

**Nos. A23-0373 & A23-0621**

---

STATE OF MINNESOTA  
IN SUPREME COURT

---

JayCee Cooper,

Appellant,

vs.

USA Powerlifting and  
USA Powerlifting Minnesota

Respondents,

---

**BRIEF OF *AMICI CURIAE* TRUE NORTH LEGAL, NATIONAL LEGAL  
FOUNDATION, AND MINNESOTA FAMILY COUNCIL**

---

Renee K. Carlson (#0389675)  
TRUE NORTH LEGAL  
525 Park Street, Suite 460  
St. Paul, Minnesota 55103  
rcarlson@truenorthlegalmn.org  
(651) 363-4547

*Counsel for Amici Curiae*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

STATEMENTS OF INTEREST ..... 1

SUMMARY OF THE ARGUMENT ..... 2

ARGUMENT ..... 3

    I.    MINNESOTA ANTI-DISCRIMINATION LAWS EXPRESSLY PERMIT  
          GENDER-SPECIFIC SPORTS TEAMS BASED ON BIOLOGY ..... 3

          A. Minnesota Law Unambiguously Allows and Encourages  
              Separate Sports Teams for Biological Women and Men ..... 3

          B. The MHRA Protects Against both Sex and Gender Identity  
              Discrimination ..... 4

    II.   WHILE *GOINS* DOES NOT CONTROL THE OUTCOME OF THIS CASE, ITS  
          REASONING IS BOTH CORRECT AND CONSISTENT WITH USAPL’S  
          POSITION ..... 8

    III.  THE SCIENTIFIC EVIDENCE DEMONSTRATES THAT BIOLOGICAL MEN  
          HAVE A SIGNIFICANT AND ENDURING ADVANTAGE OVER BIOLOGICAL  
          WOMEN IN MOST SPORTS, INCLUDING POWERLIFTING ..... 10

CONCLUSION ..... 15

CERTIFICATION OF LENGTH OF DOCUMENT ..... 16

CERTIFICATION OF ELECTRONIC SERVICE ..... 18

## TABLE OF AUTHORITIES

	Pages
<b>Federal Cases</b>	
<i>Ballard v. United States</i> , 329 U.S. 187 (1946) .....	14
<i>Michael M. v. Superior Ct.</i> , 450 U.S. 464 (1981).....	9
<i>Nguyen v. INS</i> , 533 U.S. 53 (2001) .....	8, 9
<i>Schlesinger v. Ballard</i> , 419 U.S. 498 (1975).....	9
<i>Scott v. CSL Plasma, Inc.</i> , 151 F. Supp. 961 (D. Minn. 2015) .....	8
<i>United States v. Virginia</i> , 518 U.S. 515 (1996) .....	9, 15
<b>State Cases</b>	
<i>Anderson v. Hunter, Keith, Marshall &amp; Co.</i> , 417 N.W.2d 619 (Minn. 1988) ...	7
<i>Cooper v. USA Powerlifting</i> , 5 N.W.3d 689 (Minn. Ct. App. 2024).....	4
<i>Christiansen v. Henke</i> , 831 N.W.2d 532 (Minn. 2013) .....	7
<i>Goins v. West Group</i> , 635 N.W.2d 717 (Minn. 2001) .....	8
<i>In re Johnson</i> , 968 N.W.2d 589 (Minn. App. 2021).....	7
<i>State v. Nelson</i> , 842 N.W.2d 433 (Minn. 2014) .....	7
<i>State v. Pakhnyuk</i> , 926 N.W.2d 914 (Minn. 2019) .....	7
<i>State v. Stay</i> , 935 N.W.2d 428 (Minn. 2019) .....	7
<b>Statutes and Regulations</b>	
34 C.F.R. §106.41 (b) .....	4
Ala Code §16-1-52 .....	2

Ariz. Code §15-120.02 .....	2
Ark. Code §6-1-107 .....	2
Fla. Stat. §1006.205 .....	2
Idaho Code §33-6201-06 .....	2
Ind. Code §20-33-13-4 .....	2
Iowa Code Ch. 261I .....	2
Kan. Stat. §60-5601-5606 .....	2
Ky. Stat. §164.2813 .....	2
La. Stat. §4:444.....	2
Minn. Stat. §121A.04 (2018) .....	3, 4, 5, 10
Minn. Stat. Ch. §363A (2018).....	3
Minn. Stat. §363A.02 (2018).....	3
Minn. Stat. §363A.03 (2018) .....	3, 6
Minn. Stat. §363A.11 (2018) .....	3, 5
Minn. Stat. §363A.12 (2018) .....	3
Minn. Stat. §363A.23 (2018) .....	3, 4, 5, 10
Minn. Stat. §363A.24 (2018) .....	passim
Minn. Stat. §645.16.....	7
Miss. Code §37-97-17 .....	2
Mo. Stat. §163.048.....	2

Mont. Code §20-7-1306–13072 .....2

N.C. Gen. Stat. §116-400–403 .....2

N.D. Cent. Code Ch. §15.1-41-01 .....2

70 Okla. Stat. §27-106 .....2

S.C. Code §59-1-500 .....2

S.D. Code §13-67-1 .....2

Tenn. Code §49-7-180 .....2

Tex. Educ. Code §51. 980 .....2

Utah Code §53G-6-901–904 .....2

W. Va. Code §18-2-25d ..... 2

Wyo. Stat. §21-25 101–102 .....2

**Other Authorities**

Bartolomei, Sandro, Giuseppe Grillone, Rocco Di Michel and Matteo Cortesi,  
*A Comparison between Male and Female Athletes in Relative Strength  
and Power Performances*, *Journal of Functional Morphology and  
Kinesiology* 2021 Mar; 6(1): 17 .....14

Br. *Amici Curiae* of Rep. Barbara Ehardt of Idaho *et al.*, *Little v. Hecox*, No.  
24-38 (U.S., filed Aug. 14, 2024) .....1

CBS News, *San Jose State Women’s Volleyball Team Faces Multiple  
Opponent Forfeits After Lawsuit Alleges Trans Player*, October 3, 2024,  
[https://www.cbsnews.com/sanfrancisco/news/san-jose-state-womens-  
volleyball-team-multiple-canceled-games-utah-state/](https://www.cbsnews.com/sanfrancisco/news/san-jose-state-womens-volleyball-team-multiple-canceled-games-utah-state/) .....5

Hecheated.org .....11

Hilton, Emma and Tommy Lundberg, *Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage*, *Sports Medicine* 51(2), 199-214.....12, 13

Human Rights Campaign, *Sexual Orientation and Gender Identity Definitions*, accessed at <https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions> (accessed October 6, 2024) ..... 6

Hunter, Sandra K., Siddhartha S. Angadi, Aditi Bhargava, *et al.*: *The Biological Basis of Sex Differences in Athletic Performance: Consensus Statement for the American College of Sports Medicine*, 8 *Translational J. of the ACSM*, vol. 4, 1-3 (2023) .....11, 13, 14

Juliano, Margaret E., *Forty Years of Title IX: History and New Applications*, 14 *Del. L. Rev.* 83 (2013) .....2

Justice Antonin Scalia and Bryan A. Garner in *Reading Law: The Interpretation of Legal Texts* (2012).....7

Reem Alsalem, *Report of the Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences*, United Nations General Assembly, 79<sup>th</sup> Sess., U.N. Doc. A/79/325 (August 27, 2024) .....passim

Shewon.org.....11

Silverberg, Avi, “*What Is Powerlifting? (Definitive Guide)*” accessed at [www.powerliftingtechnique.com/what-is-powerlifting/](http://www.powerliftingtechnique.com/what-is-powerlifting/) (Jan. 18, 2024)....13

Wells, Jonathan C.K., *Sexual Dimorphism of Body Composition*, *Best Practice and Research: Clinical Endocrinology and Metabolism* 21 (2007) .....12

Woodall, David, *Identity Checkup*, 68 *Salvo* (Spring 2024).....12

## STATEMENTS OF INTEREST<sup>1</sup>

**True North Legal**, a non-profit legal organization established under section 501(c)(3) of the Internal Revenue Code, is a public interest law firm which promotes and defends life, family, and religious freedom by engaging in educational initiatives, public policy, and the courts. True North Legal has, since its inception, supported fairness in female athletic opportunities and competition for women and girls. True North Legal has testified before the Minnesota Legislature on bills related to preserving female athletic opportunities and sex-based distinctions in sport that seek to eliminate hard fought gains that women and girls have enjoyed for nearly fifty years since the passage of federal laws that seek to protect them. In addition, True North Legal recently participated as counsel for *amicus curiae* before the Supreme Court of the United States, *Br. Amici Curiae* of Rep. Barbara Ehardt of Idaho *et al.*, *Little v. Hecox*, No. 24-38 (U.S., filed Aug. 14, 2024), representing the bill author Rep. Barbara Ehardt, along with fifty-five state legislators and thirty-four family policy councils across the country in support of Idaho's Fairness in Women's Sports Act, which protects women and girls athletic opportunities from males who seek to colonize women's sports teams, displacing them from podiums, proper team placements, and scholarship opportunities.

The **National Legal Foundation** (NLF) is a public interest law firm dedicated to the defense of fundamental parental rights and First Amendment liberties, including the freedoms of speech, assembly, and religion. The NLF and its donors and supporters, in particular those from Minnesota, are vitally concerned with the outcome of this case because of its effect on the fundamental rights of women and their ability to fairly compete in athletic competitions.

The **Minnesota Family Council** (MFC) is a non-profit organization under section 501(c)(4) of the Internal Revenue Code. MFC is a non-partisan, grassroots organization, which seeks to strategically advance biblical truth in the public arena for life, family, and religious freedom, through citizenship worthy of the gospel of Christ. MFC represents the voice of tens of thousands of Minnesotans in its public policy engagement at the Minnesota Legislature

---

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

and has specifically engaged in advancing legislation that protects female athletic opportunities for women and girls across the state.

## SUMMARY OF THE ARGUMENT

Providing separate athletic leagues for biological males and females has worked magic, increasing the number of girls in high school varsity sports by nearly 1000% in Title IX's first four decades alone. *See* Margaret E. Juliano, *Forty Years of Title IX: History and New Applications*, 14 Del. L. Rev. 83, 83 (2013). If anything, states across the country are doubling down on protecting female athletes<sup>2</sup> while Appellants threaten nearly fifty years of progress by asking this Court to allow biological males to participate in and dominate biological females' sports.

Appellant attempts to undo this progress for women by misreading and misapplying Minnesota law. Most notably, it fails to recognize that the Minnesota legislature, in the Minnesota Human Rights Act ("MHRA") and elsewhere, specifically allows and encourages entities to provide separate sports teams for men and women according to their biological sex.

Appellant also ignores court decisions, including those by this Court and the Supreme Court of the United States, recognizing that inherent biological differences between men and women are properly acknowledged and merit different legal treatment. These prior decisions are supported by scientific evidence. Biology grants men in many athletic competitions, including powerlifting, a significant advantage warranting their own category, separate from biological female competitors. Otherwise, biological women will no longer have a level playing field in their own sports category.

---

<sup>2</sup> See Ala. Code 16-1-52; Ariz. Code 15-120.02; Ark. Code 6-1-107; Fla. Stat. 1006.205; Idaho Code 33-6201-06; Ind. Code 20-33-13-4, Iowa Code Ch. 261I; Kan. Stat. 60-5601-5606; Ky. Stat. 164.2813; La. Stat. 4:444; Miss. Code 37-97-1, Mo. Stat. 163.048; Mont. Code 20-7-1306-1307; N.C. Gen. Stat. 116-400-403; N.D. Cent. Code Ch. 15.1-41-01; Ohio Code 3313.5320; 70 Okla. Stat. 27-106, S.C. Code 59-1-500; S.D. Code 13-67-1; Tenn. Code 49-7-180; Tex. Educ. Code 51.980; Utah Code 53G-6-901-904; W. Va. Code 18-2-25d; Wyo. Stat. 21-25 101-102.



## ARGUMENT

### I. MINNESOTA ANTI-DISCRIMINATION LAWS EXPRESSLY PERMIT GENDER-SPECIFIC SPORTS TEAMS BASED ON BIOLOGY.

#### A. Minnesota Law Unambiguously Allows and Encourages Separate Sports Teams for Biological Women and Men.

Minnesota lawmakers have consistently and unambiguously allowed and encouraged entities to field separate sports teams based on biological sex both in the MHRA and in other sections of Minnesota law. *See, e.g.* Minn. Stat. §363A.24; §121A.04; §363A.23, subd. 2. Minnesota law is clear—biological women should not be forced to compete against biological men when inherent sex differences place biological women at a disadvantage.

The MHRA prohibits a public service or public accommodations provider from discriminating on the basis of “sex” or “sexual orientation” (which includes gender identity).<sup>3</sup> Minn. Stat. §363A.02; §363A.11; §363A.12. In so doing, the MHRA contains a specific exemption for women’s athletics in §363A.24, which is designed to provide biological women with the chance to have an equal opportunity to play sports by creating separate teams for biological women only. Section 363A.24 explicitly addresses the circumstances permitting separate sports teams between men and women and laying out the factual qualifiers to obtain the exemption: “The provisions of section 363A.11 relating to sex do not apply to restricting membership on an athletic team or in a program or event to participants of one sex *if the restriction is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.*” Minn. Stat. §363A.24 (2018) (emphasis added). Thus, the MHRA contains a clear statement that separate sports teams based on biology are not discriminatory, but instead are allowed when

---

<sup>3</sup> The applicable version of §363A does not contain an explicit reference to gender identity, using the term “sexual orientation” instead. This term was defined to include gender identity. *See* Minn. Stat. §363A.03, subd. 44 (2018). In 2023, the Legislature amended §363A to include “gender identity” but those changes are not at issue in this case (and do not appear to have changed the operative definition of “gender identity”). All future references to Minnesota Statutes will be to the 2018 version unless otherwise noted.

the unique character of the sport requires different teams based on biological sex.

This case fits squarely within the exemption and qualifications articulated in §363A.24. The record shows that USAPL’s actions are consistent with the statute in its determination that allowing biological males to compete against biological women in powerlifting competitions “confers an unfair competitive advantage over non-transgender females due to increased bone density and muscle mass from pubertal exposure to testosterone.”<sup>4</sup> *Cooper v. USA Powerlifting*, 5 N.W.3d 689, A23-0373 at 7 (Minn. Ct. App. 2024). Thus, USAPL meets §363A.24’s requirement because restricting the female category to biological females is “necessary to preserve the unique character of the team, program, or event.” Minn. Stat. §363A.24.<sup>5</sup> USAPL further meets the statutory requisite by providing Cooper with the opportunity to participate against male-bodied athletes in the biological male category of its competition. *Cooper*, A23-0373 at 7.

#### B. The MHRA Protects Against Both Sex and Gender Identity Discrimination.

Additional support for USAPL’s stance is found in §121A.04, which requires public service providers “to provide an equal opportunity for members of each sex ... to participate in athletic programs.” *Id.*, subd. 2; *see also* Minn. Stat. §363.23, subd. 2. This statute, like Title IX in federal law, explicitly permits sports teams to “be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Minn. Stat. §121A.04, subd. 3(d); *see also* 34 C.F.R. §106.41 (b) (under Title IX, entities “may operate or sponsor separate teams for members of each sex”). Thus,

---

<sup>4</sup> See Section III *infra* for the compelling scientific basis for this assessment.

<sup>5</sup> *See also* Reem Alsalem, *Report of the Special Rapporteur on Violence Against Women and Girls, its Causes and Consequences*, United Nations General Assembly, 79<sup>th</sup> Sess., U.N. Doc. A/79/325 at ¶¶ 85, 90(b) (August 27, 2024) (“UN Report”) (recommending women’s sports teams be “exclusively accessible to persons whose biological sex is female by gender” because “separate-sex sports is a proportional action that corresponds to legitimate aims”).

sports teams restricted to biological women are not only permissible, but arguably required by Minnesota law.<sup>6</sup>

Appellant seeks to ignore the existence of Minnesota law’s unambiguous decision to allow equal opportunity for biological women through separate sports teams by failing to acknowledge §121A.04’s statement that “teams may be restricted to members of a sex whose overall athletic opportunities have been previously limited.” Nor does Appellant acknowledge similar language in §363A.23. With respect to the statutory exemption in §363A.24, Appellant further seeks to unravel the hard-fought gains of women’s participation in athletics by asking this Court to ignore the plain language of the statute and create a new, radical interpretation of Minnesota law.

The Appellant argues that §363A.24’s explicit approval of separate sports teams based on biological sex does not apply because the statute does not specifically use the term sexual orientation or transgender, App. Br. at 27. Appellant further argues that §363A.24 is meant to protect “sex” not in a biological sense, but in a fluid, transgender sense. Not only is there no statutory language to this effect, but this argument ignores the plain language of §363A.24, which bears repeating: “The provisions of section §363A.11

---

<sup>6</sup> Appellant’s view would invite risk of potential liability under Minn. Stat. §121A.04. Followed to its logical conclusion, Appellant’s reasoning could force biological females who wish to enter a USAPL powerlifting competition to compete against individuals identifying as transgender women (biological men) – male-bodied individuals who have gone through puberty, possessing an unfair physical advantage over female competitors in the female category (see Section III *infra*). In response, a biological female competitor could sue USAPL under Minn. Stat. §121A.04 for not providing her with an “equal opportunity” to “participate in its athletic program.” USAPL’s actions to protect female athletic categories are consistent with the concerns of at least four collegiate women’s volleyball teams across the country who have forfeited games based on reasonable belief that San Jose State is allowing a biological male to compete on its women’s volleyball team. *San Jose State Women’s Volleyball Team Faces Multiple Opponent Forfeits After Lawsuit Alleges Trans Player*, CBS News, October 3, 2024 at 1 (internet pagination), accessed at <https://www.cbsnews.com/sanfrancisco/news/san-jose-state-womens-volleyball-team-multiple-canceled-games-utah-state/> (accessed on October 9, 2024).

relating to sex, do not apply to restricting membership on an athletic team or in a program or event to participants of one sex *if the restriction is necessary to preserve the unique character of the team, program, or event and it would not substantially reduce comparable athletic opportunities for the other sex.*” Minn. Stat. §363A.24 (emphasis added). As USAPL pointed out numerous times, and as supported by significant scientific evidence and studies as further discussed in section III *infra*, biological males have an inherent, overwhelming, and enduring strength and lifting advantage over biological females in powerlifting. An attempt by a biological male to *destroy* the “unique character” of women’s powerlifting by competing against biological females is exactly the sort of harm that §363A.24 was meant to prevent.

Additionally, Appellant altogether ignores the MHRA’s definition of “sex,” which states that it “includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.” Minn. Stat. §363A.03, subd. 42. “Pregnancy” and “childbirth” are life experiences that are tethered to the female reproductive system. Neither science nor anthropology has yet to figure out how to bypass female anatomy in reproduction. Therefore, this definition of “sex” lends even more clarity to §363A.24—it is meant to protect biological males from hijacking women’s sports, which is precisely what Appellant is asking this Court to permit.

Attempting to overcome Minnesota’s statutory preference for biological females to have their own sports teams, Appellant conflates “sex” (in other words biology or bodies) with gender identity,<sup>7</sup> claiming “biology is necessarily intertwined with a person’s transgender status.” App. Br. at 24 (quoting Judge Frisch’s dissent to the decision below). Appellant faults the powerlifting association for determining that “transgender women categorically fail to fit USAPL’s definition of a ‘woman.’” App. Br. at 25. Appellant also argues that discrimination occurs against a transgender person when an entity “treat[s]

---

<sup>7</sup> Even the Human Rights Campaign, a national, self-described LGBTQ+ advocacy group, recognizes that “gender identity” is distinctly different than “sex”, defining gender identity as “one’s innermost concept of self as male, female, a blend of both or neither” which “*can be the same or different from their sex.*” See Human Rights Campaign, *Sexual Orientation and Gender Identity Definitions* at 1 (internet pagination), accessed at <https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions> (accessed Oct. 6, 2024) (emphasis added).

them only in accordance with their sex assigned at birth.” Appellant Pet. for Review at 7. Appellant claims this interpretation is necessary to give full meaning to the words “sexual orientation” under the MHRA.

Appellant’s actual disagreement, however, is with Minnesota law, which states that “sex” and “gender identity” are two differing categories, defines “sex” in biological terms, and provides explicit endorsement for separate sports teams ensuring opportunities for biological women. Furthermore, if accepted, Appellant’s argument reads “sex” out of the MHRA when a sexual orientation or gender identity claim is presented, profoundly disadvantaging and displacing women and girls. Canons of legal interpretation prohibit this outcome. As outlined by former Justice Antonin Scalia and Bryan A. Garner in *Reading Law: The Interpretation of Legal Texts* (2012) (“Scalia and Garner”), all words are to be given equal dignity when construing a text:

Surplusage Canon: “If possible, every word and every provision is to be given effect . . . . None should needlessly be given an interpretation that causes it . . . to have no consequence.”

*Id.* at 174; Minn. Stat. §645.16 (“every law shall be construed, if possible, to give effect to all its provisions”); *see also State v. Nelson*, 842 N.W.2d 433, 439 (Minn. 2014) (citing to Scalia and Garner’s Surplusage Canon discussion).<sup>8</sup>

Under this canon, both “sex” and “sexual orientation” must be given meaning in all MHRA cases, including claims based on sexual orientation and gender identity. The separate meanings of “sexual orientation” and “sex” have been clearly established under Minnesota law. The line running through these cases is straightforward — “sex” discrimination bars discriminatory conduct based on biological sex, and “sexual orientation” discrimination (in the transgender context) bars discriminatory conduct based on transgender status. *See Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 627

---

<sup>8</sup> Minnesota courts have frequently relied upon the Scalia and Garner text when deciphering the meaning of statutes. *See e.g., State v. Pakhnyuk*, 926 N.W.2d 914, 922 (Minn. 2019); *State v. Stay*, 935 N.W.2d 428, 432 (Minn. 2019); *Christiansen v. Henke*, 831 N.W.2d 532, 543 (Minn. 2013); *In re Johnson*, 968 N.W.2d 589, 592 (Minn. App. 2021).

(Minn. 1988) (holding that an employer’s decision to terminate a female employee based on her pregnancy is unlawful sex discrimination); *Scott v. CSL Plasma, Inc.*, 151 F. Supp. 961, 968 (D. Minn. 2015) (the court denied Defendant’s motion for summary judgment reasoning the facts supported a possibility of personal animus based on sexual orientation rather than a legitimate business purpose in rejecting a transgender individual from becoming a plasma donor). Unlike Appellant’s view, this reading of the MHRA gives full meaning to both “sex” and “sexual orientation.” This interpretation also supports USAPL’s decision to: 1) create different powerlifting categories based on biological sex; and 2) offer a person, like Appellant, who identifies as transgender but who retains the physical advantages of being a biological male, the ability to compete in the biological male category against other male-bodied athletes.

## II. WHILE *GOINS* DOES NOT CONTROL THE OUTCOME OF THIS CASE, ITS REASONING IS BOTH CORRECT AND CONSISTENT WITH USAPL’S POSITION.

Appellant spends significant time arguing that this Court wrongly decided *Goins v. West Group*, 635 N.W.2d 717 (Minn. 2001), and that it should be overruled. *Goins* dealt with whether MHRA barred as discriminatory a biological male identifying as a transgender woman from using the woman’s bathroom. The court found that it was not, based on the male biological status of the transgender petitioner, the fact that it is the “traditional and accepted practice” to provide sex-separated facilities for women in intimate settings like bathrooms, and “absent more express guidance from the legislature” the court refused to acquiesce to petitioner’s reading beyond the parameters of the statute to resolve the matter. *Id.* at 723. This reasoning is sound, and there is no cause to reconsider the decision.

*Goins* is also consistent with Supreme Court decisions permitting legislative distinctions based on biological sex. The core holding of these cases is that it is permissible for the legislature to take note that biological men and women are different and that these differences have real-world consequences, which are properly the subject of legislative distinctions. For example, in *Nguyen v. INS*, 533 U.S. 53, 59-73 (2001), the Court upheld a law allowing different citizenship rules for children born abroad and out of wedlock depending on whether the citizen parent is the biological mother or the father.

Reasoning the law was not a violation of equal protection, the Court held, “The use of gender specific terms takes into account a biological difference between the parents. The differential treatment is inherent in a sensible statutory scheme, given the unique relationship of the mother to the event of birth.” *Id.* at 64. *See also; Michael M. v. Superior Ct.*, 450 U.S. 464, 469-473 (1981) (the Court held that criminal law punishing biological males under the age of seventeen, and not biological females, for the same offense is constitutional, reasoning this “difference does not result from some stereotype”); *Schlesinger v. Ballard*, 419 U.S. 498, 418 (1975) (gender-based classifications in naval operations that favor one sex are justifiable in certain cases aiming to provide women officers with “fair and equitable career advancement programs”).

Similarly, the *Goins* court determined that it was reasonable for a private company to consider sex-based distinctions in deciding that biological differences between men and women justify accommodating female preferences (including concerns about privacy, modesty, and safety from even the remote possibility of sexual violence) for separate facilities in intimate settings like locker rooms and restrooms. Consistent with the Supreme Court’s analysis of sexual distinctions in equal protection claims in cases concerning equal opportunity for women, the *Goins* court did not pretend there are no biological differences between men and women. We encourage this Court to do the same.<sup>9</sup>

---

<sup>9</sup> Further, in upholding this bedrock principle of sex-based distinctions in equal protection jurisprudence, the Supreme Court has recognized that “[p]hysical differences between men and women ... are enduring”. *United States v. Virginia*, 518 U.S. 515, 533 (1996). These enduring differences are particularly pronounced in protecting the rights of females to participate in athletics. The recently published United Nations report addressing violence against women and girls in sports bolsters an avalanche of findings cataloguing the obstacles encountered by female athletes solely because of their female sex, especially when biological men seek to invade their sport. *See UN Report* ¶¶ 7, 10, 11, 12, 24, 30, 32, 33, 76, 84, 85, 90 (b), (d). To be sure, the report corroborates the physical and emotional harms to females when biological men are allowed to compete in women’s sports. The report also sheds light on other, often quieted concerns faced by female athletes such as physical violence, sexual violence, coercive control, and sexual assault (to name a few) resulting from the power dynamic between males and females in

In any event, this case is even clearer than *Goins*, because the Minnesota Legislature has plainly and repeatedly expressed a statutory preference for maintaining separate sports teams for biological females. *See* Minn. Stat. §363A.23, §363A.24, §121A.04. As discussed in Section I, those statutes outline specific statutory exemptions and defenses applicable to USAPL’s decision to include a separate and distinct category for biological women in powerlifting. In this case, the legislature has provided express guidance in support of USAPL’s position. Moreover, as in *Goins*, the “traditional and acceptable” practice for decades has been to separate men and women in contact sports to prevent injuries to women based on physiological differences, and to promote fairness for women in non-contact sports as shown in the next section.

### III. THE SCIENTIFIC EVIDENCE DEMONSTRATES THAT BIOLOGICAL MEN HAVE A SIGNIFICANT AND ENDURING ADVANTAGE OVER BIOLOGICAL WOMEN IN MOST SPORTS, INCLUDING POWERLIFTING.

Appellant claims that USAPL’s decision to protect the integrity of women’s powerlifting was based on “generalizations” that have no place in the USAPL’s decision-making framework. Pet. for Review at 6. Appellant further claims that that any statement or study contrary to their worldview regarding gender ideology is “junk science” claiming there is not one “valid and reliable” study that demonstrates the unfairness of biological men competing against biological women. App. Br. at 9. These statements are flatly and demonstrably wrong. As this section will demonstrate, a veritable ocean of credible scientific data clearly and convincingly demonstrates that biological men are at a significant advantage over biological women in most sports, including (and even especially) powerlifting.

The reason for separate groupings of men and women for sports is simple — biological men and women have different physiologies that almost always give men a competitive advantage, as sports normally advantage the

---

sport. The recommendations flowing from this evidence are another weight in favor of USAPL’s position to preserve female only categories.



faster, quicker, and stronger. These advantages of males, demonstrated throughout history, are not negated in the current day by males who “identify” as females. As example after example shows, male-bodied athletes competing in female categories quickly move to the top of the class in “girls” or “women’s” competitions, while the opposite does not occur.<sup>10</sup>

The recent “Consensus Statement” of the American College of Sports Medicine explains and illustrates these basic, physiological truths. It provides this illustrative example:

[T]he advantages of men over women in athletic performance that require muscle power and endurance are illustrated in the comparison of the best times of men 400-m runners and the top 3 women running times in 2019 where motivation does not differ between sexes. . . . Over 10,000 men (including boys <18 yr) ran faster than the three fastest recorded women in that year (2019), illustrating no overlap in the performance of men and women at the top level. These numbers underscore the historical and current rationale for biological sex–based categories in many athletic events because the top adult males almost always outperform the top females in events that rely on muscle power, strength, speed, and/or endurance.<sup>11</sup>

A recent report by the United Nations concurs: “Multiple studies offer evidence that athletes born male have proven performance advantages in sport throughout their lives.”<sup>12</sup>

---

<sup>10</sup> See, e.g., <http://shewon.org> and <http://hecheated.org> for extensive, current lists of biological female athletes who have lost competitions to biological males identifying as transgender, (occurring over 3,000 times since October 2024) (accessed Oct. 11, 2024).

<sup>11</sup> Sandra K. Hunter, Siddhartha S. Angadi, Aditi Bhargava, *et al.*: *The Biological Basis of Sex Differences in Athletic Performance: Consensus Statement for the American College of Sports Medicine*, 8 *Translational J. of the ACSM*, vol. 4, 1-33 (2023) (“Consensus Statement”).

<sup>12</sup> UN Report at ¶33.

These differences are not, and cannot be, undone by emasculation, hormonal manipulation, or other treatments.<sup>13</sup> First and foremost, every cell of the trillions in a person's body (except mature red blood cells and reproductive cells) contains either XX or XY chromosomes, and will always do so.<sup>14</sup> Moreover, male-female differences begin during early embryogenesis<sup>15</sup> and accelerate as children mature.<sup>16</sup> Females on average start puberty earlier than boys and transition through puberty faster, while boys grow more slowly for a longer period.<sup>17</sup> The process results in important physiological differences:

Males have: (a) larger and denser muscle mass and stiffer connective tissue, with associated capacity to exert greater muscular force more rapidly and efficiently; (b) reduced fat mass and different distribution of body fat and lean muscle mass, which increases power to weight ratios and upper to lower limb strength in sports where this may be a crucial determinant of success; (c) longer and larger skeletal structure, which creates advantages in sports where levers influence force application, where longer limb/digit length is favorable, and where height, mass and proportions are directly responsible for performance capacity; and (d) superior cardiovascular and respiratory function, with larger blood and heart volumes, higher hemoglobin concentration, greater cross-sectional area of the trachea and lower oxygen

---

<sup>13</sup> UN Report at ¶12 (“pharmaceutical testosterone suppression for genetically male athletes – irrespective of how they identify – will not eliminate the set of comparative performance advantages they have already acquired.”).

<sup>14</sup> David Woodall, *Identity Checkup*, 68 *Salvo* (Spring 2024), available at <https://salvomag.com/article/salvo68/identity-checkup>.

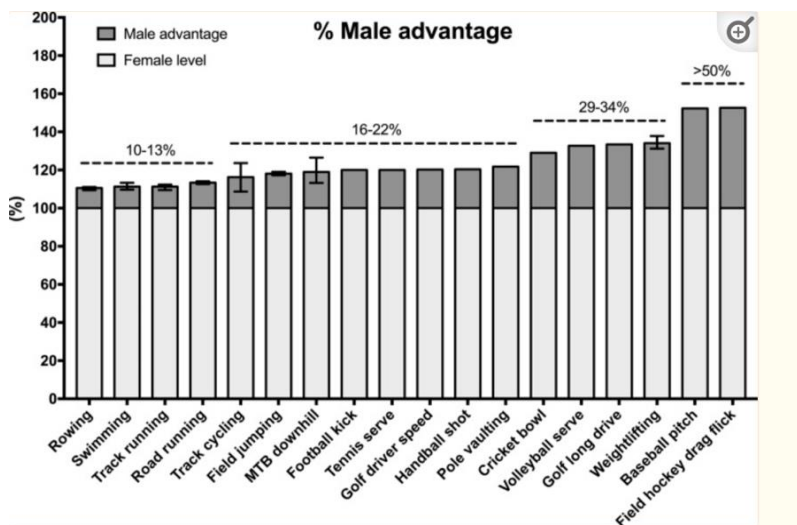
<sup>15</sup> Emma Hilton and Tommy Lundberg, *Transgender Women in the Female Category of Sport: Perspectives on Testosterone Suppression and Performance Advantage*, *Sports Medicine* 51(2), 199-214 at 2 (internet pagination) (2021) (“Hilton and Lundberg”).

<sup>16</sup> *Id.* at 4. At the age of 9, the average male was almost 10% faster than an average female, could finish a mile 16.6% faster, could jump 9.5% further from a standing stop, and could do one-third more push-ups in a 30-second span.

<sup>17</sup> Jonathan C.K. Wells, *Sexual Dimorphism of Body Composition*, *Best Practice and Research: Clinical Endocrinology and Metabolism* 21 (2007): 415.

cost of respiration.<sup>18</sup> For example, by the time they are 17, an untrained, average boy throws a ball farther than 99% of his female counterparts.<sup>19</sup>

The American College of Sports Medicine in its Consensus Statement reports that these physiological differences result in male advantage in various sports, including weightlifting, that range from a low of 10% (rowing) to over 50% (field hockey), as illustrated in the following chart:<sup>20</sup>



In powerlifting, the goal is to lift the greatest weight possible in the squat, bench press, and deadlift.<sup>21</sup> Powerlifting is designed to be “a sport that tests maximal strength.”<sup>22</sup> In such a strength contest, the differences between biological men and women are stark. The powerlifting male record in the open weight category is 65% higher than the female record.<sup>23</sup> In addition, the male powerlifting record for one of the lighter weight classes (69 kg or 152 lbs) is 3.2% higher than the female record for the heaviest weight class (108 kg or 236 lbs) despite the significant intrinsic advantage that weight brings.<sup>24</sup>

<sup>18</sup> Hilton and Lundberg at 4-5.

<sup>19</sup> *Id.*; see also Consensus Statement at 9 (female arm muscle strength ranges from 50-60% of males, and about 60% to 80% in the lower limb muscles).

<sup>20</sup> *Id.* at 7.

<sup>21</sup> Silverberg, Avi, “*What Is Powerlifting? (Definitive Guide)*” accessed at [www.powerliftingtechnique.com/what-is-powerlifting/](http://www.powerliftingtechnique.com/what-is-powerlifting/) (Jan. 18, 2024) at 1 (accessed on October 4, 2024) (internet pagination).

<sup>22</sup> *Id.*

<sup>23</sup> Hilton and Lundberg at 8.

<sup>24</sup> *Id.*

A scientific review of the differences between biological men and women in powerlifting revealed similar results:

Firstly, women had lower maximal strength values when compared to men at bench press (-59.2%), squat (-57.2%), deadlift (-56.3%), and mid-shin pull (MSP, -53.2%). In addition, lower levels of power were detected in females in both the upper (-61.2%) and the lower body (-44.2%). This is consistent with previous studies that reported similar differences between men and women in the upper body.<sup>25</sup>

The authors found the reasons for this variability were many, including differences in anaerobic power, muscle fiber types, muscle quality, larger muscles, longer muscles, muscle thickness, and lean body mass.<sup>26</sup> In sum, the authors concluded that “significant differences in strength and power relative to body mass, lean body mass, and muscle thickness exist between male and female strength and power athletes.”<sup>27</sup> The Consensus Statement is in agreement, and concludes as follows:

These data overwhelmingly confirm that testosterone-driven puberty, as the driving force of development of male secondary sex characteristics, underpins sporting advantages that are so large no female could reasonably hope to succeed without sex segregation in most sporting competitions.<sup>28</sup>

The U.N. report concurs, stating “to avoid the loss of fair opportunity, males must not compete in the female categories of sport.”<sup>29</sup>

The simple, unalterable fact is that biological male powerlifters have large, inherent, and sustained advantages over biological female powerlifters, regardless of their transgender status. That difference is the *very reason* that the former person is called “*transgender*” and the latter is not. Biological males and females are “not fungible.” *Ballard v. United States*, 329 U.S. 187,

---

<sup>25</sup> Sandro Bartolomei, Giuseppe Grillone, Rocco Di Michel and Matteo Cortesi, *A Comparison between Male and Female Athletes in Relative Strength and Power Performances*, *Journal of Functional Morphology and Kinesiology* 2021 Mar; 6(1): 17 at 10 (internet pagination).

<sup>26</sup> *Id.* at 10-11.

<sup>27</sup> *Id.* at 12.

<sup>28</sup> Consensus Statement at 10.

<sup>29</sup> UN Report at ¶12.

193 (1946). Neither are biological females fungible with biological males identifying as females. “Gender identity” does not equate to “sex,” and it never will.

The USAPL’s decision to recognize these proven facts of biology and protect biological women’s ability to compete in powerlifting, while providing Appellant other opportunities to do so, is biologically, legally, and morally correct. USAPL has acted in harmony with Minnesota law, not contrary to it.

## CONCLUSION

Although room for improvement certainly remains, our nation has made great progress toward offering all Americans “equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities,” without regard to their sex. See *United States v. Virginia*, 518 U.S. 515, 532 (1996). In the case of female athletics, that equality requires, in virtually all cases, separate spaces and teams for women and girls. Recognition of that reality has opened countless life-changing opportunities to females who would never have experienced them otherwise.

In that spirit, Minnesota, along with many other states, protects women’s rights to compete in sports by allowing and encouraging separate leagues for biological women and biological men. The USAPL did just that by creating distinct categories reflecting the enduring physical differences between biological men and women, thus preserving the hard-fought gains of women who seek to meaningfully compete in their own leagues and categories, including in powerlifting competitions. Its decision to do so was non-discriminatory and in full compliance with Minnesota law. The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

Dated: October 14, 2024

TRUE NORTH LEGAL

/s/ Renee K. Carlson

Renee K. Carlson

TRUE NORTH LEGAL

525 Park Street., Suite 460

St. Paul, Minnesota 55103

rcarlson@truenorthlegalmn.org

651-363-4547

COUNSEL FOR AMICI CURIAE  
TRUE NORTH LEGAL, NATIONAL  
LEGAL FOUNDATION, AND  
MINNESOTA FAMILY COUNCIL

## CERTIFICATION OF LENGTH OF DOCUMENT

I hereby certify that this document conforms to the requirements of the applicable rules, including Minnesota Rule of Appellate Procedure 132.01, subds.1 and 3(c)(1), is produced with a proportional 13 point font, and the length of this document is 5,044 words. This brief was prepared using Microsoft Word.

Dated: October 14, 2024

Respectfully Submitted,

/s/ Renee K. Carlson

Renee K. Carlson

TRUE NORTH LEGAL

525 Park Street., Suite 460

St. Paul, Minnesota 55103

rcarlson@truenorthlegalmn.org

651-363-4547

COUNSEL FOR AMICI CURIAE  
TRUE NORTH LEGAL, NATIONAL  
LEGAL FOUNDATION, AND  
MINNESOTA FAMILY COUNCIL

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that this document is being served on all parties by authorized use of the Court's electronic filing system, E-MACS, on October 14, 2024.

Date: October 14, 2024

TRUE NORTH LEGAL

/s/ Renee K. Carlson

Renee K. Carlson

TRUE NORTH LEGAL

525 Park Street., Suite 460

St. Paul, Minnesota 55103

r Carlson@truenorthlegalmn.org

651-363-4547

COUNSEL FOR AMICI CURIAE  
TRUE NORTH LEGAL, NATIONAL  
LEGAL FOUNDATION, AND  
MINNESOTA FAMILY COUNCIL