

Case Nos. 20-35813, 20-35815

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

LINDSAY HECOX and JANE DOE, with her next friends Jean Doe
and John Doe,

Plaintiffs-Appellees,

v.

BRADLEY LITTLE, in his official capacity as Governor of the State
of Idaho, et al.,

Defendants-Appellants,

- and -

MADISON KENYON and MARY MARSHALL,

Intervenors-Appellants.

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

**BRIEF OF TRANSGENDER WOMEN ATHLETES
AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLEES**

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**STATEMENT OF IDENTITY, INTEREST,
AND AUTHORITY TO FILE¹**

Amici are transgender women athletes of varying ages who participate in a wide range of sports around the country at different levels of competition. Participating in sports has provided these athletes with life-changing opportunities to develop important skills that they take to their everyday lives and contribute to their personal growth and resilience.

Idaho House Bill 500 (Idaho Code § 33-6201 et seq., “H.B. 500”), and policies like it, directly impacts these opportunities that should be available to transgender athletes along with everyone else. As such, *amici* have a direct interest in the Court rejecting an attempt by a state legislature to categorically ban their participation in sporting activities in accordance with their gender identity. H.B. 500 and policies adopted on the same faulty science and incorrect assumptions about transgender people embolden discrimination against transgender athletes including *amici*.

As demonstrated by the personal stories of *amici*, transgender athletes’ ability to access the same opportunities that sports can provide to their cisgender (non-transgender) peers depends on their ability to participate in accordance with their gender identity. Transgender *amici* who participated in sports with policies that

¹ Pursuant to F.R.A.P. 29(a)(4)(E), *amici curiae* state that the parties in this case have consented to the filing of the brief, no counsel for a party has authored this brief, in whole or in part, and no person, other than *amici* or their counsel, has made a monetary contribution to the preparation or submission of this brief.

respected their gender identity excelled socially and personally, and were able to develop critical skills that carried over to their own personal lives and development. In stark contrast, transgender *amici* who were excluded from sport or discriminated against in their respective sports often suffered social, emotional, and physical harm.

Likewise, *amici*'s stories below demonstrate that cisgender athletes are not harmed by participating alongside transgender athletes. Instead, all athletes benefit from nondiscriminatory policies grounded in science and practical reality, rather than fear and speculation, and that embrace transgender athletes and foster a culture of understanding, acceptance, teamwork, and inclusivity.

SUMMARY OF ARGUMENT

Transgender individuals — including transgender athlete *amici* and other transgender athletes that will be harmed by H.B. 500 — routinely experience discrimination and harassment in their everyday lives because they are transgender. It is widely acknowledged that such discrimination causes significant harm to transgender individuals' development and well-being, often preventing them from participating fully and authentically in American civic, economic, and social life.

Contrary to the criteria used by H.B. 500 to exclude transgender women from sports — namely, chromosomes, reproductive anatomy, and endogenous testosterone — the medical consensus is that a person's circulating testosterone is the primary driver of statistically significant differences in athletic performance. *See* David J.

Handelsman, et al., *Circulating Testosterone as the Hormonal Basis of Sex Differences in Athletic Performance*, 39(5) *Endocrine Reviews* 803, 821-23 (2018) (observing a “consistent deterioration in athletic performance of transwomen (M2F transgender) athletes corresponding closely to the suppression of circulating testosterone concentrations,” and concluding that the “difference in circulating testosterone of adults explains most, if not all, the sex differences in sporting performance”); Jennifer J. Liang, et al., *Testosterone levels achieved by medically treated transgender women in a United States endocrinology clinic cohort*, 24(2) *Endocrine Practice* 135, 135 (2018) (transgender women with successful hormone replacement therapy “could reliably achieve testosterone levels in the female range at virtually all times”); Bethany A. Jones, et al., *Sport and Transgender People: A Systematic Review of the Literature Relating to Sport Participation and Competitive Sport Policies*, 47 *Sports Med* 701, 701 (2017) (“there is no direct or consistent research” suggesting an “athletic advantage”).

H.B. 500 ignores these scientific realities (and also ignores the policies of virtually every athletic regulatory body including the NCAA, World Athletics, and the IOC) in its effort to exclude transgender athletes. H.B. 500 harms transgender athletes like *amici* and, demonstrating its stunning breadth, excludes transgender women at every level of sport. See Idaho Code §§ 33-6202(12); 33-6203(1) (excluding transgender women from athletics with any touchpoint to a publicly-

funded educational institution from intramural and club to varsity athletics).

As *amici* explain below, the exclusion of transgender women not only fails to recognize the reality of transgender athletes' experience but also uniquely and significantly harms transgender athletes. Moreover, contrary to the notion that cisgender women are harmed by the participation of transgender women, *amici's* experiences demonstrate that all athletes benefit from inclusive and supportive policies that incentivize the development of critical life skills.

Amici transgender women athletes in no way dominate their sport because they are transgender, as proponents of H.B. 500 claim. Instead, *amici* have to work and train hard, practice, and persevere through the same challenges as every other athlete. As several of *amici* remark, if transgender women athletes were obtaining such an advantage, one would expect transgender athletes to be prevailing routinely on the national and world stage, but that simply is not happening.

Moreover, *amici's* experiences highlight that sport is instrumental in their ability to grow and develop, build critical skills useful elsewhere in life, and even can help them overcome gender dysphoria, negative self-image, and lack of self-confidence. Excluding transgender women from sports risks taking all of this away from *amici* and transgender athletes like them.

On the other hand, the parade of horrors envisioned by the proponents of H.B. 500 simply do not exist. *Amici* below reported that, even in circumstances where

other athletes may have initially questioned *amici*'s participation in their sport, the vast majority of these people soon got to know *amici* as human beings and realized the stories they had been told about the alleged advantages that transgender athletes would have over them were not accurate.

Amici's experiences directly contradict the unsubstantiated claims of the proponents of laws like H.B. 500. Providing opportunities for transgender athletes to participate in sports can literally save their lives, as several *amici* explain. On the other hand, there is no scientific or practical basis to conclude, as the proponents of H.B. 500 do, that cisgender students will somehow be deprived of opportunities to excel when transgender athletes are participating alongside them.

Given that it is based on faulty science and erroneous assumptions about transgender people, specifically transgender women, H.B. 500 can only be understood as perpetuating paternalistic sex stereotypes that have no basis in reality and which courts have routinely rejected. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (holding that “we are beyond the day” of “assuming or insisting that [individuals] matched the stereotype associated with their group”); *Frontiero v. Richardson*, 411 U.S. 677, 684-86 (1973) (rejecting discrimination that is “rationalized by an attitude of ‘romantic paternalism,’” and that was based on “gross, stereotyped distinctions between the sexes” bearing “no relation to ability”); *Latta v. Otter*, 771 F.3d 456, 495 (9th Cir. 2014) (Berzon, J., concurring) (observing that

“social exclusion and state discrimination against ... transgender people reflects, in large part, disapproval of their nonconformity with gender-based expectations,” and “such individuals are often discriminated against because they are not acting or speaking or dressing as ‘real men’ or ‘real women’ supposedly do”); *see also Parents for Privacy v. Barr*, 949 F.3d 1210, 1229-30 (9th Cir. 2020) (where plaintiffs seeking to exclude transgender individuals could provide no evidence of harm allegedly caused by transgender individuals, concluding that the plaintiffs “feel harassed by the mere presence of transgender students” and “[t]his cannot be enough”).

H.B. 500’s breadth (banning even club and intramural participation for transgender women athletes) and lack of scientific basis compel the conclusion that H.B. 500 is not designed to protect cisgender women, but to exclude and stigmatize transgender women without any legitimate basis. *See Romer v. Evans*, 517 U.S. 620, 632 (1996) (overturning Colorado constitutional amendment because its “sheer breadth is so discontinuous with the reasons offered for it that the amendment seems inexplicable by anything but animus toward the class it affects”); *Karnoski v. Trump*, No. C17-1297-MJP, 2018 WL 1784464, at *12 (W.D. Wash. Apr. 13, 2018), *vacated and remanded on other grounds*, 926 F.3d 1180 (9th Cir. 2019) (“Any justification for the [policy banning transgender individuals] must be ‘genuine, not hypothesized or invented post hoc in response to litigation.’”) (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996) [hereinafter “*VMP*”]); *Adams by & through Kasper v. Sch.*

Bd. of St. Johns Cty., 968 F.3d 1286, 1301 (11th Cir. 2020) (observing that defendant “failed to raise genuine, non-hypothetical justifications for excluding” transgender plaintiff and “seem[ed] disingenuous”); *see also VMI*, 518 U.S. at 516 (justifications for law “must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females”).

For those reasons, and those discussed by *amici* below, *amici* respectfully urge this Court to affirm the decision of the District of Idaho.

ARGUMENT

The consensus of the medical and scientific community rejects the notion that transgender women athletes have unfair advantages in competition on the basis of physiological, anatomical, and/or chromosomal characteristics, as H.B. 500 uses to exclude transgender women from sport. The experiences of *amici* recounted below bear these scientific, medical, and, practical realities out.

I. INCLUSIVE POLICIES NOT ONLY ALLOW TRANSGENDER WOMEN ATHLETES TO ACCESS THE LIFE-CHANGING BENEFITS OF THEIR SPORT, BUT ALSO CREATE AN ARENA FOR ALL WOMEN ATHLETES TO THRIVE AND GROW

The following *amici* demonstrate that the notion that transgender women have an absolute advantage over their cisgender peers because they are transgender does not comport with reality. Instead, *amici* report that they struggle and fight just the same as their cisgender peers do in their quest to better themselves and their teams — because they want to and because they love their sport. The stories below also

demonstrate that their teams and even their competitors often become family, growing together and becoming stronger and more resilient through their shared participation in an inclusive and supportive sporting environment.

J.B., Greenfield, Massachusetts²



J.B., pictured above with her parents, is a female cyclo-cross racer (a form of bicycle race involving laps on courses with road and off-road conditions, with obstacles, that require the competitor to both ride and carry their bicycle throughout the race) currently attending high school in Massachusetts. J.B.'s dad took her to watch a cyclo-cross race several years ago as a spectator, which prompted her to head to a cyclo-cross camp, and the sport quickly became J.B.'s life.

² This narrative is based on telephone and email interviews conducted between December 11 and 18, 2020. J.B.'s name is abbreviated because she is a minor.

Cyclo-cross has had an affirming and inclusive policy toward transgender athletes for some time, which has been instrumental in J.B.’s participation in the sport after she came out as transgender and started hormone replacement therapy (“HRT”) several years prior to discovering cyclo-cross. Participating in cyclo-cross is incredibly important to J.B., who explains that “participating has made the mental stress less scary” in terms of confronting a society that is not often supportive of transgender people. Indeed, her parents observe that cyclo-cross has been “incredible for her mental health” and that she “is never more in her element than when she is outdoors racing.” Some of J.B.’s “greatest friendships have been through sports,” specifically, through racing.

J.B. and her family find the notion that she would have some advantage over cisgender women cyclo-cross racers ridiculous and not consistent with their experience or the experience of transgender athletes generally. J.B. observes that “there are no transgender women who are really winning” all of their races and dominating the field, as proponents of laws like H.B. 500 claim. J.B. herself, even in the relatively small sport of American women’s cyclo-cross (the sport is more popular in Europe), has placed and seen her standings vary just as any of her cisgender competitors do. She has seen improvement in the last two years, going from 25th place in some national competitions to 6th in her age group, and intends to keep working at her sport.

It all depends on training, say J.B. and her parents, including her father who explains that it is often difficult to get her off of the bike, and she frequently spends hours and hours of extreme training, including riding her bike in deep sand in the middle of the winter. J.B.'s dream is to participate in international races and aim for world champion, a feat that no American has been able to accomplish at the elite level. She intends to continue training and build her skills in furtherance of that goal. J.B.'s success, according to her and her parents, has been possible not just due to her single-minded devotion to a sport she loves, but because of inclusive policies that have supported her love of the sport early on. As J.B. and her parents explain, "if kids cannot compete while they are in high school, you deprive them of all of these opportunities later," and policies and laws like H.B. 500 prevent transgender individuals from accessing these truly transformative opportunities.

Grace McKenzie, San Francisco, California³



Grace, pictured above, is a female rugby player in San Francisco, California. Grace has played a variety of sports for most of her life, ranging from ice hockey to soccer, basketball, baseball, ultimate Frisbee, and, most recently, rugby. She moved to the San Francisco area approximately three years ago, and, shortly thereafter, came out as transgender. Grace started playing rugby only two years ago, but has fallen in love with the sport and now helps recruit new athletes to the sport as a leader on her team, the San Francisco Golden Gate Women's Rugby Club.

³ This narrative is based on telephone and email interviews conducted between December 9 and 17, 2020.

Because the governing body for her rugby league follows the IOC guidance with respect to transgender women athletes, Grace, who started HRT over a year before joining her rugby league, received nothing but a warm welcome from her league. Her team was no different, embracing her and welcoming her to the sport, to what would become a new family, and to a place that, despite the nature of rugby itself, became a safe space for Grace.

Since Grace had come out relatively recently, she remained worried about her participation in women's rugby but those worries were soon put to rest. Grace remarks that what she "loves about rugby is that all shapes and sizes of people can play" and the sport, despite its outward appearance, is "designed to be safe" for all that play it. At 5'7" and approximately 140 pounds, Grace explains that she routinely goes up against other women from 5'3", 100 pound female players that are quick and agile to 6'0", 250 pound women who are, quite literally, nearly double her size. Grace explains that she is "one of the faster players, but not the fastest, and is definitely not the strongest, and is thrown around plenty" by her competitors.

But Grace loves the sport all the more for it. The camaraderie and welcome she received was actually a "significant outlet for [Grace] and helped [her] to process difficult things in [her] life and deal with stress." Rugby helped Grace process her gender dysphoria and provided positive mental and psychological benefits during her transition. It also helped her develop her leadership skills and teamwork, becoming

a recruiter for the sport and a leading voice for the team.

Recently, in October 2020, flouting the IOC and most governing bodies in international sports, World Rugby adopted a policy essentially banning transgender women who transitioned after puberty, relying on similarly flawed reasoning as Idaho did in passing H.B. 500. Fortunately, USA Rugby has not followed suit, and Grace is able to continue playing with her team and competitors that have supported and included her from the beginning. Asked about laws like H.B. 500 and the World Rugby policy, Grace remarked that she and her teammates are fighting for inclusion, and explains that the policy is “trying to solve a problem that does not exist.” “There is currently no out transgender person topping the elite level of athletics,” she says, dispelling the notion that transgender women athletes will dominate sports to the exclusion of cisgender women. For athletes like Grace, the flawed justifications for such policies are merely “a thinly veiled attempt to roll back the ability of transgender people to participate.” According to Grace, this affects not just the sport itself, but the entire community, by sending a message that “transgender women are not welcome” to share spaces with other women. In addition to the risk of rolling back the personal, mental health, and psychological benefits that people like Grace have found in the sport, these attitudes and policies can change the baseline as to whether people treat each other with respect and inclusiveness, or with derision and exclusion.

*Jamie Neal, Las Vegas, Nevada*⁴



Jamie, pictured above, is a female softball player in Las Vegas, Nevada. Jamie grew up south of San Jose, California in a “trailer park in a rough neighborhood.” She explains that playing sports was a way to fit in, improve herself, and avoid getting into trouble. Because Jamie’s family could not afford competitive private leagues, intramural and high school sports were her only outlet, including volleyball — which she described as her “first love.” After high school, Jamie continued playing

⁴ This narrative is based on telephone and email interviews conducted between December 10 and 16, 2020.

volleyball and also started playing club softball, and sport remained an outlet and a significant source of positivity in her life.

In approximately 2015, Jamie came out as transgender and soon started HRT. At first, Jamie thought she would not be able to participate in competitive sports again, which was upsetting given its centrality to her life, but her transition and living as her authentic self were necessary for her personal and mental health. However, she soon learned about tournament level softball governed by organizations such as United States Specialty Sports Association (“USSSA”). Fortunately, the league has an inclusive policy for transgender players and after being asked to join a women’s tournament team by a friend, Jamie joined a tournament team.

Jamie was ecstatic to be competing again, but not all the competitors were welcoming at first. She recalls that, at the beginning, she heard the stereotypical comments from other women that “I couldn’t cut it as a man in sports” or that “I shouldn’t be allowed to play as a woman.” However, that changed as Jamie advocated for herself and people got to know her. Jamie saw real change and last season was “the most welcome I’ve felt in tournament softball.” “People are realizing who I am and the science” regarding transgender athletes, and many of the people who were initially resistant to Jamie’s inclusion have “reached out to say they were closed-minded and did not realize that [Jamie’s participation] had nothing to do with an advantage” for her.

In fact, Jamie explains how her transition and HRT affected her, recalling that she used to be able to routinely hit the ball over 400 feet, which became 300 feet after HRT (among many other physical changes to Jamie's strength and endurance). At the same time, Jamie explains that her strength as a hitter does not come from her transgender status, but because she spends countless hours in batting cages practicing and has a batting average of .750 to .800 due to that practice and hand-eye coordination. When asked about her role on her women's team, Jamie laughs and says "I would say I'm a defensive liability but an offensive positive" because she has a high batting average but is "not as fast and does not have as good of an arm as many on the team." Jamie's experience demonstrates that the mere presence of a transgender athlete does not offer an advantage to her team. She points out that at the last USSSA World Series in September 2020 her team lost both games. But her team had fun, they competed, and Jamie was surrounded by the camaraderie and friendship of her team and competitors. Jamie is glad that her sport has an inclusive policy for transgender athletes, in part because she would not be allowed to play on a men's team by league rules, and thus an exclusionary policy would steal the sport from her completely.

*Amelia Gapin, Jersey City, New Jersey*⁵



Amelia, pictured above, is a female runner in the New York City area. She explains that she never ran as a child, and in fact disliked being forced to run the mile in physical education class twice a year. However, after college, Amelia began running as a way to relieve stress, process emotions, and better herself. To her surprise, she found great peace in running, came to love it, and started participating

⁵ This narrative is based on telephone and email interviews conducted between December 14 and 15, 2020.

in endurance races such as marathons.

In 2013, Amelia came out as transgender and started HRT that same year. Given transgender-inclusive policies in much of the world of competitive running, Amelia was able to participate as the woman she is. Fortunately, she has received a warm reception in the sport and, for the most part, the fact that she happens to be a transgender woman has not been an issue.

For example, recently, after six years of attempting it, Amelia qualified for the Boston Marathon in 2018. When asked how she did, she laughs and says she placed “12,000th, 13,000th, 18,000th ... so far back” and that the “only part that mattered was getting myself to the starting line.” She explains that she is not placing routinely and questions that if transgender women “had such an advantage, why are we not out there crushing it?” Amelia adds that, given her HRT, her “testosterone level is lower than a lot of the cisgender competitors” and that she faces the same challenges as all the other women runners.

When asked about H.B. 500 and what would happen if the same rule applied in her sport, Amelia bluntly explains that “it would mean that they are taking my right to exist as a human in the world away.” She would not be able to participate and, explaining the practical reality, explains that she would not be able to prove her identity to enter into a men’s category (as H.B. 500 and laws like it seek to force her to do) since all of her identity documents show her as the woman she is.

She also explains the inherent danger in asking transgender athletes to do that, forcing them to effectively out themselves as transgender. Using her own experience in the Boston Marathon, Amelia recalls that an anti-transgender blog published a story about her running in the Boston Marathon, claiming Amelia would be advantaged over cisgender women. Because of the public availability of real-time tracking of athletes along the racecourse, she was forced to worry during her run that someone who might want to do her harm would know exactly where she was. Amelia's story highlights just how dangerous exclusionary policies can be for transgender athletes, and she explains that, for her, "running is my escape; I see it as my safe place and an important thing for my mental health," and changing the rules would take all of that away from her for reasons that are not borne out by reality.

*Erica Meacham, Eugene, Oregon*⁶



Erica, pictured above, is a female football player in the Women’s Tackle Football League, a national tackle football league. Growing up in a religious tradition that prohibited playing sports, Erica did not have access to sports. She recalls that she “always wanted the camaraderie so desperately when I was a kid” and the sense of belonging she believed sports would provide. It was only in her 20s that she started playing football, and played in a number of competitive leagues (and coached as well) on men’s teams over the next decade. However, something was still missing in her life and acceptance of herself, and “after years and years of processing indoctrinated

⁶ This narrative is based on telephone and email interviews conducted between December 10 and 16, 2020.

feelings about gender,” came out as transgender and transitioned in 2014.

Erica recalls feeling upset because “I thought I was done with sports after transitioning because of the stigma” placed upon transgender athletes, but knew that living as the woman she always has been was critical to her well-being so “made peace” with it. However, after starting HRT and proceeding through her transition, she realized just how extensive the changes to her body were as she went through that process. As Erica put it: “It gave me hope to play again.” After playing on several slow pitch softball teams, including a women’s team at the suggestion of a friend, Erica realized she needed sports and that they were central to her human experience. “When my father disowned me,” she recalls, “my teams became my family, and for me sports is about family.” Sports gave her strength and the confidence to be herself.

Several years after she transitioned, Erica returned to football. Because she had read negative stories claiming, like the proponents of H.B. 500 do, that transgender athletes have unfair advantages in sport, Erica’s “biggest fear was that I would be dominating or unfair, and I didn’t want to take away from a cisgender player.” But she immediately realized upon starting the game that “it was not going to happen, and her transition, including HRT, made her just “another one of the 11 girls” on the field trying for the same goal. Erica explains that “it was not as if I just showed up and then started throwing rocket passes down the field.” Instead, “I am so impressed by the other women and how much better than me they are.” She was

welcomed into the team and the league, largely because of its transgender-inclusive policy. Football has given her a new family, self-confidence, and “made me capable in my transition, coming out, and speaking out” about her experience, which demonstrates that the notion that transgender women are uniquely advantaged over cisgender women is not accurate.

Erica “cannot imagine what my life would like without my team,” and hopes that laws and policies like H.B. 500 do not proliferate. For her, it is about a fundamental misunderstanding of who transgender people are: “I think people are afraid of what they don’t understand, and they seem not to care to understand us.” For many transgender athletes, Erica asserts, banning them from sports would “take away hope, would take away everything” from them for no reason.

Chelsea Wolfe, West Palm Beach, Florida⁷



Chelsea, pictured above, is an elite athlete in the sport of women's BMX freestyle. Chelsea has been riding and training in the sport extensively over the last 12 years, and competed in the related sport of BMX racing before that. Through a decade-plus of hard work and perseverance, she has made the U.S. National Team in the sport and will be the first alternate at the Tokyo Olympics, representing the United States of America, alongside two other women who will ride in Tokyo.

⁷ This narrative is based on telephone and email interviews conducted between December 11 and 18, 2020.

Chelsea also happens to be transgender. She first started struggling with gender dysphoria as a young child and by middle school, it had become so intense that Chelsea developed an eating disorder and engaged in self-harm in an attempt to control her body. Due to her eating disorder and stress, her body simply did not develop like many of her competitors — at the time, male competitors in BMX racing — and her performance dropped precipitously.

After hiding who she was through the rest of high school, largely to protect herself from physical and mental abuse that occurred when she began to outwardly express traditionally feminine traits, Chelsea came out and transitioned after leaving home for college. One of the saving graces for Chelsea during her difficult high school years and transition was BMX freestyle, in which she started participating at age 15. BMX freestyle gave Chelsea a whole new lease on life and she credits it with helping her “live as my authentic self and is what helped me overcome my eating disorder and dysphoria.” Chelsea continues: “I have struggled with abuse, mental health issues, my transition, and BMX has been my constant, has taught me how to get back up after setbacks. Prior to freestyle, I felt trapped and helpless all the time, then I had this thing in my life that was mine, that helped me create and express myself through the sport.”

Chelsea has worked incredibly hard over the past 12 years to reach the U.S. National Team and to participate in the first Olympics to hold BMX Freestyle as an

event. She believes that laws like H.B. 500 are based on faulty assumptions about transgender people and both science and a quick look at the reality demonstrates that transgender women do not have the advantages claimed by the proponents of H.B. 500. Chelsea explains that transgender women simply are not dominating any elite level sports and, even in her case, she remarks “if I had such an advantage, why I am the alternate on the team?” Chelsea is proud of the hard work that she has performed, and just as proud of her fellow athletes in BMX freestyle, because she knows that gender has nothing to do with performance — it is all about practice and perseverance. Chelsea points out that another “cisgender female athlete won every event [in the sport] in 2019, and nothing was said because everyone realized that she was the best and nothing can take that away from her.” She is happy to see her competitors succeed, even as she is trying to do the same, because, in her view, “the values of sportsmanship don’t cease to exist” whether an athlete is transgender or cisgender, and BMX freestyle has taught her “both how to succeed and to fall gracefully.” Chelsea wishes that proponents of laws like H.B. 500 “knew the fire that they are playing with” because for many transgender athletes, like Chelsea, “without sport I wouldn’t have survived my teenage years” and “sport has helped me find purpose in life.”

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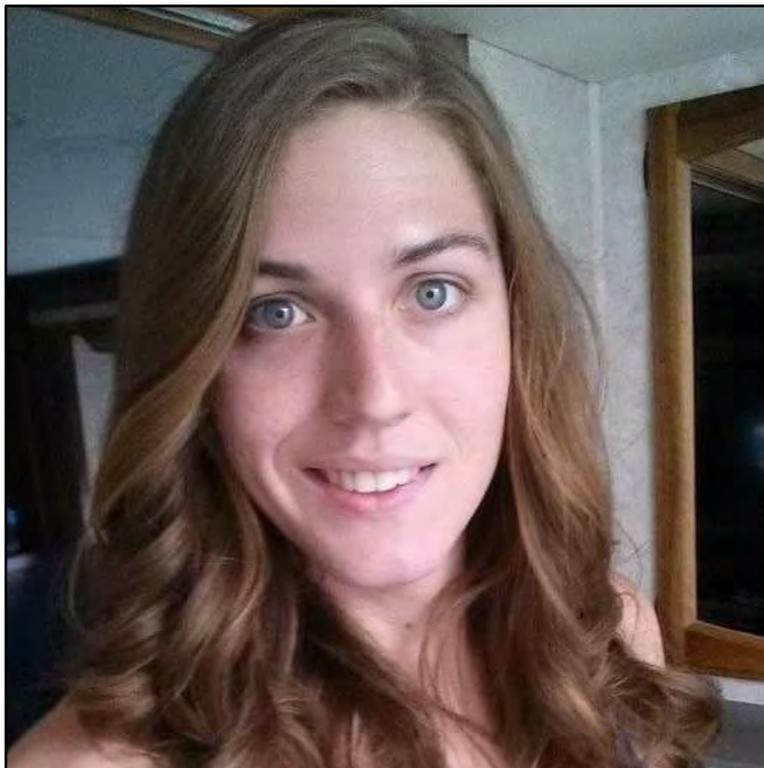
These transgender women athletes just want to participate along with everyone

else and gain the benefits that participation can provide. They do not dominate their sports simply because they are transgender, and instead find camaraderie, confidence, and personal growth through sport, as do their cisgender teammates and competitors. Those who do reach the pinnacle of their sport do so through blood, sweat, and tears, the same as all of their cisgender colleagues. *Amici* respectfully urge that this Court should not reject those ideals in favor of H.B. 500's reliance on shoddy science and misconceptions about transgender people.

II. DISCRIMINATORY POLICIES AND PRACTICES SIGNIFICANTLY IMPAIR TRANSGENDER ATHLETES' ABILITY TO BENEFIT FROM ATHLETICS, CAUSE SERIOUS HARM, AND HAVE NO CORRESPONDING BENEFIT TO CISGENDER ATHLETES

In stark contrast, other *amici* faced a discriminatory culture of exclusion that prevented them from participating on equal terms in accordance with their gender identity, and caused serious harm to their personal, mental, and social well-being. At the same time, the purported benefits for cisgender athletes created by transgender-exclusionary policies simply do not exist. *Amici's* stories below demonstrate why transgender-inclusive policies are necessary and critical to the wellbeing of all athletes, transgender or cisgender.

*Chloe Anderson, Irvine, California*⁸



Chloe, pictured above, previously played NCAA volleyball, now participates on a women's crew (rowing) team, and expects to finish college at University of California, Irvine once the current COVID-19 pandemic ends. Sports have always been important in Chloe's life, and she naturally gravitated to volleyball. Unfortunately, while the NCAA policy itself allowed for Chloe's participation on a women's team, the lack of a supportive environment caused serious and lasting harm to Chloe — harms that she has only recently been able to overcome, including through her participation in other sports.

⁸ This narrative is based on telephone and email interviews conducted between December 14 and 18, 2020.

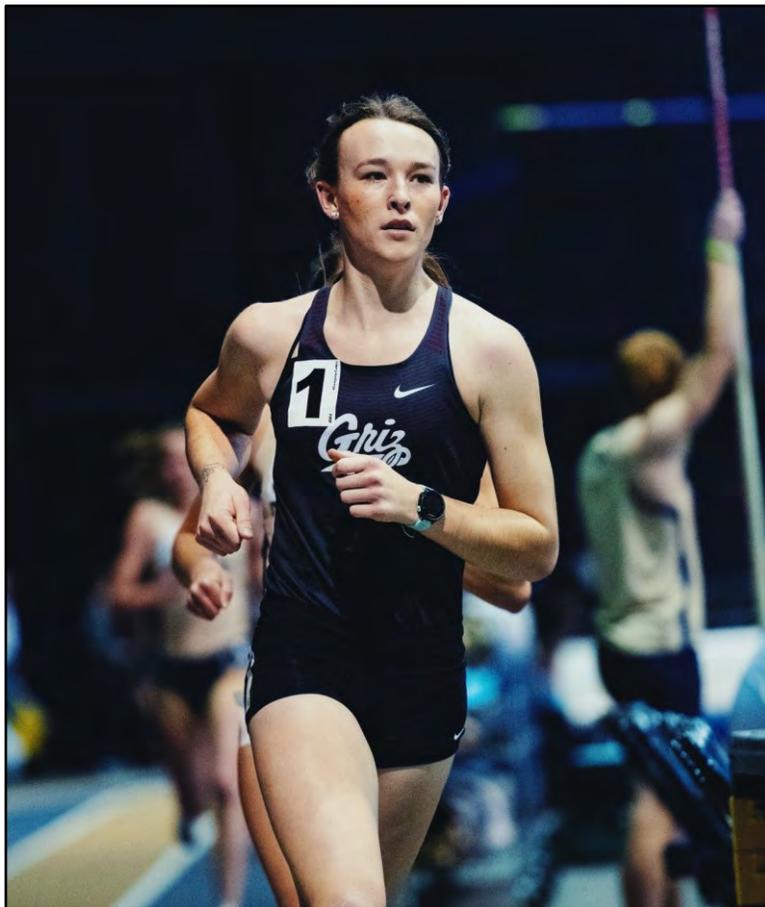
Before starting university, in 2011, Chloe came out as transgender and started HRT in 2012. She soon noticed changes, remarking that her routine long-distance bicycle rides with her father changed after her transition: “I used to go on 70 mile rides with my dad, but in the first three months after starting HRT, I could no longer keep up with my dad like I used to, and the rides ended after 30 miles.” That was not the only change Chloe noticed; at the time, she was playing with a men’s volleyball team a few times a week, but soon could no longer compete. Chloe recalls that she had to retrain her entire body because her brain recalled how she timed hits and plays before HRT, but her body simply responded differently after HRT. In other words, Chloe’s muscle memory no longer applied and “I had to relearn everything.”

Nonetheless, sport was incredibly important to Chloe, and was helpful in making her feel “like everything was going right, that I had goals, and was focused, and could be happy.” After starting college in 2014, Chloe joined the women’s volleyball team. Even at 6’0” tall, she was not the tallest on the team or the strongest, and remarks that many of her cisgender teammates’ abilities on the volleyball court exceeded hers. Unfortunately, the program was not very supportive, and Chloe often heard slurs from competitors and soon became aware that coaching staff were disparaging her behind her back. While she initially put on a brave face, she nonetheless felt isolated and attacked. Eventually, things became so bad that Chloe pulled out of the program. The isolation was devastating, resulting in significant

depressive episodes and a suicide attempt.

Fortunately, with the help of friends and family, Chloe was able to turn the corner and focus once more on herself and her mental health. She has decided to use her challenges to try and help others like her, speaking out and telling her story “because I don’t want future athletes to have to go through what I did.” Sport is still an important part of her mental health and personal development, even if what she endured, as Chloe explains, “destroyed my love of volleyball and is still hard to think about.” Chloe transferred to a new university and, because she can feel lost without the focus and goals sports provide her, joined a women’s crew (rowing) team at her new university. Chloe has received nothing but positivity and inclusion from her new team, and that strength has contributed to her ability to share her story and advocate for transgender athletes and against laws like H.B. 500 that, as Chloe states, “are taking away so much from transgender athletes without any reason other than fear and with no basis in science or reality, almost as though they [proponents of the law] had never spoken with a transgender person.”

Juniper Eastwood, Missoula, Montana⁹



Juniper, pictured above, is a graduate student currently working on her master's degree in environmental philosophy. As an undergraduate student at the University of Montana, Juniper was a cross-country runner and the first Division I transgender athlete to compete in her sport. Juniper has been running since middle school and her sport gave her the purpose, direction, and the personal challenge that she craved.

⁹ This narrative is based on email interviews conducted between December 16 and 18, 2020.

Juniper also happened to be transgender, although she did not come out until her junior year of college. She was a successful runner prior to her transition and won numerous high school and college meets when participating on the men's cross-country and track teams. However, after being sidelined with an injury for approximately 15 months, Juniper realized she had to embrace who she really is and both live and compete as a woman. Her decision to come out was in part driven by her injury, but, more importantly, by the absence of her sport as her release and its mental health benefits. While injured, Juniper became depressed and started using alcohol to self-medicate and replace the healthy benefits she obtained from running. For Juniper, there was no alternative but to accept who she was and let everyone else know as well.

Juniper started HRT, and, by her senior year, had been through HRT for over a year, qualifying her under the NCAA policy to run on the women's team. Juniper performed about the same on the women's team as she did pre-transition, placing in some events and not in others, dispelling the tired trope that transgender women athletes will come into a sport and dominate it (or perform better in relative terms than pre-transition). Although her final season as a collegiate athlete was cut short by the COVID pandemic, Juniper is glad she was able to both transition and compete as the woman she is, which both gave her the opportunity to overcome a darker time in her life (including her depression and self-medication with alcohol), make new

friendships, and to grow into the person that she was meant to be. The women’s team gave her a level of support and connection that Juniper never expected and a sense of belonging that she had never experience before. For Juniper, what running is “really about is relationships: relationships with your teammates, relationships with those you compete against, relationships with running, and a relationship with yourself.”

While the backlash she received during her one year of running on the women’s team caused her to step back from competitive running — largely in part due to the anxiety and fear caused by much of the hateful rhetoric she endured — Juniper recently has started running for fun and for herself again, and all of the benefits of her sport have thankfully come rushing back. She is concerned that laws like H.B. 500 will take the truly life-altering benefits of sport away from other transgender athletes by virtue of the “manipulated or misguided” views about transgender people.

* * * * *

The experiences of these *amici* are unfortunately very common. Even where a sport may accept transgender women athletes, the stigma transgender athletes face on a day-to-day basis can prove extremely harmful. Inclusive and supportive policies are necessary, as is a culture supporting inclusion and education. Laws like H.B. 500 do not create benefits for cisgender women athletes as proponents claim, but they exclude and place severe harms and burdens on transgender athletes that can have life-long personal consequences, as well as create a culture where harassment,

violence, and discrimination are the norm.

CONCLUSION

Amici's accounts demonstrate H.B. 500 has no basis in science or in practical reality, and creates significant harm to transgender athletes. For these reasons, *amici* respectfully urge this Court to affirm the decision of the District of Idaho.

Dated: December 21, 2020

Respectfully submitted,

s/ Jesse Ryan Loffler

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CERTIFICATE OF COMPLIANCE

I am counsel for *amici curiae* in the above-captioned matter and certify pursuant to Federal Rules of Appellate Procedure 29, 32(a)(5), 32(a)(7), and 32(g)(1) that the foregoing Brief of Transgender Women Athletes as *Amici Curiae* in Support of Plaintiffs-Appellees is proportionally spaced, has a typeface of 14 point Times New Roman, and contains 6,488 words, excluding those sections identified in Fed. R. App. P. 32(f).

Dated: December 21, 2020

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CERTIFICATE OF SERVICE

I hereby certify that, on December 21, 2020, I filed the foregoing Brief of Transgender Women Athletes as *Amici Curiae* in Support of Plaintiffs-Appellees using the CM/ECF system, which will automatically serve electronic copies upon all counsel of record.

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