A23-0373
A23-0621

STATE OF MINNESOTA

IN SUPREME COURT

JayCee Cooper,

Petitioner,

v.

USA Powerlifting and
USA Powerlifting Minnesota,

Respondents.

BRIEF OF THE NATIONAL WOMEN'S LAW CENTER AND 20* ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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** Amended Motion for Leave to File pending as to these additional proposed amici*

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INTEREST OF AMICI CURIAE

Amici the National Women's Law Center ("NWLC") and other organizations[1] committed to gender justice, including the rights of survivors of gender-based violence; women and girls of color; and lesbian, gay, bisexual, transgender ("trans"), queer/questioning, and intersex[2] ("LGBTQI+") people, file this brief. NWLC is a nonprofit legal organization that advances and protects women's legal rights and the rights of all to be free from sex discrimination.

Since 1972, NWLC has worked to secure equal access and opportunity for women and girls, including LGBTQI+ people, through enforcement of the U.S. Constitution, Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.*, and other federal, state, and local laws prohibiting sex discrimination, like the Minnesota Human Rights Act ("MHRA").

Amici share an interest in ensuring protections against sex discrimination are properly interpreted to include protections against sexual orientation and gender identity discrimination.

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[1] No party's counsel contributed to this brief. But for *amici*, no one provided monetary contributions to prepare this brief. Minn. Civ. App. P. 129.03.

[2] Intersex is an umbrella term describing people who are born with or naturally develop differences in sex traits or anatomy that do not fit binary categories of "male" or "female." Intersex people may be cisgender, trans, or nonbinary. interACT Advocates for Intersex Youth, *What is intersex?* (last updated Jan. 26, 2021), https://interactadvocates.org/faq/#definition.

INTRODUCTION

This case concerns the basic human dignity of trans, nonbinary, and intersex people and their right to access public accommodations. Minnesota has recognized this right since 1993, when it expanded the MHRA, becoming the first state to protect trans people from discrimination in public accommodations. *See* Minn. Stat. § 363A.03 subdiv. 44. Public accommodations laws like the MHRA are crucial to remedying discrimination against all women, particularly trans, nonbinary, and intersex women and women of color—discrimination grounded in stereotypes about women and white-centric standards of femininity.

The Court of Appeals upended the MHRA's purpose by relying on pernicious tropes to exclude trans women from sports because of their trans status. When courts interpret public accommodations laws to exclude any woman—whether she is cisgender,[3] trans, or intersex—all women's rights are threatened, and these laws reproduce the discrimination they were designed to prevent. The discrimination Ms. Cooper suffered, which the Court of Appeals sanctioned, promotes racist and sexist stereotypes about femininity that encourage gender policing of all women in sports and public spaces—undermining the MHRA's broad remedial purpose.

Amici explain: (1) women's historical exclusion and the harmful stereotypes used to perpetuate discrimination, *see* Section I; (2) the evolution of nondiscrimination laws and

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[3] "Cisgender" describes people whose gender aligns with their sex assigned at birth, hereinafter "cis." August Samie, "cisgender," *Encyclopedia Brittanica* (Jul. 29, 2024), https://www.britannica.com/topic/cisgender. "Trans" describes people whose genders do not align with their sex assigned at birth.

related jurisprudence remedying discrimination and sex stereotyping, *see* Section II; (3) how the Court of Appeals' flawed opinion embraces sex stereotypes that undermine the MHRA, *see* Section III; and (4) that women in sports widely support trans-inclusive policies, *see* Section IV.

ARGUMENT

I. Women, Including Trans and Intersex Women, Have Long Faced Discrimination in Public Life.

Women have suffered discrimination and exclusion throughout our country's history, often to enforce gender stereotypes rooted in both racism and sexism. These stereotypes paint women as inherently inferior to men and devalue them if they do not meet white-centric standards of femininity that require them to be weak, submissive, and focused on domestic life and childcare. These stereotypes undergird pretextual justifications for excluding women of color and LGBTQI+ people from sports. Indeed, the appellate court in this case leaned on unfounded, pernicious stereotypes to authorize USA Powerlifting's ("USAPL's") ban on trans women. This is the latest species of a centuries-old practice of denying women full participation in public life.

A. Women have been excluded from public life throughout history.

Businesses, employers, schools, and governments have discriminated against women—sometimes enforcing "'romantic paternalism' which, in practical effect, put[s] women … in a cage." *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973). Throughout public life, women have endured wholesale exclusion—often sanctioned by courts and lawmakers.

The United States Supreme Court infamously held women lacked voting rights under the federal Constitution in 1874, reinforcing the notion that women were legally inferior. *Minor v. Happersett*, 88 U.S. 162, 178 (1874). The *Minor* Court relied on state constitutions, which reserved voting "to men alone," concluding the Constitution could not afford women suffrage as a privilege of citizenship. *Id.* Women's exclusion from the ballot box endured for generations.

Women were similarly denied access to other facets of public life. Men controlled "economic and political realms," and enjoyed "'a highly visible and extensive network of leisure institutions to which women had marginal or problematic access,' including poolrooms, gyms, barber shops, sports teams, lodges, and saloons"[4]—relegating many "women to the domestic realm."[5]

Exclusions endured even after women secured many de jure civil rights protections. For instance, laws limiting women's access to bars and nightlife remained effective into the mid-1970s. Bayonne, New Jersey's ordinance prohibiting sales "of alcohol and food to women … at a bar" remained until 1968. *Gallagher v. City of Bayonne*, 245 A.2d 373, 377 (N.J. Ch. Div. 1968), *aff'd*, 256 A.2d 61 (N.J. Sup. Ct. App. Div. 1969), *aff'd*, 259 A.2d 912 (N.J. 1969). And only in 1975 did the First Circuit invalidate Rhode Island's law prohibiting businesses from serving alcohol to women. *Women's Liberation Union of*

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[4] Elizabeth Sepper & Deborah Dinner, *Sex in Public*, 129 YALE L.J. 78, 89 (2019) (quoting KATHY PEISS, CHEAP AMUSEMENTS: LEISURE IN TURN-OF-THE-CENTURY NEW YORK (1985)).

[5] *Id*. at 88.

Rhode Island v. Israel, 512 F.2d 106 (1st Cir. 1975). Even when women *were* allowed, access often depended upon women's connection to their husbands. For instance, Minnesota country clubs refused women admission through 1973, unless as part of a man's family membership.[6]

Women's systematic denial of legal rights and exclusion from public and private spaces relies on harmful stereotypes, including that women are "weak" or "natural caregivers,"[7] needing "protection" from the evils of public life. These stereotypes come from generalizations painting womanhood as monolithic, punishing any women that challenge gender stereotypes.

Courts, including the Supreme Court, historically relied on these stereotypes to sanction discrimination:

- The Supreme Court upheld Oregon's law limiting women's work hours, because rigorous factory jobs could injure women who had the "burdens of motherhood." *Muller v. Oregon*, 208 U.S. 412, 421 (1908).
- The Court preserved Michigan's statute prohibiting women from bartending unless married to, or the daughter of, the "male owner of a licensed liquor establishment." *Goesaert v. Cleary*, 335 U.S. 464, 465 (1948). The Court allowed Michigan to institute "a sharp line between the sexes," that limited women to work as bar waitresses. *Id*. at 466–67.

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[6] Sepper, *supra* note 4, at 118–19 (citing Minn. Women's Int'l League for Peace & Freedom Testimony to Minn. Human Rights Dep't. 3 (Jul. 12, 1973)).

[7] Women of color contend with different stereotypes demonizing them for not conforming to white-centric *standards* of femininity; these standards equate innocence and purity with traits like thinness and light skin. These stereotypes are weaponized against Black and brown women in sports who have faced excessive scrutiny of their bodies and performance: for example, Caster Semenya, a Black woman sprinter, and Dutee Chand, an Indian woman sprinter, were both criticized for being "too fast" and "too muscular" to "truly be women." *See* Part I.B, *infra*.

- This Court upheld a similar law, saying "patrons when intoxicated are apt to become … unrestrained in their conduct, show[ing] the need for the presence of a man to effectually cope with such situations." *Anderson v. City of St. Paul*, 32 N.W.2d 538, 544 (Minn. 1948).

- The Oregon Supreme Court upheld a law banning women's boxing and wrestling, finding the legislature "intended … [for] one island on the sea of life reserved for man that would be impregnable to the assault of woman … [who] already invaded practically every activity formerly considered suitable and appropriate for men only." *State v. Hunter*, 300 P.2d 455, 458 (Or. 1956).

- The Sixth Circuit sanctioned a school basketball league's rules which, e.g., limited girls' play to half court, relying on "differences in physical characteristics and capabilities between the sexes." *Cape v. Tennessee Secondary Sch. Athletic Ass'n*, 563 F.2d 793, 795 (6th Cir. 1977).

Amplified by the courts, these harmful tropes—that women must be kept in their place as inferior, submissive, weak, or necessarily maternal—calcified and enabled further discrimination.

B. Stereotypes excluding women from public life have been weaponized against women athletes.

Stereotypes denying women access to public life have been deployed to exclude women from sports. These stereotypes are grounded in inaccurate and outdated notions that "aggressively physical competition unleashe[s] physical, sexual, and emotional passions that put girls at risk of bodily injury, sexual impropriety, and nervous collapse."[8] For example, the youth baseball organization Little League banned girls, claiming purported "physical differences between the sexes [meant] girls as a class were more likely to be injured in the game, which is played with a hard ball, than boys[.]" *Nat'l Org. for*

[8] Jaime Schultz et al., *Introduction*, in WOMEN AND SPORTS IN THE UNITED STATES: A DOCUMENTARY READER xiii, xvii (2d ed. 2019).

Women, Essex Cnty. Chapter v. Little League Baseball, Inc., 318 A.2d 33, 35 (N.J. Super. Ct. App. Div.), *aff'd sub nom. Nat'l Org. of Women v. Little League Baseball, Inc.*, 338 A.2d 198 (N.J. 1974). The New Jersey Court of Appeals rightly held, and the New Jersey Supreme Court affirmed, that this rationale was discriminatory. *Id.* at 41. Importantly, the appellate court discredited testimony that "girls were inferior to boys" in "bone strength, muscle strength and reaction time" to find the ban violated state public accommodations laws, maintaining their "underlying purpose []" "to emancipate [women] from stereotyped conceptions." *Id.* at 35, 38. But reliance on notions of "physical difference" by sports governing bodies to exclude girls demonstrates the reach and persistence of sex stereotypes.

Stereotypes concerning women's physicality and athleticism lead to discrimination against highly competitive women athletes—especially women of color—who do not conform to sexist, white-centric notions of femininity.[9] For example, commentators have criticized Black women, like Serena Williams, Caster Semenya, and Brittney Griner, calling them "too muscular, intimidating or masculine."[10] Brown women in sports face

[9] HRW, *"They're Chasing Us Away from Sport": Human Rights Violations in Sex Testing of Elite Women Athletes* (Dec. 4, 2020), https://www.hrw.org/report/2020/12/04/theyre-chasing-us-away-sport/human-rights-violations-sex-testing-elite-women#584.

[10] Noreen Nasir, *For female athletes of color, scrutiny around gender rules and identity is part of a long trend*, ASSOCIATED PRESS (Aug. 5, 2024), https://www.ap.org/news-highlights/spotlights/2024/for-female-athletes-of-color-scrutiny-around-gender-rules-and-identity-is-part-of-a-long-trend/.

similar scrutiny: Indian sprinter Dutee Chand was forced to undergo sex testing[11] because her "stride and musculature" were "too masculine."[12] These criticisms originate in racist, colonialist depictions of women of color to justify their oppression. During their enslavement, Black women were regarded as "sinful" and more suited to physical exploitation because of "'natural' brute strength," while white women were depicted as representing innocence, purity, and "true womanhood."[13] Brown women and women of the global South are also harmed today by colonialist narratives of European nations claiming to be "civilizing forces" to justify exerting control over societies that did not conform to white, Euro-centric culture.[14] Consequently, modern sex stereotypes incorporate white-centric concepts of how women should look, act, and compete[15]—

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[11] Sex testing ranges from genital examinations to genetic testing, to surveilling a woman's menstrual cycle, forcing women athletes to "prove" their gender by scrutinizing their bodies against stereotypes of femininity. Cheryl Cooky & Shari L. Dworkin, *Policing the Boundaries of Sex: A Critical Examination Of Gender Verification and the Caster Semenya Controversy*, 50 J. SEX RESEARCH 103, 103 (2013).

[12] HRW, *supra* note 9.

[13] Lind Withycombe, *Intersecting Selves: African American Female Athletes' Experiences of Sport*, 28 SOCIOLOGY OF SPORT 478, 479–80 (2011); Patricia Vertinsky & Gwendolyn Captain, *More Myth than History: American Culture and Representations of the Black Female's Athletic Ability*, 25 J. SPORT HIST. 532, 532 (1998).

[14] Katrina Karkazis & Rebecca Jordan-Young, *The Powers of Testosterone: Obscuring Race and Regional Bias in the Regulation of Women Athletes*, 30 FEMINIST FORMATIONS 2, 11, 31 (2018).

[15] *Amici* recognize Black and brown women suffer an array of racist and sexist stereotypes beyond the sports context—including myths justifying sexual violence, denial of employment, and more. *Amici* focus here on stereotypes associated with Black and brown women's bodies to emphasize that the sex discrimination all women in sports—including trans women—face involves racist and sexist body policing.

excluding women who do not conform to "white, Westernized standards" of femininity and putting women who fit this standard on a pedestal.[16]

These discriminatory tropes have appeared at the Olympics. In the 1920s and 1930s, "Olympic officials conducted … on-site, suspicion-based tests on women deemed too strong, successful or masculine."[17] In 1968, the International Olympic Committee mandated sex testing for women's sports due to concerns about "strong Soviet women and the successes of athletes of color who failed to conform to conventional notions of acceptable Western femininity."[18] During the 2024 Olympics, onlookers criticized Algerian boxer Imane Khelif due to alleged differences in sex development.[19] This focus on Ms. Khelif's purported intersex traits is disturbing as it represents a continued attempt to normalize the demand that women conform to rigid, white-centric notions of femininity or lose the ability to participate in women's sports altogether.

Pernicious stereotypes plaguing women, particularly women of color, also exclude trans women from sports.[20] For example, Florida banned trans girls from school sports,

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[16] Nasir, *supra* note 10.

[17] Lindsay Parks Pieper, *They qualified for the Olympics. Then they had to prove their sex*, WASH. POST (Feb. 22, 2018), https://www.washingtonpost.com/news/made-by-history/wp/2018/02/22/first-they-qualified-for-the-olympics-then-they-had-to-prove-their-sex/.

[18] *Id.*

[19] Jules Boykoff & Dave Zirin, *We Must Defend Imane Khelif*, THE NATION (Aug. 5, 2024), https://www.thenation.com/article/society/imane-khelif-olympics-paris-boxing-transphobia/.

[20] MADELINE W. DONLEY, CONG. RSCH. SERV., LSB10993, REGULATING GENDER IN SCHOOL SPORTS: AN OVERVIEW OF LEGAL CHALLENGES TO STATE LAWS (updated Jan. 2, 2024), https://crsreports.congress.gov/product/pdf/LSB/LSB10993.

purportedly in the name of "maintain[ing] opportunities for [cis] female athletes to demonstrate their strength, skills, and athletic abilities[.]" Fla. Stat. § 1006.205; *see also* Idaho Stat. § 33-6202 (similar). The Court of Appeals adopted this misguided reasoning, accepting USAPL's sexist assertion that "inherent strength advantages enjoyed by powerlifters who have gone through male puberty" purportedly "compromise principles of fair athletic competition." *See Cooper v. USA Powerlifting*, 5 N.W. 3d 689, 699 n.4 (Minn. Ct. App. 2024).

This rationale—used to exclude girls from Little League in the 1970s, harass Black and brown women athletes, subject Olympians to scrutiny, and now, exclude trans women like Ms. Cooper from powerlifting—does the opposite of "protecting" women. Excluding trans women perpetuates harmful stereotypes used to keep *all* women out of sports. And the assumption cis women will underperform against trans women because the latter were assigned male at birth disrespectfully and inaccurately suggests it is appropriate to compare trans women's bodies to cis men's—when trans women, indeed all women, are harmed by this type of body policing.[21] This argument only further reifies tropes that people assigned female at birth are inherently weaker or less athletic than anyone assigned male at birth. It also ignores body diversity across athletes of all genders, such as a "high jumper [who]

[21] *See* Testimony of Fatima Goss Graves, President of NWLC, U.S. House Committee on Oversight and Accountability Subcommittee on Health Care and Financial Services, 6–7 (Dec. 5, 2023), https://oversight.house.gov/wp-content/uploads/2023/12/2023.12.05_Written-Testimony-FGG.pdf.

could be taller and have longer legs than another," and the socioeconomic advantages some athletes enjoy—like those who can afford more expensive coaching or training.[22]

Moreover, the fear that allowing trans women to play will deprive cis women of opportunities is meritless. In fact, *all* girls' participation in sports *increased* in states with trans-inclusive policies. For example, California's trans-inclusive policy saw a 14% increase in high school girls' sports participation from 2014 to 2020.[23] Connecticut likewise saw a 2.3% increase in sports participation among all high school girls.[24]

C. Sex discrimination harms women, particularly LGBTQI+ women and women of color.

Beyond sports, widespread sex discrimination endures—especially harming LGBTQI+ women and women of color. Workplace sex discrimination is still prevalent.[25] The U.S. Government Accountability Office recognizes: "gender disparities persist in education, employment and earnings, retirement, health, violence, and other areas."[26]

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[22] Chase Strangio & Gabriel Arkles, ACLU, *Four Myths About Trans Athletes, Debunked* (Apr. 30, 2020), https://www.aclu.org/news/lgbtq-rights/four-myths-about-trans-athletes-debunked.

[23] Shoshana Goldberg, Ctr. Am. Progress, *Fair Play: The Importance of Sports Participation for Transgender Youth* (2021) at 15, https://www.americanprogress.org/wp-content/uploads/sites/2/2021/02/Fair-Play-correction2.pdf.

[24] *Id.* at 16.

[25] U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Charge Statistics (Table E2b.) Title VII Sex-Based Harassment Charge Receipts FY 2010 - FY 2023, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0 (last accessed Aug. 29, 2024) (charges filed with the EEOC indicate prevalence of workplace sex discrimination, with 14,195 charges filed in 2023).

[26] U.S. GOV'T ACCOUNTABILITY OFF., *Women and Gender in Public Policy* (last accessed Aug. 20, 2024), https://www.gao.gov/women-and-gender-public-policy.

Sex discrimination disproportionately impacts the LGBTQI+ community. In 2022, over 1 in 3 LGBTQI+ adults reported suffering discrimination in the previous year. Over half of surveyed LGBTQI+ individuals reported workplace discrimination or harassment, while nearly 3 in 10 LGBTQI+ adults reported housing discrimination or harassment.[27] Nearly a third of trans people who were recognized as trans in places of public accommodation likewise suffered mistreatment.[28]

LGBTQI+ people of color face additional barriers. The National Center for Transgender Equality's 2015 Survey found trans women of color suffer pervasive housing discrimination.[29] Forty-three percent of Hispanic LGBTQI+ individuals suffered discrimination as a barrier to renting or purchasing a home, and seventy-eight percent of Black LGBTQI+ individuals were denied jobs due to discrimination.[30]

These inequities hold true in Minnesota. A recent study found "[m]ore than three-quarters of LGBTQ+ Minnesotans report[ed] experiencing anti-LGBTQ+ behavior in the

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[27] Lindsay Mahowald et al., Ctr. Am. Progress, *Discrimination and Barriers to Well-Being: The State of the LGBTQI+ Community in 2022* (Jan. 12, 2023), https://www.americanprogress.org/article/discrimination-and-barriers-to-well-being-the-state-of-the-lgbtqi-community-in-2022/.

[28] *Id.* at 14.

[29] S.E. James et al., Nat'l Ctr. Transgender Equal., *The Report of the 2015 U.S. Transgender Survey* 180 (2016), https://bit.ly/3dATnDT.

[30] Lindsay Mahowald, Ctr. Am. Progress, *Hispanic LGBTQ Individuals Encounter Heightened Discrimination* (Jul. 29, 2021), https://ampr.gs/3A0zPjF; Lindsay Mahowald, Ctr. Am. Progress, *Black LGBTQ Individuals Experience Heightened Levels of Discrimination* (Jul. 13, 2021), https://ampr.gs/3c2zFAu.

past year."[31] According to another 2022 report, only "69% of transgender or nonbinary students report[ed] that they feel safe at school, compared to 91% of straight, cisgender girl[]" Minnesotans.[32] More than half (53%) of all LGBTQ+ students in Minnesota reported experienced anti-LGBTQI+ discrimination at school.[33]

These statistics demonstrate how gravely the Court of Appeal's wrongful decision will harm marginalized communities in Minnesota, especially Black and brown women and LGBTQI+ people—whom the MHRA was designed to protect.

II. The MHRA and Other Laws Strive to Eradicate Discrimination.

This historical and ongoing discrimination provides an important backdrop for valuing the critical role public accommodations laws, and other nondiscrimination laws, play in ensuring *all* women's equal access and opportunity. Nondiscrimination laws like the MHRA must be interpreted against this backdrop.

This Court interprets the MHRA in accordance with the Civil Rights Act of 1964 ("CRA"). *See, e.g.*, *Sigurdson v. Isanti Cnty.*, 386 N.W. 2d 715, 719 (Minn. 1986). Congress passed the CRA to eradicate "the daily affront and humiliation involved in

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[31] Hubert H. Humphrey School of Public Affairs, *Inequities Persist for Women and Girls in MN, New Research Says* (Feb. 15, 2024), https://www.hhh.umn.edu/news/inequities-persist-women-and-girls-mn-new-research-says.

[32] Christina Ewig et al., *2022 Status of Women & Girls in Minnesota* 19 (last accessed Aug. 20, 2024), https://wfmn.wpenginepowered.com/wp-content/uploads/2022/03/WFMN-2022-Status-of-Women-Girls-in-MN.pdf.

[33] GLSEN, *School Climate for LGBTQ+ Students in Minnesota (2021 State Snapshot: Minnesota)* 3 (2023), https://maps.glsen.org/wp-content/uploads/2023/02/GLSEN_2021_NSCS_State_Snapshots_MN.pdf.

discriminatory denials of access"[34] and opportunity, and "strike at the entire spectrum" of discrimination. *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78 (1998) (internal quotation omitted). Forty-five states and Washington, D.C. subsequently enacted laws to prohibit discrimination, including sex discrimination, in public life, like public accommodations, employment, education, and government-funded programs.[35] Many state laws prohibiting sex discrimination are modeled after Title VII, which prohibits sex discrimination in employment. 42 U.S.C. §§ 2000(e) *et seq.* This Court has relied on Title VII's legal framework to prohibit discrimination against women. *See, e.g.*, *Hansen v. Robert Half Int'l, Inc.*, 813 N.W.2d 906, 918 (Minn. 2012) ("[Sex discrimination] claims under the MHRA, not involving direct evidence … are subject to the three-part burden-shifting framework set forth by the Supreme Court in *McDonnell Douglas*[.]").

A. Strong enforcement of sex discrimination laws is key to upholding the dignity of all women.

Title VII precedent guides this Court's interpretation of the MHRA's prohibition on sex discrimination, dictating that neither employers nor places of public accommodation may treat disparately "an individual based on stereotyped characterizations of the sexes." *Phillips v. Martin Marietta Corp.*, 400 U.S. 542, 545 (1971) (Marshall, J., concurring); *see also Roberts v. U.S. Jaycees*, 468 U.S. 609, 625 (1984) (Sex discrimination deprives

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[34] *Daniel v. Paul*, 395 U.S. 298, 307–08 (1969) (internal quotation omitted) (stressing Congressional intent undergirding Title II of the CRA, which prohibits discrimination in public accommodations, and invalidating Little Rock's race-based restrictions for recreational facilities).

[35] Nat'l Conf. State Legislatures, *State Public Accommodations Laws* (Jun. 25, 2021), https://bit.ly/3QxbCJ1.

"persons of their individual dignity," forcing conformity with "overbroad assumptions about [] needs and capacities of the sexes … often bear[ing] no relationship to their actual abilities").[36] When appropriately interpreted with their broad purpose of "strik[ing] at the entire spectrum of disparate treatment of … women resulting from sex stereotypes," nondiscrimination laws like Title VII and the MHRA remedy the exclusion that harms all women. *City of Los Angeles, Dep't of Water & Power v. Manhart*, 435 U.S. 702, 707 n.13 (1978) (internal quotation omitted). "Even a true generalization [or stereotype] about [a] class [of persons] is an insufficient reason for disqualifying an individual to whom the generalization does not apply." *Id*. at 708.

In *Manhart*, women employees brought a class action challenging a city policy requiring them to make larger pension contributions because of women's longer average lifespans. *Id.* at 704. The Supreme Court invalidated this policy, emphasizing that each individual woman had a right to freedom from sex discrimination under Title VII. *Id*. at 708. Rejecting arguments that class-wide generalizations could justify exclusionary policies, the Court emphasized that Title VII's nondiscrimination mandate "precludes treatment of individuals as simply components of a racial, religious, sexual or national class. If height is required for a job, a tall woman may not be refused employment merely because, on the average, women are too short." *Id.*

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[36] In *Roberts,* the U.S. Supreme Court upheld Minnesota's Human Rights Department's application of the MHRA as requiring Jaycees to allow women to join Minnesota chapters. *Id.* at 631.

The Court reached a similar conclusion when women challenged Arizona's discriminatory employee pension plan. The plan used sex-based actuarial tables to issue women employees lower monthly payments than men who made the same contribution due to women's longer average lifespans. *Arizona Governing Comm. For Tax Deferred Annuity & Deferred Comp. Plans v. Norris*, 463 U.S. 1073, 1077 (1983) (Marshall, J. concurring). The Court struck this policy, concluding, "An individual woman may not be paid lower monthly benefits simply because women as a class live longer than men." *Id.* at 1085.

Manhart and *Norris* demonstrate the heightened scrutiny sex-based policies rightly receive from the Court. Since the 1970s, the Court has stressed the impropriety of sex-based classifications that preserve "assumptions" about sex "rather than thoughtful scrutiny of individuals." *Manhart*, 435 U.S. at 709. These decisions clarify how sex-based generalizations—whether regarding physical characteristics, behavior, or broad statistical findings—constitute sex discrimination. *Id.* at 707–13; *Norris*, 463 U.S. at 1079–86 & n.15.

Johnson Controls built on *Manhart*'s holding when it struck a facially discriminatory policy barring women from jobs involving potential lead exposure because of their ability to become pregnant. *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 192, 197–200 (1991). The Court noted "obvious" bias in a policy where "[f]ertile men, but not fertile women, are given a choice as to whether they wish to risk their reproductive health for a particular job."

Id. at 197. *Johnson Controls* reaffirmed that discrimination based on a sex-linked characteristic is *itself* sex discrimination. *Id.* at 199.

In accordance with Title VII's broad purpose, the Court also invalidated discrimination against women who do not conform to outdated, white-centric sex stereotypes. In *Price Waterhouse v. Hopkins*, the Court stressed: "act[ing] on the basis of a belief that a woman cannot be aggressive, or that she must not be, [is] act[ing] on the basis of gender." 490 U.S. 228, 250 (1989). There, the plaintiff was denied partnership because she did not "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." *Id.* at 235. The Court acknowledged the harm Hopkins and other women suffer when subjected to sexist stereotypes: "An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible catch 22: out of a job if they behave aggressively and out of a job if they do not. Title VII lifts women out of this bind." *Id.* at 251.

Following this national trend, the MHRA and analogous state laws combat discrimination based on sex stereotypes. In 1968, a woman challenged a New Jersey ordinance stating that no "beverage or food shall be served to any female except at a table where such female shall be seated. No female shall be permitted to stand or sit at a public bar[.]" *Gallagher*, 245 A.2d at 374; *see also* Section I.A, *supra*. Striking the law, the New Jersey Superior Court disavowed the City's reliance on sex stereotypes, noting each individual's personality traits do not all fit into the oversimplified "categories labeled male or female." *See id.* at 376 ("No doubt there are those who would seek to polarize men and

women on the basis of sex differentiation alone, and to whom maleness would represent crude masculinity and femaleness fainting femininity.").

Similarly, the Southern District of New York granted summary judgment to plaintiffs challenging a restaurant's refusal to serve women. The restaurant sought to justify exclusionary policies, claiming "the presence of women in bars gives rise to moral and social problems." *Seidenberg v. McSorleys' Old Ale House, Inc.*, 317 F. Supp. 593, 606 (S.D.N.Y. 1970). The court disagreed, finding stereotypes "of women as peculiarly delicate and impressionable creatures in need of protection from the rough and tumble of unvarnished humanity will no longer justify sexual separatism." *Id.*

Federal courts also apply these principles to Title IX of the Education Amendments of 1972[37] to enjoin policies excluding trans people from sex-separated spaces purportedly to "protect" cis people—when these policies actually sought to perpetuate trans-exclusion based on discriminatory stereotypes. For example, a Wisconsin school district prohibited a trans boy from using the boys' restroom, arguing it needed to "protect the privacy rights" of its [cis] students from the "mere presence of a transgender student in the bathroom." *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1052 (7th Cir. 2017). The Seventh Circuit rejected the school's privacy argument as "based upon sheer conjecture and abstraction," and preliminarily enjoined the policy. *Id.* at 1052, 1055. It recognized the boy would suffer "irreparable harm" from the harassment and

[37] Under Title IX, "no person … shall, on the basis of sex, be … subjected to discrimination under any education program or activity" receiving federal funding. 20 U.S.C. § 1681(a).

psychological harm the policy created. *Id.* at 1045–46; *see also A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 775 (7th Cir. 2023), *cert. denied sub nom. Metro. Sch. Dist. of Martinsville v. A.C.*, 144 S. Ct. 683 (2024) (enjoining school district from prohibiting three trans boys from using the boys' restroom).

Invalidating a similar school policy, the Fourth Circuit emphasized that "stereotypic notions" of gender undergirded the anti-trans policy barring a trans boy's access to sex-separated spaces consistent with his affirmed gender. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 610 (4th Cir. 2020), *as amended* (Aug. 28, 2020) (striking policy under the Equal Protection Clause and Title IX). It also highlighted "the importance of gender affirmation" and protecting trans people from "unfounded prejudices" that stigmatize them. *Id*. at 620.

The Third Circuit dismissed claims that cis students required protection from trans students' presence in restrooms and locker rooms, concluding the mere presence of a trans student in a sex-separated space was not "harassing activity." *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 536 (3d Cir. 2018); *see also Parents for Priv. v. Barr*, 949 F.3d 1210, 1227 (9th Cir. 2020).

The Eighth Circuit similarly rejected a cis woman's argument that a Minnesota school district allowing a trans woman to use the women's restroom created a "hostile or abusive" work environment. *Cruzan v. Special Sch. Dist, No. 1*, 294 F.3d 981, 984 (8th Cir. 2002).

As observed, excluding trans women from public places is unlawful under a robust nondiscrimination framework that has been reaffirmed repeatedly to eliminate discrimination and reject stereotypes about *all* women.

B. The MHRA is a powerful tool to combat discrimination against all women in Minnesota.

In 1973, the Minnesota legislature amended the MHRA to protect against "sex discrimination to housing, public accommodations, public service, and education."[38] Mirroring Title VII's intent, "the [Minnesota] legislature intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes." *Pullar v. Indep. Sch. Dist. No. 701, Hibbing*, 582 N.W.2d 273, 277 (Minn. Ct. App. 1998) (internal citation omitted). Cases interpreting the MHRA likewise track the federal framework. This Court has long recognized the applicability of Title VII jurisprudence to the MHRA. *LaMont v. Indep. Sch. Dist. No. 728*, 814 N.W.2d 14, 21 (Minn. 2012) (citing *Continental Can Co. v. State*, 297 N.W.2d 241, 246 (Minn. 1980)) ("federal court decisions are instructive and have been applied by our court when construing the MHRA"); *see also Bahr v. Capella Univ.*, 788 N.W.2d 76, 83 (Minn. 2010) (same).

Just as Congress intended when enacting the CRA, the Minnesota legislature intended the MHRA to serve a broad remedial purpose. The legislature expressly mandated that the MHRA be "construed liberally," Minn. Stat. § 363A.04, "to secure for persons in this state, freedom from discrimination[.]" Minn. Stat. § 363A.02; *see also Cummings v.*

[38] Minn. Dep't Human Rights, History, https://mn.gov/mdhr/about/history/ (last accessed Jul. 31, 2024).

Koehnen, 568 N.W.2d 418, 422 (Minn. 1997) (acknowledging the legislature's desire for the "MHRA [to] be liberally construed"). This Court has likewise recognized the MHRA's "broad remedial purpose" to prevent discriminatory treatment based on sex stereotypes. *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 626 (Minn. 1988).

Consistent with this purpose, Minnesota courts and agencies have relied on the MHRA to combat the full range of sex discrimination:

- The Minnesota Department of Human Rights ("MDHR") investigated a city for hiring a man who did not meet qualifications for an ambulance-director position over a woman who *did* meet qualifications.[39]

- The Court of Appeals concluded a woman successfully stated a sex discrimination claim under the MHRA by alleging that a school district rejected her for a full-time teaching and coaching job because "she had young children, whose needs, the principal claimed, were incompatible with the responsibilities." *Pullar*, 582 N.W.2d at 275.

- Similarly, a federal district court determined a reasonable jury could find employment discrimination violating the MHRA when an employer believed an employee would be "more committed to her family than her job." *Ramirez-Cruz v. Chipotle Servs., LLC*, 2017 WL 3433116, at *10 (D. Minn. Aug. 10, 2017). The district court correctly acknowledged the harm of this stereotype: "[A] self-fulfilling cycle of discrimination that force[s] women to continue to assume the role of primary family caregiver, and foster[s] employers' stereotypical views about women's commitment to work and their value as employees." *Id.* (internal quotation omitted).

The law is clear: all sex stereotyping is unlawful in Minnesota, and the MHRA has been interpreted liberally, as it should be, to strike down policies based on such stereotypes.

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[39] Minn. Dep't Human Rights, *MDHR Enforcement Case Summaries: MDHR Cases with Probable Cause Determinations 2011-2015*, 16 (Feb. 2016), https://mn.gov/mdhr/assets/Case_Summaries_Report_tcm1061-229708.pdf.

In 1993, the Minnesota legislature extended the MHRA's protections against discrimination in public accommodations to trans people,[40] following Minneapolis, which in 1975 passed a similar ordinance.[41] Both were the first of their kind at the state and local levels to expressly protect trans people from discrimination in employment, housing, schools, and public accommodations.[42] And like the MHRA's protections more generally, these provisions are to be "construed liberally." Therefore, if applying sex stereotypes to cis women to limit or exclude them violates the MHRA, it seems axiomatic that relying on those same stereotypes to exclude or otherwise mistreat trans women does as well.

III. The Court of Appeals' Decision Perpetuates Sexist Stereotypes and Undermines the MHRA's Remedial Purpose.

Affirming the Court of Appeals' decision would gut the MHRA's protection against discriminatory policies based on sex stereotypes, particularly those targeting LGBTQI+ women and women of color.

The Court of Appeals erred by undermining the MHRA in two ways. *First*, it incorrectly determined USAPL's facially discriminatory policy was not direct evidence of discrimination, despite the policy *expressly* prohibiting trans women from competing alongside other women. *Cooper*, 5 N.W. 3d at 696. The court instead relied on sexist

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[40] Hennepin County Bar Association, *The Groundbreaking Minnesota Human Rights Act in Need of Renovation* (Mar. 4, 2020), https://www.mnbar.org/hennepin-county-bar-association/resources/hennepin-lawyer/articles/2020/03/04/the-groundbreaking-minnesota-human-rights-act-in-need-of-renovation (internal citation omitted).

[41] Katrina C. Rose, *Reflections at the Silver Anniversary of the First Transinclusive Gay Rights Statute: Ruminations on the Law and Its History—And Why Both Should Be Defended in an Era of Anti-Trans 'Bathroom Bills'*, 14 U. MASS. L. REV. 70, 77, 118 (2019).

[42] *Id*.

stereotypes about trans women to reason that USAPL excluded Ms. Cooper because she was assigned male at birth and underwent endogenous puberty before affirming her gender, which allegedly gave her a competitive advantage over cis women. *Id*. at 702. The court improperly conflated the analysis applicable to facially discriminatory policies with an analysis applicable to cases predicated on circumstantial evidence of discrimination. *Compare id.*, *with Johnson Controls*, 499 U.S. at 197 (stating analysis applicable to facially discriminatory policies does not consider proffered "legitimate non-discriminatory reasons" because the policy discriminates on its face), and *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) (providing tripartite, burden-shifting analysis applicable to circumstantial evidence cases).

Second, the court improperly relied on stereotypes about persons assigned female at birth and persons assigned male at birth to authorize USAPL's overt discrimination against trans women. *Compare Cooper*, 5 N.W. 3d at 703, *with Manhart*, 435 U.S. at 708–09. These findings echo the discriminatory tropes public accommodations laws were designed to remedy. *See, e.g.,* Section I.B, *supra* (citing *Little League*, 318 A.2d at 35, 38). By relying on these flawed arguments, the court ignored decades of precedent prohibiting these exact types of harmful generalizations under the MHRA.

If affirmed, this flawed reasoning would render it more difficult for *all* women seeking to enforce the MHRA. These harms are not theoretical. Public accommodations laws have transformed the ability of all women to access public spaces and participate equally in everyday life. But when those laws are construed narrowly regarding any group

of women, it reactivates sexist and racist stereotypes that should have long-ago been eradicated—stereotypes that threaten the rights, opportunities, and safety of *all* women.

The court's decision particularly threatens trans, intersex, and cis women and girls who do not conform to narrow stereotypes of womanhood. Any woman excelling in her sport—or maintaining any characteristic associated with people assigned male at birth—risks having her gender challenged and being subjected to invasive and humiliating sex testing.[43] No woman should face this scrutiny when simply seeking to participate in an activity that has long been part of public life: competitive sport. Demanding women look, act, or perform a certain way perpetuates dangerous stereotypes that have historically constrained women. Indeed, the MHRA was designed to shield women from serious social and personal harms, including forcing them to fit stereotypes bearing no relationship to their abilities. *See Jaycees*, 468 U.S. at 610. USAPL's anti-trans policy is precisely the kind of discrimination the MHRA was enacted to prevent; it deprives trans, nonbinary, and intersex people of basic dignity and their fundamental right to participate in public life.

IV. The Athletic Community Broadly Supports Trans-Inclusion.

Women across sports and levels of competition have recognized that trans inclusion benefits all women. In April 2024, over 400 current and former athletes, including professional soccer player Megan Rapinoe and professional basketball player Sue Bird, signed a letter urging the National Collegiate Athletics Association ("NCAA") not to ban

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[43] *See* Ruth Padawer, *The Humiliating Practice of Sex-Testing Female Athletes*, N.Y. TIMES MAGAZINE (Jun. 28, 2016), https://www.nytimes.com/2016/07/03/magazine/the-humiliating-practice-of-sex-testing-female-athletes.html.

trans women from women's sports.[44] They stated: "Sport is a tremendous enabler of physical and mental health, teaches valuable lessons on teamwork and discipline, and has brought us lifelong community," and "[e]very person has the right to practice sport without discrimination and in a way that respects their health, safety, and dignity."

The powerlifting community has similarly called for trans inclusion;[45] *amici* highlight the stories of several women powerlifters voicing strong support for the ability of Ms. Cooper—and all trans women—to compete and denouncing USAPL's ban as harmful to all women and destructive to the sport:[46]

- Powerlifter A, who won at the national level and broke American records, said powerlifting brought her unique "joy and accomplishment" She said "USAPL's trans-exclusionary ban … leeched most of the joy of competing in federation-sanctioned powerlifting for me. **I don't want to win when I know some of my competitors have been excluded. I want to be a part of a sport that is open to ALL women**."
- Powerlifter B started powerlifting because she saw "the community that [powerlifting] was building for women," in comparison to other athletic spaces that were "male-centric" and lacked "diversity." When she and her fellow powerlifter friends began to notice that "what [they] valued in terms of acceptance, community, and support was not reflected" in USAPL, they ended their USAPL memberships. She feels that USAPL's "bigoted and uneducated decision to ban JayCee—and other trans athletes … from

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[44] Open Letter to NCAA: Athletes (Apr. 23, 2024), https://www.athleteally.org/wp-content/uploads/2024/04/Open-letter-to-NCAA_-Athletes-2.pdf.

[45] Comment to Nondiscrimination on the Basis of Sex in Athletics Education Programs or Activities on Receiving Federal Financial Assistance, 88 Fed. Reg. 22860 (May 15, 2023), https://www.regulations.gov/comment/ED-2022-OCR-0143-152649 (signed by 50 powerlifters and three powerlifting organizations supporting proposed Title IX regulation affirming trans, nonbinary, and intersex athletes' right to play consistent with their affirmed gender).

[46] The following stories were provided to NWLC by current and former powerlifters in support of this brief.

competing in powerlifting … is frustrating" because "[i]t is devastating to not be allowed to exist in any space, when all you want to be is yourself."

- Powerlifter C said, **"USAPL's ban diminishes the inclusivity that powerlifting offers and deprives trans athletes of the many benefits of competitive sport," while "harm[ing] all women because it increases scrutiny on all women's bodies."**

- Powerlifter D said powerlifters must "share the platform"[47] with trans women and that "trans women are women … welcome to compete with me, they always have been." She left USAPL because of its anti-trans ban, stating: **"USAPL's ban on trans women athletes further enables the stereotype that powerlifting communities are rigid, hyper misogynistic and unsafe for all women, cis or trans.**"

- Powerlifter E said she "struggled with [her] body image" throughout her formative years, but in powerlifting, she felt "at home and uplifted" because she was surrounded by an accepting community. However, **"USAPL's short-sighted trans-exclusionary ban felt like a slap in the face to all that powerlifting represents … [i]t left a horrible stain on the sport and proved that USAPL … [was] swayed by the toxic, transphobic narratives by exclusionary people who are afraid to share the sport with people who are different from them."**

- Powerlifter F is a former athlete and referee. She called powerlifting "very empowering" because it "emphasized … what [her] body could do," not her appearance. She became a USAPL referee because she "found a community … that was very inclusive." However, she stopped refereeing after attending the meet that excluded Ms. Cooper**, then ended her membership with USAPL, because she "will not be a member of an organization that actively excludes transgender women."** She said: all "trans people, including [her] daughter, are amazing people that just want to live their lives and be happy."

[47] The "platform" is the structure powerlifters stand on while completing weightlifts. The slogan is used as a call to action by powerlifters protesting USAPL's discriminatory ban against trans powerlifters. Athlete Ally, *Powerlifter JayCee Cooper: It's Time to Share The Platform*, https://www.athleteally.org/powerlifter-jaycee-cooper/.

Women from other sports have also shared stories in support of Ms. Cooper. Golfer Maya Reddy recalls, "I found myself" in sports as a "brown kid, an Indian kid, a girl."[48] After playing professionally, Ms. Reddy was forced to stop because "my queerness, my South Asian-ness, and my presentation of womanhood were not acceptable … I could not play" in a sport pervaded by sexist norms. She affirms: "every trans person and queer person deserves the chance to play sports without prejudice."

These narratives show women athletes reject arguments that trans-exclusion is necessary for their "protection." Yet, proponents of anti-trans policies ignore this, perpetuating the same paternalistic oppression women have long faced.

CONCLUSION

This Court should uphold the district court's logic, finding USAPL's facially discriminatory ban targeting trans women violated the MHRA. Reversing the intermediate court's reliance on harmful sex stereotypes will ensure all Minnesota women can participate fully in public life.

[48] Ms. Reddy's story was also provided to NWLC in support of this brief.

Respectfully submitted,

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CERTIFICATE OF BRIEF LENGTH AND FORM

I hereby certify this brief meets the requirements of Minn. Civ. App. P. 132.01, subdiv. 3(c) regarding length and formatting requirements applicable to an amicus curiae brief. The length of this brief is 6939 words, which was prepared in Microsoft Word for Microsoft 365 MSO, Version 2408. All characters in this brief use Times New Roman 13-point font, consistent with Minn. Civ. App. P. 132.01, subdiv. 1.

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