Julia Beck

Women's Liberation Front

March 7, 2019

Reauthorization of the Violence Against Women Act

Thank you Congressman Collins for inviting me to speak in consideration of the reauthorization of the Violence Against Women Act of 1994 (VAWA). Thank you to Chair Bass, Vice Chair Demings, and Ranking Member Ratcliffe of the Subcommittee on Crime, Terrorism and Homeland Security for welcoming my testimony. VAWA is a direct result of bipartisan efforts and has always had support and sponsorship from Republican members of Congress. As a lesbian radical feminist, I am honored to share with you an underrepresented perspective on the sex-based oppression which VAWA originally intended to ameliorate for all women and girls in the United States of America.

All women and girls share the biological reality of being female. As female people, all women and girls are materially oppressed on the basis of our female sex. Sex refers to the two reproductive classes in our species. To deny this fact means we are unable to name, address, and fix systemic sex-based oppression. One form of sex-based oppression that all women and girls experience is male violence. Male violence cannot exist in female space, because the distinct sex categories of male and female are mutually exclusive; therefore, women and girls benefit from female space. In its earliest forms, VAWA acknowledged and defended the important sex-based boundary of female space.

VAWA was the first U.S. federal legislation to acknowledge domestic violence and sexual assault as crimes, and it provided federal resources to encourage community-coordinated responses to combating violence.[1] Its passage provided the means for the creation of the Office on Violence Against Women (OVW) which was codified by Congress in 2002 as a separate office within the Department of Justice (DOJ). Since its creation, the OVW has awarded more than $6 billion in grants to state, tribal, local, university, and nonprofit programs that target the crimes of intimate partner violence, dating violence, sexual assault, and stalking.[2] Although all women and girls experience sex-based oppression, these crimes disproportionately affect global majority women.

In 2000, Congress reauthorized VAWA to enhance federal domestic violence and stalking penalties, add protections for abused foreign nationals, and create programs for elderly and disabled women. Congress reauthorized VAWA again in 2005 to increase penalties for repeat stalking offenders; add additional protections for battered and trafficked foreign nationals; create programs for sexual assault victims and American Indian victims of domestic violence and related crimes; and create programs designed to improve the public health response to domestic violence.[3]

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[1] National Network to End Domestic Violence (NNEDV), Policy Center, Statement on VAWA (2013) available at: https://nnedv.org/content/violence-against-women-act/.
[2] Lisa N. Sacco, Congressional Research Service, "The Violence Against Women Act: Overview, Legislation, and Federal Funding" (May 26, 2015), available at: https://fas.org/sgp/crs/misc/R42499.pdf.
[3] *Id.*

The third reauthorization of VAWA enhanced protections for Native women, eighty percent of whom face rape, stalking, or abuse in the course of a lifetime.[4] One of every three Native women is raped, stalked or abused every year.[5] Roughly 97 percent of crimes against Native victims are committed by non-Natives,[6] and due to a complex web of federal laws and statutes, tribes have long been unable to prosecute non-Native perpetrators who commit crimes on tribal land. In 2013, VAWA restored tribal jurisdiction over non-Native perpetrators for the crimes of domestic violence and dating violence, enabling tribes to arrest and prosecute some of the most violent abusers who had been operating with impunity.[7] Unfortunately, a technicality in the legal definition of Indian Country excludes 228 of the 229 tribes in Alaska from these protections.

Another unfortunate outcome of the the 2013 reauthorization of VAWA is the dissolution of all sex-based protections for women and girls through the introduction of "gender identity." As defined in paragraph 249(c)(4) of Title 18, United States Code, "gender identity" refers to "actual or perceived gender-related characteristics."[8] This irresponsible circular definition endangers all women and girls, because it lacks any basis in material reality. While sex is a vital statistic, "gender" and "identity" are not. The conflation of "sex" and "gender" in any federal or state legislation effectively erases all distinctions between women and men from United States law. The introduction of "gender identity" negates all sex-based protections for women and girls set forth by VAWA in 1994, 2000, 2005, and 2013.

Sex refers to the two reproductive classes found in the human species: a woman is an adult female, i.e., an individual with XX chromosomes and predominantly female anatomy; a man is an adult male, i.e., an individual with XY chromosomes and predominantly male anatomy. As sex has been observed and recorded at birth by midwives and women as well as medical professionals as long as there have been births, it is an exceedingly accurate categorization: an infant's sex is easily identifiable based on external genitalia in 99.982% (all but 0.018%) of all cases. The minuscule fraction of individuals who are categorized as "intersex" exhibit characteristics of both reproductive classes. People who have "intersex" characteristics,

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[4] Rebecca Nagle, "What the Violence Against Women Act could do in Indian Country — and one major flaw" (Dec. 11, 2018), available at: https://www.hcn.org/articles/tribal-affairs-what-the-violence-against-women-act-could-do-in-indian-country-and-one-major-flaw.

[5] Tribal Court Clearinghouse, "Introduction to the Violence Against Women Act" (2013), available at: https://www.tribal-institute.org/lists/title_ix.htm.

[6] André B. Rosay, "Violence Against American Indian and Alaska Native Women and Men" (Oct. 19, 2016), available at: https://nij.gov/journals/277/Pages/violence-against-american-indians-alaska-natives.aspx.

[7] Rebecca Nagle, "Native American Women and VAWA — What's at stake?" Women's Law Center (Oct. 17, 2018), available at: https://www.womensmediacenter.com/news-features/native-american-women-and-vawa-whats-at-stake.

[8] Available at: https://www.govinfo.gov/content/pkg/BILLS-113s47enr/pdf/BILLS-113s47enr.pdf.

now called disorders of sex development, remain either female or male, and do not constitute a third reproductive class.[9]

By hijacking words that refer to "sex" (female, male; woman, man) and using them as synonyms for words that mean "gender" (feminine, masculine), gender doctrine obfuscates the factual validity of sex in order to justify and legitimize itself. This semantic sleight reflects a cultural taboo of talking about sexual intercourse, a taboo which is now exploited so successfully that "gender" and "identity" are replacing "sex" in federal law.

Many well-intentioned people think that this concept of "gender identity" is the next frontier of social justice, but in reality it is regressive. Gender relies on and reinforces rigid sex roles that legitimize male dominance and female subordination. Gender refers to the social norms of appearance and behavior imposed on people according to their sex.[10] These superficial sex stereotypes are in constant flux according to changing social forces and popular trends. For instance, the color pink was deemed inappropriate for girls in the last century, but today pink is considered appropriate for girls only. Gender signifies mutable concepts whereas the realities that "sex" denotes never change. There exists no legitimate governmental interest in recording a person's subjective "gender identity" or giving that "identity" legal significance in lieu of sex.

Women are not required to conform to gendered expectations of femininity in order to be women. The one and only qualifier of womanhood is the state of being female, an immutable characteristic and biological reality. Unfortunately, male people who claim womanhood are protected by VAWA on the basis of their "gender identity." In many states, men gain access to women's single-sex spaces by legally identify themselves as female[11]. Some federally-funded facilities, like the Poverello House, do not require men to change their legal documents before granting them access to female spaces.[12]

Nine women in Fresno, California are suing Naomi's House and its parent company, the Poverello House, for violating their right to privacy by forcing them to shower with a man who

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[9] 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").

[10] Julia Beck, "The Inequality of the Equality Act: Concerns from the Left" (2019), available at: https://www.heritage.org/event/the-inequality-the-equality-act-concerns-the-left (last visited March 5, 2019).

[11] Steve LeBlanc, "Massachusetts Senate OKs bill to allow gender 'X' option," The Associated Press (June 28, 2018) available at: https://apnews.com/d950dc3eb3a5436c888c3bf71b30cc9b

[12] 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.

sexually harassed them.[13] According to Poverello House representatives, the homeless shelter was required to admit this man on the basis of his self-identification as female. Federally-funded organizations like the Poverello House that allegedly protect women from male violence by upholding female boundaries actually risk losing federal funding if they acknowledge biological reality. Homeless shelters, rape crisis centers, halfway houses, prisons, and other female-only spaces must treat a person who identifies as a woman as if they truly are female, regardless of that person's male biology and sexually explicit violence against women.

When "gender identity" wins, women and girls always lose. The gender hierarchy is diametrically opposed to the rights of women and girls. Gender identity ideology erases over half of the human population from legal record by threatening the very definition of an entire sex class. Any legislation that attempts to set boundaries for women and girls by replacing "sex" with the amorphous concept of "gender identity" renders female boundaries meaningless.

Violence against women is a non-partisan issue, but ending violence against women requires bipartisan energy. Many people across the political spectrum do not support VAWA in its current form, because the introduction of "gender identity" in its 2013 reauthorization negates its founding purpose. The concept of "gender identity," predatory men who exploit lazy "gender" legislation, and indeed VAWA in its current form, all violate the sanctity and safety of women's female spaces. VAWA must not be weaponized by one party against the other. It is a well-intentioned yet seriously flawed piece of legislation that requires bipartisan intervention.

In my brief time of organizing locally, nationally, and globally, I have learned that people achieve nothing without first sharing a basis of unity. Even though the women in this room may sit on opposing sides of the political spectrum, we all share the experience of being female. Everyone here, whether female or not, knows what a woman is. Everyone knows that violence against women is an issue. Republicans and Democrats alike must work together to end this epidemic.

I urge you to acknowledge biological reality by replacing "gender" and "gender identity" with "sex" not only in VAWA but in all federal legislation. Women need female spaces to heal, grow, and survive from the violence that permeates all mixed-sex spaces. I anticipate the reauthorization of the Violence Against Women Act of 1994 to include provisions and protections for women and girls on the basis of sex, our shared biological reality.

Sincerely,

Julia Beck

[13] *McGee, et al. v. Poverello House, et al.*, Case No. 18-768 (E.D. Cal., June 5, 2018).

Enclosures: Hands Across the Aisle Petition For Rulemaking To Protect The Safety And Privacy Of Women In Need Of Shelter Due To Homelessness Or Violence

Women's Liberation Front (WoLF) friend-of-the-court brief in the case of *Doe v. Boyertown Area School District*

WoLF Washington DC-Maryland-Virginia (DMV) Chapter Opposition to Maryland House Bill 421: Sex Self-Identification for Drivers' License and Identification Cards

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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Carroll Conley
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Christian Civic League of Maine

Gene Mills
President
Louisiana Family Forum Action

Emily Zinos
Project Consultant
Ask Me First MN

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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").

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

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[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

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[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 nonconformity") 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); *Sommers 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,

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[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

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[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.

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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.

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[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

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[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.

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[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/ccsvsftr.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 Scholarship[23] and Ohio University has the Mary Ann Healy Memorial Scholarship. [24] This list goes on and on.

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[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) (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,

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[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 identity 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

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[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

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[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

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[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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WOMEN'S LIBERATION FRONT
Washington DC-Maryland-Virginia Chapter

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

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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.

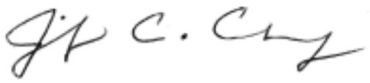
Rory Appleton, "Women accuse Poverello House of allowing transgender resident to sexually harass them," Fresno Bee (Oct. 12, 2018), available at: https://www.fresnobee.com/news/local/article219560720.html#storylink=cpy

Conclusion

Passing HB0421without 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,



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