

In the United States Court of Appeals for the Tenth Circuit

DEFENDING EDUCATION, ET AL.,

Plaintiffs-Appellants,

v.

AUBREY C. SULLIVAN, DIRECTOR, COLORADO CIVIL RIGHTS DIVISION,
in her official capacity, ET AL.,

Defendants-Appellees;

COMMITTEE OF FIVE, INC., D/B/A XX-XY ATHLETICS

Plaintiff-Appellant,

v.

AUBREY C. SULLIVAN, DIRECTOR, COLORADO CIVIL RIGHTS DIVISION,
in her official capacity, ET AL.,

Defendants-Appellees;

DOXA ENTERPRISES, LTD., D/B/A BORN AGAIN USED BOOKS,

Plaintiff-Appellant,

v.

AUBREY C. SULLIVAN, DIRECTOR, COLORADO CIVIL RIGHTS DIVISION,
in her official capacity, ET AL.,

Defendants-Appellees.

**On Appeal from the United States District Court for the District of
Colorado, Case No. 1:25-CV-01572**

**BRIEF OF ADVANCING AMERICAN FREEDOM, INC.; AMERICAN ENCORE;
AMERICAN VALUES; AMERICA'S WOMEN; CENTER FOR URBAN RENEWAL AND
EDUCATION (CURE); CHRISTIAN MEDICAL & DENTAL ASSOCIATIONS; FAMILY
INSTITUTE OF CONNECTICUT ACTION; FRONTIERS OF FREEDOM; JAMES
DOBSON FAMILY INSTITUTE; JCCWATCH.ORG; MOMS FOR LIBERTY; NEW
YORK STATE CONSERVATIVE PARTY; NORTH CAROLINA VALUES COALITION;
ORTHODOX JEWISH CHAMBER OF COMMERCE; SALT & LIGHT GLOBAL; THE
FAMILY FOUNDATION OF VIRGINIA; THE WAGNER CENTER; UPPER MIDWEST
LAW CENTER; WISCONSIN FAMILY ACTION, INC.; TIM JONES, FORMER
SPEAKER, MISSOURI HOUSE, FOUNDER, LEADERSHIP FOR AMERICA INSTITUTE;
JOHN SHADEGG, MEMBER OF CONGRESS, 1995-2010; AND PAUL STAM,
FORMER SPEAKER PRO TEM, NC HOUSE OF REPRESENTATIVES AS *AMICI
CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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CORPORATE DISCLOSURE STATEMENT

The amici curiae Advancing American Freedom, Inc.; American Encore; American Values; America's Women; Center for Urban Renewal and Education (CURE); Christian Medical & Dental Associations; Family Institute of Connecticut Action; Frontiers of Freedom; James Dobson Family Institute; JCCWatch.org; Moms for Liberty; New York State Conservative Party; North Carolina Values Coalition; Orthodox Jewish Chamber Of Commerce; Salt & Light Global; The Family Foundation of Virginia; The Wagner Center; Upper Midwest Law Center; Wisconsin Family Action, Inc.; Tim Jones, Former Speaker, Missouri House, Founder, Leadership for America Institute; John Shadegg, Member of Congress, 1995-2010; and Paul Stam, Former Speaker Pro Tem, NC House of Representatives are nonprofit corporations. They do not issue stock and are neither owned by nor are the owners of any other corporate entity, in part or in whole. They have no parent companies, subsidiaries, affiliates, or members that have issued shares or debt securities to the public. The corporations are operated by volunteer boards of directors.

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STATEMENT OF INTEREST OF AMICI

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including freedom from arbitrary power.¹ AAF “will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,”² and believes American prosperity depends on ordered liberty and self-government.³ AAF files this brief on behalf of its 161,715 members nationwide including 11,270 members in the state of Colorado.

Amici American Encore; American Values; America's Women; Center for Urban Renewal and Education (CURE); Christian Medical & Dental Associations; Family Institute of Connecticut Action; Frontiers of Freedom; James Dobson Family Institute; JCCWatch.org; Moms for Liberty; New York State Conservative Party; North Carolina Values Coalition; Orthodox Jewish Chamber Of Commerce; Salt & Light Global; The Family Foundation of Virginia; The Wagner Center; Upper

¹ Plaintiffs-Appellants consented to the filing of this amicus brief. Defendants-Appellees took no position on the filing of this amicus brief. No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

² Edwin J. Feulner, Jr., *Conservatives Stalk the House: The Story of the Republican Study Committee*, 212 (Green Hill Publishers, Inc. 1983).

³ Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at <https://advancingamericanfreedom.com/aaff-independence-index/>.

Midwest Law Center; Wisconsin Family Action, Inc.; Tim Jones, Former Speaker, Missouri House, Founder, Leadership for America Institute; John Shadegg, Member of Congress, 1995-2010; and Paul Stam, Former Speaker Pro Tem, NC House of Representatives believe in the importance of preserving the First Amendment's protection against coerced speech.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Under the Colorado Anti-Discrimination Act (CADA) as amended in 2025, a place of public accommodation that expresses a message about gender and sex contrary to the preferred position of the state of Colorado is likely liable to not only civil but also criminal penalties. CADA prohibits publication of speech or advertisements that, among other things, “indicate[]” that a person’s “patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable” because of a person’s “gender expression.” Colo. Rev. Stat. § 24-34-601(2)(a). Gender expression, in turn, is defined to include a person’s “chosen name” and “how the individual chooses to be addressed.” Colo. Rev. Stat. § 24-34-301(9). The combined effect of these and other provisions is that public accommodations like XX-XY Athletics and the other Plaintiffs reasonably fear that using given names and biologically accurate pronouns could expose them to proceedings under CADA.

The nationwide spread of gender ideology has harmed countless families and young people caught up in the furor. Proponents of the ideology have often used fear, coercion, and manipulation to advance their cause. Parents of children struggling with gender dysphoria are asked by authority figures, “Would you rather have a dead son than a live daughter?”⁴ Schools have kept and continue to keep parents in the dark, labeling parents as “dangerous” if they do not share the school’s ideological convictions. As a substitute teacher and activist at an after school program “warned” twelve-year-olds in another case out of Colorado, “it might not be safe to tell their parents they are transgender or about the meeting.”⁵ And schools and other institutions have sought to silence dissenting voices.⁶

For all of these reasons, gender ideology is controversial. A carefully crafted campaign advertisement on the subject may have even clinched the 2024 presidential election outcome.⁷ Yet Colorado, while doing nothing to limit the voices of those

⁴ *Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices* 74 n.108 Department of Health and Human Services (2025) available at <https://opa.hhs.gov/sites/default/files/2025-11/gender-dysphoria-report.pdf>.

⁵ Brief of Advancing American Freedom et al. as amici curiae at 4-5, *Lee v. Poudre*, No. 25-89 (Aug. 22, 2025) available at <https://advancingamericanfreedom.com/aaf-fights-back-against-radical-gender-ideologists/>. This substitute teacher also gave these twelve-year-olds her personal cell-phone number.

⁶ See, e.g., Brief of Advancing American Freedom et al. as amici curiae, *Parents Defending Ed. v. Olentangy Local Sch. Dist. Bd. of Ed.*, No. 23-3630 (Dec. 18, 2024) <https://advancingamericanfreedom.com/parents-v-olentangy/>.

⁷ Chris Cillizza, *The Morning: This One Ad May Have Won Donald Trump the Election* (Nov. 8, 2024) <https://chrisfillizza.substack.com/p/the-morning-this-one-ad-may-have>.

who agree with its preferred message, would silence speakers who express contrary views and even compel them to parrot the state's position, on pain of even criminal penalties.

Schools around the country keep parents in the dark about their child's social gender transition, encouraging the child to live a double life between home and school. Many of the parents affected by these school policies have challenged them in court. Americans, including Coloradans, can see the danger of these policies and feel compelled to speak. After all, it was in Colorado that one girl attempted to take her own life after being exposed to gender ideology at school without her parents' knowledge or consent.⁸

Throughout history, societies have treated children's bodies as malleable for the purposes of those in power. Castration, foot binding, and female genital mutilation each show that humans are capable of perpetrating great evil against children when doing so is socially acceptable or even expected. The transgender surgeries and administration of puberty blockers and cross-sex hormones to minors will similarly be viewed by future generations as an unthinkable evil.

Just as secret social gender transitions at school and the bodily modification of minors naturally compel people to speak out, so the obvious injustice of a boy or man competing in girls' and women's sports engenders objections. Sports are to

⁸ Brief of Advancing American Freedom et al. as amici curiae, *supra* note 5, at 5.

gender theory what the child is to the emperor's new clothes. The physical differences between the sexes inevitably shine through on the playing field, giving the lie to the assumption necessary to the whole gender agenda: that men and women are interchangeable. This injustice is particularly relevant to Plaintiff XX-XY Athletics whose mission is to “protect women's sports and spaces.”⁹

Unsurprisingly, Americans feel compelled to speak out against these injustices. Perhaps that is why Colorado would force dissenters from its preferred ideology to mouth the lies of the regime. But, “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943). Colorado would do no less through its nondiscrimination law at issue here than require those within its borders to “confess by word” a false faith in gender ideology.

In another case considering a Colorado nondiscrimination law, the Supreme Court recently rejected Colorado's rationale for compelled speech which would “allow the government to force all manner of artists, speechwriters, and others whose services involve speech to speak what they do not believe on pain of penalty.” 303

⁹ Our Why, XX-XY Athletics (last visited June 11, 2026) <https://www.xx-xyathletics.com/pages/our-mission>.

Creative LLC v. Elenis, 600 U.S. 570, 589 (2023). Apparently, that is exactly what Colorado intends to do.

For the reasons discussed in this brief, First Amendment-protected speech on these issues is critical. This Court should direct the district court to enter Plaintiffs-Appellants requested preliminary injunction.

ARGUMENT

I. The Gender Ideology Colorado Would Compel Speakers to Parrot is Causing Significant Harm to Families Around the Country.

The harm inflicted by school-led secret social transitions is real and widespread. As of May 4, a database maintained by one of the Plaintiffs here reports that over 1,200 school districts responsible for more than 12,300,000 children had adopted secret social transition policies.¹⁰ Advancing American Freedom has filed amicus briefs in nine of the thirteen Federal Circuits hearing challenges to similar gender policies.

In the First Circuit, a Massachusetts middle-school facilitated the social transition of an eleven-year-old girl, spurning her mother's requests that school officials not discuss gender identity with her daughter.¹¹ Instead, the school

¹⁰ List of School District-Gender Nonconforming Student Policies, Defending Education (updated May 4, 2025) <https://defendinged.org/investigations/list-of-school-district-transgender-gender-nonconforming-student-policies/>.

¹¹ Brief of Advancing American Freedom et al. as amici curiae, *Foote v. Ludlow School committee*, No. 24-77 (August 21, 2025) available at <https://advancingamericanfreedom.com/aaf-urges-supreme-court-to-hear-parental-rights-case/>.

counselor texted and messaged the eleven-year-old via online chat to encourage weekly meetings “to discuss any gender-related concerns.”¹²

In the Second Circuit, school officials assured a mother that no unusual circumstances were to blame for her daughter’s falling grades and distraction from her schoolwork.¹³ Even after the mother learned of the school’s social transition campaign and moved her daughter to at-home instruction, school officials continued to speak with the girl about gender issues.¹⁴

In the Third Circuit, a freshman girl diagnosed with Attention-Deficit Hyperactivity Disorder and “high functioning autism” struggled with anxiety stemming from the “the childhood trauma of the death of her mother.”¹⁵ Yet, after the girl asked the school counselor to help her socially transition at school, the school took steps to ensure that her father would not be informed, including using the girl’s legal name for announcements over the school intercom lest her siblings should find out about her social transition and inform their father.¹⁶

¹² *Id.* at 5.

¹³ Brief of Advancing American Freedom et al. as amici curiae at 4-5, *Vitsaxaki v. Skaneateles Central Sch. Dist.*, No. 25-0952 (2nd Cir. June 17, 2025) available at <https://advancingamericanfreedom.com/aaf-leads-amicus-coalition-defending-the-rights-of-parents-and-children-against-gender-indoctrination/>.

¹⁴ *Id.* at 5.

¹⁵ Brief of Advancing American Freedom et al. as amici curiae at 3-4, *Heaps v. Delaware Valley Regional High Sch. Bd. of Ed.*, No. 24-3278 (3d Cir. July 8, 2025) available at <https://advancingamericanfreedom.com/aaf-fights-for-parental-rights-in-new-jersey/>.

¹⁶ *Id.* at 4.

In the Sixth Circuit, a school district “equate[d] harassment with the ‘intentional use of pronouns inconsistent with a student’s gender identity.’”¹⁷

In the Seventh Circuit, a school district that requires written parental authorization to administer over-the-counter medication such as aspirin instituted a policy directing staff to facilitate social transitions without notifying parents or seeking their consent.¹⁸

In the Eighth Circuit, the Linn-Mar School Board adopted a policy that directed teachers to effectuate children’s gender transitions while keeping parents in the dark.¹⁹

In the Ninth Circuit, in *Mirabelli v. Bonta*, a certified class including parents and teachers challenged a California school district’s policy that prohibited teachers and school staff “from informing parents about a child’s unusual gender expression, unless the child consents.”²⁰ Though the Poe family’s daughter had been presenting

¹⁷ Brief of Advancing American Freedom et al. as amici curiae at 3-4, *Parents Defending Ed. v. Olentangy Local Sch. Dist. Bd. of Ed.*, No. 23-3630 (6th Cir. Dec. 19, 2024) available at <https://advancingamericanfreedom.com/parents-v-olentangy/>.

¹⁸ Brief of Advancing American Freedom et al. as amici curiae at 5, *Parents Protecting Our Children v. Eau Claire Area Sch. Dist.*, No. 23-1280 (July 8, 2024) available at <https://advancingamericanfreedom.com/parents-protecting-our-children-v-eau-claire-area-school-district/>.

¹⁹ Brief of Advancing American Freedom et al. as amici curiae at 7, *Parents Defending Education v. Linn-Mar Community School District*, No. 22-2927 (8th Cir. Nov. 10, 2022) available at <https://advancingamericanfreedom.com/aaf-takes-stand-for-parents/>.

²⁰ Brief of Advancing American Freedom et al. as amici curiae at 2, *Mirabelli v.*

as a boy at school for months, “The Poe parents did not learn of their child’s deteriorated mental health until after she attempted suicide.”²¹

In this Circuit, without seeking consent from parents, two sixth graders were invited to after-school meetings that discussed gender identity.²² One tragically attempted suicide and identified her attendance at the “Gender and Sexualities Alliance” club meeting as the source of her suicidal ideation.²³

In the Eleventh Circuit, a Florida School District resisted plaintiff-parents’ attempts to direct the school’s response to their daughter’s gender dysphoria in line with the school board’s policy that warned that “[o]uting a student to parents can be very dangerous to the student’s health and wellbeing.”²⁴

As this problem has spread across the country, Americans understandably have felt compelled to speak out. Colorado, on the other hand, seeks to coerce linguistic conformity with its own view at the expense of Coloradan’s First Amendment Freedoms.

Bonta, 146 S. Ct. 797 (2026) available at <https://advancingamericanfreedom.com/aaf-files-amicus-brief-standing-for-parental-rights/>.

²¹ *Id.*

²² Brief of Advancing American Freedom et al. as amici curiae, *supra* note 5 at 4-5.

²³ *Id.* at 5.

²⁴ Brief of Advancing American Freedom et al. as amici curiae, at 3-4 *Littlejohn v. Sch. Bd. of Leon Cnty.*, No. 25-259 (Oct. 6, 2025) (internal quotation marks omitted) available at <https://advancingamericanfreedom.com/aaf-stands-for-parental-rights-in-secret-social-transition-case/>.

II. The Historical Data Makes Clear that if Women and Girls are to Have Meaningful Opportunities for Athletic Excellence, Girls' and Women's Sports Must be Preserved for Girls and Women Only.

Female-only sports provide women with opportunities they would not otherwise have. The biological differences between men and women are real and have significant consequences for athletic performance. If women and girls are to have the opportunity to compete and excel in fair competition, males must be excluded from women's and girls' sports. In many sports, measuring the differences between the two sexes would be difficult. In sports that are measured in time, however, the comparison of men and women is revealing.

A. Thousands of men have exceeded women's world records in a sample of running events.

Martia Koch of East Germany set the women's 400 meter world record in 1985, running the single-lap race in 47.60 seconds.²⁵ American Sydney McLaughlin-Lavrone ran the second-fastest woman's 400 meter in history last year in Tokyo in 47.78.²⁶ More than 4,200 different men have run the 400 meters in 46.50 seconds or faster, over a second faster than the women's world record.²⁷ Counting every time a

²⁵ See 400 Metres Women, World Athletics, <https://worldathletics.org/records/all-time-toplists/sprints/400-metres/all/women/senior?regionType=world&timing=electronic&page=1&bestResultsOnly=true&firstDay=1899-12-31&lastDay=2024-0811&maxResultsByCountry=all&eventide=10229511&ageCategory=senior>.

²⁶ *Id.*

²⁷ See 400 Meters Men, World Athletics, <https://worldathletics.org/records/all-time-toplists/sprints/400->

man has run a particular time, men have run the 400 meter as fast or faster than 45.50, more than two seconds faster than the women's record, at least 8,800 times.²⁸ The American high school boys' record in the 400 meters is 44.10 seconds,²⁹ and the 10 fastest high school boy's 400 meter times are all more than two seconds faster than the women's 400 meter world record.³⁰

Similarly, Beatrice Chebet of Kenya set the women's outdoor track 5,000 meter record in 2023, covering the distance in 13:58:06.³¹ More than 6,500 men have run the 5,000 meters on the track in a faster time.³² Further, men have run the 5,000

metres/all/men/senior?regionType=world&timing=electronic&page=40&bestResultsOnly=true&firstDay=1899-12-31&lastDay=2024-08-

11&maxResultsByCountry=all&eventId=10229631&ageCategory=senior.

²⁸ 400 Metres Men, World Athletics, [https://worldathletics.org/records/all-time-toplists/sprints/400-](https://worldathletics.org/records/all-time-toplists/sprints/400-metres/all/men/senior?regionType=world&timing=electronic&page=1&bestResultsOnly=false&firstDay=1899-12-31&lastDay=2024-08-11&maxResultsByCountry=all&eventId=10229631&ageCategory=senior)

metres/all/men/senior?regionType=world&timing=electronic&page=1&bestResultsOnly=false&firstDay=1899-12-31&lastDay=2024-08-

11&maxResultsByCountry=all&eventId=10229631&ageCategory=senior.

²⁹ High School All-Time top 10s-Boys, Track and Field News (April 22, 2026) <https://trackandfieldnews.com/tfn-lists/high-school-all-time-top-10s-boys/>.

³⁰ *Id.*

³¹ *See* 5000 Metres Women, World Athletics, [https://worldathletics.org/records/all-time-toplists/middlelong/5000-](https://worldathletics.org/records/all-time-toplists/middlelong/5000-metres/all/women/senior?regionType=world&page=1&bestResultsOnly=false&firstDay=1899-12-31&lastDay=2024-08-11&maxResultsByCountry=all&eventId=10229514&ageCategory=senior)

metres/all/women/senior?regionType=world&page=1&bestResultsOnly=false&firstDay=1899-12-31&lastDay=2024-08-

11&maxResultsByCountry=all&eventId=10229514&ageCategory=senior.

³² *See* 5000 Metres Men, World Athletics, [https://worldathletics.org/records/all-time-toplists/middlelong/5000-](https://worldathletics.org/records/all-time-toplists/middlelong/5000-metres/all/men/senior?regionType=world&page=60&bestResultsOnly=true&firstDay=1899-12-31&lastDay=2024-08-11&maxResultsByCountry=all&eventId=10229609&ageCategory=senior)

metres/all/men/senior?regionType=world&page=60&bestResultsOnly=true&firstDay=1899-12-31&lastDay=2024-08-

11&maxResultsByCountry=all&eventId=10229609&ageCategory=senior.

meters on the track in 13:30 or less more than 10,000 times.³³ The American high school boys' record for the 5,000 meters is 13:25.86, and at least the top 10 high school boys' times exceed the women's world record.³⁴

The numbers for the marathon likewise demonstrate the need for women's sports. Ruth Chepngetich of Ethiopia set the women's marathon world record earlier this year, running the 26.2 miles in 2:09:56.³⁵ Men have matched or exceeded that record more than 5,000 times³⁶ and at least 1,600 different men have matched or exceeded her time.³⁷ Chepngetich is one of only three women to run the marathon in

³³ See 5000 Metres Men, World Athletics, <https://worldathletics.org/records/all-time-toplists/middlelong/5000-metres/all/men/senior?regionType=world&page=93&bestResultsOnly=false&firstDay=1899-12-31&lastDay=2024-08-11&maxResultsByCountry=all&eventId=10229609&ageCategory=senior>.

³⁴ High School All-Time top 10s-Boys, *supra* note 29.

³⁵ Marathon Women, World Athletics, <https://worldathletics.org/records/all-time-toplists/road-running/marathon/all/women/senior?regionType=world&page=1&bestResultsOnly=false&firstDay=1899-12-30&lastDay=2026-06-09&maxResultsByCountry=all&eventId=10229534&ageCategory=senior>.

³⁶ See Marathon Men, World Athletics, <https://worldathletics.org/records/all-time-toplists/road-running/marathon/all/men/senior?regionType=world&page=89&bestResultsOnly=false&firstDay=1899-12-27&lastDay=2024-07-25&maxResultsByCountry=all&eventId=10229634&ageCategory=senior>.

³⁷ See Marathon Men, World Athletics, <https://worldathletics.org/records/all-time-toplists/road-running/marathon/all/men/senior?regionType=world&page=26&bestResultsOnly=true&firstDay=1899-12-28&lastDay=2024-07-26&maxResultsByCountry=all&eventId=10229634&ageCategory=senior>.

under 2:12.³⁸ On the other hand, men have broken 2:12:00 nearly 11,000 times,³⁹ with more than 3,000 different men having done so.⁴⁰

The women who run competitively at the international level are incredibly fast athletes who would leave the average person, male or female, in the dust. But all it would take for these elite women to lose out on opportunities is for one of the thousands of men who are faster than them to begin competing as a woman. The numbers in swimming discussed below follow the same pattern.

B. The best boy swimmers in the world become competitive with the best women swimmers in the world when the boys hit puberty.

United States age group swimming is split into five age group categories: 10 and under, 11-12, 13-14, 15-16, and 17-18. Each age group has its own records for each swimming event, including short course yards (“SCY”) and long course meters

³⁸ Marathon Women, *supra* note 35.

³⁹ See Marathon Men, World Athletics, <https://worldathletics.org/records/all-time-toplists/road-running/marathon/all/men/senior?regionType=world&page=93&bestResultsOnly=false&firstDay=1899-12-27&lastDay=2024-07-25&maxResultsByCountry=all&eventId=10229634&ageCategory=senior>.

⁴⁰ See Marathon Men, World Athletics, <https://worldathletics.org/records/all-time-toplists/road-running/marathon/all/men/senior?regionType=world&page=41&bestResultsOnly=true&firstDay=1899-12-27&lastDay=2024-07-25&maxResultsByCountry=all&eventId=10229634&ageCategory=senior>.

(“LCM”).⁴¹ In the 13-14 age group, every LCM age group record is faster than the women’s overall world record, with one exception.⁴²

In the 50 meter-freestyle, Thomas Heilman’s boy’s 13-14 NAG record is 22.95, set in 2021.⁴³ The women’s world record in the same event was set by Sarah Sjostrom in 2023 at 23.61.⁴⁴

In the 200 meter individual medley, a race in which the athlete swims 50 meters of each stroke (butterfly, backstroke, breaststroke and freestyle), Shareef Elaydi’s boy’s 13-14 NAG 200 meter-individual-medley record is 2:03.73.⁴⁵ Summer McIntosh’s women’s world record in this event is 2:05.70.⁴⁶

Katie Ledecky, widely considered the greatest women’s swimmer of all time, has two world records: the 800 meter freestyle and the 1,500 meter freestyle. Luka Mijatovic’s boy’s 13-14 NAG 800 meter freestyle record is 7:59.64,⁴⁷ compared to

⁴¹ SCY races are held in 25-yard-long pools. LCM races are those that take place in Olympic sized (50 meter) pools.

⁴² National Age Group Records LCM 13-14, USA Swimming, <https://www.usaswimming.org/times/popular-resources/national-age-group-records/lcm/13-14>. Even the existence of age groups indicates the importance of creating space for fair competition. Eleven- and twelve-year-old boys should not be competing against fifteen- and sixteen-year-old boys.

⁴³ USA Swimming, *supra* note 41.

⁴⁴ Women Freestyle World Records, World Aquatics, <https://www.worldaquatics.com/swimming/records?recordCode=WR&eventTypeId=®ion=&countryId=&gender=F&pool=LCM>.

⁴⁵ USA Swimming, *supra* note 41.

⁴⁶ World Aquatics, *supra* note 44.

⁴⁷ USA Swimming, *supra* note 41.

Ledecky's 8:04.12 in the same event.⁴⁸ Ledesky's 1,500 meter freestyle world record is the one exception to the rule that the 13-14 boys exceed the women's world record times. Nonetheless, Ledesky's world record of 15:20.48⁴⁹ is slower than the 15-16 boy's record.⁵⁰

By the time male swimmers have reached physical maturity, a mediocre male swimmer can make himself highly competitive by swimming against women. Such a situation is not hypothetical. In the 2021 season for National Collegiate Athletic Association (NCAA) swimming, University of Pennsylvania swimmer Will Thomas was ranked 554th in the NCAA, all divisions, in the men's 200 meter freestyle.⁵¹ The next year, Lia Thomas (the same person, now swimming in women's races) finished 5th in the nation in the women's 200 meter freestyle,⁵² famously being given the nod by the NCAA over Riley Gaines, with whom he tied in that race.⁵³ Somewhat less dramatically, but even more tragically for the women he competed against, Thomas

⁴⁸ World Aquatics, *supra* note 44.

⁴⁹ *Id.*

⁵⁰ National Age Group Records: LCM 15-16, USA Swimming (last visited June 10, 2026) <https://www.usaswimming.org/times/popular-resources/national-age-group-records/lcm/15-16>.

⁵¹ John Lohn, *A Look at the Numbers and Times: No Denying the Advantages of Thomas*, Swimming World (April 5, 2022 9:05 AM).

⁵² *Id.*

⁵³ Riley Gaines, *Testimony Before the House Subcommittee on Health Care and Financial Services: "The Importance of Protecting Female Athletics and Title IX"*, Independent Women's Voice (Dec. 5, 2023) <https://oversight.house.gov/wp-content/uploads/2023/12/Testimony-Gaines.pdf>.

was ranked 65th nationally in the 500 meter freestyle when swimming against men, but “won” the NCAA women’s title in 2022 at that same distance,⁵⁴ depriving Emma Weyant of the University of Virginia, the fastest woman in that race and now two-time Olympic medalist, of the top trophy.⁵⁵

In every sport, both men’s and women’s records are broken as training techniques and other technologies improve. But the disparity between men’s and women’s times remains. Gretchen Walsh’s 50 yard freestyle NCAA record from March 21, 2024, would have been the Men’s NCAA record in 1970. In 1970, the men’s 50 meter freestyle NCAA record for collegiate swimming was clocked at 20.5 seconds by David Edgar,⁵⁶ one of the greatest short course swimmers of the 1970s. As of March 2024, Gretchen Walsh holds the women’s 50 yard freestyle NCAA Division I record of 20.37 seconds, which is also an American record.⁵⁷ Walsh is also the only woman to ever break 20 seconds in the 50 yard freestyle, which she did at the 2024 ACC Championship swim meet when she swam a 19.95 second split in a

⁵⁴ *Id.*

⁵⁵ See, James Sutherland, *2022 Women’s NCAA Championships: Results & Records Summary*, SwimSwam (March 22, 2022).

⁵⁶ Will Backus, *Here Are Our Top Defining Moments in the History of Tennessee Vols Athletics* (Mar. 27, 2020) <https://www.knoxnews.com/story/sports/college/university-of-tennessee/football/2020/03/28/tennessee-vols-athletic-history-top-moments-neyland-pat-summitt/2899338001/>.

⁵⁷ Dan D’Addona, *Gretchen Walsh Lowers NCAA 50 Free Record: ‘She is Doing Things No One Has Ever Done’*, Swimming World (Mar. 21, 2024).

relay.⁵⁸ Although she is the fastest woman in sprinting history, her current NCAA record of 20.37 seconds would only exceed the men's record from over 50 years ago.

While the objective measurements of performance used in sports like running and swimming facilitate direct comparisons, the physical advantage men enjoy is relevant in athletic competition generally. If women are not to be denied opportunities for achievement, biological males must be kept out of women's sports.

Colorado's law, would silence those operating public accommodations who choose to use their speech in a way that comports with the reality these data bear out: that there are biological differences between men and women.

III. The Use of Puberty Blockers to Address Gender Dysphoria in Young People Will Rightly be Remembered Alongside Other Forms of Harm to Children.

Causing children physical harm is an evil present in every society. Even more tragically, different forms of harm have been considered socially acceptable and even obligatory in many societies. In America, such harm is, rightly, nearly universally criminalized. However, one form of such harm, the chemical or surgical manipulation of children in response to alleged gender dysphoria, is legal in much of the nation. Puberty blockers may also be seen as a way of mitigating the concerns

⁵⁸ Nick Pecoraro, *Race Video: Gretchen Walsh Splits 19.95 in the 50 Free, First Woman to Break 20 Seconds*, SwimSwam (Feb. 21, 2024) <https://swimswam.com/race-video-gretchen-walsh-splits-19-95-in-the-50-free-first-woman-to-break-20-seconds%f0%9f%a4%af/>.

about men in women's sports discussed above. For the reasons discussed below, they are no solution.

A. Throughout history, children's bodies have been subjected to various horrors.

Throughout human history, for a variety of reasons, many different peoples have treated children and their bodies with brutality. For example, many societies have engaged in child sacrifice and child abandonment.⁵⁹ Different societies have also engaged in many forms of non-lethal, physical child abuse. Nor are these practices confined to the distant past. A Chinese man named Sun Yaoting who died in 1996, known as the last eunuch of China after the book that documents his story, suffered the eunuch-making procedure as a child at the hands of his father.⁶⁰ Yaoting convinced his father to perform the procedure with the hope of ultimately gaining influence in the emperor's palace and then using that influence to exact revenge on a local landlord who had wronged his family.⁶¹

In Europe, castrati were singers who had been castrated before puberty, and thus who had unique and sought-after voices. Poor Italian families would choose this

⁵⁹ See, e.g., *Ancient Carthaginians Really Did Sacrifice Their Children*, University of Oxford (Jan 23, 2014) <https://www.ox.ac.uk/news/2014-01-23-ancient-carthaginians-really-did-sacrifice-their-children>.

⁶⁰ Yinghua Jia, *The Last Eunuch of China: The Life of Sun Yaoting* 12, 14 (Sun Haichen trans. 2008) <https://archive.org/details/lasteunuchofchin0000jiay/mode/2up>.

⁶¹ *Id.* at 10-12.

path as both an immediate financial relief—the boys were sent away from the family and thus no longer needed to be fed—and as a path to future financial success.⁶² In the late nineteenth century, “violent diatribes were uttered against a custom which had ‘dishonored’, it was thought, the two previous centuries . . . In future no anathema was too strong for the condemnation of this ‘barbarous’ custom which outraged ‘morality, humanity, and nature.’”⁶³ Finally, in 1902, Pope Leo XIII “banished castrati from the Sistine Chapel for ever.”⁶⁴

For a thousand years in China, girls had their feet bound, a brutal process that forced their feet to be as small as possible and into the desired shape.⁶⁵ “Once the foot had been crushed and bound, the shape could not be reversed without a woman undergoing the same pain all over again.”⁶⁶

Female genital mutilation (“FGM”) remains a common practice in some countries today as well as among some immigrant groups in the West, and “[o]ver 100 million women and young girls living today have experienced some form of

⁶² Alanna Skuse, *Surgery and Selfhood in Early Modern England* 17 (Cambridge University Press 2021).

⁶³ Patrick Barbier, *The World of the Castrati* 236 (Margaret Crosland trans. 1996).

⁶⁴ *Id.* at 126.

⁶⁵ Amanda Foreman, *Why Footbinding Persisted in China for a Millennium*, *Smithsonian Magazine* (Feb. 2015) <https://www.smithsonianmag.com/history/why-footbinding-persisted-china-millennium-180953971/>.

⁶⁶ *Id.*

FGM with millions more being affected annually.”⁶⁷ According to the Office of Women’s Health within the U.S. Department of Health and Human Services, FGM poses serious medical risks in both the short and long terms.⁶⁸ According to Congress, “[FGM] is recognized internationally as a human rights violation and a form of child abuse, gender discrimination, and violence against women and girls.”⁶⁹

What people in a society find acceptable changes over time and from place to place, sometimes for the better but sometimes for the worse. Carthage was a city-state located in modern Tunisia that existed from about 800 BC until 146 BC.⁷⁰ An article published in the journal *Antiquity* in 2013 argued that, despite claims in the preceding decades, the Carthaginians really had engaged in child sacrifice, as the Romans and Greeks had alleged.⁷¹

Dr. Josephine Quinn of Oxford University, one of the study’s authors, explained at the time that the view that was increasingly common in the 20th century, that the Greek and Roman claims about Carthaginian child sacrifice were “racist

⁶⁷ Jewel Llamas, *Female Circumcision: The History, the Current Prevalence, and the Approach to a Patient* at 1 (April 2017) <https://med.virginia.edu/family-medicine/wp-content/uploads/sites/285/2017/01/Llamas-Paper.pdf>.

⁶⁸ Fact Sheet on Female Genital Mutilation or Cutting, Office of Women’s Health, Department of Health and Human Services, <https://owh-wh-d9-dev.s3.amazonaws.com/s3fs-public/documents/fact-sheet-fgmc.pdf>.

⁶⁹ 18 U.S.C. § 116 note.

⁷⁰ *Ancient Carthaginians Really Did Sacrifice Their Children* *supra* note 59.

⁷¹ *Id.*

propaganda,’” is an anachronistic judgment.⁷² Dr. Quinn said, “We think of it as a slander because we view it in our own terms. But people looked at it differently 2,500 years ago . . . We should not imagine that ancient people thought like us and were horrified by the same things.”⁷³ The history of the twentieth century should disabuse us of the assumption that human nature has changed such that these ancient horrors are no longer possible.

In fact, certain horrors of the past are resurfacing today under the guise of care.

B. The administration of puberty blockers to healthy children to prevent natural and normal puberty is an unproven practice with the potential to cause serious harm.

Puberty blockers have been approved by the FDA for treating precocious puberty, the condition in which children begin puberty earlier than is normal or healthy. They are used in such cases to delay puberty until the normal age at which puberty should begin. However, they are being prescribed to arrest the natural pubertal process not because that process has begun too early or to address some other physical malady, but to address gender dysphoria in young people.

As is explained in the Cass Review, a review of gender medicine conducted in Great Britain by Dr. Hilary Cass, the safety of puberty blockers as a temporary fix

⁷² *Id.*

⁷³ *Id.*

for gender dysphoria cannot be extrapolated from their safety as a treatment for precocious puberty.⁷⁴ When used in response to gender dysphoria, puberty blockers “are blocking the normal rise in hormones that should be occurring into teenage years, and which is essential for psychosexual and other developmental processes.”⁷⁵

Several justifications have been offered for administering puberty blockers to physically healthy children.⁷⁶ As the information reviewed by the Cass report shows, the data supporting these justifications ranges from inconclusive to nonexistent.

⁷⁴ Dr. Hillary Cass, *Independent Review of Gender Identity Services for Children and Young People* 174. The full report is available for download at <https://cass.independent-review.uk/home/publications/final-report/>. The evidence that the science behind “trans medicine” is unreliable has continued to come in. *Research Into Trans Medicine has Been Manipulated*, *The Economist* (July 27, 2024) <https://tinyurl.com/46esdsr6>. Yet the Federal Government may be acting to cover up the data that would expose that lack of evidence in America. As Leor Sapir explains, the Department of Justice (DOJ) may be trying “to halt release of more information in the Alabama case, as that material could further expose [the World Professional Association for Transgender Health (WPATH)] and shed more light on how HHS and other executive-branch officials misled the American public about youth gender transition.” Leor Sapir, *What Does the DOJ Not Want Americans to Know?*, *City Journal* (July 12, 2024) <https://www.city-journal.org/article/what-does-the-doj-not-want-americans-to-know>.

⁷⁵ *Id.*

⁷⁶ If doctors who prescribe puberty blockers to address gender incongruence are confident that there are no unreasonable dangers associated with administering puberty blockers to physically healthy children and adolescents, would such doctors be willing to sign a waiver of the statute of limitations, giving themselves some skin in the game for the risk of future harm to the young people they profess to help? After all, as even one critic of the Cass Review has noted, so-called “gender-affirming medical care for adolescents” is “a particularly fraught and contested area of medicine.” Lydia Polgreen, *The Strange Report Feuling the War on Trans Kids*, *The New York Times* (Aug. 13, 2024)

First, puberty blockers may be intended to help those taking them “pass” as the opposite sex when they are adults. The Cass Review notes that “since most young people are not starting puberty blockers until the age of 15 and above, it is unclear how helpful they might be” for allowing those on them to “pass” later on in life.⁷⁷ Further, since a desire to “pass” depends on the continued experience of gender dysphoria, and because the prevalence of its persistence appears to be greatly increased by the administration of puberty blockers, even if puberty blockers did help adults with gender dysphoria “pass,” that would not indicate that the administration of puberty blockers is acceptable.

Second, puberty blockers are presented as giving children more time to consider whether they want to continue gender transition. That claim grows out of Dutch research, the reliability of which has been seriously challenged.⁷⁸ Some studies have found that over 90% of those who begin taking puberty blockers will

<https://www.nytimes.com/2024/08/13/opinion/cass-report-trans-kids.html>.

Polgreen’s New York Times article has been criticized for “studiously avoid[ing] handling any uncomfortable realities, like what the medical ‘autonomy’ she advocates actually entails or what patients are being asked to consent to: sterility, the loss of sexual pleasure, and life as a guinea pig in an unregulated medical experiment.” Eliza Mondgreen, *NYT Columnist Refuses to Accept Cass Review Findings*, UnHerd (Aug. 14, 2024 1:00 PM) <https://unherd.com/newsroom/nyt-columnist-refuses-to-accept-cass-review-findings/>.

⁷⁷ Cass *supra* note 74 at 177.

⁷⁸ E. Abbruzzese, Stephen B. Levine, Julia W. Mason, *The Myth of “Reliable Research” in Pediatric Gender Medicine: A Critical Evaluation of the Dutch Studies—and Research That Has Followed*, 49 *Journal of Sex and Marital Therapy* 673 (2023).

eventually take cross-sex hormones.⁷⁹ While advocates of this approach may suggest that this merely indicates accuracy in the initial diagnosis of gender dysphoria, they have the burden to show that that is in fact the best explanation for the high rate of persistence.

As the Cass Review explains, “A formal diagnosis of gender dysphoria is frequently cited as a prerequisite for accessing hormone treatment. However, it is not reliably predictive of whether that young person will have longstanding gender incongruence in the future, or whether medical intervention will be the best option for them.”⁸⁰ It is at least as plausible, that suppressing natural puberty locks in discomfort with gender that may have otherwise subsided with time. As the Cass Review concludes, the “data suggest that puberty blockers are not buying time to think, given that the vast majority of those who start puberty suppression continue to masculinising/feminising hormones, particularly if they start earlier in puberty.”⁸¹ The question, of course, is whether without this intervention, the person’s gender dysphoria would have persisted after natural puberty.

Third, puberty blockers are supposed to provide psychological and mental health benefits. However, the Cass Review found that the data to support this

⁷⁹ *Id.* at 176.

⁸⁰ *Id.* at 193.

⁸¹ *Id.*

supposition are mixed and inconclusive.⁸² Further, the Cass Review suggests that the results may have been impacted by the lack of a randomized control and a “strong belief that the treatment is effective.”⁸³

These supposed benefits are offset by several risks. First, as the Cass Review notes, the administration of puberty blockers may alter “the trajectory of development of sexual and gender identity.”⁸⁴ Sadly, puberty blockers may well prevent a natural resolution of young people’s gender identity issues. By preventing the natural pubertal process, young people may well be locked into their mental state rather than developing out of it. Further, even if used as intended, cross-sex hormones may lead to sexual dysfunction and, by biological necessity, to sterility.⁸⁵ It is increasingly clear that starting kids on puberty blockers constitutes not a singular intervention, but rather starting them down an unproven path with a high risk of harm.

Second, puberty blockers may hinder neurocognitive development. As the Cass Review explains:

⁸² *See id.* at 176-77.

⁸³ *Id.* at 177.

⁸⁴ *Id.* at 178.

⁸⁵ And, as Dr. Marci Bowers, president of the WPATH said, the administration of puberty blockers before a certain stage of pubertal development leads to sexual dysfunction. Hannah Grossman, *Influential Trans Care Doctor Once Warned Puberty Blockers Could Cause Permanent Sexual Dysfunction*, Fox News (May 23, 2022 4:24 AM) <https://www.foxnews.com/media/influential-trans-care-doctor-once-warned-puberty-blockers-could-cause-permanent-sexual-dysfunction>.

[A]dolescent sex hormone surges may trigger the opening of a critical period for experience-dependent rewiring of neural circuits underlying executive function (i.e. maturation of the part of the brain concerned with planning, decision making and judgement). If this is the case, *brain maturation may be temporarily or permanently disrupted by the use of puberty blockers, which could have a significant impact on the young person's ability to make complex risk-laden decisions, as well as having possible longer-term neuropsychological consequences.*⁸⁶

The research on this issue is, at best, inconclusive. One study found no cognitive difference between those adolescents given puberty blockers for less than a year and those not given puberty blockers at all, “but found worse executive functioning in those treated for more than one year compared to those not treated.”⁸⁷ Common sense suggests that delaying puberty, one of the most important physiological and psychological developmental milestones in a person’s life, would have lifelong impacts.

Next, the Cass Review argues that, “[i]f puberty suppression is started too early in birth-registered males it can make subsequent vaginoplasty (creation of a vagina and vulva) more difficult due to *inadequate penile development.*”⁸⁸ Puberty blockers can prevent a child’s sexual development such that, as an adult, he will not have properly developed genitalia.⁸⁹ Such destruction of young bodies is not unlike

⁸⁶ Cass, *supra* note 74 at 178 (emphasis added).

⁸⁷ *Id.*

⁸⁸ *Id.* (emphasis added).

⁸⁹ That these interventions could permanently close doors the importance of which the child or adolescent in question could not possibly understand at his age is not the

those mutilations discussed above of young boys’ and girls’ bodies now rightly seen as barbaric relics.

Around the country, Americans have spoken out and voted against policies that harm children and families and take opportunities away from girls and women. Many have also sought judicial relief when dangerous policies have affected their own lives. Colorado would see dissenting voices from its preferred ideology not only silenced but coopted. The Constitution does not permit the state to turn citizens into mouthpieces for its social and policy preferences. This Court should direct the district court to enter the requested preliminary injunction.

CONCLUSION

For the forgoing reasons, this Court should rule for Plaintiffs-Appellants.

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exercise of autonomy, but its destruction. *See, generally*, Moti Gorin, *What is the Aim of Pediatric “Gender-Affirming” Care?*, 54 Hastings Center Report 15 (2024).

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation set forth in Circuit Rule 32-1(a) and Federal Rules of Appellate Procedure 32(a)(5)(A). This brief uses a proportional typeface and 14-point font, and contains 5,946 words.

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Counsel for Amici Curiae hereby certifies that all required privacy redactions have been made, which complies with the requirements of Federal Rule of Appellate Procedure 25(a)(5).

Counsel also certifies that any and all hard copies submitted to the Court are exact copies of the ECF filing from June 15, 2026.

Counsel further certifies that the ECF submission was scanned for viruses with the most recent version of a commercial virus scanning program (SentinelOne software version 24.2.3.471 [June 15, 2026]), and, according to the program, is free of viruses.

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I hereby certify that on June 15, 2026, I electronically filed the foregoing with the United States Court of Appeals for the Tenth Circuit using the CM/ECF system, which automatically will send notification of such filing to counsel of record.

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