

Nos. 20-35813, 20-35815

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**In the United States Court of Appeals  
for the Ninth Circuit**

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LINDSAY HECOX, et al.,

*Plaintiffs-Appellees,*

vs.

BRADLEY LITTLE, et al.,

*Defendants-Appellants,*

and

MADISON KENYON, et al.,

*Intervenors-Appellants.*

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On Appeal from the United States District Court for the District of Idaho,  
Case No. 1:20-cv-00184-DCN (Nye, J., Presiding)

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**BRIEF OF *AMICI CURIAE* 176 ATHLETES IN WOMEN'S SPORTS, THE  
WOMEN'S SPORTS FOUNDATION, AND ATHLETE ALLY IN SUPPORT  
OF PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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Diana Flynn  
Omar Gonzalez-Pagan  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
120 Wall Street, 19th Floor  
New York, NY 10005  
(212) 809-8585

Sasha Buchert  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
1776 K Street, N.W., 8th Floor  
Washington, DC 20006  
(202) 804-6245

Carl S. Charles  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
730 Peachtree Street NE, Suite 640  
Atlanta, GA 30308  
(404) 897-1880

Paul D. Castillo  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
3500 Oak Lawn Avenue, Suite 500  
Dallas, TX 75219  
(214) 219-8585

*Counsel for Amici Curiae*

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for *amici curiae* hereby certify that none of the *amici curiae* have a parent corporation. *Amici curiae* are individual athletes and, non-profit advocacy organizations, and have no shares or securities that are publicly traded.

**FED. R. APP. P. 29(a) STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), *Amici* have received Appellant and Appellee's written consent to file this amicus brief. Pursuant to Rule 29(a)(4)(E), no party or party's counsel authored the brief or contributed money that was intended to fund preparing or submitting the brief.

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## STATEMENT OF AMICI CURIAE'S IDENTITY AND INTERESTS<sup>1</sup>

*Amici* are 176 current and former athletes in women's sports who believe in the importance of equal opportunity to participate in primary, secondary, and collegiate athletic programs in the United States, as well as the Women's Sports Foundation and Athlete Ally.

*Amici* athletes have participated in sports at every level, including collegiate, amateur, professional, and international levels, and represent a broad cross section of sports, ranging from tennis to soccer, and ice hockey to surfing. Among the 176 athletes who have signed on to this brief are the following:

- **Billie Jean King** is the first female athlete to receive the Presidential Medal of Freedom. She was the world's number one ranked tennis player six times and won 39 Grand Slam singles, doubles, and mixed doubles titles. In 1973, she won the "Battle of the Sexes" match against Bobby Riggs. King is the founder of the Women's Tennis Association, the Women's Sports Foundation and the Billie Jean King Leadership Initiative and has been inducted into the International Tennis Hall of Fame and National Women's Hall of Fame.

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, their members, or their counsel made a monetary contribution to its preparation or submission.



- **Megan Rapinoe** Two-time World Cup Champion and co-captain of the US Women's National Team, Megan Rapinoe is a fan favorite and one of the team's most technical players. A vocal leader on and off the pitch, Megan helped lead the USWNT to the 2019 Women's World Cup Championship scoring some of the biggest goals of the tournament. Megan took home the tournament's two top honors – the Golden Boot for top scorer, and the Golden Ball for the best player in the tournament. Megan is an advocate for equality for all and has been able to intersect her passion for humanity and authenticity. Megan and her teammates will get ready to go again as they prepare for the 2021 Tokyo Olympics next summer.
- **Candace Parker** is an entrepreneur, activist, a two-time Olympic Gold Medalist and one of the most decorated women's basketball players of all-time with two WNBA MVP Awards. Off the court, Parker is a bold, insightful, and inspiring thought leader who is passionate about the importance of women's rights, voters' rights and Black Lives Matter. In September of 2020, Parker was the first female athlete to join the Social Change Fund, the mission of which is to invest in and support organizations that are working to liberate Black people and advocate for indigenous people and communities of color through the lens of policy solutions, community representation and narrative change.

- **Layshia Clarendon** Selected #9 overall in the 2013 WNBA Draft, Layshia is currently the point guard for the New York Liberty. Recently re-elected to a second term as WNBPA Vice President she helped negotiate a groundbreaking CBA Agreement that will serve as a bedrock for women's professional sports leagues moving forward. A current member of both 5x5 and 3x3 National Team pools, Layshia captured gold with Team USA in the 2018 FIBA World Championships. In 2017, Layshia was named a WNBA All Star, led the league in total assists and broke the franchise record for assists in a single season. Clarendon is a noted social advocate, speaker, and writer.
- **Phaidra Knight** is a former rugby player who was a member of the United States National Team from 1999 to 2017. She participated in the 2002, 2006, and 2010 Women's Rugby World Cups, and won All-World Team honors in the first two World Cups. She was named USA Rugby's Player of the Decade in 2010. On November 10, 2017, she was inducted into the World Rugby Hall of Fame.
- **Meike Babel** is a former professional tennis player from Germany who played on the Women's Tennis Association Tour for ten years. She was Women's Tennis Assistant Coach at Tulane University and at Vanderbilt University.
- **Pam Boteler** was a top-ranked sprint canoe athlete who in 2000 became the first woman in the U.S. to compete in sprint canoe against men at the national

level. She continued to race against the men in 2001, winning Gold in the Men's 4-person canoe. In 2002, influenced by her success on the water and lobbying off the water, USA Canoe/Kayak changed its by-laws to allow women to compete at the National Championships equal to the men. For nearly 20 years, Pam also successfully led a global fight for inclusion and gender equality for women in Olympic Canoeing, with women's canoe events debuting in Tokyo 2020/2021.

- **Rachel Dawson** is an American field hockey player who earned her first senior career cap vs Australia on June 5, 2005. Dawson was named to the U.S. Field Hockey Team for the 2008 Summer Olympics, 2012 Summer Olympics and the 2016 Summer Olympics, with the team finishing in 8th, 12th, and 5th respectively.
- **Imani Dorsey** is an American professional soccer player who currently plays for Sky Blue Football Club of the National Women's Soccer League.
- **Meghan Duggan** is a retired American ice hockey forward who had a 14-year career with Team USA. She competed in 3 Olympic Games and captained the team in 2 of those games. She won two silver medals in 2010 and 2014; and captained the team to the gold medal in 2018. She also represented the United States at eight Women's World Championships, capturing seven gold medals

and one silver medal. Meghan is also a motivational speaker, a mentor, an advocate, a wife, and a new mom.

- **Grete Eliassen** is an American-Norwegian freestyle skier. She is a four-time U.S. Open Champion and has won 6 medals at the Winter X Games in slopestyle and halfpipe events including back-to-back gold medals in 2005 and 2006. She served as President of the Women's Sports Foundation from 2017-2018.
- **Sophia Herzog** is a two-time World Champion Paralympic Swimmer and silver medalist from the Paralympic Games Rio 2016. She joined the United States National Team in 2014.
- **Elena Hight** is a snowboarder who represented the United States in 2006 and 2010 Winter Olympic games. She is also Gold, Silver, and Bronze medalist at the Winter X Games.
- **Tziarra King** is a professional soccer player who plays as a forward in the NWSL. She was the first women's soccer player from NC State to win the Atlantic Coast Conference's Scholar-Athlete of the Year and has been called in to multiple United States Under-23 National Team Camps.
- **Lori Lindsey** is a retired soccer midfielder and former member of the United States Women's National Team. She played in the 2011 FIFA Women's World Cup in Germany and was an alternate for the 2012 London Olympics.

- **Esther Lofgren** is an American rower and an Olympic gold medalist. She won the gold medal in the women's eight at the 2012 Summer Games in London and is an eight-time member of the U.S. National Rowing Team and a seven-time World Championship medalist.
- **Joanna Lohman** is a retired professional soccer player and former member of the United States Women's National Soccer Team.
- **Kaiya McCullough** is a professional soccer player who previously played as a defender in the German 2 Frauen-Bundesliga and in the NWSL. McCullough was part of the United States Under-18, Under-19, and Under-20 national teams.
- **Aimee Mullins** is an actor, model, and public speaker. A former track and field athlete who set three world records in the 100-meter, 200-meter and long jump events and competed at the 1996 Paralympics in Atlanta. She was President of the Women's Sports Foundation from 2007-2009, and Chef de Mission of Team USA for the 2012 Games.
- **Mary Osborne** is a champion long-boarder and professional surfer. She won the Malibu Surfing Association Surf Contest in 2009 and 2010. In 2010, she became the first woman to ride China's Qiantang River tidal bore, the world's largest and fastest bore, a roaring river-wave with recorded heights nearing 30-feet.

- **Dawn Riley** is a pioneer in the sport of sailboat racing. She sailed in three America's Cup races and two Whitbread Round the World races and was the first American, male or female, to do so. She is a former President of the Women's Sports Foundation.
- **Toccare Ross** is an international professional basketball player. She has played professionally in Puerto Rico, Ecuador, Colombia, Taiwan, Finland, Romania, Israel, Switzerland, and France. A Chicago native, she played collegiate basketball at Iowa State.
- **Becky Sauerbrunn** is a professional soccer player who plays in the NWSL and the United States Women's National team. Sauerbrunn won gold with the national team at the 2012 London Summer Olympics, the 2015 FIFA Women's World Cup, and the 2019 FIFA Women's World Cup.
- **Collette V. Smith** is a former pro football player and coach with the New York Sharks of the Women's Football Alliance (WFA) and the Independent Women's Football League (IWFL). She is also the NFL's 1st African American Female Coach in History by being the first female coach hired by the New York Jets in 2017 in the National Football League.
- **Katie Sowers** is an offensive assistant coach with the San Francisco 49ers and is in her fifth season in the NFL. When the 49ers advanced to Super Bowl LIV, Sowers became the first openly gay and first woman to coach in a

Super Bowl. Sowers previously coached with the Atlanta Falcons and is a former football player for the West Michigan Mayhem and the Kansas City Titans in the Women's Football Alliance.

- **Brenda Villa** is an American water polo player. She is the most decorated athlete in the world of women's water polo. Villa was named Female Water Polo Player of the Decade for 2000-2009 by the FINA Aquatics World Magazine.

A complete listing of all the athletes who have signed on to this brief is provided in the enclosed Addendum, including information on each of their backgrounds and relevant experiences.

*Amici* offer valuable perspectives on a core issue in this case: namely, the life-long benefits of equal opportunity and participation in the athletic programs of primary, secondary, and university schools and the value of inclusive and welcoming sports environments. While some *amici* are internationally recognized champions in their sport, others are athletes who did not go on to a professional athletic career but still deeply value their athletic experience. What each *amicus* athlete has in common, however, is an appreciation for, and understanding of the importance of, their participation in school sports. *Amici* therefore oppose laws like H.B. 500 that single out groups of women and girls from women's sports and harm the entire sports community.

The **Women's Sports Foundation** exists to enable girls and women to reach their potential in sport and life. The organization is an ally, an advocate, and a catalyst. Founded by Billie Jean King in 1974, they strengthen and expand participation and leadership opportunities through research, advocacy, community programming and a wide variety of collaborative partnerships. The Women's Sports Foundation has positively shaped the lives of millions of youth, high school and collegiate student-athletes, elite athletes, and coaches. They are building a future where every girl and woman can #KeepPlaying and unlock the lifelong benefits of sport participation. *All girls. All women. All sports.*®

**Athlete Ally** believes sport will change the world when it welcomes and empowers all people. As a leading national nonprofit working at the intersection of sport and LGBTQI+ equality, Athlete Ally works to end the structural and systemic oppression that isolates, excludes, and endangers LGBTQI+ people in sport. They educate individuals and institutions to understand obstacles to inclusion for LGBTQI+ people and how they can build an inclusive culture within their athletic communities. Athlete Ally works to ensure sport governing bodies, teams and leagues adopt policies that reflect the diversity of their constituents. They also incubate athlete activism to advance LGBTQI+ equality in and through sport.

*Amici* file this brief pursuant to Federal Rule of Appellate Procedure 29(a)(2).

All parties consent to the filing of this brief.



## INTRODUCTION

Embedded in our nation’s shared love of athletics is the fundamental principle that anyone can participate in sports, no matter their race, national origin, religion, sexual orientation, or gender identity. That is because “sport is one of the greatest socialization mechanisms in the world — it communicates values without relying on any one language, and its most successful participants are known and respected globally.”<sup>2</sup> As women and LGBTQ+ athletes, and organizations that support and advocate for women and LGBTQ+ athletes, *amici* submit that all youth deserve an equal opportunity to participate in sports alongside their peers. Such equal opportunity benefits the entire sports community.

*Amici* represent a wide range of international, professional, amateur, collegiate, and former high school athletes. All maintain that participation in athletics was essential to their development as leaders and individuals. Their early experiences in sport helped *amici* to develop key skills that have been instrumental to successes they have cultivated throughout life.

All *amici* believe that every young person, and especially youth who are transgender, or intersex, should be able to participate fully in sport alongside their peers and gain the benefits that sports participation brings. This is especially important for transgender and intersex youth. Some *amici* also share the harm they

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<sup>2</sup> *About Athlete Ally*, [www.athleteally.org/about](http://www.athleteally.org/about) (last visited Dec. 13, 2020).

experienced when excluded from athletic participation because of who they are and the ways this was detrimental to their emotional and social development, as well as their sense of self and physical well-being.

*Amici*'s experiences as athletes leads them to oppose laws like H.B. 500 because of their negative impact on all women and girls. H.B. 500 bans all women and girls who are transgender, and many who are intersex, from playing school sports in Idaho at any level. The bill would also force all women and girl athletes to endure invasive and medically unnecessary testing if anyone "disputes" their sex. This law flies in the face of bedrock principles of equality and diversity in sports. Many current and former athletes in women's sports spoke out against H.B. 500 on this ground, including Duke Law Professor Doriane Lambelet Coleman—whose research was mischaracterized in the bill's legislative findings.<sup>3</sup> *Amici* therefore dispute claims by proponents of Idaho's discriminatory law that it somehow benefits women athletes. To the contrary, *amici* submit that the law, in fact, harms women athletes through exclusion, discrimination, and denial of the benefits that flow from participation in sport.

## ARGUMENT

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<sup>3</sup> Betsy Russell, *Professor Whose Work is Cited in HB 500a, the Transgender Athletes Bill, Says Bill Misuses Her Research and Urges Veto*, Idaho Press: Eye on Boise (Mar. 19, 2020), archived at <https://perma.cc/NTA7-NJP5>.

**I. EQUAL OPPORTUNITY TO PARTICIPATE IN SCHOOL SPORTS IS CRUCIAL FOR ALL ATHLETES.**

**A. Sport Thrives on Diversity.**

Participation in school sports brings together a diverse community of student athletes, who share a sense of belonging and connectedness that fosters values of inclusion and empathy. Diversity across athletes' race, LGBTQ+ status, disability, geographical location, and other experiences and identities, enriches the experiences of individual athletes and benefits the sports community overall.

Athletic communities that foster inclusion of young people from different racial backgrounds help athletes embrace racial diversity and support and uplift their teammates on and off the field. In July 2020, the Women's National Basketball Association ("WNBA"), and the Women's National Basketball Players Association ("WNBPA") the WNBA player's union, jointly announced the 2020 WNBA Season as a "Season of Social Justice." This was marked by the creation of the Social Justice Council, of which *amicus* Layshia Clarendon is a leading member. The Council's mission to "be a driving force of necessary and continuing conversations about race, voting rights, LGBTQ+ advocacy, and gun control amongst other important societal issues,"<sup>4</sup> is an example of how diversity in sport can foster long-term solidarity,

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<sup>4</sup> *WNBA Announces A 2020 Season Dedicated to Social Justice*, Women's Nat'l Basketball Ass'n (July 6, 2020), <https://www.wnba.com/news/wnba-announces-a-2020-season-dedicated-to-social-justice/> (last visited Dec. 13, 2020).

coalition building and meaningful social change.

Sports also benefit from the participation of athletes with disabilities. As *amicus*, world record holder, and Paralympic track athlete Aimee Mullins explains,

I think the greatest adversity that we create for ourselves is this idea of ‘normalcy’ as it applies to human beings. There is no normal. There’s common, there’s typical, but there’s no normal. Whether it’s gender, physical or mental ability, or another categorization used to make assumptions about people, sports help break down barriers that society imposes.

Ms. Mullins’ confidence in sharing her experiences and reframing what is possible for all athletes and people has benefitted sports and athletes around the world. She explains how celebrating diversity in sport increases who can benefit from sport and in turn benefit their communities:

If we can begin to shift away from the mirage of normalcy and instead view deviations from the common through a lens of possibility, we can increase access to sports and all the benefits they provide. So many more potential participants would be invited to engage their rare and valuable abilities, both in sport and in their communities.

Sports also benefit from geographic diversity. Through sports, students can participate with athletes from different parts of their city, different regions in their state, from across the United States, and from around the world. These opportunities help young people learn how to bridge regional, cultural, and national differences. As former world class Women’s Tennis Association player, current tennis coach, and LGBTQ+ advocate Meike Babel explains, “Playing sport has allowed me to meet people from all over the world, from different cultures, different backgrounds

and experiences, and that has fostered respect and open-mindedness towards people who may be different from me.” The love of sport is shared around the world, and that connection serves as a foundation for meaningful relationships and building shared understanding outside of athletics.

Sports also provide an opportunity for LGBTQ+ athletes and their peers to foster acceptance for one another through commitment to shared values of participation and inclusion. As explained by *amicus* and former U.S. Women’s National Soccer team member Lori Lindsey, “I was grateful that when I came out as a lesbian, I didn’t have to step away from the sport I loved. I gained the tremendous gift of being fully myself and showing other LGBTQ+ athletes that there’s a place for them in sports.” Ensuring LGBTQ+ athletes’ equal opportunity to participate in sports as their authentic selves without fear of rejection enriches the experience for all athletes. As *amicus* and international tennis legend Billie Jean King shares,

There is no place in any sport for discrimination of any kind. I am proud to support all transgender athletes who simply want the access and opportunity to compete in the sport they love. The global athletic community grows stronger when we welcome and champion all athletes – including LGBTQI+ athletes.

Championing diversity in sports provides all student athletes with the opportunity to learn and support people who are different from themselves, a value they carry into their adult lives. As Meike Babel shares,

Trans athletes deserve to play just like any other athlete. We all deserve to experience all the benefits of sports. In my mind, any athlete that

fighters to be themselves on and off the field or court are role models with inner strength and resiliency. As athletes and as human beings, we learn from each other when we are around people who embrace who they are.

Athletes, and athletics more broadly, are benefitted by the diversity that equal participation creates. Sport thrives on the camaraderie that differences in identity, experience, and ability amplify and enrich.

**B. Through Sport, Athletes Develop a Sense of Belonging, Connectedness, and Contribution.**

Participation in sports provides student athletes with unique opportunities to develop a sense of belonging, connectedness, and contribution. Through sports, athletes access a natural community of peers who are connected through shared goals and the commitment of time, discipline, and hard work they each have undertaken.<sup>5</sup> These shared experiences extend beyond the rigors of the gridiron, pool, court, or rink and enrich the lives of the athletes for years beyond their athletic endeavors.

As explained by *amicus* and internationally renowned rugby player, Phaidra Knight, her athletic experiences fostered a sense of belonging that has echoed throughout her life:

Sport is the one thing in my life that has really brought me into a full person; the people I have discovered, the pathways it has allowed me to take, my ability to touch and inspire others whose lives I would never have come across. So, it has been amazing. It has been everything for me.

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<sup>5</sup> See Reed W. Lawson, *Toward a Psychology of Positive Youth Development*, *American Psychologist* 55, 170–183 (2000), <https://doi.org/10.1037/0003-066X.55.1.170>.

A deep sense of connection and belonging is also created through participation in sports because many student athletes learn that they can be themselves.<sup>6</sup> Many athletes are celebrated and accepted by their peers and teammates for who they are, thereby building confidence and self-esteem.<sup>7</sup> The sense of belonging fostered through sport helps student athletes learn that they and their teammates are valued for their differences and unique characteristics.

Through the sense of belonging and connection to their teammates that comes from shared goals and purpose, young people also gain a sense of contribution. *Amicus* 2018 Ice Hockey Gold Medal Olympian Meghan Duggan explains how sport allowed her to contribute to something larger than herself, “I have always wanted to change the world through sports. Playing hockey empowered me and gave me an amazing platform to advocate for the issues that matter the most to me, especially gender equality and LGBTQ+ inclusion.” A sense of connection and contribution in sport permeates all areas of life for student athletes both during their school years and beyond.

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<sup>6</sup> Andrew Soundy, et al., *Psychosocial Consequences of Sports Participation for Individuals with Severe Mental Illness: A Metasynthesis Review*, 8 *Adv. Psychiatry* 1 (2015), <https://downloads.hindawi.com/archive/2015/261642.pdf>.

<sup>7</sup> Sara Pedersen & Edward Seidman, *Team Sports Achievement and Self-Esteem Development Among Urban Adolescent Girls*, 28 *Psychology of Women Quarterly* 419 (2004), <https://doi.org/10.1111/j.1471-6402.2004.00158.x>.

## **II. PARTICIPATION IN SCHOOL SPORTS BENEFITS YOUTH IN ALL AREAS OF LIFE.**

### **A. Participation Fosters Academic Achievement and Helps Students Manage Pressure.**

The benefits of participation in sports continue throughout life. Participation in sport has a documented effect on academic achievement.<sup>8</sup> School sports programs often require academic eligibility to participate or center such achievement as an ethic within the team or athletic program. Many athletic programs require student athletes to maintain a minimum grade point average (“GPA”) to be eligible to participate. But many teams go further, making academic achievement at least as important as athletic achievement. Thus, students who participate in school athletics generally experience better academic achievement and outcomes than those who do not.<sup>9</sup>

While athletic participation fosters academic achievement, such participation also helps athletes manage academic and social pressures. Athletic participation eases some of the social pressure to make friends and “fit in” with other youth because athletes enjoy a supportive community of teammates and

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<sup>8</sup> See, e.g., Kelly Troutman & Mikaela Dufur, *From High School Jocks to College Grads: Assessing the Long-Term Effects of High School Sport Participation on Females’ Educational Attainment*, 38 *Youth & Society* 443 (2007), <https://doi.org/10.1177/0044118X06290651>.

<sup>9</sup> See Angela Lumpkin & Judy Favor, *Comparing the Academic Performance of High School Athletes and Non-Athletes in Kansas in 2008-2009*, 4 *J. of Sport Admin & Supervision* 41 (2012), <http://hdl.handle.net/2027/spo.6776111.0004.108>.



peers.<sup>10</sup> Participation in athletics also provides a healthy outlet for academic stress, as well as a community of support when they need it.<sup>11</sup> Learning how to manage life pressures early in life provides benefits to athletes beyond their time participating in sports.

### **B. Participation Builds Teamwork, Leadership, and Discipline Skills.**

Participation in athletics enables students to develop skills, including skills related to teamwork, that benefit them throughout life. Students learn how to work as part of a team and that each team member has a distinct and important role to achieve the team's goals. They learn to trust one another and to understand the importance of each team member. As Lori Lindsey explains, the value of teamwork to her athletic experience was critical, and she specifically learned “so many incredible lessons from soccer—especially the values of hard work, discipline, and teamwork. These values have carried over into every part of my life, beyond sport.”

Participation in sports provides youth with an opportunity to develop discipline and embrace hard work. Students learn the value of perseverance and

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<sup>10</sup> See Erin Boone & Bonnie Leadbeater, *Game On: Diminishing Risks for Depressive Symptoms in Early Adolescence Through Positive Involvement in Team Sports*, 16 J Res Adolesc. 79, 79 (2006), <https://doi.org/10.1111/j.1532-7795.2006.00122.x>.

<sup>11</sup> See Susan Gore, et al., *Sports Involvement as Protection Against Depressed Mood*, 11 J Res Adolesc. 119, 128 (2001), <https://doi.org/10.1111/1532-7795.00006>.

drive through countless hours of practice that leads to team success and personal fulfillment. Women's ice hockey legend and *amicus* Meghann Duggan learned about the fulfillment that comes from teamwork, and about the value of working for the common good, which builds life-long skills. She stresses that "every child, regardless of gender identity, should have the chance to access the lifelong skills that sports teach like confidence, perseverance, and leadership." Teamwork skills are fundamental to success in many facets of life and participation in school sports provides young people with important opportunities to hone and develop these crucial skills.

### **C. Participation Benefits Social Skills and Emotional Maturity.**

Through sports, students develop crucial social skills and emotional maturity. Participation in sports allows students to create and sustain friendships that last a lifetime. Athletes spend considerable time with their teammates, both in practice and games. They experience pressure-filled intense experiences that often lead to meaningful bonding, connection, and close friendship.<sup>12</sup> As *amicus* Phaidra Knight explains,

My rugby teammates are like a family to me. And with that goes, like a family, the bad things: you get sick of each other, you argue, you have fights, but at the end of the day that is your teammate. And like a family

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<sup>12</sup> Leanne Findlay, & Robert Coplan, *Come Out and Play: Shyness in Childhood and the Benefits of Organized Sports Participation*, 40 *Canadian Journal of Behavioural Science / Revue Canadienne des sciences du comportement* 153 (2008), <https://doi.org/10.1037/0008-400X.40.3.153>.

member, you always have their back.

Youth who participate in sports also develop emotional maturity. Through sports, student athletes learn self-control and how to regulate their emotions.<sup>13</sup> Students also experience significantly lower levels of emotional problems and less emotional distress because of their sports participation.<sup>14</sup> Participation in school sports supports students' growth and personal development, which benefits them throughout life.

Students' access to mentorship and guidance from their coaches and athletic support staff is another significant benefit of participation in school sports.<sup>15</sup> As young athletes in particular, students learn respect for coaching staff and gain mentorship and guidance not just about sport, but about academics and life more broadly. Ms. Knight shared her experience serving as a rugby coach to youth at Riker's Island, transforming from an athlete who received mentorship, to a mentor herself, "I'd set up certain guidelines: No talking when someone else is talking. 'You're going to respect everyone; you're going to respect me.' I hope to someday

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<sup>13</sup> David Hansen, et al., *What Adolescents Learn in Organized Youth Activities: A Survey of Self-Reported Developmental Experiences*, 13 *J Res Adolesc.* 25, 47 (2003), <https://doi.org/10.1111/1532-7795.1301006>; See also Findlay, *supra*.

<sup>14</sup> Sarah Donaldson & Kevin Ronan, *The Effects of Sports Participation on Young Adolescents' Emotional Well-Being*, 41 *Adolescence* 369, 369–389 (2006), <http://www-personal.umich.edu/~cyiu/psych%20458/out.pdf>.

<sup>15</sup> See Nicholas Holt, et al., *Benefits and Challenges Associated with Sport Participation by Children and Parents from Low-Income Families*, 12 *Psychol. Sport Exercise* 490, 490–499 (2011), <https://doi.org/10.1016/j.psychsport.2011.05.007>.

be able to show how introducing discipline with love and direction can transform an individual.” Other *amici* became coaches after retirement from sport and echoed the value of contributing to young people’s development as athletes and people. *Amicus* Meghan Duggan “now mentor[s] young athletes, inspiring them to find their voices through hockey” thereby continuing the cycle of mentorship that she experienced.

Athletes also learn to communicate with teammates, peers, coaches, and others, building bridges across differences in experience and perspective.<sup>16</sup> Participating in sports can also provide young people with a platform to speak about issues they care about and reach their peers in ways they might not otherwise. *Amicus* Kaiya McCullough uses her platform and communication skills she learned through soccer to speak about issues that matter to her:

Soccer has given me a platform to speak out about what is important to me, including calling out systemic racism and transphobia. Black trans women face some of the highest rates of violence and suicidality in the country, and through soccer I can encourage my fans to be more knowledgeable and empathetic.

Perhaps most significantly, student athletes learn the meaning and value of sportsmanship throughout their sporting experience. They learn how to live the values embedded in sportsmanship: fairness, equity, courage, and fellowship. Many athletes learn that sportsmanship does not extend only to opponents or referees, but

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<sup>16</sup> Lajeana Howie, et al., *Participation in Activities Outside of School Hours in Relation to Problem Behavior and Social Skills in Middle Childhood*, 80 *J School Health*, 119, 123 (2010), <https://doi.org/10.1111/j.1746-1561.2009.00475.x>.

to their own teammates. Kaiya McCullough also learned from her teammates' unique experiences and identities and discovered that her team was stronger because it was diverse. "Every player on a team brings their own unique experience, and that's what makes a team stronger. I value the friendships I have developed with LGBTQ+ teammates, and I've learned from them how to be a better ally." Athletic participation provides students athletes with many opportunities to learn, develop, and practice their sportsmanship skills that yield lifetime benefits.

#### **D. Participation Benefits Physical and Mental Health.**

In addition to the many social and psychological benefits that flow from school sport participation, student athletes gain physical and mental health benefits. Generally, students who participate in school sports take fewer risks and have fewer physical and mental health problems than those who do not.<sup>17</sup>

Students who participate in sports also experience the benefits of physical activity generally.<sup>18</sup> Some of the direct physical benefits include: "positive effects on lipidemia, blood pressure, oxygen consumption, body composition, metabolic syndrome, bone density and depression, increased muscle strength, and reduced

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<sup>17</sup> Hans Steiner, et al., *Adolescents and Sports: Risk Or Benefit?*, 39 *Clinical Pediatrics* 161, 161–166 (2000), <https://doi.org/10.1177/000992280003900304>.

<sup>18</sup> Christer Malm, et al., *Physical Activity and Sports—Real Health Benefits: A Review with Insight into the Public Health of Sweden*, 7 *Sports* 1, 13-14 (2019), <https://doi.org/10.3390/sports7050127>.

damage to the skeleton and muscles.”<sup>19</sup>

Participation in sport as a young person also fosters continued participation in sport as an adult. This in turn reduces the morbidity and mortality of many diseases that appear later in life and are positively affected by physical activity and exercise.<sup>20</sup> Participation in school sports also provides considerable benefit to the mental health of young people including lowering their risk for depressive symptoms.<sup>21</sup>

Significantly, participation in sport has also been reported to protect against feelings of hopelessness and suicidality.<sup>22</sup> For transgender youth, who are at considerably higher risk for “suicide and other life-threatening behaviors,” this is particularly important.<sup>23</sup> Researchers emphasize that, “good physical and mental health of children and young people participating in sport requires knowledge and organization based on everyone’s participation,” underscoring the need for equal

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Boone, *supra*, at 79.

<sup>22</sup> Lindsay Taliaferro, et al., *High School Youth and Suicide Risk: Exploring Protection Afforded Through Physical Activity and Sport Participation*, 78 J. of Sch. Health 545, 545–553, (2008), <https://doi.org/10.1111/j.1746-1561.2008.00342.x>.

<sup>23</sup> See, e.g., Erin Buzuvis, *Transgender Student-Athletes and Sex Segregated Sport: Developing Policies of Inclusion for Intercollegiate and Interscholastic Athletics*, 21 Seton Hall J. Sports & Ent. Law 1, 48 (2011), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1646059](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1646059).

opportunity for all students.<sup>24</sup>

**E. Participation Teaches Young People How to Overcome Challenges and Provides Pathways to Success Later in Life.**

Athletic participation provides a safe and controlled environment for young people to confront and overcome challenges. The challenges young people confront in the pool, on the court, field, or course, are opportunities to develop problem-solving skills. Athletic participation tests student athletes' resilience and helps them confront and overcome adversity. Like *amicus* Aimee Mullins explains:

As a bilateral below-knee amputee, I spent roughly the first two decades of my life competing against 'normal' athletes. Indeed, I had never met another amputee athlete until I was 18 years old. I have never felt defined by the term 'disabled,' regardless of what labels others may try to attach to me. Sports have provided a safe and inclusive space for me to grow as both an athlete and a person. Participating in sports created an opportunity to embrace adversity, be better because of it, and ultimately help make society better.

Athletic participation also provides pathways to student athletes experiencing success later in life. Along with support in academic achievement, the ability to manage social and academic pressures, and a clear sense of belonging and connectedness, students are equipped to excel in high stakes and impressive professional roles after their athletic careers have ended. In sum, athletic participation bestows incredible and immediate benefits on young athletes when they are in school and creates a foundation for success thereafter.

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<sup>24</sup> Malm, *supra* note 18, at 13.

### **III. EXCLUSION FROM SCHOOL SPORTS DEEPLY HARMS THE SOCIAL, EMOTIONAL AND PHYSICAL WELL-BEING OF YOUNG ATHLETES.**

#### **A. Discrimination in School Sports Causes Stigma and Harm.**

Given the myriad benefits that students who participate in school sports receive, it is not surprising that discriminatory exclusion from sports inflicts significant stigma and long-lasting harm. Not only does such discriminatory exclusion cause deep harm to student athletes on the receiving end of such treatment, but it also causes lasting negative effects on the athlete's teammates, coaches, school community and sports as an entire institution by denying diversity. Excluding any athlete because of who they are or, where they come from, contravenes the central cultural values of sports in the United States which champions the ethos that "if you can play, you can play."<sup>25</sup>

Exclusion from school sports because of a student's race, gender, or LGBTQ+ status is deeply harmful and stigmatizing. Even one experience of exclusion could chill student participation thereby potentially depriving them of a lifetime of benefits.<sup>26</sup> As *amicus* Meghan Duggan explains, she was effectively excluded from ice hockey at the professional level after graduating from college "because women

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<sup>25</sup> *Mission, You Can Play Project*, <https://www.youcanplayproject.org/about/mission/> (last visited December 13, 2020).

<sup>26</sup> Perri Class, M.D., *The Impact of Racism on Children's Health*, *The New York Times* (Aug. 12, 2019).



were excluded from resources and discouraged from participating.” Instead of sacrificing on the ice to build a legacy with her teammates, Duggan was fighting for basic equity:

Women’s professional ice hockey continues to struggle because of the lack of resources, visibility, recognition, and support for women in the sport. When I was fighting for equal pay with the U.S. Women’s Hockey Team, I was ready to sacrifice a World Championship to stand up for my teammates and the rights we deserved.

For many athletes, sports are presumed to be a place they can forget about their day-to-day pressures and focus on participating in a community of connected peers. Instead of reaping the full benefits of participation, LGBTQ+ athletes worry about rejection for being their authentic selves. Fear and anxiety about other’s reactions limits full and meaningful participation and severely diminishes the benefits a young person would otherwise obtain. Painful and stigmatizing experiences with exclusion from school sports only exacerbates the already high rates of discrimination that LGBTQ+ youth face in school environments.<sup>27</sup>

Exclusion and discrimination because of race, gender and/or LGBTQ+ status harms not only the individual athletes but their teammates, coaches, and the school community more broadly. When any athlete suffers exclusion based on who they

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<sup>27</sup> Joseph Kosciw, et al., *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools* (2019), [https://www.glsen.org/sites/default/files/2020-10/NSCS-2019-Full-Report\\_0.pdf](https://www.glsen.org/sites/default/files/2020-10/NSCS-2019-Full-Report_0.pdf).

are, athletics overall suffers from the loss of fully realized and engaged participation.

**B. Exclusion from Participation Causes Harm to Social, Emotional and Physical Well-Being of Young Athletes.**

Athletes who are excluded from participation because of discrimination experience harm to their social, emotional, and physical well-being. Student athletes excluded from participation are cut off from a primary point of community, connection, and belonging within their school. These student athletes are denied the ability to bond with their peers or develop personal and social skills that carry through a lifetime. (ER at 644 (Fry Decl. ¶ 49).) Such exclusion also negatively impacts their emotional well-being. Exclusion from participation and the accompanying sense of belonging deeply harms athletes' sense of self and identity within their team, athletic, and larger school community. Not only do the excluded athletes experience such social and emotional harms, but so do their teammates, who also feel the impact and loss of a valued team members' exclusion from participation. (ER at 644 (Fry Decl. ¶ 48).)

Student athletes who are excluded from participation also experience harm to their physical well-being. They are denied the positive health outcomes that result from participating in athletics. (*Id.*) They do not have the same access to healthy coping mechanisms that can reduce stress, anxiety, and depressive symptoms.<sup>28</sup>

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<sup>28</sup> See e.g. Annemarie Dimech & Roland Seiler, *Extra-Curricular Sport Participation: A Potential Buffer Against Social Anxiety Symptoms in Primary*

With no alternative, excluded students may turn to unhealthy measures to deal with feelings of shame and stigma.<sup>29</sup> Without encouragement and connection to teammates, athletes who were unable to participate lose motivation and are not as likely to engage in planning for their future. (ER at 643 (Fry Decl. ¶ 46).) Having such a negative experience during a phase of life where habits are developed does long-term harm to student athletes' ability to generate positive associations with physical activity for their future.<sup>30</sup> Overall, the social, emotional, and physical harms experienced by athletes who are excluded from sport are significant and far reaching.

### CONCLUSION

Sports is a critical and beneficial part of the school experience for many students. Athletic participation provides unparalleled opportunities to forge a sense of belonging, connectedness, and contribution. The benefits of sports extend to all aspects of school and throughout life. But these benefits are diminished when some athletes are excluded because of who they are. *Amici*'s experiences in sports and in life are a testament to the value of inclusion in building powerful teams and social,

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*School Children*, 12 *Psychol Sport Exercise* 347 (2011), <https://doi.org/10.1016/j.psychsport.2011.03.007>.

<sup>29</sup> See Francisco J. Lopez Villalba, et al., *Relationship Between Sport and Physical Activity and Alcohol Consumption Among Adolescent Students in Murcia (Spain)*, 114 *Arch. Argent. Pediatr.* 101, 101-106 (2016), <https://perma.cc/6M7W-7PXU>.

<sup>30</sup> Malm, *supra* note 18, at 13.

societal, and business institutions.

Dated this 21st day of December, 2020.

Respectfully submitted,

Diana Flynn  
Omar Gonzalez-Pagan  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
120 Wall Street, 19th Floor  
New York, NY 10005  
(212) 809-8585  
dflynn@lambdalegal.org  
ogonzalez-pagan@lambdalegal.org

Sasha Buchert  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
1776 K Street, N.W., 8th Floor  
Washington, DC 20006  
(202) 804-6245  
sbuchert@lambdalegal.org

/s/ Carl S. Charles  
Carl S. Charles  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
730 Peachtree Street NE, Suite 640  
Atlanta, GA 30308  
(404) 897-1880  
ccharles@lambdalegal.org

Paul D. Castillo  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
3500 Oak Lawn Avenue, Suite 500  
Dallas, TX 75219  
(214) 219-8585  
pcastillo@lambdalegal.org

**CERTIFICATE OF SERVICE**

I hereby certify that on December 21, 2020, I electronically filed the foregoing document through the court's electronic filing system, and that it has been served on all counsel of record through the court's electronic filing system.

DATED: December 21, 2020

/s/ Carl S. Charles  
Carl S. Charles

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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**ADDENDUM**  
***Amici Athletes in Women's Sports***

**International, Olympic, and Professional Athletes**

<u>Name</u>	<u>Sport(s)</u>	<u>Highest Level</u>
Meike Babel	Tennis	International, Professional
Pam Boteler	Sprint Canoe	Olympic, Professional
Layshia Clarendon	Basketball	Olympic, Professional
Rachel Dawson	Field Hockey	Olympic, Professional
Imani Dorsey	Soccer	Professional
Meghan Duggan	Ice Hockey	International, Olympic, Professional
Grete Eliassen	Freestyle Skiing	International, Professional
Sophia Herzog	Swimming	Olympic, Professional
Elena Hight	Snowboarding	Olympic, Professional
Billie Jean King	Tennis	International, Olympic, Professional
Tziarra King	Soccer	International, Professional
Phaidra Knight	Rugby	International, Olympic, Professional
Lori Lindsey	Soccer	International, Professional
Esther Lofgren	Rowing	International, Olympic
Devin Logan	Freestyle Skiing	Olympic, Professional
Joanna Lohman	Soccer	International, Professional
Kaiya McCollough	Soccer	International, Professional
Aimee Mullins	Track	Olympic
Mary Osborne	Surfing	International, Professional
Candace Parker	Basketball	Olympic, Professional
Megan Rapinoe	Soccer	International, Olympic, Professional
Dawn Riley	Sailing	International, Professional
Toccaro Ross	Basketball	Professional
Becky Sauerbrunn	Soccer	International, Olympics
Collette V. Smith	Football	Professional

Katie Sowers	Football	Professional
Brenda Villa	Water Polo	International, Professional

### **College, Amateur, and Former High School Athletes**

<b><u>Name</u></b>	<b><u>Sport(s)</u></b>	<b><u>Highest Level</u></b>
Marie Alameida	Swimming	Division I
Kelly Austin	Volleyball	Division I
Michaela Bach	Volleyball	Division III
Jenna Bailey	Volleyball	Division I
Erin Barillier	Rugby	Division III
Ella Behrens	Cross Country	Division III
Sarah Bennett	Lacrosse	Division I
Makenna Berger	Volleyball	Division II
Madeleine Bettencourt	Field Hockey	Division III
Cameron Bilardello	Rugby	College
Alexandra Blake	Cross Country/Track and Field	Division III
Lane Bohrer	Volleyball	Division III
Alana Bojar	Track and Field	Division III
Ellie Brauner	Soccer	Division III
Grace Bristow	Cross Country/Track and Field	Division III
Jessica Brooks	Basketball	Division III
Laura Bucchieri	Track and Field	Division III
Isabella Calle	Volleyball	Division I
Kristen Cameron	Ice Hockey	Division III
Caitlin Campbell	Field Hockey	Division III
Monica Carmean	Crew	Division I
Jasmine Chesson	Track and Field	Division I
Hannah Coffin	Rowing	Division III



Hannah Cook	Softball	Division I
Cora Cunningham	Volleyball	Division III
Caroline Currie	Ice Hockey	Division III
Leanna Deegan	Volleyball	Division I
Kyra Deehr-Lewis	Field Hockey	Division III
Jenn DeLongis	Field Hockey	Division I
Abby Devlin	Volleyball	Division I
Rafaela Diamond	Track and Field	Division III
Lizzy Diaz	Rowing	Club
Martha Dietrick	Athletic Administrator	Division III
Riley Dowd	Soccer	Division I
Katherine Ellmaker	Cross Country/Track and Field	Division I
Raleigh Farragher	Volleyball	Division III
Carie Feigeles	Fencing	Division I
Ava Forman	Track and Field	Division III
Hannah Fox	Volleyball	Division III
Lauren Fox	Rowing	Club
Emily Fox	Swimming	Division III
Sophie Fox	Track and Field	Division III
Katie Frade	Field Hockey	Division III
Hailee Fritsche	Soccer	Division III
Katie Ftorek	Ice Hockey	Division III
Kathleen Garvey	Lacrosse	Division I
Grace Gibson	Volleyball	Division I
Amanda Gild	Volleyball	Division III
Hannah Goodacre	Volleyball	Division I
Karisa Frade	Basketball	Division III
Sophie Grigaux	Track and Field	Division III
Savannah Groos	Track and Field	Division III

Taryn Gurbach	Volleyball	Division III
Clio Hancock	Swimming	Division III
Felicitas Hannes	Field Hockey	Division I
Elle Hansen	Track and Field	Division III
Lindsey Hauck	Ultimate Frisbee	Division I
Ella Haugen	Volleyball	Division III
Simone Hefting	Field Hockey	Division I
Amanda Hua	Volleyball	Division III
Amaya Hundal	Soccer	Amateur
Sophia Huynh	Tennis	Division III
Sophia Janna	Volleyball	Division III
Martha Josephson	Track and Field	Division I
Samm Kaiser	Volleyball	Division III
Eva Kaplan	Field Hockey	Division I
Amanda Katz	Track and Field	Division III
Kelly Keebler	Ice Hockey	Division III
Julie Keener	Volleyball	Division III
Emma Kelley	Track and Field	Division III
Morgan Kelley	Field Hockey	OUA/CIS
Sarah King	Ultimate Frisbee	Division III
Casey Kohlstruk	Track and Field	Division III
Jordan Kron	Volleyball	Division III
Natalie Kucowski	Basketball	Division I
Emily Landwehr	Swimming	Division I
Meredith Lang	Cross Country/Track and Field	Division III
Emma Langlois	Cross Country/Track and Field	Division I
Emileigh Lastowski	Field Hockey/Ice Hockey	Division III
Katie Ledwith	Volleyball	Division III
Maggie Ledwith	Lacrosse	Division I

Stephanie Lee	Volleyball	Division III
Grace Legris	Volleyball	Division III
Callie Lekas	Field Hockey	Division III
Abigail Li	Volleyball	Division III
Amanda Lookner	Basketball	High School
Caitlin Lorenz	Volleyball	Division III
Anya Lucey	Lacrosse	Division I
Ella Ludwig	Track and Field	Division III
Theresa (Tessa) Luzi	Lacrosse	Division I
Thea McAfee	Cross Country/Track and Field	Division III
Seanna McGraw	Track and Field/Rugby	Club
Kristine Meader	Field Hockey	Division III
Mataya Megson	Volleyball	Division I
Anna Miller	Soccer	Division I
Katy Mockett	Soccer	Division III
Maddie Moenickeheim	Track and Field	Division III
Ellie Moreland	Soccer	Division III
Rose Murphy	Volleyball	Division I
Paris Nix	Volleyball	Division III
Cassidy Novello	Field hockey	Division III
Lizzie O'Brien	Lacrosse	Division I
Keri O'Meara	Softball	Division III
Catherine Patti	Rugby	Division III
Faith Phillips	Volleyball	Division III
Lindsay Pieper	Lacrosse	Division I
Elisabet Pietz	Rowing	Division I
Katherine Popoff	Soccer/Ice Hockey/Lacrosse	Division III
Sejal Rajamani	Track and Field	Division III
Amanda Renteria	Basketball/Softball	Division I

Rachel Rhee	Golf	Division III
Kendall Riley	Soccer	Division I
Lara Rix	Cross Country/Track and Field	Division III
Alexis Robinson	Volleyball	Division I
Ella Rothera	Field Hockey	Division III
Carmen Rottinghaus	Cross Country	Division III
Alex Rubin	Softball	Division III
Shereen Sairafi	Soccer	Club
Audrey Sawers	Field Hockey	Division I
Courtney Scheetz	Lacrosse	Division I
Aliya Schenck	Track and Field	Division III
Kendall Schwartz	Softball	Division III
Maggie Sereika	Volleyball	Division III
Erin Siebenaler	Volleyball	Club
Eden Simko	Rowing	Division III
Holland Stam	Soccer	Division I
Anna Steps	Field Hockey	Division I
Olivia Stevermer	Track and Field	Division III
Samantha Stewart	Ice Hockey	Division III
Genna Strobel	Lacrosse	Division I
Lindsay Strong	Field Hockey	Division III
Janelle Sullivan	Field Hockey	Division III
Natalie Swinehart	Track and Field	Division III
Emily Talkow	Softball	Division III
Alix Talkow	Field Hockey	Division I
Maggie Teng	Swimming	Division III
Kerry Tuorto	Lacrosse	Division I
Grace Wakiyama	Swimming	Division III
Vanessa Walby	Volleyball	Division III

Anata Walsh	Ice Hockey	Division III
Mary Frances West	Soccer	Division III
Katie Weston	Volleyball	Division I
Cynthia Westphal	Swimming	High School
Amy Kate Williams	Field Hockey	Division III
Elisa Xu	Rugby	Club
Sophie Young	Cross Country/Track and Field	Division III
Ariel Zedric	Volleyball	Division III
Jessica Zepeda	Track and Field	Division III
Emily Zitner	Rugby	Club