

IN THE

Supreme Court of the United States

BRADLEY LITTLE, in his official capacity as
Governor of the State of Idaho; MADISON KENYON;
MARY MARSHALL, *et al.*,

Petitioners,

v.

LINDSAY HECOX; JANE DOE, with her next friends
JEAN DOE and JOHN DOE,

Respondents.

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

BRIEF FOR RESPONDENT LINDSAY HECOX

JOSHUA A. BLOCK
CHASE B. STRANGIO
SRUTI J. SWAMINATHAN
JAMES D. ESSEKS
RIA TABACCO MAR
LOUISE MELLING
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad St.
New York, NY 10004

CECILLIA D. WANG
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
425 California St.
San Francisco, CA 94104

KATHLEEN R. HARTNETT
Counsel of Record
ZOË HELSTROM
COOLEY LLP
3 Embarcadero Center
20th Floor
San Francisco, CA 94111
(415) 693-2000
khartnett@cooley.com

PATRICK J. HAYDEN
KATELYN KANG
COOLEY LLP
55 Hudson Yards
New York, NY 10001

Counsel for Respondent Lindsay Hecox
(Additional Counsel Listed On Inside Cover)

PAUL C. SOUTHWICK
EMILY M. CROSTON
AMERICAN CIVIL LIBERTIES UNION
OF IDAHO FOUNDATION
P.O. Box 1897
Boise, ID 83701

SELIM ARYN STAR
AMERICAN CIVIL LIBERTIES
UNION OF IDAHO FOUNDATION
Cooperating Attorney for
ACLU of Idaho Foundation
219 S. River St.,
Suite 202
Hailey, ID 83333

SARAH TOMPKINS
LEGAL VOICE
10114 W. Overland Rd.
Boise, ID 83709

EPHRAIM A. MCDOWELL
JOSHUA REVESZ
ELIAS S. KIM
ELIZABETH F. REINHARDT
COOLEY LLP
1299 Pennsylvania Ave. NW
Suite 700
Washington, DC 20004

CELENE CHEN
COOLEY LLP
500 Boylston St.
Boston, MA 02116

KELLY O'NEILL
LEGAL VOICE
P.O. Box 50201
Boise, ID 83705

WENDY S. HEIPT
LEGAL VOICE
907 Pine St., No. 500
Seattle, WA 98101

QUESTION PRESENTED

In 2020, Idaho enacted a law categorically banning women and girls who are transgender from participating on all women's and girls' sports teams "from primary school through college, and at every level of competition, from intramural to elite teams." Pet. App. 11a.

The question presented is whether the district court erred in preliminarily enjoining the application of that law to Lindsay Hecox, a transgender woman and Idaho college student, whose circulating testosterone levels are typical of cisgender women.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
INTRODUCTION	1
STATEMENT OF THE CASE	4
A. Idaho’s H.B. 500	4
B. The Present Controversy	8
SUMMARY OF THE ARGUMENT	13
ARGUMENT	16
I. This Case Is Moot	16
II. The Court Should Affirm Because Petitioners’ Arguments Defy the Preliminary-Injunction Record	18
III. H.B. 500 Triggers Heightened Scrutiny ..	23
A. The Act classifies on the basis of transgender status	23
1. H.B. 500 discriminates against transgender students	23
2. Transgender status is a quasi-sus- pect classification subject to heightened scrutiny	28
B. The Act classifies on the basis of sex ..	37
IV. H.B. 500 Fails Heightened Scrutiny	38
A. H.B. 500’s categorical exclusion of transgender women like Lindsay is not substantially related to an important governmental interest	39

TABLE OF CONTENTS—Continued

	Page
B. Petitioners’ contrary arguments lack merit.....	43
1. Petitioners misunderstand the equal-protection inquiry	44
2. Petitioners’ factual justifications fail.....	49
CONCLUSION	52

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Adarand Constructors, Inc. v. Pena</i> , 515 U.S. 200 (1995).....	47
<i>Ashcroft v. ACLU</i> , 542 U.S. 656 (2004).....	14, 18, 22-23
<i>Boutilier v. INS</i> , 387 U.S. 118 (1967).....	30-31
<i>Bowen v. Gilliard</i> , 483 U.S. 587 (1987).....	28, 32
<i>Bray v. Alexandria Women’s Health Clinic</i> , 506 U.S. 263 (1993).....	27
<i>Brown v. Ent. Merchants Ass’n</i> , 564 U.S. 786 (2011).....	19
<i>Caban v. Mohammed</i> , 441 U.S. 380 (1979).....	44-46
<i>City of Cleburne, Tex. v. Cleburne Living Ctr.</i> , 473 U.S. 432 (1985)	28, 32, 44
<i>City of New Orleans v. Dukes</i> , 427 U.S. 297 (1976).....	33
<i>Clark v. Ariz. Interscholastic Ass’n</i> , 695 F.2d 1126 (9th Cir. 1982).....	41
<i>Clark v. Jeter</i> , 486 U.S. 456 (1988).....	33-34
<i>Daly v. Daly</i> , 715 P.2d 56 (Nev. 1986).....	32
<i>Deakins v. Monaghan</i> , 484 U.S. 193 (1988).....	17

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Doe v. Ladapo</i> , 676 F. Supp. 3d 1205 (N.D. Fla. 2023).....	35
<i>Frontiero v. Richardson</i> , 411 U.S. 677 (1973).....	34-36
<i>Glossip v. Oklahoma</i> , 604 U.S. 226 (2025).....	18-19
<i>Gonzales v. Carhart</i> , 550 U.S. 124 (2007).....	49
<i>Graham v. Richardson</i> , 403 U.S. 365 (1971).....	33
<i>Grimm v. Gloucester County Sch. Bd.</i> , 972 F.3d 586 (4th Cir. 2020).....	34
<i>Highmark Inc. v. Allcare Health Mgmt.</i> <i>Sys., Inc.</i> , 572 U.S. 559 (2014).....	19
<i>In re Opinion of the Justices</i> , 230 Ala. 543 (1935)	31
<i>Kahn v. Shevin</i> , 416 U.S. 351 (1974).....	47
<i>Loving v. Virginia</i> , 388 U.S. 1 (1967).....	38
<i>Lyng v. Castillo</i> , 477 U.S. 635 (1986).....	28
<i>M.B. v. D.W.</i> , 236 S.W.3d 31 (Ky. Ct. App. 2007).....	32
<i>Mass. Bd. of Ret. v. Murgia</i> , 427 U.S. 307 (1976).....	36

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Mathews v. Lucas</i> , 427 U.S. 495 (1976).....	33-34
<i>Metro Broadcasting, Inc. v. FCC</i> , 497 U.S. 547 (1990).....	47
<i>Michael H. v. Gerald D.</i> , 491 U.S. 110 (1989).....	33
<i>Michael M. v. Superior Court of Sonoma County</i> , 450 U.S. 464 (1981).....	47
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995).....	44
<i>New Hampshire v. Maine</i> , 532 U.S. 742 (2001).....	17
<i>Nguyen v. INS</i> , 533 U.S. 53 (2001).....	46-47
<i>Orr v. Orr</i> , 440 U.S. 268 (1979).....	37
<i>Pers. Adm’r of Mass. v. Feeney</i> , 442 U.S. 256 (1979).....	27-28
<i>Price v. Johnston</i> , 334 U.S. 266 (1948).....	13, 18
<i>Romer v. Evans</i> , 517 U.S. 620 (1996).....	51
<i>Rostker v. Goldberg</i> , 453 U.S. 57 (1981).....	47
<i>Sessions v. Morales-Santana</i> , 582 U.S. 47 (2017).....	16, 33, 45

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard College,</i> 600 U.S. 181 (2023).....	41
<i>Talbott v. United States,</i> 775 F. Supp. 3d 283 (D.D.C. 2025).....	36
<i>United States v. Munsingwear, Inc.,</i> 340 U.S. 36 (1950).....	17
<i>United States v. Skrmetti,</i> 605 U.S. 495 (2025).. 14, 26-27, 29, 33-34, 37-38	
<i>United States v. Virginia,</i> 518 U.S. 515 (1996).....	36-39, 45, 48
<i>Univ. of Tex. v. Camenisch,</i> 451 U.S. 390 (1981).....	19
<i>Vill. of Arlington Heights v. Metro. Housing Devel.,</i> 429 U.S. 252 (1977).....	28
<i>West Virginia v. B.P.J.,</i> No. 25-43	17-18

CONSTITUTIONAL PROVISIONS

U.S. Const. art. III.....	13, 16-18
U.S. Const. amend. XIV	3, 10, 14, 27, 36

STATUTES

Pub. L. No. 64-301, § 3, 39 Stat. 874 (1917)	30
Pub. L. No. 82-414, § 212(a)(4), 66 Stat. 182 (1952).....	30

TABLE OF AUTHORITIES—Continued

	Page(s)
Pub. L. No. 89-236, § 15, 79 Stat. 991 (1965).....	31
Idaho Code § 33-6202	7, 25-27, 39
Idaho Code § 33-6203	5-6, 24-26, 37-38, 42
1925 Idaho Sess. Laws 358	31
1907 Ind. Acts 377-78.....	31
1913 Iowa Acts 1082-83	31
1927 N.D. Laws 433-36	31

RULES

Fed. R. Evid. 201(b)(1).....	21
Fed. R. Evid. 201(b)(2).....	21

OTHER AUTHORITIES

1952 U.S.C.C.A.N. 1653	30
1965 U.S.C.C.A.N. 3328	31
Charles Cohen, <i>Losing Your Children: The Failure to Extend Civil Rights Protections to Transgender Parents</i> , 85 Geo. Wash. L. Rev. 536 (2017).....	32
Lauren M. Desrosiers, <i>Out of Bounds: Gender Outlaws, Immigration & The Limit of Assimilation</i> , 24 Georgetown J. Gender & Law 117 (2022).....	30

TABLE OF AUTHORITIES—Continued

	Page(s)
William N. Eskridge, <i>Gaylaw: Challenging the Apartheid of the Closet</i> (1999)	29-30
Blair Hamilton et al., <i>Strength, Power and Aerobic Capacity of Transgender Athletes: A Cross-Sectional Study</i> , 58 British J. Sports Med. 586 (2024)	50
Anthony Michael Kreis, <i>Policing the Painted and Powdered</i> , 41 Cardozo L. Rev. 399 (2019).....	30
Jennifer Levi & Daniel Redman, <i>The Cross-Dressing Case for Bathroom Equality</i> , 34 Seattle L. Rev. 133 (2010)	29
NCAA Announces Transgender Student-Athlete Participation Policy Change, NCAA (Feb. 6, 2025), https://perma.cc/V33E-GDM2	51
Kate Redburn, <i>Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement</i> , 40 L. & Hist. Rev. 679 (2022)	29-30
Veto Letter from Doug Burgum, Governor, N.D. (April 21, 2021), https://perma.cc/Y9AM-UFJ8	8
Veto Letter from Eric J. Holcomb, Governor, Ind. (Mar. 21, 2022), https://perma.cc/5WTD-8EAL	7

TABLE OF AUTHORITIES—Continued

	Page(s)
Veto Letter from Spencer J. Cox, Governor, Utah (Mar. 22, 2022), https://perma.cc/YL8U-69TU	7-8
E. A. Zott, <i>Office Politics: Green v. Finkelstein’s Consequences for Trans Employees</i> , 54 Stetson L. Rev. 597 (2025)	35

IN THE
Supreme Court of the United States

No. 24-38

BRADLEY LITTLE, in his official capacity as
Governor of the State of Idaho; MADISON KENYON;
MARY MARSHALL, *et al.*,

Petitioners,

v.

LINDSAY HECOX; JANE DOE, with her next friends
JEAN DOE and JOHN DOE,

Respondents.

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

BRIEF FOR RESPONDENT LINDSAY HECOX

INTRODUCTION

In 2020, Idaho enacted a first-of-its-kind law categorically banning women and girls who are transgender from participating on any school sports teams for women and girls. That same year, after receiving the parties' evidence and holding a hearing, the district court preliminarily enjoined that law, which would have prevented Lindsay Hecox, a transgender woman, from participating in women's athletics at Boise State University (BSU).

Five years later, this case comes to the Court with two fatal flaws. First, as a threshold matter, this case is moot because Lindsay has stopped playing any sports covered by the challenged law as she enters what she hopes is her final year of college. As Lindsay has candidly explained to the Court in a sworn declaration, she has permanently ceased playing sports covered by Idaho's law and will instead focus on graduating without the extraordinary pressures of this litigation and related public scrutiny. She also has agreed that the preliminary injunction and appellate decision in her favor should be vacated and her case should be dismissed with prejudice—giving petitioners all the relief they would get if they prevailed on the merits. There is no live controversy for this Court to decide.

Second, petitioners' presentation mistakes this Court for a factfinder and disregards their obligation to litigate this case based on the factual record developed below. Petitioners' merits arguments all depend on the contested proposition that transgender women and girls have an athletic advantage over cisgender women and girls—even when (as in Lindsay's case) their circulating testosterone is typical of cisgender women. And petitioners seek to prove this hypothesis based on an expert declaration that has never been submitted in this case or tested in any court. *See* Pet'rs Br. 7-12. But the district court—after carefully reviewing the record before it, including dueling putative expert reports—declined to accept petitioners' scientific claims, crediting Lindsay's evidence instead. The court of appeals affirmed that factual finding on clear-error review. Thus, on the preliminary-injunction record as it stands today, Lindsay has no advantage over her cisgender peers. This Court should

decline petitioners' request to adjudicate this case based on an extra-record, untested declaration rather than the record before it.

On the merits, the courts below got it right. Idaho's blanket exclusion of transgender women and girls from women's and girls' teams in school sports at all levels triggers heightened scrutiny for two independent reasons. First, the law discriminates on the basis of transgender status—indeed, excluding women and girls who are transgender from school sports is the *only* thing the law did to alter eligibility for school sports in Idaho. And classifications that discriminate against transgender people, who have faced centuries of de jure discrimination in this country and continue to face major obstacles to vindicating their rights today, meet all the criteria for heightened scrutiny. Second, and as petitioners ultimately admit, the law independently triggers heightened scrutiny because it also discriminates on the basis of sex.

On the current preliminary-injunction record, Idaho's sweeping law fails heightened scrutiny—or even rational basis review. The law is not substantially related to Idaho's asserted interest in promoting equal opportunities and safety for cisgender women and girls because, on this preliminary record, transgender women like Lindsay have no athletic advantage over cisgender women. In the face of that critical defect in their case, petitioners urge the Court to ignore the lack of fit between Idaho's categorical ban and the purported justification for it. That argument flies in the face of the Equal Protection Clause, which, as this Court has recognized repeatedly, prohibits state laws that rest on overbroad

generalizations about the sexes—even those that may be accurate for most people but not for individuals who fall outside the average description. Because Idaho’s law does precisely that, if the Court reaches the merits, it should affirm.

STATEMENT OF THE CASE

A. Idaho’s H.B. 500

1. For years prior to H.B. 500, Idaho and States across the country maintained sex-separated school sports teams. And for years, transgender students participated on sex-separated teams consistent with their gender identity. In Idaho, for example, transgender girls in high school were permitted to compete on girls’ teams if they “had completed one year of hormone therapy suppressing testosterone under the care of a physician.” Pet. App. 15a-16a. And National Collegiate Athletic Association (NCAA) policy, which governed collegiate sports in Idaho, likewise allowed transgender women to compete on women’s teams “after one year of hormone therapy to suppress testosterone.” *Id.* at 16a; *cf. id.* at 16a n.5 (noting subsequent change to policy).

These policies recognized that transgender women and girls deserve the same athletic opportunities as other students. “Requiring a girl who is transgender” to “participate in single-sex activities for boys can be deeply harmful,” J.A. 69, and can exacerbate “gender dysphoria,” the diagnostic term for the “significant and substantial distress” transgender individuals can experience as a “result of their birth-determined sex being different from their gender identity,” Pet. App. 168a (citation omitted). Gender dysphoria is treated by recognizing a person’s gender identity and having

that person live consistently with that gender identity in all aspects of life. *Id.* at 14a; *see* J.A. 68. So allowing transgender women and girls to participate in women’s and girls’ sports, as Idaho used to, is the only route to enabling their participation in sex-separated athletics.

2. In 2020, Idaho disrupted the status quo by passing H.B. 500, “a categorical ban on the participation of transgender women and girls in women’s student athletics.” Pet. App. 11a; *see id.* at 172a-77a. H.B. 500 did not change sports eligibility rules for cisgender students in Idaho. Instead, it upended the ability of transgender women and girls to continue to participate in athletics. At the time H.B. 500 was enacted, “Idaho had no history of transgender women and girls participating in competitive student athletics.” Pet. App. 11a. Yet the law’s purpose and effect, as petitioners recognize (at 14a), was to exclude transgender women and girls from women’s and girls’ sports at all grade levels and in all circumstances. *See* J.A. 105-06, 108 (statements of Rep. Ehardt, the lead sponsor of H.B. 500); Pet. App. 25a-26a.

H.B. 500 accomplishes this goal by requiring all sports teams governed by the law to be “expressly designated” based “on biological sex” as for “[m]ales, men, or boys”; “[f]emales, women, or girls”; or “[c]oed or mixed.” Idaho Code § 33-6203(1). It then provides that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students” who do not meet three criteria. *Id.* § 33-6203(2).

By design, the three criteria the statute enumerates as the “only” bases for determining “biological sex”—reproductive anatomy, genetic makeup, and

endogenous testosterone levels—exclude women and girls who are transgender. Idaho Code § 33-6203(3); *see* Pet. App. 31a, 250a. That is so because the statute’s focus on “endogenously produced” (meaning normally occurring) testosterone levels, Idaho Code § 33-6203(3), ensures that transgender women and girls cannot qualify to play on women’s and girls’ sports teams even if they have “circulating testosterone levels [that] are within the range typical for cisgender women,” Pet. App. 251a; *see id.* at 28a.

These new restrictions are not limited to competitive events. The statute governs participation in sports at all levels “sponsored by a public primary or secondary school, a public institution of higher education, or any other school or institution whose students or teams compete” against those public schools, including “[i]nterscholastic, intercollegiate, intramural, or club athletic teams.” Idaho Code § 33-6203(1).

H.B. 500 also includes invasive sex-verification requirements for “dispute[s]” about a student’s participation on women’s and girls’ teams. When a girl’s sex is “disputed”—by any person, be it the opposing team or bystanders—the Act requires that such dispute be “resolved” by looking to the student’s “reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels.” *Id.* § 33-6203(3). Under this verification procedure, the student may be required to undergo invasive tests, including a pelvic examination, that fall well outside “any routine sports physical.” J.A. 295-98.

3. Politicians, lawyers, and scholars across the political spectrum raised significant concerns as H.B. 500 proceeded through the legislature.

One set of objections came from Idaho’s then-serving attorney general, Lawrence Wasden. An elected Republican, Attorney General Wasden “warned in a written opinion letter to the House that H.B. 500 raised serious constitutional questions due to the legislation’s disparate treatment of transgender and intersex athletes.” Pet. App. 16a-17a. A bipartisan group of five prior Idaho attorneys general also urged Idaho’s governor to veto the bill because it was “legally infirm.” Pet. App. 17a; *see* J.A. 32-33.

Another set of concerns came from one of the scholars cited by the Idaho legislature in its legislative findings. H.B. 500 twice cited studies from Doriane Lambelet Coleman, whose work concerns the effects of biology on athletic success. *See* Idaho Code § 33-6202(4)-(5). Professor Coleman wrote to Idaho’s governor “urging him to veto the bill,” explaining that “her research had been misinterpreted and misused in the legislative findings.” Pet. App. 17a; *id.* at 173a; *see* J.A. 32 (quoting Professor Coleman as saying “there is no legitimate reason to seek to bar all trans girls and women from girl’s and women’s sports”).

Despite Professor Coleman’s advice and the views of Idaho’s current and former attorneys general, the legislature enacted H.B. 500 and the governor signed it into law in March 2020. Pet. App. 17a.¹

¹ H.B. 500 sparked a wave of copycat bills resulting in enacted laws in twenty-six other States. Pet’rs Br. 20. Like H.B. 500, many of these were passed over the vetoes of governors who supported certain restrictions on the participation of transgender women and girls in sports but thought that a categorical ban went too far. *See, e.g.*, Veto Letter from Eric J. Holcomb, Governor, Ind. (Mar. 21, 2022), <https://perma.cc/5WTD-8EAL>; Veto Letter

B. The Present Controversy

1. Respondent Lindsay Hecox is a 25-year-old transgender woman living and attending college in Idaho. *See* J.A. 11. When this suit commenced over five years ago, she was a first-year student at BSU. *Id.* Lindsay ran track and cross-country in high school and sought to compete at the college level. *Id.* at 12-13. Lindsay spent her first year of college focusing on her medical transition. In her second year, she hoped to try out for BSU’s women’s track and cross-country teams after adjusting to college life and meeting NCAA standards for participating in women’s sports. *Id.* at 14.

As part of her treatment plan for her diagnosed gender dysphoria, Lindsay “is treated with both testosterone suppression and estrogen.” J.A. 13. That treatment “lowers her circulating testosterone levels” and “affects her bodily systems and secondary sex characteristics,” including by “decreas[ing] her muscle mass and size.” *Id.*

Lindsay’s medical treatment rendered her eligible to participate under NCAA rules at the time, but H.B. 500 barred Lindsay from trying out for women’s track or cross-country teams. And she could not participate on the men’s team because it would be inconsistent with her gender identity and thus “be contrary to her medical treatment plan for gender dysphoria, which requires that she lives her life in all respects as the woman she is.” *Id.* at 14. “As a woman who is

from Spencer J. Cox, Governor, Utah (Mar. 22, 2022), <https://perma.cc/YL8U-69TU>; Veto Letter from Doug Burgum, Governor, N.D. (April 21, 2021), <https://perma.cc/Y9AM-UFJ8>.

transgender, it would be painful and humiliating to be forced to be the only woman on a men’s team.” *Id.*

2. One month after H.B. 500’s enactment, Lindsay and Jane Doe (a cisgender student who feared she would be required to undergo invasive sex-verification procedures to continue playing high-school sports) challenged the law in the District of Idaho. J.A. 2.² Two cisgender women later intervened to defend the statute. Pet. App. 21a.

Shortly after filing suit, Lindsay and Jane Doe moved for a preliminary injunction. *See* J.A. 63. In support of that motion, they submitted expert declarations concerning “the different biological characteristics of sex,” *id.*, the range of “policies for transgender inclusion in athletics,” *id.* at 115, the “benefits of sports for youth and young adults,” *id.* at 131, and the invasiveness of H.B. 500’s sex-verification requirement, *id.* at 298.

As particularly relevant here, plaintiffs submitted the expert declaration of Dr. Joshua D. Safer, an endocrinologist and Professor of Medicine in Mount Sinai’s Icahn School of Medicine. J.A. 224. Dr. Safer testified that “there is a medical consensus that the difference in testosterone is generally the primary known driver of differences in athletic performance between elite male athletes and elite female athletes” and that “[a]fter a transgender woman lowers her level of testosterone, there is no inherent reason why her physiological characteristics related to athletic

² Jane Doe’s claims subsequently became moot because she graduated from high school and attended college out of state. *See* Pet. App. 121a n.17.

performance should be treated differently from the physiological characteristics of a non-transgender woman.” J.A. 231, 241.

Opposing the preliminary-injunction motion, Idaho included the expert report of Dr. Gregory A. Brown, a Professor of Exercise Science in the Department of Kinesiology and Sports Sciences at the University of Nebraska at Kearney. J.A. 411. Dr. Brown opined that “[a]dministration of androgen inhibitors and cross-sex hormones” would not “eliminate the performance advantage of men or adolescent boys over women or adolescent girls in almost all athletic contests.” *Id.* at 414-15.

3. The district court carefully reviewed the factual record, granted plaintiffs’ preliminary-injunction motion, and denied defendants’ motion to dismiss. Pet. App. 163a-262a. Concluding that H.B. 500 classified based on sex and transgender status, the court applied heightened scrutiny and held that Lindsay was likely to succeed on her equal-protection claim. Pet. App. 231a, 250a.

The district court recognized that the “Equal Protection Clause does not require courts to disregard the physiological differences between men and women” and that “redressing past discrimination against women in athletics” and “promoting equality of athletic opportunity between the sexes” are each “a legitimate and important governmental interest.” *Id.* at 234a (citation omitted). The court concluded, however, that categorically prohibiting transgender women like Lindsay from competing in women’s school sports would not advance those interests. In particular, the court found Dr. Safer’s expert view described above

more compelling than “the evidence Dr. Brown cites,” which “contain[ed] no reference to, or information about, the difference between cisgender women athletes and transgender women athletes who have suppressed their testosterone.” *Id.* at 243a. The court recognized that its conclusion was tentative and that “[u]ltimately, [it] must hear testimony from the experts at trial and weigh both their credibility and the extent of the scientific evidence.” *Id.* at 247a.

Under the district court’s injunction, Lindsay was able to try out for the BSU women’s NCAA track and cross-country teams. Pet. App. 21a, 49a. But Lindsay was not fast enough to make the teams and instead participated in women’s club soccer and running at BSU. *Id.* at 22a n.7.

4. After several intermediate rulings, the Ninth Circuit affirmed in part and remanded as to the scope of relief. Pet. App. 12a. By the time the Ninth Circuit issued the opinion under review, four years had elapsed since the district court first issued its preliminary injunction. Recognizing that “both the science and the regulatory framework surrounding issues of transgender women’s participation in female-designated sports is rapidly evolving,” the Ninth Circuit emphasized that its decision was based exclusively on “the record before the district court” and was not a final ruling on the merits. Pet. App. 116a, 130a.

In upholding the preliminary injunction, the court of appeals first held that the district court “did not err in concluding that heightened scrutiny applies.” Pet. App. 25a. The court explained that the law “discriminates against transgender women by categorically excluding them from female sports,” and

that it also classifies “on the basis of sex by subjecting all participants in female athletics, but no participants in male athletics, to invasive sex verification procedures to implement that policy.” *Id.*

The court of appeals then held that, based on “the record before the district court,” the Act likely failed heightened scrutiny. Pet. App. 48a; *see id.* at 39a-55a. The Ninth Circuit ruled that the district court “did not clearly err by relying upon the testimony of a medical expert, Dr. Safer,” rather than on “contrary medical testimony by Dr. Gregory Brown.” *Id.* at 46a-47a. Thus, the Ninth Circuit affirmed the district court’s ruling that the Act was likely infirm due to insufficient evidence “that all transgender women, including those like Lindsay who receive hormone therapy, have a physiological advantage over cisgender women.” *Id.* at 48a. The court of appeals further noted that “Lindsay’s own athletic career belies the contention that transgender women who have undergone male puberty have an absolute advantage over cisgender women” because “she has never qualified for BSU’s track team despite trying out.” *Id.* at 49a.³

5. In 2025, as Lindsay moved into what she hopes will be her final year at BSU, she made the “extremely difficult decision to cease playing women’s sports in any context covered by H.B. 500” so that she could focus on her graduation and mental health. Suggestion of Mootness 1a-2a (Decl. of Lindsay Hecox). Lindsay accordingly asked this Court to

³ Following remand, the parties stipulated, and the district court agreed, that the injunction should apply only to Lindsay. Order Modifying Prelim. Inj., *Hecox v. Little*, No. 1:20-cv-00184 (D. Idaho Aug. 22, 2024), ECF No. 138.

vacate the court of appeals' judgment on mootness grounds and remand with instructions to dismiss the appeal. This Court deferred consideration of the suggestion of mootness pending oral argument.

SUMMARY OF THE ARGUMENT

I. This case no longer presents an Article III controversy. Lindsay Hecox has stopped playing on women's teams covered by H.B. 500, has committed to never challenge the statute again, and has asked that her case be dismissed with prejudice. As a result, she no longer has any personal stake in this matter. Contrary to petitioners' arguments, there is no possibility that Lindsay will change her mind, and she will in any event be bound by the promise she has made in this Court. Nor is the mootness a result of any "manipulation." Consistent with its usual practice when a plaintiff conclusively abandons her claims, the Court should vacate the judgment below so that this case may be dismissed with prejudice.

II. If this Court nonetheless concludes that it has jurisdiction, it should uphold the preliminary injunction and remand for further proceedings, as the Court has done previously in similar circumstances. "Appellate courts cannot make factual determinations which may be decisive of vital rights where the crucial facts have not been developed." *Price v. Johnston*, 334 U.S. 266, 291 (1948). On the preliminary-injunction record, the district court found that Lindsay has no athletic advantage over cisgender women. Yet petitioners spend large portions of their brief—including critical components of their argument section—assuming the opposite and seeking to support that assumption with an untested expert declaration that is not part of the

record in this case. This Court should not reward petitioners' attempt to run from and distort the factual record here. It should affirm the preliminary injunction and remand so that petitioners' new evidence can be considered by the district court in the usual course. *See Ashcroft v. ACLU*, 542 U.S. 656, 661 (2004).

III. H.B. 500 triggers heightened scrutiny under the Equal Protection Clause for two independent reasons.

A. H.B. 500 classifies on the basis of transgender status. The only effect of the law on school sports eligibility in Idaho is to bar transgender women and girls from playing on women's and girls' teams. And the Act's purpose is reflected in its legislative history: The bill's sponsor emphasized the law's effect on transgender students, the legislative debate focused heavily on transgender students in other States, and the legislative findings explicitly mention "transgender individuals."

Petitioners' attempts to obscure this reality lack merit. Although they insist that the operative provisions of the challenged law do not use the word "transgender," this Court made clear just last Term that "a State may not circumvent the Equal Protection Clause by writing in abstract terms." *United States v. Skrametti*, 605 U.S. 495, 496 (2025).

Heightened scrutiny applies to the law's transgender-status classification. Transgender people in America satisfy all criteria this Court has used in determining whether to recognize a classification as quasi-suspect. They have historically faced de jure and de facto discrimination—indeed, there is a long history of laws aimed at regulating "gender deviance,"

those who “impersonated females,” and so on. Whether someone is transgender bears no relation to their ability to perform or contribute to society. Transgender individuals share a common trait of having a gender identity that does not align with their birth sex, making them a discrete minority accounting for roughly one percent of the population. And transgender people have not yet been able to vindicate their rights through the political process; indeed, their lack of political power is made plain by the vast array of recent government actions targeting them.

B. H.B. 500 also independently triggers heightened scrutiny because, as petitioners admit, the law facially classifies on the basis of sex, leaving individuals able or unable to participate in sports teams based on their “biological sex.” And, contrary to petitioners’ halfhearted assertion, Lindsay directly challenges that sex-based classification as applied to her.

IV. On the preliminary-injunction record, H.B. 500 fails heightened scrutiny as applied to Lindsay because categorically excluding all transgender women and girls from school sports—even when they have the same level of circulating testosterone as other women and girls—is not substantially related to any legitimate governmental interest.

A. H.B. 500 does not substantially advance Idaho’s asserted interest in promoting equal opportunities for women and girls on this record because including transgender women like Lindsay in women’s sports does not undermine those opportunities. The district court found that transgender women who suppress their testosterone do not enjoy “physiological advantages” over their cisgender peers. Pet. App.

241a. The court of appeals identified no clear error with that factual finding based on the record before the district court. Given that finding, H.B. 500 sweeps far too broadly by categorically excluding transgender women like Lindsay. It also causes significant harm to Lindsay and women like her by depriving them of the benefit of participating in school sports at all. And the law's invasive sex-verification requirement exacerbates these harms.

B. Petitioners' contrary arguments do not overcome the fundamental problems with H.B. 500. Petitioners do not (because they cannot) meaningfully argue that any legitimate state interest is advanced by excluding from women's sports a transgender woman who has no athletic advantage over her cisgender peers. Instead, they urge that H.B. 500 is appropriately tailored even though its categorical exclusion bars transgender women and girls without athletic advantage. This Court's precedents squarely refute that argument: A core purpose of heightened scrutiny is to invalidate laws that rest on "overbroad generalizations" about sex-based differences that do not hold true for some individuals. *Sessions v. Morales-Santana*, 582 U.S. 47, 57 (2017). Because this law rests on just such an overbroad generalization and is so far removed from any legitimate interest, it cannot pass constitutional muster on this record under any standard.

ARGUMENT

I. This Case Is Moot.

This case no longer presents an Article III controversy. *See* Suggestion of Mootness and Reply. As reflected in Lindsay's sworn testimony to this Court, she decided to stop playing women's sports

covered by H.B. 500 to focus on graduating and on her mental health. *See supra* at 12-13. She promised never again to challenge H.B. 500, and she agreed that her suit should be dismissed with prejudice and that all rulings below should be vacated under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

That should be the end of the matter. This Court has consistently held that when a plaintiff abandons their claims, the case is moot and the Court lacks Article III jurisdiction to reach the merits. *See, e.g., Deakins v. Monaghan*, 484 U.S. 193, 200 (1988). And petitioners have made no sound argument for why Lindsay's case is any different. In their unauthorized "supplemental brief," petitioners suggest (at 5) that Lindsay could still "change [her] mind" and challenge H.B. 500 again. She will not and cannot. Lindsay has "followed through" on every previous sworn statement she made to the courts. 9th Cir. Doc. 190, at 4. And "where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, [s]he may not thereafter, simply because h[er] interests have changed, assume a contrary position." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (citation omitted). In short, Lindsay's sworn declaration ensures that she can never again challenge the Act.

That leaves petitioners' baseless charge (Supp. Br. 7) that Lindsay seeks to "manipulat[e] the Court's docket." Not so. Lindsay is a college senior facing difficult life circumstances who made a deeply personal decision that is best for her, and she and her counsel updated this Court accordingly, as was their ethical duty. Moreover, this Court is simultaneously considering *West Virginia v. B.P.J.*, No. 25-43, which

presents a similar equal protection question. Thus, even if concerns about manipulation could justify a deviation from Article III’s case-or-controversy rules, they would not do so here, where the party at issue is acting in good faith and not preventing the Court from deciding a question on which it granted certiorari. This case is moot, and the Court should vacate and remand for it to be dismissed with prejudice.

II. The Court Should Affirm Because Petitioners’ Arguments Defy the Preliminary-Injunction Record.

Petitioners pursue a highly unusual strategy in this Court. Rather than arguing purely legal issues, accepting the facts as found below, or challenging those facts as clearly erroneous, petitioners seek to litigate this case based on contested factual assertions—most of which were rejected by the district court—and extra-record material that is not part of the record below. This Court should not permit petitioners’ improper approach. Instead—if the Court does not dismiss the case as moot—it should affirm and remand this case for further proceedings, where petitioners will have the opportunity to build their desired record in the ordinary course. *See Ashcroft*, 542 U.S. at 661, 671-72 (affirming preliminary injunction and remanding for further proceedings in similar circumstances).

1. “Appellate courts cannot make factual determinations which may be decisive of vital rights where the crucial facts have not been developed.” *Price*, 334 U.S. at 291; *see Glossip v. Oklahoma*, 604 U.S. 226, 260 (2025) (Barrett, J., concurring in part and dissenting in part) (“In exercising our appellate function, it is not our role to find facts; instead, we review the factual

findings of lower courts, subject to a deferential standard of appellate review.”). The standard of appellate review is a familiar one: “[D]ecisions on questions of law are reviewable *de novo*,” while “decisions on questions of fact are reviewable for clear error.” *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014) (citation and internal quotation marks omitted). Critically, the appellate court must issue its decision “[b]ased on the evidence that the parties presented to the [d]istrict [c]ourt.” *Glossip v. Gross*, 576 U.S. 863, 884 (2015). Facts “outside the record” may not be considered. *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 801 n.8 (2011).

This case should be no different. In 2020, the district court granted a preliminary injunction because, based on “the current record,” it found a “dearth of evidence in the record to show [that] excluding transgender women from women’s sports” supported a valid state interest. Pet. App. 156a, 249a. In line with the general rule that “[t]he purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held,” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981), the court recognized that its preliminary view was not the end of the matter. “Ultimately,” it explained, the court “must hear testimony from the experts at trial and weigh both their credibility and the extent of the scientific evidence.” Pet. App. 247a. But, until those further proceedings occur, “the record before the district court” at the time of the preliminary injunction is what controls. *Id.* at 48a.

2. Petitioners disregard those bedrock rules of appellate review. Early in their brief, petitioners include an eight-page section called “[d]ifferences between males and females that necessitate separate sports teams.” Pet’rs Br. 6-14. Relying largely on an expert declaration never submitted in this case or tested by any court, this section includes an array of factual allegations, including that “[m]ales have large anatomical and physiological differences” that “testosterone suppression does little to diminish.” *Id.* at 8-9. Petitioners then rest on those allegations in their argument section, asserting that “every justification for limiting women’s teams” to cisgender women and girls is justified because of petitioners’ largely new assertions about the ineffectiveness of testosterone suppression for mitigating purported athletic advantage. *Id.* at 48.

None of these factual allegations is supported by the record before the district court. To the contrary, the district court credited the testimony of one of Lindsay’s experts, who explained at the time that “[t]here is currently no evidence” that any physiological differences between cisgender women and transgender women who have suppressed their circulating testosterone “actually are advantages when not accompanied by high levels of testosterone and corresponding skeletal muscle.” J.A. 2439. The court of appeals concluded that the district court “did not clearly err by relying upon” that expert view. Pet. App. 46a.

Rather than engaging with the actual preliminary-injunction record from 2020, petitioners try to build a new one. In particular, their brief relies nearly

exclusively on a putative expert declaration that Dr. Gregory Brown (not a medical doctor) filed in a District of Minnesota case five years after the district court's preliminary injunction issued in this action. *See* Pet'rs Br. 7 n.1. That putative expert report was not presented to the district court in this case. Rather, the district court here reviewed an earlier, different version of Dr. Brown's report that, as the district court observed, relied on studies that "actually held the opposite" of his conclusions. Pet. App. 243a.

This Court should not decide this case based on a factually contested expert declaration that is not in the record. While petitioners suggest (at 7 n.1), without argument or support, that the Court may "take judicial notice of the public research materials cited in these reports," that is plainly wrong. Judicial notice is reserved for "generally known facts" and "sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(1), (2). Dr. Brown's hotly disputed assertions do not qualify.

Petitioners are also wrong to assert (at 7 n.1) that they do "not need the Court to accept the updated information to prevail here." The proof is in their own brief. Petitioners do not argue that, absent a showing of athletic advantage, a categorical exclusion of transgender women and girls advances a legitimate state interest. And petitioners' only cited authority for their tailoring arguments is their statement of the case, which relies almost exclusively on the extra-record evidence. Pet'rs Br. 48. Put simply, if petitioners' untested, extra-record evidence on this point is wrong, the law's classification does not advance Idaho's asserted interests.

3. The fact that the district court proceedings are “now more than five years old,” Pet’rs Br. 7 n.1, does not excuse petitioners’ disregard of procedure, but rather shows why the ordinary rules of appellate review should apply. The current record is a consequence of petitioners’ own strategic decision to seek certiorari without developing the facts. After the Ninth Circuit issued its mandate, petitioners could have introduced new evidence to the district court as part of a motion to vacate the preliminary injunction, or petitioners could have proceeded with discovery and trial. But petitioners instead chose to seek this Court’s review in an interlocutory posture based on the record as it existed over five years ago.

This Court’s decision in *Ashcroft* provides the roadmap to resolve a case in this posture. *Ashcroft*, like this case, came to the Court on review of a preliminary injunction. 542 U.S. at 660. In *Ashcroft*, as in this case, “the factfindings of the District Court were entered . . . over five years ago.” *Id.* at 671. And in *Ashcroft*, as in this case, the petitioner desired to “update and supplement the factual record” before this Court to reflect the supposedly changing state of play. *Id.*

The Court upheld the preliminary injunction in *Ashcroft* and remanded “for trial on the issues presented.” 542 U.S. at 661. That trial, the Court recognized, would allow the district court to find further facts based on “current . . . realities,” as well as to “take account of a changed legal landscape.” *Id.* at 671-72. The Court declined to “usurp the District Court’s factfinding role” by accepting the petitioner’s

request to decide the case based on untested extra-record evidence. *Id.* at 671.

That same result is appropriate here. In the district court, petitioners can argue that there is a discrepancy between the facts that existed five years ago and the facts today. *Id.* at 672. Indeed, the Ninth Circuit explicitly recognized that “both the science and the regulatory framework surrounding issues of transgender women’s participation in female-designated sports is rapidly evolving.” Pet. App. 130a. Affirming the preliminary injunction as to Lindsay and remanding for further proceedings will “permit the [d]istrict [c]ourt”—as the finder of fact—“to take account of [the] changed . . . landscape.” *Ashcroft*, 542 U.S. at 672. This Court is simply not the proper venue for that factfinding.

III. H.B. 500 Triggers Heightened Scrutiny.

H.B. 500 triggers heightened equal protection scrutiny because it classifies based on both transgender status and sex.

A. The Act classifies on the basis of transgender status.

H.B. 500 categorically excludes transgender women and girls from participating in women’s and girls’ sports in Idaho. That exclusion warrants heightened scrutiny.

1. H.B. 500 discriminates against transgender students.

H.B. 500’s text, history, and purpose make clear that it discriminates on the basis of transgender status.

a. The Act discriminates on the basis of transgender status. It provides that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex.” Idaho Code § 33-6203(2). And it further provides that “sex” means “biological sex,” which is defined as being based on three exclusive criteria: “reproductive anatomy, genetic makeup, or normal endogenously produced testosterone levels.” *Id.* § 33-6203(3).

By design, these three criteria ensure that all transgender women and girls will be deemed to be “of the male sex”—and thus categorically excluded from participating in women’s and girls’ sports. Yet the medical understanding of “biological sex” encompasses several biological attributes, including chromosomes, genes, gonads, hormone levels, internal and external genitalia, and other secondary sex characteristics. Pet. App 30a. Transgender women may possess some of those biological attributes typical of women. But the Act’s three exclusive criteria for determining “biological sex” serve to categorically bar transgender women from playing women’s sports.

Notably, the Act’s definition excludes the key criterion (circulating testosterone levels) that would have allowed certain transgender women to play on women’s teams—and that Idaho (and the NCAA) actually used before H.B. 500. Transgender women can lower their circulating testosterone levels through hormone therapy “to conform to elite athletic regulatory guidelines.” *Id.* at 28a. Both the district court and Ninth Circuit found on the preliminary-injunction record that “circulating testosterone is *the* ‘one [sex-related] factor that a consensus of the

medical community appears to agree’ actually affects athletic performance.” *Id.*; *see id.* at 98a. Nonetheless, the Act rejects circulating testosterone levels as a method of qualifying for women’s and girls’ teams, Idaho Code § 33-6203(3)—thus ensuring that transgender women and girls will never be eligible to play women’s and girls’ school sports.

The selection of these criteria was no mistake, as the entire point of the Act’s “biological sex” definition is to bar transgender women and girls from playing women’s and girls’ sports. Before the Act’s passage, “both the IHSAA and the NCAA prohibited cisgender men and boys from participating on female-designated sports teams.” Pet. App. 31a. Yet both associations also maintained policies that permitted transgender women “to participate on female athletics teams after completing one year of hormone therapy to suppress testosterone levels.” *Id.* Under the Act’s definition of “biological sex,” cisgender men and boys are still barred from playing on women’s and girls’ teams; but transgender women and girls are now also categorically barred from doing so—even if they suppress their testosterone levels. Thus, “[t]he Act’s *only* contribution to Idaho’s student-athletic landscape is to entirely exclude transgender women and girls from participating on female sports teams.” *Id.* at 31a-32a.⁴

The Act’s purpose is likewise reflected in its legislative history. During the legislative debate, “the Act’s supporters stated repeatedly that the Act’s

⁴ The Act’s “[l]egislative findings and purpose” confirm the point. Idaho Code § 33-6202. They explicitly reference “the use of puberty blockers and cross-sex hormones,” “transwomen,” and “gender-affirming treatment.” *Id.* § 33-6202(11).

purpose was to ban transgender women athletes from participating on female athletic teams in Idaho.” Pet. App. 26a. And “[m]uch of the legislative debate centered around two transgender women athletes running track in Connecticut high schools, as well as one running college track in Montana, and the potential ‘threat’ those athletes presented to female athletes in Idaho.” *Id.* at 27a.

In sum, the statutory text, history, and purpose lead to the inescapable conclusion that the Act intentionally treats transgender women and girls differently—and worse—by categorically barring them from playing women’s and girls’ sports.

b. Petitioners’ attempts to resist that conclusion are unpersuasive. Petitioners contend (at 30-31) that “[t]he Act’s classifications are based on ‘biological sex’ alone” and thus do not “classify based on whether someone identifies as transgender.” But that contention ignores that H.B. 500’s definition of “biological sex” was specifically designed to ensure that transgender women will be deemed “of the male sex” and thus ineligible for women’s teams. Idaho Code § 33-6203(2)-(3).

Petitioners similarly emphasize (at 31) that the definition of “biological sex” “does not use the word ‘transgender.’” But the Act’s stated “findings and purpose,” which are incorporated in the text, do refer to “transgender individuals”—making the legislative design unmistakably clear. Idaho Code § 33-6202(11). In any event, this Court’s precedents foreclose petitioners’ suggestion that a legislature can avoid discrimination by strategic diction. Just last Term, the Court reiterated that “a State may not circumvent the

Equal Protection Clause by writing in abstract terms.” *Skrmetti*, 605 U.S. at 496. That is because a law may classify based on a protected characteristic in either a “covert” or “overt” manner. *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 274 (1979). Where, as here, a classification “could not be plausibly explained on a neutral ground” unrelated to a protected characteristic, that is itself a “signal that the real classification made by the law was in fact not neutral.” *Id.* at 275.

Contrary to petitioners’ implication (at 32), Lindsay’s argument does not depend on a theory of “[p]roxy discrimination.” Proxy discrimination arises when legislation targets one seemingly neutral object in order to “disfavor” a particular class. *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 270 (1993). But here, the Act is not neutral on its face. As explained, the law provides that “sex” means only “biological sex,” and that “biological sex” is determined by specific criteria that invariably exclude transgender women. Moreover, the Act’s “legislative findings and purpose,” Idaho Code § 33-6202, specifically tie the need for “sex-specific teams” to the alleged athletic “advantage[s]” of “transgender individuals,” *id.* § 33-6202(11)-(12).

Idaho’s statute is fundamentally distinct from the facially sex-neutral Massachusetts statute upheld in *Feeney*, which gave employment preferences to veterans. First, whereas the Massachusetts law “defined veteran status in a way that [was] inclusive of women,” 442 U.S. at 275, the Idaho law here defines “biological sex” in a way that necessarily and by design *excludes* transgender people. Second, whereas “nothing in the record” in *Feeney* suggested that the Massachusetts legislature “devised” the veterans’

preference to “accomplish the collateral goal of keeping women in a stereotypic and predefined place,” *id.* at 279, the legislative record here is replete with evidence that the Idaho legislature devised the Act to bar transgender women and girls from women’s and girls’ sports. Accordingly, the “classification” here “is overtly or covertly based upon” transgender status and was passed at least in part because of, not in spite of, its effects on transgender women and girls. *Id.* at 274 (citing *Vill. of Arlington Heights v. Metro. Housing Devel.*, 429 U.S. 252, 266 (1977)).

2. *Transgender status is a quasi-suspect classification subject to heightened scrutiny.*

Idaho’s discrimination triggers heightened scrutiny because transgender status is a quasi-suspect classification. In determining whether a classification is quasi-suspect, this Court considers four factors: (1) whether the class has historically “been subjected to discrimination,” *Lyng v. Castillo*, 477 U.S. 635, 638 (1986); (2) whether the class has a defining characteristic that “frequently bears no relation to [the] ability to perform or contribute to society,” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 441 (1985) (citation omitted); (3) whether members of the class have “obvious, immutable, or distinguishing characteristics that define them as a discrete group,” *Lyng*, 477 U.S. at 638; and (4) whether the class lacks political power, *see Bowen v. Gilliard*, 483 U.S. 587, 602 (1987). Transgender individuals satisfy each of those criteria.

a. Transgender people have faced a long history of discrimination in the criminal justice system, immigration law, and more broadly across various

sectors of society. That discrimination is reflected in a wide swath of government action at the federal, state, and local level targeting individuals who have and express a gender identity inconsistent with their sex assigned at birth. Accordingly, while there is undoubtedly a “history of private discrimination” against transgender individuals, there is *also* “a longstanding pattern of discrimination *in the law*.” *Skrmetti*, 605 U.S. at 554 (Barrett, J., concurring).

Laws prohibiting cross dressing: Beginning in the mid-nineteenth century, States and municipalities enacted a “tidal wave of laws against cross-dressing.” William N. Eskridge, *Gaylaw: Challenging the Apartheid of the Closet* 27 (1999); see Kate Redburn, *Before Equal Protection: The Fall of Cross-Dressing Bans and the Transgender Legal Movement*, 40 L. & Hist. Rev. 679, 718-721 (2022) (listing nineteenth-century cross-dressing prohibitions). For instance, in 1843, St. Louis passed an ordinance making it a crime for people to appear in a public place “in a dress not belonging to their sex.” Redburn, *supra*, at 718. Other major cities—from Chicago, to Charleston, to Kansas City—adopted similar prohibitions. Eskridge, *supra*, at 27. Likewise, both New York and California enacted state criminal prohibitions against cross dressing in the 1870s. *Id.* All told, two States and twenty-eight cities passed cross-dressing laws in the nineteenth century. See Jennifer Levi & Daniel Redman, *The Cross-Dressing Case for Bathroom Equality*, 34 Seattle L. Rev. 133, 152 (2010); Redburn, *supra*, at 681 (explaining that “[l]aws banning cross-dressing were ubiquitous in urban America by the middle of the twentieth century”). These laws were aimed to regulate “gender

deviance” and thus “were applied to people who violated gender roles.” Eskridge, *supra*, at 28.

Liquor laws: In the wake of Prohibition, many States passed new liquor board regulations seeking to “prevent bars and restaurants from becoming ‘disorderly’ by prohibiting various ‘persons of ill repute’ from congregating there.” Redburn, *supra*, at 690 (citation omitted). In turn, some “liquor officials interpreted their mandate to include regulating gender and sexual deviance.” *Id.* New Jersey’s liquor board, for example, “explicitly prohibited licensed bars from hosting ‘female impersonators.’” *Id.* (citation omitted); see also Anthony Michael Kreis, *Policing the Painted and Powdered*, 41 Cardozo L. Rev. 399, 437-39 (2019) (describing the New York State Liquor License Authority’s efforts to revoke licenses of bars hosting male customers who “impersonated females”).

Immigration laws: In the Immigration Act of 1917, Congress “excluded from admission into the United States” “persons of constitutional psychopathic inferiority” certified by a physician to be “mentally . . . defective.” Pub. L. No. 64-301, § 3, 39 Stat. 874. That provision was applied to exclude transgender persons from entering the United States. See Lauren M. Desrosiers, *Out of Bounds: Gender Outlaws, Immigration & The Limit of Assimilation*, 24 Georgetown J. Gender & Law 117, 126 (2022). In 1952, Congress amended the law to bar entry of persons with “psychopathic personality.” Pub. L. No. 82-414, § 212(a)(4), 66 Stat. 182. As defined in the statute, the term “psychopathic personality” encompassed “sexual perversion,” including “transvestism.” 1952 U.S.C.C.A.N. 1653, 1701; see *Boutilier v. INS*, 387 U.S. 118, 122 (1967)

(“Congress “used the phrase ‘psychopathic personality’ not in the clinical sense, but to effectuate its purpose to exclude from entry all homosexuals and other sex perverts”). In response to a court decision, Congress made this exclusion explicit by barring “sexual deviates” from entering the United States, Pub. L. No. 89-236, § 15, 79 Stat. 991. The Senate Report explained that the amendment “specifically provide[s] for the exclusion of homosexuals and sex perverts.” 1965 U.S.C.C.A.N. 3328, 3337.

Sterilization laws: In 1907, the first eugenic sterilization state law was enacted, *see* 1907 Ind. Acts 377-78; by the 1930s, more than 30 States had enacted such laws, many of which targeted “sexual perverts,”⁵ a term frequently understood to include transgender people, for sterilization. 1913 Iowa Acts 1082-83 (authorizing sterilization of “moral and sexual perverts”); 1927 N.D. Laws 433-36 (similar); *see also* *Boutilier*, 387 U.S. at 135 (Douglas, J., dissenting) (discussing “sexual perversion” as including “transvestism”) (Douglas, J., dissenting). For instance, Idaho’s law applied broadly to all “moral degenerates and sexual perverts,” both those in state custody as well as all others living in the state. 1925 Idaho Sess. Laws 358. And in Alabama, officials could decide that it was “to the benefit of the physical, mental or moral condition of any sexual pervert, Sadist, homosexualist, Masochist, Sodomist, or any other grave form of sexual perversion . . . to be sterilized.” *In re Opinion of the Justices*, 230 Ala. 543, 544 (1935).

⁵ *See, e.g.*, 1913 Iowa Acts 1082-83 (authorizing sterilization of “moral and sexual perverts”); 1927 N.D. Laws 433-36 (similar).

Family laws: For decades, States have burdened the rights of transgender parents to raise children. For example, some state courts have invoked an individual's transgender status as a basis for termination of parental rights. See *M.B. v. D.W.*, 236 S.W.3d 31, 36-38 (Ky. Ct. App. 2007); *Daly v. Daly*, 715 P.2d 56, 59 (Nev. 1986); see also Charles Cohen, *Losing Your Children: The Failure to Extend Civil Rights Protections to Transgender Parents*, 85 Geo. Wash. L. Rev. 536, 542-43 (2017) (collecting cases).

b. Whether someone is transgender “bears no relation to [their] ability to perform or contribute to society.” *City of Cleburne*, 473 U.S. at 441 (citation omitted). Petitioners do not contend otherwise—and for good reason. Being transgender does not make someone less capable of being a lawyer, engineer, farmer, or doctor. And requiring the government to satisfy heightened scrutiny will ensure that transgender individuals are free to reach their full potential on the same terms as all other Americans.

c. Transgender individuals share “obvious, immutable, or distinguishing characteristics that define them as a discrete group.” *Gilliard*, 483 U.S. at 602. Specifically, they share the common trait of having a gender identity that does not align with their birth sex. And transgender individuals are a “discrete” minority, *id.*, accounting for roughly one percent of the population.

Petitioners contend (at 37) that transgender status is “not immutable.” But while the specific cause of incongruence between a person's gender identity and sex assigned at birth has not been established, as the Ninth Circuit explained, “it appears likely that there

is some biological explanation—such as gestational exposure to elevated levels of testosterone—that causes certain individuals to identify as a different gender than the one assigned to them at birth.” Pet. App. 31a. Given those biological roots, transgender status cannot be changed voluntarily or intentionally.

To be sure, in rare instances, certain “transgender individuals ‘detransition’ later in life.” *Skrmetti*, 605 U.S. at 551 (Barrett, J., concurring). But when recognizing quasi-suspect classifications, this Court has not required absolute immutability. For instance, the Court has held that classifications burdening children “based on [their] parents’ marital status . . . are subject to the same heightened scrutiny as distinctions based on gender.” *Sessions*, 582 U.S. at 76 n.25; see *Clark v. Jeter*, 486 U.S. 456, 461 (1988). It has done so even though “[i]llegitimacy is a legal construct, not a natural trait” and can change if a child’s biological parents marry. *Michael H. v. Gerald D.*, 491 U.S. 110, 131 (1989). Likewise, “religion” is a “suspect distinction[],” *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976), even though people can change faiths. And “classifications based on alienage are inherently suspect” even though alienage—i.e., the status of being a noncitizen—is not immutable. *Graham v. Richardson*, 403 U.S. 365, 372 (1971).

Petitioners also err in contending that a classification can be considered quasi-suspect only if class members “‘carry an obvious badge’ of their identity.” Pet’rs Br. 37 (citation omitted). This Court has observed that “illegitimacy does *not* carry an obvious badge, as race or sex do.” *Mathews v. Lucas*, 427 U.S. 495, 506 (1976) (emphasis added). Yet it has

still subjected “classifications that burden illegitimate children” to “intermediate scrutiny,” *Jeter*, 486 U.S. at 461, because “the legal status of illegitimacy” is “determined by causes not within the control of the illegitimate individual” and “bears no relation to the individual’s ability to participate in and contribute to society,” *Mathews*, 427 U.S. at 505. The same logic applies here.

Nor must quasi-suspect classifications be tied to traits that are “definitively ascertainable at the moment of birth.” *Skrimetti*, 605 U.S. at 550 (Barrett, J., concurring). Religion, alienage, legitimacy, and even race are not always ascertainable from the moment of birth—a person’s religion is often chosen later, and the other statuses may be altered as a person learns more about themselves and their family. There is no sound basis to hold that the lack of “definitive[] ascertainab[ility]” precludes application of intermediate scrutiny to classifications based on transgender status, *id.*

d. Transgender individuals also have not “yet been able to meaningfully vindicate their rights through the political process” in much of the Nation. *Grimm v. Gloucester County Sch. Bd.*, 972 F.3d 586, 613 (4th Cir. 2020). Indeed, they are indisputably “under-represented in this Nation’s decisionmaking councils,” *Frontiero v. Richardson*, 411 U.S. 677, 686 n.17 (1973) (plurality). Since the Founding, there has been no openly transgender senator or federal judge, and there has been only one openly transgender member of the House of Representatives.

Transgender people’s lack of political power is also vividly illustrated by the staggering number of recent

state laws and federal policies targeting transgender individuals. *See, e.g.*, E. A. Zott, *Office Politics: Green v. Finkelstein’s Consequences for Trans Employees*, 54 Stetson L. Rev. 597 (2025) (“In 2024, 691 bills targeting transgender individuals . . . were introduced across forty-three states and the federal legislature.”). And in the lead-up to those enactments, legislators have called transgender people “mutants,” “demons,” and “imps.” *Doe v. Ladapo*, 676 F. Supp. 3d 1205, 1223 n.62 (N.D. Fla. 2023).

Petitioners assert (at 39) that transgender people have “made substantial inroads as well-known celebrities,” “members of Congress,” and “federal officials.” But they cite just one member of Congress and one high-level former Executive Branch official in all of U.S. history. In any event, by the time this Court began to recognize that sex-based classifications warranted heightened scrutiny, women had “improved” their position in society “markedly,” including through passage of a constitutional amendment ensuring the right to vote and multiple federal statutes forbidding sex discrimination. *Frontiero*, 411 U.S. at 685. Despite that progress, heightened scrutiny was warranted because “women still face pervasive, although at times more subtle, discrimination” requiring more searching judicial review. *Id.* at 686. The same is true here.

Petitioners also note (at 39) that the Biden Administration and certain States have taken steps to protect transgender individuals. But just as federal legislative enactments protecting women’s rights did not negate the need for heightened judicial scrutiny in *Frontiero*, efforts by a prior presidential

administration and certain States do not negate the need for heightened judicial scrutiny here. If anything, the most notable recent political developments relating to transgender people are the surge of hostile state and federal actions targeting transgender individuals in all areas of life—many taken in response to the progress toward equality that was just beginning. *See Talbott v. United States*, 775 F. Supp. 3d 283, 330-31 (D.D.C. 2025) (summarizing recent executive orders).

Government discrimination against transgender people will only intensify if this Court decides that laws discriminating against transgender Americans are presumptively constitutional. This Court should not countenance that result.

e. Finally, petitioners appear to suggest (at 40) that even if transgender people satisfy each of the factors above, this Court should still not recognize transgender status classifications as quasi-suspect because doing so would require courts to apply heightened scrutiny to other laws as well. That position disregards the fundamental purpose of the Equal Protection Clause: to provide judicial “protection from the majoritarian political process” to certain politically powerless groups. *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976) (per curiam). Courts have never eschewed their obligation to enforce the Clause simply because it involves judicial review.

Moreover, while heightened scrutiny applies to laws that discriminate based on transgender status, that does not mean that every such law will invariably fail under that standard. “The heightened review standard [this Court’s] precedent establishes” would

not make transgender status “a proscribed classification.” *United States v. Virginia*, 518 U.S. 515, 533 (1996) (*VMI*). This Court need not and should not decide whether any other hypothetical law that classifies based on transgender status would satisfy heightened scrutiny. *Contra* Pet’rs Br. 40. It is enough to hold that Idaho’s law fails under that standard, as elaborated below.

B. The Act classifies on the basis of sex.

H.B. 500 triggers heightened scrutiny for the additional and independent reason that it classifies “on the basis of sex.” *Orr v. Orr*, 440 U.S. 268, 283 (1979).

1. “[A]ll gender-based classifications . . . warrant heightened scrutiny.” *VMI*, 518 U.S. at 555 (internal quotation marks omitted). And as petitioners admit, the challenged Idaho statute “does draw a sex-based line.” Pet’rs Br. 41. The law provides that all school sports teams “shall be expressly designated . . . based on biological sex.” Idaho Code § 33-6203(1). It then commands that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex.” *Id.* § 33-6203(2); *see id.* § 33-6203(3) (creating a “dispute” procedure to “verify the student’s biological sex” applicable only to female-designated sports teams).

The statute thus “incorporates” a sex classification “[o]n its face.” *Skrmetti*, 605 U.S. at 511. Under the law, an individual with a “biological sex” of male, as defined by the statute, cannot play on a sports team designated for “females, women, or girls.” Idaho Code § 33-6203(2). There is no parallel prohibition for male sports teams. The law therefore “proscribe[s] generally accepted conduct if engaged in by members of

different [sexes].” *Skrimetti*, 605 U.S. at 514 (quoting *Loving v. Virginia*, 388 U.S. 1, 11 (1967)). Or, as the Court recently put it, the statute “prohibit[s] conduct for one sex that it permits for the other.” *Id.* at 515.

2. Although petitioners brief this case under the heightened-scrutiny framework, *see* Pet’rs Br. 41-53, they halfheartedly argue that the usual heightened-scrutiny rule does not apply because respondent “is not challenging the Act’s sex-based classifications,” *id.* at 28; *see id.* at 27-30.

That is wrong. As pleaded in her complaint, Lindsay challenges the fact that she is “barred from athletic competition consistent with [her] gender identity,” J.A. 45, based on her “reproductive anatomy, genetic makeup, or normally endogenously produced testosterone levels.” Idaho Code § 33-6203(3). And she argues that the particular “discriminatory means employed” to bar her from athletic participation is not substantially related to the achievement of an important governmental interest. *VMI*, 518 U.S. at 533. That is a quintessential challenge to a “sex-based classification[.]” *Contra* Pet’rs Br. 28.

IV. H.B. 500 Fails Heightened Scrutiny.

On this preliminary-injunction record, petitioners cannot satisfy their “demanding” burden to justify H.B. 500 under heightened scrutiny. *VMI*, 518 U.S. at 533. They must establish that the statute serves “important governmental objectives” and that “the discriminatory means employed” is “substantially related to the achievement of those objectives.” *Id.* (citation omitted). Nothing in the record comes close to justifying the Act’s categorical prohibition of all transgender women and girls from participating in all

women's and girls' teams regardless of age, the sport, the level of competition, or the students' circulating testosterone levels.

A. H.B. 500's categorical exclusion of transgender women like Lindsay is not substantially related to an important governmental interest.

Petitioners cannot on this record establish that Idaho's categorical exclusion of women and girls who are transgender from all women's and girls' sports, regardless of age, sport, or level of competition, is substantially related to its asserted interest in "promoting equal opportunities and safety for female athletes." Pet'rs Br. 42; *see* Idaho Code § 33-6202(12). The general rule of sex separation in sports was unaffected by H.B. 500: Before H.B. 500, "[e]xisting rules already prevented boys from playing on girls' teams." Pet. App. 246a. H.B. 500 for the first time categorically barred transgender women and girls from women's and girls' school sports. *See supra* at 5. And petitioners have not shown these specific "discriminatory means employed" by the statute, *VMI*, 518 U.S. at 533 (citation omitted), promote "equal opportunity" or "safety."

1. Petitioners' arguments—and the assertions in the legislative findings—rely on the contested notion that transgender women and girls always possess "numerous recognized physical and physiological advantages over females." Pet'rs Br. 20; *see* Idaho Code § 33-6202(9)-(11). But as the district court found, the factual record at the preliminary-injunction stage is to the contrary. *See supra* at 10-11. Relying on that record, the district court concluded that "physiological

advantages are not present when a transgender woman undergoes hormone therapy and testosterone suppression.” Pet. App. 241a-42a; *see* J.A. 224-90. The court of appeals found no clear error in that conclusion. Pet. App. 46a-47a.

Petitioners do not argue clear error before this Court, and for good reason: The record is replete with medical and scientific findings of fact that petitioners largely ignore. For example, as the district court also explained, one study found that, after receiving treatment that lowered circulating their testosterone levels, transgender women athletes’ “performance was reduced so that” they performed no better as compared to cisgender women than they had previously performed as compared to cisgender men. Pet. App. 242a. And as an expert analysis credited by the district court concluded, no scientific or medical evidence supports the Idaho legislature’s finding that girls who are transgender “have ‘an absolute advantage’ over non-transgender girls” following gender-affirming hormone therapy. *Id.* at 243a; *see* J.A. 237-39. In fact, “the study cited [by the legislature] in support of this proposition” had been altered following peer review before H.B. 500 was enacted to remove “the conclusions the legislature relied upon”—specifically including the “absolute advantage” language. Pet. App. 244a.

Thus, as the case comes to the Court, H.B. 500 sweeps far too broadly by categorically excluding *all* transgender women and girls, many of whom (like Lindsay) have circulating testosterone at levels typical of cisgender women and girls, from all school sports regardless of age or level of competition. Pet. App. 48a.

Some transgender women and girls never go through endogenous puberty, and therefore their bodies experience none of the impacts of testosterone at puberty and beyond. *See id.* Others, like Lindsay, suppress testosterone and take estrogen through prescribed hormone therapy as part of their treatment for gender dysphoria after puberty, thereby minimizing the impact of testosterone on the body. *Id.* at 42a; J.A. 13. But H.B. 500 excludes circulating testosterone—the one criterion actually associated with athletic advantage—from its definition of sex. *See* Pet. App. 46a-47a. Instead, the Act bars all transgender women and girls, from primary school through college, from women’s and girls’ sports teams, regardless of their circulating testosterone. Based on the record, the district court did not clearly err in concluding that the Act’s exclusion of transgender women like Lindsay from all school sports fails to vindicate the asserted interest in protecting against athletic advantage.

2. The attenuated interests supposedly advanced by H.B. 500 cannot “outweigh the tremendous harm” that the law inflicts. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 241 (2023). H.B. 500 deprives Lindsay of participating in school sports at all. Courts have recognized that sex separation in sports can pass constitutional muster where men and women still have equal opportunities to compete. *See Clark v. Ariz. Interscholastic Ass’n*, 695 F.2d 1126, 1130 (9th Cir. 1982). But that is not what happens when H.B. 500 excludes transgender women and girls from women’s and girls’ school teams. The record shows, and the district court found, that playing on men’s teams is not a viable option for women who are

transgender. Pet. App. 236a-237a. As Lindsay explained: “I would not compete on a men’s team. I am not a man, and it would be embarrassing and painful to be forced onto a team for men—like constantly wearing a big sign that says ‘this person is not a “real” woman.’” J.A. 211; *see* Pet. App. 44a.

Thus, the district court properly rejected petitioners’ argument that “Lindsay and other transgender women are not excluded from school sports because they can simply play on the men’s team.” Pet. App. 252a. That argument, the court explained, “is analogous to claiming [gay people] are not prevented from marrying under statutes preventing same-sex marriage because lesbians and gays could marry someone of a different sex.” *Id.*

Consistent with that conclusion, the record overwhelmingly demonstrates that forcing transgender people to live inconsistently with their gender identity—including by excluding them from activities their peers participate in—results in grave mental-health consequences. Pet. App. 44a-45a; *see* J.A. 72 (describing how transgender students “suffer and experience worse health outcomes when they are ostracized from their peers through policies that exclude them from spaces and activities that other boys and girls are able to participate in consistent with gender identity”).

3. H.B. 500’s invasive sex-verification requirement independently fails heightened scrutiny and compounds the harm the law imposes on all women and girls who want to play sports. That provision allows *anyone* to “dispute . . . a student’s sex.” Idaho Code § 33-6203(3). Thus, any woman or girl could have their sex disputed at any time by anyone who thinks

they look insufficiently feminine or for any reason at all.

And in the event of a dispute, a student remains eligible to play school sports only if a physician certifies her “biological sex” based on her reproductive anatomy, genetics, or endogenous hormones, which must be determined through invasive bodily examination or tests. *Id.* Contrary to petitioners’ claims (at 53), this verification process falls well outside the scope of “any routine sports physical” and is “[in]consistent with medical science,” potentially “[un]ethical,” and “traumatic.” J.A. 296-98. Far from “promoting sex equality” in sports, the district court rightly found that the law’s sex-verification procedure makes it harder for all women and girls to play—“subjecting women and girls to unequal treatment,” “incentivizing harassment and exclusionary behavior,” and “authorizing invasive bodily examinations.” Pet. App. 257a. No important government interest justifies this sex-verification regime.

B. Petitioners’ contrary arguments lack merit.

Petitioners do not meaningfully defend H.B. 500’s categorical exclusion of transgender women, like Lindsay, who have lowered their circulating testosterone to levels typical of cisgender women. Petitioners instead shift the focus to defend sex separation in sports generally, which H.B. 500 did nothing to change. And when it comes to the critical questions about Lindsay, petitioners ignore the record.

1. Petitioners misunderstand the equal-protection inquiry.

a. Much of petitioners’ argument rests on the claim that Lindsay “inverts the intermediate scrutiny framework” by asking “whether the Act advanced the State’s interests as *applied to*” Lindsay and other transgender women who have circulating testosterone levels on par with cisgender women. Pet’rs Br. 50; *see id.* at 50-55.

To the contrary, this Court has long held that an as-applied equal protection challenge is “the preferred course of adjudication since it enables courts to avoid making unnecessarily broad constitutional judgments.” *City of Cleburne*, 473 U.S. at 447-50. And the Court has adjudicated as-applied challenges in the equal protection context by recognizing that sex-based classifications may violate equal protection as applied to some individuals, even if they are permissible as to others. That is because “[a]t the heart of the Constitution’s guarantee of equal protection lies the simple command that the Government must treat citizens ‘as individuals, not as simply components of a racial, religious, sexual or national class.’” *Miller v. Johnson*, 515 U.S. 900, 911 (1995) (citation omitted). And when individuals do not conform to sex-based generalizations, heightened scrutiny allows them to challenge an “inflexible gender-based distinction” that would otherwise exclude them. *Caban v. Mohammed*, 441 U.S. 380, 393 (1979).

Petitioners accuse the lower courts of “transmogrify[ing]” intermediate scrutiny by “look[ing] only to a small subset of the affected class and ask[ing] whether the Act advanced the State’s interests as applied to

them,” as opposed to “look[ing] to the entire class affected by the Act’s sex-based classification to assess whether it was substantially related to the State’s interests.” Pet’rs Br. 50. But petitioners are the ones who have it backwards. Heightened scrutiny is designed to protect individuals from “overbroad generalizations,” *Sessions*, 582 U.S. at 57, that may be accurate for most people but harm those who fall “outside the average description,” *VMI*, 518 U.S. at 517.

Applying this doctrine, the Court has often invalidated sex-based distinctions that are premised on justifications that simply do not hold up for at least portions of the excluded sex. In *VMI*, for instance, the Court held the categorical exclusion of women from admissions unlawful because “some women, at least, would want to attend VMI if they had the opportunity” and “some women are capable of all of the individual activities required of VMI cadets and can meet the physical standards VMI now imposes on men.” 581 U.S. at 550. The Court emphasized that “[i]t is on behalf of these women”—not most women—“that a remedy must be crafted, a remedy that will end their exclusion from a state-supplied educational opportunity for which they are fit.” *Id.* at 550-51.

The Court took a similar approach in *Caban*, where it held that a New York law that gave unmarried mothers, but not unmarried fathers, the right to object to their child’s adoption violated equal protection. *Caban* accepted that the distinction was appropriate in most cases and held that the statute violated equal protection only “[w]hen the adoption of an older child is sought” and “where the father has established a substantial relationship with the child and has

admitted his paternity.” 441 U.S. at 392-93.

This Court should evaluate the categorical exclusion of transgender women like Lindsay under the same framework. It is not “invariably” true that *all* transgender women and girls will enjoy athletic advantages over cisgender women and girls—even if that generalization may hold true in some cases for other transgender women and girls. *Caban*, 441 U.S. at 394. The proper question under heightened scrutiny is not whether H.B. 500 can be applied to all people with a male birth sex or even to all transgender women and girls. It is whether H.B. 500 can be constitutionally applied to Lindsay and women like her, who have no meaningful athletic advantage that could warrant exclusion.

b. Petitioners cite no authority to the contrary. They lean most heavily (at 46-48, 52) on *Nguyen v. INS* 533 U.S. 53 (2001), which upheld a statutory scheme that imposed “different requirements” for unmarried fathers than unmarried mothers seeking to transmit citizenship to children born abroad. *Id.* at 56. Responding to the argument that the statutory scheme failed to sufficiently advance the purported governmental interest in providing “the opportunity for meaningful parent-child bonds to develop,” this Court stated that heightened scrutiny does not require that a statute “must be capable of achieving its ultimate objective in every instance.” *Id.* at 70. From that quotation, petitioners contend that under heightened scrutiny a statute need not have a substantial relationship in every instance either. Pet’rs Br. 52.

Petitioners are wrong. What made the difference in *Nguyen* was that the challenged statute provided

men with an opportunity to show that they were, in fact, similarly situated to women for purposes of passing along citizenship to their children. Men faced only a “minimal” obligation seeking to receive equal treatment as mothers, such that the statute imposed no “inordinate and unnecessary hurdle[s].” 533 U.S. at 70. That is a far cry from this statute, where Lindsay has no opportunity—much less a minimally burdensome one—to avoid exclusion.

The remaining cases petitioners cite (at 51) in defense of the categorical exclusion of transgender women are also unavailing. *Kahn v. Shevin*, 416 U.S. 351 (1974), upheld a property tax exemption that applied to widows, but not widowers, as an appropriate remedial response to a “firmly entrenched” history of economic discrimination against women, *id.* at 353, and in recognition of the “large leeway” the States enjoy in developing “reasonable systems of taxation,” *id.* at 355 (citation omitted). *Rostker v. Goldberg*, 453 U.S. 57 (1981), applied a more deferential version of heightened scrutiny because the case arose in the context of military affairs and permitted the exclusion of women from the draft because at the time women were not eligible for combat roles. *Id.* at 71, 77, 83. *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990), applied intermediate scrutiny to a racial classification and has since been overruled. *Id.* at 579; see *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). And the plurality opinion in *Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464 (1981), rejected a facial challenge to a criminal statute. See *id.* at 467. None of these cases bears on the inquiry before this Court.

c. Petitioners similarly err in insisting (at 43-44, 50, 53) that excluding transgender women like Lindsay from sports survives heightened scrutiny because sex separation in sports is generally accepted. That point is irrelevant because heightened scrutiny independently applies to H.B. 500's classifications on the basis of transgender status. *See supra* at 23-37. And petitioners' arguments are similarly flawed if the Court applies heightened scrutiny to H.B. 500's classifications on the basis of sex.

To start, petitioners improperly suggest (at 43-44) that "classifications based on real and enduring biological differences between the sexes" necessarily satisfy equal protection. To the contrary, under heightened scrutiny, even "[i]nherent differences between men and women" cannot be used to "artificial[ly] constrain[] . . . an individual's opportunity." *VMI*, 518 U.S. at 532-33.

In all events, the longstanding pedigree of sex separation in sports—which, again, is not at issue here—does not justify the categorical exclusion of transgender students like Lindsay. Courts must "focus[] on the differential treatment for denial of opportunity for which relief is sought" and determine whether the specific "discriminatory means employed are substantially related to the achievement of those objectives." *VMI*, 518 U.S. at 533 (internal quotation marks omitted). Here, they are not, for the reasons already explained.

For similar reasons, petitioners are wrong to claim (at 53) that deeming H.B. 500 invalid "would make sex-separated sports practically impossible" and would force the State to "allow many males *who*

identify as males into women’s sports.” As the Ninth Circuit explained, the justifications for excluding cisgender men from women’s teams do not “hold true” for women who are transgender, and especially not for Lindsay. Pet. App. 235a. Lindsay’s equal-protection claim is premised on two facts: (1) She is a transgender woman and thus faces unique harms from being excluded from woman’s sports that are not experienced by cisgender men, and (2) she has circulating testosterone levels typical of cisgender women and so, on this record, enjoys no athletic advantage over those women. Change either fact and the equal-protection analysis would be different. Nothing about this case will open the floodgates to cisgender men participating in women’s sports.

2. Petitioners’ factual justifications fail.

When petitioners turn to the facts, they entirely fail to engage with the evidence the lower courts considered or to provide any basis for upholding H.B. 500 on the actual preliminary-injunction record.

a. Petitioners repeat the claims (at 45-46, 48) in Idaho’s legislative findings, which asserted that men and boys enjoy an absolute athletic advantage over women and girls. But as the district court rightly recognized and as discussed above, those findings did not accurately address the case of transgender women and girls like Lindsay who are undergoing medical treatment and have circulating testosterone levels within the range typical for cisgender women and girls. *See supra* at 9-11. When reviewing a law under heightened scrutiny, this Court does not “place dispositive weight” on legislative findings like Idaho’s. *Gonzales v. Carhart*, 550 U.S. 124, 165 (2007). If those

findings are contrary to the record before the Court, then they provide no basis to uphold the law.

b. Petitioners additionally attempt to prop up H.B. 500 through untested extra-record material. As already explained, that maneuver is wholly improper. *See supra* at 18-23. If petitioners believe that the current record is insufficient, they should update the record in the district court and should not have prematurely petitioned for certiorari based on extra-record materials that are contrary to the district court’s factual findings below.

And again, petitioners disregard the record because their legal arguments are flatly refuted by the facts as found below. In particular, their claim (at 48) that “medical treatment can at most mitigate a few of the unfair advantages” is central to their heightened-scrutiny argument but is directly contradicted by the district court’s factual findings. *See supra* at 9-11. Petitioners do not even attempt to show that the district court’s fact-finding was clearly erroneous based on the preliminary-injunction record.⁶

Finally, petitioners are wrong to suggest (at 49) that recent policy changes by the NCAA and the U.S. Olympic and Paralympic Committee support their

⁶ Of course, if petitioners seek to introduce evidence through the proper channels, Lindsay would have an opportunity to dispute petitioners’ new claims and offer contrary evidence of her own. For example, a 2023 study of transgender athletes demonstrated that transgender women who have experienced endogenous male puberty are actually at a competitive disadvantage compared to cisgender women athletes in key areas. *See* Blair Hamilton et al., *Strength, Power and Aerobic Capacity of Transgender Athletes: A Cross-Sectional Study*, 58 British J. Sports Med. 586 (2024).

theory. Those organizations explicitly stated that their policies changed, not because of advances in scientific knowledge, but rather because a recent executive order required them to. See *NCAA Announces Transgender Student-Athlete Participation Policy Change*, NCAA (Feb. 6, 2025), <https://perma.cc/V33E-GDM2> (attributing change to executive order); Seb Starcevic, *US Olympic Committee Bans Transgender Athletes After Trump Order*, Politico (May 22, 2025), <https://perma.cc/F7BB-V67G> (same).

* * *

Ultimately, petitioners' arguments confirm that H.B. 500 cannot survive even rational basis review, much less heightened scrutiny, on this preliminary-injunction record. The breadth of the exclusion is "so far removed from [the] particular justifications" claimed to support it that it is "impossible to credit them." *Romer v. Evans*, 517 U.S. 620, 633 (1996). While purporting to address biological differences that are relevant to sports, H.B. 500 excludes from consideration the critical biological factor actually linked to athletic performance. And H.B. 500 excludes transgender women like Lindsay from all women's sports regardless of age or level of competition, even though those factors also matter to the analysis.

Given these glaring issues, the district court correctly held that, based on the preliminary-injunction record, petitioners cannot "identif[y] a legitimate interest served by the Act that the preexisting rules in Idaho did not already address, other than an invalid interest of excluding transgender women and girls from women's sports

entirely, regardless of their physiological characteristics.” Pet. App. 253a. Petitioners identify no legal error in that considered judgment.

CONCLUSION

The Court should affirm the judgment below.

Respectfully submitted,

JOSHUA A. BLOCK
CHASE B. STRANGIO
SRUTI J. SWAMINATHAN
JAMES D. ESSEKS
RIA TABACCO MAR
LOUISE MELLING
AMERICAN CIVIL LIBER-
TIES UNION FOUNDA-
TION
125 Broad St.
New York, NY 10004

CECILLIA D. WANG
AMERICAN CIVIL LIBER-
TIES UNION FOUNDATION
425 California St.
San Francisco, CA 94104

KATHLEEN R. HARTNETT
Counsel of Record
ZOË HELSTROM
COOLEY LLP
3 Embarcadero Center
San Francisco, CA 94111
(415) 693-2000
khartnett@cooley.com

PATRICK J. HAYDEN
KATELYN KANG
COOLEY LLP
55 Hudson Yards
New York, NY 10001

EPHRAIM A. McDOWELL
JOSHUA REVESZ
ELIAS S. KIM
ELIZABETH REINHARDT
COOLEY LLP
1299 Pennsylvania Ave. NW
Washington, DC 20004

PAUL C. SOUTHWICK	CELENE CHEN
EMILY M. CROSTON	COOLEY LLP
AMERICAN CIVIL	500 Boylston St.
LIBERTIES UNION OF	Boston, MA 02116
IDAHO FOUNDATION	
P.O. Box 1897	KELLY O'NEILL
Boise, ID 83701	LEGAL VOICE
	P.O. Box 50201
SELM AARYN STAR	Boise, ID 83705
AMERICAN CIVIL LIBER-	
TIES	SARAH TOMPKINS
UNION OF IDAHO	LEGAL VOICE
FOUNDATION	10114 W. Overland Rd.
Cooperating Attorney for	Boise, ID 83709
ACLU of Idaho	
Foundation	WENDY S. HEIPT
219 S. River St.,	LEGAL VOICE
Hailey, ID 83333	907 Pine St., No. 500
	Seattle, WA 98101

Counsel for Respondent Lindsay Hecox

November 10, 2025