

No. 24-3097

**In the United States Court of Appeals for the
Tenth Circuit**

STATE OF KANSAS et al.,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF EDUCATION, et al.,

Defendants-Appellants.

On Appeal from the United States District Court for the District of
Kansas, Case No. 5:24-cv-04041

**BRIEF OF *AMICUS CURIAE* WOMEN'S LIBERATION FRONT
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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INTRODUCTION AND INTEREST OF AMICUS CURIAE¹

Amicus is the Women’s Liberation Front (“WoLF”), a non-profit feminist organization dedicated to the liberation of women by ending male violence, protecting women’s self-sovereignty, preserving woman-only spaces, and abolishing arbitrary and invidious sex discrimination. WoLF’s supporters include over 400 “sisters in action” who advocate for its mission and attend school, work in education, and live across the U.S., including many in the 10th Circuit.

WoLF’s interest in this case stems from its interest in empowering and protecting the safety and privacy of women and girls afforded by single-sex spaces.² The Department asks the Court to open up private spaces designated for women and girls and allow access to males who claim to identify as female. If the Court rules in its favor, it will strip the women in WoLF’s organization of their Constitutional rights to privacy; threaten their physical and psychological safety by proclaiming

¹ No counsel for any party authored any part of this brief, and no party, their counsel, or anyone other than WoLF, has made a monetary contribution intended to fund its preparation or submission, and counsel of record for all parties have consented to its filing.

² *Amicus* uses “sex” throughout the way the Supreme Court defined it in *Bostock v. Clayton County*, 590 U.S. 644 (2020) at 655: “physiological or biological distinctions between male and female.”

that women are not permitted to exclude males from any space or activity; and undercut the means by which women can achieve success.

WoLF's work centers around protecting women's sex-based rights, making the protection of single-sex spaces paramount, whether in schools under Title IX, public accommodations, women's shelters, and prisons. WoLF's research and experience working with affected populations qualifies it to offer not just examples of how women and girls encounter males in single-sex spaces, but insight that the examples given are representative of the majority experience and perspective.

WoLF urges the Court to affirm the lower court's injunction, protecting the right of women to privacy, safety, and full exercise of their Constitutional rights to meaningfully participate in society.

SUMMARY OF ARGUMENT

Single-sex intimate facilities exist and are protected by law both for privacy reasons and because women and girls are vulnerable to violence and sexual predation perpetrated by males, which is in no way lessened if a male self-identifies as female. Even if trans-identified males did pose a lower risk to women and girls, it is irrelevant in the

face of policies that allow any male to claim a female gender identity and gain access to female-only spaces at any time. Encounters with males in ostensibly female-only intimate spaces, or even potential encounters, have numerous negative impacts on women and girls. Reports of personal experiences in a variety of contexts are backed up by a significant body of research explaining and articulating the negative psychological and emotional impacts of these experiences. This Court should understand that allowing the new Title IX Rule to go into effect now will naturally and necessarily impose these potentially traumatizing encounters on all women and girls affected by Title IX, causing irreparable harm.

ARGUMENT

I. ALLOWING MALES TO IDENTIFY INTO FEMALE-ONLY SPACES CAUSES HARM TO WOMEN AND GIRLS.

A. Women and girls are vulnerable to physical and sexual violence perpetrated by males.

Women and girls are vulnerable to male violence. Nearly all murders, assaults, and rapes against women are committed by men.

Satoshi Kanazawa & Mary C. Stil, *Why Men Commit Crimes (And Why*

They Desist), SOCIOLOGICAL THEORY, 434 (Nov., 2000). Upwards of 85% of homicides in the U.S. are committed by males, and more than 95% of rapes are perpetrated by males. *Uniform crime reporting handbook: UCR. (2004-2019)*. Washington, D.C.: U.S. Dept. of Justice, Federal Bureau of Investigation. Retrieved from the Library of Congress, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019>.

The consequences of violence perpetrated by males and females also differ. Due to males' greater average size and strength than that of females, females are more likely to be injured in physical conflicts.

Belknap, J. (2020). *The invisible woman: Gender, crime, and justice*. SAGE Publications. See also Gong Chen et al., *A Comparative Study on Strength between American College Male and Female Students in Caucasian and Asian Populations*, 21 SPORT SCIENCE REV. 153 (Aug. 2012). And male-female assaults can have major consequences, as they may involve unwanted penile penetration and the threat of pregnancy.

B. Access to single-sex spaces mitigates the risk of violence and sexual predation to women and girls.

Equal opportunity for women and girls, which includes the ability to meaningfully participate in public life, sometimes requires single-sex provisions in recognition of the physiological differences between the sexes. *Unisex Changing Rooms Put Women In Danger*, The Sunday Times (Sept. 2, 2018), found at <https://archive.ph/evO4g>.

An intimate facility includes anywhere that bodily privacy is expected, including bathrooms, locker rooms, and living quarters (both temporary and permanent). Women and girls need to be safe and to feel safe in order to fully take advantage of educational or employment opportunities, make use of public accommodations and medical services, and heal from the trauma of prior male violence.

Experts have acknowledged the necessity of sex-segregated facilities in ensuring safety and dignity for women and girls. The United Nations Office of the High Commissioner for Human Rights (OHCHR) stated that “women and girls have different physical needs from men” and a “greater need for privacy when using toilets and when bathing.”

Women lack access to private toilets around the world. Columbia University's Mailman School of Public Health. September 5, 2018, found at

<https://www.sciencedaily.com/releases/2018/09/180905140245.htm>.

Inaccessible toilets and bathrooms make women and girls more vulnerable to rape.” *Women and girls and their right to sanitation.*

October 3, 2011. Office of the High Commissioner of Human Rights, found at

<https://www.ohchr.org/en/stories/2011/10/women-and-girls-and-their-right-sanitation>. Women and girls also “have particular sanitation needs when they are menstruating” and experts say that access to public life is restricted without adequate access to private sanitation facilities. *Id.*

In addition to bathrooms and locker rooms, sex-separated intimate spaces in prisons, jails, and women’s shelters across the country have adopted policies that allow biological male inmates to self-identify as female and seek to be housed in women’s facilities. While ostensibly for the purpose of protecting males from predation in men’s facilities and shelters, there has been little to no safeguarding as far as women’s safety, privacy, and dignity.

A woman working at a women's crisis shelter in Maine reported:

The shelter was originally conceived as an alternative to the city's larger, mixed-sex shelter, where many women were too afraid to stay. Afraid of the rapes and assaults that took place at that shelter, and of the ease with which the abusive husband's/boyfriends/pimps they had become homeless fleeing could track them down there, women were opting to sleep on the streets instead. And so a separate women-only shelter was established, to offer vulnerable women a safer refuge from men's violence.

Protecting Men at the Women's Shelter, Feminist Current (Sept. 13, 2020), found at <https://www.feministcurrent.com/2020/09/13/protecting-men-at-the-womens-shelter/>.

The fact that intimate spaces by design lack visual oversight and prohibit recording - due to their very nature as private spaces - makes women and girls particularly vulnerable to predation if shared with males. One incarcerated woman in California sharing her living space and intimate facilities with males under the new "gender identity" policies, noted that there are "no cameras to record abusive activity. Showering, using the toilet, changing clothes, and sleeping at night pose an unsafe environment for us." *Letters from Incarcerated Women*, Women's Liberation Front, <https://womensliberationfront.org/letters-from-incarcerated-women> (last visited September 23, 2024).

The public agrees with the experts: support for single-sex spaces is not a fringe position. There is a significant agreement, both nationally and in red and blue states alike, that women and girls deserve single-sex intimate spaces. *Poll data*, Women’s Liberation Front, <https://womensliberationfront.org/poll-data>.

Obviously, not every male will commit assault, murder, rape, or other sex offenses. The majority will not. The safety justification for female-only spaces is not because *all* men do these things - but rather because *some* men do.

**C. Disparities between men and women in crime
perpetration are based on biological sex, not “gender identity”**

There is no objective justification for exempting males from these general statistics based on self-identification as female.

According to a high-quality longitudinal study, even men who have self-identified as women for decades and who have taken hormones and removed their genitals, statistically offend at a rate no different from the other males and significantly higher than the female population. Cecilia Dhejne et. al. *Long-Term Follow-Up of Transsexual Persons*

Undergoing Sex Reassignment Surgery: Cohort Study in Sweden, PLOS One, available at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3043071/>. Also, the vast

majority of males who identify as women retain their penises, which means rape and pregnancy are still possible threats. J.L. Herman, B.D.

Wilson, T. Becker. *Demographic and Health Characteristics of*

Transgender Adults in California: Findings from the 2015-2016

California Health Interview Survey, UCLA Center for Health Policy

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<https://pubmed.ncbi.nlm.nih.gov/29091375/>. See also J.K. Canner, et al.,

Temporal Trends in Gender-Affirming Surgery Among Transgender

Patients in the United States. JAMA Surg. 2018 Jul, available at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5875299/>.

Public records actually show that trans-identified males in prison are more likely to be convicted of sexual offenses than the general male prison population:

- In California, 33.8% of biological male inmates seeking to transfer to women's facilities are registered sex offenders. *Number of Offenders Who Identify as Transgender, Intersex, or Non-Binary*

Housed in Male Facilities Seeking Transfer to Female Facilities And Percentage Who are Registered Sex Offenders or Convicted of a Sex Offense, California Dep't of Corrections and Rehabilitation, Public Records Act request, dated Feb. 9, 2022, available at <https://usa.kpssinfo.org/data-from-california-shows-that-1-3-of-the-men-seeking-to-transfer-to-womens-prison-are-registered-sex-offenders/>.

- In the federal prison system, 47.8% of male inmates identifying as women were serving time for sex offenses, compared to 6.86% of female inmates identifying as men. Federal Bureau of Prisons, *Transgender Inmate Report* (August 19, 2023). Posted on August 25, 2023 by “Keep Prisons Single Sex USA” on X (formerly Twitter),

https://x.com/NoXY_USA/status/1695205078376845782?t=XFcek3rcOxiIf750Q8n30w&s=19. This compares to 12-13% of the general prison population (which includes both sexes). Federal Bureau of Prisons, *Inmate Statistics: Offenses*,

https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp

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- In Canada, 88% of trans-identifying male inmates have been convicted of a sexual offense. Additionally, 85% were convicted of a serious violent crime, and 58% of the victims were women or children. S. Farrell McDonald, et. al., *Examination of Gender Diverse Offenders*, Canada's 2022 Correctional Service Research Report, summary available at https://www.canada.ca/content/dam/csc-scc/migration/005/008/092/005008-r442_O-en.pdf?utm_source=substack&utm_medium=email (examining data from 2017 to 2020).

- In the UK, 58.9% of trans-identifying male inmates committed sex offenses, with 28% having committed rape and 18% attempted rape. *Evidence and Data on Trans Women's Offending Rates*, Evidence submitted to WEC by Professors Rosa Freedman, Kathleen Stock, and Alice Sullivan on Gender Recognition Act in the UK, available at <https://committees.parliament.uk/writtenevidence/18973/pdf/>.

Policymakers know policies allowing males to access women's private spaces are unsafe. In 2021, the California Department of Corrections and Rehabilitation ("CDCR") requested additional staff to

process an anticipated increase in sexual assault allegations under their new policy, noting that it “will result in the integration of different populations that have not previously been housed together.” First Am. Compl. for Declaratory and Injunctive Relief, *Chandler et al. v. Macomber et al.*, (E.D.Cal. filed July 19, 2024) (No. 1:21-cv-01657-JLT-HBK), ECF 84. (hereinafter *Chandler v. Macomber* FAC). Those “different populations”, of course, are men and women. Individual prisons themselves have taken additional measures, such as purchasing stronger riot gear and pepper spray, and procuring condoms. *Condom Purchases and Sexual Assault*, results of 2021 Public Records Act request to CDCR, available at <https://womensliberationfront.org/news/condom-purchases-and-sexual-assault?rq=condoms>.

Sexual victimization takes forms beyond outright violence, such as exhibitionism and voyeurism, which are *vanishingly* rare among women. Kenneth J. Zucker, *DSM-5: call for commentaries on gender dysphoria, sexual dysfunctions, and paraphilic disorders*. Archives of sexual behavior. Vol. 42, Iss. 5, pp. 669 – 674 (2013).

D. Self-identification policies allow males to opt-in to access female-only spaces at any time.

That *any* male can justify his presence in *any* female-only space by saying “I identify as female” will not escape the notice of those who already harass, assault, and rape tens of thousands of women and girls every day, as well as those who would do so if given the opportunity.

Allowing any male to claim that he has a right by law to be in women’s most intimate spaces undermines laws designed to protect women in these places. For example, in Maryland it is a crime “to conduct visual surveillance of . . . an individual in a private place without the consent of that individual,” defining a “private place” as “a room in which a person can reasonably be expected to fully or partially disrobe and has a reasonable expectation of privacy.” Md. Code Ann. Crim. Law § 3-902(c)(1). If any male can assert that he has a legal right to be in a women’s locker room because he identifies as female, this law (and similar laws in 26 other states) are easily undermined. This is especially true in states that criminalize only covert or surreptitious observation, as any male may self-identify as female, enter women’s locker rooms, and openly ogle the women there.

II. WOMEN AND GIRLS EXPERIENCE FEAR, ANXIETY, AND HUMILIATION OVER LOSS OF PRIVACY AND DIGNITY IN DIVERSE SETTINGS.

Women and girls who must share single-sex intimate spaces with biological males often feel unsafe, anxious, and embarrassed having to dress and undress, shower, and attend to bodily needs in close proximity and view of the opposite sex; experience sexual harassment, threats and intimidation; are subjected to intentional voyeurism and indecent exposure; and are at risk of sexual assault. In addition to the safety issues, which more than justify female-only spaces on their own, courts have noted that the mere presence of unwanted males in intimate spaces causes distress to women and girls sharing those spaces. *Fortner v. Thomas*, 983 F.2d 1024, 1030 (11th Cir. 1993) (people “have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the opposite sex may be especially demeaning and humiliating.”). This is true even if they are not engaging in overtly threatening or inappropriate behavior (although *amicus* believes, as do many others, that entering these private spaces is itself threatening and inappropriate).

A. School bathrooms, locker rooms, and housing

Many women and girls have shared negative experiences with and have objected to their loss of safety and privacy under “gender identity” policies with the Department of Education. See, e.g., Dept. of Educ., Transcript of Title IX Public Hearing at 22-26, 57-59, 63-66, 104-07, 120-23, 191-94, 375-78, 438-40, 685-88, 918-22 (June 2021); see also Revised letter of impending enforcement action in OCR Case No. 01-19-4025, *In re. CIAC, et al.* (Aug. 31, 2020). But there are many more.

According to an Illinois lawsuit challenging a self-ID policy, “every day these girls go to school, they experience embarrassment, humiliation, anxiety, fear, apprehension, stress, degradation, and loss of dignity.” Verified Complaint for Injunctive and Declaratory Relief at 7, 8, 12, *Students and Parents for Privacy et al. v. U.S. Dept of Ed. et al.*, No. 1:16-cv-04945 (N.D. Ill, May 4, 2016). The girls have taken various steps to reduce their exposure, from avoiding the locker rooms and restrooms altogether, wearing gym clothes under regular clothes, or changing as quickly as possible while avoiding all eye contact and conversation - but none of this is enough to eliminate the “great stress

and anxiety” over sharing private space with a biological male or knowing they could walk in at any time. *Id.* Other girls have reported feeling “dread,” that they are experiencing a “scary and intimidating environment,” that they are “petrified” and scared about taking care of feminine hygiene needs, which they report as “humiliating” to have to manage in the presence of males. *Id.*

A lawsuit filed by members of a sorority in Wyoming accused a male who had been admitted to the sorority of voyeuristic and harassing behavior. Genevieve Gluck, *Wyoming Sorority Members Forced to Admit Trans-Identifying Male as Court Rejects Suit*, Reduuxx, August 28, 2023, found at <https://reduxx.info/wyoming-sorority-members-forced-to-admit-trans-identifying-male-as-court-rejects-suit/>. He was alleged to have watched women change clothes or get ready to shower, sometimes staring at them for long periods, including on at least one occasion with a visible erection. Such behavior is usually unheard of, as male access to the sorority house is *strictly* limited. But as a “sister,” he has broad access to this female-only space.

In New Mexico, a 12-year-old girl disclosed in therapy that a boy claiming a female “gender identity” had raped her in her school bathroom (where the policy was bathroom use based on asserted gender identity). Kelsey Bolar and Andrew Mew, *Female student alleges she was raped in trans-inclusive bathroom at New Mexico middle school*. The Post Millennial (June 20, 2023),

<https://thepostmillennial.com/exclusive-female-student-alleges-she-was-raped-in-trans-inclusive-bathroom-at-new-mexico-middle-school>

B. Public bathrooms and changing rooms

In Washington state, a female-only nude spa lost a discrimination complaint after denying entry to males with penises (even though it would allow entry by trans-identified males who had surgery). Lee Brown, *Women-only spa forced to allow trans customers with penises even though everyone is naked*, New York Post, June 9, 2023,

<https://nypost.com/2023/06/09/women-only-spa-must-welcome-naked-trans-clients-with-penises/>. The owner of the Olympus Spa, Myoon Woon

Lee, stated that there were “several” incidents where female customers “noticed male genitals exposed” in the spa — causing “humiliation, trauma, and rage.”

In Alaska, a trans-identified male with a fully masculine appearance, was allowed to use the female locker room at Planet Fitness. One distressed witness also reported a young girl wrapped in a towel who seemed uneasy and “frightened.” Lisa Fickenschier, *Planet Fitness assigns staffer to assist transgender client in women’s locker room: ‘If you are uncomfortable, you can use a stall’*, New York Post, March 22, 2024,

<https://nypost.com/2024/03/22/business/planet-fitness-assigns-staffer-to-assist-transgender-client-in-womens-locker-room/>.

Elsewhere, the problem for women and girls continues. “A man dressed as a woman was arrested in Virginia on Monday after police say he was caught peeping into restroom stalls three times in the past year.” NBC Washington, *Man Dressed as Woman Arrested for Spying Into Mall Bathroom Stall, Police Say*. November 18, 2015. Available at <https://www.nbcwashington.com/news/local/man-dressed-as-woman-arrested-for-spying-into-mall-bathroom-stall-police-say/1979766>.

In 2021, a trans-identified man exposed his erect penis to four adult women and a little girl in a female-only section of a spa in Los Angeles. Andy Ngo, *Wi Spa Suspect Still at Large, With History of*

Indecent Exposure and Masturbation, New York Post, September 17, 2021, available at

<https://nypost.com/2021/09/17/wi-spa-suspect-still-at-large-has-history-of-indecent-exposure-and-masturbation>. This man, who identified as a woman, had a legal right to be there under California’s “gender identity” laws, despite being on the sex offender registry since 2006 for exposing himself to another group of women.

In North Carolina, a trans-identified man was charged with indecent exposure to a minor after walking around naked in a Planet Fitness locker room nude, asking women to shower with him and help him put on lotion. He was entitled to use the women’s locker room per Planet Fitness policy. WSOCTV.com, *Suspect arrested after going into women’s locker room, charged with indecent exposure*, April 10, 2024, <https://www.wsoc.tv.com/news/local/suspect-accused-exposing-themselves-inside-womens-locker-room-planet-fitness/K6ETD7O6I5ERJJK7LBRJN7NK4A/>.

At a Washington state YMCA, an 80-year-old woman reported seeing a male employee “watching maybe four or five little girls pulling down their suits in order to use the toilet.” Emma Colton, *80-year-old*

Washington state woman banned from YMCA after demanding trans employee leave locker, New York Post. August 9, 2022, available at <https://nypost.com/2022/08/09/woman-banned-from-ymca-for-treatment-of-trans-employee/>. The woman had been a member of the pool facility for 35 years, but was banned for confronting the man, who apparently identified as a woman, claiming it was against their anti-discrimination policy. *Id.*

At an Ohio YMCA, a trans-identified male was charged, but later found not guilty of indecent exposure, after he was reported for walking around fully naked in the female locker room. *Hearing on H.B. 183*, (Ohio 2024) (Testimony of Janel Holloway and Angelina Drollinger). Apparently the relevant Ohio statute requires that genitals be exposed, but because this male weighed more than 350 pounds, his genitals were covered by his stomach. *Id.* A YMCA employee who initially sympathized with the trans-identified male offered to join him for coffee, but later reported that he used the time to share his sexual fantasies with her and also forcibly groped her. *Hearing on H.B. 183* (Ohio 2024) (Testimony of Kateisha Young).

C. Women's Prisons and Juvenile Justice Facilities

Three female inmates at a federal women's facility in Texas filed a lawsuit objecting to being housed with males. They claim they are "forced to share intimate facilities with men, who allege they are women... [and] openly express their sexual desire for the women inmates... while women are naked or partially clothed." Bill Hanna, *Transgender Bathroom Battle Smolders in Fort Worth Federal Prison*, Fort Worth Star-Telegram (February 28, 2017), <https://www.star-telegram.com/news/local/fort-worth/article134353039.html>.

A third-party PREA Report was filed on July 5, 2022 on behalf of several dozen women at Central California Women's Facility regarding their experiences being housed in the women's prison with male inmates (who identify as transgender). Ex. A., Decl. of Candice Jackson in Supp. of Pls.' Opp'n. to Proposed Intervenors' Mot. for Leave to File Supplemental Reply in Supp. of Defs.' Mot. to Strike Pls.' Decls. at 10-11, *Chandler v. Macomber* (E.D.Cal. July 14, 2022) (No. 1:21-cv-01657-JLT-HBK), ECF No. 48-1 (hereinafter Third-Party PREA Report). One woman reported that, after repeatedly exposing himself by

refusing to close the door while using the in-cell toilet, one male inmate filed a grievance accusing her and other women he was exposing himself to of harassing him. *Id.* In a separate incident, another male inmate was reportedly voyeuristically “peeping” at women in the shower. *Id.* And on multiple occasions, the same male “peep[ed]” at another woman while she was using the bathroom and naked from the waist down (which was caught on video). *Id.*

Women in prison have described their “fear and frustrations,” being “scared, angry and worried” about their safety, and “living in constant fear.” *Letters from Incarcerated Women*, <https://womensliberationfront.org/letters-from-incarcerated-women> (last visited August 29, 2024). They report they are “fearful,” and a “sense of hopelessness” is “really consuming this prison.” *Incarcerated Woman Speaks Out on the Impact of SB 132*, Women’s Liberation Front (July 6, 2021), <https://www.youtube.com/watch?v=k0q26czZZqg>.

Even in the absence of aggressive behavior from a particular male, the male presence itself - in places where the women sleep, shower, use the toilet, dress and undress - causes them fear and anxiety, and exacerbates mental health symptoms, especially for the significant

number of women in prison who have previously experienced domestic violence or sexual abuse. Third-Party PREA Report at 18.

Unfortunately, numerous women also described experiencing or personally witnessing acts of sexual assault, sexual harassment, intimidation, coercion, physical assault, voyeurism, exhibitionism. *Id.* at 2-14.

The women prisoners who brought a lawsuit challenging the gender identity housing policy in California prisons report experiencing fear, depression, anxiety, and distress from the presence of biological male inmates; being forced to share living quarters, shower, go to the bathroom, and sleep with them. *Chandler v. Macomber* FAC at paragraph 54. One woman reported feeling “intimidated” with a “profound sense of unease and angst.” *Id.* at paragraph 65.

Of note, Title IX rules apply equally to many juvenile justice facilities and programs - including institutions that serve youth of both sexes through sex-segregated housing and other sex-segregated programming. See Ex. O, U.S. Dep’t of Justice and U.S. Dep’t of Education, Dear Colleague Letter on Civil Rights Enforcement in Juvenile Justice Residential Facilities (Dec. 8, 2014).

D. Women's Shelters

The worker at the Maine women's shelter reported that women staying there have reported harassment by trans-identified males sharing the shelter space, and have "voice[d] their discomfort" to staff over sharing the intimate facilities. *Protecting Men at the Women's Shelter*, Feminist Current (Sept. 13, 2020), found at <https://www.feministcurrent.com/2020/09/13/protecting-men-at-the-womens-shelter/>.

At a California shelter, women "repeatedly complained" regarding the conduct of a male staying there, but "were informed that they had to respect this person's decision to identify as a woman. *McGee v. Poverello House*, No. 118-CV-00768-LJO-SAB, 2019 WL 5596875, at *2 (E.D. Cal. Oct. 30, 2019). Furthermore, even though this man would "make lewd and sexually inappropriate comments" as well as watch them while naked, they were told if they refused to share shower facilities with him, they would be expelled from the facility.

III. ENCOUNTERS WITH MALES IN FEMALE-ONLY SPACES CAUSE MEASURABLE HARMS TO WOMEN AND GIRLS.

A. Psychological Trauma

Actual perpetration of assault and rape are not necessary in order for women to be traumatized by male presence in private spaces.

Women with post-traumatic stress disorder (PTSD) as a result of male violence (especially sexual violence) can experience the onset or exacerbation of debilitating PTSD symptoms when in the unwanted presence of males in their intimate spaces, including terror. S.E.

Ullman, et al., *Psychosocial Correlates of PTSD Symptom Severity in Sexual Assault Survivors*, *Journal of traumatic stress*, 20(5), 821-831 (2007). The more frequent the exposure, the more likely the woman might experience a cascade of resulting psychological and physical symptoms, including reduced functioning of the immune system. K.A. Chivers-Wilson, *Sexual assault and posttraumatic stress disorder: a review of the biological, psychological and sociological factors and treatments*. *McGill journal of medicine: MJM : an international forum for the advancement of medical sciences by students*, 9(2), 111–118 (2006).

In light of the significant evidence that trans-identified males pose as great a threat to females as any other male, it would be both justified and appropriate for women and girls to fear trans-identified males just as much as any other male. The presence, or threatened presence, of males in single-sex private spaces means that the women and girls occupying them must be on guard for their safety.

Data shows that more than 10% of college women experienced sexual assault in a single academic year, with almost half of those women reporting more than one such assault during that time. U.S. Department of Justice, Bureau of Justice Statistics, *Campus Climate Survey Validation Study Final Technical Report*, January 2016, p. 85, available at www.bjs.gov/content/pub/pdf/ccsvsftr.pdf. Moreover, a majority of those assaults were committed by “students, professors, or other employees of the school.”

One young woman, Hannah, suing Kappa Kappa Gamma over admission of a voyeuristic male to her female sorority, said on a podcast “It is really uncomfortable. Some of the girls have been sexually assaulted or sexually harassed. Some girls live in constant fear in our home.” *Sorority Sisters Reveal Fear and Betrayal After Biological Male*

Pledge Allowed into Their Sorority, Megyn Kelly Show. May 15, 2023, found at <https://www.youtube.com/watch?v=XTiR7DBHrkQ>.

One woman interviewed about living with biological males in a women's prison, said "we are fearful" and that in her opinion "this is not conducive to rehabilitation." *Incarcerated Woman Speaks Out on the Impact of SB 132*, Women's Liberation Front (July 6, 2021), <https://www.youtube.com/watch?v=k0q26czZZqg>. She shared that she had felt that the women's facility was previously a safe place for her, calling it her "incubator" and that she now felt "helpless." *Id.* She further stated that "a sense of hopelessness is consuming this prison" and her feeling of being triggered by the unwanted presence of biological males in her living space: "you're that victim, again and again and again." *Id.*

Other women, incarcerated in various women's facilities in California, shared their experiences being housed with biological males in ostensibly single-sex facilities: their "fear and frustrations," being "scared, angry and worried about their safety," the feelings of being "locked in a room we can't get out of," "severe stress, anxiety and nightmares," and "living in constant fear." *Letters from Incarcerated*

Women, found at

<https://womensliberationfront.org/letters-from-incarcerated-women>.

One woman said “I am a survivor of abuse. So to have men incarcerated alongside of me is fearsome.” Another stated her opinion on the unfairness of being subject to this policy, saying “despite our trauma we will be forced to live, shower, and coexist with our pain by bringing men into our only way of living safe to be able to rehabilitate.”

These women, who overwhelmingly have abuse histories, do not need psychology research to tell them what they already know: their trauma is being entrenched, and their chances of healing are reduced. Stephanie S. Covington, *From Prison to Home: The Effect of Incarceration and Reentry on Children, Families, and Communities*, Center for Gender & Justice. (December 2001).

One woman reported that “[her] mental health has deteriorated” from being housed with men. Decl. of Nadia Romero in Supp. of Pls’ Opp’n. to Defs.’ Mot. to Dismiss at 6, *Chandler v. Macomber* (E.D.Cal. filed May 31, 2022) (No. 1:21-cv-01657-JLT-HBK), ECF 36-2. She experiences panic attacks, insomnia, and self-harm ideation. *Id.*

One witness described a general “state of fear,” defensiveness, and a pervasive “fight or flight” mentality.” Decl. of Ayanna Green at 16, *Chandler v. Macomber*, ECF 36-8. Another said that the presence of men is “very triggering and sad for everybody”, and “terrifying.” Decl. of Mimi Le at 9, *Chandler v. Macomber*, ECF 36-7.

Another witness, a biological female who identifies as a transgender man, said that the “climate here has changed,” noting with concern that the young women they look out for are now in an environment that is “no longer rehabilitative” because they are in a “constant state of hypervigilance.” Decl. of Sagal Sadiq at 3, *Chandler v. Macomber*, ECF 36-6. This witness said that witnessing sexual harassment incidents were a trigger for them personally, also saying that “Women are reluctant and scared to speak up.” *Id.* at 9.

Women challenging the California “gender identity” prison housing law have alleged that they “suffer from mental distress, fear, anxiety, PTSD, hypervigilance, panic attacks, or autoimmune disease due to their exposure and conditions of living with biological male inmates.” *Chandler v. Macomber* FAC at paragraph 57. One woman who experienced lifelong sexual abuse prior to prison suffers from “panic

attacks” and “hyperventilat[ion] when in proximity to biological males, as well as “feelings of helplessness, despair, anxiety, and depression.” *Id.* at paragraph 75. One witness in the case described having to endure conversations with a “serial rapist” who speaks openly about his sex crimes, saying many women are “retraumatized” by this. Third-Party PREA Report at 9-10.

B. Punishment and Retaliation

Women and girls are placed at risk of punishment, including criminal penalties, if they are forced to physically defend themselves from physical or sexual violence. This is a particularly acute risk in prisons, jails, and juvenile justice facilities, where women and girls do not have the same due process rights, and whose future freedom can be placed in jeopardy just from a write-up.

One woman in a California prison reported being told by staff ““you know how to fight, you know how to scrap, defend yourself” as a response to sharing their feelings of fear. *Incarcerated Woman Speaks Out on the Impact of SB 132*, Women’s Liberation Front (July 6, 2021), <https://www.youtube.com/watch?v=k0q26czZZqg>. She said “Women who

have worked diligently to change their behavior, to really rehabilitate” are being forced into situations in which they may have to choose to defend themselves, risking their freedom.

In addition, laws and policies suppressing or compelling speech regarding sex and gender identity place women and girls potentially subject them to suffering punitive measures as a result of being placed at risk of all types of harms perpetrated by males in intimate spaces. Pronouns aside, people often move easily through their day without discussing or even mentioning another person’s sex, as it is irrelevant in most contexts. However, when women and girls experience harassment or even assault by a male in a female-only space who is identifying as transgender, they are often admonished or even punished for identifying the male by his actual sex rather than his claimed identity.

In a California prison, a woman who was sexually assaulted found that the prison not only did nothing in response, but refused to acknowledge the sex of the perpetrator, referring to him as a “transgender woman with a penis” which worsened her distress. Decl. of Krystal Gonzalez at 16, *Chandler v. Macomber*, ECF 36-12.

Later, the state accused her of “willful misgendering” in her report. Mem. and P. & A. in Supp. of Mot. to Dismiss at 7, *Chandler v. Macomber* (E.D.Cal. filed May 31, 2022) (No. 1:21-cv-01657-JLT-HBK), ECF No. 15-1 (April 11, 2022).

One women’s shelter in Toronto forced one sexual abuse victim to share a private room with a biological male. Joseph Brean, *Forced to share a room with transgender woman in Toronto shelter; sex abuse victim files human rights complaint*. National Post (August 2, 2018), available at <https://nationalpost.com/news/canada/kristi-hanna-human-rights-complaint-transgender-woman-toronto-shelter>. When she filed a human rights complaint, the Human Rights Legal Support Centre told her she was the one engaged in discrimination for describing her new roommate as a “man.”

The Maine shelter worker reported that when coworkers receive complaints from women about harassment or sharing intimate facilities with males, they “do not record the reports in our daily logs, nor do they mention the incident to a supervisor. They do not confront the man to speak to him about his behavior. If, while describing the harassment

she is experiencing, a woman calls the man a man, or “he” rather than “she,” my coworkers take the time to correct her by pointing out that she is mistaken: this man is a woman.” *Protecting Men at the Women’s Shelter*, Feminist Current, Sept. 13, 2020, found at <https://www.feministcurrent.com/2020/09/13/protecting-men-at-the-womens-shelter/>.

Even women and girls who register dissent by choosing not to participate - as happened in West Virginia earlier this year - may be subject to retaliation. Five girls who abstained from participation were banned from future events as a result. Emma Richter, *Fury after five WV middle school students who protested a trans athlete's participation are banned from future competitions as state's AG fights for their freedom of speech*, Dailymail.com (April 30, 2024), <https://www.dailymail.co.uk/news/article-13364947/trans-athletes-becky-pepper-jackson-lawsuit-harrison-middle-school.html>.

C. Loss of Access to Services

Reports of all kinds are often minimized, ignored, or even punished by authorities, which understandably leads to women and

girls not reporting incidents and, when they do report, they are ignored or even retaliated against.

Authorities are often unable to remove threats, or at least believe they are unable to, or perhaps feel it is the “safest” for themselves to make decisions favoring gender identity policies, at the expense of women and girls. This dynamic contributes to the fear and anguish suffered by women who are subject to them, and dampens their confidence that making reports or filing grievances will improve their living conditions. Guards at one prison in California reportedly told one incarcerated woman that they are afraid of a lawsuit if they take actions to protect the women held there. *Incarcerated Woman Speaks Out on the Impact of SB 132*, Women’s Liberation Front (July 6, 2021), <https://www.youtube.com/watch?v=k0q26czZZqg>.

One prisoner at the same facility said they are “doing nothing meaningful to protect women from being preyed upon. They play musical beds with the inmates, just moving them from yard to yard with a new set of victims.”). Decl. of Sagal Sadiq, *Chandler v. Macomber*, ECF 36-6.

This witness noted that this makes women “reluctant to speak up” because they will remain unprotected. Another woman reported that many male inmates are “[dumped] off in different units... kick off and dominate this unit, and then the next unit, then the next unit.”

Incarcerated Woman Speaks Out on the Impact of SB 132, Women’s Liberation Front (July 6, 2021),

<https://www.youtube.com/watch?v=k0q26czZZqg>.

Many women in prison have been subject to retaliation when reporting abuse that they experience or witness. A victim of multiple incidents of voyeurism, and two witnesses who also reported, were all put in solitary confinement, allegedly for her own safety. *Chandler v. Macomber* FAC at paragraph 57. The prison disposed of corroborating evidence of one of the witnesses. *Id.* Incredibly, the victim actually had her parole grant vacated after being accused of “harassment” for filing the grievance about it. *Id.* at paragraph 89-92.

Two women were asked to leave a women's shelter in Kelowna, British Columbia, after they complained that the shelter required one of them to share a room with a man who claims to be a woman but retains

his penis and testicles. Klaudia van Emmerik, *Concerns Over Transgender Client at Okanagan shelter*, Global News (Mar. 9, 2017).

CONCLUSION

Women and girls are harmed - physically, mentally, psychologically, materially, and constitutionally - by forced encounters with males in female-only spaces. We urge the Court to uphold the longstanding legal protections for women afforded by single-sex spaces and stand resolute in defense of women and girls by affirming the district court's decision.

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CERTIFICATE OF COMPLIANCE

This brief complies with Rule 32(a), (g) because it contains 6,254 words, excluding the parts that can be excluded. This brief also complies with Rule 32(a)(5)-(6) because it is prepared in a proportionally spaced face using Microsoft Word Office 365 in 14-point Century Schoolbook font.

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CERTIFICATE OF DIGITAL SUBMISSION

With respect to this brief, all required privacy redactions have been made; the hard copies submitted to the clerk are exact copies of the ECF submission; the digital submission has been scanned for viruses with the most recent version of a commercial virus scanning program, and according to the program is free of viruses.

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