

No. 16-273

In the Supreme Court of the United States

GLOUCESTER COUNTY SCHOOL BOARD,

Petitioner,

v.

G.G., BY HIS NEXT FRIEND AND MOTHER,
DEIRDRE GRIMM,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

**BRIEF OF *AMICI CURIAE* WOMEN'S
LIBERATION FRONT AND FAMILY POLICY
ALLIANCE IN SUPPORT OF PETITIONER**

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*¹

Amici are the Women’s Liberation Front (“WoLF”), an organization of radical feminists dedicated to the liberation of women by ending male violence, regaining reproductive sovereignty, and preserving women-only spaces, and the Family Policy Alliance (“FPA”), a Christian organization dedicated to helping pro-family Americans unleash their citizenship for a nation where God is honored, religious freedom flourishes, families thrive, and life is cherished.

Pro-family Christians and radical feminists may not agree about much, but they agree that redefining “sex” to mean “gender identity” is a truly fundamental shift in American law and society. It also strips women of their privacy, threatens their physical safety, undercuts the means by which women can achieve educational equality, and ultimately works to erase women’s very existence. It not only revokes the very rights and protections Congress enacted specifically to secure *women’s* access to education, but does so in order to extend Title IX to cover men *claiming* to be women.

Less than one month after the decision below, the federal government issued “guidance” expanding the

¹ No counsel for any party authored any part of this brief, and no party, their counsel, or anyone other than FPA and 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.

reach of the “sex” means “gender identity” doctrine from just restrooms to *all* previously sex-segregated facilities, including locker rooms, showers, and dormitories.² Not surprisingly, the government cited the Fourth Circuit’s decision as support for taking this interpretation to its logical conclusion. App. 129a, n. 5.

Three harmful consequences follow from redefining “sex” in Title IX to mean “gender identity”.³ First, women will lose their physical privacy and face an increased risk of sexual assault. This redefinition allows *any* man to justify his presence in *any* women-only space simply by uttering the magic words, “I identify as a woman”, subject only to the condition that male students “notif[y] the school administration that the student will assert a gender identity that differs from previous representations or records.” App. 130a. But male faculty, administrators, other employees, *and any other men who walk onto the campus* of a Title IX institution do not have to notify anyone about anything; they can just show up in any women’s restroom, locker room, shower, or dormitory whenever they want.

² U.S. Department of Justice and U.S. Department of Education, *Dear Colleague Letter on Transgender Students*, May 13, 2016 (“May 13 Guidance”), App. 126a-142a. On August 21, 2016, the U.S. District Court for the Northern District of Texas preliminarily enjoined enforcement of the May 13 Guidance. *Texas v. United States*, 2016 WL 4426495 (N.D. Tex. Aug. 21, 2016), on appeal, *Texas v. United States*, No. 16-11534 (5th Cir.).

³ *Amici* use “sex” throughout to mean exactly what Congress meant in 1972: The binary biological classification of human beings as either female (“women”) or male (“men”).

But because men have been forcing themselves on women for thousands of years with virtual impunity, a new pretext for stripping women of their privacy and making them more vulnerable to everything from groping to rape may actually be the least remarkable of these consequences.

More pernicious is the loss of one of the primary means by which women are trying to overcome the centuries – millennia – of being denied education: Scholarships. If any man becomes eligible for the millions of dollars in female-only scholarships at Title IX institutions merely by “identifying” as a woman, then many will do just that. For women, this means the loss of an indispensable tool in their struggle to achieve equality in education.

The third and most serious consequence of legally redefining “woman” as anyone who claims to be one, is that “woman” – as humankind has *always* recognized “woman” – will cease to exist. Women’s immutable existence will be legally altered to include any man who wishes to be deemed a woman, for whatever reason, at whatever time and for however long it suits him.

Even at times and in places where women are the property of men (as many still are around the globe) and have few rights beyond those granted by their owners they, like all women, still possess their own experience and legal status derived from their biological reality. But if “sex” means nothing more than self-determined “gender identity”, even those women will continue to share a status no longer

available to “the people formerly known as women” in the United States. If, as a matter of law, anyone can be a woman, then no one is a woman.

WoLF

WoLF’s interest in this case stems from its own challenge to the May 13 Guidance that expanded the application of the “sex” means “gender identity” doctrine to all sex-segregated facilities at Title IX schools. (*Women’s Liberation Front v. U.S. Department of Justice et al.*, No. 1:16-cv-00915 (D.N.M. August 11, 2016.) WoLF’s district court complaint alleges that the Guidance is a legislative rule adopted without the required notice and comment rulemaking, that it conflicts with the plain language of Title IX, and that it violates Constitutional rights to privacy.⁴

Family Policy Alliance

FPA’s interest in this case is tied directly to its advocacy for policies that protect the privacy and safety of women and children in vulnerable spaces such as showers and locker rooms. Together with its state allies, FPA launched the “Ask Me First” campaign (www.askmefirstplease.com) to empower women and children to advocate for their privacy and safety rights before government officials who might not otherwise consider those most affected by redefining Title IX. As a Christian organization, FPA

⁴ *WoLF v. United States* has been stayed pending a decision in this case.

believes that all human beings are created in the image of God and that both sexes uniquely reveal part of His nature. Because of this, FPA opposes policies that would endanger or eliminate either sex.

STATEMENT

If accepted, the redefinition of “sex” mandated by the Fourth Circuit will have at least three very serious consequences for women.

A. Privacy and Sexual Violence

Redefining “sex” to mean “gender identity” means that the hundreds of colleges and universities that have women-only dormitories must now allow any man who “identifies” as a woman to live in them: According to DOJ and DOE, “a school must allow transgender students access to housing consistent with their gender identity.” App. 137a.

Thus women who believed that they would have the personal privacy of living only with other women will be surprised to discover that men will be their roommates and will be joining them in the showers. And those women will only discover this *after* they move in, not before, because even if the school is aware that a student is a man identifying as a woman, *the school must keep such notification confidential*. Schools may disclose “directory information” such as “a student’s name, address, telephone number, date and place of birth”, etc., but “[s]chool officials may not designate students’ sex, including transgender status, as directory information because doing so could be

harmful or an invasion of privacy.” App. 140a. It is truly mind-boggling that informing women as to which men might have the “right” to share a bedroom with them is an “invasion of privacy”, but it is *not* an invasion of privacy to invite those men into women’s bedrooms in the first place.

Colleges have already begun implementing this portion of May 13 Guidance. For example, Florida Gulf Coast University announced that, as a result of the Guidance, it will open its women-only dorms to any man who “identifies” as female.⁵ This includes the Women in Science, Technology, Engineering and Mathematics Living and Learning Community (WiSTEM), designed to support “first-year college women pursuing challenging degrees in STEM disciplines”.⁶

Schools have long provided women-only dormitories and related facilities for female students. For example, Cornell College in Mount Vernon, Iowa, has a proud history of serving women, being the first college west of the Mississippi to grant women the same rights and privileges as men, and the first, in 1858, to award a degree to a woman. At Cornell College, Bowman-Carter Hall has traditionally been a residence hall for women only.⁷ But if “sex” is redefined to mean “gender identity”, then any man

⁵www.nbc-2.com/story/33480768/fgcu-opens-all-housing-to-transgender-students.

⁶www.fgcu.edu/Housing/prospective/WiStem.html.

⁷www.cornellcollege.edu/residence-life/housing/halls/bowman-carter/index.shtml.

will be legally entitled to live in Bowman-Carter Hall so long as he “identifies” as a woman.

The same is true at another Cornell – Cornell University – where Balch Hall has long been a women-only residence.⁸ But that will end if “sex” is redefined to mean “gender identity”, and the women of Balch Hall will be joined by any man – or group of men – who utters the magic words.

Privacy is one thing; violence is another. The violence DOE and DOJ have done to the statute is reflected in the violence that will result from their actions. Without a second thought – and without any public notice or opportunity to comment – the federal government has mandated that almost every school in the U.S. must now allow men to invade women’s privacy and threaten their physical safety in the places heretofore reserved exclusively for them. That *any* man can justify his presence in *any* women’s restroom, locker room, or shower by saying, “I identify as a woman” will not escape the notice of those who already harass, assault, and rape tens of thousands of women every day.

The first report of the White House Task Force to Protect Students from Sexual Assault begins with the sentence, “One in five women is sexually assaulted in college.”⁹ More recent data has shown that the problem is even worse than that – *more than 10% of*

⁸living.sas.cornell.edu/live/wheretolive/residencehalls/Balch-Hall.cfm.

⁹ *Not Alone*, April 2014, p. 2 (available at www.justice.gov/ovw/page/file/905942/download).

*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.*¹⁰ Moreover, a majority of those assaults were committed by “students, professors, or other employees of the school”; in other words, the very people that the federal government is now emboldening in those activities. *Id.*, p. 104.

It is surreal that the Departments of Education and Justice, both of which profess concern about the safety of women in schools and on campus, would facilitate sexual predation in those very places. Allowing any man to claim he has a right guaranteed by federal law to be where he should not be seriously undermines the 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”. Md. Code Ann., Crim. Law § 3-902(c)(1); the statute defines “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” (*id.*, § 3-902(a)(5)(i)), such as dressing rooms, restrooms (*id.*, § 3-902(a)(5)(ii)), and any such room in a “school or other educational institution”. *Id.*, § 3-902(a)(5)(i)(6).

¹⁰ 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).

Given that any man can assert that he has a legal right to be in the women’s locker room because he “identifies as female”, it is impossible to see how either this or similar laws in 26 other states could ever be enforced.¹¹

Giving predators the convenient pretext of a right to be precisely where women are at their most vulnerable also renders similar statutes in other states simply inapplicable to these types of crimes: In many states, the relevant statute criminalizes only covert or “surreptitious” observation.¹² For example, District of Columbia law provides that it is “unlawful for any person to occupy a hidden observation post or to install or maintain a peephole, mirror, or any electronic device for the purpose of secretly or

¹¹ See Alaska Stat. § 11.61.123; Ariz. Rev. Stat. § 13-1424; Ark. Code Ann. § 5-16-102; Cal. Penal Code § 647; Colo. Rev. Stat. § 18-3-404; Ind. Code Ann. § 35-45-4-5; Iowa Code § 709.21; Kan. Stat. Ann. § 21-4001; Ky. Rev. Stat. Ann. § 531.090; Me. Rev. Stat. Ann. tit. 17-A, § 511; Md. Code Ann., Crim. Law § 3-902; Minn. Stat. § 609.746; Mo. Rev. Stat. § 565.253; Neb. Rev. Stat. Ann. § 28-311.08; N.H. Rev. Stat. Ann. § 644:9; N.J. Stat. Ann. § 2C:14-9; N.M. Stat. Ann. § 30-9-20; Okla. Stat. Ann. tit. 21, § 1171; Or. Rev. Stat. § 163.700; 18 Pa. Cons. Stat. Ann. § 7507.1; S.C. Code Ann. § 16-17-470; Tenn. Code Ann. § 39-13-607; Tex. Penal Code Ann. § 42.01; Utah Code Ann. § 76-9-702.7; Vt. Stat. Ann. tit. 13, § 2605; Wash. Rev. Code Ann. § 9A.44.115; Wis. Stat. Ann. § 942.08. Other states either criminalize only filming in such places (Conn. Gen. Stat. § 53a-189a; Idaho Code Ann. § 18-6609; 720 Ill. Comp. Stat. Ann. 5/26-4; Mass. Ann. Laws ch. 272, § 104; N.Y. Penal Law § 250.45), and one state limits its voyeurism statutes to private residences (La. Rev. Stat. Ann. § 14:283.1).

¹² Presumably those states never considered that such predators would be open about their activities.

surreptitiously observing” in a bathroom, locker room, etc. D.C. Code Ann. § 22-3531(b). Similarly, in Virginia, “It shall be unlawful for any person to use a peephole or other aperture to secretly or furtively peep, spy or attempt to peep or spy into a restroom, dressing room, locker room, [etc.]” Va. Code Ann. § 18.2-130(B).¹³

But it is *not* illegal for a man to walk into a women’s locker room in the District of Columbia or Virginia and openly ogle the women there, because there is nothing “secret or surreptitious about” that action – just the opposite. Redefining “sex” to mean “gender identity” *effectively decriminalizes this predatory sexual activity* and gives a get-out-of-jail free card to any predator who smiles and says, “But I identify as a woman”.

¹³ This same condition of the secret or hidden observer applies to voyeurism statutes in at least 15 other states. *See* Del. Code Ann. tit. 11, § 820 (“peer or peep into a window or door”); Fla. Stat. Ann. § 810.14 (“secretly observes”); Ga. Code Ann. § 16-11-61 (“peeping Tom”); Haw. Rev. Stat. Ann. § 711-1111 (“peers or peeps”); Mich. Comp. Laws Serv. § 750.167 (“window peeper”); Miss. Code Ann. § 97-29-61 (“pries or peeps through a window”); Mont. Code Ann. §45-5-223 (“surreptitious”); Nev. Rev. Stat. Ann. § 200.603 (“surreptitiously conceal . . . and peer, peep or spy”); N.C. Gen. Stat. § 14-202 (“peep secretly”); N.D. Cent. Code § 12.1-20-12.2 (“surreptitiously”); Ohio Rev. Code Ann. § 2907.08 (“surreptitiously”); R.I. Gen. Laws § 11-45-1 (“window, or any other opening”); S.D. Codified Laws § 22-21-1 (“peek”); Wyo. Stat. § 6-4-304 (“looking in a clandestine, surreptitious, prying or secretive nature”).

B. Preferences Addressing Historical and Systemic Discrimination

After centuries of second-class treatment in all matters educational, the very preferences used to remedy that history and encourage women's education – most importantly, scholarships for women – will now be reduced by the demands of any men who “identify” as women. Every women's scholarship at Title IX schools that have been created by the school itself, or by the federal or state government *must*, as a matter of federal law, now be open to any such men.¹⁴

Virtually all schools have such endowed scholarships. Princeton, for example, has the Peter A. Cahn Memorial Scholarship, the first scholarship for female students at Princeton, and the Gary T. Capen Family Scholarship for International Women. For graduate students, Cornell University's School of Veterinary Medicine has the Sheila D. Grummick Scholarship for female students, and the Richard M. Sweezey Memorial Scholarship, whose awards are made to students “with financial need and preferably to a minority female student from the Bronx to help pay for supplies and books.”¹⁵

Given the struggles women have gone through to become lawyers (*see, e.g.*, Ruth Bader Ginsburg, *The*

¹⁴ Whether scholarships funded by a third party (*e.g.*, Alpha Epsilon Phi, a women's legal sorority, sponsors the Ruth Bader Ginsburg Scholarship for female law students) would be required to abide by this policy if used at a school subject to Title IX is an open question.

¹⁵ <https://www2.vet.cornell.edu/education/doctor-veterinary-medicine/financial-aid/policies-funding-sources/scholarships/scholarship-list>.

Progression of Women in the Law, 28 Val. U. L. Rev. 1161 (1994)), it is not surprising that law schools also have established such scholarships. Yale Law School, for example, has the Joan Keyes Scott Memorial scholarship for women students, the Lillian Goldman Perpetual Scholarship Fund, “for students in financial need who have a demonstrated interest in women’s rights, with a preference for women students”, and the Elizabeth Warke Brem Memorial Fund, “for scholarships at Yale Law School with a preference for Hispanic women students”.¹⁶

Nor are such scholarships confined to private institutions. At the University of Iowa, for example, undergraduate women are supported by, *inter alia*, the Madeline P. Peterson Scholarship, “awarded to an entering first-year woman student of American Indian descent”, and the Cathy Hinton Scholarship, “awarded to a female engineering student who is an Iowa resident”.¹⁷ For graduate students, the University of Virginia has the Class of 1975 Marianne Quattrocchi Memorial Scholarship, whose purpose is “to attract female candidates to Darden [School of Business] who otherwise might not attend.”¹⁸ The list goes on and on.

¹⁶ <http://bulletin.printer.yale.edu/htmlfiles/law/alumni-and-endowment-funds.html>.

¹⁷ <https://diversity.uiowa.edu/awards/madeline-p-peterson-scholarship-american-indian-women>;
<https://uiowa.academicworks.com/opportunities/83404>.

¹⁸ <http://www.darden.virginia.edu/mba/financial-aid/scholarships/affinity/>.

Even the federal government offers such scholarships, *e.g.*, the National Oceanic and Atmospheric Administration's Dr. Nancy Foster Scholarship Program, which "provides support for master's and doctoral studies in oceanography, marine biology, maritime archaeology and all other science, engineering, social science and resource management disciplines involving ocean and coastal areas particularly by women and members of minority groups."¹⁹

Twenty years ago, this Court eloquently described how women's physiology was used as an excuse to deny them education:

Dr. Edward H. Clarke of Harvard Medical School, whose influential book, *Sex in Education*, went through 17 editions, was perhaps the most well-known speaker from the medical community opposing higher education for women. He maintained that the physiological effects of hard study and academic competition with boys would interfere with the development of girls' reproductive organs. See E. Clarke, *Sex in Education* 38-39, 62-63 (1873); *id.*, at 127 ("identical education of the two sexes is a crime before God and humanity, that physiology protests against, and that experience weeps over"); see also H. Maudsley, *Sex in Mind and in Education* 17 (1874) ("It is not that girls have not ambition,

¹⁹ <http://fosterscholars.noaa.gov/aboutscholarship.html>.

nor that they fail generally to run the intellectual race [in coeducational settings], but it is asserted that they do it at a cost to their strength and health which entails life-long suffering, and even incapacitates them for the adequate performance of the natural functions of their sex.”); C. Meigs, *Females and Their Diseases* 350 (1848) (after five or six weeks of “mental and educational discipline,” a healthy woman would “lose . . . the habit of menstruation” and suffer numerous ills as a result of depriving her body for the sake of her mind).

United States v. Virginia, 518 U.S. 515, 536 n.9 (1996). It is ironic that while women’s bodies were once used as an excuse to deny them education, now women’s educational opportunities will be curtailed by saying that there is actually no such thing as a “female” body: Women, after all, are simply anyone who “identifies” as such.

Congress enacted Title IX to ensure women’s equal access to educational opportunity; it is difficult to imagine a more damaging interpretation than reading it to allow men to help themselves to one of the primary means of assuring that access.

C. Other Remedial Statutes

If “sex” is ambiguous in Title IX, then there is no logical reason why “sex” or “female” or “woman” or “girl” is any less ambiguous when used in any other

law designed to remedy centuries of discrimination against women.

Nearly thirty years ago, Congress enacted the Women’s Business Ownership Act of 1988 to “remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production” (Pub. L. 100-533, § 101), and creating the National Women’s Business Council, of which at least four members would be “women”. *Id.*, § 403(b)(2)(A)(ii). In 1992, noting that “women face significant barriers to their full and effective participation in apprenticeable occupations and nontraditional occupations”, Congress enacted the Women in Apprenticeship and Nontraditional Occupations Act (Public Law 102-530, § 1(a); codified at 29 U.S.C. § 2501(a)), in order to “expand the employment and self-sufficiency options of women” in these areas via grants, technical assistance and studies. *Id.*, §1(b); codified at 29 U.S.C. § 2501(b). In 2000, Congress amended the Small Business Act to create the Procurement Program for Women-Owned Small Business Concerns (Pub. L. 106-554, § 811; codified at 15 U.S.C. § 637(m)) in order to create preferences for women-owned (and “economically disadvantaged” women-owned) small businesses in federal contracting. In 2014, Congress again amended the Small Business Act (Pub. L. 113-291, § 825; codified at 15 U.S.C. § 637(m)) to include authority to award sole-source contracts under this program. Neither in 1988, nor 1992, nor 2000, nor 2014, nor in any other remedial statute did Congress define “woman”, so presumably these programs will

soon become equally available to any man who “identifies” as one.

Just as with Title IX scholarships, allowing men to take advantage of remedial programs and benefits Congress intended for women works to perpetuate the very problems these programs were intended to fix.

While *amici* are concerned that men will say that they are women for the purpose of helping themselves to benefits Congress intended for actual women, redefining “sex” to mean “gender identity” in Title IX would also affect all other federal statutes which explicitly incorporate Title IX’s definition of “sex discrimination”. For example, the federal government spends billions of dollars a year for “youth workforce investment activities”, “adult employment and training activities”, and “dislocated worker employment and training activities”. 29 U.S.C. § 3181. All of these programs are subject to Title IX’s nondiscrimination provisions. 29 U.S.C. § 3248(a)(1)-(2). The same is also true for Public Health Service block grants to states for general purposes (42 U.S.C. § 300w-7(a)), for mental health and substance abuse (42 U.S.C. § 300x-57(a)), for maternal and child health (42 U.S.C. § 708(a)), and a myriad of other federal programs.²⁰

²⁰ This redefinition will also wreak havoc with many federal statistics. If a man who “identifies” as a woman is mugged, was the crime committed against a man or a woman? If a man who “identifies” as a woman is diagnosed with cancer, will the government require that this be recorded as part of female morbidity statistics?

Finally, *amici* also note that men might take advantage of the “sex” means “gender identity” definition to avoid particular obligations imposed on them, *e.g.*, selective service: “[I]t shall be the duty of every male citizen of the United States, and every other male person residing in the United States . . . to present himself for and submit to registration[.]” 50 U.S.C. § 3802(a). In the event of war, no doubt demographers will be astonished by the sudden surge in the female population.

D. Erasing Women

It was not that long ago that this Court noted approvingly that married women had a limited independent legal existence apart from their husbands:

The identity of husband and wife is an ancient principle of our jurisprudence. It was neither accidental nor arbitrary and worked in many instances for her protection. There has been, it is true, much relaxation of it but in its retention as in its origin it is determined by their intimate relation and unity of interests, and this relation and unity may make it of public concern in many instances to merge their identity, and give dominance to the husband.

Mackenzie v. Hare, 239 U.S. 299, 311 (1915). Women may have escaped the bonds of such doctrines and achieved their independent legal existence, but that

status is now threatened by redefining “sex” to mean “gender identity”.

Worse than enabling men to help themselves to women’s bodies and women’s remedial or protective programs, that redefinition poses a truly existential threat: An administrative *ukase* decreeing that there really is no such thing as a woman. When the law requires that any man who wishes (for whatever reason) to be treated as a woman *is* a woman, then “woman” (and “female”) lose all meaning. With the stroke of a pen, women’s existence – shaped since time immemorial by their unique and immutable biology – has been eliminated by Orwellian fiat. Women, as they have been known forever, will simply be no more.

SUMMARY OF ARGUMENT

Amici make three arguments in support of Petitioner.

First, in addition to the dictionary definitions of “sex” from when Title IX was enacted described by Petitioner (Pet. Br. 27-32), there are numerous contemporary examples of Congress, the courts and the Executive Branch all using the word “sex” to mean the physiological differences between men and women. Moreover, notwithstanding the recent efforts of the Departments of Justice and Education, all three branches have continued to do so. In fact, the Department of Justice itself has a long and well-documented history (in decisions of the Equal Employment Opportunity Commission) of arguing that the federal civil rights laws did not apply to “gender identity” discrimination by the federal

government, including *in DOJ's own employment practices*.

Second, in his concurrence below, Judge Davis erroneously cites cases in which the federal courts have extended statutory or Constitutional provisions to include “gender identity” discrimination as support for why the Respondent had “demonstrated a likelihood of success on the merits of his Title IX claim.” App. 35a. Those cases provide no basis for so interpreting Title IX, because extending such protection under those laws did not necessarily infringe upon rights granted to anyone else. In contrast, extending Title IX to include “gender identity” would necessarily revoke the very rights Congress granted women in that statute.

Third, the Fourth Circuit accorded *Auer* deference to a DOE interpretation which, in turn, relied on a single previous DOE interpretation applicable only to single-sex classes, not restrooms or any other single-sex facility. However, DOE’s earlier regulatory actions show that even applying the “sex” means “gender identity” doctrine to single-sex classes violated the agency’s own regulations and, *a fortiori*, provides no support for extending that doctrine to restrooms or any other single-sex facility.

ARGUMENT

I. ALL THREE BRANCHES OF THE FEDERAL GOVERNMENT HAVE CONSISTENTLY USED THE WORD “SEX” TO MEAN THE PHYSIOLOGICAL DIFFERENCES BETWEEN WOMEN AND MEN.

In addition to the contemporary dictionary definitions of “sex” that focus without exception on the physiological differences between men and women (Pet. Br. 27-32), other indications from that time demonstrate what Congress meant by “sex”. In 1975, Congress ordered the military to open the service academies to women. In doing so, Congress was very clear about the differences between men and women:

[T]he Secretary of the military department concerned shall take such action as may be necessary and appropriate to insure that . . . (2) the academic and other relevant standards required for appointment, admission, training, graduation, and commissioning of female individuals shall be the same as those required for male individuals, *except for those minimum essential adjustments in such standards required because of physiological differences between male and female individuals.*

Pub. L. 94–106, § 803(a); codified at 10 U.S.C. § 4342 note (emphasis added). If “male” and “female” were simply a matter of self-identification, it would have made no sense for Congress to refer to the

“physiological differences” between them. Similarly, Petitioner gives several examples of Congress using “gender identity”, *and* either “sex” or “gender”, in the same statutory provisions (Pet. Br. 33-34); presumably, Congress would not use both if it intended them to mean the same thing.

Not only did Congress use “sex” to mean the binary physiological division of humans into women and men, the other branches of the federal government also regarded “sex” as physiologically determined.

Less than a year after Congress enacted Title IX, this Court noted that “sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth[.]” *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973). In fact, throughout all of this Court’s sex discrimination jurisprudence, not once has it even hinted that “sex” meant anything other than “an immutable characteristic determined solely by an accident of birth”. *See, e.g., Craig v. Boren*, 429 U.S. 190, 212 (1976)(Stevens, J., concurring)(sex “is an accident of birth”); *City of L.A. Dep’t of Water & Power v. Manhart*, 435 U.S. 702, 727 (1978)(Burger, C.J., dissenting)(“categorizing people on the basis of sex, the one acknowledged immutable difference between men and women”). And, most recently, this Court noted that, for two people of the same sex, “their immutable nature dictates that same-sex marriage is their only real path to this profound commitment.” *Obergefell v. Hodges*, 135 S.Ct. 2584, 2594 (2015).

Similarly, while DOJ and DOE insist that “sex” means “gender identity”, that does not seem to be the opinion of the Chief Executive, who has consistently used *both* “sex” *and* “gender identity” in the same sentence. In 2010, President Obama asked the Secretary of the Department of Health and Human Services to begin a rulemaking concerning rights of hospital patients, in which:

[i]t should be made clear that designated visitors . . . should enjoy visitation privileges that are no more restrictive than those that immediate family members enjoy. You should also provide that participating hospitals may not deny visitation privileges on the basis of race, color, national origin, religion, *sex*, sexual orientation, *gender identity*, or disability.

Presidential Memorandum of April 15, 2010, 75 F.R. 20511 (emphasis added).

In 2011, pursuant to his authority under 8 U.S.C. § 1182(f) to suspend entry of certain aliens into the United States, the President did just that as to:

any alien who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility, widespread or systematic violence against any civilian population based in whole or in part on race; color; descent; *sex*; disability; membership in an indigenous group; language; religion; political opinion;

national origin; ethnicity; membership in a particular social group; birth; or sexual orientation *or gender identity*, or who attempted or conspired to do so.

Presidential Proclamation No. 8697, 76 F.R. 49277 (emphasis added).

In 2012, the President formed the “Working Group on the Intersection of HIV/AIDS, Violence Against Women and Girls, and Gender-related Health Disparities”, and ordered it to, *inter alia*, “provide information on . . . (iv) research and data collection needs regarding HIV/AIDS, violence against women and girls, and gender-related health disparities to help develop more comprehensive data and targeted research (*disaggregated by sex, gender, and gender identity, where practicable*)”. Presidential Memorandum of March 30, 2012, 77 F.R. 20277 (emphasis added).

If, as Respondent insists, “sex” is identical to “gender identity”, then there was no reason for the President to keep using both terms in his official Proclamations and Memoranda. The only reason for the President to have used both “sex” and “gender identity” is that they mean different things.

On July 21, 2014, the President issued Executive Order 13672, which amended two previous Executive Orders from 1965 and 1969. The President amended four separate provisions of Executive Order 11246 (September 24, 1965), concerning discrimination by government contractors and subcontractors, adding

“gender identity” to the prohibited categories of discrimination, each of which already included “sex”.

The President also amended Executive Order 11478 (August 8, 1969), concerning discrimination in federal employment, by adding “gender identity” to the prohibited categories of discrimination that included “race, color, religion, sex, national origin, handicap, or age discrimination”. Thus President Obama also did not believe that the word “sex” (and when used in the specific context of prohibited discrimination) meant “gender identity” when it was used by President Johnson in 1965 or by President Nixon in 1969.

Even other parts of the Justice Department believe that “sex” is not the same as “gender identity”. For more than 30 years, the Board of Immigration Appeals has consistently described “sex” as an “immutable characteristic”, beginning with the seminal case of *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (BIA 1985):

[W]e interpret the phrase "persecution on account of membership in a particular social group" to mean persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic. The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as former military leadership or land ownership.

The *Acosta* doctrine of “immutable characteristics” has been cited in dozens of cases reviewing BIA decisions (most recently in *Garay Reyes v. Lynch*, 842 F.3d 1125, 2016 U.S. App. LEXIS 21408, p. 9 (9th Cir. 2016)), and BIA’s position that “sex” is an “immutable characteristic” has apparently never been questioned.²¹

Nor is the Bureau of Immigration Appeals the only part of the Justice Department that disagrees with the position DOJ advanced below. For decades, DOJ insisted that discrimination by the federal government against transgendered individuals was *not* discrimination on the basis of sex. As recently as 2011, the Department of Justice maintained, *as to its own employment practices*, that claims of discrimination on the basis of “gender identity” were simply not cognizable under the prohibition of discrimination on the basis of “sex”.

DOJ’s position was rejected only in *Macy v. Holder*, Appeal No. 0120120821 (EEOC April 20, 2012), which expressly stated that it was overruling a long line of cases affirming the government’s view that discrimination on the basis of “gender identity” did not fall within the meaning of discrimination on the basis of sex. *Id.* at 25, n.16, citing, *inter alia*, *Kowalczyk v. Department of Veterans Affairs*, Appeal No. 01942053, p. 4 (EEOC December 27, 1994)(“The

²¹ At other times, BIA refers to “sex” simply as an “innate” characteristic, *e.g.*, “innate characteristics such as sex or family relationship”. *Matter of C-A*, 23 I. & N. Dec. 951, 959 (BIA 2006).

Commission finds that the agency correctly concluded that appellant's allegation of discrimination based on her acquired sex (transsexualism) is not a basis protected under Title VII and therefore, the final agency decision properly dismissed this basis”) and *Cassoni v. United States Postal Service*, Appeal No. 01840104, p. 4 (EEOC September 28, 1984) (rejecting Title VII claim of “gender identity” sex discrimination because: “Absent evidence of Congressional intent to the contrary, and in light of the aforementioned case law, this Commission finds that the phrase ‘discrimination because of sex’ must be interpreted in accordance with its plain meaning”).

In fact, it was not until 2014 that Attorney General Holder announced that he had “determined that the best reading of Title VII's prohibition of sex discrimination is that it encompasses discrimination based on gender identity”. In that same document he candidly admitted “that Congress may not have had such claims in mind when it enacted Title VII” in 1964. *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964*, December 15, 2014, p. 2 (available at <https://www.justice.gov/file/188671/download>).

In sum, there is no credible basis for concluding that the word “sex” meant anything but the physiological differences between men and women when Congress enacted Title IX in 1972 or when the Department of Health, Education and Welfare (“HEW”) issued the Title IX regulations in 1975.

II. EXTENDING OTHER LAWS TO REMEDY “GENDER IDENTITY” DISCRIMINATION PROVIDES NO BASIS FOR DOING SO UNDER TITLE IX.

Judge Davis’ concurring opinion below cited four decisions in which other statutes or Constitutional protections had been applied to “gender identity” discrimination to support his conclusion that Respondent would “succeed on the merits of his Title IX claim.” App. 35a. But a critical difference between Title IX and the statutes and Constitutional provisions at issue in those cases makes them inapposite: Unlike the harms that would flow from expanding Title IX, extending protection on the basis of “gender identity” to those plaintiffs did not violate anyone else’s rights under those laws.

Restoring a transgender plaintiff’s position with the Georgia General Assembly’s Office of Legislative Counsel because of an Equal Protection Clause violation (*Glenn v. Brumby*, 663 F.3d 1312, 1316-19 (11th Cir. 2011)) did not infringe the Equal Protection rights of anyone else. Holding that being terminated by the Fire Department on the basis of transgender identity was cognizable under Title VII (*Smith v. City of Salem*, 378 F.3d 566, 573-75 (6th Cir. 2004)) would not violate anyone else’s Title VII rights. Deciding that refusal to give a cross-dressing man a loan application was discrimination “on the basis of sex” under the Equal Credit Opportunity Act (“ECOA”) (*Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215-16 (1st Cir. 2000)) did not violate anyone else’s ECOA rights. And applying the Gender Motivated Violence

Act (“GMVA”) to an attempted rape of a transgender prisoner by a prison guard (*Schwenk v. Hartford*, 204 F.3d 1187, 1201-02 (9th Cir. 2000)) did not infringe anyone else’s rights under the GMVA.

But Title IX is different. Congress enacted Title IX as a remedial statute for the benefit of women, and granting Title IX rights to men who claim they are women *necessarily violates* the rights Congress gave women in this law. In contrast, in each of the cited cases, recognizing rights and providing remedies under the various statutory and Constitutional provisions did not infringe on any rights Congress or the Founders extended to anyone else.

III. THE FERG-CADIMA LETTER IS NOT ENTITLED TO AUER DEFERENCE BECAUSE IT RELIED ON A PREVIOUS AGENCY INTERPRETATION THAT VIOLATED THE AGENCY’S OWN REGULATIONS.

The Fourth Circuit’s decision rested entirely on the deference it gave DOE’s interpretation of “sex” (the “Ferg-Cadima Letter”) under *Auer v. Robbins*, 519 U.S. 452, 461 (1997). As Petitioner notes (Pet. Br. 14), the *only* citation in the Ferg-Cadima Letter regarding DOE’s position on restroom access is to an earlier DOE document entitled, “*Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities*” (available at <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>)(the “Classroom Q&A”).

As its title suggests, the Classroom Q&A is limited to consideration of single-sex classrooms, and contains no discussion whatsoever of restrooms (or locker rooms, dormitories, or showers).

Not only was the Ferg-Cadima letter unjustified bootstrapping, but digging a little deeper it becomes clear that the Classroom Q&A itself is flatly inconsistent with the regulation it purports to interpret. Although DOE's regulations explicitly allow for certain types of sex-segregated classes, including "[c]lasses or portions of classes in elementary and secondary schools that deal primarily with human sexuality" (34 C.F.R. § 106.34(a)(3)), the Classroom Q&A states that "[u]nder Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of . . . single-sex classes." Classroom Q&A p. 25. The Classroom Q&A fails to cite *any* source or authority whatsoever for this policy statement, and the regulation's actual history shows that the policy contradicts it.

There was no provision concerning single-sex classes in HEW's proposed Title IX regulations. 39 F. R. 22228 (June 20, 1974). However, three weeks later HEW published a supplemental notice from Secretary Weinberger that is worth quoting at length:

Immediately after the text of the proposed regulation was made public on June 18, 1974, the Department received numerous inquiries as to whether § 86.-34(a) permitted elementary and secondary schools to present

separately to boys and girls brief presentations in the area of sex education. Although the language of the proposed regulation precludes such separation, I had not intended it to do so in the area of sex education. . . . In view of personal and parental attitudes concerning the subject, and because rights of privacy on these matters, desired by both students and their parents may well be invaded by requiring mixed classes on sex education, school administrators, for reasons not applicable to other subjects, might properly decide that some of or all of such sessions be conducted separately for boys and girls. . . . I hereby give notice that I propose to insert in the final regulation, when published, a proviso at the end of the present text of proposed § 86.34 to read as follows

39 F. R. 25667 (July 12, 1974). The Classroom Q&A ignores Secretary Weinberger's remarkable personal acknowledgment of the "numerous inquiries" made about separate sex-education classes, and his statements that privacy rights that "may well be invaded" by not allowing such sex-segregated classes for "boys and girls".

Following publication of HEW's final regulations, Congress held six days of hearings on them; according to the chair of the relevant committee, their purpose was to review the regulations "solely to see if they are consistent with the law and with the intent of the Congress in enacting the law. . . . solely to see if the

regulation writers have read [Title IX] and understood it the way the lawmakers intended it to be read and understood.” *Sex Discrimination Regulations. Hearings Before the Subcommittee on Postsecondary Education of the Committee on Education and Labor, House of Representatives, Ninety-Fourth Congress, First Session* (available at <http://eric.ed.gov/?id=ED118012>), p. 1.

Not surprisingly, Secretary Weinberger’s testimony touched on the issue of sex-segregated classes: “[C]lasses in health education, if offered, may not be conducted separately on the basis of sex, but the final regulation allows separate sessions for boys and girls at the elementary and secondary levels during times when the materials and discussion deal exclusively [*sic*] with human sexuality”. *Id.* p. 439. In order to show public support for the regulations, Secretary Weinberger placed into the record numerous editorials expressing approval; these too, addressed the issue of single-sex classes, *e.g.*, “One particularly controversial point, the implication that since all classes must be open to both sexes this meant sex education, too, was quickly clarified by HEW as a mistake; in the latest version, sex-education classes are exempted.” *Louisville Courier-Journal, id.* p. 458.

An agency’s interpretation of even its own regulations does not get deference if an "alternative reading is compelled by the regulation's plain language *or by other indications of the Secretary's intent at the time of the regulation's promulgation.*" *Gardebring v. Jenkins*, 485 U.S. 415, 430 (1988)(emphasis added). Secretary Weinberger’s personal supplemental notice

concerning single-sex classes and his Congressional testimony show that neither he nor Congress (nor the public) thought that there was any ambiguity in the single-sex class regulation or, indeed, with the word “sex”.

DOE’s most recent regulatory action concerning single-sex classes further undermines the Classroom Q&A. In 2006, DOE amended its Title IX regulations “to clarify and modify” requirements for “single-sex schools, classes and extracurricular activities”, but despite changing the very regulation concerning sexual education classes (34 C.F.R. § 106.34(a)(3)), DOE did not say a word about “gender” or “gender identity”. 71 F. R. 62530 n.6 (October 25, 2006).

DOE introduced its redefinition of “sex” to mean “gender identity” in addressing single-sex classes in the Classroom Q&A; the Ferg-Cadima Letter then bootstrapped off that to extend the doctrine to restrooms, and then when the decision below deferred to the Ferg-Cadima Letter, DOE issued the May 13 Guidance extending the “sex” means “gender identity” doctrine to showers, locker rooms, dormitories, and beyond. It bears repeating that DOE and DOJ justify creating this revolutionary social policy without a single public notice or opportunity for comment, on the grounds that they were doing nothing more than “clarifying” the meaning of the word “sex”.

CONCLUSION

For the reasons stated herein, the Court should reverse the decision below and vacate the preliminary injunction.

Respectfully submitted,

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No. 15-2056

In the United States Court of Appeals for the Fourth Circuit

G.G., by his next friend and mother, DEIRDRE GRIMM,

Plaintiff – Appellant,

v.

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant – Appellee.

On Appeal from the United States District Court
For the Eastern District of Virginia
No. 4:15-cv-00054-RGD-DEM

**BRIEF OF AMICI CURIAE WOMEN'S LIBERATION FRONT AND
FAMILY POLICY ALLIANCE IN SUPPORT OF APPELLEE**

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INTEREST OF *AMICI CURIAE*

Amici are the Women’s Liberation Front (“WoLF”), an organization of radical feminists dedicated to the liberation of women by ending male violence, regaining reproductive sovereignty, and preserving women-only spaces, and the Family Policy Alliance (“FPA”), a Christian organization dedicated to helping pro-family Americans unleash their citizenship for a nation where God is honored, religious freedom flourishes, families thrive, and life is cherished.¹

Pro-family Christians and radical feminists may not agree about much, but they agree that Appellant’s attempt to redefine “sex” to mean “gender identity” is a truly fundamental shift in American law and society.² If successful, it would strip women of their privacy, threaten their physical safety, undercut the means by which women can achieve educational equality, and ultimately work to erase women’s very existence. It revokes the rights and protections Congress enacted

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

² *Amici* use “sex” throughout to mean exactly what Congress meant in 1972: The binary biological classification of human beings as either female (“women”) or male (“men”).

specifically to secure *women's* access to education in order to extend Title IX to cover men *claiming* to be women.

Three bad consequences would follow if this Court were to reverse the District Court's decision and redefine "sex" in Title IX to mean "gender identity".

First, women will lose their physical privacy and face an increased risk of sexual assault. To understand the magnitude of this, it is important to recognize that the result of such redefinition would go far beyond the narrow confines of one student and a high-school restroom.

Title IX and its implementing regulations do not distinguish between restrooms and any other sex-segregated space. Title IX speaks only in terms of "living facilities": "Nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes." 20 U.S.C. § 1686. And the specific Title IX regulation at issue here refers to "separate toilet, locker rooms, and shower facilities". 34 C.F.R. § 106.33. Thus redefining "sex" in Title IX to mean "gender identity" allows any man to justify his presence in any women-only

space – restroom, locker room, shower, dormitory, etc. – simply by claiming to “identify” as a woman.

And just as neither Appellant - nor anyone else, in the long history of this litigation - has offered any principle by which to distinguish restrooms from every other sex-segregated space, no one has offered any principle by which this redefinition is confined just to students. Title IX applies to students, faculty, administrators, other employees, *and anyone else who walks into* any Title IX institution. Thus any male teacher, professor, administrator, employee, or visitor who “self-identifies” as female must, as a matter of law, also be granted access to all of those single-sex spaces.

Apropos of the physical dimensions of this issue, Title IX applies to more than just schools – it applies to every museum, library, and other institution or other “education program or activity receiving Federal financial assistance” that receive the billions of dollars in such assistance every year.³

³ Federal “on-budget funds for education” includes \$9.5 billion for “other education programs”, which “includes libraries, museums, cultural activities, and miscellaneous research.” U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics 2014* (available at <http://nces.ed.gov/pubs2016/2016006.pdf>), p. 730 and

Thus redefining “sex” to mean “gender identity” means that (1) any man, (2) has the legal right to enter any female-only space, (3) in any Title IX institution, (4) based solely on his purely subjective and self-interested statement that he “identifies” as a woman.

This last point bears repeating: “Gender identity” is purely a function of self-identification subject to absolutely no limits in terms of who may invoke it, for how long, or for what purpose. Redefining “sex” to mean “gender identity” allows *any* man to “identify” as a woman, for *any* purpose, for however long he desires to do so. For women’s privacy and safety, the implications of this are terrifying.

But because men have been forcing themselves on women for thousands of years with virtual impunity, a new pretext for stripping women of their privacy and making them more vulnerable to everything from voyeurism to groping to rape may actually be the least remarkable of the consequences that would follow if Appellant were successful.

n.3. These funds are distributed by DOE and by the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Labor, State, Transportation, Treasury, and Veterans Affairs, and more than 20 independent agencies. *Id.*, pp. 733-738.

Just as the implications of redefining “sex” to mean “gender identity” go beyond the physical spaces at issue in this case, they go far beyond physical spaces, period. More pernicious than the loss of those single-sex spaces is the loss of scholarships for women, the primary means by which women are trying to overcome the centuries – millennia – of educational discrimination. If any man becomes eligible for the millions of dollars in female-only scholarships at Title IX institutions merely by “identifying” as a woman, then many will do just that. For women, this means the loss of an indispensable tool in their struggle to achieve equality in education.

The consequences of such redefinition would also ripple across federal law far beyond Title IX: If “sex” means “gender identity” in that statute, then there is no reason to think that it means anything else in any other. The benefits of every other remedial system that Congress has enacted to counteract our society’s centuries of pervasive discrimination against women would be opened to any man who “identifies” as a woman.

The last and most serious consequence of legally redefining “woman” to mean anyone who claims to be one, is that “woman” – as

humankind has *always* recognized “woman” – will cease to exist.

Women’s immutable existence will be legally altered to include any man who wishes to be deemed a woman, for whatever reason, at whatever time and for however long it suits him.

Even at times and in places where women are the property of men (as many still are around the globe) and have few rights beyond those granted by their owners they, like all women, still possess their own experience and legal status derived from their biological reality. But if “sex” means nothing more than self-determined “gender identity”, those women will share a status no longer available to “the people formerly known as women” in the United States. If, as a matter of law, anyone can be a woman, then no one is a woman.

WoLF

WoLF has had a longstanding interest in the proper interpretation of Title IX. WoLF filed an amicus in support of certiorari from this Court’s previous decision in this case and then, with Family Policy Alliance, an amicus on the merits in the Supreme Court. WoLF had previously filed its own challenge to the 2016 federal government guidance that expanded the application of the “sex” means “gender

identity” doctrine to all Title IX sex-segregated facilities. (*Women’s Liberation Front v. U.S. Department of Justice et al.*, No. 1:16-cv-00915 (D.N.M. August 11, 2016).)⁴

Family Policy Alliance

FPA’s interest in this case is tied directly to its advocacy for policies that protect the privacy and safety of women and children in vulnerable spaces such as showers and locker rooms. Together with its state allies, FPA launched the “Ask Me First” campaign (www.askmefirstplease.com) to empower women and children to advocate for their privacy and safety rights before government officials who might not otherwise consider those most affected by redefining Title IX. As a Christian organization, FPA believes that all human beings are created in the image of God and that both sexes uniquely reveal part of His nature. Because of this, FPA opposes policies that would endanger or eliminate either sex.

⁴WoLF voluntarily dismissed its case following the revocation of that guidance.

SUMMARY OF ARGUMENT

The question before this Court is what Congress meant in 1972 when it used the word “sex” in Title IX: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . .” 20 U.S.C. § 1681(a).

Amici make four arguments in support of Appellee. First, in addition to the contemporary dictionary definitions of “sex” that Appellee cites, there are numerous examples of Congress, the Executive Branch and the courts all using the word “sex” to mean the physiological differences between men and women. Congress has routinely used both “sex” and “gender identity” in statutes; it would not do so if they meant the same thing. Similarly, for decades the Executive Branch has expressly distinguished between “sex” and “gender identity”. President Obama, for example, used both terms in no fewer than four separate Executive Orders, Presidential Memoranda and Presidential Proclamations. And rounding out the Constitutional triad, the Supreme Court has – without exception – said that “sex” is an

“immutable characteristic”, and not something that each person can simply change whenever they feel like it.

Second, Appellant cites cases in which the federal courts have extended statutory or Constitutional provisions to include “gender identity” discrimination as support for why this Court should do likewise under Title IX. Those cases provide no basis for so interpreting Title IX, because extending such protection under those laws did not infringe upon rights granted to anyone else. Most of those cases arose under Title VII, but not allowing employers to fire an employee just because he or she identifies as “transgendered” *does not violate the Title VII rights of any other employee*. In contrast, extending Title IX to include “gender identity” would *necessarily* revoke the very rights and protections Congress granted women in that statute.

Third, as noted above, there are significant policy reasons for not legislating such a change in Title IX. Redefining “sex” to mean “gender identity” would create terrible risks for women’s physical safety and privacy, and would be a *de facto* repeal of the voyeurism and indecent exposure laws that could no longer protect women from any man who simply “identifies” as a woman. It would take one of the primary tools

for women’s education – female-only scholarships – and make them available to any man who “identified” as a woman. And if “sex” means “gender identity” in Title IX, the same would presumably be true in other remedial statutes Congress enacted for the benefit of women.

Finally, the most ominous policy consequence is that such redefinition would completely erase women’s separate legal existence. If any man can be a woman, for any reason, at any time, and for however long he wishes, then no one is a woman.

ARGUMENT

I. ALL THREE BRANCHES OF THE FEDERAL GOVERNMENT HAVE CONSISTENTLY USED THE WORD “SEX” TO MEAN THE PHYSIOLOGICAL DIFFERENCES BETWEEN WOMEN AND MEN.

In addition to the contemporary dictionary definitions of “sex” that focus without exception on the physiological differences between men and women (Appellee’s Supp. Br. pp. 24-25), other indications from when Title IX was enacted demonstrate what Congress meant by “sex”. For example, when Congress ordered the military to open the service academies to women in 1975, it was very clear about the differences between men and women:

[T]he Secretary of the military department concerned shall take such action as may be necessary and appropriate to insure that . .

. (2) the academic and other relevant standards required for appointment, admission, training, graduation, and commissioning of female individuals shall be the same as those required for male individuals, *except for those minimum essential adjustments in such standards required because of physiological differences between male and female individuals.*

Pub. L. 94–106, § 803(a); codified at 10 U.S.C. § 4342 note (emphasis added). If “male” and “female” were simply a matter of self-identification, it would have made no sense for Congress to refer to the “physiological differences” between them. Appellee gives several examples of Congress using “gender identity”, *and* either “sex” or “gender”, in the same statutory provisions (Appellee’s Supp. Br. pp. 29-30); presumably, Congress would not use both if it intended them to mean the same thing.

Not only did Congress use “sex” to mean the binary physiological division of humans into women and men, the other branches of the federal government also regarded “sex” as physiologically determined.

Less than a year after Congress enacted Title IX, the Supreme Court noted that “sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth[.]” *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973). In fact, throughout all of the Supreme Court’s sex discrimination jurisprudence, not once has it even

hinted that “sex” meant anything other than “an immutable characteristic determined solely by an accident of birth”. *See, e.g., Craig v. Boren*, 429 U.S. 190, 212 (1976)(Stevens, J., concurring)(sex “is an accident of birth”); *City of L.A. Dep’t of Water & Power v. Manhart*, 435 U.S. 702, 727 (1978)(Burger, C.J., dissenting)(“categorizing people on the basis of sex, the one acknowledged immutable difference between men and women”). And, most recently, the Court noted that, for two people of the same sex, “their immutable nature dictates that same-sex marriage is their only real path to this profound commitment.” *Obergefell v. Hodges*, 135 S.Ct. 2584, 2594 (2015).

And what is true as to both Congress and the Supreme Court is also true as to the Executive Branch. While parts of the Obama Administration insisted that “sex” meant “gender identity”, that did not seem to be the President’s opinion, who consistently used *both* “sex” *and* “gender identity” in the same sentence. In 2010, President Obama asked the Secretary of the Department of Health and Human Services to begin a rulemaking concerning rights of hospital patients: “You should also provide that participating hospitals may not deny visitation privileges on the basis of race, color, national origin, religion, *sex*,

sexual orientation, *gender identity*, or disability.” Presidential Memorandum of April 15, 2010, 75 F.R. 20511 (emphasis added).

In 2011, pursuant to his authority under 8 U.S.C. § 1182(f) to suspend entry of certain aliens into the United States, President Obama did just that as to:

any alien who planned, ordered, assisted, aided and abetted, committed or otherwise participated in, including through command responsibility, widespread or systematic violence against any civilian population based in whole or in part on race; color; descent; *sex*; disability; membership in an indigenous group . . . birth; or sexual orientation *or gender identity*, or who attempted or conspired to do so.

Presidential Proclamation No. 8697, 76 F.R. 49277 (emphasis added). In 2012, President Obama formed the “Working Group on the Intersection of HIV/AIDS, Violence Against Women and Girls, and Gender-related Health Disparities”, and ordered it to, *inter alia*, “provide information on . . . (iv) research and data collection needs regarding HIV/AIDS, violence against women and girls, and gender-related health disparities to help develop more comprehensive data and targeted research (*disaggregated by sex, gender, and gender identity*, where practicable)”. Presidential Memorandum of March 30, 2012, 77 F.R. 20277 (emphasis added).

On July 21, 2014, the President issued Executive Order 13672, which amended two previous Executive Orders. The President amended four separate provisions of Executive Order 11246 (September 24, 1965), concerning discrimination by government contractors and subcontractors, adding “gender identity” to the prohibited categories of discrimination, each of which *already* included “sex”.

The President also amended Executive Order 11478 (August 8, 1969), concerning discrimination in federal employment, by adding “gender identity” to the prohibited categories of discrimination that included “race, color, religion, sex, national origin, handicap, or age discrimination”. Thus President Obama also did not believe that the word “sex” (and when used in the specific context of prohibited discrimination) meant “gender identity” when it was used either by President Johnson in 1965 or by President Nixon in 1969.

If, as Appellant insists, “sex” is identical to “gender identity”, then there was no reason for President Obama to keep using both terms in his official statements. The only reason for the President to have done so is that they mean different things.

The same is true elsewhere in the Executive Branch. For more than 30 years, the Board of Immigration Appeals has consistently described “sex” as an “immutable characteristic”, beginning with the seminal case of *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (BIA 1985):

[W]e interpret the phrase "persecution on account of membership in a particular social group" to mean persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic. The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as former military leadership or land ownership.

The *Acosta* doctrine of “immutable characteristics” has been cited in dozens of cases reviewing BIA decisions (most recently in *Garay Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016)), and the BIA’s position that “sex” is an “immutable characteristic” has apparently never been questioned.⁵

Nor is the BIA alone at the Justice Department. For decades, DOJ insisted that discrimination by the federal government against transgendered individuals was *not* discrimination on the basis of sex.

⁵ At other times, BIA refers to “sex” simply as an “innate” characteristic, *e.g.*, “innate characteristics such as sex or family relationship”. *Matter of C-A-*, 23 I. & N. Dec. 951, 959 (BIA 2006).

As recently as 2011, the Department of Justice maintained, as to its own employment practices, that claims of discrimination on the basis of “gender identity” were simply not cognizable under the prohibition of discrimination on the basis of “sex”.

DOJ’s position was rejected only in *Macy v. Holder*, Appeal No. 0120120821 (EEOC April 20, 2012), which expressly stated that it was overruling a long line of cases affirming the government’s view that discrimination on the basis of “gender identity” did not fall within the meaning of discrimination on the basis of sex. *Id.* at 25, n.16, citing, *inter alia*, *Kowalczyk v. Department of Veterans Affairs*, Appeal No. 01942053, p. 4 (EEOC December 27, 1994)(“The Commission finds that the agency correctly concluded that appellant's allegation of discrimination based on her acquired sex (transsexualism) is not a basis protected under Title VII and therefore, the final agency decision properly dismissed this basis”) and *Cassoni v. United States Postal Service*, Appeal No. 01840104, p. 4 (EEOC September 28, 1984) (rejecting Title VII claim of “gender identity” sex discrimination because: “Absent evidence of Congressional intent to the contrary, and in light of the aforementioned case law, this Commission finds that the

phrase ‘discrimination because of sex’ must be interpreted in accordance with its plain meaning”).

It was only in 2014 that Attorney General Holder suddenly announced that he had “determined that the best reading of Title VII's prohibition of sex discrimination is that it encompasses discrimination based on gender identity”. Yet in that same document he candidly admitted “that Congress may not have had such claims in mind when it enacted Title VII” in 1964.⁶

In sum, the history of how Congress, the Supreme Court, and the Executive Branch have all consistently used the word “sex” since 1972 shows that there is no credible basis for concluding that “sex” meant anything but the physiological differences between men and women when Congress enacted Title IX in 1972 or when the Department of Health, Education and Welfare (“HEW”) issued the Title IX regulations in 1975.

⁶ *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964*, December 15, 2014, p. 2 (available at <https://www.justice.gov/file/188671/download>).

II. EXTENDING OTHER LAWS TO REMEDY “GENDER IDENTITY” DISCRIMINATION PROVIDES NO BASIS FOR DOING SO UNDER TITLE IX.

Appellants cite a series of cases in which courts have applied other statutes or Constitutional provisions to remedy “gender identity” discrimination. But there is a critical, dispositive difference between Title IX and the laws at issue in those cases makes them inapposite: Extending protection on the basis of “gender identity” to those plaintiffs did not violate anyone else’s rights under those laws. In contrast, doing so with Title IX *necessarily* violates women’s rights to privacy, safety, and access to educational opportunities. In other words, so extending Title IX defeats the very purposes for which it was enacted.

Restoring a transgender plaintiff’s job because of an Equal Protection Clause violation (*Glenn v. Brumby*, 663 F.3d 1312, 1316-19 (11th Cir. 2011)) did not infringe anyone else’s Equal Protection rights. Holding that being fired on the basis of “transgender identity” was cognizable under Title VII (*Smith v. City of Salem*, 378 F.3d 566, 573-75 (6th Cir. 2004)) would not violate anyone else’s Title VII rights.⁷

⁷ The same holds for each of the other Title VII decisions cited by Appellant: *Finkle v. Howard County*, 12 F. Supp.3d 780 (D. Md. 2014); *Hart v. Lew*, 973 F. Supp.2d 561 (D. Md. 2013); *Barnes v. City of*

Deciding that refusal to give a cross-dressing man a loan application was discrimination “on the basis of sex” under the Equal Credit Opportunity Act (“ECOA”) (*Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215-16 (1st Cir. 2000)) did not violate anyone else’s ECOA rights. Applying the Gender Motivated Violence Act (“GMVA”) to an attempted rape of a transgender prisoner by a prison guard (*Schwenk v. Hartford*, 204 F.3d 1187, 1201-02 (9th Cir. 2000)) did not infringe anyone else’s rights under the GMVA. And requiring a hospital to treat a transgender patient with the same standard of care as other patients (*Rumble v. Fairview Health Servs.*, No. 14-CV-2037 SRN/FLN, 2015 WL 1197415 (D. Minn. Mar. 16, 2015)) did not violate anyone else’s rights under the Affordable Care Act.

But Title IX is different. Congress enacted Title IX as a remedial statute for the benefit of women, and granting Title IX rights to men who claim they are women *necessarily violates* the rights Congress gave women in this law and works to defeat Title IX’s very purpose. In

Cincinnati, 401 F.3d 729 (6th Cir. 2005); *Schroer v. Billington*, 577 F. Supp.2d 293 (D.D.C. 2008); *Muir v. Applied Integrated Tech., Inc.*, No. 13-0808, 2013 WL 6200178 (D. Md. Nov. 26, 2013); *Mia Macy v. Holder*, EEOC DOC 0120120821, 2012 WL 1435995 (Apr. 20, 2012).

contrast, in each of the cited cases, recognizing rights and providing remedies under the various statutory and Constitutional provisions to people who identified as transgender did not infringe on any rights Congress or the Founders extended to anyone else.

It is worth noting that in *Etsitty v. Utah Transit Authority*, 502 F.3d 1215 (10th Cir. 2007), the Tenth Circuit recognized this precise issue in the context of Title VII. Etsitty, a male bus driver whose self-declared “gender identity” was female, was fired by the defendant transit agency because bus drivers use public restrooms on their routes, and Etsitty insisted on using women’s restrooms.

Relying on *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), Etsitty claimed that “terminating her because she intended to use women’s restrooms is essentially another way of stating that she was terminated for failing to conform to sex stereotypes.” *Etsitty*, 503 F.3d at 1224. While courts have generally recognized *Price Waterhouse* “sex stereotyping” employment discrimination claims in cases involving “transgendered” plaintiffs, the Tenth Circuit understood the inherent limits of this doctrine when it collided with other people’s rights (*id.*):

However far *Price Waterhouse* reaches, this court cannot conclude it requires employers to allow biological males to use women’s

restrooms. Use of a restroom designated for the opposite sex does not constitute a mere failure to conform to sex stereotypes.

III. REDEFINING “SEX” TO MEAN “GENDER IDENTITY” WOULD BE TERRIBLE PUBLIC POLICY.

A. Women’s Privacy and Safety

Appellant casually dismisses concerns about allowing any man unfettered access to women-only spaces because, “If a school has a legitimate concern that a student is falsely claiming to be transgender, a letter from a doctor or parent can easily provide corroboration.”

Appellant’s Supp. Br. 42-43.

To begin with, that statement directly contradicts Appellant’s earlier insistence that “gender identity” is a purely subjective “internal sense” of self, referring “to one’s sense of oneself as belonging to a particular gender.” Br. of Appellant, Doc. 73, p. 3. Appellant’s position appears to have evolved into that being “transgender” requires a doctor’s note.

Moreover, Appellant’s new position raises far more questions than it resolves, starting with how can anyone judge the validity of a claim about something that is purely a matter of self-identification?

But let's assume that somehow parents or physicians "know" the "truth" about whether someone is "transgendered". What if the student insists that he or she is "transgender," but his/her parents or family doctor disagree? Do schools adjudicate the question and decide between the competing claims? What evidence would they consider? What if the parents say one thing, and the doctor another? Or the parents disagree between themselves? What if two doctors disagree? Things quickly degenerate into a Monty Python routine:

"I'm transgendered."

"No, you're not."

"Yes, I am."

"I'm your mother and I say you're not."

"But I feel like I'm transgendered."

"Well, you didn't last week."

"But I do now."

"No, you don't."

"But I am."

"Your doctor says you're not."

"No, your doctor says I'm not; my doctor says that I am."

Etc., etc.

Replacing an objective physiological standard with pure self-identification creates a myriad of such intractable problems.

Let's go beyond restrooms, and even locker rooms and showers. Redefining "sex" to mean "gender identity" means that the hundreds of colleges and universities that have women-only dormitories must allow any man who "identifies" as a woman to live in them. Thus women who believed that they would have the personal privacy of living only with other women will be surprised to discover that men will be their roommates, simply on the basis of their "gender identity."

At the University of Pennsylvania, for example, undergraduate rooms are designated single-sex unless students request gender-neutral housing.⁸ But any man who "identifies" as female will be legally entitled to room with women, the very women who wanted single-sex housing and did not ask for gender-neutral rooms. At South Carolina's Wofford College, Marsh Hall (like most of the College's housing) has single-sex

⁸ <http://cms.business-services.upenn.edu/residential-services/applications-a-assignments/assignments-faq.html>

hallways and bathrooms; that will no longer be the case if “sex” is redefined as “gender identity”.⁹

Privacy is one thing; violence is another. The violence Appellant proposes to do to the statute is reflected in the violence that will result if Title IX is so redefined. Appellant wants to mandate that almost every school in the U.S. must allow men to invade women’s privacy and threaten their physical safety in the places heretofore reserved exclusively for them. That *any* man can justify his presence in *any* women’s restroom, locker room, or shower by saying, “I identify as a woman” will not escape the notice of those who already harass, assault, and rape thousands of women every day.

The first report of the White House Task Force to Protect Students from Sexual Assault begins with the sentence, “One in five women is sexually assaulted in college.”¹⁰ More recent data has shown that the problem is even worse than 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*

⁹ <http://www.wofford.edu/residenceLife/marsh/>

¹⁰ *Not Alone*, April 2014, p. 2 (available at www.justice.gov/ovw/page/file/905942/download).

*during that time.*¹¹ Moreover, a majority of those assaults were committed by “students, professors, or other employees of the school”, the very people who could have no better excuse to be in places where they should not be than being able “identify” as a woman. *Id.*, p. 104. Allowing any man to claim he has such a right seriously undermines the 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”. Md. Code Ann., Crim. Law § 3-902(c)(1); the statute defines “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” (*id.*, § 3-902(a)(5)(i)), such as dressing rooms, restrooms (*id.*, § 3-902(a)(5)(ii)), and any such room in a “school or other educational institution”. *Id.*, § 3-902(a)(5)(i)(6).

Since any man could assert that he has a legal right to be in the women’s locker room because he “identifies as female”, it is impossible to see how either this or similar laws in other states could ever be

¹¹ 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).

enforced. Giving predators the convenient pretext of a right to be precisely where women are at their most vulnerable also renders similar statutes in other states simply inapplicable to these types of crimes: In many states, the relevant statute criminalizes only covert or “surreptitious” observation.¹² For example, in Virginia, “It shall be unlawful for any person to use a peephole or other aperture to secretly or furtively peep, spy or attempt to peep or spy into a restroom, dressing room, locker room, [etc.]” Va. Code Ann. § 18.2-130(B).¹³

But it is *not* illegal for a man to walk into a women’s locker room in Virginia and openly ogle the women there, because there is nothing “secret or surreptitious about” that action – just the opposite.

Redefining “sex” to mean “gender identity” *effectively decriminalizes this predatory sexual activity* and gives a get-out-of-jail free card to any predator who smiles and says, “But I identify as a woman”.

¹² Presumably those states never considered that such predators would be open about their activities.

¹³ The North Carolina statute uses similar language “peep secretly”. N.C. Gen. Stat. § 14-202.

B. Preferences Addressing Historical and Systemic Discrimination

After centuries of second-class treatment in all matters educational, if “sex” is redefined to mean “gender identity”, the very preferences used to remedy that history and encourage women’s education – most importantly, scholarships for women – will now be reduced by the demands of any men who “identify” as women. Every women’s scholarship at Title IX schools that has been created by the school itself, or by the federal or state government would, as a matter of federal law, now be open to all such men.

Virtually all schools have such endowed scholarships, *e.g.*, the University of Virginia’s Class of 1975 Marianne Quattrocchi Memorial Scholarship, whose purpose is “to attract female candidates to Darden [School of Business] who otherwise might not attend.”¹⁴

Given the struggles women have gone through to become lawyers (*see, e.g.*, Ruth Bader Ginsburg, *The Progression of Women in the Law*, 28 Val. U. L. Rev. 1161 (1994)), it is not surprising that law schools also have established such scholarships. Yale Law School, for example, has

¹⁴ <http://www.darden.virginia.edu/mba/financial-aid/scholarships/affinity/>.

the Joan Keyes Scott Memorial scholarship for women students, the Lillian Goldman Perpetual Scholarship Fund, “for students in financial need who have a demonstrated interest in women’s rights, with a preference for women students”, and the Elizabeth Warke Brem Memorial Fund, “for scholarships at Yale Law School with a preference for Hispanic women students”.¹⁵

Even the federal government offers such scholarships, *e.g.*, the National Oceanic and Atmospheric Administration’s Dr. Nancy Foster Scholarship Program, which “provides support for master’s and doctoral studies in oceanography, marine biology, maritime archaeology and all other science, engineering, social science and resource management disciplines involving ocean and coastal areas particularly by women and members of minority groups.”¹⁶

Twenty years ago, the Supreme Court eloquently described how women’s physiology was used as an excuse to deny them education:

Dr. Edward H. Clarke of Harvard Medical School, whose influential book, *Sex in Education*, went through 17 editions, was perhaps the most well-known speaker from the medical community opposing higher education for women. He maintained

¹⁵ <http://bulletin.printer.yale.edu/htmlfiles/law/alumni-and-endowment-funds.html>.

¹⁶ <http://fosterscholars.noaa.gov/aboutscholarship.html>.

that the physiological effects of hard study and academic competition with boys would interfere with the development of girls' reproductive organs. See E. Clarke, *Sex in Education* 38-39, 62-63 (1873); *id.*, at 127 (“identical education of the two sexes is a crime before God and humanity, that physiology protests against, and that experience weeps over”); see also H. Maudsley, *Sex in Mind and in Education* 17 (1874) (“It is not that girls have not ambition, nor that they fail generally to run the intellectual race [in coeducational settings], but it is asserted that they do it at a cost to their strength and health which entails life-long suffering, and even incapacitates them for the adequate performance of the natural functions of their sex.”); C. Meigs, *Females and Their Diseases* 350 (1848) (after five or six weeks of “mental and educational discipline,” a healthy woman would “lose . . . the habit of menstruation” and suffer numerous ills as a result of depriving her body for the sake of her mind).

United States v. Virginia, 518 U.S. 515, 536 n.9 (1996). It is ironic that while women’s bodies were once used as an excuse to deny them education, now women’s educational opportunities will be curtailed by saying that there is actually no such thing as a “female” body: Women, after all, are simply anyone who “identifies” as such.

Congress enacted Title IX to ensure women’s equal access to educational opportunity; it is difficult to imagine a more absurd interpretation than reading it to allow men to help themselves to one of the primary means of assuring that access.

C. Impact on Other Remedial Statutes

If “sex” is ambiguous in Title IX, then there is no logical reason why “sex” or “female” or “woman” or “girl” is any less ambiguous when used in any other law designed to remedy centuries of discrimination against women.

Nearly thirty years ago, Congress enacted the Women’s Business Ownership Act of 1988 to “remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production” (Pub. L. 100-533, § 101), and created the National Women’s Business Council, of which at least four members would be “women”. *Id.*, § 403(b)(2)(A)(ii). In 1992, noting that “women face significant barriers to their full and effective participation in apprenticeable occupations and nontraditional occupations”, Congress enacted the Women in Apprenticeship and Nontraditional Occupations Act (Public Law 102-530, § 1(a); codified at 29 U.S.C. § 2501(a)), in order to “expand the employment and self-sufficiency options of women” in these areas via grants, technical assistance and studies. *Id.*, §1(b); codified at 29 U.S.C. § 2501(b).

In 2000, Congress amended the Small Business Act to create the Procurement Program for Women-Owned Small Business Concerns (Pub. L. 106-554, § 811; codified at 15 U.S.C. § 637(m)) in order to create preferences for women-owned (and “economically disadvantaged” women-owned) small businesses in federal contracting. In 2014, Congress again amended the Small Business Act (Pub. L. 113-291, § 825; codified at 15 U.S.C. § 637(m)) to include authority to award sole-source contracts under this program. Neither in 1988, nor 1992, nor 2000, nor 2014, nor in any other remedial statute did Congress define “woman”, so presumably the benefits of these programs would soon become equally available to any man who “identifies” as one.

Just as with Title IX scholarships, allowing men to take advantage of remedial programs and benefits Congress intended for women works to perpetuate the very problems these programs were intended to fix.

While *amici* are concerned that men will say that they are women for the purpose of helping themselves to benefits Congress intended for actual women, redefining “sex” to mean “gender identity” in Title IX would also affect all other federal statutes which explicitly incorporate

Title IX’s definition of “sex discrimination”. For example, the federal government spends billions of dollars a year for “youth workforce investment activities”, “adult employment and training activities”, and “dislocated worker employment and training activities”. 29 U.S.C. § 3181. All of these programs are subject to Title IX’s nondiscrimination provisions. 29 U.S.C. § 3248(a)(1)-(2). The same is also true for Public Health Service block grants to states for general purposes (42 U.S.C. § 300w-7(a)), for mental health and substance abuse (42 U.S.C. § 300x-57(a)), for maternal and child health (42 U.S.C. § 708(a)), and a myriad of other federal programs.¹⁷

Finally, *amici* also note that men might take advantage of the “sex” means “gender identity” definition to avoid particular obligations imposed on them, *e.g.*, selective service: “[I]t shall be the duty of every male citizen of the United States, and every other male person residing in the United States . . . to present himself for and submit to registration[.]” 50 U.S.C. § 3802(a). In the event of war, no doubt

¹⁷ This redefinition would also wreak havoc with many federal statistics. If a man who “identifies” as a woman is mugged, was the crime committed against a man or a woman? If a man who “identifies” as a woman is diagnosed with cancer, will that be recorded as part of male or female morbidity statistics?

demographers will be astonished by the sudden surge in the female population.

D. Erasing Women

It was really not that long ago that the Supreme Court noted approvingly that married women had a limited independent legal existence apart from their husbands:

The identity of husband and wife is an ancient principle of our jurisprudence. It was neither accidental nor arbitrary and worked in many instances for her protection. There has been, it is true, much relaxation of it but in its retention as in its origin it is determined by their intimate relation and unity of interests, and this relation and unity may make it of public concern in many instances to merge their identity, and give dominance to the husband.

Mackenzie v. Hare, 239 U.S. 299, 311 (1915). Women may have escaped the bonds of such doctrines and achieved their independent legal existence, but that status is now threatened by redefining “sex” to mean “gender identity”.

Worse than enabling men to help themselves to women’s bodies and women’s remedial or protective programs, that redefinition poses a truly existential threat: A legal *ukase* decreeing that there really is no such thing as a woman. When the law requires that any man who wishes (for whatever reason) to be treated as a woman *is* a woman, then

“woman” (and “female”) lose all meaning. With the stroke of a pen, women’s existence – shaped since time immemorial by their unique and immutable biology – would have been eliminated. Women, as they have been known forever, will simply no longer exist.

CONCLUSION

For the reasons given herein, the decision of the District Court should be affirmed.

Respectfully submitted,

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Certificate of Compliance With Rule 32(g)(1)

This brief complies with Rule 32(g), F.R.A.P., and this this Court's
Order of April 13, 2017, and contains 6,482 words.

s/David Bookbinder
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Certificate of Service

I certify that on May 14, 2017, I served on counsel of record for all parties a copy of the foregoing Brief of Amici Curiae Women's Liberation Front and Family Policy Alliance via the Court's CM/ECF system.

s/David Bookbinder
David Bookbinder

No. 18-13592

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

DREW ADAMS,

Plaintiff-Appellee,

v.

SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA,

Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Florida,
Honorable Timothy J. Corrigan, Case No. 3:17-cv-00739-TJC-JBT

**BRIEF OF *AMICUS CURIAE* WOMEN'S LIBERATION FRONT IN
SUPPORT OF REVERSAL ON BEHALF OF DEFENDANT-APPELLANT
SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA**

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Local Rules 26.1-1 through 26.1-3 and 28-1(b), the undersigned certifies that the name of each person, attorney, association of persons, firm, law firm, partnership, and corporation that has or may have an interest in the outcome of this action—including subsidiaries, conglomerates, affiliates, parent corporations, publicly-traded companies that own 10% or more of a party's stock, and all other identifiable legal entities related to any party in the case, in addition to those set forth in the Initial Brief of Appellant The School Board of St. Johns County, Florida, include:

1. Bertschi, Craig – counsel for *Amicus Curiae* Women's Liberation Front
2. McRae Bertschi & Cole LLC – counsel for *Amicus Curiae* Women's Liberation Front.
3. Women's Liberation Front – *Amicus Curiae*

The undersigned will enter this information in the Court's web-based CIP contemporaneously with filing this Certificate of Interested Persons and Corporate Disclosure Statement.

Women's Liberation Front is a private non-profit corporation that has no parent corporation and does not issue stock; thus there is no publicly held corporation that holds 10% or more of its stock.

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STATEMENT OF THE ISSUES

Whether the district court erred when it interpreted “sex” to mean “gender identity” under Title IX and the Equal Protection Clause?

INTEREST OF *AMICUS CURIAE*¹

Amicus Women’s Liberation Front (“WoLF”), is an all-volunteer radical feminist organization dedicated to the liberation of women by ending male violence, protecting reproductive sovereignty, preserving woman-only spaces, and abolishing sex discrimination. WoLF has nearly 500 members who live, work, and attend public schools, colleges, and Universities across the United States.

WoLF’s interest in this case stems from its interest in protecting the safety and privacy of women and girls and preserving women’s sex-based civil rights. When we say “sex” in this brief, we mean exactly what Congress meant in 1972 when it protected sex as a class in Title IX of the Civil Rights Act: The biological classification of human beings as either female (“women”) or male (“men”).

That legal protection against sex discrimination is being threatened by recent court decisions and agency policies that embrace the vague concept of “gender identity” in a manner that overrides statutory and Constitutional protections that

¹ None of the parties to this case nor their counsel authored this brief in whole or in part. No person or entity other than WoLF made a monetary contribution intended for the preparation or submission of this brief. *Amicus curiae* files this brief with the written consent of all parties. All parties received timely notice of *amicus curiae*’s intention to file this brief.

are based explicitly on “sex.” The lower court’s decision in this case typifies this erosion of protection for women under the law.

WoLF previously challenged one such policy that purported to rewrite Title IX of the Civil Rights Act in a “Dear Colleague” letter issued by the U.S.

Department of Justice and U.S. Department of Education on May 13, 2016.

Women’s Liberation Front v. U.S. Department of Justice et al., No. 1:16-cv-00915

(D.N.M. August 11, 2016). WoLF also served as *amicus* addressing these same

issues at the United States Supreme Court in *Doe v. Boyertown Area Sch. Dist.*,

897 F.3d 515 (3d Cir. 2018), *petition for cert. filed*, (Nov. 19, 2018) (No. 18-658)

(supporting the pending petition for a writ of certiorari), and in *Gloucester County*

School Bd. v. G.G., 137 S. Ct. 1239 (2017) (mem.) (vacating and remanding *G.G.*

v. Gloucester Cty. Sch. Bd., 822 F.3d 709 (4th Cir. 2016)), as well as in the

respective appellate cases in *Boyertown* and *Gloucester County*.

Although the 2016 Dear Colleague Letter was withdrawn on February 22, 2017, threats to the rights of women and girls persist. The decision below did not recognize that women and girls—being of one sex—are understood under federal law as a discrete category worthy of civil rights protection. Instead, the lower court adopted “gender identity” ideology, according to which a girl who claims a so-called “male gender identity” does gain categorical protection for being “transgender.” No coherent limiting principle confines the impact of this decision

to Appellant Adams, and the opposite-sex access granted to Adams ineluctably extends to the use of locker rooms and other communal intimate facilities by girls who claim to be male, or by boys who claim to be female.

The lower court erred by fundamentally shifting American law and policy to strip women of their Constitutional right to privacy, threatens their physical safety, and undercuts the means by which women can achieve educational equality. Ultimately and inevitably, “gender identity” ideology erases women and girls from the law. The principle embodied in the decision below not only extinguishes the very rights and protections that specifically secure *women’s* access to education, but will extend those rights and protections to boys claiming to be girls.

WoLF empowers women and girls to advocate for their rights to privacy, safety, and association, seeking to educate government officials who might not otherwise consider the particular harms women and girls face if sex is redefined to mean “gender identity” under civil rights laws and the Constitution. WoLF urges the Court to reverse the decision below and confirm that schools and other institutions have the authority and duty to give effect to longstanding sex-based protections under the law.

SUMMARY OF THE ARGUMENT

The Court below has completely re-written the definition of “sex” for the purpose of interpreting Title IX and its implementing regulations. *Adams v. Sch.*

Bd. of St. Johns Cty., Fla., 318 F. Supp. 3d 1293, 1320 (M.D. Fla. 2018). But redefining such a key term to categorically eliminate “sex” as a protected characteristic under Title IX is a job for Congress, not a federal district court.² This Court should instead affirm the unambiguously-expressed intent of Congress to prohibit discrimination on the basis of sex under Title IX and the Constitution, in order to remedy centuries of sex-based discrimination against women and girls in the educational arena.

Sex and gender (or “gender identity”) are distinctly different concepts. The word “sex” has objective meaning – specifically, the distinction between male and female.³ Sex is recorded (not “assigned”) at birth by qualified medical professionals, and it is an exceedingly accurate categorization: an infant’s sex is easily identifiable based on external genitalia and other factors in 99.982% of all cases. The miniscule fraction of individuals who have “intersex” characteristics are also either male or female; in vanishingly rare cases individuals are born with such

² WoLF categorically believes that Congress should not do this, as “gender identity” is a vague and meaningless concept that is not grounded in any material reality.

³ See Sex, Black’s Law Dictionary (10th ed. 2014); Male, Merriam-Webster.com (Dec. 3, 2018); Female, Merriam-Webster.com (Dec. 3, 2018); Nat’l Inst. For Health, *Genetics Home Reference: X chromosome* (Jan. 2012), <https://ghr.nlm.nih.gov/chromosome/X> (last visited Dec. 3, 2018); Daphna Joel, *Genetic-gonadal-genitals sex (3G-sex) and the misconception of brain and gender, or why 3-G males and 3-G females have intersex brain and intersex gender*, 27 *Biology of Sex Differences*, no. 3, Dec. 2012, at 1.

a mix of characteristics that it is difficult to characterize—but they still do not constitute a third reproductive class.⁴

In stark contrast to sex, “gender” and “gender identity” refer to stereotypical roles, personalities, behavioral traits, and clothing fashions that are socially imposed on men and women.⁵ There is no credible support for the argument that “gender identity” is innate, has a supposed “biological basis,” or that every human being has a “gender identity.” The Court below acknowledges as much when it states that “[g]ender identity” refers to a person’s internal sense of being male, female, or another gender.” *Adams*, 318 F. Supp. 3d at 1299. That is a wholly circular definition. “Gender identity” is in essence only a belief system that has been invented and adhered to by a small subset of society.⁶

Legally redefining one sex, such as female, as anyone (male or female) who claims to be female results in the erasure of female people as a class.⁷ If, as a

⁴ Leonard Sax, *How Common Is Intersex? A Response to Anne Fausto-Sterling*, *The Journal of Sex Research*, 39, no. 3 (2002) at 174-78, <http://www.jstor.org/stable/3813612>; R. Dawkins, *The Ancestor’s Tale, A Pilgrimage to the Dawn of Evolution*, 135 (Mariner Books ed. 2005); Nat’l Institutes for Health, *Genetics Home Reference: SRY gene* (March 2015) <https://ghr.nlm.nih.gov/gene/SRY.pdf>. Nor are chromosomal anomalies at issue in this case.

⁵ *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. Of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017) (“By definition, a transgender individual does not conform to the sex-based stereotypes of the sex that he or she was assigned at birth.”)

⁶ See Rebecca Reilly-Cooper, *Gender is Not a Spectrum*, Aeon (June 28, 2016); Cordelia Fine, *Testosterone Rex* (2017).

⁷ See generally, Ruth Barrett, ed., *Female Erasure* (2016).

matter of law, *anyone* can be a woman, then *no one* is a woman, and Title IX has no meaning whatsoever. The ruling below effectively erases the category of sex from Title IX.

The entire concept of “gender identity” is rooted in the notion that males and females have particular sex-specific ways of feeling and thinking, but scientists have demonstrated time and again that there is simply no such thing as a “female brain” or a “male brain.”⁸ This science demonstrates that gender is not innate. It is a collection of sex-based stereotypes that society imposes on people on the basis of sex, where women are understood to like particular clothing and hair styles and to have nurturing, unassuming personalities, whereas men are said to like a different set of styles and to have ambitious, outgoing personalities.⁹

In application, “gender identity” is simply adopting the sex-based

⁸ See, e.g., Daphna Joel, et al., *Can We Finally Stop Talking About ‘Male’ and ‘Female’ Brains?* The New York Times (Dec. 3, 2018) ; Karen Kaplan, *There’s No Such Thing as a ‘Male Brain’ or a ‘Female Brain’ and Scientists Have the Scans to Prove It*, L.A. Times (Nov. 30, 2015), <http://www.latimes.com/science/sciencenow/la-sci-sn-no-male-female-brain-20151130-story.htm>; Lila MacLellan, *The biggest myth about our brains is that they are “male” or “female,”* Quartz (August 27, 2017), <https://qz.com/1057494/the-biggest-myth-about-our-brains-is-that-theyre-male-or-female/>.

⁹ See, e.g., *Am. Br. of the National PTA, et al. in Support of Appellees at 22, Doe v. Boyertown Area Sch. Dist.*, No. 17-3113 (Jan. 23, 2018) (quoting a self-described “trans[gender] girl” as stating, “When I was little I loved to play with dolls and play dress up. I loved painting my nails too. Wearing my mom’s high heels was my favorite!”) These stories peddle the offensive stereotype that a child who is a girl must like playing with dolls, dressing up, painting nails, and wearing heels.

stereotypes that society imposes on the opposite sex. This is old-fashioned sexism run rampant: schools and courts should suppress the use of sexist stereotypes, not force entire student populations to affirm a particular individual's expression of adopted stereotypical behavior.

ARGUMENT

Sex and "gender" are distinct concepts that cannot be conflated. While some individuals may claim to feel or possess an "identity" that differs from their sex, such feelings have no bearing whatsoever on the person's vital characteristics, and should have no bearing on the Courts' application of civil rights law.

A. If "gender identity" is used to mean sex for purposes of interpreting the Constitutional right to privacy and Title IX, women and girls will lose their privacy and be put at even greater risk of sexual violence.

Redefining "sex" to mean "gender identity" means that the thousands of colleges, universities, and schools that have women-only facilities, including dormitories, must now allow any male who "identifies as" female or "transgender" to live in them. Thus, women and girls who believed that they would have personal privacy of living only with other females will be surprised to discover that males will be their roommates and will be joining them in the showers. And those girls and their parents will only discover this *after* they move in because colleges and universities across the country have adopted policies that prohibit administrators from notifying them in advance, on the theory that self-described transgender

students have a right to conceal their vital characteristics and to compel schools to instead recognize their subjective “gender identity.” It is truly mind-boggling that informing women that men might have the “right” to share a bedroom with them is an “invasion of privacy,” but it is *not* an invasion of privacy to invite those men into women’s bedrooms in the first place.

Schools have long provided women-only dormitories and related facilities for female students. For example, Cornell College in Mount Vernon, Iowa, has a proud history of serving women, having been the first college west of the Mississippi to grant women the same rights and privileges as men, and the first, in 1858, to award a degree to a woman. At Cornell College, Bowman-Carter Hall has traditionally been a residence hall for women only.¹⁰ But if sex is redefined to mean “gender identity” under Title IX, then any male person will be legally entitled to live in Bowman-Carter Hall once he claims to identify as a woman.

The same is true at Cornell University, where Balch Hall has long been a women-only residence.¹¹ But that will end if “sex” is redefined to mean “gender identity,” and the women of Balch Hall will be joined by any man – or group of men – who utters the magic words “I identify as a woman.”

¹⁰ See *Bowman-Carter Hall (1885)*, Cornell College, www.cornellcollege.edu/residence-life/housing/halls/bowman-carter/index.shtml (last visited Dec. 3, 2018).

¹¹ See *Living at Cornell, Balch Hall*, Cornell College, <https://living.cornell.edu/live/wheretolive/residencehalls/Balch-Hall.cfm> (last visited Dec. 3, 2018).

Privacy is one thing; violence is another. The violence that Appellee Adams seeks to do to the definition of “sex” under civil rights laws is reflected in the violence that will result from this action. Without a second thought, schools and universities are mandating that men must be permitted to invade women’s spaces, which inherently threatens women’s physical safety in the places previously preserved exclusively for women and girls. 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. 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.¹² Moreover, a majority of those assaults were committed by “students, professors, or other employees of the school.”¹³

Allowing any male to claim that he has a right guaranteed by federal law to be in women’s most intimate and vulnerable spaces seriously undermines the 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

¹² U.S. Dep’t 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).

¹³ *Id.* at 104.

consent of that individual.” Md. Code. Ann. Crim. Law § 3-902(c)(1). The statute defines “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” (*id.* § 3-902(a)(5)(i), such as dressing rooms, restrooms (*id.* § 3-902(a)(5)(ii)), and any such room in a “school or other educational institution.” *Id.* § 3-902(a)(5)(i)(6). If any male can assert that he has a legal right to be in a women’s locker room because he identifies as female, it will be impossible to see how either this or similar laws in 26 other states could ever be enforced.

Redefining sex to mean “gender identity” under civil rights laws would also render similar statutes in other states inapplicable to these types of crimes. In many states, the relevant statute criminalizes only covert or “surreptitious” observation. For example, District of Columbia law provides that it is “unlawful for any person to occupy a hidden observation post or to install or maintain a peephole, mirror, or any electronic device for the purpose of secretly or surreptitiously observing” in a bathroom, locker room, etc. D.C. Code Ann. § 22-3531(b). Similarly, in Virginia, “It shall be unlawful for any person to use a peephole or other aperture to secretly or furtively peep, spy or attempt to peep or spy into a restroom, dressing room, locker room, [etc.]” Va. Code Ann. § 18.2-130(B).¹⁴

¹⁴ This same condition of the secret or hidden observer applies to voyeurism statutes in at least 15 other states. See Del. Code Ann. tit. 11, § 820 (“peer or peep into a window or door”); Fla. Stat. Ann. § 810.14 (“secretly observes”); Ga. Code

But if sex can be self-declared, then it is *not* illegal for a man to walk into a women’s locker room in the District of Columbia or Virginia and openly ogle the women there, because there is nothing “secret or surreptitious about” that action – just the opposite. Redefining sex to mean “gender identity,” as the Court below has done, *effectively decriminalizes this predatory sexual activity* and gives a get-out-of-jail free card to any predator who smiles and says, “But I identify as female.”

B. If “gender identity” is used to mean sex for purposes of interpreting Title IX, women and girls will lose preferences addressing historical and systemic discrimination.

After centuries of second-class treatment in all matters educational, the very preferences used to remedy that history and encourage women’s education – most importantly perhaps, scholarships for women – will, if the word “sex” is redefined to mean “gender identity,” be reduced by the demands of any males who “identify as female.” For example, will Alpha Epsilon Phi, a women’s legal sorority that sponsors the Ruth Bader Ginsburg Scholarship for female law students, now be forced to open its scholarships to males purely on the basis of “gender identity?”

Ann. § 16-11- 61 (“peeping Tom”); Haw. Rev. Stat. Ann. § 711-1111 (“peers or peeps”); Mich. Comp. Laws Serv. § 750.167 (“window peeper”); Miss. Code Ann. § 97-29-61 (“pries or peeps through a window”); Mont. Code Ann. §45-5-223 (“surreptitious”); Nev. Rev. Stat. Ann. § 200.603 (“surreptitiously conceal . . . and peer, peep or spy”); N.C. Gen. Stat. § 14-202 (“peep secretly”); N.D. Cent. Code § 12.1-20-12.2 (“surreptitiously”); Ohio Rev. Code Ann. § 2907.08 (“surreptitiously”); R.I. Gen. Laws § 11-45-1 (“window, or any other opening”); S.D. Codified Laws § 22-21-1 (“peek”); Wyo. Stat. § 6-4-304 (“looking in a clandestine, surreptitious, prying or secretive nature”).

Virtually all schools have endowed scholarships. Princeton, for example, has the Peter A. Cahn Memorial Scholarship, the first scholarship for female students at Princeton, and the Gary T. Capen Family Scholarship for International Women. For graduate students, Cornell University's School of Veterinary Medicine has at least four scholarships intended to benefit female students.¹⁵

Given the struggles that women have gone through to become lawyers (*see, e.g.,* Ruth Bader Ginsburg, *The Progression of Women in the Law*, 28 Val. U. L. Rev. 1161 (1994)), it is not surprising that law schools also have established such scholarships. *See, e.g.* the Joan Keyes Scott Memorial Scholarship, the Lillian Goldman Perpetual Scholarship Fund and the Elizabeth Warke Brenm Memorial Fund at Yale Law School.¹⁶

Nor are such scholarships supporting women confined to private institutions. For example, at the University of Iowa, undergraduate women are supported by the Madeline P. Peterson Scholarship¹⁷ and Ohio University has the Mary Ann Healy Memorial Scholarship.¹⁸ This list goes on and on.

¹⁵ *See* College of Veterinary Medicine, *Scholarship List*, Cornell University, <http://bit.ly/2BAJKhO> (last visited Dec. 3, 2018).

¹⁶ *See Alumni and Endowment Funds*, Yale Law School, <http://bit.ly/2RjTbfg> (last visited Dec. 34, 2018).

¹⁷ *See Awards and Scholarships, Madeline P. Peterson Scholarship for American Indian Women*, University of Iowa, <http://bit.ly/2AcqCqG> (last visited Dec. 3, 2018).

¹⁸ *See Scholarship Library, Mary Ann Healy Memorial Scholarship*, Ohio University, <http://bit.ly/2PZjanw> (last visited Dec. 3, 2018).

Twenty years ago, the Supreme Court eloquently described how women's physiology was used as an excuse to deny them education:

Dr. Edward H. Clarke of Harvard Medical School, whose influential book, *Sex in Education*, went through 17 editions, was perhaps the most well-known speaker from the medical community opposing higher education for women. He maintained that the physiological effects of hard study and academic competition with boys would interfere with the development of girls' reproductive organs. See E. Clarke, *Sex in Education* 38-39, 62-63 (1873); *id.*, at 127 ("identical education of the two sexes is a crime before God and humanity, that physiology protests against, and that experience weeps over"); see also H. Maudsley, *Sex in Mind and in Education* 17 (1874) ("It is not that girls have no ambition, nor that they fail generally to run the intellectual race [in coeducational settings], but it is asserted that they do it at a cost to their strength and health which entails life-long suffering, and even incapacitates them for the adequate performance of the natural functions of their sex."); C. Meigs, *Females and Their Diseases* 350 (1848) (after five or six weeks of "mental and educational discipline," a healthy woman would "lose ... the habit of menstruation" and suffer numerous ills as a result of depriving her body for the sake of her mind).

United States v. Virginia, 518 U.S. 515, 536 n.9 (1996). It is ironic that while women's bodies were once used as an excuse to deny them education, now women's educational opportunities will be curtailed based on the notion that there is no objective way to identify a female body. After all, according to the lower court and to Adams, whether one is male or female is defined solely by self-identification.

The ruling below effectively denies that sex is a meaningful legal category. This would be a surprise to the drafters of the Nineteenth Amendment, which reads

“[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”¹⁹ Surely, everyone knew what a woman was when the law prohibited women from voting; at no point were those disenfranchised women asked whether they identified with the sex-stereotypes or social limitations imposed on women at the time.

C. If “gender identity” is used to mean sex for purposes of interpreting Title IX, women and girls will lose preferences under other remedial statutes.

If “sex” becomes ambiguous in Title IX, then there is no logical reason why “sex” or “female” or “woman” or “girl” would be any less ambiguous when used in any other law designed to remedy centuries of discrimination against women. Nearly thirty years ago, Congress enacted the Women’s Business Ownership Act of 1988 to “remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production.” (Pub. L. 100-533, § 101), and creating the National Women’s Business Council, of which at least four members would be women. *Id.*, § 403(b)(2)(A)(ii).

Similarly in 1992, noting that “women face significant barriers to their full and effective participation in apprenticeable occupations and nontraditional occupations,” Congress enacted the Women in Apprenticeship and Nontraditional Occupations Act (Pub. L. 102-530, § 1(a); codified at 29 U.S.C. § 2501(a)), in

¹⁹ U.S. Const. Amend. 19.

order to “expand the employment and self-sufficiency options of women” in these areas via grants, technical assistance, and studies. *Id.*, § 1(b); codified at 29 U.S.C. § 2501(b). In 2000, Congress amended the Small Business Act to create the Procurement Program for Women-Owned Small Business Concerns (Pub. L. 106-554, § 811; codified at 15 U.S.C. § 637(m)) in order to create preferences for women-owned (and economically disadvantaged women-owned) small businesses in federal contracting. In 2014, Congress again amended the Small Business Act (Pub. L. 113-291, § 825; codified at 15 U.S.C. § 637(m)) to include authority to award sole-source contracts under this program. Neither in 1988, nor 1992, nor 2000, nor 2014, nor in any other remedial statute did Congress define “woman,” so presumably these programs will soon become equally available to any man who “identifies” as one.

Just as with Title IX scholarships, allowing men to take advantage of remedial programs and benefits Congress intended for women works to perpetuate the very problems these programs were intended to fix.

While *amicus* is concerned that men “identifying as women” reduces the availability of benefits Congress intended to aid actual women, judicially redefining sex to mean “gender identity” in Title IX would also affect all other federal statutes that explicitly incorporate Title IX’s definition of “sex discrimination.” For example, the federal government spends billions of dollars a

year for “youth workforce investment activities,” “adult employment and training activities,” and “dislocated worker employment and training activities.” 29 U.S.C. § 3181. All of these programs are subject to Title IX’s nondiscrimination provisions. 29 U.S.C. § 3248(a)(1)-(2). The same is also true for Public Health Service block grants to states for general purposes (42 U.S.C. § 300w-7(a)), mental health and substance abuse (42 U.S.C. § 300x-57(a)), maternal and child health (42 U.S.C. § 708(a)), and a myriad of other federal programs.

Finally, *amicus* also note that men might take advantage of the confusion between sex and “gender identity” to avoid particular obligations imposed on them, *e.g.*, selective service: “[I]t shall be the duty of every male citizen of the United States, and every other male person residing in the United States ... to present himself for and submit to registration[.]” 50 U.S.C. § 3802(a). Should America again find itself relying on the draft to defend itself, draft boards may well be astonished by a sudden surge in the female population.

D. Civil rights protections should not be based on subjective feelings or on a propensity to threaten or engage in self-harm.

The ruling below rests on the extraordinary principle that a male person who claims to “feel like” a female person must automatically be given access to a host of rights and spaces that were hard-won by women and girls. While the ruling below asserts that “[M]any transgender individuals are diagnosed with gender dysphoria,” *Adams* 318 F. Supp. 3d at 1299 (citation omitted), it only defines

gender identity and transgender according to ineffable, unverifiable, subjective beliefs, making all the medical evidence cited by the lower court irrelevant.

Even if the definition of “transgender” in the ruling below required a formal diagnosis of “gender dysphoria,”²⁰ subjective distress about one’s sex has never previously served to define a class of persons protected under civil rights laws. Yet the ruling below erases single-sex protections based in part on the largely self-reported propensity of an ill-defined class of individuals to threaten or engage in self-harm. *Adams*, 318 F. Supp. 3d at 1299 n. 15. No law justifies or requires this result.

Moreover, this is misleading and manipulative. There are many groups of individuals with high-levels of self-reported attempted or completed suicide, while conversely, some groups that have historically been subject to sex-based and race-based discrimination exhibit very low rates of suicide and self-harm.²¹ Indeed, if

²⁰ “Gender dysphoria” is a psychiatric condition marked by significant distress at the thought of one’s sex, and “a strong conviction that one has feelings and reactions typical” of the opposite sex. American Psychiatric Association, *Gender Dysphoria* (discussing the diagnostic criteria contained in the APA’s *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*), available at <http://bit.ly/2Re1MA5> (last visited Nov. 10, 2018).

²¹ See, e.g., Gary Barker, *Why Do So Many Men Die by Suicide?*, Slate (June 28, 2018), <http://bit.ly/2EHSe9V?>; Jennifer Wright, *Why a Pro-Life World Has a Lot of Dead Women in it*, Harper’s Bazaar (June 28, 2018), <http://bit.ly/2RhBFbC>; Irina Ivanova, *Farmers in America are facing an economic and mental health crisis*, Money Watch (June 29, 2018), <https://cbsn.ws/2GABxzX>; Rand Corporation, *Invisible Wounds of War* (2008), <http://bit.ly/2EEUdMa>.

civil rights laws were to be interpreted according to suicide rates, white men would be roughly three times as oppressed as Black, Hispanic, or Asian Pacific Islander individuals in the U.S., even more so for white men living in Montana.²² Certainly, any student expressing suicidal intent merits compassion and support—but it is neither compassionate nor supportive of women and girls to eliminate sex discrimination protections by judicially adopting gender identity ideology.

E. Replacing sex with “gender identity” under civil rights law will distort vital statistics.

Numerous consequences follow from the conflation of sex to mean “gender” or “gender identity.” For example, sex is a vital statistic; “gender” and “identity” are not. Society has many legitimate interests in recording and maintaining accurate information about its residents’ sex, for purposes of identification, tracking crimes, determining eligibility for sex-specific programs or benefits, ensuring proper medical treatment where the effectiveness of therapies is directly impacted by the patient’s sex, and determining admission to sex-specific spaces, to name just a few examples. In contrast, there is no legitimate governmental interest in recording a person’s subjective “identity” or giving that identity legal significance *in lieu of* sex.

²² Suicide Prevention Resource Center, *Racial and Ethnic Disparities*, <https://www.sprc.org/racial-ethnic-disparities> (last visited Dec. 3, 2018); American Found. for Suicide Prevention, *State Fact Sheet for Montana*, <https://afsp.org/about-suicide/state-fact-sheets/#Montana> (last visited Dec. 3, 2018).

Additionally, as demonstrated consistently by the FBI's Uniform Crime Reporting system and similar state systems, women face a dramatically disproportionate statistical risk of violence, rape, assault, or voyeurism, and in the vast majority of cases women suffer these harms at the hands of men. For crimes reported by law enforcement to the FBI in 2015, men committed over 88% of all murders, 97% of rapes, 77% of aggravated assaults, and 92% of sex offenses other than rape or prostitution.²³ Redefining sex to mean "gender identity" would skew basic crime statistics traditionally recorded and analyzed according to sex because police departments traditionally use the sex designation on a driver's licenses to record the sex of an arrestee. Males who commit violent crimes against women should not be permitted to obscure their sex by simply "identifying as women."

CONCLUSION

If the word sex is redefined in a circular manner; if the words "women" and "girls" have no clear meaning; if women and girls have not been discriminated against, harassed, assaulted, and murdered because of their sex; if women are not a discrete legally-protectable category, then one might rightly wonder what women have been fighting for all this time. Women and girls deserve more consideration than the ruling below gives them. WoLF implores the Court to reverse the lower

²³2015 Crime in the United States, Table 33, *Ten-Year Arrest Trends by Sex, 2006–2015*, <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-33>, U.S. Dep't of Justice Fed. Bureau of Investigation (last visited Dec. 3, 2018).

court's holding and honor the plain text and original intent of Title IX, which is to prohibit discrimination on the basis of *sex*.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), the undersigned certifies that this brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B).

Exclusive of the sections exempted by Fed. R. App. P. 32(f), the brief contains 4,893 words, according to the word count feature of the software (Microsoft Word 2013) used to prepare the brief. The brief has been prepared in proportionately spaced typeface using Times New Roman 14 point.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically with the Court's CM-ECF system on this 27th day of December, 2018. Service will be effectuated by the Court's electronic notification system upon all parties and counsel of record.

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No. 18-658

In The
Supreme Court of the United States

—◆—
JOEL DOE, et al.,

Petitioners,

v.

BOYERTOWN AREA SCHOOL DISTRICT, et al.,

Respondents.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit**

—◆—
**BRIEF OF *AMICUS CURIAE*
WOMEN'S LIBERATION FRONT
IN SUPPORT OF PETITIONERS**

—◆—
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INTEREST OF *AMICUS CURIAE*¹

Amicus is the Women’s Liberation Front (“WoLF”), an all-volunteer organization of radical feminists dedicated to the liberation of women by ending male violence, protecting reproductive sovereignty, preserving woman-only spaces, and abolishing sex discrimination. WoLF has nearly 500 members who live, work, and attend public schools, colleges, and Universities across the United States.

WoLF’s interest in this case stems from its interest in protecting the safety and privacy of women and girls and preserving women’s sex-based civil rights.² Those rights have been threatened by recent court decisions and agency policies that embrace the vague concept of “gender identity” in a manner that overrides statutory and Constitutional protections that are based explicitly on “sex.” WoLF previously challenged one such policy that purported to rewrite Title IX of the Civil Rights Act in a “Dear Colleague” letter issued by the U.S. Department of Justice and U.S. Department of

¹ None of the parties to this case nor their counsel authored this brief in whole or in part. No person or entity other than WoLF made a monetary contribution specifically for the preparation or submission of this brief. *Amicus curiae* files this brief with the written consent of all parties. All parties received timely notice of *amicus curiae*’s intention to file this brief.

² *Amicus* uses “sex” throughout to mean exactly what Congress meant in 1972 when it incorporated the longstanding meaning of that term into Title IX of the Civil Rights Act: The biological classification of human beings as either female (“women”) or male (“men”).

Education on May 13, 2016 (“2016 Guidance”).³ *Women’s Liberation Front v. U.S. Department of Justice, et al.*, No. 1:16-cv-00915 (D.N.M. August 11, 2016). WoLF also submitted *amicus* briefs addressing the same question in this Court and in the U.S. Court of Appeals for the Fourth Circuit in the case of *Gloucester County School Bd. v. G.G.*, 137 S. Ct. 1239 (2017) (mem.) (vacating *G.G. v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2016), and remanding).

Although the 2016 Guidance was withdrawn on February 22, 2017, the threat to women’s civil rights persists. The decision below proclaims that women and girls are no longer recognized under federal law as a discrete category worthy of civil rights protection, but men and boys who claim to have a female “gender identity” are. If allowed to stand, it will mark a truly fundamental shift in American law and policy that strips women of their Constitutional right to privacy, threatens their physical safety, undercuts the means by which women can achieve educational equality, and ultimately works to erase women and girls under the law. It not only revokes the very rights and protections that specifically secure *women’s* access to education, but does so in order to extend those rights and protections to men *claiming* to be women.

WoLF seeks to empower women and girls to advocate for their rights to privacy, safety, and association before government officials who might not otherwise consider the particular harms women and girls face if

³ See Petition for *Certiorari* at 2.

sex is redefined to mean “gender identity” under civil rights laws and the Constitution. WoLF urges the Court to grant certiorari in order to confirm that schools and other institutions have the authority and duty to give effect to longstanding sex-based protections under the law.



SUMMARY OF ARGUMENT

There are at least three reasons for granting the Petition for *Certiorari*.

A. The Court Should Grant Certiorari In Order To Resolve A Circuit Split As To Whether Title IX Employers And Schools May Limit Access To Restrooms And Other Intimate Spaces On The Basis Of Sex.

The Third Circuit held that under Title IX and the Constitution, schools may not limit student access to restrooms on the basis of sex. This holding applies equally to school teachers, administrators, or other employees, because DOE’s regulations expressly extend Title IX’s protections to employees of covered institutions: “No person shall, on the basis of sex, . . . be subjected to discrimination in employment, or recruitment, consideration, or selection therefor . . . under any education program or activity operated by a recipient which receives Federal financial assistance.”

34 C.F.R. § 106.51(a).⁴ In short, the decision below *requires* schools to allow male teachers, administrators, and other employees the same unfettered access to women’s restrooms as extended to students on the basis of a self-declared female “gender identity.”

By forbidding schools from keeping male teachers, administrators and other employees out of women’s bathrooms, the decision below conflicts with the Tenth Circuit’s decision in *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215 (10th Cir. 2007). Etsitty, a male bus driver whose self-declared “gender identity” was female, was fired by the defendant transit agency because bus drivers use public restrooms on their routes, and Etsitty insisted on using women’s restrooms.

Relying on *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), Etsitty claimed that “terminating her because she intended to use women’s restrooms is essentially another way of stating that she was terminated for failing to conform to sex stereotypes.”⁵ *Etsitty*, 502

⁴ DOE’s authority to promulgate the Title IX employment regulations was upheld in *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512 (1982), and the regulation at issue here (“A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex . . . ;” 34 C.F.R. § 106.33) has a similar counterpart in DOE’s employment regulations: “[N]othing contained in this section shall prevent a recipient from considering an employee’s sex in relation to employment in a locker room or toilet facility used only by members of one sex.” 34 C.F.R. § 106.61.

⁵ *Price Waterhouse* “sex stereotyping” (now “gender non-conformity”) claims have become the prevailing remedy for trans-related employment discrimination because most courts have held that discrimination based on “transgendered” status, in and of itself, is not sex discrimination under Title VII precisely because “sex” means

F.3d at 1224. While courts have generally recognized *Price Waterhouse* “sex stereotyping” employment discrimination claims in cases involving “transgendered” plaintiffs, the Tenth Circuit understood the inherent limits to this doctrine (*id.*):

However far *Price Waterhouse* reaches, this court cannot conclude it requires employers to allow biological males to use women’s restrooms. Use of a restroom designated for the opposite sex does not constitute a mere failure to conform to sex stereotypes.

Ever since this Court’s decision in *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60, 75 (1992), which expressly relied on its Title VII decision in *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986), to hold that Title IX supported actions for damages, courts have read Title IX in light of Title VII. “This Court has also looked to its Title VII interpretations of discrimination in illuminating Title IX[.]” *Olmstead v. L. C. by Zimring*, 527 U.S. 581, 616 n.1 (1999) (Thomas, J., dissenting). Nowhere is this truer than in the area covered by both statutes, *i.e.*, sex discrimination in educational employment. “The identical standards apply to employment discrimination claims brought under Title VII [and] Title IX[.]” *Weinstock v. Columbia Univ.*, 224 F.3d 33, 42 n.1 (2d Cir. 2000); *Preston v. Commonwealth of Virginia ex rel. New River Cmty. Coll.*, 31 F.3d 203, 206 (4th Cir. 1994).

“male” or “female” but not “transgender.” *Etsitty*, 502 F.3d at 1221; *Ulane v. E. Airlines, Inc.*, 742 F.2d 1081, 1084 (7th Cir. 1984); *Somers v. Budget Mktg., Inc.*, 667 F.2d 749, 750 (8th Cir. 1982).

Thus the Circuit split: The Tenth Circuit held that Title VII allows employers to require employees to use restrooms consistent with their sex, but the Third Circuit says that employers may not do so under Title IX. And while courts disagree as to whether Title IX provides a private right of action for employment discrimination by covered institutions, or whether such claims must be brought under Title VII, the United States may enforce either Title VII or Title IX against an educational institution discriminating in employment on the basis of sex. The decision below thus presents a Circuit split on a pure question of law that needs no further factual development before review in this Court.

B. The Ruling Below Redefines “Sex” In A Manner That Undermines Title IX.

The Court below has completely re-written the definition of the word sex for the purpose of interpreting Title IX and its implementing regulations.⁶ This case presents an opportunity for the Court to affirm the unambiguously-expressed intent of Congress to prohibit discrimination on the basis of sex under Title IX and the Constitution, in order to remedy centuries of sex-based discrimination against women and girls in the educational arena.

Sex and gender (or “gender identity”) are distinct concepts. The word “sex” has meaning – specifically,

⁶ See Petition for *Certiorari* at 4-5.

the distinction between male and female.⁷ Sex is recorded (not “assigned”) at birth by qualified medical professionals, and it is an exceedingly accurate categorization: an infant’s sex is easily identifiable based on external genitalia and other factors in 99.982% of all cases; the miniscule fraction of individuals who have “intersex” characteristics are also either male or female; in vanishingly rare cases individuals are born with such a mix of characteristics that it is difficult to characterize – but they still do not constitute a third reproductive class.⁸

In stark contrast to sex, “gender” and “gender identity” refer stereotypical roles, personalities, behavioral traits, and clothing fashions that are socially imposed on men and women.⁹ There is no credible

⁷ See Black’s Law Dictionary, *Sex* (10th ed. 2014); Merriam-Webster.com, *Male* (Dec. 3, 2018); Merriam-Webster.com, *Female* (Dec. 3, 2018); Nat’l Institutes for Health, *Genetics Home Reference: X Chromosome* (Jan. 2012), available at <https://ghr.nlm.nih.gov/chromosome/X> (last visited Dec. 3, 2018); Joel, Daphna, *Genetic-gonadal-genitals sex (3G-sex) and the misconception of brain and gender, or why 3-G males and 3-G females have intersex brain and intersex gender*, 27 *Biology of Sex Differences*, No. 3, Dec. 2012, at 1.

⁸ Sax, Leonard, “*How Common Is Intersex? A Response to Anne Fausto-Sterling*,” *The Journal of Sex Research* 39, No. 3 (2002): 174-78, available at <http://www.jstor.org/stable/3813612>; Dawkins, R., *The Ancestor’s Tale, A Pilgrimage to the Dawn of Evolution*, 135 (Mariner Books ed. 2005); Nat’l Institutes for Health, *Genetics Home Reference: SRY Gene* (Mar. 2015), available at <https://ghr.nlm.nih.gov/gene/SRY.pdf>.

⁹ See *Doe v. Boyertown Area Sch. Dist.*, No. 17-3113, 29 (3d Cir. 2018), quoting *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017) (“By

support for the argument that “gender identity” is innate, has a supposed “biological basis,” or that every human being has a “gender identity.” The Court below acknowledges as much when it states that “[a] person’s gender identity is their subjective, deep-core sense of self as being a particular gender” – a wholly circular definition.¹⁰ “Gender identity” is simply a belief system that has been invented and adhered to by a small subset of society.¹¹

Legally redefining “female” as anyone who claims to be female results in the erasure of female people as a class.¹² If, as a matter of law, *anyone* can be a woman, then *no one* is a woman, and Title IX has no meaning whatsoever. The ruling below effectively erases Title IX.

Gender is simply a set of sex-based stereotypes that operate to oppress female people. Further, to assert that women and girls have a “deeply felt identification” with the sex-based stereotypes that are imposed on them is insulting to women and girls who reject the prison of femininity.

definition, a transgender individual does not conform to the sex-based stereotypes of the sex that he or she was assigned at birth.”).

¹⁰ *See id.* at 7.

¹¹ *See* Reilly-Cooper, Rebecca, *Gender is Not a Spectrum* Aeon (June 28, 2016); Fine, Cordelia, *Testosterone Rex* (W.W. Norton & Co. 2017).

¹² *See* Barrett, Ruth, ed., *Female Erasure* (Tidal Time Publishing, L.L.C. 2016).

The entire concept of “gender identity” is rooted in the notion that males and females have particular sex-specific ways of feeling and thinking, but scientists have demonstrated time and again that there is simply no such thing as a “female brain” or a “male brain.”¹³ This science demonstrates that gender is not innate. It is a collection of sex-based stereotypes that society imposes on people on the basis of sex, where women are understood to like particular clothing and hair styles and to have nurturing, unassuming personalities, whereas men are said to like a different set of styles and to have ambitious, outgoing personalities.¹⁴ This is simply old-fashioned sexism.

¹³ See, e.g., Joel, Daphna, *et al.*, *Can We Finally Stop Talking About ‘Male’ and ‘Female’ Brains?* *The New York Times* (Dec. 3, 2018); Kaplan, Karen, *There’s No Such Thing as a ‘Male Brain’ or a ‘Female Brain’ and Scientists Have the Scans to Prove It*, *L.A. Times* (Nov. 30, 2015), available at <http://www.latimes.com/science/sciencenow/la-sci-sn-no-male-female-brain-20151130-story.html>; MacLellan, Lila, *The biggest myth about our brains is that they are “male” or “female,”* *Quartz* (Aug. 27, 2017), available at <https://qz.com/1057494/the-biggest-myth-about-our-brains-is-that-theyre-male-or-female/>.

¹⁴ See, e.g., *Amicus Brief of the National PTA, et al. in Support of Appellees at 22, Doe v. Boyertown Area Sch. Dist.*, No. 17-3113 (3d Cir. 2018) (quoting a self-described “trans[gender] girl” as stating, “When I was little I loved to play with dolls and play dress up. I loved painting my nails too. Wearing my mom’s high heels was my favorite!”). These stories peddle the offensive stereotype that a child who is a girl must like playing with dolls, dressing up, painting nails, and wearing heels.

C. The Third Circuit Has Completely Re-Written The Strict Scrutiny Test For Evaluating Constitutional Claims Without Input From This Court.

In its decision, the Third Circuit has completely re-written the strict scrutiny test for evaluating a claim that the government has intruded on the fundamental Constitutional right to privacy.¹⁵ This case presents an opportunity for the Court to clarify that when evaluating such a claim, the Court must hold the government to its burden of demonstrating that the action or policy being complained about serves a compelling government interest and that the action or policy is narrowly tailored to accomplish that interest.

ARGUMENT

Sex and “gender” are distinct concepts that cannot be conflated. While some individuals may claim to feel or possess an “identity” that differs from their sex, such feelings have no bearing whatsoever on the person’s vital characteristics, and should have no bearing on the Courts’ application of civil rights law.

¹⁵ See Petition for *Ceriorari* at 3-4.

A. If “Gender Identity” Is Used To Interpret The Constitutional Right To Privacy And Title IX, Women And Girls Will Lose Their Privacy And Be Put At Even Greater Risk Of Sexual Violence.

Redefining “sex” to mean “gender identity” means that the thousands of colleges, universities, and schools that have women-only facilities, including dormitories, must now allow any male who “identifies as” female or “transgender” to live in them. Thus, women and girls who believed that they would have personal privacy of living only with other females will be surprised to discover that males will be their roommates and will be joining them in the showers. And – like Alexis Lightcap and her fellow students – those girls and their parents will only discover this *after* they move in because colleges and universities across the country have adopted policies that prohibit administrators from notifying them in advance, on the theory that students have a right to conceal their vital characteristics and to compel schools to instead recognize their subjective “gender identity.” It is truly mind-boggling that informing women that men might have the “right” to share a bedroom with them is an “invasion of privacy,” but it is *not* an invasion of privacy to invite those men into women’s bedrooms in the first place.

Schools have long provided women-only dormitories and related facilities for female students. For example, Cornell College in Mount Vernon, Iowa, has a proud history of serving women, having been the first

college west of the Mississippi to grant women the same rights and privileges as men, and the first, in 1858, to award a degree to a woman. At Cornell College, Bowman-Carter Hall has traditionally been a residence hall for women only.¹⁶ But if sex is redefined to mean “gender identity” under Title IX, then any male person will be legally entitled to live in Bowman-Carter Hall once he claims to identify as a woman.

The same is true at Cornell University, where Balch Hall has long been a women-only residence.¹⁷ But that will end if “sex” is redefined to mean “gender identity,” and the women of Balch Hall will be joined by any man – or group of men – who utters the magic words “I identify as a woman.”

Privacy is one thing; violence is another. The violence that the Respondents seek to do to the definition of “sex” under civil rights laws is reflected in the violence that will result from this action. Without a second thought, schools and universities are mandating that men must be permitted to invade women’s spaces and threaten their physical safety in the places heretofore reserved exclusively for women and girls. 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

¹⁶ See *Bowman-Carter Hall* (1885), available at <http://www.cornellcollege.edu/residence-life/housing/halls/bowman-carter/index.shtml> (last visited Dec. 3, 2018).

¹⁷ See *Living at Cornell, Balch Hall*, available at <https://living.cornell.edu/live/wheretolive/residencehalls/Balch-Hall.cfm> (last visited Dec. 3, 2018).

rape tens of thousands of women and girls every day. 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.¹⁸ Moreover, a majority of those assaults were committed by “students, professors, or other employees of the school.”¹⁹

Allowing any male to claim that he has a right guaranteed by federal law to be in women’s most intimate and vulnerable spaces seriously undermines the 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.” Md. Code Ann. Crim. Law § 3-902(c)(1). The statute defines “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” (*id.* § 3-902(a)(5)(i)), such as dressing rooms, restrooms (*id.* § 3-902(a)(5)(ii)), and any such room in a “school or other educational institution.” *Id.* § 3-902(a)(5)(i)(6). If any male can assert that he has a legal right to be in a women’s locker room because he identifies as female, it will be impossible to see how either this or similar laws in 26 other states could ever be enforced.

¹⁸ 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.

¹⁹ *Id.* at 104.

Redefining sex to mean “gender identity” under civil rights laws would also render similar statutes in other states simply inapplicable to these types of crimes. In many states, the relevant statute criminalizes only covert or “surreptitious” observation. For example, District of Columbia law provides that it is “unlawful for any person to occupy a hidden observation post or to install or maintain a peephole, mirror, or any electronic device for the purpose of secretly or surreptitiously observing” in a bathroom, locker room, etc. D.C. Code Ann. § 22-3531(b). Similarly, in Virginia, “It shall be unlawful for any person to use a peephole or other aperture to secretly or furtively peep, spy or attempt to peep or spy into a restroom, dressing room, locker room, [etc.].” Va. Code Ann. § 18.2-130(B).²⁰

But if sex can be self-declared then it is *not* illegal for a man to walk into a women’s locker room in the District of Columbia or Virginia and openly ogle the women there, because there is nothing “secret or

²⁰ This same condition of the secret or hidden observer applies to voyeurism statutes in at least 15 other states. *See* Del. Code Ann. tit. 11, § 820 (“peer or peep into a window or door”); Fla. Stat. Ann. § 810.14 (“secretly observes”); Ga. Code Ann. § 16-11-61 (“peeping Tom”); Haw. Rev. Stat. Ann. § 711-1111 (“peers or peeps”); Mich. Comp. Laws Serv. § 750.167 (“window peeper”); Miss. Code Ann. § 97-29-61 (“pries or peeps through a window”); Mont. Code Ann. § 45-5-223 (“surreptitious”); Nev. Rev. Stat. Ann. § 200.603 (“surreptitiously conceal . . . and peer, peep or spy”); N.C. Gen. Stat. § 14-202 (“peep secretly”); N.D. Cent. Code § 12.1-20-12.2 (“surreptitiously”); Ohio Rev. Code Ann. § 2907.08 (“surreptitiously”); R.I. Gen. Laws § 11-45-1 (“window, or any other opening”); S.D. Codified Laws § 22-21-1 (“peek”); Wyo. Stat. § 6-4-304 (“looking in a clandestine, surreptitious, prying or secretive nature”).

surreptitious about” that action – just the opposite. Redefining sex to mean “gender identity,” as the Court below has done, *effectively decriminalizes this predatory sexual activity* and gives a get-out-of-jail-free card to any predator who smiles and says, “But I identify as female.”

B. If “Gender Identity” Is Used To Interpret Title IX, Women And Girls Will Lose Preferences Addressing Historical And Systemic Discrimination.

After centuries of second-class treatment in all matters educational, the very preferences used to remedy that history and encourage women’s education – most importantly perhaps, scholarships for women – will, if the word “sex” is redefined to mean “gender identity,” be reduced by the demands of any males who “identify as female.” For example, will Alpha Epsilon Phi, a women’s legal sorority that sponsors the Ruth Bader Ginsburg Scholarship for female law students, now be forced to open its scholarships to males purely on the basis of “gender identity?”

Virtually all schools have endowed scholarships. Princeton, for example, has the Peter A. Cahn Memorial Scholarship, the first scholarship for female students at Princeton, and the Gary T. Capen Family Scholarship for International Women. For graduate students, Cornell University’s School of Veterinary

Medicine has at least four scholarships intended to benefit female students.²¹

Given the struggles that women have gone through to become lawyers (*see, e.g.*, Ruth Bader Ginsburg, *The Progression of Women in the Law*, 28 Val. U. L. Rev. 1161 (1994)), it is not surprising that law schools also have established such scholarships. *See, e.g.*, the Joan Keyes Scott Memorial Scholarship, the Lillian Goldman Perpetual Scholarship Fund and the Elizabeth Warke Brenm Memorial Fund at Yale Law School.²²

Nor are such scholarships supporting women confined to private institutions. For example, at the University of Iowa, undergraduate women are supported by the Madeline P. Peterson Scholarship²³ and Ohio University has the Mary Ann Healy Memorial Scholarship.²⁴ This list goes on and on.

²¹ *See* Cornell University College of Veterinary Medicine Scholarship List, available at <https://www2.vet.cornell.edu/education/doctor-veterinary-medicine/financing-your-veterinary-education/policies-funding-sources/college-scholarships/scholarship-list> (last visited Dec. 3, 2018).

²² *See* Yale Law School Alumni and Endowment Funds, available at <http://bulletin.printer.yale.edu/htmlfiles/law/alumni-and-endowment-funds.html> (last visited Dec. 3, 2018).

²³ *See Madeline P. Peterson Scholarship for American Indian Women*, available at <https://diversity.uiowa.edu/awards/madeline-p-peterson-scholarship-american-indian-women> (last visited Dec. 3, 2018).

²⁴ *See* Scholarship Library, Mary Ann Healy Memorial Scholarship, available at [http://www.scholarshiplibrary.com/wiki/Mary_Ann_Healy_Memorial_Scholarship_\(Ohio_University_Main_Campus\)](http://www.scholarshiplibrary.com/wiki/Mary_Ann_Healy_Memorial_Scholarship_(Ohio_University_Main_Campus)) (last visited Dec. 3, 2018).

Twenty years ago, this Court eloquently described how women's physiology was used as an excuse to deny them education:

Dr. Edward H. Clarke of Harvard Medical School, whose influential book, *Sex in Education*, went through 17 editions, was perhaps the most well-known speaker from the medical community opposing higher education for women. He maintained that the physiological effects of hard study and academic competition with boys would interfere with the development of girls' reproductive organs. See E. Clarke, *Sex in Education* 38-39, 62-63 (1873); *id.*, at 127 ("identical education of the two sexes is a crime before God and humanity, that physiology protests against, and that experience weeps over"); see also H. Maudsley, *Sex in Mind and in Education* 17 (1874) ("It is not that girls have no ambition, nor that they fail generally to run the intellectual race [in coeducational settings], but it is asserted that they do it at a cost to their strength and health which entails life-long suffering, and even incapacitates them for the adequate performance of the natural functions of their sex."); C. Meigs, *Females and Their Diseases* 350 (1848) (after five or six weeks of "mental and educational discipline," a healthy woman would "lose . . . the habit of menstruation" and suffer numerous ills as a result of depriving her body for the sake of her mind).

United States v. Virginia, 518 U.S. 515, 536 n.9 (1996). It is ironic that while women's bodies were once used

as an excuse to deny them education, now women’s educational opportunities will be curtailed based on the notion that there is no objective way to identify a female body. After all, according to the court below and the Respondents, women are defined solely by self-identification.

The ruling below effectively denies that sex is a meaningful legal category. Yet the text of the Nineteenth Amendment reads, “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”²⁵ Surely, everyone knew what a woman was when the law prohibited women from voting; at no point were those disenfranchised women asked whether they identified with the sex-stereotypes or social limitations imposed on women at the time.

C. Women And Girls Will Lose Preferences Under Other Remedial Statutes.

If “sex” is ambiguous in Title IX, then there is no logical reason why “sex” or “female” or “woman” or “girl” is any less ambiguous when used in any other law designed to remedy centuries of discrimination against women.

Nearly thirty years ago, Congress enacted the Women’s Business Ownership Act of 1988 to “remove,

²⁵ U.S. Const. Amend. 19. In addition, surely the founders of the ACLU Women’s Rights Project understood the category of people whose rights they were seeking to protect.

insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production.” (Pub. L. No. 100-533, § 101), and creating the National Women’s Business Council, of which at least four members would be women. *Id.*, § 403(b)(2)(A)(ii). In 1992, noting that “women face significant barriers to their full and effective participation in apprenticeable occupations and nontraditional occupations,” Congress enacted the Women in Apprenticeship and Nontraditional Occupations Act (29 U.S.C. § 2501(a)), in order to “expand the employment and self-sufficiency options of women” in these areas via grants, technical assistance, and studies. *Id.*, § 1(b); codified at 29 U.S.C. § 2501(b). In 2000, Congress amended the Small Business Act to create the Procurement Program for Women-Owned Small Business Concerns (15 U.S.C. § 637(m)), in order to create preferences for women-owned (and economically disadvantaged women-owned) small businesses in federal contracting. In 2014, Congress again amended the Small Business Act (15 U.S.C. § 637(m)) to include authority to award sole-source contracts under this program. Neither in 1988, nor 1992, nor 2000, nor 2014, nor in any other remedial statute did Congress define “woman,” so presumably these programs will soon become equally available to any man who “identifies” as one.

Just as with Title IX scholarships, allowing men to take advantage of remedial programs and benefits Congress intended for women works to perpetuate the very problems these programs were intended to fix.

While *amicus* is concerned that men will say that they are women for the purpose of helping themselves to benefits Congress intended for actual women, redefining “sex” to mean “gender identity” in Title IX would also affect all other federal statutes that explicitly incorporate Title IX’s definition of “sex discrimination.” For example, the federal government spends billions of dollars a year for “youth workforce investment activities,” “adult employment and training activities,” and “dislocated worker employment and training activities.” 29 U.S.C. § 3181. All of these programs are subject to Title IX’s nondiscrimination provisions. 29 U.S.C. § 3248(a)(1)-(2). The same is also true for Public Health Service block grants to states for general purposes (42 U.S.C. § 300w-7(a)), mental health and substance abuse (42 U.S.C. § 300x-57(a)), maternal and child health (42 U.S.C. § 708(a)), and a myriad of other federal programs.

Finally, *amicus* also note that men might take advantage of the confusion between sex and “gender identity” to avoid particular obligations imposed on them, *e.g.*, selective service: “[I]t shall be the duty of every male citizen of the United States, and every other male person residing in the United States . . . to present himself for and submit to registration[.]” 50 U.S.C. § 3802(a). In the event of war, no doubt demographers will be astonished by the sudden surge in the female population.

D. Civil Rights Protections Should Not Be Based On Subjective Feelings Or On A Propensity To Threaten Or Engage In Self-Harm.

The ruling below rests on the extraordinary claim that a male person who claims to “feel like” a female person must automatically be given access to a host of rights and spaces that were hard-won by women and girls. While the ruling below asserts that “transgender individuals may experience ‘gender dysphoria,’”²⁶ it only defines “transgender” according to ineffable, unverifiable, subjective beliefs, making all the medical evidence cited by the Panel irrelevant. In other words, this is not a case about discrimination against people who have received a mental health diagnosis of “gender dysphoria”;²⁷ it is a case about people who – for any reason or no reason at all – claim to identify as the opposite sex.

Even if the definition of “transgender” in the ruling below required a formal diagnosis of “gender dysphoria,” subjective distress about one’s sex has never previously been recognized as a basis for defining a class of persons protected under civil rights laws. Yet

²⁶ See *Doe v. Boyertown Area Sch. Dist.*, No. 17-3113, 5 (3d Cir. 2018).

²⁷ “Gender dysphoria” is a psychiatric condition marked by significant distress at the thought of one’s sex, and “a strong conviction that one has feelings and reactions typical” of the opposite sex. American Psychiatric Association, *Gender Dysphoria* (discussing the diagnostic criteria contained in the APA’s *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*) (5th ed. 2013), available at https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Gender-Dysphoria.pdf (last visited Nov. 10, 2018).

the ruling erases single-sex protections based on the self-reported propensity of an ill-defined class of individuals to threaten or engage in self-harm.²⁸ No law justifies or requires this result.

Moreover, this is misleading and manipulative. There are many groups of individuals with high-levels of self-reported attempts or completed suicide,²⁹ while, conversely, some groups that have historically been subject to sex-based and race-based discrimination exhibit very low rates of suicide and self-harm. Indeed, if civil rights laws were to be interpreted according to suicide rates, white men would be roughly three times as oppressed as Black, Hispanic, or Asian Pacific Islander individuals in the U.S., even more so for white men living in Montana.³⁰ The Court below further recognizes in its ruling the need to be concerned about the mental

²⁸ See *Doe v. Boyertown Area Sch. Dist.*, No. 17-3113 at 5-6, 15 (3d Cir. 2018).

²⁹ See, e.g., Barker, Gary, *Why Do So Many Men Die by Suicide?*, Slate (June 28, 2018), available at <https://amp.slate.com/human-interest/2018/06/are-we-socializing-men-to-die-by-suicide.html?>; Wright, Jennifer, *Why a Pro-Life World Has a Lot of Dead Women in it*, Harper's Bazaar (June 28, 2018), available at <https://www.harpersbazaar.com/culture/features/amp10033320/pro-life-abortion/>; Ivanova, Irina, *Farmers in America are facing an economic and mental health crisis*, Money Watch (June 29, 2018), available at <https://www.cbsnews.com/news/american-farmers-rising-suicide-rates-plummeting-incomes/>; Rand Corporation, *Invisible Wounds of War* (2008), available at <https://www.rand.org/pubs/monographs/MG720.html>.

³⁰ Suicide Prevention Resource Center, *Racial and Ethnic Disparities*, available at <https://www.sprc.org/racial-ethnic-disparities> (last visited Dec. 3, 2018); American Found. for Suicide Prevention, *State Fact Sheet for Montana*, available at <https://afsp.org/about-suicide/state-fact-sheets/#Montana> (last visited Dec. 3, 2018).

health and wellness not only of students identifying as transgender, but of lesbian, gay, and bisexual individuals.³¹ If the law cannot recognize sex, then it cannot recognize anyone’s sexual orientation.

E. Replacing Sex With “Gender Identity” Under Civil Rights Law Will Distort Vital Statistics.

Numerous consequences follow from the conflation of sex to mean “gender” or “gender identity.” For example, sex is a vital statistic; “gender” and “identity” are not. Society has many legitimate interests in recording and maintaining accurate information about its residents’ sex, for purposes of identification, tracking crimes, determining eligibility for sex-specific programs or benefits, and determining admission to sex-specific spaces, to name just a few examples. In contrast, there is no legitimate governmental interest in recording a person’s subjective “identity” or giving that identity legal significance *in lieu of* sex.

Additionally, as demonstrated consistently by the FBI’s Uniform Crime Reporting system and similar state systems, women face a dramatically disproportionate statistical risk of violence, rape, assault, or voyeurism, and in the vast majority of cases women

³¹ See *Doe v. Boyertown Area Sch. Dist.*, No. 17-3113, 6 n.17 (3d Cir. 2018). Despite the Court’s suggestion during oral argument in the proceedings below that the words “sex” and “opposite sex” are confusing, this Court knows perfectly well what the word “sex” means, as this Court used the phrase “same-sex” a total of 165 times throughout the Syllabus and the various Opinions in its landmark decision *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

suffer these harms at the hands of men. For crimes reported by law enforcement to the FBI in 2015, men committed over 88% of all murders, 97% of rapes, 77% of aggravated assaults, and 92% of sex offenses other than rape or prostitution.³² Redefining sex to mean “gender identity” would skew basic crime statistics traditionally recorded and analyzed according to sex because police departments traditionally use the sex designation on a driver’s license to record the sex of an arrestee. Males who commit violent crimes against women should not be permitted to obscure their sex by simply “identifying as women.”

◆

CONCLUSION

If the word sex is redefined in a circular manner, if the words “women” and “girls” have no clear meaning; if women and girls have not been discriminated against, harassed, assaulted, and murdered because of their sex; if women are not a discrete legally-protectable category, then one might rightly wonder what women have been fighting for all this time. Women and girls deserve more consideration than the ruling below gives them. WoLF implores the Court to grant the Petitioners’ Petition for a Writ of *Certiorari* in order to honor the plain text and original intent of

³² Dept. of Justice Fed’l Bureau of Investigation, 2015 Crime in the United States, Table 33, *Ten-Year Arrest Trends by Sex, 2006–2015*, available at <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-33/> (last visited Dec. 3, 2018).

Title IX, which is to prohibit discrimination on the basis of *sex*.

Respectfully submitted,

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February 20, 2019

By hand delivery:

Environment and Transportation Committee
Maryland House of Delegates
House Office Building, Room 251
6 Bladen St., Annapolis, MD 21401

**HB0421: Sex Self-Identification for Drivers' License and Identification Cards
("An Act concerning Vehicle Laws – Licenses, Identification Cards, and Moped Operator's
Permits - Indication of Applicant's Sex")**

OPPOSED

The Washington DC-Maryland-Virginia chapter of the Women's Liberation Front opposes HB0421. The law proposed in HB0421 is as simple as it is sweeping and dangerous: it requires the Maryland Motor Vehicle Administration (MVA) to allow an applicant for a driver's license, moped operating permit, or identification (ID) card to self-identify their sex as either female, male, or unspecified. The MVA would be prohibited from requiring the applicant to provide proof of their sex, and further prohibited from denying the applicant a license, operating permit, or ID card if their self-declared "sex" does not match the sex indicated on their other official documents. The reasons for our opposition follow.

Sex self-identification undermines the fundamental purpose of a state-issued identification, while serving no valid governmental interest.

The fundamental purpose for recording sex on a driver's license, operating permit, or ID is to enable state agencies, businesses, police, and other entities to verify the sex of the holder. The State of Maryland has a valid governmental interest and critical duty to record and maintain accurate information about sex on drivers' licenses, operating permit, and ID cards: for purposes of identification, tracking crimes, determining eligibility for sex-specific programs or benefits, and determining admission to sex-specific spaces like public toilets, dressing rooms, shower and locker rooms, jails, and homeless or domestic violence shelters, to name just a few examples. In contrast, there is no legitimate governmental interest in recording a person's subjective and mutable beliefs about their sex. Nor is there any legitimate governmental purpose to be found in allowing holders of these official government documents to withhold their sex designation from their driver's license, operating permit, or ID.

Sex is a vital statistic. "Sex" refers to the two reproductive classes found in the human species: a woman is an adult human female, *i.e.*, an individual with XX chromosomes and predominantly female anatomy; a man is an adult human male *i.e.*, an individual with XY chromosomes and predominantly male anatomy.¹ Sex is recorded at birth by qualified medical professionals, and it is an exceedingly accurate

¹ Nat'l Institutes for Health, *Genetics Home Reference: X chromosome* (Jan. 2012), <https://ghr.nlm.nih.gov/chromosome/X.pdf> (noting that "[e]ach person normally has one pair of sex chromosomes in each cell. Females have two X chromosomes, while males have one X and one Y chromosome"); Joel, Daphna, *Genetic-gonadal-genitals sex (3G-sex) and the misconception of brain and gender, or, why 3G-males and 3G-females have intersex brain and intersex gender*, *Biology of Sex Differences*, DOI: 10.1186/2042-6410-3-27 (Dec. 2012) ("Whether a scientist or a layperson,

categorization: an infant's sex is easily identifiable based on external genitalia and other factors in 99.982% of all cases; the miniscule fraction of individuals who have "intersex" characteristics remain either male or female, or are difficult to characterize but do not constitute a third reproductive class.²

Sex is a matter of objective medical fact; any change based on self-declaration is a change on paper only. Such a change can only stem from subjective belief or fraudulent intent—neither of which is supported by any legitimate governmental interest. Moreover, issuing drivers' licenses, operating permit, and ID cards with self-declared sex designations that don't match the applicant's accurate sex designation, or that indicate their sex is "unspecified" (marked as "X") will have serious consequences, particularly for women and girls, but also for many aspects of Maryland government and administration.

We are aware that Maryland law currently allows individuals to change their sex designation on their birth certificate and driver's license if they meet certain prerequisites. While we object to this practice for the same reasons discussed in this letter, and think these laws need to be changed without delay, we note that the relevant sections of the code, (e.g. MD Code, Health § 4-211) at least contain certain procedural requirements as well as a certification from a licensed health care professional or court of competent jurisdiction. Even that is insufficient to justify falsification of vital records but, in contrast, HB0421 contains no prerequisites whatsoever, including no safeguards against fraudulent intent.

HB0421 will have disproportionate adverse effects on women and girls.

Allowing sex self-identification will skew or even make unusable crime statistics that are crucial in the fight to stop violence against women and girls, and will help individual violent men evade law enforcement efforts at apprehending them. These concerns are well-supported by the facts. As demonstrated consistently by the FBI's Uniform Crime Reporting system and similar state systems, women - *i.e.* juvenile and adult human females – face a dramatically disproportionate statistical risk of violence, rape, assault, or voyeurism, and in the vast majority of cases women suffer these harms at the hands of men. For crimes reported by law enforcement to the FBI in 2015, men – *i.e.* juvenile and adult human males – committed over 88% of all murders, 97% of rapes, 77% of aggravated assaults, and 92% of sex offenses other than rape or prostitution.³ Because police officers in Maryland use the sex designation on a driver's licenses to record the sex of an arrestee, allowing the sex designation on driver's licenses to become a matter of self-declaration (or worse, to be withheld from a driver's license, operating permit, or ID) would skew basic crime statistics that are traditionally recorded and analyzed according to sex. HB0421 would allow males who commit violent crimes against to obscure their sex and

when people think about sex differences in the brain and in behavior, cognition, personality and other gender characteristics, their model is that of genetic-gonadal-genitals sex. . . . 3G-sex is a categorization system in which ~99% of human subjects are identified as either 'male' or 'female', and identification with either category entails having all the characteristics of that category (*i.e.*, 'female' = XX, ovaries, uterus, fallopian tubes, vagina, labia minora and majora, clitoris, and 'male' = XY, testes, prostate, seminal vesicles, scrotum, penis").

² Sax, Leonard. "How Common Is Intersex? A Response to Anne Fausto-Sterling." *The Journal of Sex Research*, 39, no. 3 (2002): 174-78. <http://www.jstor.org/stable/3813612>; Dawkins, R. *The Ancestor's Tale, A Pilgrimage to the Dawn of Evolution*, 135 (Mariner Books ed. 2005) (stating that, "[i]ndeed, the gene determining maleness (called SRY [sex determining region y]) has never been in a female body"); Nat'l Institutes for Health, *Genetics Home Reference: SRY gene* (March 2015) <https://ghr.nlm.nih.gov/gene/SRY.pdf> (noting that "[a] fetus with an X chromosome that carries the SRY gene will develop male characteristics despite not having a Y chromosome").

³ Dept. of Justice Fed'l Bureau of Investigation, 2015 Crime in the United States, Table 33, *Ten-Year Arrest Trends by Sex, 2006–2015*. <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-33>

evade detection and arrest simply by compelling the MVA to record their self-declared “sex,” or recording their sex as “unspecified.”

If HB0421 is adopted, the following scenario would become routine: an officer pulls a car over for a traffic violation and requests a license and registration, which the driver produces. The license, operating permit, or ID states an inaccurate sex designation or simply “X.” The officer observes that the driver is easily recognizable as male or female, but the driver’s license, operating permit, or ID states the opposite, or indicates only an “X.” The officer runs the license number only to find records, maybe even a criminal arrest warrant, indicating the person’s accurate sex, which now differs from their MVA-issued document. What is the officer to do? Is she prohibited from questioning the driver about their criminal warrant? If she does, will she be liable to be fired or sued for discrimination? Will the state be liable to the driver’s victim if the officer refuses to make the arrest?

What other rights will be affected by HB0421’s proposed sex self-identification or “unspecified” designation for driver’s license, operating permits, or IDs? Will violent males be allowed to change their sex designation and thereby gain the right to demand to be housed and treated as a woman in Maryland correctional facilities? Will teenagers be allowed to obtain change or declare the sex designations on their MVA-issued documents without the knowledge or consent of their parents or guardians? Will Maryland’s nondiscrimination laws be applied in conjunction with HB0421 to require already-vulnerable homeless women and victims of domestic violence to share their sleeping and showering spaces with potentially violent males who obtained an “F” or “X” designation on their MVA-issued document based on self-declaration?⁴

The bill’s sponsors have not consulted with the populations most likely to be harmed by the bill.

According to the Fiscal and Policy analyst for the bill, the Department of Public Safety was not consulted to determine how this change would affect DPS’ ability to classify and incarcerate violent men in men’s facilities, if such men obtain an “F” or “X” marker on their drivers’ license. Personal conversation (Feb. 15, 2019). The bill’s sponsors do not appear to have consulted any women who may be made more vulnerable by the bill, including incarcerated women and women in need of emergency shelter, many of whom are lower-income women of color with histories of trauma.

While the sponsor and witnesses testifying in favor of the Senate companion bill claimed to be unaware of any risks to women associated with this proposed change, there is ample evidence of such risks available in the public domain. Moreover, it is disingenuous for gender identity activists to claim as they did in the Senate hearing that such incidents are unimaginable, given that they have actively argued that incarcerated individuals should have a right to “flexible self-identification.” Such a policy would give men “a right to be placed in the facility of their [self-defined woman] ‘gender identification’ unless it is determined, on a case-by-case basis, that they should be placed elsewhere.” Richael Faithful, "Transitioning Our Prisons Toward Affirmative Law: Examining the Impact of Gender Classification Policies on U.S. Transgender Prisoners," *The Modern American*, v. 5 iss. 1 (Spring 2009), available at: <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1012&context=tma>. See also Transgender Law Center, Policy Recommendations Regarding LGBT People in California Prisons,

⁴ Maryland has a number of shelters for persons in need of emergency shelter, but very few are designed to serve women exclusively—a vital service needed by many women escaping abuse at the hands of men (i.e. adult human males). See <https://www.shelterlistings.org/state/maryland.html>. HB0421 would force these precious few facilities to become mixed-sex with the stroke of a pen.

available at <http://translaw.wpengine.com/wp-content/uploads/2012/07/99831645-TLC-Policy-on-LGBT-People-in-Prisons.pdf>. In plain English, this would mean that men would have the right to self-identify their way into a women's facility, while shifting the burden to the state to demonstrate that he should not be housed with women. In reality, the burden would be on incarcerated women – disproportionately women of color whose lives are heavily characterized by poverty, sexual and physical abuse, and histories of child sexual trauma.

Misguided by aggressive gender identity activism, prison officials in the UK have already conducted this experiment only to prove what seems obvious to any rational person: placing men in women's facilities exposes women to greater risk of sexual assault.

Frances Crook, the chief executive of the Howard League for Penal Reform, said vulnerable women were being put at risk by a small number of violent men whose primary interest was harming women. "It is a very toxic debate, but I think prisons have probably been influenced by some of the extreme conversations and have been bullied into making some decisions that have harmed women and put staff in an extremely difficult position," she said.

Alexandra Topping, "Sexual assaults in women's prison reignite debate over transgender inmates," The Guardian (Sept. 9, 2018), available at: <https://www.theguardian.com/uk-news/2018/sep/09/sexual-assaults-in-womens-prison-reignite-debate-over-transgender-inmates-karen-white>.

Gender identity proponents have also targeted women's shelters, using state Equal Rights laws against organizations that attempt to provide safe, secure emergency housing for women seeking women-only shelter. Devin Kelly, "Discrimination complaint against downtown Anchorage women's shelter opens up political front," Anchorage Daily News (March 14, 2018), available at: <https://www.adn.com/alaska-news/anchorage/2018/03/14/discrimination-complaint-against-downtown-anchorage-womens-shelter-opens-up-political-front/>. While proof of the danger of such actions should hardly be required – as that danger is the very reason for the existence of women-only emergency shelters – we already have evidence from the real world experience of vulnerable women made more vulnerable when housing eligibility is dictated by self-defined gender identity:

It was during these moments, the lawsuit says, when the [man] began making lewd comments to the women, specifically saying things about their breasts and other body features as the group was nude. Some of the women also caught [him] looking at them through cracks in the shower stalls and while they used the restroom.

The lawsuit claims the alleged harasser showed some of the women nude pictures and videos, including media that showed the [man] masturbating.

[The women's lawyer] said his clients told [shelter] staff about the harassment, but were told they had to be more accepting of the transgender community.

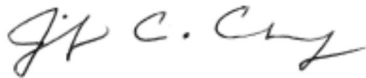
Rory Appleton, "Women accuse Poverello House of allowing transgender resident to sexually harass them," Fresno Bee (Oct. 12, 2018), available at: <https://www.fresnobee.com/news/local/article219560720.html#storylink=cpy>

Conclusion

Passing HB0421 without considering the foregoing questions and issues would be irresponsible and arbitrary, particularly given the complete lack of regard given to how the bill will harm residents or local and federal agencies who depend on the State of Maryland to keep accurate information about sex.

We urge you not to support this bill or allow it to advance in any way.

Sincerely,

A handwritten signature in cursive script that reads "J.C. Chavez".

Jennifer C. Chavez
Member, WoLF-DMV
Silver Spring, Maryland

The Honorable Benjamin Carson, M.D.
Secretary
U.S. Department of Housing and Urban Development
Attn: Rules Docket Clerk, Room 5218
Washington, DC 20410

**Re: Petition For Rulemaking To Protect The Safety And Privacy Of Women
In Need Of Shelter Due To Homelessness Or Violence**

Dear Mr. Secretary:

We write to urge you to amend 24 C.F.R. Part 5, to protect the safety and privacy of women in need of shelter due to homelessness or violence. We are a diverse group of women and organizations allied in a common cause: mothers, feminists, women of faith, lesbian and bisexual women's rights activists, and concerned neighbors, convened through the Hands Across The Aisle Coalition, to request your consideration for our sisters without stable housing.

We specifically request that you rescind and revise the final rule adopted by the Department of Housing and Urban Development (HUD), entitled "Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs," 81 Fed. Reg. 64763 (Sept. 21, 2016), now codified at 24 C.F.R. Part 5 (hereafter, "the Rule"). Currently these regulations require men to be placed in programs and shelters previously reserved as safe havens for women, based on the self-reported "gender identity," and without regard to sex recorded at birth. Shelters funded by HUD's office of Community Planning and Development must comply.

While the Rule discusses "single-sex" facilities, in reality it ended federally-funded single-sex emergency shelters with the stroke of a pen. All federally-funded women's shelters have since been required to admit male clients who claim to feel female, or risk closing their doors to the women who desperately need them. Men's shelters have also been required to admit female clients who claim to feel male. In all cases, this mainly puts female shelter clients in danger. As detailed below, the Rule puts already vulnerable women in danger and must be revised.

Sex is the only relevant categorization for placement in women's single-sex shelters and other programs covered under the Rule.

In the interest of clarity and accuracy we use the relevant terms in line with their longstanding commonly-understood meanings: a woman is an adult human female, *i.e.*, an individual with XX chromosomes and predominantly female anatomy. A man is an adult human male, *i.e.*, an individual with XY chromosomes and predominantly male anatomy.^[1] Sex recorded at birth is a remarkably accurate categorization, with an infant's sex easily identifiable based on external genitalia and other factors in 99.982% (all but .018%) of all cases; the tiny fraction of individuals who make up the exception to this general rule are said to possess "intersex" characteristics, but they remain either male or female.^[2] In any event, the misguided Rule gives primacy to "*gender identity*," which, as discussed further below, is not a biological condition and has no relation whatsoever to intersex conditions.

For purposes of determining eligibility for residence in women's shelters or domestic violence refuges or availability of other single-sex services, sex is also the only salient characteristic. As an initial matter, women are the only sex vulnerable to involuntary impregnation through

rape.^[3] Further, as demonstrated consistently by the FBI's Uniform Crime Reporting system and similar state programs, women face a dramatically disproportionate statistical risk of violence, rape, assault, or voyeurism, and in the vast majority of cases women suffer these harms at the hands of violent men. For crimes reported by law enforcement to the FBI in 2015, males committed over 97% of rapes, nearly 80% of all violent crime (defined as murder, nonnegligent manslaughter, rape, robbery, or aggravated assault) and over 92% of sex offenses other than rape or prostitution.^[4] Homeless women in general have tremendously high documented risks of rape or other sexual assault.^[5] By mandating the placement of men in intimate living spaces with women in need of shelter, the Rule places those women at greater statistical risk of harm.

Available evidence indicates that males' disproportionate engagement in violent criminal behavior does not change significantly based on their subjective gender feelings: one long-term study of post-operative transsexuals confirmed that males continued to engage in a significantly higher rate of violent crime compared to females, but not compared to males, particularly in the absence of focused and intensive investment in specialized counseling and social services^[6]— which are *not* mandated as a condition for cross-sex admission to single-sex shelters or services under HUD's Rule.

Women's disproportionate vulnerability applies in men's single-sex shelters as well. According to the 2003 report by the National Gay and Lesbian Task Force Policy Institute, *Transitioning Our Shelters*, there had already been incidents at that time of transgender-identified females ("trans men") having been gang-raped in men's shelters.^[7]

As advocates for women, we are appalled at HUD's disregard for women's safety under this Rule. While members of many communities have specific religious or cultural objections to sharing mixed-sex accommodations, weighty concerns about privacy and safety in these circumstances are shared by women from all walks of life. Our opinions are informed by histories of exposure to predominantly male violence that some of us have in common with many homeless or abused women, particularly mothers.

In adopting the Rule the prior administration ignored the disproportionate harmful effects on black and Hispanic women, poor women, and women who are victims of domestic violence.

The harms facilitated by the Rule will fall disproportionately on already-vulnerable women. Statistics reviewed by the U.S. Department of Health and Human Services in 2016 showed that as many as 93 percent of mothers staying in homeless shelters are trauma survivors, often due to physical or sexual abuse, and multiple studies show that significant numbers of them (between 22% and 57%) are immediately homeless because of intimate partner violence.^[8] According to the American Civil Liberties Union (ACLU), "While women at all income levels experience domestic violence," "[w]omen with household incomes of less than \$7,500 are 7 times as likely as women with household incomes over \$75,000 to experience domestic violence."^[9] Black and Hispanic mothers are particularly vulnerable.^[10]

In spite of this history of trauma and violence in the women's shelter population, and the known propensity of abusive male partners to continue to try and gain access to their victims once they've left the home, the previous administration refused to prioritize or even study the needs and risks faced by women and their children in shelters. It flatly refused to consider *why* Congress expressly allowed for the establishment and funding of single-sex facilities, stating only that "HUD does not opine on Congress's intent behind permitting single-sex facilities."^[11] It

further made the bizarre claim that “[t]here is no reason to assume that transgender persons pose risks to health or safety,” pretending that there is no meaningful difference between the risks of violence faced by women housed with transgender-identified males versus men housed with transgender-identified females.^[12] Instead, their top priority was to affirm the feelings of individuals who claim to have a “gender identity” they or others perceive to be inconsistent with their sex.^[13]

The Rule itself silences reasonable objections and makes objective reporting impossible or risky for HUD-funded shelters.

Because the Rule dictates that one’s natal sex is irrelevant, and impermissible to mention against one’s wishes, it forces vulnerable women to repress their concerns of personal safety and privacy when sharing intimate spaces in shelters with men. HUD’s regulations now forbid staff from excluding transgender-identified male clients from shared shower and sleeping areas in ostensibly single-sex women’s shelters.^[14] It requires all complaints by women about sharing intimate quarters with the opposite sex to be treated as “opportunities to educate and refocus” shelter occupants, and requires or allows staff to evict women if they continue to object to the presence of men in the shelter.^[15] Therefore, women who feel harassed, intimidated, or concerned over sharing a shelter with men, showering or dressing in front of men, or humiliated by having to deal with menstrual discharge in a wash area where a man might walk in, are made to feel that they are perpetrators of harassment towards the men demanding to be placed in a women’s shelter.

Traumatized women who object to sharing group living accommodations with men have been stripped of the right to complain, and could lose their place for continuing to do so. Yet from the data compiled in 2016 and referenced by HUD to support this change,^[16] it seems likely that these changes were made against most service providers’ wishes, given that 70 percent of shelters surveyed at the time refused to house male clients with women. But the Rule silenced all opposition from both clients and providers, by tying federal funding to acceptance of the belief that males can be females if they say so.

“Gender identity” is not a proper basis for determining eligibility for single-sex shelters because the concept is subjective, vague, and circular. It is also inconsistent with Supreme Court case law regarding discrimination on the basis of sex stereotypes.

Instead of placement by an individual’s biological sex recorded at birth, HUD’s Rule allows placement in shelters based on “the individual’s own self-identified gender identity,” a concept that lacks scientific evidentiary support or societal consensus.

One of the core components of the Rule is its definition of “gender identity,” which is defined as “the gender with which a person identifies, regardless of the sex assigned to that person at birth and regardless of the person’s perceived gender identity.”^[17] Because the Rule did not include a definition of “gender,” this definition is hopelessly vague, subjective, and circular. The Rule’s definition of “perceived gender identity” is perhaps even worse: it means “the gender with which a person is perceived to identify based on that person’s appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth or identified in documents.”^[18] Thus, the definition refers to one person’s subjective perception of another person’s subjective perception of their own subjective state. This is patently absurd.

What are “gender related characteristics”? No one can define what it means to “feel” female or male in one’s mind or, stated differently, to “feel like a woman” or like a man. In general, people do not “feel” but rather they know that they are either female or male, because they possess the external genitals or other physical characteristics that have long been defined in medicine and science as either male or female. A person cannot claim to know what it “feels” like to be the sex that is opposite of their biological sex, except through reference to sex stereotypes – for example, the notion that only women are nurturing, or the notion that only men are drawn to math and science. Stereotypes can also revolve around superficial modes of appearance or fashion.

From the Rule’s definitions, we can surmise that the prior administration believed that “gender related characteristics” include appearance, behavior, and expression– all of which are culturally-constructed and culturally-dependent, and none of which have any bearing on whether a person is a man or a woman. Because there *cannot be* any mode of appearance, behavior, or expression that is inconsistent with the biological state of being either male or female, the definition indicates that the previous administration had sex-stereotypes in mind as the basis for a core component of the Rule.

That flies in the face of the legal principle, established by the Supreme Court in *Price Waterhouse v. Hopkins*, that discrimination on the basis of non-conformance with sex-stereotypes is prohibited sex discrimination.^[19] At the same time, the U.S. Circuit Court for the Tenth Circuit has rejected an attempt to extend this principle in the very manner encompassed by the Rule: “However far *Price Waterhouse* reaches [in establishing that discrimination based on sex stereotypes constitutes discrimination on the basis of sex], this court cannot conclude it requires employers to allow biological males to use women’s restrooms. Use of a restroom designated for the opposite sex does not constitute a mere failure to conform to sex stereotypes.”^[20] The same is true for single-sex shelters and safe havens designed to serve vulnerable women: while a man’s refusal or inability to conform to male sex stereotypes cannot justify denying him admission to a men’s shelter, nor can his identification with female sex stereotypes justify housing him in a women’s shelter, for it is only sex that is relevant in applying for admission to single-sex programs, not the sex stereotypes that form the basis of “gender identity” and “perceived gender identity.”

The Department claims statutory authority to adopt the rule based on its “responsibility under the Department of Housing and Urban Development Act to work to address “the needs and interests of the Nation’s communities and of the people who live and work in them,” and on HUD’s general rulemaking authority.^[21] In reaching this conclusion, HUD primarily relied on non-binding guidance and administrative rulings issued by HUD itself or by other agencies within the same administration, citing a 2010 HUD guidance memorandum, two administrative rulings by the Equal Employment Opportunity Commission, and a guidance memorandum issued in 2014 by the U.S. Attorney General.^[22] These non-binding authorities cannot overcome the fact that the Rule is inconsistent with Congressional intent to allow single-sex shelters. Indeed, in the proposed rule HUD acknowledged that “[a]n emergency shelter and other building and facility that would not qualify as dwellings under the Fair Housing Act are not subject to the Act’s prohibition against sex discrimination and thus may be permitted by statute to be sex-segregated.”^[23] It follows that the Act does not authorize HUD to adopt a rule claiming that segregation on the basis of biological sex constitutes unlawful discrimination.

Even assuming for the sake of argument that Congress gave HUD discretionary authority to dictate eligibility for HUD-funded shelters and programs based on “gender identity,” the Rule is unlawful because it is arbitrary and capricious and therefore runs afoul of the Administrative

Procedure Act.^[24] As discussed above, the Department rejected a standard that is reliable and accurate 99.982% of the time, in favor of a standard that no one can satisfactorily define or objectively measure. This is the epitome of arbitrary and capricious agency action. Given the wide latitude for abuse made possible by this switch, and the significant health and safety risks posed to women by men being able to access their shared sleeping and bathing areas, we request that this Rule be revised. Shelter providers should be allowed to run single-sex facilities again, based on their own knowledge of local needs and their capacity to meet them, and clients should have the right to expect that shared sleeping and bathing quarters will remain single-sex and private.

HUD's desire to ensure that transgender individuals not be wrongly denied shelter does not support the conclusion that transgender-identified persons must be placed in intimate single-sex facilities with members of the opposite sex. Instead, HUD can and should revise its rules to reaffirm the principle that shelters and related programs cannot discriminate based on sex-stereotypes, that single-sex facilities should not be forced to permit clients of the opposite biological sex, that men who identify as women or non-binary must be kept safe at men's facilities, and that women who identify as men or non-binary should be kept safe at women's facilities. While we understand that not all shelters are single-sex facilities, we object to the *elimination* of single-sex facilities and the prior administration's insistence on allowing access for men to women's spaces. Eligibility for single-sex facilities and services must be determined solely by sex; both "gender identity" and "perceived gender identity" are irrelevant. In conclusion, we respectfully request that you immediately open a rulemaking to amend the regulations set forth at 24 C.F.R. Part 5, to restore the ability of HUD grantees to maintain safe, sex-segregated emergency shelters. All sources cited in support of this petition are hereby incorporated by reference as though fully stated herein.

If you have any questions about this petition or would like to discuss, please feel free to contact us at handsacrosstheaislewomen@gmail.com

Thank you for your consideration.

Sincerely,
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[1] See Nat'l Institutes for Health, Genetics Home Reference: X chromosome (Jan. 2012), <https://ghr.nlm.nih.gov/chromosome/X.pdf> (noting that “[e]ach person normally has one pair of sex chromosomes in each cell. Females have two X chromosomes, while males have one X and one Y chromosome”); see also Joel, Daphna, *Genetic-gonadal-genitals sex (3G-sex) and the misconception of brain and gender, or, why 3G-males and 3G-females have intersex brain and intersex gender*, Biology of Sex Differences, DOI: 10.1186/2042-6410-3-27 (Dec.

2012) (“Whether a scientist or a layperson, when people think about sex differences in the brain and in behavior, cognition, personality and other gender characteristics, their model is that of genetic-gonadal-genitals sex. . . . 3G-sex is a categorization system in which ~99% of human subjects are identified as either ‘male’ or ‘female’, and identification with either category entails having all the characteristics of that category (i.e., ‘female’ = XX, ovaries, uterus, fallopian tubes, vagina, labia minora and majora, clitoris, and ‘male’ = XY, testes, prostate, seminal vesicles, scrotum, penis”).

[2] Sax, Leonard. “How Common Is Intersex? A Response to Anne Fausto-Sterling.” *The Journal of Sex Research*, V. 39, no. 3 (2002): 174-78. <http://www.jstor.org/stable/3813612>; see also Dawkins, R. *The Ancestor’s Tale, A Pilgrimage to the Dawn of Evolution*, 135 (Mariner Books ed. 2005) (stating that, “[i]ndeed, the gene determining maleness (called SRY [sex determining region y]) has never been in a female body”); Nat’l Institutes for Health, Genetics Home Reference: SRY gene (March 2015) <https://ghr.nlm.nih.gov/gene/SRY.pdf> (noting that “[a] fetus with an X chromosome that carries the SRY gene will develop male characteristics despite not having a Y chromosome”).

[3] Nat’l Institutes for Health, Genetics Home Reference: AMH gene (March 2011), <https://ghr.nlm.nih.gov/gene/AMH.pdf> (noting that the AMH (anti-Mullerian hormone) gene, which expresses itself in males, prevents the development of the uterus and fallopian tubes necessary for pregnancy). See also Center for Disease Control and Prevention, Pregnancy Mortality Surveillance System, <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pmss.html> (noting that “the number of reported pregnancy-related deaths in the United States steadily increased from 7.2 deaths per 100,000 live births in 1987 to a high of 17.8 deaths per 100,000 live births in 2009 and 2011,” with 17.3 deaths per 100,000 live births in 2013, the latest available year of data).

[4] Dept. of Justice Fed’l Bureau of Investigation, 2015 Crime in the United States, Table 33, *Ten-Year Arrest Trends by Sex, 2006–2015*. <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-33>

[5] See generally Goodman, et al., *No Safe Place: Sexual Assault in the Lives of Homeless Women*, (Sept. 2006), and studies cited therein, <http://vawnet.org/material/no-safe-place-sexual-assault-lives-homeless-women>.

[6] Cecilia Dhejne, et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden* (February 22, 2011), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885> (finding that males who claim some sort of female or woman identity had a significantly increased risk for violent crime compared to females, but not compared to males).

[7] Mottet, L., & Ohle, J. (2003). “Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People.” New York: The National Coalition for the Homeless and the National Gay and Lesbian Task Force Policy Institute. <http://www.thetaskforce.org/transitioning-shelters/>

[8] U.S. Department of Health & Human Services, Administration for Children & Families, Family & Youth Services Bureau. “Domestic Violence and Homelessness: Statistics (2016).” Published, June 24, 2016, accessed March 21, 2017. <https://www.acf.hhs.gov/fysb/resource/dv-homelessness-stats-2016>

[9] ACLU Women’s Rights Project, Domestic Violence and Homelessness at 1, <https://www.aclu.org/sites/default/files/pdfs/dvhomelessness032106.pdf>, citing Callie Marie Rennison & Sarah Welchans, Department of Justice, NCJ 178247, *Intimate Partner Violence 4* (2000).

[10] HUD’s 2016 Annual Homeless Assessment Report to Congress revealed that nearly half (49%) of sheltered people in families with children were African American, and nearly one-third (31%) of people experiencing homelessness in families with children were Hispanic or

Latino. <https://www.hudexchange.info/resources/documents/2016-AHAR-Part-1.pdf> at 32 (Nov. 2016). The same report shows that women are more likely than men to be the head of a household with children living in a shelter. *Id.* at 33, Exhibit 3.4. The 2010 issue of the same report similarly revealed that “[p]ersons in families are also more likely to be minorities, headed by a woman.” HUD, The 2010 Annual Homeless Assessment Report to Congress, 19-20, Exhibit 3-

4, <https://www.hudexchange.info/resources/documents/2010HomelessAssessmentReport.pdf>.

[11] Rule at 64771.

[12] Rule at at 64773.

[13] For example, the proposed rule relied on an unpublished listening session in which one transgender-identified male complained of having been forced to “disguise their gender identity” (which we take to mean no longer claiming to identify as a woman) while staying in a men’s shelter. *Equal Access in Accordance With an Individual’s Gender Identity in Community Planning and Development Programs*, Proposed Rule, 80 Fed. Reg. 72642 at 72644 (Nov. 20, 2015). Yet women forced to be housed with males have no similar ability to “disguise” themselves so as to counteract their particular vulnerability to male violence.

[14] *See* Rule at 64788 (“This final rule makes clear that providers do not have the discretion to suggest that individuals may not be accommodated in shelters that match their gender identity because their gender identity differs from their sex assigned at birth.”); 24 C.F.R. § 5.106(c).

[15] Rule at 64768.

[16] Caitlin Rooney, *et al.*, Center for American Progress and the Equal Rights Center Discrimination Against Transgender Women Seeking Access to Homeless Shelters, January 7, 2016. <https://cdn.americanprogress.org/wp-content/uploads/2016/01/06113001/HomelessTransgender.pdf>

[17] Rule at 64782, citing the current version of 24 C.F.R. § 5.100.

[18] *Id.*

[19] *See Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (holding that employers can violate Title VII by making employment or promotion decisions based on performance reviews that result from sex stereotyping).

[20] *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1224 (2007) (holding that Title VII allows an employer to require transgender-identified employees to use the single-sex restroom designated for their biological sex).

[21] Rule at 64769-70, citing 42 U.S.C. § 3531; *id.* at 64782, citing 42 U.S.C. § 3535(b).

[22] Rule at 64770, n. 11 and 12.

[23] Fed. Reg. at 72644 n.2.

[24] 5 U.S.C. § 706 (authorizing federal courts to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”).



US EQUALITY ACT: GENDER IDENTITY IMPACT SUMMARY

Making “gender identity” a protected characteristic under federal law would erase the protected category of sex.

The [Equality Act](#), introduced in the US House of Representatives as H.R. 2282 in 2017, and likely to be reintroduced, includes gender identity rules that have received little public focus regarding their adverse impact on sex stereotyping bans, or the **danger they pose to women and children**.

In several places in this bill, it directs the term “sex” in federal civil rights law to be replaced with the term, “sex, sexual orientation, gender identity.” While sexual orientation does not alter the legal category of sex, the bill’s authors made clear that gender identity is to take precedence over and replace sex as a protected category. The bill doesn’t mention individuals with clinically diagnosed gender dysphoria, or undertaking surgical or hormonal transition, thus making clear that **self-declared gender identity would be sufficient** to claim protected legal status.

From the bill summary: “Employers must recognize individuals in accordance with their gender identity if sex is a bona fide occupational qualification that is reasonably necessary to the normal operation of that particular business or enterprise.”

Women and girls would be harmed by the Equality Act.

Under current civil rights law employers may hire and assign work on the basis of sex only when it’s a bona fide occupational qualification. These are some jobs and assignments this change will affect, **taking away the right** of Americans to insist that only someone of the same sex be able to:

- Perform security pat downs or strip searches
- Supervise locker rooms or shared **showers**
- Handle **intimate care** for hospital and long-term care patients
- Chaperone a doctor or medical assistant who is providing such care
- Perform intimate **medical examinations**
- Supervise drug tests
- Supervise **children** on overnight trips

Also from the summary, “The bill prohibits an individual from being denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual’s gender identity.” This means that American women will no longer be able to expect any single-sex facilities when using or being required to stay in:

- Shared hospital rooms or wards
- Locker rooms and public or group showers
- Multi-stall bathrooms
- Jails, prisons, or **juvenile detention** facilities
- Homeless shelters
- Overnight drug rehabilitation centers
- Domestic **violence or rape crisis** shelters

Women sharing prison showers, emergency shelters, changing rooms, and long-term care facilities with strangers shouldn't be put in the position of wondering if they can complain about a naked male in their presence, or if that complaint would be a violation of his civil rights.

No concept so poorly defined as "gender identity" should be passed into federal law as a protected characteristic, especially not when it would erase the protected category of sex.

Women's sports and scholarships would be at risk

This bill will end sports programs and scholarships set aside for women and girls. All such programs **will have to admit men and boys** who identify themselves as women or girls. Such programs will no longer meet their intended purpose of protecting the rights of women and girls by redressing historical inequality of opportunity.

What is Gender? Anything Except Sex.

Because the term gender identity has been defined in the bill as, "gender-related identity, appearance, mannerisms, or characteristics, regardless of the individual's designated sex at birth," it redefines the protected characteristic of sex as everything **except** sex.

"Gender-related identity" has **no definition**. It likely refers to a claim of feeling that one is of a different sex, or no sex, regardless of one's physical sex. Physical sex is clear for 99.98 percent of people, and all intersex people also have a sex. Rules and policies based on this poor wording and muddled thinking will create **judicial chaos**, and will not protect the rights of women and children, or anyone else the bill seeks to protect.

Discrimination against people on the basis of appearance, mannerisms, and the oddly undefined "characteristics," as related or unrelated to sex, should already be prohibited under existing laws that prohibit discrimination on the basis of sex stereotypes. This definition seems to define **sex stereotypes** as a protected characteristic, thereby erasing legal protections women may have against discriminatory sex stereotyping. Indeed, lawyers and judges are being directed to disregard sex, making it **impossible to define the category of sex** that commonly has the stereotype attached to it.

The authors of this bill **can't define either gender or gender identity** outside of sex stereotypes, yet they suggest that any person can claim a gender identity. This gender identity, still undefined, will override their legal sex in all those cases that the law previously allowed sex to be recognized as a bona fide consideration.

This bill tragically attempts to prohibit sex discrimination by forbidding the law to see sex. A law, and courts, that cannot see sex, also cannot address sex discrimination or protect the **bodily privacy rights and dignity** of Americans in those circumstances where sex matters very much.

Violent Men In Women's Jail And Prison Facilities Stories from New York, Massachusetts, and California

With a national self-identification standard for gender identity overriding sex in the law, based on the gender identity provisions in the Equality Act, there will be no legal grounds on which prison officials can keep these men out of women's facilities. The denial of female-only living and bathing facilities for incarcerated women violates their human rights under international law standards for humane treatment of prisoners.

New York: Synthia China Blast (formerly, Luis Morales)

"2 Kings Get Life In Rape Slay Of Girl, 13"
Daily News, November 5, 1996 <https://archive.fo/9iqNh>

A Bronx mother yesterday berated two members of the Latin Kings gang for smirking while standing trial for torturing and killing her 13-year-old daughter. Yvonne Hill then nodded approvingly when the men were sentenced to life in prison for murdering Ebony Williams. "Ever since the trial was going on, all I see is Luis Morales grinning and Carlos Franco, too," Hill said. "You ain't smiling today. I hope you both rot in hell.



"Morales, 22, and Franco, 24, appeared unmoved as Bronx Supreme Court Justice Martin Marcus sentenced them to 25 years to life for the 1993 slaying. Bronx Prosecutor William Hrabsky said the two held the girl captive in a Hunts Point apartment, Morales raping her and repeatedly slashing her body. Franco was charged with killing the girl after breaking her neck. "The suffering that this poor child went through is beyond belief and puts this crime in the category of monstrous and barbarous," Hrabsky said. Investigators said the men shoved Ebony's body into a box and dumped it on the Sheridan Expressway at E. 165th St., where it was set on fire. They later bragged about the crime to friends, many of whom testified against them. In court, a defiant Morales wore a black-and-gold Latin Kings necklace and insisted that other gang members, not he and Franco, killed Ebony. "I will be back down and I will be vindicated," he said. "I didn't kill her. I didn't do it. But whatever happens here today, I'll take it like a man. ..."

Massachusetts: Michelle Kosilek (formerly, Robert Kosilek)

"Should This Inmate Get a State-Financed
Sex Change Operation?"
The New Republic, October 30, 2013

"... Early in the morning of May 23, 1990, police executed a search warrant at a new three-story duplex on Concetta Circle in Mansfield, Massachusetts, a small commuter town about 30 miles south of Boston. The house belonged to Robert and Cheryl Kosilek, both of whom worked as substance-abuse counselors at nearby hospitals, and Cheryl's teenage son Timothy. On the previous night, police had discovered Cheryl's body in the parking lot of the Emerald Square Mall, a 20-minute drive away. She lay beneath a blanket in the back seat of her gray Hyundai. Her top had been pulled up, her pants pulled down. She had been garroted with both wire and rope and nearly decapitated.



A short, dark-haired, heavy-set man of 41 emerged from the Kosilek home and spoke to the newspaper and TV reporters gathered outside. “My best friend has been killed, and they tell me they think I did it,” Robert Kosilek declared, fighting back sobs. “Of course I didn’t ... I couldn’t do that to anyone.”

“... On the afternoon of May 24, while attempting to flee, Kosilek was stopped for speeding in New Rochelle, New York, 200 miles from his home. The arresting officer smelled alcohol on Kosilek’s breath and found a bottle of vodka and two beer cans on the floor of the car. “I can’t call my wife,” Kosilek told him. “I murdered my wife.” ...”

CALIFORNIA: DANA RIVERS

“Oakland Lesbian Couple and Their Son Murdered By Former LGBT Activist”
Autostraddle, November 16, 2016

“... Tragically, Diambu-Wright, along with his 57-year-old mother and her 56-year-old partner, were found dead on the property of their Elmhurst home last Friday after suffering fatal gunshot and stabbing wounds. There was also a fire in the garage that the Oakland Fire Department extinguished within half an hour. Police had responded to reports of gunshots heard on the block a little after midnight, and immediately found Diambu outside, bleeding to death. After hearing a loud noise from the garage, a bloody 61-year-old Dana Rivers emerged from the house with knives and



Courtesy Michael Campbell — Pictured left to right are Patricia Wright, Benny Diambu-Wright, and Charlotte Reed. The threesome was found stabbed and shot to death at their Oakland home Nov. 11, 2016. A San Jose woman, Dana Rivers, 61, was arrested shortly thereafter in connection with the triple homicide.

via [East Bay Times](#)

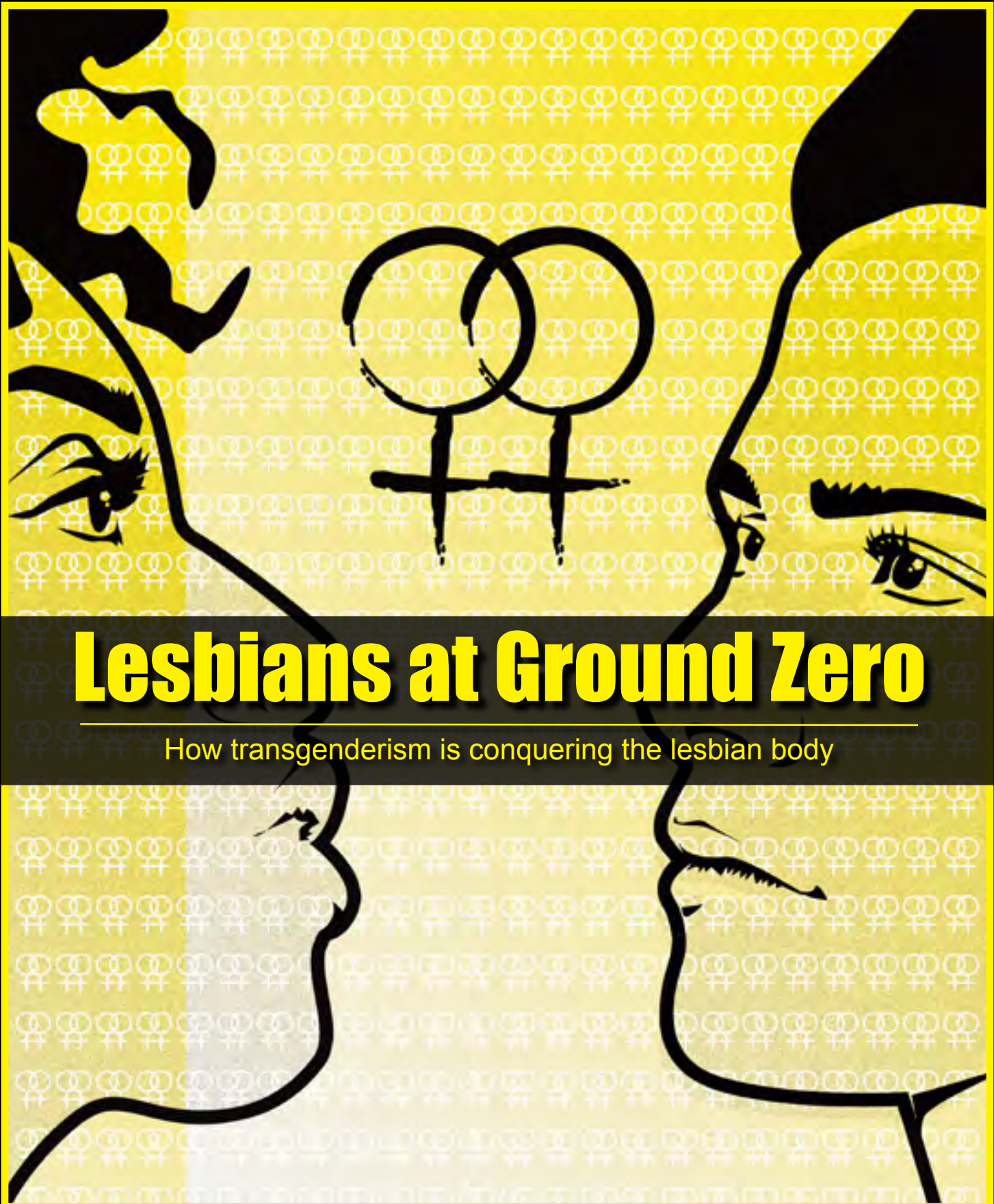
ammunition in her pockets. She then “began to make spontaneous statements about her involvement in the murders” and attempted to flee on her motorcycle.

Today, Rivers was charged with three counts of murder with special circumstances, arson, and possession of metal knuckles. She may be sentenced to life in prison without the possibility of parole and could also be eligible for the death penalty, depending on the judgment of the Alameda County District Attorney’s Office.

In a tragic twist, Dana Rivers was actually a very well-known transgender activist.”

“Transgender Activist Ordered To Stand Trial For Oakland Triple Murder”
CBS SF Bay Area, March 7, 2018

“... A motive for the three homicides wasn’t disclosed during Rivers’ preliminary hearing but prosecutors said it will be revealed at her trial, which may not take place for several years since she could face the death penalty and the attorneys in the case need time to prepare. ...”



Lesbians at Ground Zero

How transgenderism is conquering the lesbian body

Angela C. Wild
Get The L Out Report
March 2019

#GetTheLOut
#CottonCeilingIsRape
#LesbiansAtGroundZero

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To L. my love always.

Sisters, I salute you ! xx

Introduction

Following the emergence of high profile “transgender women” [Caitlin Jenner, Kelly Maloney, Munroe Bergdorf...], discussions about transgenderism have become a regular topic for mainstream news outlets.

This has coincided with the proposed reform of the Gender Recognition Act 2004. The government’s consultation about proposed changes to the G.R.A. which ended a few months ago was proposing to introduce what has been called “sex self-id.” (for sex self-identification), aiming to simplify the process for transgender people to “legally change their gender”, potentially enabling anyone to self-identify as the gender of their choice by simply ticking a box, with no professional assessment of gender dysphoria, no social transition, medical transition or surgery being requested from the applicant.

Feminists have questioned publicly whether trans politics poses any concerns for women and girls highlighting the clash of rights existing between women and “transwomen” (Fairplay For Women, 2019, Woman’s Place UK, 2019). If men who transition can legally become women, it becomes impossible for women to maintain women’s right of access to sex-segregated spaces and services exclusively for females. (Equality Act 2010).

The same is also true for lesbians.

As social media such as Twitter is a crucial tool for spreading ideas, such public discussion has led transactivists to share the view that they are discriminated against because some lesbians refuse to date them, propagating the idea that lesbianism is “transphobic” (Dennis, 2017).

The latter statement invites the question:

What is the experience of lesbians when confronted with those ideas?

This work aims to investigate this under researched phenomenon, highlighting the impact of transactivism and trans ideology on lesbians. It has a second, crucial aim of ensuring lesbians’ voices and experiences are heard.

Positionality

An important consideration for any researcher is the position they occupy in relation to the research setting. Feminist researchers argue that we cannot suddenly ignore our own experiences, and stop being human in the name of ‘objective’ research (Stanley & Wise, 1993). McDowell (1992: 409) writes that we must recognise our own position, and include this in our research practice. As a woman, a lesbian and a feminist I have been actively involved in the debate about trans rights and women’s erasure for many years. On a personal level, I suffer from the impact the trans ideology has on women and lesbians. This will be expanded on in the methodology section.

Key definitions and language

Due to my own positionality, I reject mainstream ways of discussing gender, as well as the terminology typically used by trans and queer ideologies when referring to people who identify with the opposite “gender”. When referring to “transwomen” I will use the term males who call themselves / identify as women / transwomen. As Sheila Jeffreys, a prominent feminist, comments:

“The female pronoun [is] an honorific, a term...due to women as members of a sex caste that have survived subordination and deserve to be addressed with honour. Men who transgender cannot occupy such a position.” (2014: 9)

I will use the pronoun associated with their biological sex: “he” when referring to a transwoman. I recognise that this is controversial as gender neutral language has become an expected part of the discourse when discussing issues relating to transgenderism.

Language is never neutral. Language not only shapes people’s consciousness, it is a tool of power in a patriarchal system (Spender, 1985). In recent years, under pressure to be inclusive to men who identify as women, women have been renamed “menstruators” (Guardian, 2018), “non-men” (Beale, 2016), “uterus-bearer” (Qu’emi, 2014), “front-holders” (Human Right Campaign Foundation, 2016), “pregnant person” (Donnelly, 2017) and “chest-feeders” (De La Cretaz, 2016). Every aspect of female anatomy and women’s specific experience has been judged to be not inclusive enough, therefore “transphobic”, the current trans ideology seems to be yet another example of how “women have had the power of naming stolen from us” (Daly, 1985: 8). With the banning of sex-specific vocabulary relating to women, talking about ourselves in those terms is a forbidden act. It is a particularly urgent political act to use the vocabulary which is forbidden to us.

What is feminism if anyone can be a woman regardless of their biological sex or experience of oppression?

Outline

Drawing on key writers, this essay will outline the development of the trans ideology (in academia and in the mainstream) and how it relates to lesbians specifically. It will highlight the work of early lesbian feminists who have theorised the concepts of lesbian visibility and the conflicts with the wider gay movement (now known as LGBT), as well as the more recent work by lesbian feminists in identifying the lesbian body as a woman-only space to be conquered.

Key literature

Development of the trans ideology

Judith Butler in "Gender Trouble" is one of the influential agents in shifting the meaning of the word "woman" (2007). Obsessed about "narrative", "discourse" and "representation", to the exclusion of any other form of oppression, Butler's theory is at pains to explain that the category "woman" is irrelevant politically. Intersecting with race, class, ethnicity etc, there are so many variables it would appear no one knows what a woman is. Butler believes that "woman" is a fabricated construct, not a material reality. She remains abstract and never mentions the bodies of women. Stating that women are a category apart from men because our bodies are biologically different from men's is labelled "biological essentialism". The real meaning of biological essentialism is in fact quite different. It means enforcing behaviours onto an oppressed class of people because of biological differences, then calling that different behaviour "innate", naturalising what has been internalised and placing it out of the realm of the political.

Politically, women are a different category from men because it is in our female bodies and because of our female bodies that oppression is enforced on us by men: through rape and sexual harassment (Brownmiller, 1975), compulsory heterosexual intercourse (Dworkin, 1987, Barry, 1979), a culture of compulsory motherhood, or enforced pregnancies. Women are a different political category from men because we are born and raised with those experiences our whole lives. The way patriarchy oppresses women varies from woman to woman, depending on those factors of race, class, geography etc, but women's bodies remain central to women's oppression.

The trans ideology relies on the essentialist premise that there is such a thing as a male and a female brain and that it is possible for some people to be "born in the wrong body"¹. Those "born in the wrong body" experience what has been termed "gender dysphoria": a mismatch between the physical sex of the person and the gender that person feels him or herself to be (NHS, 2016).

NOTES

¹On the contrary, feminists and scientists argue there is no such thing as a male and female brain (Rippon, 2015, Fine, 2010) rendering the concept of transgenderism invalid.

The fact that humans are a sexually dimorphic species and human reproduction relies on the existence of females and males is denied. "Sex" is said to be "assigned at birth" (NHS, 2016), no longer understood as a material reality but a social construct, while "gender" becomes a characteristic "we are born with; (that) cannot be changed": innate and determining the real essence of a person (National Geographic 2017: 18). In the case of trans people this "gender identity" does not match the physical sex. The term "trans people" is used to describe the people seeking to live "according to their gender identity, rather than their biological sex" (NHS, 2016). "Living according to their gender identity" means "passing": being accepted seamlessly as a member of the opposite sex by society. This relies on adopting the social codes usually associated with the persons of the opposite sex (Jeffreys, 2007). Typically, men who identify as women wear clothes, accessories and make-up, and adopt associated beauty practices traditionally marketed for women; they attempt to adjust their voice tone and body language, thus mimicking sex stereotypes imposed on females. All of this is denounced by feminist theory as sexist and seeks to free women from it (Dworkin, 1974, Wolf, 1991, Jeffreys, 2007).

Trans ideology and lesbians

Sandy Stone, a male transactivist who identifies as a lesbian, wrote a counterattack on Raymond's work "The Transsexual Empire" (1995) in "The Empire Strikes Back". The arguments of his text ironically largely revolve around male sexual anatomy and sexual pleasure, what he terms "wringing the turkeys neck": the last instance of penile masturbation the night before castrative surgery is performed. He explains that the medical profession was originally responsible for the fact that "transsexuals" were performing gender in a stereotypical way, thus giving the medical profession the performance they expected so that "transsexuals" could obtain the surgery they desired (Stone, 1991). Stone laments the enforcement of binary gendered practices upon the (male) transgender community and calls for "transsexuals" to become "posttranssexual": to stop trying to "pass" as women – therefore to be "read" as male who are transsexuals. It can be argued that this shift paved the way for transsexuals to be able to reject castrative surgery - which is the norm today as **most remain genitally intact males** (Reed, 2015) - and yet still be able to call themselves "women" and "lesbians".

Stone's work is key when we fast-forward to 2012 where the term "**cotton ceiling**" started appearing on social media. Drew DeVea, transactivist and porn performer, invented the term to describe the difficulties faced by men who identify as "trans lesbians" in being accepted as a "real lesbian", finding lesbians reluctant to choose them as sexual partners (Malantino, 2016, TerflsASlur.com, 2019)².

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²The term "cotton ceiling" is copied from the term "glass ceiling". But where the glass ceiling describes the invisible barrier women face to attain a higher position in their field of work, the "cotton ceiling" refers to the knickers worn by the lesbian: the cotton of the knickers being the barrier the trans-identified males' struggle penetrate. This barrier is seen as denying his validity as a lesbian, as only a sexual experience with a lesbian would make him a "real lesbian". Lesbians are accused of using their genitals to "gatekeep womanhood", denying "trans lesbians" their "rights" to be real lesbians via by accessing lesbians sexually.

The cotton ceiling

Google search results: the “cotton ceiling”.

As lesbians argued that they did not want to have sexual relationships with people with penises, the term penis was rebranded “**girdick**” (Yardley, 2018). Julia Serano uses the terms “girly little estrogenized penis”(Serano, 2007 : 229)3. In this “logic”, the penis, in virtue of being attached to a male who identifies as female, automatically becomes a female organ. Lesbians who still refuse to consider “trans lesbians” as sexual partners are called “transphobes” and “vagina fetishists”, and figuratively lynched on social media (Cade, 2014, Scarcella, 2018).

Today LGBT organisations give their undivided support to the trans community at the expense of lesbians. The **#GetTheLOut** action and response from LGBT officials exemplifies this position clearly.

In July 2018, a group of activists (of which I am a member) organised a peaceful action at Pride in London: a small group of lesbians marched uninvited in front of the parade carrying banners⁴ and distributing leaflets (Get The L Out, 2018). It intended to promote uncompromising lesbian visibility⁵. As the backlash following the action demonstrated, lesbians who dare to publicly challenge the trans narrative are demonised by most LGBT organisations. Pride in London’s official statement has called lesbian protesters “disgusting”, “bigoted” and “transphobic”, “an issue (which) need to be stamped out” (Pride In London, 2018), thus demonising lesbians for stating lesbians have a right to sexual boundaries and to self-definition. Manchester Pride compere Tony Cooper violently criticised the #GetTheLOut action at the Manchester Pride 2018 rally, stating that **lesbian protesters** should have been **“dragged out by their saggy tits”** (Cooper, 2018, Sprocket, 2018). The choice of words is reminiscent of public lynching and witch burning. It is hateful, misogynist, ageist and incites violence against women and lesbians, groups which technically are under the protection of the law as sex and sexual orientation are protected characteristics under the Equality Act, 2010. Cooper’s intervention should have been investigated as **hate speech**. Cooper has since started a campaign in Canal Street against “TERFs” (Cooper, 2018b). Lesbians are no longer welcome in Manchester gay village unless they accept dating “trans lesbians”. This statement is nothing more than a redefinition of the word “lesbian”.

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³Terms like “lady stick” “lady’s penis” are also found to describe the genitals of males who identify as women. As some lesbians use dildos and strap-ons as part of their sexual practices, the term “built-in strap-on” or “strapless” (Human Rights Campaign Foundation, 2016) to refer to the penis, has also been used to highlight the supposed similarity between the real male organ and the plastic replica and the lack of consistency from lesbians in accepting one while rejecting the other.

⁴Slogans used on the banners stated:

Lesbian not queer : we are claiming our affiliation to lesbian feminism and rejected new queer definitions of womanhood and lesbianism

Lesbian = female homosexual : Lesbians are same-sex attracted, lesbians do not want to have sex with people with penises regardless of their gender identity, only females can be lesbians.

Transgenderism erases lesbians : The T in LGBT is in direct conflict with the L. If a “transwoman” can be a lesbian how can lesbians retain sexual autonomy? If the LGBT support “transwomen” they de facto deny lesbian rights to exclusive same sex orientation.

“Get The L Out” : the LGBT does not represent nor advocate for lesbians but speak against us, we need our own separate groups.

⁵ Lesbians are rarely seen or represented at Pride in London (Bart, 2018) and report feeling uncomfortable there due to the event’s male-centeredness (Glass, 2018)



Lesbian Feminism, Lesbian Visibility

In her essay "To Be and To Be Seen", Frye examines the concepts of lesbian existence and lesbian visibility (1983). Through her research of the word "lesbian" in diverse dictionaries and the revealing lack of meaning in its definition, Frye demonstrates how the word "lesbian" already had no meaning well before post-modernist ideology took over language. Frye concludes that language, created by men, leaves blank the definition of lesbian, purposely excluding lesbians from the conceptual scheme of the patriarchal world. Women are mere "stagehands" in the background of the patriarchal male-focused play, and it is inconceivable to patriarchy that women might have autonomous thoughts of our own, unrelated to men. This would disrupt the patriarchal stage where men's play is being acted out. On the contrary, a lesbian is a woman who has autonomous thought outside of the male focus, who notices and gives importance to the world of women, thus threatening patriarchal illusions of male-centeredness⁶. Today's queer definition of lesbianism: "a person who identifies as a woman and is sexually and/or romantically attracted to others who identify as women" (Bangor University, 2019) erases the meaning even further.

Lesbian-feminists have long recorded the divide between the gay rights movement and the lesbian-feminist movement. Rich has highlighted the sexism of the gay men's movement, as well as the risk of erasing the specific oppression of females by equating lesbians' experiences with those of gay men (Rich, 1977). Frye (1983b) maintained that the parallels between experiences of oppression between gay men and lesbians were at best superficial, and any alliance between them was based solely on the fact that members of both groups are labelled "deviant" for not conforming to sex stereotypes and refusing heterosexuality. Her work demonstrates that gay male culture and its political movement is inherently based on male supremacist values of the presumption of male citizen, worship of the penis, homoeroticism, woman-hating, compulsory heterosexuality and presumption of general phallic access, thus antithetic to lesbian feminist politics.

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⁶Because women can choose to become lesbians (a claim patriarchal queer theory firmly disputes arguing that sexuality is innate and cannot be chosen) the threat of contagion of lesbianism constitutes a real threat to patriarchal society as a whole, which is why lesbian erasure is orchestrated and motivated in patriarchy.

Both Harne (1996) and Jeffreys (2003) recount the shift of the gay movement from a truly radical and revolutionary movement aiming to eradicate sexism as well as homophobia, to a male-centred and misogynist movement promoting sexual objectification, drag performance (which many lesbians saw as misogyny), and pressuring lesbian groups to accept transgender males in their midst. Effectively, the gay movement became a male sexual rights movement. Assimilation within the straight world became its sole purpose, a dramatic departure from its revolutionary origins⁷. Many lesbian feminists describe the lesbian walk-out of the gay movement which led to the creation of Women's Liberation Movement (Stanley, 1982, Dixon, 1988, Jeffreys, 2003 and Brackx, 1980)⁸. Given that history, it is not surprising to see the male-centred LGBT movement supporting the rights of males who identify as lesbians at the expense of lesbians' rights to sexual boundaries and women-loving.

The #GetTheLOut action inscribes itself in a long tradition of women separating from a male-centred movements.



Photo copyright Pam Isherwood

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⁷A key point of dissent was the shift from understanding heterosexuality as politically constructed - therefore promoting homosexuality and lesbianism as a positive political choice leading to political change - to an essentialist understanding of sexuality where gay men argued they had to be accepted by the straight world as "we can't help it (...) we are not a threat to you" (Alderson, 1988)

⁸Furthermore, it has been discussed elsewhere that terms like "queer", "gay" and "LGBT" make lesbians invisible within the neutrality of an alphabet soup and depoliticise lesbianism further. Indeed, most young lesbians do not today use the term "lesbian" to define themselves as it is not "inclusive enough and denotes hostility towards men (trans identified or not)." (Blair & Obinawne, 2018)

The lesbian body as a battleground

The consequence of systematic lesbian erasure, combined with the male centred politics of the LGBT, is a constant invasion: **invasion of lesbian spaces and invasion of the lesbian body as the ultimate women-only space**, leading to the destruction of those spaces and the consequent **destruction of lesbianism**.

Raymond's work in "The Transsexual Empire" was the first to address transgenderism critically from a lesbian feminist perspective (1995). Raymond firmly attacks the ethics of a medicalised industry profiting financially from the physical castration of members of the community who suffer from failing to fit into the rigid sex stereotype mould. She attacks the individualisation and medicalisation of what she sees as a political problem, as morally questionable, detrimental to society and anti-feminist. Her chapter "Sappho by surgery: The Transsexually constructed Lesbian-Feminist" addresses the issue of transgender males invading lesbian spaces and describes the case of Sandy Stone (discussed above).

"All transsexuals rape women's bodies by reducing the real female form to an artefact, appropriating this body for themselves." (Raymond. 1995: 104)

When Raymond explained that transsexuals rape women's bodies, did she foresee that today those rapes would leave the symbolic to become an embodied reality for the lesbians who do not manage to escape the queer narrative? Despite it being written more than 20 years ago, Raymond's analysis remains as relevant as ever precisely because nowadays males who call themselves lesbians do not typically have castrative surgery (Reed, 2015).

Jeffreys (2014) and Morris (2016) describe the transgender's lobby assault on women-only spaces in. Both cite the attack on the Michigan Womyn Music Festival, a woman-only music festival held since 1976. The festival did not survive and closed down permanently in 2015, erasing decades of lesbian culture in the process.

Morris names the "trans issue" as instrumental in the way a festival like Michigan Womyn Music Festival was targeted. The rhetoric relies heavily on a mixture of misogyny and ageism as the festival's separatist stance was described as a "relic of the second wave" (Meltzer quoted in Morris 2016 : 101). Despite a statement from organiser Lisa Vogel that

"claiming one week a year as womyn-born womyn is not a contradiction to being trans-positive and trans-allies. (...) there is room for affinity groups to enjoy separate and supportive space, and also come together in broader alliances to fight prejudice that affect us all" (Vogel quoted In Morris : 103)

The festival, its attendees and the artists who performed there were all labelled "Terfs" (Trans Exclusive Radical Feminist). Artists were targeted and made to apologise for ever performing at Michfest, threats to burn the festival appeared online, leading finally to the organisers announcing the end of a festival that had lasted for 40 years and welcomed almost half of million attendees over the years.

In "Gender Hurts" Jeffreys identifies the lesbian body as **"the most intimate of women's spaces"** (2014: 180) and discusses the cotton ceiling as an assault against lesbians.

Max Robinson, a young lesbian and detransitioner offers an invaluable, powerful and disturbing insight into the queer community. Robinson names the lies and manipulation behind the concept of "cis privilege": "It was accepted fact that being born female gave you a lifelong advantage over a male who transitioned." (Robinson, 2016). Statements such as these render the oppression of females and the sexual violence perpetrated by men who transition completely invisible. Robinson started to question the trustworthiness of such a statement after several of her female friends were raped or beaten by "transwomen". Robinson also describes how she was targeted as a youngster and deceived into sending nude pictures of herself to adult men who identified as trans. Robinson describes women's inability under queer hegemony to name reality for what it is, therefore to name male violence for what it is. She shows how queer ideology disconnects women from other women, as well as from the past and present women's struggle, and the subsequent inability to place our experience of violence within the feminist political context of the continuum of male violence against women. Her work exposes the incredible social pressures faced by lesbians within the queer community; threats of ostracism from the only place women and girls like herself were ever welcomed into; the constant policing and silencing; the fear women victims experience and their inability to come forward after a rape; their exclusion from the group for daring to name a transwoman as a rapist, the incredible gaslighting women who still dare to call themselves "lesbians" face in those communities.

The extract below about K, her girlfriend who was in a "lesbian relationship" with M, a transwoman, summarises the problems faced by lesbians today:

"Calling that relationship "lesbianism" left her stranded from the framework she desperately needed in order to contextualize her experiences as a survivor of captivity. It destroyed her ability to call herself a lesbian or a woman for a long time: if lesbians like to sleep with transwomen and were repulsed by the supposed maleness of transmen, how could she be a lesbian herself? If women are what her ex-partner M was, then she, K, must be something else entirely. The language of transition lends itself readily to abusive gaslighting that disguises and distorts women's ability to name what is happening" (Robinson, 2016)

"Lesbians who see their sisters disappearing are more likely to try to erase themselves." (Robinson, 2016)

What Robinson's work shows is that the pervasiveness of transgenderism and queer theory leave young lesbians with no physical space to discuss their specific issues, no lesbian community to go to for validation and support, no books to refer to, no word to define themselves and no political framework from which to place or maintain sexual boundaries from men.

Research Outline

Aims

As a lesbian I have heard many lesbians privately discuss being targeted by transactivists for being lesbians. Those stories were hushed in confidence, suppressed, women justifiably fearing retaliation from perpetrators. This silencing means that there are very few public stories of lesbians on the “cotton ceiling”, a point often advanced by transactivists to dismiss lesbians’ dissent. The aim of this study was to give silenced lesbians an opportunity to speak anonymously about their experience when faced with men who identify as transwomen, while formally gathering the missing evidence.

The survey aimed to find whether there is a form of social pressure on lesbians to accept trans ideology within the LGBT community, and what form this may take. How does this affect their ability to meet other lesbians? Are lesbian dating sites safe for lesbians? Is this social pressure influencing lesbians’ life and their sexual life? If lesbians are pressured online, could they also be pressured offline? Are lesbians experiencing any form of sexual violence from men who call themselves lesbians? If yes what form does this sexual violence take?

Reflexivity

Before outlining how this research was carried out it is useful to pause to return to the issue of reflexivity and my own standpoint. Feminists have long understood the power of reflexivity as a way of gaining more insight into a particular topic, a desire to dismiss the alleged objectivity usually claimed by patriarchal academics, and an attempt to be honest with regard to the researcher’s point of view and experience of the subject (Stanley & Wise, 1993).

During my time as a Women’s Studies student, the discussion about transgenderism has received an increasing amount of attention in the media. As a gender critical feminist I have felt the silencing that academia, a patriarchal institution notoriously uncritical of queer theory (Biggs, 2018), implicitly exerts onto its members, staff and students alike. I remember the tension I felt when the subject was mentioned by a fellow student in the first year of my degree, the fear of it being discovered that I had thoughts the university would no doubt label “unacceptable” and “dangerous”. I had the opportunity to give a presentation on “Gender” and explained the radical feminist perspective. I was able to discuss dissenting views thanks to one brave teacher. I had the feeling all along that the Women’s Study MA was a precious haven for making this discussion possible.

As we had to face the devastating decision the university took to discontinue the Women’s Studies MA alongside the whole Life Long Learning Department, we recognised the obvious sexism of that decision, knowing it would affect the ability of future generations of women (particularly working-class mothers) to access education, bringing to an end the possibility we had to learn about our condition in the safe space of a woman-only group. The closing of the course has been an emotional and stressful journey and a struggle to keep going under the circumstances. But in the background of these events, the ideas of Judith Butler resonated, reminding me of the political significance of such events:

Do we really need women’s studies courses? And what is a woman anyway?

As a long-time activist I have battled against constant accusations of being “hateful” and “transphobic” because I am one of those who define what a woman is and because I have clear sexual boundaries which exclude men. The relentless attacks and threats have not succeeded in silencing me but have impacted my mental health. Writing about such a topic as part of my degree has been challenging: finding a supervisor prepared to work with me but also confronting my own self-censorship. We have all internalised patriarchy, we all know almost instinctively what we are allowed and not allowed to say when working within the structures of patriarchy. How would this pressure to conform influence the words I used, or affect the clarity of my analysis?

The challenge has been to confront potential attempts by the university itself to silence me or dilute my work. I was relieved that the Ethics Committee reviewing my application had approved it, allowing me to proceed with the project. Their insistence on my use of the term “transwoman” within the survey and on the importance of remaining “objective” and asking non-leading questions was problematic. In agreement with the feminist tradition, I do not consider that there is such a thing as “objectivity” or that “objectivity” is desirable, necessary or ethical in order to produce a valid piece of work (Stanley & Wise 1993). I reflect below on the response I had from a respondent about the use of the term “transwomen” within the survey, a point I wholeheartedly agree with. Overall I was grateful, though conflicted as I knew my politics were in direct confrontation with academia and yet I had no intention of toning them down. The way this work will be received will reveal how academia positions itself vis-a-vis the following questions:

Have post-modernism and queer theory irreversibly become the dogma or can they be challenged?

Are women allowed to define what a woman is?

Are dissenting points of view allowed within a university?

These questions are worthy of a thesis all on their own.

Research tools and method

The research was initially planned to be a series of interviews conducted with women who would be preselected after taking part in the questionnaire. After careful consideration a questionnaire was deemed more suitable in order to map an under-researched issue. A questionnaire enables the researcher to ask respondents a wider variety of questions in a short space of time (Sarantokos, 2012) and gives respondents the chance to complete the questionnaire in their own time (Curtis and Curtis, 2011).

The survey comprised of 30 questions about lesbians’ experience. It had sections relating to the following subjects: respondent identity, their experiences in LGBT groups and on lesbian dating sites, their experiences interacting with men who identify as transwomen as potential sexual partners. For the purpose of the survey, I used the queer terminology “transwomen” as advised by the Ethics Committee. The Ethics Committee believed that the survey should be “objective” but did not consider that the term “transwomen” is not an objective term and is far less widely accepted than they claimed, a point noted by a respondent who complained that the term was incorrect and misleading as “transwomen” are biologically male, therefore “not a subset of women”.

The survey was sent to women-only and lesbian-only groups on social media, as well as to individual lesbians in my own networks. **As such the sample does not claim to be a representative sample of the lesbian community. However, the research was to capture the points of view and stories of many, until now, silenced lesbians.**

Findings

Findings

Within a few days, 80 women had responded to the survey, far more than originally planned. This rapid engagement demonstrates a keen interest by women who are affected by such issues and the recognition that there is a lack of work and visibility in this area. Several women left private notes, thanking me for the opportunity to speak up. Lesbians were eager to share their stories. The intention was to record lesbians' experiences from the UK (48%), however the survey was also answered by women across the world⁹, highlighting that the questions raised concerns for lesbians in different parts of the western world. All age groups were represented. Due to the imposed time constraints of the research, I had to limit the number of questions relating to demographic information and also relating to the location e.g. rural/city provenance. Future research that will attempt to understand these views in more depth and detail will take more factors into considerations.

Overview of respondents

98.8% of respondents primarily defined themselves as "lesbians"¹⁰, while only two identified as "bisexual" including one as "queer". This choice of word represents a political standpoint (Blair & Obinawne, 2018). Every woman apart from the "queer" respondent defined lesbianism as "women exclusively attracted to women". The "queer" respondent was dating females, non-binary and trans people, and she alone defined lesbianism in terms of "a self-identified woman attracted to self-identified women".

The view on "transwomen"

The majority answered "no" to the following questions:

"Do you believe transwoman are women?" (NO 87.5%),

"Do you believe transwoman can be lesbians" (NO 95%)

"Would you yourself consider a transwoman as a potential sexual partner" (NO 98.8%)

Most respondents considered "transwomen", based on their biological sex, to be men. The pronouns used by respondents to refer to "transwomen" ranged between "he", "she" and "they". I will use the terminology used by respondents when quoting them to report their word accurately despite it going against the principle laid out above. I will use the term "transwomen" in quotation marks for that reason.

NOTES

⁹ United States, Germany, Canada, Ireland, France, Australia, New Zealand. Only 3 women did not specify the country they lived in.

¹⁰ Also calling themselves "dykes"(35%), "butch" (16%) or "femme"(10%), Gay woman (18%)

The following sections will discuss findings in relation to their engagement with LGBT groups, dating sites, lesbians' experiences of sexual pressure and sexual violence by transwomen.

LGBT groups

The majority of respondents reported being part of lesbian, queer or LGBT groups online (11%), offline (37%) or both (48%). 72% reported being part of strictly women-only groups (excluding "transwomen"). Women were also part of groups which are mixed – including men and women (20%), inclusive of all gender (21%), women-only but including self-identifying women (20%) and welcoming of "transwomen" (26%).

Women who were in groups that were not "women-only" reported **"feeling silenced"**, **"intimidated"**, **"unable to speak freely"**, **"uncomfortable"** with the group policy and wishing the group was for women only but **"dare not say it"**. Several reported how **"transwomen derail"** and monopolise the discussion to be solely about their issues while shutting down discussion about women's or lesbians' issues by calling it "transphobic". Group dynamics are described as **"toxic"**. Several women explain how **"transwomen are behaving just like men"**. **Lesbians constantly report being told their sexuality is "wrong" if they openly state they are solely attracted to women.**

Women reported **"threats"**, **"intimidations"** and **"abuse"**, by **"transwomen"** and allies.

Several respondents explained they understand and respect the need for "transwomen" to meet exclusively amongst themselves but cannot understand the lack of reciprocity accorded to women and lesbians by the trans community.

50% of women reported being excluded from their LGBT group(s).

The reason for their removal was made clear: questioning any aspect of the queer doctrine results in women being labelled "transphobic", resulting in a ban. Respondents were banned for sharing articles from feminists that their group disapproved of, or for stating biological facts about sex and anatomy such as: **"just females have periods"**.

Many lesbians reported being excluded if they mentioned for example:



"lesbians don't like penises or have sex with people who have or had penises".

Several respondents have left groups themselves due to intimidation or before being pushed out. Women who are still in LGBT groups have not been excluded because they report **"not being open with their views"**.

66% of respondents reported being intimidated or receiving threats in their LGBT group(s).

For questioning the trans doctrine or **just stating they were lesbians** respondents reported experiences including:

verbal abuse, death and rape threats, pressure to commit suicide, threats of physical or sexual violence, threats to kill family members, receiving "trans-woman nudes", threats of "doxing", actual online "doxing" (including exposure of their name, picture and home address), threats of exposure to employers.

While most of this intimidation happened online, many women also reported offline threats:

- **Two respondents were threatened at their place of work and one lost her job.**
- **A woman's employer was repeatedly contacted with attempts to have her dismissed,**
- **Two respondents were subjected to intimidating behaviour from "transwomen" at lesbian events,**
- **A seventy-year-old woman reported being "physically threatened and forced out" of a group by a physically intimidating "transwoman".**

A respondent observed that "the very presence of transwomen in a woman-only event is enough to silence us for fear of retaliation. There is no need to have a physical threat; their presence serves as a warning".

Several women have felt the pressure to accept transwomen as women intensifying:

"It is not enough that you simply censor and stay silent, you must actively pledge allegiance through the naming of pronouns etc..."




This pressure to shift from silent passive acceptance to active vocal embracing of trans politics may explain why some reported being pressured by other women within their groups (see chapter on "sexual pressure").

Underground Women-only spaces


Because of these experiences, women who wanted to gather exclusively with other women have had to create underground women-only groups and have to maintain a constant high level of vigilance and scrutiny to ensure the sex-segregated policy is upheld.

This is true online as well as offline: women-only gatherings still happen but must be planned in secret and are rarely advertised publicly. Women who are part of women-only groups or attend women-only gatherings reported feeling “safer to speak”, “more comfortable”, and not needing to censor themselves. They “enjoy being with like minded women” and “value the women centeredness of the group”.

The lack of women-only spaces is highlighted by many lesbians who report how much more difficult it has become for them to meet lesbians, because “trans women” are now included in most “women-only spaces”.



“Every other group in my city is either “queer” or for lesbians, bi women and trans. I don’t think there is one group exclusively for lesbians in my city of 1 million people”




“Lesbians are such an underrepresented group. I was sorely disappointed to attend ONE space that was meant for us to openly talk about our experiences of sex, love, discrimination, sexism, homophobia and other very private things specific to being a female homosexual, and for there to be a man present.”

Dating sites

48% of respondents reported visiting lesbian dating sites. Of those, 31% have been approached by “transwomen”. 12.5% have been on dates with “transwomen”, 6% of whom unknowingly. Four respondents report having had a sexual relationship with a “transwoman”: three with a “pre-op transwoman”, one with a “pre-op transwoman” and also with a “post-op transwoman”.

Two respondents were not aware that the person they were about to have a sexual relationship with was a biological male. If those “transwomen” were pre-op, we can argue that these constitute cases of rape by deception.

A respondent explained that on dating sites, half of the matches she received were from “transwomen”.



“None were making an effort to pass, one had a beard, another stated they were pre-op and had no intention to change this”.

A woman described feeling violated when she realised the person she had shared intimate messages with online was “a man”. Another respondent reported that 90% of the messages she receives come from “transwomen”. Although she stated that she has never felt coerced or intimidated, many women experience the very presence of “transwomen” as a violation.

“There are so many men that appear as “women” on dating sites. It makes me paranoid that someone I match with could be a man”.

Indirect sexual pressure

56% of the respondents reported being pressured or coerced to accept a transwoman as a sexual partner.

Much of this pressure happens online. Lesbians are routinely harassed for stating that their sexuality excludes males regardless of their “gender identity”. Most respondents reported being subjected to such rhetoric directly or indirectly, and have experienced it as a form of “psychological coercion” with the general feeling that it is “online everywhere” and “relentless”.

The responses show the wide variety of ways in which women have also been directly sexually pressured, ranging from coercion, sexual harassment and sexual assault to rape by deception and rape with physical force.

Direct sexual pressure and harassment

Often this pressure comes from members of lesbians' social circles. Two respondents reported the pressure they have come under from former girlfriends to **"include transwoman in their dating pool"**.

A respondent was targeted by a woman in an online group:



"I was told that homosexuality doesn't exist and I owed it to my trans sisters' to unlearn my 'genital confusion' so I can enjoy letting them penetrate me".

Lesbians report being told they are **"worse than rapists if they don't date transwomen"**, that not dating "transwomen" is akin to **"racism"**.

Many lesbians wrote about being questioned endlessly about their sexual preferences and whether they **"would or wouldn't potentially date a transwoman"**. A young woman reported being directly pressured to go on dates with a "transwoman" by her friends. She explained she cannot say no directly but has to keep making excuses for fear of being **"blacklisted from (her) social groups"**.

Women reported being sexually harassed directly by "transwomen".

- Being constantly sexually pressured by "transwomen" friends and acquaintances despite repeatedly saying no.
- Receiving intimidating and scary sexual pressure from "transwomen" **in women's toilets.**
- Receiving pressure from a "transwoman" friend to allow him to expose his surgically constructed vagina while they are alone.

Sexual assault

Many women reported unwanted sexual touching which fit the definition of sexual assault.

One recalled being pressured to kiss and touch a transwoman **against her will** in a club, another the violating experience of having a **"transwoman slapping (her) ass"** in the women's toilet of a gay club.

Sexual assault stories also happened in private settings, during sleep overs, in situations where women were vulnerable (drunk, asleep or unable to go home). In each case the "transwoman" was a friend who had taken advantage of the situation, **initiating non-consensual sexual contact, touching or masturbating in their presence.**

Domestic abuse

A woman describes her relationship with a male partner who was a transvestite.

"He insisted he was a lesbian and that I define myself as a lesbian so that he could feel validated as a 'woman'. This was before I came out as a lesbian [...] I felt that sexual intimacy was coerced from me under emotional blackmail".



Online grooming

Several young women report being groomed online while 18 or younger by "older transwomen". Two of those respondents were made to send nude pictures of themselves.

Deception

Several respondents discussed their experiences of deception while being approached by "transwomen" they assumed to be women. They reported feeling "betrayed" and "violated":

"Only once I was going to do a 3 way and one of the women was trans but passed very well and I was initially fooled till her partner told me. Fortunately there was no genital sex and they were pre-op. I freaked out afterwards!"

A respondent recalled being approached by an "androgynous looking" person for a date. After sex the person revealed being a "post-op transwoman". Shocked, the respondent remained in the relationship until she realised that she was "in a relationship with a man who acted like a man".

Queer coercion

Queer ideology combined with guilt-tripping were reported to be effective strategies to persuade women to sleep with “transwomen” against their will.

The woman above who had sex with a “post-op transwoman” stated she had “bought into the propaganda that sex doesn’t matter”.

Women in the 18-24 years old age group appear particularly vulnerable to these strategies.

Young women explained how they were pressurised to accept a “transwoman” as a sexual partner:



“I thought I would be called a transphobe or that it would be wrong of me to turn down a transwoman who wanted to exchange nude pictures”; young women feel pressured to sleep with transwomen “to prove I am not a TERF”.

The strategy works as a form of conversion therapy for lesbians.

“After I came out as a lesbian, I went on many dates/entered relationships with transwoman because the culture I was in said if I didn’t do that I was evil and should be banished from everything. I knew I wasn’t attracted to them but internalised the idea that it was because of my “transmisogyny” and that if I dated them for long enough I could start to be attracted to them. It was DIY conversion therapy.”



Rape

Many of the experiences above classify as rape although were not named as such. One of the respondents did name her experience as rape. Her story combines several problems highlighted above:

“The man I went on a date with, unknowingly, was mutual friends with people I knew, he threatened to out me as a terf and risk my job if I refused to sleep with him. I was too young to argue and had been brainwashed by queer theory so he was a “woman” even if every fibre of my being was screaming throughout so I agree to go home with him. He used physical force when changed my mind upon seeing his penis and raped me.”



Discussion & Conclusion

The evidence of this research suggests that there is huge pressure in online and offline LGBT, queer and lesbian groups to accept without question the queer ideology and mantra that “transwoman are women”.

The act of defining lesbianism as “same-sex attraction at the exclusion of people who have or had penises” is considered a form of hate speech and violently punished.

Dissenting voices are aggressively attacked, followed by an immediate ban from the group that can sometimes have consequences for women's lives and livelihoods. Lesbians are a small community of already marginalised individuals, and this exclusion sometimes means exclusion from the only social group women have. The threats on social media and offline groups act both as sexual pressure and silencing, leading to isolation and social exclusion. There is a direct link between threats in online groups and lesbian participation in real life groups or events.

Many lesbians who have been targeted have developed avoidance strategies towards LGBT in general and complain of feeling unsafe and unwelcome in the LGBT community.

Women who dare to say they will not have sex with anyone but a woman, excluding men and men who identify as transwomen, are demonised and name-called. Terms like “terf”, “transphobe”, “bigot”, “rapist”, “racist” etc are routinely used against lesbians. Women who remain silent in groups are asked relentlessly to reveal whether or not they would date a “transwoman”. This constant pressure creates a culture of terror, leading to women policing each other in order to not appear to be a “terf” to the rest of the group. This trend is intensifying as anyone not actively embracing the trans ideology is suspected of silent “terfing”.

Many lesbians reveal leading a double life where their lesbianism is toned down. Many have no social life or meet underground and explain how difficult and dangerous it has become to meet other lesbians. Lesbian dating sites are infiltrated by men who pose as lesbians (whether they identify as transwoman or not and whether they “pass” as women or not), leading many lesbians to feel unsafe at the thought of unknowingly going on a date with a man. Both in groups and dating sites, the presence of men who identify as transwomen acts as a threat, leading to self-policing and silencing.

This constant pressure is a form of psychological coercion and leads to lesbians feeling pressurised to accept men who identify as transwomen as sexual partners.

This is particularly true for younger lesbians, many of whom have only ever known queer/LGBT groups and ideology since they first came out. This constant pressure means that when faced with individual men who identified as transwomen and who were pressuring them for sex, many lesbians felt that they couldn't justify saying no to them, resulting in them having non-consensual sex under pressure.

Lesbians have been subjected to a wide variety of sexual violence by men who identify as transwomen.

While experiences of sexual violence were reported by women from every age group, the younger 18-24 age group seemed to be particularly targeted. The sexual violence experiences reported by respondents range from **coercion, online grooming, sexual harassment and assault to rape by deception or with physical force.** Perpetrators have used queer theory mixed with guilt-tripping to pressure, justify or excuse sexual violence.

Consistent with a former study showing that men who transitioned “retain a male pattern regarding criminality” including violent crime and sexual offences, that men who did not transition, (Dhejne et al, 2011 : 6) **sexual violence was committed by men who identified as transwomen in a typical male pattern of aggression, whether in public spaces: clubs, women's toilets, with unwanted sexual touching; in acquaintance rape scenario/private setting: either while lesbians were vulnerable (drunk, asleep or unable to leave), or during dates when the women withdrew consent and were then “persuaded” or forcibly raped.**

The findings are consistent with lesbian feminist thinkers who theorised that lesbians had nothing to gain by having their experiences conflated with those of gay men in a misogynistic LGBT movement, and that transactivists' invasion of lesbians' spaces could lead to the erasure of lesbians and lesbianism.

- Indeed within the LGBT movement today, young lesbians are denied the right to experience lesbianism as they are pressured to accept male bodies as female bodies.
- Older lesbians, who have led a lesbian life from a young age and experienced discrimination and violence as lesbians draw parallels between their past experiences and the way the trans ideology targets lesbians today.
- Lesbians who have had past heterosexual experiences recount how this is used against them to justify penis inclusion into their lives.

Lesbians who responded to this survey perceive the sexual pressure they experience, both as a form of rape culture and as conversion therapy, where they are pressured to accept penises in their sexual lives. Heterosexuality is forced upon lesbians under the guise of queer progressiveness.

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“We all know the outcome of the race before it even starts; it’s demoralising”

Selina Soule, US High School runner on racing against transgender athletes

THE PROBLEM

Women and girls are losing out.

Biological males identifying as women are now included in female-only sport categories. Unintended consequences of inclusivity deny female athletes’ right to meaningful competition.

Neither **Fairness and Safety for Women and Girls nor Male Performance Advantage** considered when new rules were made.



FINDING SOLUTIONS

Fair Play For Women is a grassroots campaign group raising public awareness, providing objective evidence-based advocacy for female athletes and sports professionals.

We aim to review and develop policy through better understanding of the law and science. Putting women and girls’ safety and fairness on the agenda.

We are building a confidential network of sports women and men, coaches and sports scientists to share contacts, advice and ideas. We are apolitical and non partisan. Our only concerns are **fairness, safety, privacy and respect** for women and girls.

If you think you can help us please contact Nicola Williams by email at nicolawilliams@fairplayforwomen.com

www.fairplayforwomen.com

THE RULES

In 2015 the IOC changed their guidelines: males may compete with females if their testosterone level is reduced to 10nmol/L for 12 months.

Testosterone levels unfair: 10nmol/L is much higher than the average level in females. Guidelines for female athletes with disorders of sexual development (intersex) were thoughtlessly copied for male transgender athletes. Very different considerations apply.

Unscientific: IOC Rule makers ignored advantages of male puberty on performance. Independent experts agree that even lowering testosterone to zero can’t reverse advantages due to male biomechanics and male muscle memory.

Fairness and safety forgotten: IOC guidelines have now been widely adopted by UK sporting bodies with no equality impact assessments for women and girls.

UK equality law is clear: It is lawful to restrict male participation (including males identifying as women) to uphold fair and safe competition in sport. This law is being ignored.

Hormone monitoring is impractical at amateur levels putting pressure on sports authorities to abandon it for self-ID.

THE CONSEQUENCES

Loss of fair and meaningful competition; women and girls are losing rankings, role models, scholarship opportunities and ultimately ambition.

No limits; Men and boys self identify into female sports without monitoring. The Canadian Winter Games accepts anyone who says they are female. 17 US states now allow boys to compete as girls in high school sporting competitions.

Safety ignored; Women and girls are getting injured when competing against males in contact sports. Women and girls are expected to share communal changing areas and sleeping accommodation with males.

Legitimate concerns branded as ‘transphobic’: Martina Navratilova an LGBT pioneer was ejected from Athlete Ally. Sponsorships are threatened, gagging orders issued, competitions protested, scientific debate stifled.



[fairplayforwomen](https://www.facebook.com/fairplayforwomen)



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Help us keep sport fair and safe for women and girls.



Thirty-four-year-old, 6ft 3in tall Brazilian volleyball player Tiffany Abreu is expected to be one of the first male-born transgender athletes competing in the Olympics at Tokyo 2020.



Male-born transgender runners Terry Miller and Andraya Yearwood winning first and second place in the GIRLS sprint (a repeat of what happened in 2018 outdoor meet) at the 2019 Connecticut State Indoor track and field competition.



Male-born transgender athlete Hannah Mouncey playing in the WOMEN'S Australian national handball team in the 2018. Mouncey played 22 games with the Australian MEN's national handball team before identifying as a woman in 2016.



Male-born transgender weight lifter Laurel Hubbard winning gold in the heavyweight FEMALE category at 2017 Australia Weightlifting Open. Expected to qualify for the 2020 Tokyo Olympic Games.



USA male-born trans athlete, CeCe Telfer. Last year running in men's race. This year winning women's most outstanding performer. No reduction in Testosterone.



Male-born transgender athlete Fallon Fox beating Tamikka Brents in just three minutes in a WOMEN'S mixed martial art fight, leaving her with a broken orbital bone and needing seven staples in her head.



Male-born transgender cyclist Rachel McKinnon winning gold in FEMALE track cycling at 2018 UCI Masters Track Cycling World Championships.

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X chromosome

The X chromosome is one of the two sex chromosomes in humans (the other is the Y chromosome). The sex chromosomes form one of the 23 pairs of human chromosomes in each cell. The X chromosome spans about 155 million DNA building blocks (base pairs) and represents approximately 5 percent of the total DNA in cells.

Each person normally has one pair of sex chromosomes in each cell. Females have two X chromosomes, while males have one X and one Y chromosome. Early in embryonic development in females, one of the two X chromosomes is randomly and permanently inactivated in cells other than egg cells. This phenomenon is called X-inactivation or lyonization. X-inactivation ensures that females, like males, have one functional copy of the X chromosome in each body cell. Because X-inactivation is random, in normal females the X chromosome inherited from the mother is active in some cells, and the X chromosome inherited from the father is active in other cells.

Some genes on the X chromosome escape X-inactivation. Many of these genes are located at the ends of each arm of the X chromosome in areas known as the pseudoautosomal regions. Although many genes are unique to the X chromosome, genes in the pseudoautosomal regions are present on both sex chromosomes. As a result, men and women each have two functional copies of these genes. Many genes in the pseudoautosomal regions are essential for normal development.

Identifying genes on each chromosome is an active area of genetic research. Because researchers use different approaches to predict the number of genes on each chromosome, the estimated number of genes varies. The X chromosome likely contains 800 to 900 genes that provide instructions for making proteins. These proteins perform a variety of different roles in the body.

Health Conditions Related to Chromosomal Changes

The following chromosomal conditions are associated with changes in the structure or number of copies of X chromosome.

46,XX testicular disorder of sex development

46,XX testicular disorder of sex development is a condition in which individuals with two X chromosomes in each cell, the pattern normally found in females, have a male appearance. In most individuals with 46,XX testicular disorder of sex development, the condition results from an abnormal exchange of genetic material between chromosomes (translocation). This exchange occurs as a random event during the formation of sperm cells in the affected person's father. The translocation affects the gene responsible for development of a fetus into a male (the *SRY* gene). The *SRY* gene, which is normally found on the Y chromosome, is misplaced in this disorder,

almost always onto an X chromosome. A fetus with an X chromosome that carries the *SRY* gene will develop as a male despite not having a Y chromosome.

48,XXX Y syndrome

48,XXX Y syndrome is a chromosomal condition in boys and men that causes intellectual disability, developmental delays, physical differences, and an inability to father biological children (infertility). This condition results from having two extra X chromosomes in each cell. Boys and men with 48,XXX Y syndrome have the usual single Y chromosome plus three copies of the X chromosome, for a total of 48 chromosomes in each cell.

Having extra copies of multiple genes on the X chromosome affects many aspects of development, including sexual development before birth and at puberty. Researchers are working to determine which genes contribute to the specific developmental and physical differences that occur with 48,XXX Y syndrome.

48,XXX Y syndrome is sometimes described as a variant of Klinefelter syndrome (described below). However, the features of 48,XXX Y syndrome tend to be more severe than those of Klinefelter syndrome and affect more parts of the body. As doctors and researchers have learned more about the differences between these sex chromosome disorders, they have started to consider them as separate conditions.

48,XXYY syndrome

48,XXYY syndrome is a chromosomal condition that causes infertility, developmental and behavioral disorders, and other health problems in affected boys and men. This condition is caused by the presence of an extra X chromosome and an extra Y chromosome in a male's cells. Extra genetic material from the X chromosome interferes with male sexual development, preventing the testes from functioning normally and reducing the levels of testosterone (a hormone that directs male sexual development) in adolescent and adult males. Extra copies of genes from the pseudoautosomal regions of the extra X and Y chromosomes contribute to the signs and symptoms of 48,XXYY syndrome; however, the specific genes have not been identified.

49,XXXXY syndrome

49,XXXXY syndrome is a chromosomal condition in boys and men that causes intellectual disability, developmental delays (especially in speech and language), physical differences, and infertility. This condition results from having three extra X chromosomes in each cell. Boys and men with 49,XXXXY syndrome have the usual single Y chromosome plus four copies of the X chromosome, for a total of 49 chromosomes in each cell.

Having extra copies of multiple genes on the X chromosome affects many aspects of development, including sexual development before birth and at puberty. Researchers

are working to determine which genes contribute to the specific developmental and physical differences that occur with 49,XXXXY syndrome.

49,XXXXY syndrome is sometimes described as a variant of Klinefelter syndrome (described below). However, the features of 49,XXXXY syndrome tend to be more severe than those of Klinefelter syndrome and affect more parts of the body. As doctors and researchers have learned more about the differences between these sex chromosome disorders, they have started to consider them as separate conditions.

Intestinal pseudo-obstruction

Intestinal pseudo-obstruction, a condition characterized by impairment of the coordinated waves of muscle contractions that move food through the digestive tract (peristalsis), can be caused by genetic changes involving the X chromosome.

Some individuals with intestinal pseudo-obstruction have mutations, duplications, or deletions of genetic material on the X chromosome that affect the *FLNA* gene. The protein produced from this gene, filamin A, helps form the branching network of filaments called the cytoskeleton, which gives structure to cells and allows them to change shape and move.

Researchers believe that the changes in the X chromosome that affect the *FLNA* gene impair the function of the filamin A protein. Studies suggest that impaired filamin A function affects the shape of cells in the smooth muscles of the gastrointestinal tract during development before birth, causing abnormalities in the layering of these muscles. Smooth muscles line the internal organs; they contract and relax without being consciously controlled. In the digestive tract, abnormal layering of these muscles may interfere with peristalsis.

Deletions or duplications of genetic material that affect the *FLNA* gene can also include adjacent genes on the X chromosome. Changes in adjacent genes may account for some of the other signs and symptoms, such as neurological abnormalities and unusual facial features, that occur in some affected individuals.

Klinefelter syndrome

Klinefelter syndrome is a chromosomal condition in boys and men that can affect physical and intellectual development. It is caused by an extra copy of the X chromosome. Boys and men with Klinefelter syndrome have the usual single Y chromosome plus two copies of the X chromosome, for a total of 47 chromosomes in each cell (47,XXY).

Having an extra copy of genes on the X chromosome affects many aspects of development, including sexual development before birth and at puberty. Researchers are working to determine which genes contribute to the specific developmental and physical differences that can occur with Klinefelter syndrome.

Some people with features of Klinefelter syndrome have an extra X chromosome in only some of their cells; other cells have one X and one Y chromosome. In

these individuals, the condition is described as mosaic Klinefelter syndrome (46,XY/47,XXY). Boys and men with mosaic Klinefelter syndrome may have milder signs and symptoms than those with the extra X chromosome in all of their cells, depending on what proportion of cells have the additional chromosome.

Several conditions resulting from the presence of more than one extra sex chromosome in each cell are sometimes described as variants of Klinefelter syndrome. These conditions include 48,XXXYY syndrome and 49,XXXXYY syndrome (both described above). The features of these disorders tend to be more severe than those of Klinefelter syndrome and affect more parts of the body. As doctors and researchers have learned more about the differences between these sex chromosome disorders, they have started to consider them as separate conditions.

Microphthalmia with linear skin defects syndrome

A deletion of genetic material in a region of the X chromosome called Xp22 causes microphthalmia with linear skin defects syndrome. This condition is characterized by small or poorly developed eyes (microphthalmia) and unusual linear skin markings on the head and neck.

The Xp22 region includes a gene called *HCCS*, which carries instructions for producing an enzyme called holocytochrome c-type synthase. This enzyme helps produce a molecule called cytochrome c. Cytochrome c is involved in a process called oxidative phosphorylation, by which mitochondria generate adenosine triphosphate (ATP), the cell's main energy source. It also plays a role in the self-destruction of cells (apoptosis).

A deletion of genetic material that includes the *HCCS* gene prevents the production of the holocytochrome c-type synthase enzyme. In females (who have two X chromosomes), some cells produce a normal amount of the enzyme and other cells produce none. The resulting overall reduction in the amount of this enzyme leads to the signs and symptoms of microphthalmia with linear skin defects syndrome.

In males (who have only one X chromosome), a deletion that includes the *HCCS* gene results in a total loss of the holocytochrome c-type synthase enzyme. A lack of this enzyme appears to be lethal very early in development, so almost no males are born with microphthalmia with linear skin defects syndrome. A few affected individuals with male appearance who have two X chromosomes have been identified.

A reduced amount of the holocytochrome c-type synthase enzyme can damage cells by impairing their ability to generate energy. In addition, without the holocytochrome c-type synthase enzyme, the damaged cells may not be able to undergo apoptosis. These cells may instead die in a process called necrosis that causes inflammation and damages neighboring cells. During early development this spreading cell damage may lead to the eye and skin abnormalities characteristic of microphthalmia with linear skin defects syndrome.

Triple X syndrome

Triple X syndrome (also called 47,XXX or trisomy X) results from an extra copy of the X chromosome in each of a female's cells. Females with triple X syndrome have three X chromosomes, for a total of 47 chromosomes per cell. An extra copy of the X chromosome can be associated with tall stature, developmental delays, learning problems, and other features in some girls and women.

Some females with triple X syndrome have an extra X chromosome in only some of their cells. This phenomenon is called 46,XX/47,XXX mosaicism.

Females with more than one extra copy of the X chromosome (48,XXXX or 49,XXXXX) have been identified, but these chromosomal changes are rare. As the number of extra sex chromosomes increases, so does the risk of learning problems, intellectual disability, birth defects, and other health issues.

Turner syndrome

Turner syndrome results when one normal X chromosome is present in a female's cells and the other sex chromosome is missing or structurally altered. The missing genetic material affects development before and after birth, leading to short stature, ovarian malfunction, and other features of Turner syndrome.

About half of individuals with Turner syndrome have monosomy X (45,X), which means each cell in an individual's body has only one copy of the X chromosome instead of the usual two sex chromosomes. Turner syndrome can also occur if one of the sex chromosomes is partially missing or rearranged rather than completely absent.

Some women with Turner syndrome have a chromosomal change in only some of their cells, which is known as mosaicism. Some cells have the usual two sex chromosomes (either two X chromosomes or one X chromosome and one Y chromosome), and other cells have only one copy of the X chromosome. Women with Turner syndrome caused by X chromosome mosaicism (45,X/46,XX or 45,X/46,XY) are said to have mosaic Turner syndrome.

Researchers have not determined which genes on the X chromosome are responsible for most of the features of Turner syndrome. They have, however, identified one gene called *SHOX* that is important for bone development and growth. The *SHOX* gene is located in the pseudoautosomal regions of the sex chromosomes. Missing one copy of this gene likely causes short stature and skeletal abnormalities in women with Turner syndrome.

X-linked acrogigantism

Duplication of a small amount of genetic material on the X chromosome causes X-linked acrogigantism (X-LAG), which is characterized by abnormally fast growth beginning in infancy or early childhood. Affected individuals may have the condition as a result of enlargement (hyperplasia) of the pituitary gland or development of a

noncancerous tumor in the gland (called a pituitary adenoma). The pituitary is a small gland at the base of the brain that produces hormones that control many important body functions, including growth hormone, which helps direct growth of the body. The abnormal gland releases more growth hormone than normal, causing rapid growth in individuals with X-LAG.

The duplication, often referred to as an Xq26.3 microduplication, occurs on the long (q) arm of the chromosome at a location designated q26.3. It can include several genes, but only duplication of the *GPR101* gene is necessary to cause X-LAG. The *GPR101* gene provides instructions for making a protein whose function is unknown, although it is thought to be involved in the growth of cells in the pituitary gland or in the release of growth hormone from the gland.

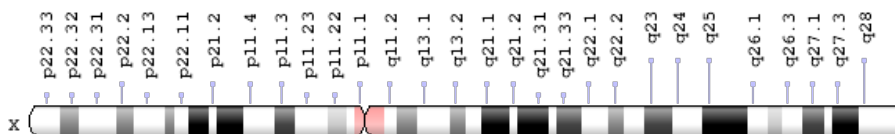
Duplication of the *GPR101* gene leads to an excess of GPR101 protein. It is unclear how extra GPR101 protein results in the development of a pituitary adenoma or hyperplasia or in the release of excess growth hormone.

Other chromosomal conditions

Chromosomal conditions involving the sex chromosomes often affect sex determination (whether a person has the sexual characteristics of a male or a female), sexual development, and the ability to have biological children (fertility). The signs and symptoms of these conditions vary widely and range from mild to severe. They can be caused by missing or extra copies of the sex chromosomes or by structural changes in the chromosomes.

Chromosome Diagram

Geneticists use diagrams called idiograms as a standard representation for chromosomes. Idiograms show a chromosome's relative size and its banding pattern, which is the characteristic pattern of dark and light bands that appears when a chromosome is stained with a chemical solution and then viewed under a microscope. These bands are used to describe the location of genes on each chromosome.



Credit: Genome Decoration Page/NCBI

Additional Information & Resources

Health Information from MedlinePlus

- Encyclopedia: Chromosome
<https://medlineplus.gov/ency/article/002327.htm>

Additional NIH Resources

- National Human Genome Research Institute: Chromosome Abnormalities
<https://www.genome.gov/11508982/>
- National Human Genome Research Institute: Studies Expand Understanding of X Chromosome (March 2005)
<https://www.genome.gov/13514331/>

Clinical Information from GeneReviews

- Microphthalmia with Linear Skin Defects Syndrome
<https://www.ncbi.nlm.nih.gov/books/NBK7041>
- Nonsyndromic 46,XX Testicular Disorders of Sex Development
<https://www.ncbi.nlm.nih.gov/books/NBK1416>
- X-Linked Acrogigantism
<https://www.ncbi.nlm.nih.gov/books/NBK476671>

Scientific Articles on PubMed

- PubMed
<https://www.ncbi.nlm.nih.gov/pubmed?term=%28Chromosomes,+Human,+X%5BM%5D%29+AND+%28X+Chromosome%5BTI%5D%29+AND+english%5Bla%5D+AND+human%5Bmh%5D+AND+%22last+1800+days%22%5Bdp%5D>

Research Resources

- Cancer Genetics Web
<http://www.cancerindex.org/geneweb/clinkc23.htm>
- Database of Genomic Variants
http://projects.tcag.ca/variation/cgi-bin/tbrowse/tbrowse?source=hg17&table=Locus&show=table&keyword=&flop=AND&fcol=_C19&fcomp==&fkwd=chrX&cols=
- Ensembl Human Map View
http://www.ensembl.org/Homo_sapiens/Location/Chromosome?chr=X;r=X:1-155270560
- The DNA sequence of the human X chromosome. Nature. 2005 Mar 17;434(7031):325-37.
<https://www.nature.com/articles/nature03440.pdf>
- U.S. Department of Energy: Human Genome Project Information Archive
https://web.ornl.gov/sci/techresources/Human_Genome/posters/chromosome/chromoX.shtml

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Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden

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Abstract

Context

The treatment for transsexualism is sex reassignment, including hormonal treatment and surgery aimed at making the person's body as congruent with the opposite sex as possible. There is a dearth of long term, follow-up studies after sex reassignment.

Objective

To estimate mortality, morbidity, and criminal rate after surgical sex reassignment of transsexual persons.

Design

A population-based matched cohort study.

Setting

Sweden, 1973–2003.

Participants

All 324 sex-reassigned persons (191 male-to-females, 133 female-to-males) in Sweden, 1973–2003. Random population controls (10:1) were matched by birth year and birth sex or reassigned (final) sex, respectively.

Main Outcome Measures

Hazard ratios (HR) with 95% confidence intervals (CI) for mortality and psychiatric morbidity were obtained with Cox regression models, which were adjusted for immigrant status and psychiatric morbidity prior to sex reassignment (adjusted HR [aHR]).

Results

The overall mortality for sex-reassigned persons was higher during follow-up (aHR 2.8; 95% CI 1.8–4.3) than for controls of the same birth sex, particularly death from suicide (aHR 19.1; 95% CI 5.8–62.9). Sex-reassigned persons also had an increased risk for suicide attempts (aHR 4.9; 95% CI 2.9–8.5) and psychiatric inpatient care (aHR 2.8; 95% CI 2.0–3.9). Comparisons with controls matched on reassigned sex yielded similar results. Female-to-males, but not male-to-females, had a higher risk for criminal convictions than their respective birth sex controls.

Conclusions

Persons with transsexualism, after sex reassignment, have considerably higher risks for mortality, suicidal behaviour, and psychiatric morbidity than the general population. Our findings suggest that sex reassignment, although alleviating gender dysphoria, may not suffice as treatment for transsexualism, and should inspire improved psychiatric and somatic care after sex reassignment for this patient group.

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Competing interests: The authors have declared that no competing interests exist.

Introduction

Transsexualism (ICD-10),[1] or gender identity disorder (DSM-IV),[2] is a condition in which a person's gender identity - the sense of being a man or a woman - contradicts his or her bodily sex characteristics. The individual experiences gender dysphoria and desires to live and be accepted as a member of the opposite sex.

The treatment for transsexualism includes removal of body hair, vocal training, and cross-sex hormonal treatment aimed at making the person's body as congruent with the opposite sex as possible to alleviate the gender dysphoria. Sex reassignment also involves the surgical removal of body parts to make external sexual characteristics resemble those of the opposite sex, so called sex reassignment/confirmation surgery (SRS). This is a unique intervention not only in psychiatry but in all of medicine. The present form of sex reassignment has been practised for more than half a century and is the internationally recognized treatment to ease gender dysphoria in transsexual persons.[3], [4]

Despite the long history of this treatment, however, outcome data regarding mortality and psychiatric morbidity are scant. With respect to suicide and deaths from other causes after sex reassignment, an early Swedish study followed 24 transsexual persons for an average of six years and reported one suicide.[5] A subsequent Swedish study recorded three suicides after sex reassignment surgery of 175 patients.[6] A recent Swedish follow-up study reported no suicides in 60 transsexual patients, but one death due to complications after the sex reassignment surgery.[7] A Danish study reported death by suicide in 3 out of 29 operated male-to-female transsexual persons followed for an average of six years.[8] By contrast, a Belgian study of 107 transsexual persons followed for 4–6 years found no suicides or deaths from other causes.[9] A large Dutch single-centre study (N=1,109), focusing on adverse events following hormonal treatment, compared the outcome after cross-sex hormone treatment with national Dutch standardized mortality and morbidity rates and found no increased mortality, with the exception of death from suicide and AIDS in male-to-females 25–39 years of age.[10] The same research group concluded in a recent report that treatment with cross-sex hormones seems acceptably safe, but with the reservation that solid clinical data are missing.[11] A limitation with respect to the Dutch cohort is that the proportion of patients treated with cross-sex hormones who also had surgical sex-reassignment is not accounted for.[10]

Data is inconsistent with respect to psychiatric morbidity post sex reassignment. Although many studies have reported psychiatric and psychological improvement after hormonal and/or surgical treatment,[7], [12], [13], [14], [15], [16] other have reported on regrets,[17] psychiatric morbidity, and suicide attempts after SRS.[9], [18] A recent systematic review and meta-analysis concluded that approximately 80% reported subjective improvement in terms of gender dysphoria, quality of life, and psychological symptoms, but also that there are studies reporting high psychiatric morbidity and suicide rates after sex reassignment.[19] The authors concluded though that the evidence base for sex reassignment “is of very low quality due to the serious methodological limitations of included studies.”

The methodological shortcomings have many reasons. First, the nature of sex reassignment precludes double blind randomized controlled studies of the result. Second, transsexualism is rare [20] and many follow-ups are hampered by small numbers of subjects.[5], [8], [21], [22], [23], [24], [25], [26], [27], [28] Third, many sex reassigned persons decline to participate in follow-up studies, or relocate after surgery, resulting in high drop-out rates and consequent selection bias.[6], [9], [12], [21], [24], [28], [29], [30] Fourth, several follow-up studies are hampered by limited follow-up periods.[7], [9], [21], [22], [26], [30] Taken together, these limitations preclude solid and generalisable conclusions. A long-term population-based controlled study is one way to address these methodological shortcomings.

Here, we assessed mortality, psychiatric morbidity, and psychosocial integration expressed in criminal behaviour after sex reassignment in transsexual persons, in a total population cohort study with long-term follow-up information obtained from Swedish registers. The cohort was compared with randomly selected population controls matched for age and gender. We adjusted for premorbid differences regarding psychiatric morbidity and immigrant status. This study design sheds new light on transsexual persons' health after sex reassignment. It does not, however, address whether sex reassignment is an effective treatment or not.

Methods

National registers

The study population was identified by the linkage of several Swedish national registers, which contained a total of 13.8 million unique individuals. The Hospital Discharge Register (HDR, held by the National Board of Health and Welfare) contains discharge diagnoses, up to seven contributory diagnoses, external causes of morbidity or mortality, surgical procedure codes, and discharge date. Discharge diagnoses are coded according to the 8th (1969–1986), 9th (1987–1996), and 10th editions (1997-) of the International Classification of Diseases (ICD). The register covers virtually all psychiatric inpatient episodes in Sweden since 1973. Discharges that occurred up to 31 December 2003 were included. Surgical procedure codes could not be used for this study due to the lack of a specific code for sex reassignment surgery. The Total Population Register (TPR, held by Statistics Sweden) is comprised of data about the entire Swedish population. Through linkage with the Total Population Register it was possible to identify birth date and birth gender for all study subjects. The register is updated every year and gender information was available up to 2004/2005. The Medical Birth Register (MBR) was established in 1973 and contains birth data, including gender of the child at birth. National censuses based on mandatory self-report questionnaires completed by all adult citizens in 1960, 1970, 1980, and 1990 provided information on individuals, households, and dwellings, including gender, living area, and highest educational level. Complete migration data, including country of birth for immigrants for 1969–2003, were obtained from the TPR. In addition to educational information from the censuses, we also obtained highest educational level data for 1990 and 2000 from the Register of

Education. The Cause of Death Register (CDR, Statistics Sweden) records all deaths in Sweden since 1952 and provided information on date of death and causes of death. Death events occurring up to 31 December 2003 are included in the study. The Crime Register (held by the National Council of Crime Prevention) provided information regarding crime type and date on all criminal convictions in Sweden during the period 1973–2004. Attempted and aggravated forms of all offences were also included. All crimes in Sweden are registered regardless of insanity at the time of perpetration; for example, for individuals who suffered from psychosis at the time of the offence. Moreover, conviction data include individuals who received custodial or non-custodial sentences and cases where the prosecutor decided to caution or fine without court proceedings. Finally, Sweden does not differ considerably from other members of the European Union regarding rates of violent crime and their resolution.[31]

Study population, identification of sex-reassigned persons (exposure assessment)

The study was designed as a population-based matched cohort study. We used the individual national registration number, assigned to all Swedish residents, including immigrants on arrival, as the primary key through all linkages. The registration number consists of 10 digits; the first six provide information of the birth date, whereas the ninth digit indicates the gender. In Sweden, a person presenting with gender dysphoria is referred to one of six specialised gender teams that evaluate and treat patients principally according to international consensus guidelines: Standards of Care.[3] With a medical certificate, the person applies to the National Board of Health and Welfare to receive permission for sex reassignment surgery and a change of legal sex status. A new national registration number signifying the new gender is assigned after sex reassignment surgery. The National Board of Health and Welfare maintains a link between old and new national registration numbers, making it possible to follow individuals undergoing sex reassignment across registers and over time. Hence, sex reassignment surgery in Sweden requires (i) a transsexualism diagnosis and (ii) permission from the National Board of Health and Welfare.

A person was defined as exposed to sex reassignment surgery if two criteria were met: (i) at least one inpatient diagnosis of gender identity disorder diagnosis without concomitant psychiatric diagnoses in the Hospital Discharge Register, and (ii) at least one discrepancy between gender variables in the Medical Birth Register (from 1973 and onwards) or the National Censuses from 1960, 1970, 1980, or 1990 and the latest gender designation in the Total Population Register. The first criterion was employed to capture the hospitalization for sex reassignment surgery that serves to secure the diagnosis and provide a time point for sex reassignment surgery; the plastic surgeons namely record the reason for sex reassignment surgery, i.e., transsexualism, but not any co-occurring psychiatric morbidity. The second criterion was used to ensure that the person went through all steps in sex-reassignment and also changed sex legally.

The date of sex reassignment (start of follow-up) was defined as the first occurrence of a gender identity disorder diagnosis, without any other concomitant psychiatric disorder, in the Hospital Discharge Register after the patient changed sex status (any discordance in sex designation across the Censuses, Medical Birth, and Total Population registers). If this information was missing, we used instead the closest date in the Hospital Discharge Register on which the patient was diagnosed with gender identity disorder without concomitant psychiatric disorder prior to change in sex status. The reason for prioritizing the use of a gender identity disorder diagnosis *after* changed sex status *before* was to avoid overestimating person-years at risk of sex-reassigned person.

Using these criteria, a total of 804 patients with gender identity disorder were identified, whereof 324 displayed a shift in the gender variable during the period 1973–2003. The 480 persons that did not shift gender variable comprise persons who either did not apply, or were not approved, for sex reassignment surgery. Moreover, the ICD 9 code 302 is a non specific code for sexual disorders. Hence, this group might also comprise persons that were hospitalized for sexual disorders other than transsexualism. Therefore, they were omitted from further analyses. Of the remaining 324 persons, 288 were identified with the gender identity diagnosis *after* and 36 *before* change of sex status. Out of the 288 persons identified *after* changed sex status, 185 could also be identified *before* change in sex status. The median time lag between the hospitalization *before* and *after* sex change for these 185 persons was 0.96 years (mean 2.2 years, SD 3.3).

Gender identity disorder was coded according to ICD-8: 302.3 (transsexualism) and 302.9 (sexual deviation NOS); ICD-9: 302 (overall code for sexual deviations and disorders, more specific codes were not available in ICD-9); and ICD-10: F64.0 (transsexualism), F64.1 (dual-role transvestism), F64.8 (other gender identity disorder), and F64.9 (gender identity disorder NOS). Other psychiatric disorders were coded as ICD-8: 290-301 and 303-315; ICD-9: 290-301 and 303-319; and ICD-10: F00-F63 as well as F65-F99.

Identification of population-based controls (unexposed group)

For each exposed person (N=324), we randomly selected 10 unexposed controls. A person was defined as unexposed if there were no discrepancies in sex designation across the Censuses, Medical Birth, and Total Population registers *and* no gender identity disorder diagnosis according to the Hospital Discharge Register. Control persons were matched by sex and birth year and had to be alive and residing in Sweden at the estimated sex reassignment date of the case person. To study possible gender-specific effects on outcomes of interest, we used two different control groups: one with the same sex as the case individual at birth (birth sex matching) and the other with the sex that the case individual had been reassigned to (final sex matching).

Outcome measures

We studied mortality, psychiatric morbidity, accidents, and crime following sex reassignment. More specifically, we investigated: (1) all-cause mortality, (2) death by definite/uncertain suicide, (3) death by cardiovascular disease, and (4) death by tumour. Morbidity included (5) any psychiatric disorder (gender identity disorders excluded), (6) alcohol/drug misuse and dependence, (7) definite/uncertain suicide attempt, and (8) accidents. Finally, we addressed court convictions for (9) any criminal offence and (10) any violent offence. Each individual could contribute with several outcomes, but only one event per outcome. Causes of death (Cause of Death Registry from 1952 and onwards) were defined according to ICD as suicide (ICD-8 and ICD-9 codes E950-E959 and E980-E989, ICD-10 codes X60-X84 and Y10-Y34); cardiovascular disease (ICD-8 codes 390-458, ICD-9 codes 390-459, ICD-10 codes I00-I99); neoplasms (ICD-8 and ICD-9 codes 140-239, ICD-10 codes C00-D48), any psychiatric disorder (gender identity

disorders excluded); (ICD-8 codes 290-301 and 303-315, ICD-9 codes 290-301 and 303-319, ICD-10 codes F00-F63 and F65-F99); alcohol/drug abuse and dependence (ICD-8 codes 303-304, ICD-9 codes 303-305 (tobacco use disorder excluded), ICD-10 codes F10-F16 and F18-F19 (x5 excluded)); and accidents (ICD-8 and ICD-9 codes E800-E929, ICD-10 codes V01-X59).

Any criminal conviction during follow-up was counted; specifically, violent crime was defined as homicide and attempted homicide, aggravated assault and assault, robbery, threatening behaviour, harassment, arson, or any sexual offense.[32]

Covariates

Severe psychiatric morbidity was defined as inpatient care according to ICD-8 codes 291, 295-301, 303-304, and 307; ICD-9 codes 291-292, 295-298, 300-301, 303-305 (tobacco use disorder excluded), 307.1, 307.5, 308-309, and 311; ICD-10 codes F10-F16, F18-F25, F28-F45, F48, F50, and F60-F62. Immigrant status, defined as individuals born abroad, was obtained from the Total Population Register. All outcome/covariate variables were dichotomized (i.e., affected or unaffected) and without missing values.

Statistical analyses

Each individual contributed person-time from study entry (for exposed: date of sex reassignment; for unexposed: date of sex reassignment of matched case) until date of outcome event, death, emigration, or end of study period (31 December 2003), whichever came first. The association between exposure (sex reassignment) and outcome (mortality, morbidity, crime) was measured by hazard ratios (HR) with 95% CIs, taking follow-up time into account. HRs were estimated from Cox proportional hazard regression models, stratified on matched sets (1:10) to account for the matching by sex, age, and calendar time (birth year). We present crude HRs (though adjusted for sex and age through matching) and confounder-adjusted HRs [aHRs] for all outcomes. The two potential confounders, immigrant status (yes/no) and history of severe psychiatric morbidity (yes/no) prior to sex reassignment, were chosen based on previous research[18],[33] and different prevalence across cases and controls (Table 1).

Characteristics of baseline	Sex-reassigned subjects (N=324)	Both sex-matched controls (N=3,238)	Single sex-matched controls (N=3,238)
Gender			
Female at birth, male after sex change	122 (37.6%)	1,221 (37.7%)	1,220 (37.6%)
Male at birth, female after sex change	191 (58.4%)	1,997 (61.9%)	1,997 (61.9%)
Average age at study entry (years) (SD, interquartile)			
Female at birth, male after sex change	35.9 (6.7, 23-45)	35.9 (6.7, 23-45)	35.9 (6.7, 23-45)
Male at birth, female after sex change	36.3 (6.5, 21-48)	36.3 (6.5, 21-48)	36.3 (6.5, 21-48)
Both genders	36.1 (6.7, 23-48)	36.1 (6.7, 23-48)	36.1 (6.7, 23-48)
Immigrant status			
Female at birth, male after sex change	28 (23.0%)	116 (9.5%)	109 (9.0%)
Male at birth, female after sex change	42 (22.5%)	176 (8.8%)	166 (8.3%)
Both genders	70 (21.8%)	292 (9.2%)	275 (8.6%)
Less than 10 years of schooling prior to entry vs. 10 years or more			
Female at birth, male after sex change	89 (72.9%) (N=122)	474 (38.8%) (N=1,221)	462 (37.8%) (N=1,220)
Male at birth, female after sex change	41 (21.5%) (N=191)	405 (20.3%) (N=1,997)	399 (19.9%) (N=1,997)
All individuals with data	130 (40.2%) (N=324)	1,079 (33.1%) (N=3,238)	1,061 (32.7%) (N=3,238)
Psychiatric morbidity prior to study entry			
Female at birth, male after sex change	22 (17.9%)	27 (2.2%)	41 (3.3%)
Male at birth, female after sex change	38 (19.9%)	78 (6.4%)	72 (5.8%)
Both genders	60 (18.6%)	105 (3.3%)	113 (3.5%)
Never hospitalized for any psychiatric disorder prior to study entry			
Female at birth, male after sex change	13 (10.6%)	188 (15.4%)	198 (16.2%)
Male at birth, female after sex change	28 (14.7%)	233 (11.7%)	222 (11.1%)
Both genders	41 (12.7%)	421 (13.1%)	420 (12.9%)

Table 1. Baseline characteristics among sex-reassigned subjects in Sweden (N=324) and population controls matched for birth year and sex.
<https://doi.org/10.1371/journal.pone.0016885.t001>

Gender-separated analyses were performed and a Kaplan-Meier survival plot graphically illustrates the survival of the sex-reassigned cohort and matched controls (all-cause mortality) over time. The significance level was set at 0.05 (all tests were two-sided). All outcome/covariate variables were without missing values, since they are generated from register data, which are either present (affected) or missing (unaffected). The data were analysed using SAS version 9.1 (SAS Institute Inc., Cary, NC, USA).

Ethics

The data linking of national registers required for this study was approved by the IRB at Karolinska Institutet, Stockholm. All data were analyzed anonymously; therefore, informed consent for each individual was neither necessary nor possible.

Results

We identified 324 transsexual persons (exposed cohort) who underwent sex reassignment surgery and were assigned a new legal sex between 1973 and 2003. These constituted the sex-reassigned (exposed) group. Fifty-nine percent (N=191) of sex-reassigned persons were male-to-females and 41% (N=133) female-to-males, yielding a sex ratio of 1.4:1 (Table 1).

The average follow-up time for all-cause mortality was 11.4 (median 9.1) years. The average follow-up time for the risk of being hospitalized for any psychiatric disorder was 10.4 (median 8.1).

Characteristics prior to sex reassignment

Table 1 displays demographic characteristics of sex-reassigned and control persons prior to study entry (sex reassignment). There were no substantial differences between female-to-males and male-to-females regarding measured baseline characteristics. Immigrant status was twice as common among transsexual individuals compared to controls, living in an urban area somewhat more common, and higher education about equally prevalent. Transsexual individuals had been hospitalized for psychiatric morbidity other than gender identity disorder prior to sex reassignment about four times more often than controls. To adjust for these baseline discrepancies, hazard ratios adjusted for immigrant status and psychiatric morbidity prior to baseline are presented for all outcomes [aHRs].

Mortality

Table 2 describes the risks for selected outcomes during follow-up among sex-reassigned persons, compared to same-age controls of the same birth sex. Sex-reassigned transsexual persons of both genders had approximately a three times higher risk of all-cause mortality than controls, also after adjustment for covariates. Table 2 separately lists the outcomes depending on when sex reassignment was performed: during the period 1973–1988 or 1989–2003. Even though the overall mortality was increased across both time periods, it did not reach statistical significance for the period 1989–2003. The Kaplan-Meier curve (Figure 1) suggests that survival of transsexual persons started to diverge from that of matched controls after about 10 years of follow-up. The cause-specific mortality from suicide was much higher in sex-reassigned persons, compared to matched controls. Mortality due to cardiovascular disease was moderately increased among the sex-reassigned, whereas the numerically increased risk for malignancies was borderline statistically significant. The malignancies were lung cancer (N=3), tongue cancer (N=1), pharyngeal cancer (N=1), pancreas cancer (N=1), liver cancer (N=1), and unknown origin (N=1).

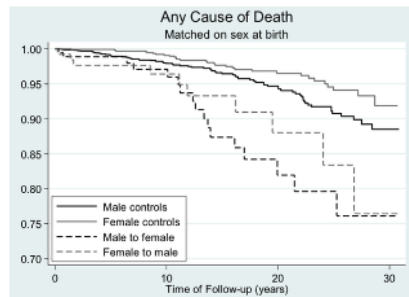


Figure 1. Death from any cause as a function of time after sex reassignment among 324 transsexual persons in Sweden (male-to-female: N=191, female-to-male: N=133), and population controls matched on birth year. <https://doi.org/10.1371/journal.pone.0016885.g001>

	Number of events (n/N)	Observed incidence rate per 1000 person years 1973–2003 (95% CI)	Crude		Adjusted ^a		Adjusted ^b	
			Incidence rate 200% CI	Relative risk 1973–2003	Relative risk 1973–2003	Relative risk 1973–1988	Relative risk 1989–2003	
Gender								
All death	2766	22.03-19.92	22.03-19.92	2.97-3-0.2	2.87-3-0.42	2.77-3-0.58	19.02-11.28	
Death by suicide	193	27.31-24.28	61.03-52.8	18.2-20-0.08	18.17-20-0.08	N/A	N/A	
Death by cardiovascular disease	842	28.31-24.21	17.03-14.6	23.7-2-5.6	23.7-2-5.6	N/A	N/A	
Death by malignancy	978	22.31-14.28	19.03-11.28	2.77-3-0.42	2.77-3-0.42	N/A	N/A	
All psychiatric morbidity ^c	98712	707.14-20.28	4.23-0-0.8	4.23-0-0.8	2.87-3-0.42	2.77-3-0.42	2.11-4-4.2	
Substance misuse	2048	59.03-8.9	18.03-2.8	3.07-2-0.6	3.07-2-0.6	N/A	N/A	
Suicide attempt	2048	79.03-11.46	10.03-1.46	7.9-07-1.04	4.9-2-0.65	7.9-0.1-15.9	20.02-2-1.8	
All crimes	20202	50.03-12.75	57.03-8-0.5	1.87-2-2.3	1.87-2-2.1	1.87-2-2.5	11.05-2-2.8	
Violent crime	6920	162.14-20.28	69.03-10.5	1.97-2-2.5	1.97-2-2.5	1.97-2-2.4	67.03-11.9	
Violent crime	1863	22.02-14.21	14.13-10.18	2.77-3-0.48	2.77-3-0.48	N/A	N/A	

Notes:
^a Adjusted for psychiatric morbidity prior to baseline and demographic status.
^b Stratification for gender identity disorder same as used.
^c Not applicable due to missing data.
 doi:10.1371/journal.pone.0016885.t002

Table 2. Risk of various outcomes among sex-reassigned subjects in Sweden (N=324) compared to population controls matched for birth year and birth sex. <https://doi.org/10.1371/journal.pone.0016885.t002>

Psychiatric morbidity, substance misuse, and accidents

Sex-reassigned persons had a higher risk of inpatient care for a psychiatric disorder other than gender identity disorder than controls matched on birth year and birth sex (Table 2). This held after adjustment for prior psychiatric morbidity, and was true regardless of whether sex reassignment occurred before or after 1989. In line with the increased mortality from suicide, sex-reassigned individuals were also at a higher risk for suicide attempts, though this was not statistically significant for the time period 1989–2003. The risks of being hospitalised for substance misuse or accidents were not significantly increased after adjusting for covariates (Table 2).

Crime rate

Transsexual individuals were at increased risk of being convicted for any crime or violent crime after sex reassignment (Table 2); this was, however, only significant in the group who underwent sex reassignment before 1989.

Gender differences

Comparisons of female-to-males and male-to-females, although hampered by low statistical power and associated wide confidence intervals, suggested mostly similar risks for adverse outcomes (Tables S1 and S2). However, violence against self (suicidal behaviour) and others (violent) crime constituted important exceptions. First, male-to-females had significantly increased risks for suicide attempts compared to both female (aHR 9.3; 95% CI 4.4–19.9) and male (aHR 10.4; 95% CI 4.9–22.1) controls. By contrast, female-to-males had significantly increased risk of suicide attempts only compared to male controls (aHR 6.8; 95% CI 2.1–21.6) but not compared to female controls (aHR 1.9; 95% CI 0.7–4.8). This suggests that male-to-females are at higher risk for suicide attempts after sex reassignment, whereas female-to-males maintain a female pattern of suicide attempts after sex reassignment (Tables S1 and S2).

Second, regarding any crime, male-to-females had a significantly increased risk for crime compared to female controls (aHR 6.6; 95% CI 4.1–10.8) but not compared to males (aHR 0.8; 95% CI 0.5–1.2). This indicates that they retained a male pattern regarding criminality. The same was true regarding violent crime. By contrast, female-to-males had higher crime rates than female controls (aHR 4.1; 95% CI 2.5–6.9) but did not differ from male controls. This indicates a shift to a male pattern regarding criminality and that sex reassignment is coupled to increased crime rate in female-to-males. The same was true regarding violent crime.

Discussion

Principal findings and comparison with previous research

We report on the first nationwide population-based, long-term follow-up of sex-reassigned transsexual persons. We compared our cohort with randomly selected population controls matched for age and gender. The most striking result was the high mortality rate in both male-to-females and female-to-males, compared to the general population. This contrasts with previous reports (with one exception[8]) that did not find an increased mortality rate after sex reassignment, or only noted an increased risk in certain subgroups.[7], [9], [10], [11] Previous clinical studies might have been biased since people who regard their sex reassignment as a failure are more likely to be lost to follow-up. Likewise, it is cumbersome to track deceased persons in clinical follow-up studies. Hence, population-based register studies like the present are needed to improve representativity.[19], [34]

The poorer outcome in the present study might also be explained by longer follow-up period (median >10 years) compared to previous studies. In support of this notion, the survival curve (Figure 1) suggests increased mortality from ten years after sex reassignment and onwards. In accordance, the overall mortality rate was only significantly increased for the group operated before 1989. However, the latter might also be explained by improved health care for transsexual persons during 1990s, along with altered societal attitudes towards persons with different gender expressions.[35]

Mortality due to cardiovascular disease was significantly increased among sex reassigned individuals, albeit these results should be interpreted with caution due to the low number of events. This contrasts, however, a Dutch follow-up study that reported no increased risk for cardiovascular events.[10], [11] A recent meta-analysis concluded, however, that data on cardiovascular outcome after cross-sex steroid use are sparse, inconclusive, and of very low quality.[34]

With respect to neoplasms, prolonged hormonal treatment might increase the risk for malignancies,[36] but no previous study has tested this possibility. Our data suggested that the cause-specific risk of death from neoplasms was increased about twice (borderline statistical significance). These malignancies (see Results), however, are unlikely to be related to cross-hormonal treatment.

There might be other explanations to increased cardiovascular death and malignancies. Smoking was in one study reported in almost 50% by the male-to-females and almost 20% by female-to-males.[9] It is also possible that transsexual persons avoid the health care system due to a presumed risk of being discriminated.

Mortality from suicide was strikingly high among sex-reassigned persons, also after adjustment for prior psychiatric morbidity. In line with this, sex-reassigned persons were at increased risk for suicide attempts. Previous reports [6], [8], [10], [11] suggest that transsexualism is a strong risk factor for suicide, also after sex reassignment, and our long-term findings support the need for continued psychiatric follow-up for persons at risk to prevent this.

Inpatient care for psychiatric disorders was significantly more common among sex-reassigned persons than among matched controls, both before and after sex reassignment. It is generally accepted that transsexuals have more psychiatric ill-health than the general population prior to the sex reassignment.[18], [21], [22], [33] It should therefore come as no surprise that studies have found high rates of depression,[9] and low quality of life[16], [25] also after sex reassignment. Notably, however, in this study the increased risk for psychiatric hospitalisation persisted even after adjusting for psychiatric hospitalisation prior to sex reassignment. This suggests that even though sex reassignment alleviates gender dysphoria, there is a need to identify and treat co-occurring psychiatric morbidity in transsexual persons not only before but also after sex reassignment.

Criminal activity, particularly violent crime, is much more common among men than women in the general population. A previous study of all applications for sex reassignment in Sweden up to 1992 found that 9.7% of male-to-female and 6.1% of female-to-male applicants had been prosecuted for a crime.[33] Crime after sex reassignment, however, has not previously been studied. In this study, male-to-female individuals had a higher risk for criminal convictions compared to female controls but not compared to male controls. This suggests that the sex reassignment procedure neither increased nor decreased the risk for criminal offending in male-to-females. By contrast, female-to-males were at a higher risk for criminal convictions compared to female controls and did not differ from male controls, which suggests increased crime proneness in female-to-males after sex reassignment.

Strengths and limitations of the study

Strengths of this study include nationwide representativity over more than 30 years, extensive follow-up time, and minimal loss to follow-up. Many previous studies suffer from low outcome ascertainment,[6], [9], [21], [29] whereas this study has captured almost the entire population of sex-reassigned transsexual individuals in Sweden from 1973–2003. Moreover, previous outcome studies have mixed pre-operative and post-operative transsexual persons,[22], [37] while we included only post-operative transsexual persons that also legally changed sex. Finally, whereas previous studies either lack a control group or use standardised mortality rates or standardised incidence rates as comparisons,[9], [10], [11] we selected random population controls matched by birth year, and either birth or final sex.

Given the nature of sex reassignment, a double blind randomized controlled study of the result after sex reassignment is not feasible. We therefore have to rely on other study designs. For the purpose of evaluating whether sex reassignment is an effective treatment for gender dysphoria, it is reasonable to compare reported gender dysphoria pre and post treatment. Such studies have

been conducted either prospectively[7], [12] or retrospectively,[5], [6], [9], [22], [25], [26], [29], [38] and suggest that sex reassignment of transsexual persons improves quality of life and gender dysphoria. The limitation is of course that the treatment has not been assigned randomly and has not been carried out blindly.

For the purpose of evaluating the safety of sex reassignment in terms of morbidity and mortality, however, it is reasonable to compare sex reassigned persons with matched population controls. The caveat with this design is that transsexual persons before sex reassignment might differ from healthy controls (although this bias can be statistically corrected for by adjusting for baseline differences). It is therefore important to note that the current study is only informative with respect to transsexuals persons health after sex reassignment; no inferences can be drawn as to the effectiveness of sex reassignment as a treatment for transsexualism. In other words, the results should not be interpreted such as sex reassignment *per se* increases morbidity and mortality. Things might have been even worse without sex reassignment. As an analogy, similar studies have found increased somatic morbidity, suicide rate, and overall mortality for patients treated for bipolar disorder and schizophrenia.[39], [40] This is important information, but it does not follow that mood stabilizing treatment or antipsychotic treatment is the culprit.

Other facets to consider are first that this study reflects the outcome of psychiatric and somatic treatment for transsexualism provided in Sweden during the 1970s and 1980s. Since then, treatment has evolved with improved sex reassignment surgery, refined hormonal treatment,[11], [41] and more attention to psychosocial care that might have improved the outcome. Second, transsexualism is a rare condition and Sweden is a small country (9.2 million inhabitants in 2008). Hence, despite being based on a comparatively large national cohort and long-term follow-up, the statistical power was limited. Third, regarding psychiatric morbidity after sex reassignment, we assessed inpatient psychiatric care. Since most psychiatric care is provided in outpatient settings (for which no reliable data were available), underestimation of the *absolute* prevalences was inevitable. However, there is no reason to believe that this would change the *relative risks* for psychiatric morbidity unless sex-reassigned transsexual individuals were more likely than matched controls to be admitted to hospital for any given psychiatric condition.

Finally, to estimate start of follow-up, we prioritized using the date of a gender identity disorder diagnosis *after* changed sex status over *before* changed sex status, in order to avoid overestimating person-years at risk after sex-reassignment. This means that adverse outcomes might have been underestimated. However, given that the median time lag between the hospitalization before and after change of sex status was less than a year (see [Methods](#)), this maneuver is unlikely to have influenced the results significantly. Moreover, all deaths will be recorded regardless of this exercise and mortality hence correctly estimated.

Conclusion

This study found substantially higher rates of overall mortality, death from cardiovascular disease and suicide, suicide attempts, and psychiatric hospitalisations in sex-reassigned transsexual individuals compared to a healthy control population. This highlights that post surgical transsexuals are a risk group that need long-term psychiatric and somatic follow-up. Even though surgery and hormonal therapy alleviates gender dysphoria, it is apparently not sufficient to remedy the high rates of morbidity and mortality found among transsexual persons. Improved care for the transsexual group after the sex reassignment should therefore be considered.

Supporting Information

Table S1.

Risk of various outcomes in sex-reassigned persons in Sweden compared to population controls matched for birth year and birth sex .

<https://doi.org/10.1371/journal.pone.0016885.s001>
(DOCX)

Table S2.

Risk of various outcomes in sex-reassigned persons in Sweden compared to controls matched for birth year and final sex .

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(DOCX)

Author Contributions

Conceived and designed the experiments: CD PL AJ NL ML. Performed the experiments: MB AJ. Analyzed the data: CD PL MB AJ NL ML. Contributed reagents/materials/analysis tools: PL NL AJ. Wrote the paper: CD PL MB AJ NL ML.

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ORIGINAL RESEARCH—INTERSEX AND GENDER IDENTITY DISORDERS

Puberty Suppression in Adolescents With Gender Identity Disorder: A Prospective Follow-Up Study

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ABSTRACT

Introduction. Puberty suppression by means of gonadotropin-releasing hormone analogues (GnRHa) is used for young transsexuals between 12 and 16 years of age. The purpose of this intervention is to relieve the suffering caused by the development of secondary sex characteristics and to provide time to make a balanced decision regarding actual gender reassignment.

Aim. To compare psychological functioning and gender dysphoria before and after puberty suppression in gender dysphoric adolescents.

Methods. Of the first 70 eligible candidates who received puberty suppression between 2000 and 2008, psychological functioning and gender dysphoria were assessed twice: at T0, when attending the gender identity clinic, before the start of GnRHa; and at T1, shortly before the start of cross-sex hormone treatment.

Main Outcome Measures. Behavioral and emotional problems (Child Behavior Checklist and the Youth-Self Report), depressive symptoms (Beck Depression Inventory), anxiety and anger (the Spielberger Trait Anxiety and Anger Scales), general functioning (the clinician's rated Children's Global Assessment Scale), gender dysphoria (the Utrecht Gender Dysphoria Scale), and body satisfaction (the Body Image Scale) were assessed.

Results. Behavioral and emotional problems and depressive symptoms decreased, while general functioning improved significantly during puberty suppression. Feelings of anxiety and anger did not change between T0 and T1. While changes over time were equal for both sexes, compared with natal males, natal females were older when they started puberty suppression and showed more problem behavior at both T0 and T1. Gender dysphoria and body satisfaction did not change between T0 and T1. No adolescent withdrew from puberty suppression, and all started cross-sex hormone treatment, the first step of actual gender reassignment.

Conclusion. Puberty suppression may be considered a valuable contribution in the clinical management of gender dysphoria in adolescents. **de Vries ALC, Steensma TD, Doreleijers TAH, and Cohen-Kettenis PT. Puberty suppression in adolescents with gender identity disorder: A prospective follow-up study. J Sex Med 2011;8:2276–2283.**

Key Words. Gender Identity Disorder; Transsexualism; Puberty Suppression; Gonadotropin-Releasing Hormone Analogues; Adolescents

Introduction

In recent years, the possibility of puberty suppression has generated a new dimension to clinical management of adolescents with a gender

identity disorder (GID), the official diagnosis according to the Diagnostic and Statistical Manual of Mental Disorders, fourth edition, text revision (DSM-IV-TR) [1]. GID is characterized by feelings of gender dysphoria associated with strong

cross-gender identification as well as a persistent discomfort with one's natal sex. The most extreme form of GID, for which the term *transsexualism* is used in the International Classification of Diseases, Tenth Edition (ICD-10) [2], is accompanied by a strong wish for gender reassignment (GR). Gender dysphoria will remit in most prepubertal children with GID (e.g., references [3–6]), but not in most gender dysphoric adolescents [7,8]. Previous studies on the effectiveness of GR, starting with cross-sex hormone (CSH) treatment between the ages of 16 and 18, showed that the gender dysphoria had dissipated, 1 year or more after GR surgery and that psychological and social functioning of these young transsexuals was favorable [7,8]. Age 16 was chosen because some cognitive and emotional maturation is desirable when starting partially irreversible interventions and Dutch adolescents are legally competent to make a medical decision without parents' consent. However, as secondary sex characteristics develop before the age of 16, waiting for medical interventions is highly upsetting for most younger adolescents.

By prescribing gonadotropin-releasing hormone analogues (GnRHa), we enable gender dysphoric adolescents under the age of 16 to explore their gender dysphoria and the wish for GR without the distress of physical puberty development [9]. If an adolescent continues to pursue GR, arresting the development of secondary sex characteristics results in a lifelong advantage of a convincing physical appearance congruent with the desired gender role. Puberty suppression is fully reversible and can be discontinued should the adolescent decide not to pursue GR [10]. It is meant to prevent the emotional problems many young transsexuals experience when puberty has started [11,12]. While on GnRHa, a gender role change is not required, as no physical cross-gender characteristics develop yet. At the Amsterdam gender identity clinic, adolescents are eligible for puberty suppression when they are diagnosed with GID, have shown persistent gender dysphoria since childhood, live in a supportive environment, and have no serious comorbid psychiatric disorders that may interfere with the diagnostic assessment. For example, it can be complicated to disentangle whether the gender dysphoria evolves from a general feeling of being just "different" or a whether a true "core" cross-gender identity exists in adolescents who suffer from an autistic spectrum disorder [13]. In addition, adolescents should have physical changes of puberty to at least Tanner stage 2–3, confirmed by pubertal hormonal levels,

so that they have experienced some of their biological puberty [14–16].

GR commences with the partially irreversible CSH treatment. CSH may be prescribed when adolescents reach the age of 16 and fulfill the same eligibility criteria as for puberty suppression, with the exception of the Tanner stage criterion. The irreversible step of GR surgery is not performed prior to legal adulthood, at the age of 18.

Although some gender identity clinics have adopted this strategy of puberty suppression for adolescents with GID, other professionals working with gender dysphoric youth remain critical (e.g., Viner et al. [17]). They are concerned that GnRHa may be physically hazardous for adolescents and that psychological functioning may be negatively affected by suppressing puberty. Furthermore, they state that one's gender identity is still subject to change during adolescence and that adolescents are therefore unable to make decisions regarding GR.

Aims

Thus far, no studies have been performed that compare psychological functioning and gender dysphoria before and after the start of GnRHa. This prospective follow-up study assessed psychological functioning and gender dysphoria of the first 70 puberty suppressed young transsexuals before and after the start of puberty suppression.

Methods

Participants

Between 2000 and 2008, 140 of 196 consecutively referred adolescents were considered eligible for medical intervention at the Amsterdam gender identity clinic of the VU university medical center (VUmc) (for a description of the protocol, see Delemarre-van de Waal and Cohen-Kettenis [15]). The 29 adolescents who were age 16 years or older were prescribed CSH. The other 111 adolescents were prescribed GnRHa to suppress puberty. Participants of this study were the first 70 adolescents (mean age at assessment 13.6 [standard deviation {SD} = 1.8] years, 33 natal males and 37 natal females), who had subsequently started CSH treatment between the years 2003 and 2009.

Mean ages of the participants at first assessment, at the start of GnRHa treatment and at the start of CSH are presented in Table 1. Table 1 further shows participants' intelligence, as measured by either the Wechsler Intelligence Scale for Children, revised or

Table 1 General characteristics

Variable	All participants (N = 70)	Natal males (N = 33)	Natal females (N = 37)	<i>t</i> or χ^2	<i>df</i>	<i>P</i>
Age (in years)						
At assessment						
<i>M</i> (<i>SD</i>)	13.65 (1.85)	13.14 (1.55)	14.10 (1.99)	-2.24	66.82	0.028*
Range	11.1–17.0	11.1–16.8	11.2–17.0			
At start GnRHa [†]						
<i>M</i> (<i>SD</i>)	14.75 (1.92)	14.25 (1.79)	15.21 (1.95)	-2.14	67.93	0.036*
Range	11.3–18.6	11.6–17.9	11.5–18.6			
At start CSH [‡]						
<i>M</i> (<i>SD</i>)	16.64 (1.90)	16.24 (1.21)	16.99 (1.07)	-2.73	64.22	0.008*
Range	13.9–19.2	13.9–18.9	15.9–19.3			
Time between start GnRHa and CSH						
<i>M</i> (<i>SD</i>)	1.88 (1.05)	1.99 (0.94)	1.78 (1.16)	0.838	67.41	0.405
Range	0.42–5.06					
Full-Scale IQ						
<i>M</i> (<i>SD</i>)	98.2 (15.0)	97.1 (13.3)	99.2 (15.2)	-0.60	63.81	0.55
Range	70–131	70–123	72–131			
Parents' marital status N, (%)						
Both parents [§]	44 (62.9)	23 (69.7)	21 (56.8)	1.25	1	0.26
Other	26 (37.1)	10 (30.3)	16 (43.2)			
Parents' educational level [¶] , N (%)						
High	7 (10.6)	1 (3.3)	6 (16.7)	3.75	2	0.15
Middle	44 (66.7)	23 (76.7)	21 (58.3)			
Low	15 (22.7)	6 (20.0)	9 (25.0)			
Sexually attracted to, N (%)						
Own natal sex ^{**}	62 (88.6)	29 (87.9)	33 (89.2)	2.70	3	0.44
Both sexes	6 (8.6)	2 (6.1)	4 (10.8)			
Other ^{††}	2 (2.8)	2 (6.0)	0			

*Significant difference in mean age between natal males and natal females, $P < 0.05$.

[†]Gonadotropin-releasing hormone analogues.

[‡]Cross sex hormones.

[§]For marital status, the category "Both parents" included "adopted" ($n = 2$, 2.9%).

[¶]Parents' educational level was measured by a 5-point scale where 1 = university degree and 5 = grade 6 or less. Education level was divided in three groups; 1 = high, 2 and 3 = middle, and 4 and 5 = low.

^{**}Sexual attraction was coded as "attracted to own natal sex" when adolescents responded that they fell in love "only with boys or only with girls" or "mainly with boys or mainly with girls" (according to their natal sex) and as "attracted to both sexes" when their response was "somewhat more with boys or somewhat more girls" or "both with boys and girls."

^{††}The category "Other" consisted of one natal male who responded "only with girls" and one adolescent who responded "don't know yet." [Correction added after online publication 14-Jul-2010: "only with boys" has been changed to "only with girls".]

M = mean; *SD* = standard deviation.

third edition, or the Wechsler Adult Intelligence Scale, third edition, depending on age and year of assessment [18–20], marital status and educational level of the parents. Compared with natal males, the age of natal females was significantly higher at the time of first assessment, at the start of treatment with GnRHa, and at the start of treatment with CSH. Significant differences between natal males and natal females regarding IQ, marital status, and educational level of the parents were not observed.

Participants' sexual orientation at T1 is also presented in Table 1. Understandably, at T0, quite a few could not report on their sexual orientation because they sometimes were not older than 11 or 12 years. At T1, adolescents answered to the question, "Do you know if you fall in love with girls or boys?" Response categories were "only with boys, mainly with boys, somewhat more with boys, both with boys and girls, somewhat more with girls, mainly with girls, only with girls, or don't know yet". Participants were coded as "attracted to own natal sex" when their

answer was "only with boys or only with girls" or "mainly with boys or mainly with girls" (according to their natal sex) and as "attracted to both sexes" when their answer was "somewhat more with boys or girls" or "both with boys and girls." One natal male responded to the question with "only with boys" and one adolescent with "don't know yet." Separate results for both sexes are presented in Table 1.

When attending the clinic for the first time, the participants were not yet consistently and officially living in the cross-gender role (e.g., using a new first name). However, many were already seen and treated by their families and friends as a member of the other gender. During the diagnostic phase, which usually takes between half a year and a year, all but one made a more official transition. They adopted a new first name and asked their social environment (family, friends, school) to use the appropriate personal pronouns. A legal gender change could, of course, only be made after surgery at age 18.

Procedure

Participants were assessed twice: first, shortly after their attendance at the gender identity clinic (T0); and second, shortly before starting CSH treatment (T1). Both assessments were part of the diagnostic procedure during which eligibility is assessed for puberty suppression and CSH treatment.

The VUmc medical ethics committee approved the study, and all participants and their parents gave informed consent.

Main Outcome Measures

Psychological Functioning

Behavioral and emotional problems were measured by the Child Behavior Checklist (CBCL) and the Youth Self-Report (YSR) administered to the parents and the adolescents, respectively [21,22]. These are widely used questionnaires, assessing a broad range of behavioral and emotional problems, with good psychometric properties. In this study, *T*-scores and percentages in the clinical range were used for total problem behavior, internalizing and externalizing behavior. A *T*-score above 63 is considered to be in the clinical range. Of the Dutch adolescent norm group, the percentage scoring in the clinical range on the total problem score is 8–9% on both the CBCL and YSR [21,22]. Because the CBCL and YSR were intended to measure general behavior disturbance and not gender dysphoria (which was measured by other means), items referring to gender atypical behavior were scored as 0 for all the analyses in this study to avoid any artificial inflation (for a full description of the items that may refer to gender dysphoric behavior, see Cohen-Kettenis et al. [23]).

In addition, the adolescents completed the Beck Depression Inventory (BDI). This is a 21-item inventory in multiple-choice format measuring presence and degree of depression in adolescents and adults, with good psychometric properties [24]. The BDI-II has been developed to assess a depression. A score between 14 and 19 is suggestive of a mild depression, a score between 20 and 28 of a moderate depression, and a score of more than 29 of a severe depression. Furthermore, the Trait Anger and Anxiety (TPI and STAI, respectively) Scales of the State-Trait Personality Inventory were administered [25,26]. Only the “trait” versions were used, assessing the tendency to respond with anxiety or anger to a threatening or annoying situation, respectively. They each

contain 20 statements concerning the frequency with which the emotions of anger and anxiety are experienced. Each response can range from 1 (*almost never*) to 4 (*almost always*). Total scores are often used to assess and evaluate feelings of anxiety and anger over time. Finally, the attending clinician rated the Children’s Global Assessment Scale (CGAS), one of the most widely used measures of the overall severity of disturbance in children [27].

An official Dutch version of each of these instruments was available and used in this study.

Gender Dysphoria

The Utrecht Gender Dysphoria Scale (UGS) was used to measure adolescents’ gender dysphoria. This is a 12 item questionnaire on which the subject rates his or her agreement on a 5-point scale. An example of an item is “I feel a continuous desire to be treated as a man/woman.” The higher the score, the more gender dysphoria is indicated (for psychometric data, see Cohen-Kettenis and van Goozen [7]). In addition, the Body Image Scale (BIS) was administered to measure body satisfaction [28]. The scale consists of 30 body features, which the subject is asked to rate on a 5-point scale. Each of the 30 items falls into one of three basic groups based on its relative importance as a gender-defining body feature: primary sex characteristics, secondary sex characteristics, and neutral body characteristics. A higher score indicates more dissatisfaction. For this study, an adaptation for the Dutch population was used [29].

Statistical Analyses

Independent *t*-tests and Chi-square tests were used to ascertain differences between natal males and females.

Repeated-measures analysis of variance (ANOVA) was used to ascertain within-subject differences between baseline functioning (T0, before the start of GnRHa) and the start of CSH (T1), with sex entered as a between-subject variable.

Not all 70 adolescents completed both assessments, for example, because some lists were added to the test battery after the first eligible adolescents had started GnRHa. Only data of adolescents who administered questionnaires on both assessments could be used (CBCL, YSR: 54; BDI, TPI, STAI, CGAS, and UGS: 41; BIS: 57). Independent *t*-tests between mean scores on the CBCL, YSR, BDI, TPI, STAI, CGAS, UGS, and BIS of adolescents who completed both assess-

ments and mean scores of adolescents who completed only one of the assessments revealed no significant differences on all used measures, neither at T0 nor at T1.

Results

Psychological Functioning

Adolescents showed a significant decrease in behavioral and emotional problems over time on mean *T*-scores of the total problem scale, the internalizing and externalizing scale of both CBCL and YSR (see Table 2). In addition, the percentage of adolescents scoring in the clinical range significantly decreased between T0 and T1, on the CBCL total problem scale (44.4% vs. 22.2%, $\chi^2[1] = 6.00, P = 0.001$), and the internalizing scale (29.6% vs. 11.1%, $\chi^2[1] = 5.71, P = 0.017$) of the YSR. Depressive symptom scores on the BDI-II significantly decreased and global functioning ratings on the CGAS significantly increased between T0 and T1 (see Table 2). No significant change was observed in mean TPI or STAI scores over time, representing feelings of anger and anxiety, respectively (see Table 2).

With regard to sex differences, natal females showed significantly more problem behavior at T0 and T1 than natal males in mean externalizing *T*-scores of the CBCL and the YSR (see Table 2). In addition, compared with natal males, natal females reported significantly more feelings of anger and anxiety and had a significantly lower score on the global assessment of functioning scale at T0 and T1 (see Table 2).

There was no significant interaction effect between natal sex and time for any of the used measures.

Gender Dysphoria

No significant changes in gender dysphoria or body image scores between T0 and T1 emerged (see Table 3). Compared with natal males, natal females reported significantly more gender dysphoria and were more dissatisfied with their primary and secondary sex characteristics both at T0 and T1 (see Table 3). There was a significant interaction effect between natal sex and the changes of gender dysphoria between T0 and T1; natal females became more dissatisfied with their secondary ($F[1,55] = 14.59, P < 0.001$) and neutral ($F[1,55] = 15.26, P < 0.001$) sex characteristics compared with natal males.

Table 2 Psychological functioning of adolescents with gender dysphoria before (T0) and while on puberty suppression (T1)

	T0			T1			T0-T1 significance		Between-sex significance	
	All	Natal males	Natal females	All	Natal males	Natal females	<i>F</i> (df, errdf)	<i>P</i>	<i>F</i> (df, errdf)	<i>P</i>
	<i>M</i> (SD)	<i>M</i> (SD)	<i>M</i> (SD)	<i>M</i> (SD)	<i>M</i> (SD)	<i>M</i> (SD)				
CBCL (N = 54)										
Total <i>T</i> score	60.70 (12.76)	59.42 (11.78)	61.73 (13.60)	54.46 (11.23)	50.38 (10.57)	57.73 (10.82)	26.17 (1.52)	<0.001	2.64 (1.52)	0.110
Internalizing <i>T</i> -score	61.00 (12.21)	60.00 (9.51)	61.80 (14.12)	54.46 (10.22)	52.17 (9.81)	56.30 (10.33)	22.93 (1.52)	<0.001	1.16 (1.52)	0.286
Externalizing <i>T</i> -score	58.04 (12.99)	54.71 (12.91)	60.70 (12.64)	53.81 (11.86)	48.75 (10.22)	57.87 (11.66)	12.04 (1.52)	0.001	6.29 (1.52)	0.015
YSR (N = 54)										
Total <i>T</i> -score	55.46 (11.56)	53.56 (12.26)	57.10 (10.87)	50.00 (10.56)	47.84 (10.86)	51.86 (10.11)	16.24 (1.52)	<0.001	1.99 (1.52)	0.164
Internalizing <i>T</i> -score	56.04 (12.49)	55.88 (11.81)	56.17 (13.25)	49.78 (11.63)	49.24 (12.24)	50.24 (11.28)	15.05 (1.52)	<0.001	0.049 (1.52)	0.825
Externalizing <i>T</i> -score	53.30 (11.87)	48.72 (11.83)	57.24 (10.59)	49.98 (9.35)	46.52 (9.23)	52.97 (8.51)	7.26 (1.52)	0.009	9.14 (1.52)	0.004
Depression (BDI) (N = 41)	8.31 (7.12)	5.71 (4.31)	10.34 (8.24)	4.95 (6.72)	3.50 (4.58)	6.09 (7.93)	9.28 (1.39)	0.004	3.85 (1.39)	0.057
Trait anger (TPI) (N = 41)	18.29 (5.54)	5.22 (2.76)	6.43 (2.78)	17.88 (5.24)	5.00 (3.07)	6.39 (2.59)	0.46 (1.39)	0.503	5.70 (1.39)	0.022
Trait anxiety (STAI) (N = 41)	39.43 (10.07)	4.33 (2.68)	7.00 (2.36)	37.95 (9.38)	4.39 (2.64)	6.17 (2.62)	1.21 (1.39)	0.276	16.07 (1.39)	<0.001
Global functioning (CGAS) (N = 41)	70.24 (10.12)	73.10 (8.44)	67.25 (11.06)	73.90 (9.63)	77.33 (8.69)	70.30 (9.44)	8.76 (1.39)	0.005	5.77 (1.39)	0.021

M = mean; *SD* = standard deviation; CBCL = Child Behavior Checklist; YSR = Youth Self Report; BDI = Beck Depression Inventory; TPI = Spielberger's Trait Anger Scale; STAI = Spielberger's Trait Anxiety Scale; CGAS = Children's Global Assessment Scale; df = degrees of freedom.

Table 3 Gender dysphoria of adolescents with gender dysphoria before (T0) and while on puberty suppression (T1)

	T0			T1			T0-T1 significance		Between-sex significance	
	All	Natal males	Natal females	All	Natal males	Natal females	F (df, erraf)	p	F (df, erraf)	P
	M (SD)	M (SD)	M (SD)	M (SD)	M (SD)	M (SD)				
Gender dysphoria scale (UGDS) (N = 41)	53.20 (7.91)	47.95 (9.70)	56.57 (3.89)	53.9 (17.42)	49.67 (9.47)	56.62 (4.00)	0.959 (1,39)	0.333	15.98 (1,39)	<0.001
Body image (BIS) (N = 57)	4.10 (0.56)	4.02 (0.61)	4.16 (0.52)	3.98 (0.71)	3.74 (0.78)	4.17 (0.58)	2.18 (1,55)	0.145	4.11 (1,55)	0.047
Primary sex characteristics	2.74 (0.65)	2.66 (0.50)	2.81 (0.76)	2.82 (0.68)	2.39 (0.69)	3.18 (0.42)	0.327 (1,55)	0.569	11.57 (1,55)	0.001
Neutral characteristics	2.41 (0.63)	2.60 (0.58)	2.24 (0.62)	2.47 (0.56)	2.32 (0.59)	2.61 (0.50)	0.248 (1,55)	0.620	0.081 (1,55)	0.777

M = mean; SD = standard deviation; UGDS = Utrecht Gender Dysphoria Scale; BIS: Body Image Scale; df = degrees of freedom.

Discussion

This is the first prospective study showing that psychological functioning of adolescents diagnosed with GID had improved in many respects after an average of nearly 2 years of GnRHa use. Adolescents showed fewer behavioral and emotional problems, reported fewer depressive symptoms, feelings of anxiety and anger remained stable, and their general functioning improved.

There may be various explanations for these results. Foremost, suppression of the development of secondary sex characteristics resulted in a physical appearance allowing for a smooth transition into the desired gender role. In adult transsexuals, postoperative psychopathology is associated with difficulties in passing in their new gender [30]. Furthermore, by receiving puberty suppression, gender dysphoric adolescents may trust that GR will be offered if needed. In addition, stigmatization and discrimination (e.g., references [11,31].) may have been limited because the adolescents in this study received extensive family or other social support. Finally, the adolescents were all regularly seen by one of the clinic’s psychologists or psychiatrists. Psychological or social problems could thus be timely addressed. All these factors may have contributed to the psychological well-being of these gender dysphoric adolescents.

As expected, puberty suppression did not result in an amelioration of gender dysphoria. Previous studies have shown that only GR consisting of CSH treatment and surgery may end the actual gender dysphoria [7,8,32]. None of the gender dysphoric adolescents in this study renounced their wish for GR during puberty suppression. This finding supports earlier studies showing that young adolescents who had been carefully diagnosed show persisting gender dysphoria into late adolescence or young adulthood [7,8].

Although both adolescent natal boys and girls had profited from GnRHa treatment, there were some sex differences. At baseline, gender dysphoric natal males were younger and showed less problem behavior than natal females. With a mean age of 14, most natal females had developed breasts and had their menarche. Why natal female gender dysphoric adolescents do not come to the gender identity clinic at an earlier age should be investigated further. One hypothesis is that parents of gender dysphoric natal female adolescents may consider some puberty development (e.g., menstruation) not as dramatic as beard growth or breaking of the voice in gender dyspho-

ric boys because it is less visible for the environment. The higher problem scores of natal females in this study may indicate that this assumption would be erroneous. Another explanation is that, in the period that this very first cohort received GnRHa treatment, the public as well as referring clinicians may not have been aware yet that girls might also profit from puberty suppression. In further studies, this explanation could be tested. Finally, a reason for a later referral of natal females may be that the threshold for seeking clinical help in girls is higher than in boys. Indeed, prepubertal girls with GID seen at two large gender identity clinics appeared to show more extreme gender dysphoria than boys and came to the clinics at a later age [23].

Some limitations of this study warrant comment. This study of psychological functioning and gender dysphoria did not focus on social and sexual relationships. Although it is not likely that the gender dysphoric adolescents would report favorable psychological functioning in the absence of satisfactory relationships with their peers and family, the topic deserves more attention. This is also applicable to sexuality, which is a complicated issue for young people having primary sex characteristics that do not match their gender identity.

Furthermore, this study only focused on the functioning of gender dysphoric adolescents before the actual GR. It showed that their situation improved, as compared with the pre-GnRHa phase. Long-term follow-up studies, however, should be performed to examine whether these adolescents will be able to maintain their relatively good functioning into their adult years after GR. In addition, effects of GnRHa on physical parameters are needed before broad conclusions can be drawn regarding the safety of puberty suppression [15].

Finally, this study was a longitudinal observational descriptive cohort study. Ideally, a blinded randomized controlled trial design should have been performed. However, it is highly unlikely that adolescents would be motivated to participate. Also, disallowing puberty suppression, resulting in irreversible development of secondary sex characteristics, may be considered unethical [33].

Conclusions

Gender dysphoria did not resolve as a result of puberty suppression. Psychological functioning, however, improved in various respects. We cautiously conclude that puberty suppression may be a

valuable element in clinical management of adolescent gender dysphoria. It relieves the acute distress accompanying gender dysphoria. Hence, by offering youths the possibility of healthy psychological development, puberty suppression helps in the exploration of suitable treatment options and making a balanced decision regarding GR.

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Written evidence submitted by British Association of Gender Identity Specialists to the Transgender Equality Inquiry

Dear Mrs Miller,

I write in my capacity as the President of the British Association of Gender Identity Specialists.

The Association numbers over a hundred members and comprises the overwhelming majority of all clinicians working in every Gender Identity Clinic in the British Isles. The membership is drawn from all the involved disciplines and includes Speech Therapists, Psychologists, Psychiatrists, Surgeons, Psychosexual Counsellors, Nurses, Occupational Therapists, Endocrinologists, General Practitioners and Social Workers.

Firstly, the Association members who deal with Transyouth almost all work at the Tavistock NHS Trust. These members, with decades of experience and working in the only major Child and Adolescent clinic in the UK are, as I understand it, separately writing to the Committee. The Association advises that their separate communication summarises matters.

Secondly, considering proper terminology and definitions, it should be noted that anybody working for the NHS is obliged to record their diagnoses in International Classification of Diseases version 10 (ICD) format, as are all other health institutions, private or state, in every other country in the world. In the USA, where psychiatric diagnoses are often made in the locally based Diagnostic and Statistical Manual (DSM) the state has to translate its DSM diagnoses into ICD before submitting them to the World Health Organisation.

The current ICD diagnoses applicable to people with gender dysphoria don't sit particularly comfortably with contemporary UK clinicians, truth be told, but we are obliged to use them. They are due for revision fairly shortly, in any case, and are likely to be changed to something both more palatable and more clinically useful, as has already happened with DSM.

Considering looser, day to day, terminology there is, at all times, an ever shifting set of terms for the broad spectrum of gender identities (particularly non-binary) and no doubt with the passing of the years some currently used terms will flourish and become permanent features of language whilst others will fall by the wayside. It is not possible at this point to say which will burgeon and which will die away, as is ever the case with the evolution of language.

The provision of data in this field is indeed less good than one would wish. Estimates of population prevalence have varied wildly, this variation probably reflecting sampling bias, leading questions or a combination of the two. What certainly doesn't seem to be in question is the unvarying increase the numbers of people referred to UK gender identity clinics, this having steadily increased at a rate of about twenty per cent a year since 1966. There is every suggestion that this is a global phenomenon. Over the years the proportion of patients assigned male at birth has decreased from about ninety percent to more like sixty.

The only other really solid, near to real-time and big volume data is that which comes from the patient satisfaction studies done in all English clinics over the last year, and which would be available from NHS England Specialised Commissioning. These data are collected anonymously from every patient attending every appointment at every clinic and would accordingly accurately reflect the experiences of those who actually attended the clinics and filled them out. It is suggested that this should consequently be the most relevant and accurate source of such information.

From a clinician's point of view one of the most troubling aspects is the lack of really long-term follow-up data on patients discharged from treatment to detect any long-term adverse effects of treatment. It would be very helpful to know the subsequent history of these people but it is almost impossible to maintain people in long-term follow-up when they are, essentially, well. The UK is in an almost unique position to provide this data because nearly everyone gets healthcare of every sort from the NHS and the nature of every episode treatment is centrally recorded; further every death is certified. Cross referencing from the databases that are currently kept would enable the recording of the subsequent health career and eventual cause of death of every discharged patient, without disclosing any patient's identity to the researchers. This would not be a very expensive exercise and would allow current treatments to be refined to afford even greater long-term safety. It is hoped that the Committee can recommend this.

The Association doesn't find itself able to pass comment on the relationship between various government departments. It can be said that it is difficult at any one time to find out who is in charge of what. Even within the Department of Health there doesn't seem to be any readily available Directory of who is who and who relates to whom. Importantly, as will be described below, some parts of NHS England make statements about what other parts of NHS England will be responsible for and provide, the 'responsible' part later denying any duty to do so, instead suggesting that the first part is, in fact, responsible.

The Association's view is that the Gender Recognition Act doesn't work particularly well and could do with some amending:

Regarding disclosure of trans status for incapacitated persons under the Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) Order 2005, at present Psychologists are not included under the *Disclosure for medical purposes* section of this Order which does allow disclosure (outlined elsewhere) by a Health Professional including: a registered medical practitioner; a registered dentist; a registered pharmaceutical chemist; a registered nurse; a paramedic or operating department practitioner; or a trainee for the above.

We echo the submission we understand has been given by the British Psychological Society to your committee; in that we contend that Applied Psychologists who are registered with the Health and Care Professions Council (HCPC) should be included in this list. We note that several of the professions who are included in the list are also accredited by the HCPC.

The Association acknowledges that some members of the trans communities feel that the restrictions on disclosure should be tightened. Indeed we are aware that the spirit of the restrictions has not always been respected within the healthcare sphere.

Notwithstanding this, the understandable wish to tighten such restrictions must be balanced against the need for appropriate care for trans people who lack capacity to consent — care which may be provided by Psychologists in cases where the person lacks capacity under the Mental Capacity Act 2005 or the revision to the Mental Health Act in 2007. The Association considers that the original Gender Recognition Act 2004 only foresaw times when people were physically unconscious — rather than lacking in capacity in other ways. While the Association wholeheartedly supports the feelings of the trans communities with respect to a general expectation for the right to privacy, this would, of course, not be pertinent to the case of severely disabled trans people with a significant intellectual or psychological disability who do not have capacity to consent; and therefore necessarily required their responsible Psychologist to make decisions on their behalf.

In addition, we note that the Gender Recognition Act 2004 and the Order 2005 predate the Mental Capacity Act 2005 and the Mental Health Act 2007. These pieces of legislation, alongside the move of applied psychologist accreditation to the Health and Care Professions Council from the British Psychological Society, radically increased the amount of responsibility afforded to registered Psychologists - not least that of being an Approved Mental Health Professional, which at the time of the Gender Recognition Act 2004 and the Order 2005 was assumed to be the province of Medical Practitioners and Approved Social Workers. The law as it stands therefore fails to take all this into account - In effect it makes Psychologists legally responsible for roles it would then be illegal for them to fulfil. The Association urgently seeks to see this addressed.

Another persistent source of difficulty is that NHS rules require patient files too be kept for at least thirty years whilst the GRA requires us to destroy any records which link the patient's old identity with the new identity. It isn't clear which legislation takes precedence.

Another difficulty is the interaction with the Companies Act, that Act requiring a list of all previous Directors of Companies. If a patient changes social gender role their previous identity will be listed as an earlier director and the often similar name and identical date of birth and address do rather give the game away.

End of life might be an issue, also. If the patient dies of an illness associated with only one sex (endometrial or ovarian cancer, for example) recording this upon the death certificate of somebody who is legally male would clearly expose a change of role that might have happened many years earlier and be known to very few people still living. Whilst the patient is no longer alive to be offended, this does seem to lie counter to the spirit of the Act.

The Association thinks it would be very useful to ask the Gender Recognition Panel to contribute information on these points. That Panel doubtless has observations of its own that the Committee would like to consider.

Considering the aspect of the Marriage (Same Sex Couples) Act 2013 which is referred to as the “spousal veto” this seems greatly to exercise those of a legalistic turn of mind but has not, to the knowledge of anyone in the Association, ever been successfully legally exercised. This is not to say that this aspect shouldn’t be dealt with; in the end, someone is bound to try to exercise it, if only because they can.

A separate issue is wording at a marriage ceremony. It does seem that if either or both parties at an apparently opposite sex wedding is/are someone who has changed social gender role and who does not possess a Gender Recognition Certificate it might be more seemly to use a form of words along the lines of “do you [name of first marriage partner] take [name of second marriage partner] as your lawfully wedded spouse ?” Followed by the same question asked to the other party, the order of the names reversed. This avoids the difficulties caused by the use of “husband” and “wife” altogether and might, indeed, be a form of words preferred by other sorts of marrying couples.

The Equality Act seems to cover gender identity fairly well in the sense of the words on the paper. The difficulty, it seems to working clinicians, is the implementation in practice. There have been few successful challenges using this piece of legislation that any of us have heard of, despite a considerable degree of discrimination we have heard about in clinical settings. It seems to that a major difficulty is the very small number of lawyers who are experienced in using the Act in this way. Those patients who have mounted successful challenges have often been represented by Trades Unions.

Employment and workplace issues seem, from patient reports in a clinical setting, to hinge particularly on the attitude of the employing organisation and, more particularly, the direct line management the person concerned. A positive attitude on the part of both of these is almost always accompanied by success — often very dramatic success. A negative attitude from either makes it a much more uncertain process and a negative attitude from both carries a grave prognosis, in our experience. We can be pretty sure that the problem isn’t the patient in that many people who have had difficult workplace experiences in the light of negativity from employers and line managers have gone on to thrive in a subsequent, similar, work placement where attitudes were more positive.

We would not describe transphobia as very widespread; on the other hand, its very presence is saddening and regrettable. On the whole, in our experience, non-fiction broadcast radio and televisual representations have varied between moderately poor and moderately good whilst print journalism has been moderately poor at best. There appears to be a persisting inability to distinguish between homosexuality, people who cross dress for any one of a large number of reasons including fetishistic and people for whom gender is the core issue. This difficulty in distinguishing one thing from another seems most marked in print journalism and low-end television.

With regard to fictional portrayals there seems to be a parallel with the casting of actors playing gay characters. There is a tendency in the media to cast straight/non-gay actors in gay roles because it somehow makes it a little more palatable for the audience; the exception this being when a gay character is particularly and deliberately put out as camp or ‘queeny’. There is a sense that the media profile of

trans story lines tend to use non trans people to play trans roles for similar, unconsciously transphobic reasons. An interesting practical commentary is that of actress Rebecca Root, shortly to appear in a lead role as a transwoman in 'Boy meets Girl' on BBC TV. It is striking that she was hired to play a transwoman in the BBC series 'Casualty' in about 2005 and that after all her scenes had been shot there was a decision to re-shoot all those scenes with a cisgendered actor playing her role and any trans references dropped. The Association feels that Trans Media Watch is a sound organisation and has done much to support trans narratives away from the voyeuristic and lurid documentary approaches that tend to obsess about genital reconstructions and promote confusion between gender and sexuality.

The criminal justice system merits quite a bit of thinking about. On the one hand, many of us can remember patients who were charged with crimes, convicted and who ended up on the sex offenders register when we thought that the same thing wouldn't have happened if they weren't a trans person. A good example would be the transwoman charged with sexual assault after some brief fellatio with two males who were two and three years younger than her own age at the time (she was eighteen). They were visitors to the area and boasted to their cousin of their recent sexual encounter. The cousin, enlightening them as to the nature of the person they had had a sexual encounter with, caused them to feel embarrassed. One thing led to another and the patient was charged with sexual assault. Given that she was in a kneeling position at the time and that it would have been perfectly possible for either one of the males concerned to run away this seemed a bit implausible. In the end, she was convicted of being reckless as regard to age. This does place her on the sex offenders register, though. One suspects that she would never have been charged at all if she had been a born female.

The converse is the ever-increasing tide of referrals of patients in prison serving long or indeterminate sentences for serious sexual offences. These vastly outnumber the number of prisoners incarcerated for more ordinary, non-sexual, offences. It has been rather naïvely suggested that nobody would seek to pretend transsexual status in prison if this were not actually the case. There are, to those of us who actually interview the prisoners, in fact very many reasons why people might pretend this. These vary from the opportunity to have trips out of prison through to a desire for a transfer to the female estate (to the same prison as a co-defendant) through to the idea that a parole board will perceive somebody who is female as being less dangerous through to a [false] belief that hormone treatment will actually render one less dangerous through to wanting a special or protected status within the prison system and even (in one very well evidenced case that a highly concerned Prison Governor brought particularly to my attention) a plethora of prison intelligence information suggesting that the driving force was a desire to make subsequent sexual offending very much easier, females being generally perceived as low risk in this regard. I am sure that the Governor concerned would be happy to talk about this.

There has been much talk recently of an "informed consent" approach being adopted. The difficulty is that this phrase is much used in medical practice at the same two word phrase holds a wholly different meaning in the context being suggested.

In routine medical practice in this and other countries the phrase “informed consent” means that patients can only be felt to have consented to any medical procedure if they have been fully informed, and understood, the likely consequences, both positive and negative, of the treatment being suggested, advised of alternative treatments that might be available, (including no treatment at all) and the likely positive and negative consequences of those alternatives. It is assumed in advance that the treatment suggestion is that being advanced by the practitioner concerned, the question being whether the patient is consenting to that treatment in a fully informed way.

The same phrase — “informed consent” — seems to the Association to have been borrowed by those suggesting very radical and negative shift in medical practice. It is suggested that provided patients are of sound mind (this amounts to the exclusion of serious mental illness) and understand the nature and consequences of what they request it should, essentially, be the role of the practitioner to fulfil that request. Crucially, there seems to be no recognition or acknowledgement of the view of the practitioner concerned about the merit of the suggested procedure. If actually implemented, this arrangement would leave medical practitioners in the position of having to make diagnoses they do not believe in, prescribe drugs they personally believe will not benefit the patient and undertake surgical procedures that they themselves believe will confer no benefit or cause harm. This is incompatible with medical practice, the first tenet of which is that one should “first, do no harm”.

In practical application, the worrying prisoner described in the paragraph above would be in a position to oblige medical practitioners to advance a plan the basis of which is the facilitation of subsequent sexual assault. If extended to other areas of medical practice this arrangement would leave General Practitioners obliged to prescribe antibiotics for viral conditions (something frequently demanded by patients and a leading cause escalating antibiotic resistance) even though they knew it to be wrong.

It has been suggested by those who promote this change in practice that this is what pertains in general medicine and surgery. This is absolutely not the case, the surgeons and physicians in the Association having confirmed that in general surgical and medical practice doctors do not undertake treatment which they don't think will confer benefit, even if it is the request of a patient with full capacity. Those members of the Association who undertake non-gender cosmetic surgery confirm that this is the case. Association surgeons report that the Health and Social Care Act restructuring of the NHS was immensely successful in ending the “postcode lottery” that seemed previously to apply but do make it clear that “whilst surgeons are independent of gender clinics we could not offer surgery other than as part of pathway managed by those clinics”.

In general medical and surgical practice almost 100% of the time the patient and the clinician, after discussion, find themselves in agreement and there is not an issue. In a very small proportion of cases the clinician recommends a particular line of treatment and the patient does not want to go along with it. Provided the patient is of sound mind that patient has every right *not* to go along with the treatment. Interestingly, in my long experience as a Liaison Psychiatrist, the usual response of the clinician in this scenario has been to call me ! Needless to say, almost always (provided the patient has properly grasped what the clinician is suggesting) it's simply been a case

of the patient not fancying the clinician's plan and my role has been to gently break it to the clinician that the patient has every right to refuse treatment.

Very rarely in general medicine the reverse is the case, which is to say that the patient wants some particular mode of treatment that the clinician cannot, in all honesty, support. In these circumstances it is usual to suggest a second opinion be sought. If the provider of the second opinion does support that line of treatment, they are usually then welcome to assume the care of the patient. If there isn't anybody else willing to support that line of treatment it does tend to suggest that it's probably not a great idea that it be undertaken.

It seems to the Association that gender medicine is no different from the other scenarios outlined above. There are no other aspects of the National Health Service in which patients need only to have their lack of insanity confirmed before being in a position to decide exactly what professionals will be obliged to prescribe to them and what surgical procedures they will be obliged to perform upon them.

An Association member has travelled to North America (home of the World Professional Association for Transgender Health, originators of the proposed way of working) and observed a large gender identity clinic in action. It seemed that, in practice, clinical work proceeds very much as it does in this country. It seems this situation is one in which the stated Guidelines bear no relation to what actually happens. It would be a bit like somebody in a foreign country, with an axe to grind about some aspect of transport policy, reporting to their own Department of Transport that every vehicle on a British motorway travels at no greater a speed than 70 miles an hour on the basis that the British legislation says that this ought to be so, and attempting to influence the governmental arrangements in their own country by citing the British law as if it actually reflected what happened on British motorways.

This mooted change aside, there is a very great deal that can be said about transpeople and wider NHS services as they actually currently operate. The commendable desire to have the same services on the 'menu' at every English gender identity clinic has been the aim and in some regards has been achieved (illustrated by the remark about the end of the 'postcode lottery, above) but in others only partially implemented — for example, it is notable that one gender identity clinic is unique in that it doesn't pay travelling expenses for patients on out of work benefits, that clinic being amongst the most remotely located and one that has more frequent appointments than average.

The casual, sometimes unthinking trans-phobia of primary care, accident and emergency services and inpatient surgical admissions continue to be striking. A matter of serious day-to-day importance at a primary care level is the persistent refusal of some General Practitioners to even make referrals to gender identity clinics.

Only last month there were reports of the death of Synestra DeCourcy. The account from her mother suggests that her General Practitioner steadfastly refused to refer her to a Gender Identity Clinic when she first requested this in early 2013. These refusals were said to have persisted and the patient to have commenced self-medicating with illicit hormones, prostituting herself to pay for these. Eventually, with the assistance of a transman who transitioned many years earlier, the referral was made, being received in February this year. An inquest is yet to be held but there is every

suggestion that her death might have been avoided if prompt referral had been made. Her mother sadly, correctly, said that if this had been the case she would, at the time of her death, probably have been well established on safe hormone treatment and about to be referred for gender reassignment surgery. Her mother has confirmed that she would be very happy to speak to the Committee.

In these circumstances, Association members have sometimes sought the help of secondary care endocrine services (itself a wildly wasteful use of this scarce resource) but on this occasion consultant endocrinologists are said to have declared that they are “too busy” to do this and that they lack the necessary expertise. This situation remains unresolved. It does not seem reasonable to expect Association members to prescribe for patients for the rest of their lives as the number of people involved would be vast and ever growing and it is the view of the Association that primary and secondary care should see it as a priority to acquire the quite manageable additional skills required to prescribe for this patient group rather than dismiss their needs.

The core of the current administrative arrangement is that NHS England Specialised Commissioning has published an Interim Protocol outlining what all English gender identity clinics are funded to provide, although it is silent on issues like funding travel allowing inequities to persist. It has been made clear from the outset that prescribing should be done at a primary care level, and a Circular was subsequently published to reiterate this. It also is made clear that gamete storage is not arranged through gender identity clinics and will be a matter for the patients’ local Clinical Commissioning Group. In a related vein, it is made clear that hysterectomy and oophorectomy should be provided by local gynaecological services, a separate tariff being drawn up for when this service is provided. It is implied that Speech and Language Therapy would be best provided on a local basis, in settings associated with the patients’ local Clinical Commissioning Group.

The problem is that these services either are not aware of this arrangement, or don’t accept them as their responsibility if they are.

An ongoing concern is the unwillingness of General Practitioners to prescribe hormones to patients, as NHS England Specialised Commissioning suggests they will, even when the patients are established at an NHS Gender Identity Clinic. This is most disastrous when the General Practitioner concerned sits on an important committee and sets the policy for a wider area. One such General Practitioner sat on the committee covering all of one of the Home Counties and as a consequence not a single General Practitioner across the entire county Buckinghamshire is “allowed” to prescribe for any trans person, ever, including after discharge and into old age. The individual, personal, General Practitioner of one of the patients affected by this rang me in some distress. He said he was perfectly willing to prescribe on a personal basis but felt he was not “allowed” to do so because of this. I am sure that he would be happy to give evidence, as would the patient concerned.

Clinical Commissioning Group fertility services occasionally do offer prompt gamete storage but mainly claim that they are ‘not funded’ to offer this service or that the patients are ‘not eligible’. Lengthy appeals are possible, of course, and a few patients pay privately but most, understandably, cannot face an indeterminate wait and forgo gamete storage — a decision they may well deeply regret having been forced into.

Clinical Commissioning Group gynaecological services might, in theory, have a tariff for undertaking hysterectomies but in actuality they won't do so. Yesterday, an Association member was contacted about a patient who was discharged from the London gender identity clinic in 2013 and whose General Practitioner requested a local hysterectomy (with a referral letter from the London clinic). At least three gynaecology departments in district hospitals have said that they 'cannot' offer this surgery and the patient and his General Practitioner are growing somewhat desperate. [For the avoidance of doubt it should be made clear to the Committee that the operation is no different from any other hysterectomy and is one that could be carried out by any gynaecologist.]

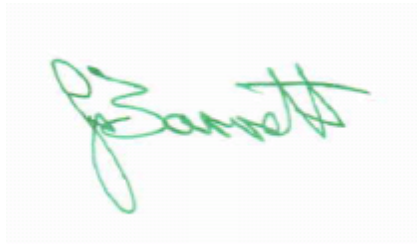
Attempts to refer for Speech and Language Therapy on a local basis, as is suggested by the Interim Protocol, are very often rebuffed with the statement that the local department is 'not funded' to do that sort of work. Sometimes the provision of care is refused with the slightly more reasonable statement that the local department lacks the necessary skills and the therapy would be better delivered by someone with much experience and a busier caseload to keep that experience up to date. There is some merit in this latter statement, as it is felt by the Royal College of Speech and Language Therapists that a poor service will be offered by a Therapist with only a few patients year, if that — such a therapist being what is suggested by the interim Protocol.

These persisting, seemingly growing problems with primary and secondary care suggest that any devolution of the management of gender dysphoria to these tiers of the NHS, even were it to be desirable, is currently a very distant prospect.

Gender medicine, which can be defined as clinical practice aimed at the safe and sustained relief of gender dysphoria, involves a wider range of clinical disciplines than almost any other part of medical practice. There is routine and ongoing involvement from psychiatrists, psychologists, endocrinologists, surgeons, nurses, speech therapists, psychosexual therapists, counsellors, occupational therapists and primary care. None of these disciplines is or should be pre-eminent and the professional body of each of them will only ever contain a very small number of members involved in this work, leaving their interests and those of their patients easily ignored. Consequently, the Association was formed to create an adequate collective voice for those of us working in this field, the better to advance the field and the welfare of the gender dysphoric patients we all try to help. The considerable difficulties experienced by the World Health Organisation and American Psychiatric Association when they attempted to reclassify gender dysphoria in diagnostic terms is reflected by the difficulties in trying to decide which part of the NHS should be responsible for gender medicine. For reasons more related to history than clear eyed thinking this has in the past been psychiatric services and the psychiatric part of NHS higher administration. The most truthful, if messy, analysis suggests that gender medicine doesn't easily fit into any professional or administrative category and that the best care for patients will always involve a close-knit and very multidisciplinary team. Such teams already exist in Gender Identity Clinics and the extremely large dataset from those actually attending such clinics makes it clear that satisfaction levels are extraordinarily high; chief patient concerns appear to be long waiting lists to access clinics and other parts of the NHS preventing referral to those clinics or

failing to cooperate with the advice given by the clinics. Recent, very welcome, if somewhat belated higher administrative action has been taken to address the problems of waiting lists. The Association does feel, though, that attention should be directed at strongly encouraging primary and secondary care providers to heed and adhere to the plans issued by NHS England and to grasp that gender dysphoric people are equally deserving patients in whose care they decidedly can and should play their part.

Sincerely,

A handwritten signature in green ink, appearing to read 'Dr. Barrett', is enclosed in a rectangular box with a dotted border.

Dr. James Barrett
President, British Association of Gender Identity Specialists

20 August 2015

WHERE THE MARGINS MEET: A DEMOGRAPHIC ASSESSMENT OF TRANSGENDER INMATES IN MEN'S PRISONS*

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Abstract

Drawing on official data and original interview data on 315 transgender inmates in California prisons for men, this research provides the first empirical portrayal of a prison population in California that is unique by virtue of being both transgender and incarcerated. Situated at the nexus of intersecting marginalities, transgender inmates in California prisons are diverse with regard to their gender presentation, gender identity, sexual orientation, and sexual attractions. In addition, both incarcerated and non-incarcerated transgender populations fare far worse on standard demographic and health measures than their non-transgender counterparts in the U.S. population, the California population, the U.S. prison population, and the California prison population. With the possible exceptions of partnership status and educational attainment, these factors combine to reveal that transgender inmates are marginalized in heretofore undocumented ways. At a time in which evidence-based corrections is increasingly embraced by corrections officials in the U.S., this article provides the first systematic profile of transgender prisoners as a heretofore “forgotten group” of prisoners (Tewksbury & Potter, 2005).

Keywords: transgender, gender, sexuality, inmate, prison, vulnerable populations, social and economic marginalization

Introduction

A recently released report by The Pew Center on the States (2008) revealed a startling figure: “for the first time, more than one in every 100 adults is now confined in an American jail or prison” (p.3). This number has received considerable attention from the media, policymakers, academics, activists, and corrections officials alike, at least in part because it dramatically emphasizes mass incarceration in the U.S. Growing mass incarceration, in turn, raises a plethora of social, legal, and fiscal issues related to how U.S. prisons have become “warehouses” for a sizeable—and growing—portion of the American population (Tonry, 2004). In the words of Mauer and Chesney-Lind, “[U]ltimately, a society in which mass imprisonment becomes the norm is one in which questions of justice, fairness and access to resources are being altered in ways hitherto unknown” (2002, p. 2).

Mass imprisonment has been accompanied by newfound challenges confronting criminal justice officials charged with managing diverse and changing inmate populations while attending to human rights issues as well as legislative and judicial mandates. In a historical context in which prisons have become “warehouses” for criminals rather than institutions designed to rehabilitate offenders (e.g., Simon and Feeley, 1992; Irwin, 2005; Tonry, 2004), departments of corrections have increasingly had to confront the realities of incarcerating transgender inmates in men’s prisons. These realities include reconsidering intake, screening, and classification processes and other custodial challenges related to medical care, housing, physical presentation, disproportionately high rates of victimization, and litigation resulting in high institutional costs associated with transgender inmates (Blight, 2000; Jenness, Maxson, Matsuda, & Sumner, 2007; Mann, 2006; Petersen, Stephens, Dickey, & Lewis, 1996; Tarzwell, 2006; Tewksbury & Potter, 2005).

Among the millions of people currently incarcerated, transgender inmates have become increasingly visible as a(nother) “special population.” Over a decade ago the U.S. Supreme Court heard a case in which a transgender inmate, Dee Farmer, alleged “deliberate indifference” to her safety. In this case the Court affirmed that prison officials have a duty to protect inmates’ rights under the “Cruel and Unusual Punishment” clause of the Eighth Amendment of the U.S. Constitution by protecting them from violence at the hands of other prisoners (*Farmer v. Brennan* [114 S.Ct. 1970 (1994)]).¹ More recently, the issue of conditions of confinement for transgender inmates was made even more visible to the American public in *Cruel and Unusual* (2006). This award-winning documentary follows the lives and stories of a handful of transgender women in men’s prisons to reveal the complex nature of their identities as well as the unique challenges they face as prisoners. Bringing mainstream media attention to transgender inmates, more than one corrections agency in the United States has made the news when announcing new policies providing for the treatment of transgender inmates. In 2008, for example, New York corrections made national news when Governor Patterson’s office announced a new anti-discrimination policy that allows transgender youth in New York detention centers to wear whatever uniform they choose, be called by whatever name they want, and request (and be considered for) specialized housing (Associated Press, 2008). More recently, the Washington, DC Department of Corrections issued a new policy on “Gender Classification and Housing” that will allow for housing placement according to gender identity (Najafi, 2009). Furthermore, in California, State Assemblyman Tom Ammiano (D-13th District) has introduced a bill (The LGBT Prisoner Safety Act, AB 382) that, if adopted, would require the California Department of Corrections and Rehabilitation (CDCR) to “add the sexual orientation and gender identity of the inmate or ward to the list of characteristics to be

considered” when classifying inmates and wards “in order to prevent inmate and ward sexual violence and to promote inmate and ward safety.”

In a context in which the judicial decision-makers, the media, elected officials from the executive and legislative branches, and corrections officials are increasingly focused on transgender inmates, there is little empirical social science research devoted to understanding this population of inmates. As Tewksbury and Potter (2005, p. 15-2) recently concluded, “Despite the fact that transgender individuals are fairly likely to end up in prison... there is very little scholarly information available about transgender inmates.” While select works examine correctional policies that do and do not address transgender inmates (see Petersen et al., 1996; Tarzwell, 2006; Tewksbury & Potter, 2005), systematic social science work that examines the demographic patterns and lived experiences of this population is, at best, in a nascent state. In 2007, the Sylvia Rivera Law Project, a non-profit group dedicated to providing legal services to transgender, gender non-conforming, and intersexed low-income communities, recently released a report based on a systematic analysis of first-hand accounts obtained through in-person interviews with legal clients (Sylvia Rivera Law Project, 2007). Also in 2007, research on violence in California correctional facilities by Jenness et al. (2007) revealed that transgender inmates are disproportionately victims of sexual assault. Specifically, comparing the results from in-person interviews with a convenience sample of 39 transgender inmates and a random sample of 322 inmates in California prisons for adult men, Jenness and her colleagues reported that 59% of transgender inmates reported having been sexually assaulted in a California correctional facility in contrast to 4.4% of the random sample of inmates (Jenness et al., 2007). Moreover, incident-level data from this study revealed that when transgender inmates are sexually assaulted in prison by another inmate, the incident is more likely to involve the use of a

weapon, yet less likely to evoke medical attention if needed. Through these and other empirical findings, this report makes clear that the prevalence rate of sexual assault for transgender inmates is significantly higher than for their non-transgender counterparts in prison; moreover, transgender inmates experience different institutional interactions and responses than their non-transgender counterparts in prison.

These recently conducted studies are the exception, rather than the rule, when it comes to relying on systematically analyzed empirical data to delineate the demographic parameters of transgender inmates as a uniquely situated prison population. This is surprising given the wealth of information provided through decades of ethnographic research on inmate culture and lives. Although the term “transgender” is absent in most research on prison culture and inmate violence, a well-established literature on inmate culture nonetheless details the characteristics, behaviors, and status of the “punk” and the “queen”—each of whom *could*, presumably, be included in current umbrella understandings of the term “transgender.”² The queen is the inmate who displays visible feminine characteristics, always plays the submissive role to the “men,” is referred to by way of female pronouns, and is understood to have presented as feminine/female when on the streets. While not occupying the lowest position within the prison hierarchy, *she* is located not far above the truly despised punk (Sykes, 1958; Donaldson, 1993 & 2003; but see also Coggeshall, 1988).³ The punk is distinct from the queen and is seen to be of lower status within the prison hierarchy because the punk has been forcibly “turned out” or forced to play the submissive sexual role through force or threat of force. The punk is despised because *he* did not have the strength to resist the force of another. Both are situated near the bottom of the inmate social hierarchy: the queen because she represents the “female” among “men” and the punk because he has been forced into a role not (presumably) his own.

Similarly, while empirical research that examines the causes and correlates of inmate violence or other inmate issues often includes inmates with non-normative sexual identities, it does not allow for the separate and distinct consideration of transgender inmates.⁴ In prison settings, references to sexual and gender identities are frequently conflated and inconsistently used by both inmates and staff. According to Donaldson, “[t]he prisoner subculture fuses sexual and social roles and assigns all prisoners accordingly” (1993, p.7). Thus, not surprisingly, even as the more established literature on “homosexuality” in inmate culture details the characteristics and behaviors of those who may presumably be considered transgender, depending on the definition used for the term, we have yet to fully understand this population within a rubric of non-normative gender and sexual identities. Transgender inmates are a unique and empirically underexamined population whose labels and images are subject to interpretation both inside and outside of prison by inmates, researchers, lawmakers, and lay persons alike.

Drawing on official data and original interview data with transgender inmates in prisons for men, the following research provides the first systematic empirical portrayal of a population that is exceptionally vulnerable by virtue of being both transgender and incarcerated. The focus is on demographic and well-being factors that characterize this population in ways that render it distinct from other inmate populations as well as populations of people who are not incarcerated. We begin by detailing the research methodology employed and the data collected. Next, we provide an examination of the demographic characteristics of transgender inmates in California prisons for adult men. We then compare transgender inmates in California prisons for men to the non-incarcerated transgender population, the incarcerated population of both the U.S. and California specifically, and the non-incarcerated populations of the U.S. and California in order to determine whether these populations are comparable or distinct when it comes to a host of

demographic and social factors that correlate with victimization and, more generally, life chances. More specifically, we answer the following overarching, interrelated questions: are transgender inmates more marginalized than other groups in terms of their basic demographic and social profile? And, if so, how? Finally, we draw on original interview data to provide an empirical assessment of the gender and sexual identities of transgender inmates in California in order to capture their diversity along the very same dimensions that define their marginality.

Research Methodology and Data

This article draws on data collected from a larger study focused exclusively on transgender inmates in California prisons (Jenness, Sexton, & Sumner, 2009).⁵ However, as described below, this article makes use of both official and original data collected for the purposes of this larger study as well as secondary data on the United States population, the California population, the United States men's prison population, the California men's prison population, and the transgender population in the community for comparative purposes. We begin this section by defining the target population. Thereafter we describe the research sites, how we collected original interview data and official data from the CDCR, and how we amassed secondary data to be used for comparative purposes.

Defining the Target Population

Our focus on transgender inmates immediately raised a dilemma best phrased as a question: who is transgender in prison and how can we identify transgender inmates in prisons? Varying definitions in the activist and research communities, a lack of consensus with regard to what transgender means in a prison setting, and by what criteria an inmate should be classified as transgender, made this task quite challenging. To further complicate matters, the CDCR, the research site for this work, does not employ an agreed-upon definition of transgender to identify

or classify inmates. Indeed, as discussed earlier, transgender is often conflated with gay or homosexual by prison staff and inmates alike.

In light of this morass of ambiguity, in order to collect reliable and valid data in prisons for men, we operationalized transgender by utilizing four specific criteria. For the purposes of this study, a transgender inmate is an inmate in a men's prison who: (a) self-identifies as transgender (or something analogous); (b) presents as female, transgender, or feminine in prison or outside of prison; (c) receives any kind of medical treatment (physical or mental) for something related to how she presents herself or thinks about herself in terms of gender, including taking hormones to initiate and sustain the development of secondary sex characteristics to enhance femininity; or (d) participates in groups for transgender inmates. Meeting any one of these criteria would qualify an inmate for inclusion in this study.⁶

Selecting Research Sites

The State of California currently has the largest correctional population in the country (Petersilia, 2008; The Pew Center on the States, 2008). When field data collection began, approximately 160,000 adult prisoners were incarcerated in California's 33 prisons.⁷ Despite the rising rate at which females are being incarcerated in California (Petersilia, 2006), well over 90% of these inmates are housed in 30 prisons for adult men. Rather than sample transgender inmates from these institutions, we worked collaboratively with CDCR officials to identify and make face-to-face contact with all transgender inmates in California prisons for men in order to obtain data on the population. We asked for all inmates on our lists to be educated⁸ for interviews and, once face-to-face with inmates on the list, we asked them if they are transgender.⁹ Inmates who met our criteria as described above were invited to participate in the study.

Collecting Original Interview Data

The field data collection process began in late April 2008 and ended in late June 2008; in eight weeks, the interview team traveled to 27 prisons for adult men in California, met face-to-face with over 500 inmates, and completed interviews with over 300 transgender inmates.¹⁰ The interview instrument included questions about transgender inmates' daily prison life, fear of victimization in prison, perceptions of sexual and non-sexual victimization in prison, personal victimization from sexual and non-sexual assaults in California correctional facilities and in the community, opinions on safety and reporting, and demographics.¹¹ The shortest interview was less than a half an hour (19 minutes), while the longest extended just under 3 hours (2 hours and 55 minutes). The mean duration for interviews was slightly less than 1 hour (56 minutes). The total amount of live interview time approached 300 hours (294 hours and six minutes).

Predictably, there was some sifting and attendant loss of cases from the interview data as we moved from the total number of names provided on all of the lists from 27 prisons for adult men (n=705) to the number of inmates we actually saw face-to-face at a prison (n=505) to the number of inmates who met our eligibility requirements for participation (n=332) to the number of inmates who consented to an interview (n=316) and the number of inmates who completed a usable interview (n=315).¹²

There are two potential sources of bias introduced in our data collection strategy. First, there were possibly transgender inmates who were not identified by CDCR officials for inclusion in the study and thus did not appear on our original interview lists. Second, it was the case that many of the inmates who were listed were not transgender (according to our study definition). Our method corrects for error resulting from inmates being on our lists who do not qualify for participation. However, it does not address the opposite source of source of error: the omission

of inmates who qualify for participation in the study from our lists. Fortunately, we have no reason to believe this introduced systematic bias and, in fact, our experience in the field suggests that CDCR officials were—just as we had requested—over-inclusive. This process resulted in a 95% participation rate.¹³ This exceptionally high participation rate does not leave much room for consequential bias in the data born of transgender inmates declining to be interviewed. Using age, sex, race/ethnicity, occupational status, and language used in the interview as key interviewer indicators, we found no evidence to suggest that the characteristics of the interviewer had an impact on transgender inmates' willingness to participate in the study (see also, Jenness et al., 2009)

Collecting Official Data

Next, we concatenated existing official data retrieved from the CDCR's database on inmates—the Offender Based Information System—to the self-report data described above.¹⁴ To protect the identity of each inmate participating in the research, we assigned each participant in the study a unique study identification number for the purposes of this project only. This study ID was used to link the interview and official data for each inmate in the study. Official data variables include age, race/ethnicity, mental health status, verified gang membership, custody level, commitment offense, lifer status, and sex offender registration.

Secondary Data Collection

Finally, for comparative purposes, we retrieved the most comparable data possible on all relevant indicators of social status and welfare across other populations. To do so, we first chose several key demographic and social dimensions on which to compare transgender inmates to other populations, including education and employment, marital status, health, sex work, homelessness, and victimization. Next, we identified empirical research that examined these variables for each of

the following populations: the non-incarcerated transgender population, the incarcerated populations of both California and the United States (in adult men's prisons only), and the non-incarcerated California and United States populations. A total of 27 data sources were ultimately selected for inclusion in the study. These range from decennial Census reports to small-scale studies of transgender health and economic needs conducted by small non-profit organizations, with the methodological rigor and sampling quality of each study informing the ultimate decision for inclusion.

This approach has its limitations, which are largely born of those that are characteristic of secondary data collection more generally. First, the large number of distinct data sources—each with its own particular operationalization of key constructs—results in imperfect comparisons across several dimensions. This is most problematic when differences are evident in the unit of analysis or time frame, or when constructs themselves were differentially operationalized. This limitation was minimized through the selection of sources with data that best approximate measures used for the transgender inmate population in order to maximize validity of comparisons across data. Second, as studies of the non-incarcerated transgender community are few and far between, several data sources and analyses did not meet the high standards of methodological rigor evident in data for the other populations. In an effort to remedy this, wherever possible multiple measures are used from multiple studies, in order to triangulate the estimates and hopefully achieve convergence—or, at the very least, display the breadth in estimates evident in the larger literature.

Despite these limitations, as the first demographic profile of transgender inmates and the first systematic comparison of transgender inmates to other populations, the findings presented below are informative because they reveal multiple dimensions of what it means to be transgender in California

prisons for men. Moreover, by utilizing comparative data, we provide an assessment of how these dimensions differ from other U.S. populations.

Findings

To make systematic comparisons between the transgender inmate population and the entire men's prison population in California, we analyzed official data on eight demographic variables: age, race/ethnicity, offense category, custody level, type of life sentence (or not), registered sex offender (or not), verified gang affiliation (or not), and mental health status.¹⁵ Table 1 reveals that transgender inmates are distinguishable from the larger population of inmates in prisons for adult men in terms of age, with transgender inmates more represented in the middle ages (36-45);¹⁶ race/ethnicity, with transgender inmates disproportionately White and Black; commitment offense, with transgender inmates disproportionately admitted to prison for crimes against property; custody level, with transgender inmates disproportionately classified as Level 3 and Level 4 inmates; sex offender status, with transgender inmates more frequently classified as sex offenders; gang status, with transgender inmates less frequently identified as gang members; and mental health status, with transgender inmates more often classified as CCCMS¹⁷ and EOP.¹⁸ The magnitude of the difference (i.e., the effect size) for all of these dimensions is not large. Transgender inmates and the larger population of inmates in prisons for men are roughly equivalent on only one dimension reported in Table 1. Namely, 15.7% of transgender inmates are serving life sentences and 16.9% of inmates in prisons for adult men are serving life sentences. Combined, these findings suggest that the demographic composition of the transgender population is considerably different from the demographic composition of the total population of inmates in prisons for adult men.

Table 2 presents a bricolage that expands the domain of comparisons between transgender inmates in California and other populations. It does so in two ways: 1) by making comparisons across more populations, including the U.S. population, the U.S. prison population (men's prisons only), the California prison population (men's prisons only), the transgender community (non-incarcerated), and the transgender population in California prisons for men; and 2) by moving beyond age, race/ethnicity, criminal history, and offender status—standard demographic variables—to consider other variables related to health and welfare, including education and employment, marital status, health status (mental health, substance abuse, and HIV status), participation in sex work, homelessness, and experiences with victimization (sexual and non-sexual).¹⁹ These features of social life serve as a lens through which specific dimensions of the economic and social status of transgender people (in general) and transgender inmates (in particular) are rendered evident.

Education and Employment

A comparison of transgender populations in the community and in prison to their non-transgender counterparts reveals notable differences in terms of education and employment, two important measures of class status. The highest level of educational attainment for 32.5% of the transgender inmates in California prisons is a high school degree or GED, while less than 8% have a college degree. This compares favorably to the population of inmates in men's prisons in California and the population of inmates in men's prisons in the U.S.; however, it does not compare favorably to the transgender community outside of prison, the California population, or the U.S. population.

Just over 10% of Americans were unemployed or marginally employed as of August 2008 (U.S. Department of Labor, 2008). This stands in stark contrast to the figures for the U.S.

and California men's prison populations one month prior to their arrest, which hover around 30% (U.S. Department of Justice, 2004). For the transgender population in the community, unemployment estimates range from 23% to over 50% (Herbst, Jacobs, Finlayson, McKleroy, Neumann, & Crepaz, 2008 and Clements-Nolle, Marx, & Katz, 2006, respectively). By some accounts, the prevalence of unemployment for transgender people is even higher than the U.S. and California prison populations, and by all accounts it exceeds the percentage of the general population that is unemployed (Table 2). In accordance with estimates for both transgender and incarcerated populations, joblessness for transgender inmates in California prior to their incarceration is just below 30%.

Throughout the interviews with transgender inmates in California prisons for men, transgender inmates expressed awareness of their marginalized status along these lines. For example, a Level 1 African-American transgender inmate who worked as a prostitute on the streets of Los Angeles for over twenty years explained it this way: "Look at me. That's the only line of business some of us can get. They aren't going to hire us at Target. Only real girls get hired at Target." Related, some of the transgender inmates expressed that the value of securing conventional employment outside of prison is as much about securing respect as it is about the pursuit of financial self-sufficiency. As a White transgender inmate who reported considerable problems with drug addiction and mental illness surmised when asked how transgender people get respect outside of prison: "You have to show you can be productive as a transgender. You'll get a lot of respect if you can get a real job." Those who reported having a "real" job—which means conventional, legal employment—outside of prison often emphasized their atypical status. As a biracial transgender inmate distinguished herself from other transgender inmates when she wrote in a follow-up letter:

I am a caring, respectful, productive, self-supported member of society that developed an addiction to meth. I was clean for 4 years, relapsed, and ended up here. I always have a job, I graduated high school, and have parents that support me being transsexual 100%. This constellation of factors, especially employment and the presence of social support from family members, is rare among the transgender inmates in California prisons for men.

Marital Status

Predictable differences emerge when comparing marital status—as just one measure of social integration²⁰—across various populations. More than half of all U.S. adults are married and approximately one in five prison inmates in the U.S. and California is married (U.S. Census Bureau, 2000; U.S. Department of Justice, 2004, respectively). In contrast, only 8.7% of transgender community members reported being married in a survey of over 250 transgender community members in Washington, D.C. (Xavier, 2000). Over 20% of these respondents were reportedly partnered, but unmarried, perhaps due to legal limitations on same-sex marriage and the complications of legal sex change documentation. Approximately 40% of transgender inmates in California prisons reported being married or partnered, which is considerably more than transgender people in the community outside of prison (30.1%).

Health

Far more revealing than demographic comparisons, however, are the differences between the transgender population and the larger population with regard to health, most notably mental health, substance abuse, and HIV/AIDS status. Over 60% of respondents in a San Francisco survey of 362 male-to-female transgender people reported that they were currently suffering from clinical depression—a figure more than twice the rate of mental illness as a whole for the U.S. population in a given year and over twice the lifetime prevalence of a mental illness

diagnosis for male prisoners (Clements-Nolle et al., 2006). Furthermore, estimates of transgender individuals in the community who have had suicidal ideation or who have attempted suicide range from 30% to over 50% (Kenagy, 2005 and Herbst et al., 2008, respectively). Among the incarcerated transgender population in California, over 70% reported having had a mental health problem at some point in their lives, most of whom (66.9%) reported experiencing mental health problems since being incarcerated (Table 2).

Alcohol and drug abuse are similarly overrepresented among transgender populations. Over one-third of transgender people in the community suffer from drug and alcohol abuse problems (Xavier, 2000). The level of alcohol abuse among the non-incarcerated transgender population is slightly higher than among prisoners in general, though the estimate of drug abuse among transgender inmates falls short of the levels for prisoners in general. For the incarcerated transgender population, however, these numbers rise precipitously, with estimates that exceed those of the larger California men's prison population (see Table 2).

The prevalence rates for HIV are even more disparate. While an estimated .5% of the U.S. population is HIV-positive (McQuillan & Kruszon-Moran, 2008), an estimated 1.6% of inmates in men's prisons in the U.S. are HIV positive (Maruschak, 2006). The figure for California's transgender inmates in prisons for men far exceeds that number. According to Dr. Lori Kohler, the founder of California's only health clinic for transgender inmates (located at the California Medical Facility (CMF) in Vacaville): "Anywhere from 60-80 percent [of transfeminine prisoners] at any given time are HIV-infected. And many are also Hep-C infected. The next greatest problem is addiction" (Alpert, 2005). To worsen the situation, most health care professionals have had little to no exposure to transgender people. Dr. Kohler explained: "Care of transpeople is not something that most medical people understand. As far as I know of, CMF

and now CMC [California Men's Colony] are the only two prisons in the country that actually have a physician who's dedicated to providing good care [for transgender inmates], including cross-hormone therapies."²¹ This observation was confirmed by a middle-aged, White, HIV-positive transgender inmate with a history of drug abuse who said the following when asked "if there was one thing you'd want people to understand about being transgender in prison, what would it be?":

I would like to see a lot more of certain staff in here that aren't too familiar with transgenders to be more familiar and not be prejudice towards us. I'd like to see some sensitivity training. I wish they knew that being transgender is hard. Going from prison to the community is hard. We need drug treatment that is HIV- and transgender-friendly.

Sex Work

By their own account, over 40% of transgender inmates in California prisons for men have participated in sex work. It is difficult to put this number into context by making comparisons to the U.S. population, the California population, or other prison populations because comparable data for these populations do not exist. Nonetheless, it is telling that this self-reported rate approximates the rate estimated by Herbst et al. (2008) in their analysis of 29 studies of HIV prevalence and risk behaviors of transgender persons in the U.S.; to be exact, our study estimates 42.5% and Herbst et al.'s study (2008) estimated 41.5%. It is difficult to imagine a higher prevalence of sex work in the U.S. population, the California population, or the population in men's prisons.

Compatible with these numbers, it is not surprising that transgender inmates in this study who reported engaging in sex work often did so in a matter-of-fact way, such that the taken-for-grantedness of selling sex was emphasized and the problematic nature of prostitution understood

to be an unfortunate part of sex work. When asked about the frequency of engaging in “sexual things against one’s will” or “sexual things one would rather not do,” some transgender inmates could not recall exact numbers, but frequently told accounts of prostitution in response to these inquiries. When they were prodded to estimate a number, the response was often some version of “too many times to count” or “more times than I can remember.” On occasion and without prompting, some transgender inmates compared working on the streets to serving time in prison. For example, an African-American transgender inmate who reported engaging in prostitution for decades while coming in and out of prison explained: “I was prostituting for 20 years, more than 20 years. It’s [the violence is] much worse on the streets than in prison.” Similarly, a recently incarcerated young White transgender inmate who recently tested positive for HIV described being stabbed in the chest while engaging in street prostitution: “I did prostitution for drugs to support myself, my habit. It was easy and fast money, but then there’s the risk. I’m going to die. That’s the risk.” Also revealing a theme of life-threatening risk, another transgender inmate explained the circumstances in which engaging in prostitution led to being raped on the streets by a local law enforcement officer:

Transgender inmate: He [a municipal police officer] penetrated me with a foreign object. It was a routine stop in a prostitution area. He arrested me and took me to a secluded area.

Interviewer: What foreign object?

Transgender inmate: His billy club.

Interviewer: Did you report it?

Transgender inmate (mildly laughing): No, god no. Why?

The frequency and severity of violence associated with prostitution notwithstanding, a handful of transgender inmates described engaging in prostitution as a rite of passage of transgender people. As a transgender inmate serving a life sentence who reported engaging in prostitution “for about four months... just to fit in” explained:

It just wasn't me. I'd rather go get a credit card—someone else's credit card—and go shopping. I didn't have to prostitute to survive like some of the girls in here. I got money from credit cards and then told some of the other girls I made it as a prostitute. I'd tell them I had a date for \$200. They would be impressed.

In a similar vein, a Mexican-American transgender inmate who reported coming from a wealthy family explained the importance of engaging in prostitution this way:

No matter how much money I had, I wanted to know how much I was worth. How much would a guy pay for me. I went to prostitution to see how much I could get—I got \$1,000 once. I'm not joking. A \$1,000—and I could have got more.

This is not to say that transgender inmates *routinely* took pride in engaging in prostitution, nor did they deny the physical harm associated with prostitution. Rather, most frequently, transgender inmates who reported engaging in prostitution described sex work as a way to survive in light of their limited prospects for employment. As one of the oldest transgender inmates interviewed for this study, a biracial transgender inmate who reported engaging in prostitution both inside and outside of prison, explained: “Prostitution. It's something I have to do to survive. Of course I'd prefer to not do it. I'd prefer to not be in here. But, I am. You just make the best of it. That's all you can do, really.” Elaborating along these lines, another older African-American transgender inmate who reported engaging in prostitution off-and-on since becoming a teenage runaway said:

I was a sex worker beginning when I was 18. But, I stopped when I was 40 once I got SSI. When I was a prostitute, there would be dates I really didn't want, but I did it for the money. I didn't want to do it, but it wasn't against my will. I did it willingly, but I didn't want to.

These and other comments by transgender inmates point to the multiple ways in which engaging in sex work and being transgender outside prison intersect in the lives of transgender inmates. At the aggregate level, these are lives defined by considerable economic and social marginalization, including exceptionally high rates of homelessness.

Homelessness

Estimates of homelessness for transgender people who are not incarcerated range from 6.4% to 25.5% of the population reporting being currently homeless (Xavier, 2000 and Reback & Lombardi, 1999 respectively). The prevalence of homelessness among transgender people, according to a meta-analysis of 29 studies, averaged almost 13%—a figure over ten times as high as the largest estimate for the U.S. population (Herbst et al., 2008). This number increases further still when considering the incarcerated transgender population. Nearly half (47.4%) of California's transgender inmates experienced homelessness at some point in their adult lives, and over 20% reported being homeless right before their most recent incarceration.

Transgender inmates in California prisons described homelessness as an outgrowth of not being able to work, lacking social support in the form of dependable family and friends, and being confronted with no viable alternatives upon parole. An African-American transgender inmate described daily life prior to coming to prison this way: "I was a girl on the street. I can't read well enough to get a job. I lived homeless and panhandled to eat every day. I go to the mission to shower and change my clothes." This transgender inmate went further to express a

desire to learn to read past the sixth grade level, a concern about having no place to live upon release, a defeatist attitude about any prospects for improvement in her life, and an acceptance of the inevitable: that upon release from prison, life outside prison would be “all the same” as it was before being incarcerated due to a lack of programming in prison and a lack of alternatives outside of prison. In this case, “all the same” includes prostitution and considerable victimization in the form of verbal harassment and sexual assault on the street.

Others are beginning to document the ways in which the consequences of being homeless are exacerbated for transgender people, including acting as a catalyst for criminal behavior and attendant incarceration (see, for example, the Sylvia Rivera Law Project, 2007). As Raschka (2008, p. C08) recently explained to a national audience after examining the lives of homeless transgender youth: “transgender people face— often bravely—hostility and other obstacles that complicate their homelessness.” Homelessness, like many of the other dimensions of marginalization associated with being transgender, correlates with victimization.

Victimization

In terms of physical victimization, transgender individuals do not fare well—and transgender inmates worse still. Compared to the 2.3% of the U.S. population who were victims of a violent crime in a given year (Rand & Catalano, 2006), an estimated 37% of transgender people reported having experienced physical abuse *because of their gender identity or presentation* (Clements & Clynes, 1999) and 43%, 51.3%, and 59.5%, respectively, report lifetime violent victimization (Xavier, 2000), lifetime physical abuse (Kenagy, 2005), and lifetime harassment or violence (Wilchins, Lombardi, Priesing, & Malouf, 1997). While reports from a single year cannot be directly compared to lifetime prevalence rates, the sheer magnitude of the difference suggests that transgender people are differentially vulnerable to victimization.

As compared to inmates in U.S. and California men's prisons—by all reports, populations that have also suffered high rates of physical abuse—transgender people experienced more than five times as many incidents of non-sexual physical victimization. Even when compared to other relatively vulnerable populations, transgender people are perilously situated. When examining a population that is doubly vulnerable—transgender inmates—lifetime prevalence of physical assault while presenting as female outside of prison is 61.1%, a number that rises to 85.1% when considering assault both in and out of a carceral setting (Table 2). Statistics are just as revealing for sexual victimization. While approximately one in ten Americans—and one in six American women—has experienced rape or attempted rape (Tjaden & Thoennes, 1998), numerous estimates for the transgender population range from 13.5% to nearly 60% (Clements & Clynes, 1999; Kenagy, 2005; Wilchins et al., 1997; Xavier, 2000). The corresponding figure for transgender inmates in California prisons is higher still, with over 70% of the population reporting a lifetime prevalence of sexual victimization (Table 7).

Self and Identity

Breaking new ground entirely, this study enables the first empirical profile of transgender inmates as a diverse prison population in terms of four important dimensions of self and identity: continuity in terms of presenting as female, gender identity, sexual orientation, and sexual attraction(s).²² Reported in Table 3, over three-fourths (76.7%) of transgender inmates presented as female outside of prison and anticipate presenting as female if/when they are released from prison. Through continuity of presentation along these lines, these transgender inmates display consistency between their gender presentation and their status as transgender both inside and outside of prison. For them, prison life does not disrupt this particular dimension of how they situate socially and in terms of what Erving Goffman (1963) calls “presentation of self.”

In contrast, a little less than a quarter (23.3%) of transgender inmates in prison report more discontinuity along these lines. Specifically, 13.6% did not present as female prior to their most recent incarceration, but plan to present as female if/when they leave prison; 5.2% presented as female prior to their most recent incarceration, but do not plan to present as female if/when they leave prison; and a little less than 5% (4.5%) did not present as female before their most recent incarceration and do not plan to present as female if/when they leave prison. For some transgender inmates, then, being transgender is imported into prison and for others becoming transgender—at least in terms of presenting as female—is a life event that occurs for the first time in prison.

Finally, transgender inmates expressed contrasting views on the degree to which being transgender is an ascribed dimension of the self versus a feature of the self that is socially-environmentally dependent.²³ With regard to belief that being transgender is an immutable fact—a middle-aged White inmate serving a multi-decade sentence expressed the following in a letter to the Lead Researcher after being interviewed for the current study:

Although there is no test, I believe a true t/g could describe certain feelings or/and mutilation/prosthesis that one has had during their mind-boggling “oh my god! I’m not in the right body.” Being tg is something that one doesn’t just wake up and become. This is something that we have been born with.

Sharing this view, a 26 year old, Hispanic transgender inmate who did not present as female prior to being incarcerated, but began presenting as female while incarcerated, said: “I was holding it secret for a long time. I found a friend who was comfortable with it who told me: ‘just come out and be yourself’ and I got more respect and feel much better about myself.”

In sharp contrast to this essentialized view of being transgender, other transgender inmates see being transgender as time and place dependent. For example, a self-identified homosexual inmate expressed a transition to “becoming” transgender as an adaptation to prison life:

When you come into prison being homosexual, you’re automatically a girl. It’s your place to play the female role. If you’re open with your homosexuality.... But if you’re a guy and you’re fucking around with me, they’re the man and I’m the girl. I don’t understand it because you’re doing the same things I am doing.... When I first got here I had a bald head and was more tough. One transgender told me, “you have to gay it up!” And then the guys were really receptive. Real life is so different than prison life. Here, you’re gay so there’s pressure right away to grow your hair out.... If you’re a manly gay boy you don’t fit in with the guys or the homosexuals. You have to adapt or be a total loner. I came in more manly and now am more feminine so people are more receptive. It’s an adaptation but I wouldn’t take hormones for it. That’s too far.

As a final example of the malleable nature of being a transgender inmate, consider the trajectory of an inmate who has lived for decades as a transgender inmate in a California prison, but no longer defines himself as transgender. At the beginning of an interview, this middle-aged African American inmate who has been in prison for over two decades reported that he is no longer on hormones and does not participate in groups with transgender inmates. He then politely and simply declared: “I’m not transgender anymore.” As he described his life, he began taking hormones in the late 1960s, used to be transgender for many years (including on the streets in the city in which he grew up and in which he lived prior to coming to prison in the mid

1980s on his current term), and quit taking hormones in prison in the mid 2000s after testing positive for HIV, receiving news that his mother died, and finding god. He reported:

I always wanted to be a little girl. Since 1968, I took hormones early on. I was living as a woman and looking good. I had the clothes, the jewelry. I had it all going on. Girl, you should have seen me.... [But] transgenders have a very big problem in the prison system. When I came in, they were automatically ostracized. They were not treated well by anyone—not the inmates, not the guards, not the people who were supposed to help them....I'm a people person. I like everybody, but everybody does not like me [as a transgender person].

When asked why he “quit” being transgender, he said:

I learned I wasn't happy as transgender, but I came to prison as transgender. I was the person everyone wanted to be around. I followed a guy to [name of another prison], but he never went there. I sure loved him. I came here [name of prison he's in] to settle down. Lord, I've been doing this for 40 some years and I'm not happy. I came to [prison he's in] to settle down, it was just too much of a lifestyle. I just wanted to be happy. So I gave it up. I quit being transgender and a woman.

When asked if being transgender is “something you can just choose to quit,” he said: “Yes, I still see guys and get that tingly feeling, but I resist. I just don't act on it—and some of the young ones are soooooo cute. They really are, but I just look the other way.” This view could be an exception to the rule, but it is telling nonetheless when considering the malleability of being a transgender inmate.

Likewise, transgender inmates report a range of labels to describe themselves. Figures 1 and 2 reveal the distribution of self-referencing labels embraced by transgender inmates in

prison. The vast majority (76.1%) identify themselves as female when asked about their gender identity, with considerably fewer identifying as “male and female” (14%), “other” or “it depends” (3.5%), “neither female nor male” (3.2%), and “male” (3.2%). In one case, an inmate identified as hermaphrodite and emphasized that “federal papers” affirmed the identity with legal standing.

Figure 2 reveals that transgender inmates self-identify with a range of sexual orientations. About a third (33.3%) of transgender inmates in California prisons identify as “homosexual,” while 19.4% identify their sexual orientation as “transgender,” 18.1% identify as heterosexual, 11.3% identify as bisexual, and the remaining 17.8% identify as something else. “Something else” includes a range of self-signifiers, such as: “a girl transsexual,” “a queen that likes men,” “androgynous,” “both transgender and heterosexual,” “heterosexual in a transgender world,” “homosexual and transgender,” “I’m my mother’s daughter,” “just sexual,” “just normal,” “just myself,” “just a person,” “just natural,” “just me,” and “human.”

Finally, Figure 3 reveals less variation in terms of sexual attractions for transgender inmates in California prisons. The majority of transgender inmates are sexually attracted to men (81.9%), but a considerable minority indicated being attracted to both men and women (15.6%). Only 1.3% of transgender inmates reported being sexually attracted exclusively to women. The remaining respondents reported being sexually attracted to “neither” men nor women or some combination of “transgender” or “transsexual” persons and women. This pattern is not specific to the prison environment. The vast majority of transgender inmates (75.8%) report being attracted to men outside of prison and inside prison (see Table 4), effectively dispelling the notion that they turn to men as an adaptation to being in a sex-segregated environment in which women are not available.

Discussion

The demographic profile of transgender inmates presented in this article reveals multiple dimensions of social and economic marginality as well as the diversity of inmates that fall under the rubric of “transgender.” First, transgender inmates constitute a diverse group in terms of continuity of gender presentation, gender identity, sexual orientation, and sexual attractions; indeed, the findings presented above suggest that it is fitting to consider “transgender” an umbrella term that encompasses multiple non-normative identities, sexual orientations, and presentations of self. Second, with regard to the social, economic, and experiential status of transgender inmates, the larger picture is clear: with the possible exceptions of partnership and educational attainment, transgender inmates are marginalized in ways that are not comparable to other prison populations.

As the focus shifts to the incarcerated transgender population, these multiple sources of marginalization continue—and along some dimensions are exacerbated. Most significantly, transgender inmates fare far worse in terms of their health, participation in sex work, homelessness, and history of sexual victimization. It is not surprising that these factors cluster together. Homelessness has dire consequences for both physical and mental health (a relationship which is often reciprocal) and can be intimately linked to sex work as a means of survival—a means that carries with it a high risk of victimization. Stories of violence recounted by transgender inmates were common both as they related to living on the streets and, more generally, simply living as transgender—prompting the vast majority of California transgender inmates to report sexual assault in the community and/or while incarcerated. These accounts not only reveal drastically disproportionate marginalization at multiple turns but highlight the interconnectedness of these marginalities and clearly illustrate the familiar point made by

philosopher de Tocqueville: "It is well known that most individuals on whom the criminal law inflicts punishment have been unfortunate before they become guilty" (Beaumont & de Tocqueville, 1964). This quote is perhaps nowhere more true than with regard to transgender inmates.

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Endnotes

1. The Court's ruling in this case was a landmark decision insofar as it affirmed that being violently assaulted and raped in prison is not part of the penalty and serves no penological objectives.

2. Although there is a growing academic literature on transgender people and lives, there is not a concomitant consensus on how best to define transgender. At one end of a range of definitions, transgender is used as an umbrella term to refer to gender variant individuals, with gender variance referring to individuals whose gender expression and behavior do not match the expectations associated with a binary understanding of sex/gender (i.e., that there are males and there are females, but nothing else) (Girshick, 2008; see also Gagné & Tewksbury, 1998, 1999; Tewksbury & Potter, 2005). This understanding includes all non-normative sexual and gender identities and lifestyles. At the other end of a range of definitions, transgender is used as a proxy for transsexuals (i.e., those who have undergone, or will undergo, sex reassignment surgery), or transvestites in the narrowest sense of the term (e.g., those who wear "opposite" gendered clothing).

3. However, Hensley, Wright, Tewksbury, and Castle (2003) argue that sexual and gendered hierarchies are being reconfigured such that female-presenting inmates may occupy a higher status.

4. For example, Alarid (2000) recently surveyed (presumably) gay and bisexual men about their sexual identities, behavioral preferences, and perceptions of treatment by others. The author reports that 7% of the sample "would rather be female than male," 14% dress in drag when on the street, and 30% report that they are more feminine than masculine, all characteristics that fit easily within recent "umbrella" definitions of transgender outside carceral settings and that correspond with inmate cultural understandings of "the queen." However, none of the groups are afforded separate examination within the author's analyses.

5. For a more detailed description of the research methodology employed in the larger project see Jenness et al. (2009).

6. By deploying these criteria, we hoped to bypass larger debates about who is and is not transgender and, instead, rely on a comprehensive understanding that would maximize inclusion without diluting the target population beyond recognition.

7. This represents the total population of CDCR prisons in April 2008, just a few weeks prior to the commencement of data collection in the field (see http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/TP_OPIA/TPOPIAd0804.pdf, last retrieved May 21, 2009).

8. In prison, a ducat is written permission to move throughout the institution for a particular appointment or responsibility, such as a medical appointment or a work.

9. In compliance with the University of California, Irvine (UCI) Institutional Review Board protocol, all interviews were conducted in confidential settings after obtaining informed consent. No potential respondents were questioned about inclusion criteria until a confidential setting was secured.

10. For more details on the experience of collecting data on transgender inmates in California prisons, see Jenness (2009).

11. The complete interview schedule is available upon request.

12. The loss of *potential* cases—going from the name on the master list to actually seeing the person at the prison—is due to a variety of factors, including inmates paroling, dying, or being transferred to another prison after we received our list and before we arrived at the prison; inmates being unwilling to come out of their cell; inmates being unavailable as a result of an urgent medical or psychiatric appointment; and inmates—believe it or not—being “lost” in the prison and thus unavailable for an interview. We emphasize that these are *potential* losses of cases because we have no way of knowing how many would have met our eligibility requirements and therefore been given the opportunity to participate in the study. If, upon arrival at a prison, we learned that an inmate on our list had been transferred to a prison to which we had not yet collected data, we made every effort to locate the inmate at that prison; however, if an inmate on our list transferred to a prison from which we had already collected data, we did not return to that prison to locate the inmate.

13. We also identified four transgender inmates in a prison for women. Three of these inmates completed an interview. These interviews were exceptionally illuminating, both in and of themselves and in light of interviews conducted in men’s prisons; however, because there are so few cases it is difficult to extrapolate statistical trends from these interviews. Therefore, this research focuses exclusively on transgender inmates in prisons and reception centers for men.

14. Because UCI’s IRB, the research protocol, and our own professional ethics required that the identities of research participants be kept confidential (only known to the research team), we received central file information on *all* individuals currently housed in California adult correctional facilities from the CDCR, from which the research team extracted information for study participants. This enabled us to collect official data without revealing to the CDCR which inmates are included in this study (for more along these lines, see Jenness, Maxson, Matsuda, and Sumner 2009).

15. These variables were chosen for two reasons: 1) they are typically used to profile inmate populations; and 2) they represent factors identified by extant research as potential correlates of sexual and/or non-sexual violence.

16. This finding is no doubt related to the age at which transgender people “come out” (i.e., a process whereby gay men, lesbians, bisexuals, and transgender people inform others of their non-normative identity). A recent study based on a survey of 3,474 transgender people from across the U.S. revealed the following: although the vast majority of transwomen “felt different” and reported feeling “uncertain about their gender identity” very early in life (age 12 and under), only 1% disclosed their gender identity to others when they were age “12 and under.” According to this study, 6% of transwomen disclosed their gender identity to others between the ages of 13-19, 16% disclosed their gender identity in their 20s, 17% disclosed their gender identity in the 30s, and 38% disclosed their gender identity when they were 40 or older. In other words, transwomen most often come out as such later in life (Beemyn & Rankin, Forthcoming; but, see a related Power Point presentation at: <http://www.umass.edu/stonewall/translives/>, last retrieved May 21, 2009). For a more complicated view of coming out as transgender, see Gagné, Tewksbury, and McGaughey (1997).

17. CCCMS stands for Correctional Clinical Case Management System.

18. EOP stands for Enhanced Outpatient.

19. Unfortunately, there is very little research on the health and welfare of transgender people in the community that reports systematic data along these lines and what does exist consists of convenience samples from a few select regions of the country. As a result, basic demographic characteristics of the transgender community are difficult to document.

20. The presence or absence of children, another conventional measure of social integration, is also an important consideration. Unfortunately, data along these lines are typically collected with “household” as the unit of analysis, thus comparisons to the transgender inmates in California prisons are problematic.

21. See Alpert (2005), found at <http://inthe fray.org/content/view/1381/39/>, last visited May 21, 2009.

22. Not reported here, in subsequent analyses, analyses of variation in terms of collective identity and collective efficacy are underway (Sexton & Jenness, in progress). Borrowing from Touraine’s (1985) work, a collective identity is present “when some shared characteristic becomes salient and is defined as important, resulting in a sense of ‘we-ness.’” Two of the most cited scholars on the topic, Taylor and Whittier (1992, p. 105), describe a collective identity as “the shared definition of a group that derives from members’ common interests, experiences, and solidarity.” Closely related to collective identity is the concept of collective efficacy. Collective efficacy is measured by the degree to which cohesion and trust are present among a group as well as the degree to which members of a group (or neighborhood) are willing to intervene on the behalf of others in the group (Sampson, Raudenbush, & Earls, 1997).

23. In the vernacular of social science, this often framed as the “realism versus constructionism” debate which. To quote Abbott (2004, p. 46), this debate boils down to a question about “whether the things and qualities we encounter in reality are enduring phenomena or simply produced (and reproduced) in social interaction as need be.”

Table 1

A Comparison of Select Characteristics of the Transgender Inmate Population in California Prisons for Men and the Total Population in CDCR Prisons for Men

	Total Adult Transgender Population in CDCR Prisons for Men		Total Adult Population in CDCR Prisons for Men ^a	
	n	%	N	%
Total	332	100	146,360	100
Age				
<i>M</i>		38.05		37.69
<i>Mdn</i>		38.50		37.00
<i>SD</i>		9.61		11.18
Range		19, 63		18, 92
18-25	33	9.9	21,383	14.6
26-35	90	27.1	46,933	32.1
36-45	135	40.7	40,971	28.0
46+	74	22.3	37,073	25.3
Race/Ethnicity				
Hispanic	94	28.3	56,880	38.9
White	93	28.0	37,954	25.9
Black	115	34.6	43,451	29.7
Asian/Pacific Islander	3	.9	1,337	.9
Other	27	8.1	6,738	4.6
Offense				
Crimes Against Persons	162	49.8	80,202	54.8
Property	98	30.2	26,892	18.4
Drug	53	16.3	26,418	18.1
Other	12	3.7	12,841	8.8

Table 1

A Comparison of Select Characteristics of the Transgender Inmate Population in California Prisons for Men and the Total Population in CDCR Prisons for Men

	Total Adult Transgender Population in CDCR Prisons for Men		Total Adult Population in CDCR Prisons for Men ^a	
	n	%	N	%
Custody Level				
1	39	13.3	25,226	19.6
2	75	25.6	43,288	33.6
3	85	29.0	31,037	24.1
4	94	32.1	29,405	22.8
Life Sentence				
Life	44	13.3	21,271	14.5
Life Without Parole	8	2.4	3,524	2.4
Death Row	-	-	64	.0
Sex Offender Registration				
Yes	68	20.5	21,381	14.6
Gang (Verified)				
Yes	17	5.1	22,070	15.1
Mental Health (Official)				
CCCMS ^b	180	54.2	25,148	17.2
EOP ^c	33	9.9	4,458	3.0

^aThe total adult male prison population figures include the study population and exclude those residing in camps.

^bCorrectional Clinical Case Management System.

^cEnhanced outpatient.

Table 2

A Comparison of Select Characteristics of the Transgender Inmate Population in California Prisons for Men and Various Other Populations

	US Population	CA Population	US Prison Population (Men's Prisons Only)	CA Prison Population (Men's Prisons Only)	Transgender Community	Transgender Inmate Population in CA Men's Prisons ^a
Education						
Some grade school	18.2% ^b	23.2% ^b	60.8% ^c	50.1% ^c	34.5% ^d	38.2%
High school graduate or GED	28.6% ^b	20.1% ^b	24.6% ^c	31.9% ^c	28.2% ^d	32.5%
Some college	21.1% ^b	22.9% ^b	10.3% ^c	13.3% ^c	17.9% ^d	20.7%
College graduate	21.8% ^b	24.2% ^b	1.1% ^c	2.7% ^c	6.3% ^d	7.6%
Any post-graduate	8.9% ^b	9.5% ^b			7.6% ^d	1.0%
Employment						
Unemployed	10.7% ^e (unemployed or marginally employed as of August 2008)	7.3% ^f (percent of civilian labor force unemployed)	26.6% ^c (unemployed one month prior to arrest)	31.6% ^c (unemployed one month prior to arrest)	23.0% ^g 35.0% ^h 42.0% ^d 51.0% ⁱ	27.6% (unemployed before most recent incarceration)
Marital Status						
Married	54.3% ^b	52.4% ^b	19.5% ^c	21.4% ^c	8.7% ^d	13.3%
Partnered (not married)	1.9% ^b (unmarried partner household members)	2.0% ^b			21.4% ^d	29.9%
Separated	2.2% ^b	2.5% ^b	6.6% ^c	7.9% ^c		4.5%
Single	27.1% ^b	30.1% ^b	53.6% ^c	51.0% ^c	68.7% ^d	41.2%
Divorced	9.7% ^b	9.5% ^b	18.0% ^c	17.7% ^c		9.1%
Widowed	6.6% ^b	5.6% ^b	2.0% ^c	2.1% ^c		1.9%

Table 2

A Comparison of Select Characteristics of the Transgender Inmate Population in California Prisons for Men and Various Other Populations

	US Population	CA Population	US Prison Population (Men's Prisons Only)	CA Prison Population (Men's Prisons Only)	Transgender Community	Transgender Inmate Population in CA Men's Prisons ^a
Mental Health						
Mental health problem	26.2% ^j (suffer from a diagnosable mental disorder in a given year)	16.3% ^k (self-reported current need for mental health treatment)	25.3% ^c (ever diagnosed)	26.0% ^c (ever diagnosed)	60.2% ⁱ (currently meet criteria for depression)	66.9% (mental health problem since incarcerated) 71.2% (ever had mental health problem)
Serious mental illness	5.9% ^j (serious mental illness in a given year)	6.5% ^l (serious mental illness in a given year)			30.1% ^m (lifetime attempted suicide) 34.9% ^d (lifetime suicidal ideation) 53.8% ^g (lifetime suicidal ideation)	
Substance Abuse						
Alcohol abuse	7.6% ⁿ (dependence or abuse of alcohol in past year)	8.23% ⁿ (dependence or abuse of alcohol in past year)	33.4% ^o (current alcohol abuse "high need")	33.0% ^o (current alcohol abuse "high need")	34.1% ^d (self-reported current alcohol problem)	37.5% (ever had alcohol problem)
Drug abuse	2.9% ⁿ (dependence or abuse of illicit drugs in past year)	2.9% ⁿ (dependence or abuse of illicit drugs in past year)	40.6% ^o (current substance abuse "high need") 53.0% ^p (drug dependence/abuse)	48.3% ^o (current substance abuse "high need")	36.1% ^d (self-reported current drug problem)	59.2% (ever had drug problem)

Table 2

A Comparison of Select Characteristics of the Transgender Inmate Population in California Prisons for Men and Various Other Populations

	US Population	CA Population	US Prison Population (Men's Prisons Only)	CA Prison Population (Men's Prisons Only)	Transgender Community	Transgender Inmate Population in CA Men's Prisons ^a
HIV Status						
HIV positive	0.5% ^q	0.4% ^{r, s}	1.6% ^t		10.0% ^m 27.7% ^g (weighted mean of prevalence across 4 studies) 32.0% ^d 35.0% ⁱ 35.0% ^v	60-80% ^u
Sex Work						
Participated in sex work					36.0% ^w (past 30 days) 41.5% ^g (average across 29 studies) 48.0% ^v (past 6 months) 80.0% ^v (lifetime prevalence)	42.5% (lifetime prevalence)
Homelessness						
Homeless	.5% ^x (sheltered homeless in a given year) .82 - 1.2% ^y (homeless in a given year)	.4% ^x (sheltered homeless in a given year)	9.0% ^c (ever homeless)	12.4% ^c (ever homeless)	6.4% ^d (current) 10.0% ^h (current) 12.9% ^g (weighted mean of prevalence across 29 studies) 25.5% ^w (current)	21.0% (homeless right before most recent incarceration) 47.4% (ever homeless)

Table 2

A Comparison of Select Characteristics of the Transgender Inmate Population in California Prisons for Men and Various Other Populations

	US Population	CA Population	US Prison Population (Men's Prisons Only)	CA Prison Population (Men's Prisons Only)	Transgender Community	Transgender Inmate Population in CA Men's Prisons ^a
Victimization						
Physical victimization	2.3% ^z (victims of violent crime [including sexual victimization] in a given year)		11.9% ^c (lifetime physical abuse) 13.4% ^{aa} (lifetime physical abuse)	12.4% ^c (lifetime physical abuse)	37.0% ^v (lifetime physical abuse because of gender) 43.0% ^d (lifetime violent victimization) 51.3% ^m (lifetime physical abuse violence) 59.5% ^{cc} (lifetime harassment or violence)	61.1% (ever been physically assaulted outside of prison) 85.1% (ever been physically assaulted in lifetime)
Sexual victimization	10.5% ^{bb} (lifetime rape/attempted rape) 17.6% ^{bb} (females only) 3.0% ^{bb} (males only)		5.7% ^c (lifetime forced sexual contact) 5.8% ^{aa} (lifetime sexual abuse)	5.6% ^c (lifetime forced sexual contact)	13.5% ^d (lifetime sexual assault) 14.0% ^{cc} (lifetime rape or attempted rape) 53.8% ^m (lifetime forced sex) 59.0% ^{d,v} (lifetime forced sex or rape)	40.2% (ever had to do sexual things against will outside of prison) 52.7 (ever had to do sexual things would rather not have done outside prison) 70.7% (ever had to do sexual things against will in lifetime)

- ^aPopulation N =332 (includes 16 refusals and one unusable interview).
- ^bUnited States Census Bureau (2000)
- ^cUnited States Department of Justice (2004)
- ^dXavier (2000)
- ^eUnited States Department of Labor (2008)
- ^fCalifornia Employment Development Department (2008)
- ^gHerbst, Jacobs, Finlayson, McKleroy, Neumann, & Crepaz (2008)
- ^hSan Francisco Bay Guardian and Transgender Law Center (2006)
- ⁱClements-Nolle, Marx, & Katz, (2006)
- ^jNational Institute of Mental Health (2005)
- ^kLund (2005)
- ^lCalifornia Department of Mental Health (2000)
- ^mKenagy (2005)
- ⁿUnited States Department of Health and Human Services (2006)
- ^oPetersilia (2006). "High need" defined as reporting at least eight alcohol-related issues across several areas (out of 25 possible areas) or at least ten drug-related issues (out of 34 possible areas). In short, responding positively to at least 30% of criteria substance-need criteria qualified an individual as "high need." Criteria adapted from *Prisoner Reentry and Crime in America* (Petersilia, 2005).
- ^pMumola & Karberg (2004)
- ^qMcQuillan & Kruszon-Moran (2008)
- ^rCalifornia Department of Health (2007)
- ^sUnited States Census Bureau (2007)
- ^tMaruschak (2006)
- ^uAlpert (2005)
- ^vClements & Clynes (1999)
- ^wReback & Lombardi (1999)
- ^xUnited States Department of Housing and Urban Development (2008)
- ^yNational Law Center on Homelessness and Poverty (2007)
- ^zRand & Catalano (2006)
- ^{aa}Harlow (1999)
- ^{bb}Tjaden & Thoennes (1998)
- ^{cc}Wilchins, Lombardi, Priesing, & Malouf (1997)

Table 3

Distribution of Transgender Inmates in California Prisons for Men Presenting as Female Before and After Incarceration

	Expected Female Presentation Upon Release From Prison					
	Yes		No		Total	
	n	%	n	%	n	%
Female Presentation Prior to Most Recent Incarceration						
Yes	237	76.7	16	5.2	253	81.9
No	42	13.6	14	4.5	56	18.1
Total	279	90.3	30	9.7	309	100

Note. Results of chi-squared analysis significant at $p < .001$

Figure 1.

Distribution of gender identities of transgender inmates in California prisons for men

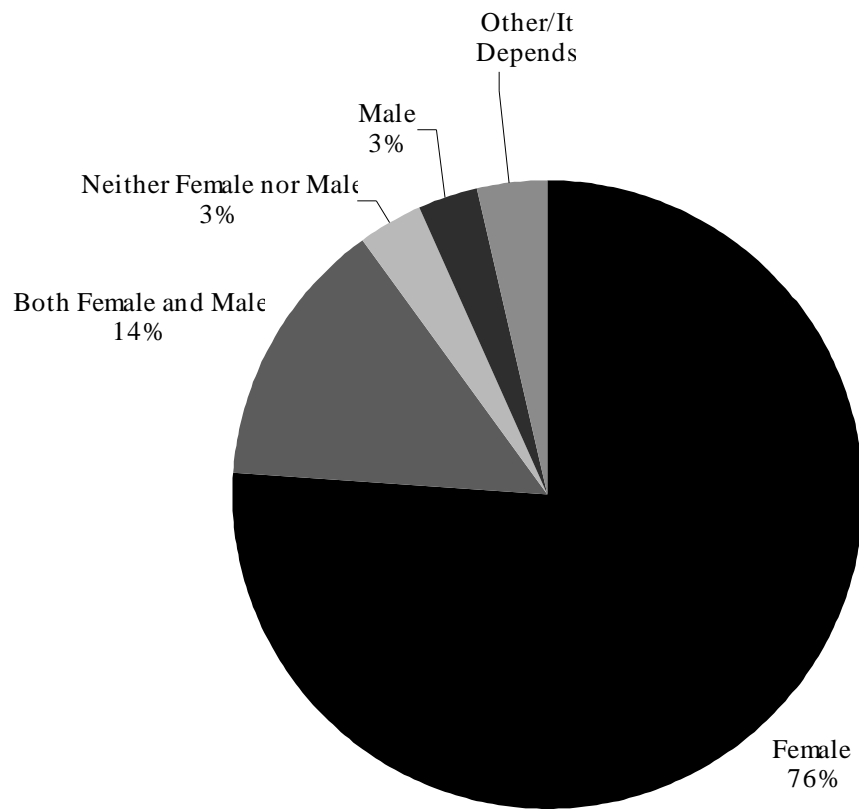


Figure 2.

Distribution of sexual orientations of transgender inmates in California prisons for men

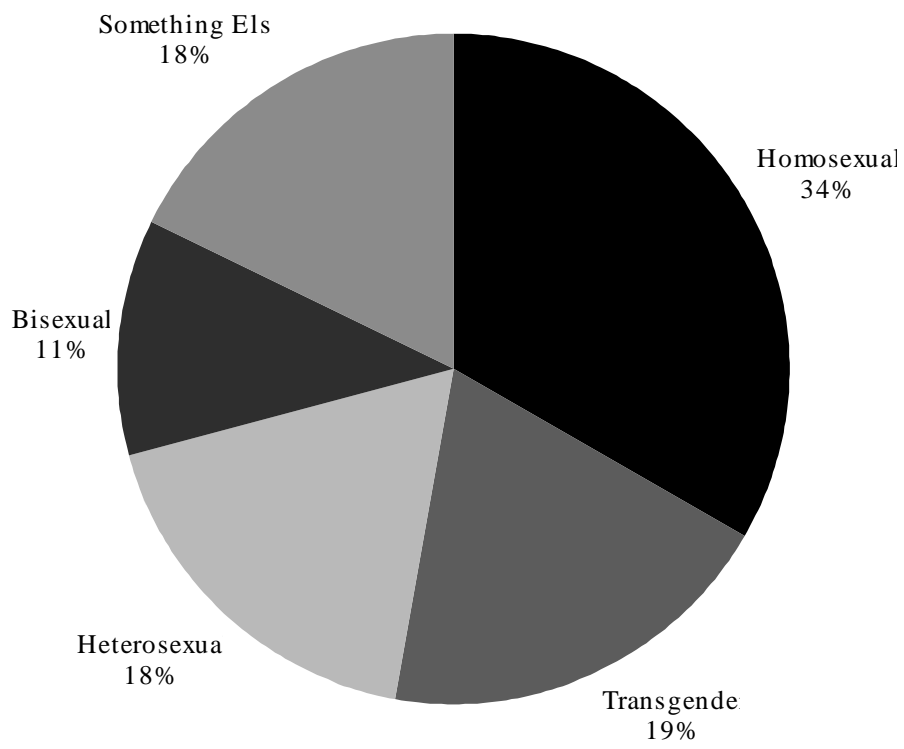


Figure 3.

Distribution of sexual attractions of transgender inmates in California prisons for men

