

No. 26-3283

United States Court of Appeals for the Ninth Circuit

JANINE CHANDLER, an individual; KRYSTAL GONZALEZ,
an individual; TOMIEKIA JOHNSON, an individual; NADIA ROMERO,
an individual; CATHLEEN QUINN; CHANNEL JOHNSON,

Plaintiffs-Appellants,

WOMAN II WOMAN, INC., a California non-profit corporation.

Plaintiff,

— v. —

KELLI BLACKWELL; KATIE BROWN; TREMAYNE CARROLL;
JENNIFER ROSE; TRANSGENDER, GENDER-VARIANT &
INTERSEX JUSTICE PROJECT,

Intervenors-Appellees,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT IN NO. 1:21-CV-01657-JLT-HBK,
HONORABLE JENNIFER L. THURSTON, DISTRICT JUDGE

BRIEF FOR *AMICUS CURIAE* WOMEN'S DECLARATION INTERNATIONAL USA, DEMOCRATS FOR AN INFORMED APPROACH TO GENDER, AND WOMEN ARE REAL, IN SUPPORT OF APPELLANTS AND REVERSAL

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CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION; KATHLEEN ALLISON, Secretary of the California
Department of Corrections and Rehabilitation, in her official capacity; MICHAEL
PALLARES, Warden, in his official capacity; MONA HOUSTON, Warden, in
her official capacity; JEFF MACOMBER, Secretary of the California Department
of Corrections and Rehabilitation, in his official capacity; ANISSA DE LA
CRUZ, Warden, in her official capacity; LAVELLE PARKER,

Defendants-Appellees.

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INTRODUCTION AND INTEREST OF *AMICI*¹

Women’s Declaration International (WDI) is a global organization of women working to advance the Declaration on Women’s Sex-Based Rights, which reaffirms women and girls’ sex-based rights and challenges the discrimination we experience from the replacement of the category of sex with that of “gender identity” (the Declaration).² The Declaration comprises nine articles. Article I reaffirms that the rights of women are based on the category of sex.³ Article VIII reaffirms the need for the elimination of violence against women, and explains the importance of “the provision of single-sex services and physical spaces for women and girls to provide them with safety, privacy, and dignity.”⁴ Article VIII continues: “Whether provided by public or private entities, such single sex provisions should be allocated on the basis of sex and not ‘gender identity,’ and should be staffed by women on the basis

¹ No counsel for a party authored the brief in whole or in part. No counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity, other than the *amicus curiae*, its members, or its counsel, made a monetary contribution to the preparation or submission of the brief. Counsel on this brief is currently a member of the Board of Directors of DIAG. She was the President and a member of the Board of Directors of WDI USA from 2021 to 2024 and served as a member of the Board of Directors of the Women’s Liberation Front from 2016 to 2020.

² Declaration on Women’s Sex-Based Rts., <https://www.womensdeclaration.com/en/> (last visited July 27, 2026).

³ Declaration, Article I.

⁴ Declaration, Article VIII.

of their sex and not ‘gender identity.’”⁵ WDI USA is the US chapter of the global organization.

Democrats for an Informed Approach to Gender (DIAG) is a movement of Democratic voters who want to see the Democratic Party return to core liberal values.⁶ It supports the sex-based rights of women and girls to: fair competition; safe play in sports; privacy and dignity afforded by single-sex spaces; opportunities for recognition; and honors for achievement. It is a signatory to the Democratic Women’s Declaration, which advocates for office-holding Democrats to take a firm position on women’s sex-based rights.⁷

Women Are Real is a nonpartisan California-based organization that also focuses on women’s sex-based rights. It states: “We are women—liberal, moderate, and conservative—who believe that sex still matters in the daily lives of women and girls. There are consequences in the lives of women and girls when males who now identify as women have access to women’s spaces and sports. Some of the consequences can be seen as minor, and easily resolved, while there are others that are proving to be outright dangerous. These dangerous consequences need

⁵ *Id.*

⁶ See Democrats for an Informed Approach to Gender, <https://www.di-ag.org/> (last visited July 26, 2026).

⁷ See Democratic Women’s Declaration, <https://www.democraticwomensdeclaration.com/> (last visited July 26, 2026).

significant and immediate interventions. We, as a society, need to be able to have a serious discussion about these issues, and we need to find solutions that respect the safety, privacy, and dignity of women.”⁸

Amici are all familiar with the importance of protecting women and girls as a sex class. They all understand why it is important to separate prisons according to sex, as mandated by the United Nations Standard Minimum Rules for the Treatment of Prisoners.⁹

WDI USA has filed *amicus* briefs before this court in the matters of *Hecox v. Little*, No. 20-35813 (9th Cir. 2024), *reversed*, 609 U.S. ____ (2026), and *Olympus Spa, et al. v. Armstrong, et al.*, No. 23-4031 (9th Cir. 2025/2026), *en banc* rehearing denied (“This is a case about swinging dicks,” VanDyke, J., dissenting from decision not to rehear the matter *en banc*).¹⁰

It has filed *amicus* briefs before roughly half of the U.S. Courts of Appeals and before the Supreme Court in the matters of *U.S. v. Skrmetti*, 605 U.S. 495 (2025),

⁸ Women Are Real, <https://womenarereal.org/> (last visited July 26, 2026).

⁹ See G.A. Res. 70/175, annex, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (Jan. 8, 2016).

¹⁰ Judge VanDyke elaborated: “You may think that swinging dicks shouldn’t appear in a judicial opinion. You’re not wrong. But as much as you might understandably be shocked and displeased to merely encounter that phrase in this opinion, I hope we all can agree that it is far more jarring for the unsuspecting and exposed women at Olympus Spa—some as young as thirteen—to be visually assaulted by the real thing.” *Olympus Spa* at 56.

A.C. v. Martinsville, 75 F.4th 760 (7th Cir. 2023), *cert. denied* (Jan. 16, 2024), and *Little v. Hecox* and *West Virginia v. B.P.J.*, 609 U.S. ____ (2026).

In view of their work on these issues, all *amici* have a meaningful perspective to offer the Court.¹¹

SUMMARY OF ARGUMENT

The fact that male inmates who claim to be “transgender” are being housed in women’s prisons across the country should be a national scandal. There is simply no valid reason for housing male inmates in women’s prisons regardless of whether such inmates label themselves “transgender.”

The district court provided four basic reasons for dismissing the amended complaint filed by six female inmates in California’s prison system: (1) the court did “not have the authority to manage California’s prisons from day to day, such as by making decisions about transfers and housing assignments;” (2) it was “clear that the state law in question does not actually force prison officials to transfer inmates without regard for the safety and well-being of others;” (3) the plaintiffs were “not

¹¹ Each *amicus* organization on this brief rejects the entire concepts of “gender identity” and “transgender.” Each understands the material reality of sex: that every person on the planet is either female or male. WDI USA and WAR are female-only organizations. DIAG includes as its supporters some men and some women (though DIAG supporters tend overwhelmingly to be women). *Amici* understand that various differences of sexual development (commonly referred to as “intersex”) exist, but emphasize that such differences of sexual development are medical conditions, not identities. The fact that such conditions exist does not negate the sex binary.

asking the Court to redress some specific harm or injury that has already befallen them;” and (4) the plaintiffs had not “explained why the forward-looking order they would like this Court to issue—i.e., confirmation that the state’s law is unconstitutional and an instruction that the defendants must not follow it in the future—is likely to prevent future harm.” Op. at 2.

Amici disagree with each of these assertions and will explain why the district court was wrong as to all of them.

Amici agree with the claims set forth in the amended complaint as to equal protection, cruel and unusual punishment, and freedom of speech and religion. *Amici* will provide additional commentary on the equal protection issue and explain why injunctive relief is warranted under the Equal Protection Clause specifically.

Amici oppose the general practice of housing male inmates in women’s prisons and will explain why housing any men in women’s prisons is dangerous, inappropriate, and insulting to women as a sex class.

ARGUMENT

I. The plaintiffs’ allegations should have survived the motion to dismiss and the district court had jurisdiction to hear the matter.

The reasons offered by the district court for dismissing the amended complaint boil down to the following:

- The Court did “not have the authority to manage California’s prisons from day to day, such as by making decisions about transfers and housing assignments.”
- It was “clear that the state law in question does not actually force prison officials to transfer inmates without regard for the safety and well-being of others.”
- The plaintiffs were “not asking the Court to redress some specific harm or injury that has already befallen them.”
- The plaintiffs had not “explained why the forward-looking order they would like this Court to issue—i.e., confirmation that the state’s law is unconstitutional and an instruction that the defendants must not follow it in the future—is likely to prevent future harm.”

Op. at 2.

Amici will address each of these assertions.

In addition, the court noted that “California had been housing transgender inmates in women’s prisons before the disputed law came into effect.” *Id.* It is true that California had been housing male inmates in women’s prisons before the disputed law came into effect, but that fact in no way diminishes the federal judiciary’s obligation to ensure that plaintiffs receive the Constitutional protections to which they are entitled.

A. No one is asking the district court to “manage California’s prisons from day to day.”

Before 1964, the federal judiciary generally took a “hands-off” approach to prison inmates’ claims brought under the Eighth Amendment, preferring to defer to prison administrators. *See, e.g., United States ex rel. Morris v. Radio Station WENR,*

209 F.2d 105, 107 (7th Cir. 1953) (“Inmates of State penitentiaries should realize that prison officials are vested with wide discretion in safe-guarding prisoners committed to their custody. Discipline reasonably maintained in State prisons is not under the supervisory direction of federal courts.”).

However, that changed when the U.S. Supreme Court decided in 1964 that an Illinois inmate’s claim under 28 U.S.C. § 1983 could proceed. The inmate had alleged that because of his religious beliefs he was denied permission to purchase certain religious publications and denied other privileges enjoyed by other prisoners. The Court ruled that this was sufficient to allege a cause of action and that the lower courts had improperly dismissed the complaint. *See Cooper v. Pate*, 378 U.S. 546 (1964).

In the ensuing decades, the judiciary has developed a robust jurisprudence regarding claims involving alleged violations of the Eighth Amendment, including the Supreme Court’s 1976 opinion in *Estelle v. Gamble*, 429 U.S. 97 (1976), establishing the “deliberate indifference” standard. The Court then re-affirmed this standard in *Farmer v. Brennan*, 511 U.S. 825 (1994).

Under *Estelle* and *Farmer*, when an inmate alleges that prison officials have violated his or her rights under the Eighth Amendment, as the plaintiffs alleged in the case at bar, the standard that courts should apply is whether the officials’ alleged

actions demonstrated “deliberate indifference” to the inmate’s serious illness or injury. *Estelle*, 429 U.S. at 104.

Here, plaintiffs alleged (among other claims) that “[k]nowing the medical needs of many female inmates, including Plaintiffs, and knowing the propensity of trans-identifying biological males to physically victimize women, CDCR is deliberately disregarding ‘an excessive risk to inmate health or safety.’” Amended Complaint at 19.

In ruling on a motion to dismiss, a district court must take as true the complaint’s well-pleaded factual allegations and draw all reasonable inferences in favor of the plaintiff. *See Howard v. RNC*, 177 F.4th 1133 (9th Cir. 2026) (citing *Shields v. Credit One Bank, N.A.*, 32 F.4th 1218, 1220 (9th Cir. 2022)).

Taken as true, this allegation alone should have been sufficient to survive a motion to dismiss, but the amended complaint contains many more allegations that the district court was required to accept as true.

While it is true that courts should *generally* defer to prison officials regarding the day-to-day operations of prisons, this does not relieve them of their obligation to protect the constitutional rights of incarcerated persons, including the female plaintiffs in this case. Properly interpreting the Constitution is the province of the federal judiciary, not prison administrators. Fulfilling this crucial role is not “managing [a state’s] prisons from day to day.”

It remains to be seen whether plaintiffs will ultimately prevail on their claims. For now, though, it is enough to say that the amended complaint should have survived the motion to dismiss.

B. The state law in question does in fact require prison officials to transfer inmates based on inmates’ “gender identities.”

SB 132, the Transgender Respect, Agency, and Dignity Act, was enacted and signed into law in 2020. It became effective in January 2021. *See* Cal. Penal Code §§ 2605, 2606. It is extremely authoritarian as to what it requires of prison officials.

It requires officials of the California Department of Corrections and Rehabilitation (CDCR), for example, to ask the following of each inmate entering the system: the individual’s “gender identity of female, male, or nonbinary,” “whether the individual identifies as transgender, nonbinary, or intersex,” and “the individual’s gender pronoun and honorific.” Cal. Penal Code §§ 2605(a)(1)-(3).

This is all true whether or not a particular incoming inmate even claims to have a “gender identity” or a “preferred pronoun.”

It states: “Staff, contractors, and volunteers of the department shall not consistently fail to use the gender pronoun and honorific an individual has specified in all verbal and written communications with or regarding the individual that involve use of a pronoun and honorific.” Cal. Penal Code § 2605(d). The law further requires administrators to refer to, search, and house inmates according to inmates’ “gender identity”-related preferences. *See, e.g.,* Cal. Penal Code § 2606(a)(2).

Moreover, SB 132 commands that the transferring inmate's perception of health and safety "shall" be given serious consideration in bed assignments, placement, and programming decisions, and that if the inmate later raises health or safety concerns, housing and placement "shall" be reassessed. It requires written certification, notice, and an opportunity to object when CDCR denies the transferring inmate's preferred housing placement. Notably, the statute creates no comparable process for women in the receiving facility: no individualized assessment of their safety, no right to object, no written findings, and no requirement that CDCR consider their sex-based privacy, trauma, religious beliefs, or pregnancy risk before placing male inmates in women's facilities. Every mandatory safety provision runs in favor of the transferring inmate, not the women forced to receive, live, and shower with him.

There should be no confusion about what this bill does, which is exactly what lawmakers and lobbyists intended it to do. One of the groups that pushed for the bill was Equality California, which stated upon the bill's passage in the Assembly: "The California Assembly passed Senator Scott Wiener's (D-San Francisco) bill *requiring* the California Department of Corrections and Rehabilitation (CDCR) to house transgender, gender-nonconforming and intersex people according to their own

sense of where they will be safest on Sunday, and the Senate concurred in the Assembly’s amendments Monday morning” (emphasis added).¹²

Even CDCR concedes that SB 132 requires it to house inmates according to the inmates’ preference. When the bill was signed into law, CDCR announced, “Governor Gavin Newsom signed Senate Bill 132, The Transgender Respect, Agency and Dignity Act, legislation that will allow incarcerated transgender, non-binary and intersex people to be housed and searched in a manner consistent with their gender identity.”¹³ It continued: “SB 132 *requires* CDCR to house a person who identifies as transgender, non-binary or intersex in a correctional facility – including residential reentry facilities – designated for men or women based on their preference” (emphasis added).¹⁴

Anyone suggesting that the law does not require prison authorities to house inmates in accordance with their “gender identities” is willfully ignoring the clear language of these pronouncements.

¹² Equality California, “CA Legislature Passes Bill to Ensure Incarcerated Transgender People Are Housed Where They Are Safest” (August 31, 2020), <https://www.eqca.org/release-sb132-final-passage/> (last visited July 27, 2026).

¹³ California Department of Corrections and Rehabilitation, “Governor Newsom signs Senate Bill 132” (Sept. 29, 2020), <https://www.cdcr.ca.gov/insidecdcr/2020/09/29/governor-newsom-signs-senate-bill-132-to-respect-gender-identity-during-incarceration/> (last visited July 27, 2026).

¹⁴ *Id.*

- C. The plaintiffs in fact asked the court to redress specific harms and injuries, which were clearly laid out in both the amended complaint and in the district court's own order granting the motion to dismiss.

The plaintiffs alleged generally (among other things) that:

- They are at “legitimate risk of sexual assault, physical violence, and other emotional trauma that comes as a natural consequence of having been victims of prior abuse.” Amended Complaint at 8.
- The law subjects female inmates to “increased risk of mental health issues by placing trans-identifying male inmates with women who are known to suffer disproportionately from post-traumatic stress disorder (“PTSD”).” *Id.* at 11.
- They “have a substantial fear of future physical or sexual assault and sexual harassment by trans-identifying biological male inmates who are transferred to CCWF [the Central California Women’s Facility].” *Id.* at 12.
- They “have experienced and continue to experience fear, depression, anxiety, and distress from the presence of biological male inmates, worsening their post-traumatic stress disorders, because they are forced to share close-living quarters, shower, go to the bathroom, and sleep with biological males.” *Id.*

The amended complaint goes on to address the specific injuries suffered by the individual plaintiffs, such as (among other things):

- “Janine [Chandler] has observed the arrangements and behavior of trans-identifying biological male inmates housed in her prison, and this has caused her fear and an exacerbated experience of PTSD.” Amended Complaint at 12.
- “Being housed with trans-identifying biological male inmates profoundly affects Janine’s mental health in two ways. First, the presence of criminal, intimidating males gives her flashbacks of her violent husband. Second, her inability to choose who she undresses around and helplessness to prevent trans-identifying biological male inmates from observing her while she undresses is extremely distressing to Janine. Janine is a Muslim whose faith instructs her to not be unclothed with unrelated males. CCWF is forcing Janine to live in conditions that violate her sincerely held religious beliefs.” *Id.* at 13.

- “Krystal [Gonzalez] was sexually assaulted by a trans-identifying biological male inmate transferred to her housing unit. This male inmate thrust his penis against Krystal’s backside without her consent.” *Id.* at 13.
- “Krystal promptly disclosed the incident to CCWF staff, and, after staff failed to pursue her report, she filed a grievance with the CDCR.” *Id.*
- “In her CDCR grievance, Krystal requested single-sex housing to prevent further sexual victimization. CCWF ultimately ignored her grievance but did note that Krystal had been assaulted by a ‘transgender woman with a penis.’ CCWF ignored Krystal’s documented concern of being housed with males”. *Id.*
- “Tomiekia [Johnson] witnessed and reported incidents of sexual harassment (voyeurism) of co-Plaintiff Cathleen Quinn by a trans-identifying biological male inmate named Michael Contreras (‘Contreras’).” *Id.* at 14.
- “Tomiekia is also aware of Contreras stalking and attempting to rape another female inmate, Jennifer Barbero.” *Id.*
- “Tomiekia knows of yet another incident of a trans-identifying biological male inmate harming a female inmate. Three inmates reported that they witnessed a trans-identifying biological male inmate vaginally rape a female inmate while she was unconscious.” *Id.*
- “On multiple occasions in 2021, Nadia [Romero] was repeatedly subjected to unwanted physical touching by a trans-identifying biological male inmate while Nadia was trying to complete a work assignment. She attempted to get the male inmate to stop, but he refused.” *Id.*
- “On two separate occasions in February 2022, Contreras, ‘peep[ed]’ at Cathleen [Quinn] while she was using the bathroom and naked from the waist down. Contreras’s behavior was caught on video.” *Id.* at 15.
- “Channel Johnson was assigned to a cell with a trans-identifying biological male inmate, Jonathan Robertson. At first, Channel and Robertson engaged in consensual sex. Then, however, Robertson began stealing from Channel and reports of their relationship circulated to prison staff. After Robertson was placed in administrative segregation as discipline for his relationship with Channel, he began demanding Channel deny they ever had a relationship. When Channel refused to lie, Robertson threatened to rape and murder her. He also stole Channel’s mail, read her family’s home address, and began mailing threats of rape and murder to her family—including her minor younger brother and nephew.” *Id.* at 15-16.

This is just a short list of the numerous very clearly articulated allegations set forth in the amended complaint.

The district court understood that these allegations were being presented and it summarized the accusations in its own decision dismissing the amended complaint. *See Op.* at 10-11. The court was required by law to assume the truth of each accusation for the purpose of evaluating the motion to dismiss. These were precisely the specific harms and injuries that the plaintiffs were asking the district court to redress.¹⁵

- D. The plaintiffs had in fact explained why the forward-looking order they were seeking is likely to prevent future harm.

The district court essentially relied on the fact that CDCR would house male (“transgender”) inmates in the women’s prison even if SB 132 had never been enacted (and even if the law were to be enjoined) to support its ruling that the plaintiffs had failed to explain why the forward-looking order they were seeking was likely to prevent future harm.

While it is true that California housed male inmates in women’s prisons before the passage of SB 132 and that SB 132 simply codified existing practices, this in no way obviates the plaintiffs’ need for an injunction to prevent the future harms that SB 132 makes inevitable.

¹⁵ *Amici* understand that the district court ruled that these events all took place in the past and that appellants are only seeking prospective injunctive relief. *Amici* recount these allegations, set forth in the amended complaint, to explain that these are precisely the types of harm that SB 132 causes and is likely to cause in the future, in the absence of injunctive relief.

The Prison Rape Elimination Act (PREA) was enacted and signed into law by George W. Bush in 2003. It was voted in unanimously by Congress. In 2012, the federal Bureau of Prisons (BOP) promulgated regulations implementing the statute. *See* 28 C.F.R. Part 115, *et seq.* Those regulations state: “In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems.” 28 C.F.R. § 115.42(c). They state further: “A transgender or intersex inmate’s own views with respect to his or her own safety shall be given serious consideration.” 28 C.F.R. § 115.42(e). The regulations define “transgender” to mean “a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth.” 28 C.F.R. § 115.5.

Notably, there is nothing in the statutory text of PREA itself that requires any consideration of any individual’s claim to “be transgender” or to have a “gender identity.” Those considerations were only introduced by the implementing regulations.

All states that receive federal funding under PREA, including California, are required to comply with these regulations. This is the underlying reason why

California began housing male (“transgender”) inmates in the women’s prison even before the passage of SB 132.

Importantly, however, the PREA regulations are much more restrictive than SB 132. SB 132 creates a presumption in favor of housing by the inmate’s stated preference, Cal. Penal Code § 2606(a)(3); places the burden on the CDCR Secretary to certify in writing a specific and articulable basis before any denial, *id.* § 2606(b); and prohibits denial based on anatomy or physical characteristics, or any factor present among people at the requested facility, *id.* §§ 2606(c)(1), (3).

Moreover, it is likely that the PREA regulations will be amended to eliminate the “transgender” loophole allowing men to get into women’s prisons in the near future.

In January of 2025, President Trump issued an Executive Order titled “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” requiring the Attorney General to “ensure that males are not detained in women’s prisons or housed in women’s detention centers, including through amendment, as necessary, of Part 115.41 of title 28, Code of Federal Regulations [the PREA implementing regulations].” EO 14168, § 4(a).

If the Attorney General amends the PREA regulations as ordered, one of the underlying justifications for California’s policy of housing male (“transgender”) inmates in the women’s prison will be gone.

Thus, despite the fact that some male inmates were already being housed in women's prisons before SB 132, an order enjoining the enforcement of SB 132 is necessary to prevent future harm to plaintiffs, both because SB 132 is codifying and exacerbating an existing problem and because one of the justifications California uses for housing male inmates in women's prisons is likely to disappear in the near future.

II. CA SB 132 is unconstitutional for all the reasons the plaintiffs say it is and the federal judiciary should protect women and girls as a sex class under the Equal Protection Clause.

Amici strongly agree that SB 132 violates plaintiffs' rights to equal protection of the laws, to be free from cruel and unusual punishment, and to freedom of speech and religion, for all of the reasons explained in the amended complaint. We would like to elaborate specifically on the equal protection argument.

The U.S. Supreme Court decided recently that claims of sex discrimination under the Equal Protection Clause are related to just that: sex. "Under this Court's equal protection precedents, laws that classify by sex are subject to what is known as intermediate scrutiny: Sex-based classifications are permissible only when the classification is 'substantially related' to achieving an 'important' government objective." *West Virginia v. B.P.J.*, 609 U.S. ___, ___ (2026).

People who think that men should be considered women under the law when they call themselves "transgender" are free not to like that outcome, and *amici*

understand that that case was about sports, not prisons. Nonetheless, the principle is the same: these are questions about *sex* discrimination, not discrimination on the basis of “gender identity” or status as “transgender.”

The Court decided for the first time that women count as “persons” under the Equal Protection Clause in 1971. It did so in a landmark case titled *Reed v. Reed*, 404 U.S. 71 (1971), after a young attorney named Ruth Bader Ginsburg persuasively argued that women are entitled to equal protection of the laws.

At issue in that case was an Idaho statute that expressly granted men an advantage over women in the administration of probate estates. The Idaho law stated: “Of several persons claiming and equally entitled to administer, *males must be preferred to females*, and relatives of the whole to those of the half blood” (emphasis added). *See Reed*, 404 U.S. at 72 n.2 and 73.

The parties were Sally and Cecil Reed, the parents of Richard Reed, who had died intestate. Because Richard had no spouse or children, the administration of his estate would fall to either Sally or Cecil, and because of the law’s provision preferring males over females, the probate court granted the privilege to Cecil. Sally challenged that decision. The Supreme Court eventually ruled that the Idaho law unconstitutionally deprived Sally of her right to equal protection of the law on the basis of sex. In its ruling, the Court stated: “By providing dissimilar treatment for

men and women who are thus similarly situated, the challenged section violates the Equal Protection Clause.” *Id.* at 77.

The Idaho law explicitly expressed a preference for male people over female people. The Supreme Court held, rightfully, that this violated the Constitution. So-called “gender identity” had nothing to do with it. If “gender identity” were in fact a subcategory of sex, Sally Reed could simply have declared to the probate and higher courts that she had the right to a preference in administering Richard’s estate because she “identified as” male.

The argument, as valid today as it was in 1971, was that the Equal Protection Clause protects women and girls on the basis of sex because women and girls have historically been discriminated against on that very basis.

Notably, in arguing that the Equal Protection Clause protects women and girls as a sex class, Sally Reed’s legal team (including future Justice Ginsburg) reminded the Supreme Court that equal legal rights for women and girls need not, and constitutionally must not, come at the expense of the privacy rights of women and girls. *See* Appellant Br. at 19, n.13, *Reed*, 404 U.S.

Justice Ginsburg, of course, went on to become the second female Supreme Court Justice and, in 1996, authored the majority opinion in *United States v. Virginia*, 518 U.S. 515 (1996), building on her own legacy of protecting women and girls as a sex class under the Equal Protection Clause.

The federal judiciary should uphold the legacy of Justice Ginsburg by continuing to protect women and girls as a sex class that does not include any men or boys (including men and boys who call themselves “transgender”).¹⁶

III. Housing men in women’s prisons is torture for female inmates.

As stated, our society’s policies of housing male inmates in women’s prisons should be a nationwide scandal.

In the early days of the Republic, convicted male and female felons were housed together in prisons.¹⁷ Starting in the late 19th century, the penal system started focusing more on rehabilitation than on punishment, and with that development came the emergence of separate male and female “reformatories.”¹⁸ The first female-only facility was the Indiana Reformatory Institution for Women and Girls, founded in 1873 as the first public prison for women in the United States.¹⁹

¹⁶ For more on Justice Ginsburg’s legacy of protecting the sex-based rights of women and girls, *see* Kara Dansky, “Harris v. EEOC and the women’s rights legacy of Ruth Bader Ginsburg,” THE HILL (Oct. 8, 2019), <https://thehill.com/opinion/civil-rights/464325-harris-v-eeoc-and-the-womens-rights-legacy-of-ruth-bader-ginsburg/> (last visited July 27, 2026).

¹⁷ Nicole Hahn Rafter, “Gender, Prisons, and Prison History,” SOCIAL SCIENCE HISTORY, Vol. 9, No. 3 (Summer, 1985), 233-247, at 235-36.

¹⁸ *Id.*

¹⁹ Candice Norwood, “The forgotten history of America’s first public women’s prison, THE 19TH (Mar. 23, 2023), <https://19thnews.org/2023/03/forgotten-history-first-public-womens-prison-indiana/> (last visited July 27, 2026).

Put simply, society recognized that justice-involved men and women have different needs. Irene Lawrence is a Community Development Specialist at the North Carolina Department of Corrections. According to her:

I've seen people tell their reentry stories. When men have reformed, what they say about their journey is that they've learned how to stop hurting people. They've learned how to develop empathy. Whereas women who have reformed have had to develop enough self-esteem to even learn that they're significant enough for their actions to hurt people. Men and women require totally different types of rehabilitation.²⁰

Lawrence was talking about reformation and rehabilitation, but the same principle applies in the context of prison itself.

Moreover, for incarcerated women, forced housing with intact male prisoners creates a sex-specific bodily risk no screening can eliminate: pregnancy through rape. That risk requires only fertility, male anatomy, and access. It is irreversible in a way borne by female inmates alone. A statute that forbids officials from considering the one physical characteristic that produces this harm necessarily increases the risk.

For these reasons and others, in 2015 the United Nations formally adopted the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela

²⁰ Interview with Irene Lawrence, *Woman's Hour: The TERF Report* (June 26, 2026), <https://karadansky.substack.com/p/listen-to-womans-hour-the-terf-report-7ae> (last visited July 27, 2026).

Rules). Rule 11 calls for the separation of different categories of people: “The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus: Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate.” Minimum Rules for Treatment of Prisoners Rule 11(a) (*see supra* n.9).

And yet, in the United States (as in other countries), we now have laws such as the PREA regulations and SB 132 that permit male inmates to be housed with women. *Amicus* WDI USA has published an online database documenting male inmates across the country who are classified as female and/or housed in women’s prisons.²¹ According to known data at the time of filing, there were at least 91 male inmates being housed in women’s prisons across the country. Many of them have been convicted of crimes such as homicide, rape, child sexual exploitation, and assault.²²

We know that some of these male inmates housed in women’s prisons have committed horrendous offences against incarcerated women, including in

²¹ Women’s Declaration International USA, *Not Our Crimes*, <https://notourcrimes.info/> (last visited July 27, 2026).

²² *Id.*

California. Even when they do not commit horrendous offences against incarcerated women, male inmates' very presence in a women's prison is intimidating to the women, the vast majority of whom have endured physical and/or sexual trauma at the hands of men at some point in their lives.

Incarcerating men in women's prisons is a shameful practice, and it has to end.

CONCLUSION

For all of the foregoing reasons, *amici* urge this court to reverse the district court's grant of the motion to dismiss and to remand for further proceedings.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), the undersigned hereby certifies that:

1. This brief complies with the type-volume limitation, as provided in Circuit Rule 32.2 and Fed. R. App. P. 29(a)(5), because, exclusive of the exempted portions of the brief as provided by Fed. R. App. P. 32(f), the brief contains 5441 words.
2. This brief complies with the type-face and type-style requirements, as provided in Fed. R. App. P. 32(a) and Circuit Rule 32 because the brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.
3. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

Dated: August 6, 2026

Respectfully submitted,

/s/ Kara Dansky
Kara Dansky

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system. Participants in the case who are registered ACMS users will be served by the appellate ACMS system.

Dated: August 6, 2026

Respectfully submitted,

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