

No. 23-8065

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

JAYLYN WESTENBROEK; HANNAH HOLTMEIER; ALLISON  
COGHAN; GRACE CHOATE; MADELINE RAMAR; MEGAN KOSAR,  
on behalf of themselves and derivatively on behalf of KAPPA KAPPA  
GAMMA FRATERNITY,

*Plaintiffs-Appellants,*

v.

KAPPA KAPPA GAMMA FRATERNITY, an Ohio non-profit  
corporation, as Nominal Defendant and as a Direct Defendant; MARY  
PAT ROONEY, President of the Fraternity Council of KAPPA KAPPA  
GAMMA FRATERNITY, in her official capacity; KAPPA KAPPA  
GAMMA BUILDING CO., a Wyoming non-profit corporation,

*Defendants-Appellees.*

ARTEMIS LANGFORD,

*Defendant.*

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**On Appeal from the United States District Court for the District  
of Wyoming – Cheyenne, 2:23-CV-00051-ABJ  
Alan B. Johnson, U.S. District Judge**

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**BRIEF OF *AMICUS CURIAE* WOMEN'S LIBERATION  
FRONT IN SUPPORT OF APPELLANTS AND REVERSAL**

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## **CORPORATE DISCLOSURE STATEMENT**

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## INTRODUCTION AND INTEREST OF *AMICUS CURIAE*<sup>1</sup>

*Amicus* is the Women’s Liberation Front (“WoLF”), a non-profit radical feminist organization dedicated to the liberation of women by ending male violence, protecting reproductive sovereignty, preserving woman-only spaces, and abolishing gender and sex discrimination.

WoLF’s supporters include over 350 “sisters in action” who live across the U.S. who advocate for its mission across the U.S., including many in the 10th Circuit.

WoLF’s interest in this case stems from its interest in empowering and protecting the safety and privacy of women and girls and preserving women’s sex-based civil rights.<sup>2</sup> KKG asks the Court to reverse more than a century of jurisprudence that established

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

<sup>2</sup> *Amicus* uses “sex” throughout to mean “the fundamental distinction, found in most species of animals and plants, based on the type of gametes produced by the individual,” and the resulting classification of human beings into those two reproductive classes: female (women and girls) or male (men and boys). *See* Sex, Male, and Female, Miller-Keane Encyclopedia And Dictionary Of Medicine, Nursing, And Allied Health (7th ed. 2003), <https://medical-dictionary.thefreedictionary.com>.

protections for women’s right to the privacy and safety afforded by single-sex housing. If the Court rules in its favor, it will strip the women in WoLF’s organization of their Constitutional rights to privacy and to freedom of association; threatening their physical safety by proclaiming that women are not permitted to exclude males from any space or activity; and undercutting the means by which women can achieve success.

WoLF urges the Court to rule in favor of Appellants by reversing the district court’s decision to grant the defendant’s motion to dismiss, affirming the right of women to fully exercise their Constitutional rights and meaningfully participate in society.

## **ARGUMENT**

### **I. KAPPA REMAINING SINGLE-SEX IS ESSENTIAL FOR ITS MEMBERS’ LEGAL EQUALITY**

#### **A. Liberating women from sex-based oppression requires recognition of sex.**

The patriarchal oppression of women can be traced back to the beginning of recorded history. Women, in most times and/or places, have been confined, exploited, and even owned by men. *See* GERDA LERNER, *THE CREATION OF PATRIARCHY: VOL. 1*, 1986. This has taken

myriad forms, from ancient Sumerian concubinage practices, to the state-ordered murder of female royals who failed to produce male heirs, to discriminatory hiring practices of mothers in the 1960s, to contemporary domestic and sexual violence. *Id.* Women have been controlled and disadvantaged on the basis of their immutable, material status as women--and the desire of men to control their domestic, sexual, and especially their reproductive labor. Elizabeth V. Spelman, *Women As Body, Ancient and Contemporary Views*, 8 FEMINIST STUDIES 109 (1982) (discussing how women's only value, historically, has been their bodies and their reproductive capacities). *See also* Saraswathi Vedam et. al., *The Giving Voice to Mothers study: inequity and mistreatment during pregnancy and childbirth in the United States*, 16 REPRODUCTIVE HEALTH 77 (2019) <https://doi.org/10.1186/s12978-019-0729-2>.

Women seeking the fundamental right to vote were arrested (some held in indefinite detention), force fed, subjected to terrible police brutality, lost custody of their children, and even gave their lives. Lizzie Pook, *Groped, imprisoned and force-fed: what the suffragettes really went through*, *Stylist* (2018), available at

<https://www.stylist.co.uk/visible-women/suffragettes-force-fed-imprisoned-uk-tactics-punishment-history/188085> (last accessed Oct. 15, 2021).

The vulnerabilities of the female sex, and the lack of autonomy afforded them, have kept women out of the male-dominated public sphere for thousands of years. Women could not (and in some places still cannot) inherit property or titles. They could not (and in some places still cannot) study at universities, serve in the military, or be treated as credible witnesses in courtrooms. Women have been (and in some places still are) the longstanding victims of marital rape clauses, discriminated against in hiring practices and compensation (when they were allowed to join the workforce at all) and unprotected from domestic abuse as long as public peace was not disturbed. *Timeline of Legal History of Women in the United States*, NATIONAL WOMEN'S HISTORY ALLIANCE, (last accessed Dec. 10, 2023)

<https://nationalwomenshistoryalliance.org/resources/womens-rights-movement/detailed-timeline/>. Women have been (and in some places

still are) barred from practicing medicine or law, unable to vote or to run for office.<sup>3</sup>

It was not, in many places in the world, including in the social tradition of western civilization, until the 1800s that women began to gain autonomy, legal protection, and equality with men. *See generally*, JOAN HOFF, LAW, GENDER, AND INJUSTICE, A LEGAL HISTORY OF U.S. WOMEN, 1991 In the United Kingdom, our legal progenitor, legislation to give women custody over their children for the first time was not passed until 1839, in the Custody of Infants Act, 2 & 3 Vict. c. 54. *See*

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<sup>3</sup> Arabella Mansfield was granted admission to practice law in Iowa in 1869, making her the first woman lawyer. Louis Haselmayer, Belle A. Mansfield, 55 WOMEN LAWYERS J. 2, 46-54 (1969). Ada H. Kepley becomes the first woman in the United States to graduate from law school in 1870. Am. Bar Ass'n, "13 Pioneering Women in American Law", ABA J., available at [https://www.abajournal.com/gallery/historical\\_women/767](https://www.abajournal.com/gallery/historical_women/767) (last accessed Oct. 17, 2021). Elizabeth Blackwell became the first woman to graduate from medical school in 1849 and opened the New York Infirmary for Women and Children with her sister, Emily Blackwell, and Marie Zakrzewska, in 1857. Beth Howard, "Women physicians over the centuries", Yale Medicine Magazine 27 (Spring 2018), available at [https://medicine.yale.edu/news/yale-medicine-magazine/YM-Spring2018-Web\\_348382\\_43933\\_v1.pdf](https://medicine.yale.edu/news/yale-medicine-magazine/YM-Spring2018-Web_348382_43933_v1.pdf) (last accessed Oct. 17, 2021); see also Elizabeth Blackwell, PIONEER WORK IN OPENING THE MEDICAL PROFESSION TO WOMEN (Longmans, Green & Co. 1895), available at <https://digital.library.upenn.edu/women/blackwell/pioneer/pioneer.html> (last accessed Oct. 17, 2021).

also UK Parliament, *Custody Rights and Domestic Violence* (last accessed Oct. 15, 2021), available at <https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/custodyrights/>. Out of more than 5,000 years of recorded history, women have had the legal right to be a mother to their children for a little more than 3% of it.

It wasn't until 30 years later in the UK that legislation, the Married Women's Property Act 1870, granted married women the right to own and inherit property and wages on their own. See also Rachel Ablow, *"One Flesh" One Person, and the 1870 Married Women's Property Act*, Branch Collective (May 2012), available at [http://www.branchcollective.org/?ps\\_articles=rachel-ablow-one-flesh-one-person-and-the-1870-married-womens-property-act](http://www.branchcollective.org/?ps_articles=rachel-ablow-one-flesh-one-person-and-the-1870-married-womens-property-act) (last accessed October 15, 2021).

In America that same year Kappa Kappa Gamma was founded. Three years later, the Supreme Court of the United States ruled that married women could be excluded from the practice of law in 1873. *Bradwell v. Illinois*, 83 U.S. 130 (1873). In *Muller v. Oregon*, 208 U.S.

412 (1908), the Supreme Court of the United States upheld a law that limited women to a 10-hour workweek. It was not until 1919 that the 19<sup>th</sup> Amendment was passed to guarantee women the right to vote nationwide.

Women did not even have the right to control their own fertility with contraceptives until 1965 (a right under renewed attack in the 21st century), and employers could refuse to hire women with children until 1971. *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Phillips v. Martin Marietta Corp.*, 400 US 542 (1971). Laws exempting marital rape from prosecution were not eliminated from American law until the 1970s, with Nebraska passing the first legislative ban on marital rape in 1975.<sup>4</sup>

The legal equality women have recently had in the United States has been a blip on the radar of human history. The right of every

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<sup>4</sup> Joann Ross, Making Marital Rape Visible: A History of American Legal and Social Movements Criminalizing Rape in Marriage, 2 “Invading the Domestic Forum and Going Behind the Curtain”: Nebraska’s Elimination of the Marital Rape Exemption and the Development of Coordinated Victim’s Services 86-126 (2015) (unpublished Ph.D. dissertation, University of Nebraska) (on file with the University of Nebraska-), *available at* <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1085&hx0026;context=historydiss> (last accessed Dec. 10, 2023).

woman to reproductive choice in early pregnancy was guaranteed by law in the U.S. for less than 40 years, and within days of being stripped of this right in June 2022, lawmakers in some states were planning legislation to prohibit pregnant women from leaving the state. *Dobbs v. Jackson*. Progress for women is not inevitable, not linear, and is threatened by courts who treat their rights as an academic exercise.

Women still have a long way to go in certain areas - while losing ground in others - and many of our remaining challenges are not as simple as passing a law, especially when women often bear a disproportionate impact of ostensibly “gender-neutral” policies such as poor parental leave policies and lack of paid sick time. *E.g.*, Gaëlle Ferrant et al., *Unpaid Care Work: The missing link in the analysis of gender gaps in labour outcomes*, OECD Dev. Centre, (2014).

**B. Kappa Kappa Gamma was created as a single-sex organization and still purports to be**

Kappa Kappa Gamma, and every other sorority in the National Panhellenic Conference (“NPC”) claims to be explicitly single-sex organizations, created to advance women’s equality. The NPC’s Unanimous Agreements, which all member organizations must abide, states that “The women’s sororities of the National Panhellenic

Conference have the right to confine their membership to women and shall defend their right to exist as single-sex organizations.”

(<https://www.npcwomen.org/wp-content/uploads/2017/11/NPC-Manual-of-Information.pdf> , pg 40-41)

The status of Kappa Kappa Gamma and other Panhellenic organizations as single-sex organizations has been inherent to the ethos of the organizations since its founding. The Gamma Omicron chapter brags on its website, “Our beginnings in 1870 occurred fifty years before women would receive the right to vote and hold office in the United States.” (<https://uwyo.kappa.org/fraternity-history>). Indeed, the first sororities founded in the United States were a direct response to women’s exclusion from male institutions of power, such as fraternities. As scholar Diana B. Turk writes in her book “Bound by a Mighty Vow: Sisterhood and Women’s Fraternities, 1870-1920,” “Thus, as well as striving to prove their intellectual worth as women and as students, the first generation of fraternity women also struggled to uphold and evince certain moral and social standards, to show themselves and those around them that college education did not “unsex” them.”

(<https://books.google.co.zw/books?id=1B8UCgAAQBAJ&printsec=frontcover#v=onepage&q&f=false> , pg 29 - 30).

Likewise, archives of The Key, Kappa’s national magazine, provide decades of evidence for how Kappa as an organization and its sisters has always viewed womanhood. For example, one essay by attorney Isabel Simons arguing in favor of recognizing sex differences in the fight for civil equality was reprinted multiple times, including spawning a letter of support from the Key editors. Simons wrote: “We know that women and men are different and must secure not only legal equality, which would mean identical laws, but social and economic equality which would allow us to determine what is true equality in each given case and then strive to accomplish that end.”

(<https://kappa.historyit.com/key-view.php?id=665739>)

Despite it’s recent policy statement (and posture taken in this action), Kappa has continued to publicly and robustly acknowledge that women are biologically female (and biological females are women) as recently as last year. After the *Dobbs v. Jackson* case overturned legal abortion, Kappa posted on its official Instagram, ““This ruling will have a fundamental impact on women throughout the United States....

Kappa Kappa Gamma believes that preserving women’s rights means maintaining the ability for women to make decisions regarding their health and bodily autonomy.”

(<https://www.instagram.com/p/CfUbXQVOFgt/> ). Similarly, in 2021 and 2018, Kappa promoted official Kappa merchandise for International Women’s Day that read “THE FUTURE IS FEMALE. THE FUTURE IS KAPPA.” ([https://www.instagram.com/p/CMKUJ5LBTo5/?img\\_index=1](https://www.instagram.com/p/CMKUJ5LBTo5/?img_index=1))

The sex differences between men and women, as well as the powerful sex discrimination women in education faced throughout its early history, is a common theme throughout Kappa’s narrative and the history of sororities as a whole. Kappa knows that it has been plainly understood by men for hundreds of years whom to exclude from their institutions — just as Kappa still plainly understands what a woman is, regardless of any claims to the contrary.

**C. Redefining woman in the Kappa bylaws weakens or renders nonsensical its other sex-based provisions.**

Kappa seeks to redefine “woman” to include members of both sexes (who don’t even have to “identify” as women) and redefine “sex” to mean one’s subjective state of mind (which doesn’t have to be male or female) instead of one’s reproductive class. However, all other

regulations and provisions that address sex, or men and women, are based on the presumption that objective differences exist between the sexes, and that these differences matter. Rules meant to address or prevent pregnancy, for example, are meaningless if women can impregnate one another or one's status as a male or female gives no information as to whether they are a member of the sex that commits nearly all rape, or the member of the sex that can become forcibly impregnated. All the justification Kappa gives for being a women-only organization, for having rules limiting the presence and movement of men, are meaningless if any man can join, even if he doesn't say he is a woman, as long as he doesn't say he is a man.

**D. The inclusion of male sorority members makes it less safe for the women members**

Nearly all murders, assaults, and rapes against women are committed by men. See, Satoshi Kanazawa & Mary C. Stil, *Why Men Commit Crimes (And Why They Desist)*, SOCIOLOGICAL THEORY, 434 (Nov., 2000). Since men are, on average, much stronger and larger than women, women lack the capacity to meaningfully defend themselves in close quarters when threatened. Gong Chen et al., *A Comparative Study on Strength between American College Male and Female Students in*

*Caucasian and Asian Populations*, 21 SPORT SCIENCE REV. 153 (Aug. 2012) (finding that women have 37-64% of the upper body strength of men on average).

Women in sororities are at an increased risk for sexual assault. One large study found that women in sororities were over five times more likely to be raped than their non-Greek peers.

(<https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1251&context=dignity>) Greek-involved men present an enhanced risk of sexual violence, being three times more likely to commit sexual assault than their peers who are not in fraternities.

(<https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1251&context=dignity>).

In addition, sexual victimization can take additional forms beyond outright violence, such as exhibitionism and voyeurism.

There is nothing about “self-identifying” as a woman that exempts a man from being included in statistics and factual generalities about men. According to a high-quality longitudinal study, even men who have identified as women for a long period of time and who have taken hormones and removed their genitals, maintain “male-pattern

criminality,” including violent crimes. Cecilia Dhejne et. al. *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, PLoS One. 2011 Feb 22;6(2):e16885. doi: 10.1371/journal.pone.001688.<sup>5</sup> Twenty percent of incarcerated trans-identified men in California are sex offenders, compared to only 15% of the incarcerated male population overall. Lori Sexton et. al., *Where The Margins Meet: A Demographic Assessment of Transgender Inmates in Men’s Prisons*, 12, 38, University of California, Irvine, June 10, 2009.

In 2021, a trans-identified man exposed his genitals to four adult women and a little girl in a female-only section of a spa in Los Angeles. Andy Ngo, *Wi Spa Suspect Still at Large, With History of Indecent Exposure and Masturbation*, New York Post, September 17, 2021, found at <https://nypost.com/2021/09/17/wi-spa-suspect-still-at-large-has-history-of-indecent-exposure-and-masturbation/>. This man, who did identify as a woman, had a legal right to be there under California’s “gender identity” laws, despite being on the sex offender registry since

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<sup>5</sup> This study is not saying men who identify as women are more likely to be criminal and/or violent than men in general; it simply says that they are not less likely to be.

2006 for exposing himself. His claimed “female” gender identity does not appear to have lessened his risk of perpetration.

Exhibitionism, voyeurism, and paraphiliac sex crimes are *vanishingly* rare among actual women. Zucker, K. (2013). DSM-5: call for commentaries on gender dysphoria, sexual dysfunctions, and paraphilic disorders. Archives of sexual behavior. Vol. 42, Iss. 5, pp. 669 – 674.

We do not have female-only spaces because *all* men do these things - but rather because *some* men do.

## **II. BELIEFS IN HUMAN SEX CHANGE ARE UNSCIENTIFIC, INCOHERENT, AND REGRESSIVE**

The underlying belief system supporting the concept of human sex change is inherently harmful to women, even before it is imposed by fiat or used to justify ending single-sex accommodations.

While feminism has sought to improve women’s status by dismantling sex-stereotyping, the concept of “transgender” depends on the continued existence of these same sex-stereotypes. Girls and women are female whether or not they look or act in a stereotypically feminine manner. To believe that sex is determined by a gendered soul or feminine appearance, rather than biology, is to believe that femininity

is the same thing as being female. This belief is offensive and harmful to women and antithetical to civil rights jurisprudence.

**A. Sex is objective and immutable, while gender is socially constructed and is harmful and oppressive to women and girls.**

“Sex” and “gender” both have distinct definitions and criteria. Sex is an immutable characteristic based in reality. It is defined by reproductive function; a male produces sperm and a female produces eggs, gestates, and gives birth. The National Institute of Health (NIH) describes sex as “a classification based on biological differences... between males and females rooted in their anatomy and physiology. By contrast, gender is a classification based on the social construction (and maintenance) of *cultural* distinctions between males and females.”

[emphasis added.] Institute of Medicine (US) Committee on Assessing Interactions Among Social, Behavioral, and Genetic Factors in Health; Hernandez LM, Blazer DG, editors. *Genes, Behavior, and the Social Environment: Moving Beyond the Nature/Nurture Debate*. Washington (DC): National Academies Press (US); 2006. 5, Sex/Gender, Race/Ethnicity, and Health. Available from:

<https://www.ncbi.nlm.nih.gov/books/NBK19934/>

The World Health Organization (WHO) agrees, defining “gender” as “the socially constructed roles, behaviour, activities and attributes that a particular society considers appropriate for men and women.” World Health Organization, *Gender, Equity, and Human Rights in Western pacific*, found at <https://www.who.int/westernpacific/health-topics/gender-equity-and-human-rights> (last accessed Dec. 10, 2023).

WHO further notes that these socially constructed roles “give rise to gender inequalities, i.e., differences between men and women that systematically favor one group.” *Id.*

**B. “Gender identity” and “transgender” have no objective definitions, and are based on harmful sex-based stereotypes.**

Although people’s lives and personalities are not defined by their sex, their sex is always defined by their biology. By contrast, a “gender identity” is a subjective statement of self-perception. Under gender identity ideology, a woman is simply a person who “identifies” as a woman. But what exactly does it mean to “identify” as a woman? Identifying as a member of the female *sex* would mean identifying as a member of the reproductive class that produces eggs, gestates, and gives birth. Of course, that is nonsense.

Instead, to “identify as a woman” means embracing the socially constructed gender roles that are imposed upon women. Feminists have been fighting against this toxic system for generations.<sup>6</sup>

**C. Gender identity ideology is inconsistent and incoherent.**

A core concept of gender identity ideology is that the sole criteria for whether somebody is transgender is that he or she says that he or she is transgender. *See Doe 2 v. Shanahan*, 917 F.3d 694, 722 (D.C. Cir. 2019). Under this philosophy, a male becomes a female when he declares himself so. *Id.*

Many who identify as transgender identify as one of dozens of “non-binary” gender identities; for example, demigirl (or demiboy), genderqueer, bigender, or another idiosyncratic label a person might invent based on his or her belief that it “reflect[s] their personal experience.” Human Rights Campaign, *Understanding the Transgender*

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<sup>6</sup> Raymond, Janice. *Doublethink: A Feminist Challenge to Transgenderism*. Spinifex Press, 2021 at 28 “Self-declared women are not women, and attempts to define themselves as such are bogus. Pretending that the female body and the experience of living as a woman are irrelevant — but should be accessible to men — is insulting to women” *See also* Raymond, Janice. *The Transsexual Empire: The Making of the She-Male*. The Beacon Press, 1979.

*Community*, <https://www.hrc.org/resources/understanding-the-transgender-community> (last visited Dec. 10, 2023). In fact, nearly half of all respondents to the National Transgender Discrimination Survey (NTDS) identify as “non-binary” (neither exclusively male nor exclusively female). S.E. James, *et. al.*, *The Report of the 2015 U.S. Transgender Survey* (National Center for Transgender Equality, 2015). Still, while gender and gender identity may evolve along with fashionable philosophies, sex is immutable. Langford could wake up tomorrow and no longer identify as a woman, and nothing will have objectively changed. He could decide to identify as nonbinary, genderfluid, or even “clowgender,”<sup>7</sup> but regardless of his personal beliefs or sorority membership, he will always be male.

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<sup>7</sup> Yes, these are all real “gender identities.” See LGBTQA Wiki, *Greengender*, <https://lgbta.wikia.org/wiki/Greengender> (last accessed Oct. 28, 2021)

### **III. GENDER IDEOLOGY PROMOTES HARMFUL LAWS AND POLICIES.**

#### **A. Harm to lesbians, gay, and bisexual people**

##### **a. Pathologizing same sex attraction and promoting homophobia**

Gender identity ideology promotes homophobia by pathologizing same-sex attraction and gender nonconforming behavior. Indeed, the vast majority of children with gender dysphoria do not grow up to identify as transgender, but rather become same-sex attracted adults. M.S.C. Wallien, et al., *Psychosexual outcome of gender-dysphoric children*, *Journal of the American Academy of Child and Adolescent Psychiatry*, 47, 1413–1423 (2008).

##### **b. Sexual harassment of lesbians by heterosexual men**

In contrast to the psychosexual outcomes of dysphoric children, adult men who identify as transgender are overwhelmingly heterosexual; they claim to identify as “lesbians.” Sánchez, Francisco J.; Vilain, Eric (2013). “Transgender Identities: Research and Controversies”. In Patterson, Charlotte J.; D’Augelli, Anthony R. (eds.). *Handbook of Psychology and Sexual Orientation*. Oxford University Press. There is a long history of violent practices aimed at actual

lesbians, including so-called “corrective rape.” Hawthorne, Susan (2005). “Ancient Hatred And Its Contemporary Manifestation: The Torture Of Lesbians”. *Journal of Hate Studies*, found at <https://jhs.press.gonzaga.edu/articles/10.33972/jhs.32> (last accessed Dec. 10, 2023). The BBC even reported on the harmful impact on lesbians - including sexual harassment and even rape - of insisting that people ought to be attracted to “gender identity” (regardless of a person’s sex), instead of sex. Caroline Lowbridge, *We’re being pressured into sex by some trans women*, BBC News, Dec. 10, 2023, found at <https://www.bbc.com/news/uk-england-57853385>.

The report also discussed the phenomenon of the “cotton ceiling,” which is a term used by gender activists to describe lesbian refusal to have sex with men who identify as women. Planned Parenthood even held a workshop on how to help heterosexual men have sexual relationships with lesbians. *Id.*

Whether or not he considers himself a lesbian, Langford has been clear that he is attracted to women. He is described by the Appellants as “watching members enter the sorority house, had an erection visible through his leggings... At a slumber party, Langford “repeatedly

questioned the women about what vaginas look like, [and] breast cup size,” and stared as one Plaintiff changed her clothes.” Appellant Brief, pp.12-14.

**c. Promoting paraphilias as a protected characteristic**

Heterosexual men with adult-onset gender dysphoria also have a high incidence - some estimates are upwards of 75% - of a paraphilia called autogynephilia, whereby a man becomes sexually aroused by the idea of himself as a woman. Cantor, James M.; Sutton, Katherine S. (2014). “Paraphilia, Gender Dysphoria, and Hypersexuality”. In Blaney, Paul H.; Krueger, Robert F.; Millon, Theodore (eds.). *Oxford Textbook of Psychopathology*. Oxford University Press. pp. 593, 602–604. *See also* Sanchez at 47–48.

**B. Dismantling single-sex spaces and services for women and girls.**

Governmental and societal acceptance and promotion of gender identity ideology allows any man to invade women’s spaces, such as this sorority, women’s sports, women’s homeless shelters, shelters for battered women, women’s prisons, and other places and resources dedicated to the support of women. Each time a man colonizes these spaces, he is not only taking up resources which have been designated

to women, but he is potentially harming women as well. This potential harm could be putting women at physical and psychological risk in women's intimate facilities or other enclosed spaces, or taking their opportunities to socialize and receive the benefits of sorority membership. This is the plain exploitation, by males, of women for their resources and opportunities.

Marginalized groups of women have been shown to particularly benefit from sororities, making the removal of its single-sex characteristic particularly harmful. The Collegiate Experiences of Lesbians In Panhellenic Sororities (sc.edu).<https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=4531&context=etd>

### **C. Stifling and undermining the first amendment.**

U.S. women can still be, and are, disciplined, fired, or harassed in the workplace for stating verifiable facts, including that human beings, like all mammals, cannot change sex. While men are certainly not exempt from such "cancellation," the swiftness and viciousness of attacks on women who won't submit is evident. Even in this case: Kappa has revoked the lifetime memberships of its alumnae who spoke

out in support of the women bringing this action.

(<https://www.iwf.org/2023/11/09/kappa-kappa-gamma-sorority-retaliates-against-alumnae-for-standing-up-for-women-revokes-lifetime-membership-after-50-years-of-sisterhood/>)

Gender identity speech restrictions have taken hold for public employees in many jurisdictions. For example, New York state now requires its (publicly employed) correctional officers to use “preferred pronouns.” New York City actually characterizes “misgendering” as sexual harassment reportable under the Prison Rape Elimination Act.

*The Prevention of Sexual Victimization in Prison*, New York State Department of Corrections and Supervision, found at

<https://doccs.ny.gov/system/files/documents/2020/05/dc053ec-05-20.pdf>.

This policy has the added effect of falsely increasing statistics on sexual victimization against people who identify as transgender while incarcerated. This policy also risks giving the appearance of an increase in victimization over time, because older data would not reflect this convention. Activists can then use this data to bolster their case for mixed-sex prisons. National Center for Transgender Equality, *Police*,

*Jails, and Prisons*, found at <https://transequality.org/issues/police-jails-prisons> (last accessed Dec. 10, 2023).

Such practices also have grave implications for victims' rights. In the UK, an older woman giving testimony about being the victim of a violent physical assault was repeatedly interrupted and admonished by the judge for not referring to her male attacker as "she". Melanie Newman, *Warning over transgender guidance to judges*. The Law Society Gazette, Dec. 10, 2023, found at <https://www.lawgazette.co.uk/news/warning-over-transgender-guidance-to-judges/5103196.article>. The Judicial Equal Treatment Benchbook now requires this practice in all UK courtrooms. *Id.*

The legal system is the last bulwark against these trends, and fortunately there are jurisdictions that are taking this seriously. The Fifth Circuit denied the request of a male pedophile to use female pronouns after he began to "identify" as a woman. *U.S. v. Varner*, 948 F.3d 250 (5th Cir. 2020). The *Varner* court spoke bluntly against the practice of mandatory "preferred" pronouns, correctly finding that "no authority supports the proposition that we may require litigants, judges, court personnel, or anyone else to refer to gender-dysphoric

litigants with pronouns matching their subjective gender identity.” *Id.* at 254. It further noted that such compelled speech would “raise delicate questions about judicial impartiality” and “convey its tacit approval of the litigant’s underlying legal position.” *Id.* at 256. The court concluded by “declin[ing] to enlist the federal judiciary in this quixotic undertaking.” *Id.* at 258.

## CONCLUSION

A man who has cosmetic surgery on his genitals is still a man. It does not matter what outfit he wears, or what drugs he is prescribed. A woman is not a feeling inside a man’s head. Men do not have the right to redefine what it means to be female in order to accommodate their own feelings and desires, and Kappa cannot suddenly compel its all-female membership to pretend that being a woman means nothing at all.

If the words “woman” and “female” have no clear meaning, and if single-sex spaces and resources have no value for women and girls, one could question the entire basis by which the government has enacted statutory and regulatory protections for them, and why the courts have

consistently upheld the right of women and girls to self-separate from men and boys.

The outcome of this case is a statement on whether this Circuit will honor these constitutional and statutory protections granted to women, fought for and earned over centuries of advocacy by feminists and civil rights activists. We urge the Court to stand resolute in defense of women and girls by reversing the lower court's decision and remanding it for further proceedings.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with Rule 32(a), (g) because it contains 4,689 words, excluding the parts that can be excluded. This brief also complies with Rule 32(a)(5)-(6) because it is prepared in a proportionally spaced face using Microsoft Word Office 365 in 14-point Century Schoolbook font.

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## CERTIFICATE OF DIGITAL SUBMISSION

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

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