

# 21-1365

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

SELINA SOULE, a minor, by Bianca Stanescu, her mother, CHELSEA MITCHELL, a minor, by Christina Mitchell, her mother, ALANNA SMITH, a minor, by Cheryl Radachowsky, her mother, ASHLEY NICOLETTI, a minor, by Jennifer Nicoletti, her mother,

*Plaintiffs-Appellants,*

v.

CONNECTICUT ASSOCIATION OF SCHOOLS, INC. d/b/a CONNECTICUT INTERSCHOLASTIC ATHLETIC CONFERENCE, BLOOMFIELD PUBLIC SCHOOLS BOARD OF EDUCATION, CROMWELL PUBLIC SCHOOLS BOARD OF EDUCATION, GLASTONBURY PUBLIC SCHOOLS BOARD OF EDUCATION, CANTON PUBLIC SCHOOLS BOARD OF EDUCATION, DANBURY PUBLIC SCHOOLS BOARD OF EDUCATION,

*Defendants-Appellees,*

ANDRAYA YEARWOOD, THANIA EDWARDS on behalf of her daughter, T.M., and COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES,

*Intervenors-Defendants-Appellees*

---

On Appeal from the United States District Court for  
the District of Connecticut, Case No. 3:20-cv-00201 (RNC)

---

**BRIEF FOR AMICI CURIAE TEAMMATES, COACHES, AND ALLIES  
OF TRANSGENDER ATHLETES IN SUPPORT OF APPELLEES AND  
AFFIRMANCE**

---

Melissa A. McCall  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
2600 El Camino Real, Suite 400  
Palo Alto, CA 94306  
(650) 858-6000  
melissa.mccall@wilmerhale.com

Matthew D. Benedetto  
Thomas F. Costello  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
350 South Grand Avenue, Suite 2400  
Los Angeles, CA 90071  
(213) 443-5300  
matthew.benedetto@wilmerhale.com  
thomas.costello@wilmerhale.com

*Counsel for Amici Curiae  
Teammates, Coaches, and Allies of  
Transgender Athletes*

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF AMICI CURIAE.....	1
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT.....	5
I.    TITLE IX PROTECTS THE RIGHT OF TRANS WOMEN TO PARTICIPATE IN INTERSCHOLASTIC SPORTS CONSISTENT WITH THEIR GENDER IDENTITY .....	5
II.   THE EXPERIENCES OF COACHES, TEAMMATES, AND OTHER ALLIES OF TRANS ATHLETES DEMONSTRATE THAT THE PARTICIPATION OF TRANS WOMEN ATHLETES IN WOMEN’S SPORTS BENEFITS ALL ATHLETES .....	12
A.   Running—Diana Fitzpatrick, Amy Rusiecki, and David Roche.....	12
B.   Rugby—Emma McKay and Meghan Flanigan.....	16
C.   Cycling—Erin Ayala and Rosy Metcalfe .....	19
CONCLUSION.....	23
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

## TABLE OF AUTHORITIES

### CASES

	Page(s)
<i>Bostock v. Clayton County, Georgia</i> , 140 S. Ct. 1731 (2020).....	2, 7, 8
<i>Cruzan v. Special School District, No. 1</i> , 294 F.3d 981 (8th Cir. 2002) .....	9
<i>Doe by &amp; through Doe v. Boyertown Area School District</i> , 897 F.3d 518 (3d Cir. 2018).....	9
<i>Emeldi v. University of Oregon</i> , 673 F.3d 1218 (9th Cir.).....	7
<i>Grimm v. Gloucester County School Board</i> , 972 F.3d 586 (4th Cir. 2020) .....	8
<i>Haffer v. Temple Univ. of Com. Sys. of Higher Ed.</i> , 524 F. Supp. 531 (E.D. Pa. 1981).....	5
<i>Jennings v. University of North Carolina</i> , 482 F.3d 686 (4th Cir. 2007) .....	7
<i>Mabry v. State Board of Community Colleges &amp; Occupational Education</i> , 813 F.2d 311 (10th Cir. 1987) .....	7
<i>Menaker v. Hofstra University</i> , 935 F.3d 20 (2nd Cir. 2019).....	7
<i>Parents for Privacy v. Barr</i> , 949 F.3d 1210 (9th Cir. 2020) .....	9
<i>Parker v. Franklin County Community School Corp.</i> , 667 F.3d 910 (7th Cir. 2012).....	6
<i>United States v. Virginia</i> , 518 U.S. 515 (1996).....	9
<i>Whitaker by Whitaker v. Kenosha Unified School District No. 1 Board of Education</i> , 858 F.3d 1034 (7th Cir. 2017).....	9
<i>Yusuf v. Vassar Coll.</i> , 35 F.3d 709 (2d Cir. 1994).....	5, 7
<i>Zarda v. Altitude Express, Inc.</i> , 883 F.3d 100 (2nd Cir. 2018).....	7

## STATUTES, RULES, AND REGULATIONS

Fed. R. App. P. 29.....	1
86 Fed. Reg. 7023 (Jan. 25, 2021).....	10
86 Fed. Reg. 32,637 (June 22, 2021) .....	11
20 U.S.C. § 1681 .....	2, 5
42 U.S.C. § 2000e-2.....	2, 5
Executive Order No. 13988 on Preventing and Combating Discrimination on the Basis of Gender Identify or Sexual Orientation (Jan. 20, 2021).....	10

## OTHER AUTHORITIES

Cohen, Li, <i>A Surge in Legislation Targeting Trans Youth ‘could come at the literal cost of lives,’ Advocates Warn</i> , CBS News (Apr. 10, 2021), <a href="https://www.cbsnews.com/news/transgender-rights-legislation-surge-youth-mental-health/">https://www.cbsnews.com/news/transgender-rights- legislation-surge-youth-mental-health/</a> .....	3
Department of Justice, Civil Rights Division, Application of Bostock v. Clayton County to Title IX of the Education Amendments of 1972 (Mar. 26, 2021) .....	10, 11

## **INTEREST OF AMICI CURIAE<sup>1</sup>**

Amici are teammates, coaches, and allies of trans athletes who have directly coached or participated alongside trans athletes throughout their athletic careers. Their personal experiences allow them to see firsthand how inclusive policies, such as the policy adopted by the Connecticut Interscholastic Athletic Conference (“CIAC”) allowing trans athletes to play sports on teams consistent with their gender identity, benefit not only trans athletes, but also many other individuals who are involved in those sports. Moreover, they view bans on such participation at the youth, scholastic, and collegiate levels, such as the injunctive relief Appellants now seek, to have far-reaching consequences for the role of sports in educational settings and for the development of sports as a whole.

As explained by the personal stories of the amici set forth below, the participation of trans women in sports is a benefit to everyone involved, and the alleged harms of participation by trans athletes in sports are unfounded. Contrary to Appellants’ contentions in the district court and now on appeal, allowing trans women to participate in women’s sports does not give trans women an unfair

---

<sup>1</sup> Amici Teammates, Coaches, and Allies of Transgender Athletes submit this brief pursuant to Federal Rule of Appellate Procedure 29(a)(2) and state that all parties have consented to its timely filing. Amici further state, pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), that no counsel for a party authored this brief in whole or in part, and no person other than the amici curiae or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

competitive advantage nor deprive cisgender women of equal opportunities in sports. Rather, trans women's participation in sports promotes understanding, acceptance, and inclusivity for trans athletes, their teammates, and their coaches. The amici have come to these conclusions after decades of combined experience in a variety of individual, team, and full-contact sports. Amici therefore have a direct interest in the Court interpreting Title IX of the Education Amendments of 1972 to prohibit discrimination against trans athletes, which they believe will have a significant, positive impact on each of their sports.

### **SUMMARY OF THE ARGUMENT**

Many courts have held that discrimination based on transgender status is prohibited under both Title VII and Title IX, *see infra* pp. 7-9, which safeguard against discrimination based on sex in the workplace and in schools, respectively. 42 U.S.C. § 2000e-2; 20 U.S.C. § 1681. The Supreme Court recently held that the prohibition on sex discrimination under Title VII extends to discrimination based on sexual orientation and transgender status, *see Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020) (“An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.”). Moreover,

equal opportunity to participate in sports—regardless of one’s transgender status—is a vital part of Title IX’s promise.

But despite that promise, trans individuals across the United States, especially trans women, routinely face discrimination and harassment. Recently, there has been a growing trend in state legislatures to target trans youth for exclusion, including in the context of school sports.<sup>2</sup> CIAC’s trans-inclusive policy, by contrast, seeks to ensure that trans women are afforded the same opportunities and benefits that participation in interscholastic sports provides to cisgender women, and that all women are afforded the same opportunities and benefits traditionally afforded to men and boys. Appellants want a radically different policy under which trans athletes in Connecticut would no longer be afforded these opportunities. The injunctive relief Appellants seek is particularly harmful because it takes aim at an activity—participation in school sports—which is often pursued by trans girls and women in order to feel accepted. It would also harm the teammates and coaches of trans athletes—and all those involved in their sports—who would be robbed of valuable teammates and competitors and be denied the ability to benefit from a diversity of experiences and perspectives

---

<sup>2</sup> See Cohen, *A Surge in Legislation Targeting Trans Youth ‘could come at the literal cost of lives,’ Advocates Warn*, CBS News (Apr. 10, 2021), <https://www.cbsnews.com/news/transgender-rights-legislation-surge-youth-mental-health/>.



(athletic and non-athletic alike). As set forth below, CIAC's policy is in accord with Title IX, and the injunctive relief sought by Appellants is not only harmful to sports generally, but is also contrary to the actual experiences of individuals who coach, compete, and play alongside trans women athletes.

As amici have recounted, enjoining CIAC's inclusive policy would deprive trans and cisgender students alike of the many benefits generated by a sporting environment that is inclusive of trans women and girls. All amici reported positive experiences with trans women athletes—and found competition with these athletes to be fair and welcomed. *See infra* Section II. As multiple amici explained, trans women pose no threat to fair competition, including because, as amici's experiences demonstrate, success in sports is determined by a multitude of factors (such as natural talent and the amount of effort dedicated to learning and practicing a sport). Transgender status is inconsequential to competitive outcomes.

Many amici also share that they have grown personally as a result of their experiences with trans women in their sport. Several note that the inclusion of trans individuals on a team fosters a sense of community; teammates learn about different experiences and perspectives and often ultimately support the inclusion of all players, regardless of their backgrounds, to enjoy something they have in common—the sport. Multiple amici also observe that working with trans athletes enabled them to overcome their own biases and fostered an ability to treat all

players (and all people) equally. Ultimately, amici’s experiences demonstrate that trans women are just like other women—and should be afforded the same opportunities to participate in women’s sports.

## **ARGUMENT**

### **I. TITLE IX PROTECTS THE RIGHT OF TRANS WOMEN TO PARTICIPATE IN INTERSCHOLASTIC SPORTS CONSISTENT WITH THEIR GENDER IDENTITY**

Statutory protection against discrimination based on sex is provided by Title VII of the Civil Rights Act of 1964 (“Title VII”) and Title IX of the Education Amendments of 1972 (“Title IX”). 42 U.S.C. § 2000e-2; 20 U.S.C. § 1681. Both Title VII and Title IX are vital to ensuring that all women are free from sex-based discrimination. Title VII protects against, among other things, discrimination on the basis of sex in the workplace. 42 U.S.C. § 2000e-2. Title IX mandates that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). Title IX was enacted to supplement the Civil Rights Act of 1964, and both statutes share the same goals and are constructed similarly to prohibit discrimination “on the basis of sex.” *See Yusuf v. Vassar Coll.*, 35 F.3d 709, 714 (2d Cir. 1994). Equal opportunity to participate in school athletic programs is also a vital part of Title IX’s protections. *Haffer v. Temple Univ. of Com. Sys. of Higher Ed.*, 524 F. Supp. 531, 541 (E.D. Pa. 1981), *aff’d and*

*remanded sub nom. Haffer v. Temple Univ.*, 688 F.2d 14 (3d Cir. 1982).

Moreover, “[t]he impact of Title IX on student athletes is significant and extends long beyond high school and college; in fact, numerous studies have shown that the benefits of participating in team sports can have life-long positive effects on women.” *Parker v. Franklin Cty. Cmty. Sch. Corp.*, 667 F.3d 910, 916 (7th Cir. 2012).

Appellants argue that CIAC’s trans-inclusive policy, which allows trans students to compete on sports teams consistent with their gender identity, creates an experience for cisgender athletes that violates Title IX and “is not the world that Title IX intended.” Opening Brief of Appellants (“AOB”) 6, 9. To make this argument, Appellants misgender Intervenor-Appellees, referring to each as a “biological male” and contrasting them with Appellants, who are described as “female athletes.” *See e.g.* AOB 32, 38. Appellants then conclude that CIAC’s inclusive policy “subjugates [female athletes’] athletic opportunities to biological males.” This characterization is at odds with decisions from courts across the country, and conflicts with guidance issued by the White House, Department of Justice, and Department of Education, all of which have concluded that discrimination based on sex in various contexts encompasses discrimination based on transgender status.

Although the Supreme Court has not yet ruled on whether Title IX prohibits discrimination based on transgender status, the Second Circuit looks to Title VII to interpret Title IX claims. *Menaker v. Hofstra Univ.*, 935 F.3d 20, 31 (2nd Cir. 2019) (“We have, however, long interpreted Title IX ‘by looking to the ... the caselaw interpreting Title VII’”) (citing *Yusuf v. Vassar Coll.*, 35 F.3d 709, 714–15 (2d Cir. 1994) (alteration in original)). Other circuits also agree. *See, e.g., Jennings v. Univ. of N. Carolina*, 482 F.3d 686, 695 (4th Cir. 2007) (“We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.”); *Emeldi v. Univ. of Oregon*, 673 F.3d 1218, 1223 (9th Cir.), *republished as amended at* 698 F.3d 715 (9th Cir. 2012) (applying the framework used to decide Title VII retaliation claims to Title IX retaliation claims); *Mabry v. State Bd. of Cmty. Colleges & Occupational Educ.*, 813 F.2d 311, 316 (10th Cir. 1987) (“Both Title VII and Title IX prohibit discrimination on the basis of sex ... We find no persuasive reason not to apply Title VII’s substantive standards regarding sex discrimination to Title IX suits.”).

The Supreme Court recently held that the plain language of Title VII prohibits discrimination based on transgender status, concluding that such discrimination is inherently discrimination based on sex. *Bostock*, 140 S. Ct. at 1741, 1754 (affirming *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2nd Cir. 2018)) (“An employer who fires an individual merely for being gay or transgender

defies the law” because “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”) Title IX’s prohibition on discrimination based on sex mirrors the language of Title VII and should be read no differently under *Bostock*. Plaintiffs therefore have it backwards—far from protecting Title IX, the injunctive relief they seek would undermine it.

Courts have similarly held in other contexts that discrimination based on transgender status is sex discrimination, triggering protection under Title IX and requiring heightened scrutiny. For example, in *Grimm v. Gloucester County School Board*, the Fourth Circuit evaluated a school board policy that limited male and female restroom use to individuals with the corresponding gender assigned at birth—therefore preventing trans individuals from accessing the restroom that conformed with their gender identity. 972 F.3d 586, 608-09 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied sub nom. Gloucester County School Board v. Grimm*, 141 S. Ct. 2878 (2021). The Fourth Circuit concluded that “the Board’s policy constitutes sex-based discrimination as to Grimm [a trans student] and is subject to intermediate scrutiny.” *Id.* It further held that the policy violated both the Equal Protection Clause and Title IX. *Id.* at 616-17. The Seventh Circuit has similarly concluded that policies preventing trans individuals from accessing the restroom that conforms to their gender identity is sex discrimination and that Title

IX prohibits it. *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1050-52 (7th Cir. 2017) (school restroom policy that disciplined trans students if they used a restroom that conformed to their gender identity triggered a “burden on the School District to demonstrate that its justification for its bathroom policy is not only genuine, but also ‘exceedingly persuasive,’” and the burden was not met (quoting *United States v. Virginia*, 518 U.S. 515, 533)).

The Third, Eighth, and Ninth Circuits have all also held that trans-inclusive policies in the context of school restrooms do not violate Title IX’s prohibition on a hostile environment. *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 536 (3d Cir. 2018) (school district policy allowing trans students to use restroom corresponding to their gender identity “is not the type of conduct that supports a Title IX hostile environment claim”); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (“We agree with the district court that Cruzan [a female teacher] failed to show the school district’s policy allowing Davis [a trans woman] to use the women’s faculty restroom created a working environment that rose to this level.”); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1217 (9th Cir. 2020), *cert. denied*, No. 20-62, 2020 WL 7132263 (U.S. Dec. 7, 2020) (“the normal use of privacy facilities does not constitute actionable sexual harassment under Title IX just because a person is transgender”).

CIAC's inclusive policy is also consistent with guidance from the executive branch of the United States government. On January 20, 2021, President Biden issued Executive Order 13988, on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation. The order states that "[c]hildren should be able to learn without worrying about whether they will be denied access to the restroom, the locker room, or school sports," and continues, "[a]ll persons should receive equal treatment under the law, no matter their gender identity or sexual orientation." The order locates these protections in the Constitution's Equal Protection Clause and in Title VII, and by explicit extension, Title IX, citing the Supreme Court's determination in *Bostock* that "'because of ... sex' covers discrimination on the basis of gender identity and sexual orientation." 86 Fed. Reg. 7023, 7023 (Jan. 25, 2021). The order directs the head of each federal agency to "review all existing orders, regulations, guidance documents, policies, programs, or other agency actions" that "are or may be inconsistent with the policy set forth in section 1 of this order." *Id.* at 7023-7024.

In response to Executive Order 13988, the Department of Justice ("DOJ") issued a memorandum to assist federal agencies in ensuring "the consistent and robust enforcement of Title IX." Department of Justice, Civil Rights Division, Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972 at 3 (Mar. 26, 2021). DOJ concluded that "the text of Title

IX, Supreme Court caselaw, and developing jurisprudence” all require that Title IX’s prohibition of discrimination on the basis of sex includes discrimination on the basis of sexual orientation and gender identity. *Id.* at 2. Subsequently, the Department of Education (“DOE”) issued a notice of interpretation, Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*. 86 Fed. Reg. 32,637 (June 2, 2021). The order states:

After reviewing the text of Title IX and Federal courts’ interpretation of Title IX, the Department has concluded that the same clarity exists for Title IX. That is, Title IX prohibits recipients of Federal financial assistance from discriminating based on sexual orientation and gender identity in their education programs and activities.  
*Id.* at 32,638.

Further, in reviewing the purpose of Title IX, DOE concluded:

[T]he interpretation set forth in this document is most consistent with the purpose of Title IX, which is to ensure equal opportunity and to protect individuals from the harms of sex discrimination. As numerous courts have recognized, a school’s policy or actions that treat gay, lesbian, or transgender students differently from other students may cause harm.  
*Id.* at 32,639.

Thus, Title IX does not prohibit trans-inclusive policies in school athletics like the one enacted by CIAC; if anything, it requires policies that treat transgender students consistent with their gender identity. Like other student athletes, trans women are entitled to equal treatment that enables them to experience the benefits of scholastic sports.



## **II. THE EXPERIENCES OF COACHES, TEAMMATES, AND OTHER ALLIES OF TRANS ATHLETES DEMONSTRATE THAT THE PARTICIPATION OF TRANS WOMEN ATHLETES IN WOMEN’S SPORTS BENEFITS ALL ATHLETES**

Many coaches, teammates, and other allies of trans athletes who are involved in sports have come to understand the importance of trans women’s participation in women’s sports, both for the trans athletes themselves and for sports as a whole. The amici, who are geographically diverse, also come from a variety of sporting backgrounds, including running, rugby, and cycling. As the amici recount below, trans women compete alongside cisgender women without taking competitive opportunities away from them, and the benefits of participation in sports span far beyond the moments of victory. To the contrary, amici’s personal experiences with trans athletes demonstrate that trans women’s participation in sports promotes understanding, acceptance, and inclusivity not only for trans athletes, but also for their coaches, teammates, and everyone involved in those sports—trans and cisgender alike.

### **A. Running—Diana Fitzpatrick, Amy Rusiecki, and David Roche**

Amici Diana Fitzpatrick, Amy Rusiecki, and David Roche all work and compete in the world of professional trail running. In addition to being runners themselves, Fitzpatrick and Rusiecki are administrators of some of the sport’s leading races: Fitzpatrick is the president of the Western States Endurance Run Foundation (“Western States”), the sponsor of the country’s first 100-mile race,

which has thrived for the last forty years. Western States now receives more than 6,000 entrants in a lottery for 369 race slots. Rusiecki directs two of the Northeast's most important trail runs, the Vermont 100 and the Seven Sisters Trail Race. She also coaches the running team at Hampshire College and is herself a three-time member of the U.S. trail running team.

Roche is an elite running coach based in Boulder who has coached clients—both male and female—all over the world through a company he founded in 2014. One of Roche's clients is Grace Fisher, an elite trail runner and trans woman who began competing in women's categories in 2015. The first time Fisher ran in the women's race at the Vermont 100 came shortly after her transition, and she finished in second place. In 2019, Western States, of which Fitzpatrick was at the time a member of the board, learned that Fisher intended to participate in that race as a woman. Western States allowed Fisher to compete in the women's category, though ultimately she did not place in the top 10.

All three running-focused amici believe that permitting trans women to compete in women's sports is fundamentally fair—and that there is nothing to substantiate concerns that trans women have a competitive advantage. Roche points out that no simple model can capture the thousands of variables that bear on individual running performance. One trans athlete Roche knows would regularly place on the podium in men's races, but after her transition, she would place only

in the top 30 among women. Based on his experience as an elite running coach, Roche believes that rules that categorically ban trans women from competing in women's sports—just as the injunctive relief Appellants now seek—make judgments about performance “in a way that is 100% wrong in terms of science and exercise physiology.”

Rusiecki concurs in this judgment. Noting that she is a competitor herself, she says that, by recognizing Fisher's eligibility to compete in women's races, it means Rusiecki might lose to her in another race at some point in the future. In any event, Rusiecki observes, because the rewards for amateur sports are so small, “people are being so silly by saying that people are trying to cheat the system” rather than simply trying to express who they are.

Further, all three running-focused amici say that running is a sport that is less about competition between runners and is more about competition with oneself over time—such that inclusion of trans runners helps rather than hinders the broader running community. “The running community is pretty accepting of people being different because people that choose to run have different things motivating them, especially long term. A lot of runners feel like outcasts at different times,” explains Roche. This means that, even when runners are competing as individuals, they embrace their competitors. Speaking about Fisher's 2019 participation in Western States, Roche says that the other runners were fully

supportive of Fisher's participation; he says that his other female clients (including the woman who won Western States the year Fisher raced) all welcome the prospect of being beaten in a fair race someday by Fisher or another trans athlete. Fitzpatrick says that, at all levels of Western States—whether runners are contending for a top 10 spot or not—runners are “all in it together,” running as a pack and encouraging each other in order to help as many people as possible complete the daunting 100-mile race in under 30 hours. And Rusiecki says that “especially in the trail and ultrarunning community, everyone is very accepting of who you are. People care about the sport and experience, not who you are and what baggage you bring to the race.”

Fitzpatrick, Roche, and Rusiecki also all agree that inclusion of trans athletes has key benefits for the trans athletes themselves. Rusiecki, speaking from her experience as a coach, says that running is a sport where putting in the work can lead directly to a positive result. “It is a great sport for someone who needs to build confidence because your hard work results in measurable improvement,” she says. Permitting trans athletes to compete as their authentic selves is key to their personal development. “Why would anyone become a runner by choice? Because you're getting to know yourself,” explains Roche. Thus, according to Roche, “athletics is just a part of expression of themselves [for trans athletes], and it's so tied together with everything else that makes them a human,” regardless of whether

the runner is on the podium or at the back of the pack. And in Fitzpatrick's words, "so much of running is about a personal journey for everybody who is out there." The goal of trans-inclusive policies is thus "to make sure that a transgender person could follow their personal journey just like everybody else."

**B. Rugby—Emma McKay and Meghan Flanigan**

Amici Emma McKay and Meghan Flanigan both have years of experience in the sport of rugby. Each played rugby for her university and then played upper-level rugby following graduation—McKay in Vancouver and Flanigan in Minneapolis. Each then shifted to coaching: In 2014, McKay began coaching a Division II women's club team at San Francisco Golden Gate Rugby. Her team includes athletes ranging in age from 18 to 38 years old. In 2016, Flanigan left her team in Minneapolis to become the coach of the women's rugby team at the University of Northern Iowa, her alma mater. Both McKay and Flanigan have competed against and coached trans athletes, and both agree that it is fair for trans women to participate in women's sports and that the inclusion of trans women benefits the overall rugby community as well as the trans women themselves.

Like the running-focused amici, McKay and Flanigan believe that Appellants' purported fairness-based justifications for prohibiting trans women from participating in women's sports are unfounded. "This is a solution to a problem that doesn't exist," says Flanigan. "When someone says 'trans athletes

might weigh 280 pounds and can squat 240 pounds,' I can do that too. There's all different body shapes and variations in strength with females, and I've played with some females who are stronger than male athletes I've seen." McKay, who has a very successful trans female athlete on her team, emphasizes that this athlete's success did not result from her trans identity but rather because of her hard work. "I've known a lot of cis women like that," she says. "You work hard, ask questions, are curious, and you learn. That learning curve is about how much effort you put in as an athlete. People have an ability physically and naturally and will hone it. I don't see that the fact of transition made it that way."

Flanigan and McKay also both emphasized the positive effect that trans athletes have had on their cisgender teammates. "Having more trans athletes around helps the sport be more inclusive and helps open people's eyes and hearts," says Flanigan. "The benefit of having people who are going through that on your team is that it fosters a different sense of community, because all of a sudden your community is changing," McKay concurs. "But everybody has that one thing in common—the sport. It's all about rugby and the people first. Everything else is secondary."

Indeed, both women say that they have benefited personally from the presence of trans athletes on their teams. Each says that working with trans athletes helped them overcome her own biases, and Flanigan emphasizes that the

experience has helped her focus even more on treating all her players equally and being more protective of her players and team. And each underscores that playing with, or coaching, trans athletes taught them and their players that trans athletes are just like everyone else—including because they did not know at first that they were playing with trans individuals. McKay says that she did not know that one of the women on her team was trans until after she had been on the team for six months; Flanigan says that her college team had played against a trans athlete, but none of her players knew that fact until Flanigan told them in connection with a discussion about policies banning trans women from participating on women's rugby teams.

The rugby-focused amici also emphasize the benefits that inclusion has for trans players themselves. McKay says that a trans woman on her team had never played rugby before but joined the club looking for community and connection. Within a year of joining the team, that player had joined the team's board and had taken on "a massive leadership role"; she is now in charge of organizing social events and fundraising. And Flanigan emphasizes that her team is a "safe place where people aren't treated differently and where they can go to feel normal." She reports that the trans athletes on her team have confided in her that they feel welcome and safe as members of the team.

Both Flanigan and McKay point to the harmful effects of a ban on trans women competing in women's sports. Flanigan says that a ban could harm both

trans and cis athletes alike. “The moment you put a ban on someone in a certain community, it stunts the growth of the sport because that turns those athletes away and turns away athletes who aren’t trans as well, since they want to stand up for their trans teammates,” she says. McKay agrees, saying “I take my experiences with trans athletes and apply it to my workplace on a daily basis.” Banning trans women from competing in women’s sports thus deprives all women in sports of key opportunities for learning and personal growth.

### **C. Cycling—Erin Ayala and Rosy Metcalfe**

Amici Erin Ayala and Rosy Metcalfe are cyclists with years of experience both competing and coaching. Ayala, a sport psychologist who began cycling competitively in 2016, is the co-founder of a nine-member team of cis and trans women and nonbinary individuals who all race in the women’s peloton. Metcalfe has raced mountain bikes competitively at the regional level on and off for the last fifteen years; she also coaches biking for individuals—including children as young as five years old—at Stowe Mountain Bike Academy in Vermont. She also has a master’s degree in clinical social work and worked in public schools for six years as a social worker, counselor, and behavior interventionist.

Both Ayala and Metcalfe have significant experience racing alongside (and against) trans women athletes. Ayala recalls racing against a trans athlete in 2018 at a national series event in Milwaukee. Her competitor was particularly skilled at



“taking lines”—a skill where a racer whips around a competitor quickly, and where biking at the right angle is key—and Ayala remembers being impressed both by the woman’s skill and by how much fun she had racing against her. After the trans competitor beat Ayala in 2018, the two raced against each other the next year, with Ayala prevailing. “She was racing at the same level as me and belonged at that level,” Ayala says. “She’s like any other woman racing with me and mentoring me, and she’s been racing longer than me.”

Metcalf is on the same racing team as a trans female athlete, although the two ride and compete in different disciplines. She also has worked to provide informal coaching to a friend who recently came out as a trans woman and is now working on honing her skills.

Like the other amici, Ayala and Metcalf stress the benefit that participating in sports can have for trans individuals. “Sport has been so important in my life for mental and physical health, like competing alongside friends,” Metcalf says. “Access to sport is a human right, both in the education setting and outside it. With the camaraderie and the community, to see someone denied that isn’t right.” Similarly, in her work as a sport psychologist, Ayala has seen that trans and gender-nonconforming individuals are often subject to microaggressions that “eat away at them over time.” Trans individuals may seek to combat these harms by finding community in sport—but “for them to come out publicly and say ‘I want to

race or compete because that's who I am,' and to have people say 'no you can't' because of who you are, takes away a huge piece of their identity and discounts all the work they've done behind the scenes" to develop their identity and sense of self, Ayala says. Like Metcalfe, Ayala says that "sport is a human right, and everyone deserves to do it, and everyone deserves to belong."

Ayala and Metcalfe also both say that they experienced personal growth after competing alongside and against trans women. Ayala reports that her relationships with trans teammates and competitors have helped her "learn little things that show up in day-to-day conversations that have nothing to do with cycling," such as being more likely to wait before speaking in meetings at work in order to give more space to others to speak. Metcalfe, meanwhile, says that "I used to feel like trans women didn't belong in women's sports, but that didn't sit right, so I did the work and learned that I was wrong." Because she loves and respects her trans friends, even if she initially felt discomfort with trans women participating in women's sports, "I need to do my work because I care about them and want them to have a good life and have the same freedoms I have." Indeed, competing alongside trans women helped Metcalfe better understand her own identity: Doing the work of understanding what it means to be trans helped Metcalfe realize that she herself identifies as nonbinary.

Both Ayala and Metcalfe also agree that inclusion of trans women can have significant benefits for the sport of cycling overall. Cycling is a very elite sport where 85% of licensed riders are men, Ayala says, and she has had numerous negative experiences where she was subjected to microaggressions, harassment, sexism, unsolicited advice, and condescension because she is a woman. Given the paucity of women in the sport, there is significant pressure for women to compete more frequently and to fight for more equal racing opportunities. Having more women and gender-nonconforming people participate in cycling makes the sport more inclusive, and Ayala reports that many women are excited about inclusion of trans riders and welcome more people joining them in the field. “If anything, it’s reassuring and validating because we know we aren’t ‘the only’—we can be ‘the onlies’ together. We can share the same moments and awkward situations and mistakes that other racers experience,” she says. “Seeing people with different backgrounds brings us closer because we have that common experience of not being” part of the groups that dominate the sport.

The two cycling-focused amici also concur that inclusion has special benefits for children and teenagers—a critical concern here, given that CIAC’s inclusive policy governs interscholastic sports. Ayala works as a psychologist with children and adolescents, and she says that this generation is generally more open to questions about gender. Where there are problems, they are often grounded in

confusion or fear of asking questions, and exposure to trans individuals through sports can help children overcome those issues, she says. Metcalfe's work as a coach for young children has led her to the same belief. "Especially with children, dialogue around gender impacts the rest of their life," she says, "so we have an opportunity to teach them about gender in a way that is more based in science and more human, so people can be who they are and belong in sports."

## CONCLUSION

Amici's experiences demonstrate that the injunctive relief Appellants seek—which would effectively ban trans women from participating in interscholastic sports in Connecticut—is unfounded and harmful to everyone. This is true regardless of whether the sport is a high-contact sport like rugby, a traditionally male-dominated sport like cycling, or an individually focused sport like running. Far from posing a threat to fair competition, the participation of trans women in these sports is welcomed by those who have actually coached and participated alongside them. Participation in sports, especially at the school level, promotes the personal development of many individuals, as well as an opportunity to foster camaraderie, friendship, and understanding with peers. CIAC's policy ensures that these benefits are made available to trans and cisgender women alike.

For these reasons, amici respectfully urge the Court to affirm the decision of the district court (Dkt. 178) with respect to the Motion to Dismiss (Dkt. 145) and

affirm the decision of the district court (Dkt. 176) to deny Appellant's Motion for a Preliminary Injunction (Dkt. 12).

Respectfully submitted,

Melissa A. McCall  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
2600 El Camino Real, Suite 400  
Palo Alto, CA 94306  
(650) 858-6000  
Melissa.McCall@wilmerhale.com

/s/ Matthew D. Benedetto  
\_\_\_\_\_  
Matthew D. Benedetto  
Thomas F. Costello  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
350 South Grand Avenue, Suite 2400  
Los Angeles, CA 90071  
(213) 443-5300  
Matthew.Benedetto@wilmerhale.com  
Thomas.Costello@wilmerhale.com

*Counsel for Amici Curiae  
Teammates, Coaches, and Allies of  
Transgender Athletes*

Dated: October 14, 2021

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(g), the undersigned hereby certifies that this brief complies with the type-volume limitation of Circuit Rule 32.1(a).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 5,675 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14 point Times New Roman font. As permitted by Fed. R. App. P. 32(g), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

Dated: October 14, 2021

/s/ Matthew D. Benedetto

Matthew D. Benedetto  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
350 South Grand Avenue,  
Suite 2400  
Los Angeles, CA 90071  
(213) 443-5300

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 14th Day of October, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: October 14, 2021

/s/ Matthew D. Benedetto  
Matthew D. Benedetto  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
350 South Grand Avenue,  
Suite 2400  
Los Angeles, CA 90071  
(213) 443-5300