

No. 24-5588

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

STATE OF TENNESSEE; COMMONWEALTH OF KENTUCKY;
STATE OF OHIO; STATE OF INDIANA; COMMONWEALTH OF VIRGINIA;
STATE OF WEST VIRGINIA,

Plaintiffs-Appellees,

CHRISTIAN EDUCATORS ASSOCIATION INTERNATIONAL;
A.C. by her next friend and mother Next Friend, Abigail,

Intervenors/Plaintiffs-Appellees,

v.

MIGUEL CARDONA, in his official capacity as Secretary of Education;
U.S. DEPARTMENT OF EDUCATION;

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Kentucky at Covington, No. 2:24-cv-00072.
The Honorable Danny C. Reeves, Chief District Judge Presiding.

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

LAUREN A. BONE
WOMEN'S LIBERATION FRONT
1802 Vernon Street NW #2036
Washington, DC 20009
(212) 507-9475
Legaldirector@womensliberationfront.org

Attorney for Amicus Curiae



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TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT.....	i
TABLE OF AUTHORITIES.....	iv
INTRODUCTION AND INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	4
1. ALLOWING MALES TO IDENTIFY INTO FEMALE-ONLY SPACES CAUSES HARM TO WOMEN AND GIRLS.....	4
A. Women and girls are vulnerable to physical and sexual violence perpetrated by males.....	4
B. Access to single-sex spaces mitigates the risk of violence and sexual predation to women and girls.....	5
C. Disparities between men and women in crime perpetration are based on biological sex, not “gender identity”.....	8
D. Self-identification policies allow any male can opt-in to access female-only spaces at any time.....	12
2. WOMEN AND GIRLS REPORT FEAR, ANXIETY, AND HUMILIATION OVER LOSS OF PRIVACY AND DIGNITY IN DIVERSE SETTINGS.....	13
A. School bathrooms, locker rooms, and housing.....	13
B. Public bathrooms and changing rooms.....	16
C. Women’s Prisons and Juvenile Justice Facilities.....	19
D. Women’s Shelters.....	22
3. ENCOUNTERS WITH MALES IN FEMALE-ONLY SPACES CAUSE MEASURABLE HARMS TO WOMEN AND GIRLS.	23
A. Psychological Trauma.....	23
B. Punishment and Retaliation.....	28

C. Loss of Access to Services 31
CONCLUSION 34

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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 6th 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 decision to issue the 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.

The personal experiences shared by A.C. and other incidents referenced by the plaintiffs and intervenors are not rare, nor are they coincidental. Additionally, the descriptions shared about the *impact* on women and girls of encountering males in ostensible female-only spaces are closer to the rule than the exception. They are also 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 will naturally and necessarily impose these potentially traumatizing encounters on all women and girls affected by Title IX.

ARGUMENT

1. **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.³

Upwards of 85% of homicides in the U.S. are committed by males, and more than 95% of rapes are perpetrated by males.⁴

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.⁵ And male-female assaults can have major consequences, as they may involve unwanted penile penetration and the threat of pregnancy.

³ Satoshi Kanazawa & Mary C. Stil, *Why Men Commit Crimes (And Why They Desist)*, SOCIOLOGICAL THEORY, 434 (Nov., 2000).

⁴ 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>.

⁵ 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).

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.⁶ 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

⁶ Gilligan, *Unisex Changing Rooms Put Women In Danger*, THE SUNDAY TIMES online (Sept. 2, 2018), <https://www.thetimes.co.uk/article/unisex-changing-rooms-put-women-in-danger-8lwbp8kgk>, found at <https://archive.ph/evO4g>.

from men” and a “greater need for privacy when using toilets and when bathing.”⁷

Inaccessible toilets and bathrooms make women and girls more vulnerable to rape.”⁸ 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.⁹

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.

⁷ *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>

⁸ *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>

⁹ *Id.*

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

*"[t]he 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."*¹⁰

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."¹¹

¹⁰ "A.," 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/?fbclid=IwAR0zd8Wq1NoO9eJ2sn9Pznahm3BBagQaR-f9w_UFkS0cpTw9OCMybOTE2J8

¹¹ Letters from Incarcerated Women, <https://womensliberationfront.org/letters-from-incarcerated-women> (last visited August 29, 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.¹²

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

¹² *Poll data*, Women’s Liberation Front. Found at <https://womensliberationfront.org/poll-data>

population.¹³ Also, the vast majority of males who identify as women retain their penises, which means rape and pregnancy are still possible threats.¹⁴

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.¹⁵

¹³ Cecilia Dhejne et. al. *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, PLoS One. 2011 Feb 22;6(2):e16885. doi: 10.1371/journal.pone.0016888.

¹⁴ Herman JL, Wilson BD, Becker T. *Demographic and Health Characteristics of Transgender Adults in California: Findings from the 2015-2016 California Health Interview Survey*. Policy Brief UCLA Cent Health Policy Res. 2017 Oct, found at <https://pubmed.ncbi.nlm.nih.gov/29091375/>. See also Canner JK, Harfouch O, Kodadek LM, Pelaez D, Coon D, Offodile AC 2nd, Haider AH, Lau BD. *Temporal Trends in Gender-Affirming Surgery Among Transgender Patients in the United States*. JAMA Surg. 2018 Jul, found at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5875299/>.

¹⁵ *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, found 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.¹⁶ This compares to 12-13% of the general prison population, which includes both sexes.¹⁷
- 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.¹⁸
- In the UK, 58.9% of trans-identifying male inmates committed sex offenses, with 28% having committed rape and 18% attempted rape.¹⁹

¹⁶ “*Transgender Inmate Report*”, Federal Bureau of Prisons, dated August 19, 2023. Posted on August 25, 2023 by “Keep Prisons Single Sex USA” on X (formerly Twitter) at https://x.com/NoXY_USA/status/1695205078376845782?t=XFcek3rcOxiI f750Q8n30w&s=19

¹⁷ *Id.* See also “Inmate Statistics: Offenses”, Federal Bureau of Prisons, found at https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp

¹⁸ Canada’s 2022 Correctional Service Research Report, *Examination of Gender Diverse Offenders*, examining data from 2017 to 2020

¹⁹ *Evidence and Data on Trans Women’s Offending Rates*, Evidence submitted to WEC by Professors Rosa Freedman, Kathleen Stock, and

Policymakers know policies allowing males to access women’s private spaces are unsafe. In 2021, the California Department of Corrections and Rehabilitation 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.” Those “different populations”, of course, are men and women.²⁰ Prisons themselves took additional measures, such as purchasing stronger riot gear and pepper spray, and procuring condoms.²¹

Sexual victimization takes forms beyond outright violence, such as exhibitionism and voyeurism, which are *vanishingly* rare among women.²²

Alice Sullivan on Gender Recognition Act in the UK, found at <https://committees.parliament.uk/writtenevidence/18973/pdf/>

²⁰ First Amended Complaint for Declaratory and Injunctive Relief, *Chandler v. Macomber*, Case 1:21-cv-01657-JLT-HBK, U.S. Dist. Ct. for East. Dist. of Cal. Doc. 84.

²¹ *Condom Purchases and Sexual Assault*, results of Public Records Act request to California, found at <https://womensliberationfront.org/news/condom-purchases-and-sexual-assault?rq=condoms>

²² Zucker, K. (2013). *DSM-5: call for commentaries on gender dysphoria, sexual dysfunctions, and paraphilic disorders*. Archives of sexual behavior. Vol. 42, Iss. 5, pp. 669 – 674.

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.”²³ 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

²³ Md. Code Ann. Crim. Law § 3-902(c)(1).

as female, enter women’s locker rooms, and openly ogle the women there.

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

In addition to the safety issues, which more than justify female-only spaces on their own, the mere presence of unwanted males in intimate spaces causes distress to women and girls sharing those spaces.²⁴ 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

The experiences (and third party reports²⁵) already shared with the Court by A.C. regarding the impact of sharing single-sex intimate

²⁴ *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.”).

²⁵ Reports include sexual assault, sexual harassment, and forced exposure to nudity, which resulted in women and girls being “uncomfortable, embarrassed, and... traumatized.” Prop. Intervenors-Plaintiffs’ Complaint, Doc. 21-3, Para 41-42, 45, 46-47.

spaces with biological males are fairly typical: Feeling unsafe, anxious, and embarrassed having to dress and undress, shower, and attend to bodily needs in close proximity and view of the opposite sex; sexual harassment; threats and intimidation; intentional voyeurism and indecent exposure; and sexual assault.²⁶ Many women and girls have shared similar experiences and objections to their loss of safety and privacy under “gender identity” policies with the Department of Education.²⁷ 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.”²⁸ 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

²⁶ Dec. of A.C., Doc. 21-5.

²⁷ 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).

²⁸ Verified Complaint for Injunctive and Declaratory Relief. *Students and Parents for Privacy et al. v. U.S. Dept of Ed. et al.*, U.S. District Court Northern District of Illinois, Eastern Division. Case No. 1:16-cv-04945. Paragraphs 7, 8, 12.

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.²⁹ 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.³⁰

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.³¹ 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

²⁹ *Id.*

³⁰ *Id.*

³¹ *Wyoming Sorority Members Forced to Admit Trans-Identifying Male as Court Rejects Suit*. Genevieve Gluck, August 28, 2023. Found at <https://reduxx.info/wyoming-sorority-members-forced-to-admit-trans-identifying-male-as-court-rejects-suit/>

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).³²

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).³³ 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.”

³² Kelsey Bolar and Andrea 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#google_vignette

³³ “Women-only spa forced to allow trans customers with penises even though everyone is naked”, New York Post, June 9, 2023. Found at <https://nypost.com/2023/06/09/women-only-spa-must-welcome-naked-trans-clients-with-penises/>.

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.”³⁴

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.”³⁵In 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.³⁶ 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

³⁴ *“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. Found at <https://nypost.com/2024/03/22/business/planet-fitness-assigns-staffer-to-assist-transgender-client-in-womens-locker-room/>.

³⁵ *Man Dressed as Woman Arrested for Spying Into Mall Bathroom Stall, Police Say*. NBC Washington. November 18, 2015. Found at <https://www.nbcwashington.com/news/local/man-dressed-as-woman-arrested-for-spying-into-mall-bathroom-stall-police-say/1979766>.

³⁶ *Wi Spa Suspect Still at Large, With History of Indecent Exposure and Masturbation*, Andy Ngo, New York Post, September 17, 2021, found at <https://nypost.com/2021/09/17/wi-spa-suspect-still-at-large-has-history-of-indecent-exposure-and-masturbation/>.

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.³⁷

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."³⁸ 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.³⁹

³⁷ "Suspect arrested after going into women's locker room, charged with indecent exposure" WSOCTV.com, April 10, 2024, found at <https://www.wsocvtv.com/news/local/suspect-accused-exposing-themselves-inside-womens-locker-room-planet-fitness/K6ETD7O6I5ERJJK7LBRJN7NK4A/> Women's Lockerroom, NC Planet Fitness

³⁸ *80-year-old Washington state woman banned from YMCA after demanding trans employee leave locker.* Emma Colton, New York Post. August 9, 2022. Found at <https://nypost.com/2022/08/09/woman-banned-from-ymca-for-treatment-of-trans-employee/>.

³⁹ *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.⁴⁰ 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.⁴¹ 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.⁴²

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.”⁴³

⁴⁰ Testimony of Janel Holloway in Ohio House Bill (HB) 183; Testimony of Angelina Drollinger in Ohio House Bill (HB) 183

⁴¹ *Id.*

⁴² Testimony of Kateisha Young in Ohio House Bill (HB) 183

⁴³ Hanna, Bill. Transgender bathroom battle smolders in Fort Worth federal prison. February 28, 2017. Fort Worth Star-Telegram.

In California, after being repeatedly asked by women to close the door while using the toilet, one male inmate filed a grievance accusing the women of harassing him.⁴⁴ Another male inmate was reportedly voyeuristically “peeping” at women in the shower.⁴⁵ 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).⁴⁶

Women in prison have described their “fear and frustrations,” being “scared, angry and worried” about their safety, and “living in constant fear.”⁴⁷ They report they are “fearful,” and a “sense of hopelessness” is “really consuming this prison.”⁴⁸

<https://www.star-telegram.com/news/local/fort-worth/article134353039.html>

⁴⁴ *Third Party PREA report. Chandler v. Macomber*, Exhibit A. Plaintiffs’ Opp. to Prop. Intervenor’s Motion for Leave to File Supplemental Reply in Support of Def.’s Motion to Strike Plaintiffs’ Declarations. Doc. 48-1, p. 10-11

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Letters from Incarcerated Women, <https://womensliberationfront.org/letters-from-incarcerated-women> (last visited August 29, 2024).

⁴⁸ Incarcerated Woman Speaks Out on the Impact of SB 132. (Interview with Michelle H.) July 6, 2021

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

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).⁴⁹ 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.⁵⁰ Unfortunately, numerous women also described experiencing or personally witnessing acts of sexual assault, sexual harassment, intimidation, coercion, physical assault, voyeurism, exhibitionism.⁵¹

The plaintiffs in *Chandler v. Macomber*, a lawsuit challenging a gender identity housing policy in California prisons, allege that they experience fear, depression, anxiety, and distress from the presence of biological male inmates; being forced to share living quarters, shower,

⁴⁹ Third Party PREA report. *Chandler v. Macomber*, Document 48-1.

⁵⁰ *Id.*

⁵¹ *Id.*

go to the bathroom, and sleep with them.⁵² One plaintiff reported feeling “intimidated” with a “profound sense of unease and angst.”⁵³

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.⁵⁴

At a California shelter, women “repeatedly complained” regarding the conduct of a male staying there, but “were informed that they had to

⁵² First Amended Complaint, *Chandler v. Macomber*, Doc. 84. Para 54.

⁵³ *Id.* Para 65.

⁵⁴ “A.” 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/?fbclid=IwAR0zd8Wq1NoO9eJ2sn9Pznahm3BBagQaR-f9w_UFkS0cpTw9OCMybOTE2J8

respect this person’s decision to identify as a woman.⁵⁵ 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.

3. 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.⁵⁶ The more frequent the exposure, the more likely the woman might experience a

⁵⁵ *McGee v. Poverello House*, No. 118-CV-00768-LJO-SAB, 2019 WL 5596875, at *2 (E.D. Cal. Oct. 30, 2019).

⁵⁶ Ullman, S. E., Filipas, H. H., Townsend, S. M., & Starzynski, L. L. (2007). Psychosocial correlates of PTSD symptom severity in sexual assault survivors. *Journal of traumatic stress*, 20(5), 821-831.

cascade of resulting psychological and physical symptoms, including reduced functioning of the immune system.⁵⁷

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.⁵⁸

Moreover, a majority of those assaults were committed by “students, professors, or other employees of the school.”

⁵⁷ Chivers-Wilson K. A. (2006). 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.

⁵⁸ 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/ccsvsfr.pdf.

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.”⁵⁹

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.”⁶⁰ 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.”⁶¹ 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.”⁶²

⁵⁹ *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>.

⁶⁰ *Incarcerated Woman Speaks Out on the Impact of SB 132*. (Interview with Michelle H.) July 6, 2021

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

⁶¹ *Id.*

⁶² *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."⁶³ 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,⁶⁴ do not need psychology research to tell them what they already know: their trauma is being entrenched, and their chances of healing are reduced.

⁶³ Letters from Incarcerated Women,
<https://womensliberationfront.org/letters-from-incarcerated-women>

⁶⁴ *From Prison to Home: The Effect of Incarceration and Reentry on Children, Families, and Communities*. Stephanie S. Covington, PhD, LCSW Co-director, Center for Gender & Justice. December 2001.

One plaintiff in *Chandler v. Macomber*, said that “my mental health has deteriorated” from being housed with men.⁶⁵ She experiences panic attacks, insomnia, and self-harm ideation.⁶⁶

One witness described a general “state of fear,” defensiveness, and a pervasive “fight or flight” mentality.”⁶⁷ Another said that the presence of men is “very triggering and sad for everybody”, and “terrifying.”⁶⁸ 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.”⁶⁹ 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.”⁷⁰

⁶⁵ Dec. of Nadia Romero in Support of Plaintiffs’ Opp. to Def. Mot. to Dis., *Chandler v. Macomber*, Doc. 36-2. para 6.

⁶⁶ *Id.*

⁶⁷ Dec. of Ayanna Green in Support of Plaintiffs’ Opp. to Def. Mot. to Dis., *Chandler v. Macomber*, Doc. 36-8. para 16.

⁶⁸ Dec. of Mimi Le in Support of Plaintiffs’ Opp. to Def. Mot. to Dis., *Chandler v. Macomber*, Doc. 36-7. para 9.

⁶⁹ Dec. of Sagal Sadiq in Support of Plaintiffs’ Opp. to Def. Mot. to Dis., *Chandler v. Macomber*, Doc. 36-6. para 3.

⁷⁰ *Id.* at Para 9.

The plaintiffs in *Chandler v. Macomber* allege 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.”⁷¹ One plaintiff 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.”⁷² 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.⁷³

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

⁷¹ First Amended Complaint, *Chandler v. Macomber*, Doc. 84. Para 57.

⁷² *Id.* Para 75.

⁷³ *Third Party PREA report*. Exhibit A. Plaintiffs’ Opp. to Prop. Intervenor’s Motion for Leave to File Supplemental Reply in Support of Def.’s Motion to Strike Plaintiffs’ Declarations. *Chandler v. Macomber*, Doc. 48-1, p. 9-10.

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.⁷⁴ 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

⁷⁴ Incarcerated Woman Speaks Out on the Impact of SB 132. (Interview with Michelle H.) July 6, 2021

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

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.⁷⁵ Later, the state accused her of “willful misgendering” in her report.⁷⁶

One women’s shelter in Toronto forced one sexual abuse victim to share a private room with a biological male.⁷⁷ 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

⁷⁵ Dec. of Krystal Gonzalez in Support of Plaintiffs’ Opp. to Def. Mot. to Dis., *Chandler v. Macomber*, Doc. 36-12. para 16.

⁷⁶ Memorandum and Points of Authorities in Support of Motion to Dismiss, *Chandler v. Macomber*, p. 7.

⁷⁷ *Forced to share a room with transgender woman in Toronto shelter, sex abuse victim files human rights complaint*. National Post. August 2, 2018. Found at <https://nationalpost.com/news/canada/kristi-hanna-human-rights-complaint-transgender-woman-toronto-shelter>

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.”⁷⁸

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.⁷⁹

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

⁷⁸ “A,” *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/?fbclid=IwAR0zd8Wq1NoO9eJ2sn9Pznahm3BBagQaR-f9w_UFkS0cpTw9OCMybOTE2J8

⁷⁹ *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*, Emma Richter, Dailymail.com. April 30, 2024. Found at <https://www.dailymail.co.uk/news/article-13364947/trans-athletes-becky-pepper-jackson-lawsuit-harrison-middle-school.html>.

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.⁸⁰ 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.”⁸¹ This witness noted that this makes women “reluctant to speak up” because they will remain unprotected. Another woman reported that many male

⁸⁰ Incarcerated Woman Speaks Out on the Impact of SB 132. (Interview with Michelle H.) July 6, 2021

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

⁸¹ Dec. of Sagal Sadiq in Support of Plaintiffs’ Opp. to Def. Mot. to Dis., *Chandler v. Macomber*, Doc. 36-6.

inmates are “[dumped] off in different units... kick off and dominate this unit, and then the next unit, then the next unit.”⁸²

Many women in prison have been subject to retaliation when reporting abuse that they experience or witness. One plaintiff in *Chandler v. Macomber* reportedly was put in solitary confinement, allegedly for her own safety, and the prison disposed of paperwork corroborating her claims.⁸³ Another, a victim of multiple acts of voyeuristic bathroom “peeping,” actually had her parole grant vacated after being accused of “harassment” for filing a grievance about it.⁸⁴

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.⁸⁵

⁸² Incarcerated Woman Speaks Out on the Impact of SB 132. (Interview with Michelle H.) July 6, 2021

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

⁸³ First Amended Complaint, *Chandler v. Macomber*, Doc. 84. Para 57.

⁸⁴ First Amended Complaint, *Chandler v. Macomber*, Doc. 84. Para 89-92.

⁸⁵ *Concerns over transgender client at Okanagan shelter*, Klaudia Van Emmerik, 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.

Respectfully submitted,

/s/ Lauren A. Bone

Lauren A. Bone
Women's Liberation Front
1802 Vernon Street NW #2036
Washington, DC 20009
(212) 507-9475
legaldirector@womensliberationfront.org

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century font.

This document complies with the word limits established by Federal Rule of Appellate Procedure 29(a)(5) because the brief contains 6,214 words, excluding the parts of the brief exempt by Federal Rule of Appellate Procedure 32(f).

Dated: September 3, 2024

/s/ Lauren A. Bone

Lauren A. Bone

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2024, I e-filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. All participants who are CM/ECF registered will be served with the foregoing document.

/s/ Lauren A. Bone

Lauren A. Bone