupposes that the regulation complies with the APA. The pronouncement at issue here cannot even get out of the starting gate because the Department failed to comply with the APA's notice-and-comment command. *See* 5 U.S.C. § 553. A rule is subject to notice and comment if it will "have the 'force and effect of law.'" *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1203 (2015) (quoting *Chrysler Corp. v. Brown*, 441 U.S. 281, 303 (1979)). The agency rule is therefore subject to notice and comment if it "supplements a statute, adopts a new position inconsistent with existing regulations, or otherwise effects a substantive change in existing law or policy." *Mendoza*

v. Perez, 754 F.3d 1002, 1021 (D.C. Cir. 2014). Notice and comment "improves the quality of agency rulemaking by exposing regulations to diverse public comment, ensures fairness to affected parties, and provides a well-developed record that enhances the quality of judicial review." *Sprint Corp. v. FCC*, 315 F.3d 369, 373 (D.C. Cir. 2003) (citation omitted).

In contrast, an agency rule is not subject to notice and comment under Section 553 if it merely "express[es] the agency's intended course of action, its tentative view of the meaning of a particular statutory term, or internal house-keeping measures organizing agency activities." *Batterton v. Marshall*, 648 F.2d 694, 702 (D.C. Cir. 1980). But this exception must be narrowly construed. The APA's legislative history is "scattered with warnings that various of the exceptions are not to be used to escape the requirements of section 553." *Am. Bus Ass'n v. United States*, 627 F.2d 525, 528 (D.C. Cir. 1980) (citing S. Doc. No. 79-248 (2d Sess. 1946)); *see also Nat'l Nutritional Foods Ass'n v. Kennedy*, 572 F.2d 377, 384 (2d Cir. 1978) ("The legislative history of the [APA] demonstrates that Congress intended the exceptions in § 553(b)(B) to be narrow ones." (citing S. Rep. No. 79-752 (1st Sess. 1945))). The exceptions to Section 553's notice-and-comment requirement, in sum, are not an excuse for making "important policy judgments [outside of] the more formal deliberative processes that produce ... legislative rules." John F. Manning, *Nonlegislative Rules*, 72 Geo. Wash. L. Rev. 893, 917 (2004).

The Department's letter has the force and effect of law. That is the whole point—the Department's aim is to coerce entities accepting federal funds to conform

to the Administration's policy agenda. Otherwise, this Court would not have needed to stay the Fourth Circuit's judgment. Petitioner sought that relief precisely because the Department has made clear that noncompliance will have drastic ramifications for funding recipients. Simply put, compliance is compulsory in nature. *See Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1023 (D.C. Cir. 2000). "Permitting the definition of sex to be defined in this way would allow [the Department] to 'create de facto new regulation' by agency action without complying with the proper procedures. This is not permitted." *Texas v. United States*, 2016 WL 4426495, at *12 (quoting *Christensen v. Harris Cty.*, 529 U.S. 576, 588 (2000)).[2]

2. Even if the Department's interpretation were not subject to notice and comment, deference would be inappropriate given the letter's informality. "Just as varying degrees of deference are appropriate for regulations or other forms of guidance issued by agencies, so too are different levels of deference appropriate for interpretations of regulations offered by agencies." *Joseph v. Holder*, 579 F.3d 827, 832 (7th Cir. 2009); *see United States v. Lachman*, 387 F.3d 42, 54 (1st Cir. 2004). "When the agency speaks formally, *Auer* holds that the agency's interpretation is controlling unless it is plainly erroneous or inconsistent with the regulation. An off-the-cuff response to an interpretive question from the first person who answers the telephone would be quite a different matter." *Joseph*, 579 F.3d at 832. The Department's interpretation may not be an off-the-cuff response—but it is not far from it. Pet. 26. "To defer to the agency's interpretation in this circumstance would seriously undermine the principle that agencies should provide regulated parties 'fair warning of the conduct [a regulation] prohibits or requires.'" *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2167 (2012) (alteration in original) (quoting *Gates & Fox Co. v. OSHRC*, 790 F.2d 154, 156 (D.C. Cir. 1986) (Scalia, J.)); *see also infra* at 16-17.

Importantly, failure to comply with Section 553 is no trivial error. Congress enacted Section 553 because it understood that agency procedures must be "adapted to giving adequate opportunity to all persons affected to present their views, the facts within their knowledge, and the dangers and benefits of alternative courses." S. Doc. No. 77-8, at 102 (1st Sess. 1941). From the beginning, there has been a consensus that notice-and-comment rulemaking is needed "to permit administrative agencies to inform themselves and to afford adequate safeguards to private interests." *Id*. at 103. In other words, "advance notice and opportunity for public participation are vital if a semblance of democracy is to survive in this regulatory era." *Chamber of Commerce v. OSHA*, 636 F.2d 464, 472 (D.C. Cir. 1980) (Bazelon, J., concurring in the result).

Finally, this is not an isolated incident. Time and again, the Obama Administration has tried to bypass the APA's notice-and-comment requirement. The Administration, as the Court is well aware, tried this gambit on the issue of immigration. *See Texas v. United States*, 809 F.3d 134, 171-78 (5th Cir. 2015), *aff'd by an equally divided Court*, 135 S. Ct. 2271 (2016). But the Administration also circumvented notice and comment on issues garnering less publicity. *See, e.g.*, *United Steel v. Fed. Highway Admin.*, 151 F. Supp. 3d 76, 89 (D.D.C. 2015) (DOT waiver of "Buy America" rule); *Mendoza v. Perez*, 754 F.3d 1002, 1025 (D.C. Cir. 2014) (new DOL wage and working conditions rule); *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 707 (D.C. Cir. 2014) (new FCC telecommunications reimbursement rule); *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 95 (D.C. Cir. 2012) (new EPA diesel engine rule); *EPIC v. DHS*, 653 F.3d 1, 8 (D.C. Cir. 2011) (new TSA airport screening rule).

In the end, the Court's intervention is needed if the APA is to continue performing its vital function. The statute is "a 'working compromise, in which broad delegations of discretion were tolerated as long as they were checked by extensive procedural safeguards.'" *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 537 (2009) (Kennedy, J., concurring in part and concurring in the judgment) (quoting Richard B. Stewart & Cass R. Sunstein, *Public Programs and Private Rights*, 95 Harv. L. Rev. 1193, 1248 (1982)). But it is no compromise at all if administrative agencies, as the Department did, may bypass notice and comment in the name of expediency. The Court should grant the petition to ensure the APA's procedures are rigorously enforced.

B. Congress did not delegate its authority to decide this highly sensitive issue to the Department.

Auer deference also does not apply here for a more fundamental reason: Congress did not delegate to the Department the authority to resolve this issue. Although administrative law has divided the deference paradigm into subcategories, all the various doctrines are premised on the same understanding: Congress has delegated to the agency the authority "to fill in the statutory gaps." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000). If Congress delegates its "lawmaking power" to an agency, *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 566 (1980), deference may be warranted. But if there has been no delegation to the agency, its "interpretation deserves no consideration at all, much less deference." *Terrell v. United States*, 564 F.3d 442, 450 (6th Cir. 2009).

That is why *Auer* deference is inapplicable when "the underlying regulation does little more than restate the terms of the statute itself." *Gonzales v. Oregon*, 546 U.S. 243, 257 (2006). Any basis for judicial deference dissipates when the agency's interpretation of its own regulation does not fill a statutory gap. As the Court has explained, "the existence of a parroting regulation does not change the fact that the question here is not the meaning of the regulation but the meaning of the statute." *Id.* A federal agency "does not acquire special authority to interpret its own words when, instead of using its expertise and experience to formulate a regulation, it has elected merely to paraphrase the statutory language." *Id.*

That is what the Department did. Title IX, again, does not "prohibit any educational institution receiving funds ... from maintaining separate living facilities for the different sexes." 20 U.S.C. § 1686. The Department issued a regulation providing that "[a] recipient may provide separate housing on the basis of sex" so long as it is "[p]roportionate in quantity" and "[c]omparable in quality and cost." 34 C.F.R. § 106.32(b). The neighboring regulation, upon which the Department relies, merely extends that same principle to other intimate facilities. *See id.* § 106.33 ("A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex."). Neither regulation fills any gap in Title IX with regard to the meaning of "sex." They simply parrot the statutory language. Accordingly, no deference is due the Department's interpretation.

The reason why the Department's regulations do not fill any statutory gap is plain: this is not the kind of issue that Congress would delegate to an agency. Congress will "speak clearly if it wishes to assign to an agency" the power to decide an issue "of vast 'economic and political significance.'" *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2444 (2014) (quoting *Brown & Williamson*, 529 U.S. at 160). There can be no doubt that whether to add gender identity to the classifications that Title IX protects is an issue of vast political significance. It has the potential to affect millions of citizens and billions of dollars. The political firestorm ignited by the Department's rule makes its political significance all the more clear. *See* Jeannie Suk Gersen, *The Transgender Bathroom Debate and the Looming Title IX Crisis*, *New Yorker* (May 24, 2016).

At bottom, only Congress is equipped to undertake the careful balance of competing interests that is necessary to address the most significant political, social, and economic issues of the day. How best to address gender identity in the context of intimate facilities—especially in educational institutions—raises sensitive and complex issues. *See* Pet. App. 50a-53a (Niemeyer, J., dissenting). Accommodations for those, like Respondent, identifying with the opposite biological sex must be weighed against the rights and needs of those who do not. Resolving this issue will require the decision-maker to grapple with issues of privacy, federalism, economics, morality, and religious liberty—just to name a few. This is a job for Congress, not a federal agency seeking to rush through the Administration's policy agenda without giving these issues careful thought.

III. The Department's Interpretation Of Title IX Violates The Spending Clause.

Courts must avoid interpreting a statute to raise a serious constitutional question if the law's text will allow it. *See Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). The avoidance canon, when applicable, supersedes any appeal to administrative deference. *See Miller v. Johnson*, 515 U.S. 900, 923 (1995). The canon applies here. The Department's interpretation of Title IX violates the Spending Clause.

Title IX "was enacted as an exercise of Congress' powers under the Spending Clause." *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 181 (2005). As the Court has explained, "legislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the [recipients] agree to comply with federally imposed conditions." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). "The legitimacy of Congress' power to legislate under the spending power," consequently, depends on whether the recipient of the federal funds "voluntarily and knowingly accepts the terms of the 'contract.'" *Id.* Like any other contract, "if Congress desires to condition the ... receipt of federal funds, it 'must do so unambiguously …, enabl[ing] the [recipients] to exercise their choice knowingly, cognizant of the consequences of their participation.'" *South Dakota v. Dole*, 483 U.S. 203, 207 (1987) (second and third alterations in original) (quoting *Pennhurst*, 451 U.S. at 17).

The Spending Clause thus prevents Congress from surprising recipients of federal funds, like Petitioner, "with postacceptance or 'retroactive' conditions." *NFIB v. Sebelius*, 132 S. Ct. 2566, 2606 (2012) (opinion of Roberts, C.J.) (quoting *Pennhurst*, 451 U.S. at 25). Unless "Congress spoke so clearly that [the Court] can fairly say that the [recipient] could make an informed choice," the statute cannot be interpreted to impose the condition. *Pennhurst*, 451 U.S. at 25. Recipients "cannot knowingly accept conditions of which they are 'unaware' or which they are 'unable to ascertain.'" *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296, (2006) (quoting *Pennhurst*, 451 U.S. at 17). In sum, the statute must provide recipients with "clear notice" of the condition that acceptance of federal funds purportedly imposed. *Id.*

The Department's interpretation of Title IX does not even come close to meeting this demanding standard. It is not the better interpretation of Title IX—let alone the unambiguously correct interpretation of it. *See supra* at 5-7. The Fourth Circuit agreed. The court conceded the Department's interpretation was "novel," admitted it was "perhaps not the intuitive one," and acknowledged that "there was no interpretation of how § 106.33 applied to transgender individuals before January 2015." Pet. App. 23a. No more is necessary to see the Spending Clause problem. No such agency directive can meet the standard of "clear notice."

This result follows directly from *Pennhurst*. There, the Court deemed language "ambiguous" in part because the statute did not expressly impose the mandate at issue. *Pennhurst*, 451 U.S. at 19. The Court reasoned that "in those [other] instances where Congress ha[d] intended

the States to fund certain entitlements as a condition of receiving federal funds, it ha[d] proved capable of saying so explicitly." *Id.* at 17-18. Similarly, Congress has "proved capable" of explicitly prohibiting discrimination on the basis of "gender identity" in laws which previously only barred discrimination on the basis of "sex." *See supra* at 7. The absence of any express congressional directive to expand Title IX to encompass "gender identity" confirms that imposing the funding condition at this juncture would violate the Spending Clause.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

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