

No. 1-18-0294

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

NOVA MADAY,
Plaintiff-Appellant

v.

TOWNSHIP HIGH SCHOOL
DISTRICT 211,
Defendant-Appellee

and

STUDENTS AND PARENTS FOR
PRIVACY, a voluntary
unincorporated association,
Intervenor-Appellee.

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)
) Appeal from the Circuit Court
) of Cook County,
) Chancery Division
)
) Case No. 17 CH 15791
)
) Hon. Thomas R. Allen,
) Judge Presiding
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AMICUS CURIAE BRIEF OF
THE WOMEN'S LIBERATION FRONT
IN SUPPORT OF TOWNSHIP HIGH SCHOOL DISTRICT 211

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TABLE OF POINTS AND AUTHORITIES

INTRODUCTION AND INTEREST OF AMICUS CURIAE1

34 C.F.R. § 106.331

Nat’l Institutes for Health, *Genetics Home Reference: X chromosome* (Jan. 2012)1

Daphna Joel, *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*, 27 *Biology of Sex Differences*, no. 3, Dec. 20121

Leonard Sax, *How Common Is Intersex? A Response to Anne Fausto-Sterling*, 39 *J. of Sex Research* 174, 174-78 (2002), available at <http://www.jstor.org/stable/3813612>2

Dawkins, R. *The Ancestor’s Tale, A Pilgrimage to the Dawn of Evolution* (Mariner Books ed. 2005)2

Nat’l Institutes for Health, *Genetics Home Reference: SRY gene* (Mar. 2015)2

Rebecca Reilly-Cooper, *Gender is Not a Spectrum* (Aeon June 28, 2016)3

Cordelia Fine, *Delusions of Gender: The Real Science Behind Sex Differences* (Icon Books 2010)3

David C. Page, *Every Cell Has a Sex: X and Y and the Future of Health Care*, Yale Center for Clinical Investigation (Aug. 30, 2016).....3

Keith Brannon, *Does the Sex of a Cell Matter in Research?*, Tulane University (June 6, 2017)3

Jenny Crofton, *What It Means To Be MultiGender: The Questions Many Have, But Are Afraid To Ask*, *The Body is Not An Apology* (Dec. 24, 2017)4

Women’s Liberation Front v. U.S. Department of Justice et al., No. 1:16-cv-00915 (D.N.M. Aug. 11, 2016.).....5

Gloucester v. G.G., 137 S. Ct. 1239 (2017) (Mem.).....5

SUMMARY OF ARGUMENT5

ARGUMENT.....6

I.	“WOMEN AND GIRLS” IS A MEANINGFUL LEGAL CATEGORY OF PEOPLE, WORTHY OF CIVIL RIGHTS PROTECTION, SAFETY, AND PRIVACY.....	6
	<i>Sex</i> , Black’s Law Dictionary (10th ed. 2014).....	6
	Illinois Human Rights Act, 775 ILCS § 5/1-103	6
	<i>Male</i> , Merriam-Webster.com, Meriam-Webster (Apr. 8 2018).....	6
	<i>Female</i> , Merriam-Webster.com, Meriam-Webster (Apr. 5 2018).....	6
	Ruth Barrett, ed., <i>Female Erasure</i> (Tidal Time Publishing, LLC, 2016).....	7
II.	ILLINOIS LAW PROHIBITS SEX-BASED DISCRIMINATION AND THE LAW SHOULD NOT BE INTERPRETED IN A MANNER THAT ERASES IT.	7
	Illinois Human Rights Act, 775 ILCS § 5/1-103	7
III.	TO THE EXTENT THAT “GENDER IDENTITY” EXISTS AS A BELIEF SYSTEM, IT IS GROUNDED IN SEXIST AND REGRESSIVE STEREOTYPES THAT HAVE NO PLACE IN CONTEMPORARY SOCIETY.	8
	Karen Kaplan, <i>There’s No Such Thing as a ‘Male Brain’ or ‘Female Brain’ and Scientists Have the Scans to Prove It</i> , L.A. Times (Nov. 30, 2015)	9
	Gayle Rubin, <i>The Traffic in Women</i> (1975).....	9
IV.	THERE ARE NUMEROUS HARMFUL CONSEQUENCES OF ALLOWING INDIVIDUALS TO SELF-IDENTIFY THEIR “GENDER IDENTITY” IN LIEU OF THEIR SEX	9
	Sam Pazzano, <i>Predator who claimed to be transgender declared dangerous offender</i> , Toronto Sun (Feb. 26, 2014, 6:49 PM EDT), http://torontosun.com/2014/02/26/predator-who-claimed-to-be-transgender-declared-dangerous-offender/wcm/fc2c70f0-b1a1-41e2-85db-bec9d0012ce5	9
	Cam Smith, <i>Connecticut transgender sprinter Andraya Yearwood wins two state titles amidst controversy</i> , USA Today (June 7, 2017), http://usatodayhss.com/2017/connecticut-transgender-sprinter-andraya-yearwood-wins-two-state-titles-amidst-controversy	9

Transgender Rights: The Elimination of the Human Rights of Women,
GenderTrender, [https://gendertrender.wordpress.com/2013/07/11/
transgender-rights-the-elimination-of-the-human-rights-of-women/amp/](https://gendertrender.wordpress.com/2013/07/11/transgender-rights-the-elimination-of-the-human-rights-of-women/amp/)
(last visited April 12, 2018)10

CONCLUSION10

INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

Amicus is the Women’s Liberation Front (“WoLF”), an organization of radical feminists dedicated to the liberation of women by ending male violence, regaining reproductive sovereignty, and preserving female-only spaces. WoLF has nearly 500 members who live, work, and attend public schools across the United States, including in Illinois.

Women and girls have the right to spaces that are free of men and boys, particularly in situations where they are required to be partially-clothed or otherwise vulnerable to sexual assault or other threats to their bodily integrity and privacy. This is well-established under federal law, as Title IX’s implementing regulations allow Title IX recipients to provide separate toilet, locker room, and shower facilities on the basis of sex, provided that such facilities are comparable.¹ Palatine High School receives Title IX funding, and thus has the legal ability under federal law to create separate locker rooms on the basis of sex.

Sex and “gender identity” (or “gender-related identity”) are distinct concepts. 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.² As sex is recorded at birth by qualified medical

¹ See 34 C.F.R. § 106.33.

² Nat’l Institutes for Health, *Genetics Home Reference: X chromosome* (Jan. 2012), <https://ghr.nlm.nih.gov/chromosome/X.pdf> (last visited on April 12, 2018) (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”); Daphna Joel, *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*, 27 *Biology of*

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% (all but .018%) of all cases; the miniscule fraction of individuals who have "intersex" characteristics, now called "disorders of sex development," remain either male or female, or are difficult to characterize but do not constitute a third reproductive class.³

In stark contrast to sex, "gender" and "gender identity" refer to nothing more than the degree to which one embraces or rejects stereotypical roles, personality or behavioral traits, and clothing fashions that are socially imposed on men and women.⁴ There is no credible support for the argument that "gender identity" is innate, has a supposed "biological basis," or that every human being has a "gender identity" that is somehow unconnected to their sex.⁵ It is simply a belief system that has been invented and adhered

Sex Differences, no. 3, Dec. 2012, at 1 ("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)").

³ Leonard Sax, *How Common Is Intersex? A Response to Anne Fausto-Sterling*, 39 *J. of Sex Research* 174, 174-78 (2002), 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) (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* (Mar. 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").

⁴ See A. 76 (defining "gender identity" as "one's sense of oneself"); A. 79 (noting that "gender presentation" "requires dressing, grooming, and otherwise outwardly presenting oneself consistently through social signifiers" in order to "consolidat[e]" one's "gender identity"); A. 81 (citing a desire to wear dresses as evidence of one's supposed "female" identity).

⁵ See A. 76 (claiming without citation that "gender identity has a biological component, and is not the result of social, cultural or environmental influences.");

to by a small subset of society.⁶ 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 sex. In fact, the latest science unambiguously confirms that sex is written into every cell of every human body; it is a material reality, regardless how any particular individual chooses to self-identify.⁷

To be sure, no person should be subject to violence or to employment or housing discrimination merely because he or she has received a medical diagnosis of gender dysphoria.⁸ However, Appellant provides no evidence whatsoever that a diagnosis of gender dysphoria means that one literally is or becomes the opposite sex. Indeed, the diagnosis can only apply to one whose sex is in fact the opposite to the one with which he or she subjectively identifies. *Id.* Nor has Appellant provided evidence that “gender identity” even exists as anything other than a belief system.

Under this belief system, anyone is permitted to adopt any “gender identity” *in lieu* of his or her unambiguous and uncontested sex. Sometimes, as is the case with Appellant, it is asserted that a particular individual sincerely believes that he or she is the opposite sex. Other times, it is asserted that a particular individual “identifies as” an entirely different “gender identity.” The following have been proposed as potential “genders” that a person can “identify as:”

Amorgender – gender that changes in response to a romantic partner’s

⁶ See Rebecca Reilly-Cooper, *Gender is Not a Spectrum* (Aeon June 28, 2016); Cordelia Fine, *Delusions of Gender: The Real Science Behind Sex Differences* (Icon Books 2010).

⁷ See David C. Page, *Every Cell Has a Sex: X and Y and the Future of Health Care*, Yale Center for Clinical Investigation (Aug. 30, 2016); Keith Brannon, *Does the Sex of a Cell Matter in Research?*, Tulane University (June 6, 2017).

⁸ A. 77 (noting that “gender dysphoria” is the “medical diagnosis for the feeling of incongruence and accompanying distress.”)

Mirrorgender – gender that changes to reflect those around you

Ambigender – two genders experienced simultaneously as equal and unchanging

Chaosgender – gender that is highly unpredictable

Genderfuck – a subversive gender that can be singular or multi

Demifluid – having multiple genders where some are fluid, while others are static

Collgender – not pangender, but having too many genders to describe

Endogender – having multiple genders that all relate to a specific gender

construct, e.g. *mascfuid*

Cyclogender – gender that changes with hormonal cycles

Fissgender – having highly disparate genders, as in “fissured”

Domgender – having multiple genders where one is dominant over the rest

Gendervex – having multiple genders, each of which is unidentifiable⁹

It has even been claimed that “[t]here are at least as many genders as there have been humans who have lived.”¹⁰

“Gender identity” really just boils down to personality. But, critically, our system of law does not provide legal protections for people on the basis of personality, however sincerely-held one’s beliefs about their personality may be. If it did, every single human being would be entitled to claim civil rights protection on the basis of any personality characteristic. Appellant may have a sincere belief in being a member of the opposite sex, but that is simply a matter of Appellant’s personality, and not a protected legal characteristic.

⁹ Jenny Crofton, *What It Means To Be MultiGender: The Questions Many Have, But Are Afraid To Ask*, *The Body is Not An Apology* (Dec. 24, 2017).

¹⁰ *Id.*

WoLF's interest in this case stems from its interest in protecting the safety and privacy of women and girls. WoLF previously challenged the May 13, 2016, Guidance issued by the Obama Administration that expanded the application of the "sex-means-gender identity" doctrine to all sex-segregated facilities at Title IX schools. (*Women's Liberation Front v. U.S. Department of Justice et al.*, No. 1:16-cv-00915 (D.N.M. August 11, 2016). WoLF also submitted an *amicus* brief in the United States Supreme Court in the case of *Gloucester County School Bd. v. G.G.*, U.S., 137 S. Ct. 1239 (2017) (Mem.) (vacating *G.G. v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2016), and remanding). WoLF seeks to ensure that the Illinois Human Rights Act is interpreted in a manner that gives effect to the sex-based protections that the General Assembly explicitly preserved under the Act.

We urge the Court to uphold the ruling below.

SUMMARY OF ARGUMENT

Our argument is straightforward. First, "women and girls" is a meaningful legal category of people, worthy of civil rights protection, safety, and privacy. Second, Illinois law prohibits sex-based discrimination, and the law should not be interpreted in a manner that erases sex. Third, to the extent that "gender identity" ideology exists as a belief system, it is grounded in sexist and regressive stereotypes that have no place in contemporary society. Fourth, there are numerous harmful consequences to allowing individuals to self-identify their "gender identity" *in lieu* of their sex that have not been adequately considered.

ARGUMENT

I. “WOMEN AND GIRLS” IS A MEANINGFUL LEGAL CATEGORY OF PEOPLE, WORTHY OF CIVIL RIGHTS PROTECTION, SAFETY, AND PRIVACY.

The word “sex” has meaning – specifically, the distinction between male and female.¹¹ This is true under Illinois law itself.¹² The words “male” and “female” also have meaning. Specifically, the word “male” means “an individual of the sex that is typically capable of producing small, usually motile gametes (such as sperm or spermatozoa) which fertilize the eggs of a female.”¹³ The word “female” means “of, or relating to, or being the sex that typically has the capacity to bear young or produce eggs.”¹⁴ There is no dispute that Appellant Nova Maday is an adult human male. Thus, there is simply no logical reason that Nova ought to be given access to the locker rooms reserved for female students. Nova’s “gender identity” does not change this fact.

Defining “sex” to mean “gender identity” under Illinois law, which Appellant seeks to do, would be a truly fundamental shift in American law and society. It would also strip women and girls of our privacy, threaten our physical, safety, undercut the means by which women can achieve educational equality, and ultimately work to erase the very existence of women and girls as a legally-protected class.

There are harmful consequences to allowing any student to obtain full access to school locker rooms on the basis of subjective, self-defined “gender identity.” First,

¹¹ See *Sex*, Black’s Law Dictionary (10th ed. 2014); see also n. 2, *supra*.

¹² See Illinois Human Rights Act, 775 ILCS § 5/1-103 (“Sex’ means the status of being male or female.”).

¹³ *Male*, Merriam-Webster.com, Merriam-Webster (Apr. 8 2018), <http://www.merriam-webster.com/dictionary/male> (last visited June 2, 2016); see also n. 2, *supra*.

¹⁴ *Female*, Merriam-Webster.com, Merriam-Webster (Apr. 5 2018), <http://www.merriam-webster.com/dictionary/female> (last visited June 2, 2016); see also n. 2, *supra*.

female students will lose our physical privacy and face an increased risk of sexual assault, voyeurism, or other invasions of bodily integrity. Giving male students unfettered access to the girls' locker room allows any boy to justify his presence in the girls' locker room simply by uttering the magic words, "I identify as female." Males have been forcing themselves on females for thousands of years with virtual impunity, and self-declared "gender identity" is simply a new pretext for stripping girls of their privacy and making us more vulnerable to everything from groping to rape.

Second, legally redefining "female" as anyone who claims to be female results in the erasure of female people as a protected class.¹⁵ If the ruling below is overturned, that will be yet another contribution to the contemporary phenomenon of legally altering the words "women" and "girls" to include any man or boy who wishes to be deemed a woman or girl, for whatever reason, at whatever time and for however long it suits him. Even at times and in places where women are the property of men (as many still are around the globe) and have few rights beyond those granted by our owners we, like all women, still possess our own experience and legal status derived from our biological reality. If, as a matter of law, *anyone* can be a woman, then *no one* is a woman.

II. ILLINOIS LAW PROHIBITS SEX-BASED DISCRIMINATION AND THE LAW SHOULD NOT BE INTERPRETED IN A MANNER THAT ERASES IT.

Illinois law explicitly prohibits discrimination on the basis of sex. Illinois Human Rights Act, 775 ILCS § 5/1-103(Q). The Act's prohibition against discrimination based on sex is separate and distinct from its prohibition of discrimination based on "gender-related identity." Therefore, the court cannot interpret or apply the statute in a manner

¹⁵ See Ruth Barrett, ed., *Female Erasure* (Tidal Time Publishing, LLC, 2016).

that erases sex and supplants it with “gender identity.” If any man or boy, including Appellant, can simply “identify as” a woman or girl to gain access to their most intimate and vulnerable spaces, then sex-based protection is rendered meaningless. Allowing any male to claim he has a right to be in women’s and girls’ spaces – guaranteed by Illinois law – seriously undermines the laws designed to protect women in these places.

There is not a scintilla of evidence that the Illinois legislature intended to erase sex and replace it with “gender-related identity,” and Appellant does not offer any. In fact, Appellant does not even attempt to address the tension between the statute’s sex-based protections with the Act’s use of the term “gender-related identity” in a different section of the Act.

Here, Palatine High School has offered Appellant eminently reasonable accommodations, while still attempting to protect female students from unlawful discrimination in the form of forced cross-sex nudity. It has not violated the Illinois’ Human Rights Act, and the court below was correct to deny Appellant a preliminary injunction. However, if the school were to allow male students full access to the locker room for female students, then it would be violating the law, by subjecting female students to cross-sex nudity and other threats to their bodily integrity and privacy. The same would be true if females were allowed into lockers reserved for male students.

III. TO THE EXTENT THAT “GENDER IDENTITY” EXISTS AS A BELIEF SYSTEM, IT IS GROUNDED IN SEXIST AND REGRESSIVE STEREOTYPES THAT HAVE NO PLACE IN CONTEMPORARY SOCIETY.

Gender is simply a set of sex-based stereotypes that operate to oppress female people (the category of people known as “women and girls”). Further, to assert that women and girls have a “deeply felt” identification with the set of sex-based stereotypes

that are imposed on us is insulting to women and girls who reject the prison of femininity.

The entire concept of “gender identity” is rooted in the notion that it is possible to have a “female brain in a male body” or vice-versa. This is simply not true. Scientists have demonstrated again and again that there is simply no such thing as a “female” brain or a “male brain.”¹⁶ This science demonstrates that gender is not innate. It is, instead, a “socially imposed division of the sexes.”¹⁷ It is a collection of sex-based stereotypes that our society imposes on people on the basis of sex, where women are understood to like pink and be nurturing, whereas men are said to like blue and be aggressive, for example. This is simply old-fashioned sexism, and it has no place in contemporary society.

IV. THERE ARE NUMEROUS HARMFUL CONSEQUENCES OF ALLOWING INDIVIDUALS TO SELF-IDENTIFY THEIR “GENDER IDENTITY” *IN LIEU* OF THEIR SEX.

There are numerous additional consequences to allowing individuals to simply self-identify their “gender identity,” which must be thought through carefully. One is that male people will be given access to women’s most intimate and vulnerable spaces, such as domestic violence refuges, homeless shelters, and women’s prisons, where women are at risk.¹⁸ Another is that male people will be able to compete in sports as females, which puts female athletes at a disadvantage.¹⁹ Allowing individuals to “self-identify their

¹⁶ See Karen Kaplan, *There’s No Such Thing as a ‘Male Brain’ or ‘Female Brain’ and Scientists Have the Scans to Prove It*, L.A. Times (Nov. 30, 2015).

¹⁷ Gayle Rubin, *The Traffic in Women* 179 (1975); see also n. 4-6, *supra*.

¹⁸ Sam Pazzano, *Predator who claimed to be transgender declared dangerous offender*, Toronto Sun (Feb. 26, 2014, 6:49 PM EDT), <http://torontosun.com/2014/02/26/predator-who-claimed-to-be-transgender-declared-dangerous-offender/wcm/fc2c70f0-b1a1-41e2-85db-bec9d0012ce5>.

¹⁹ Cam Smith, *Connecticut transgender sprinter Andraya Yearwood wins two state titles amidst controversy*, USA Today (June 7, 2017), <http://usatodayhss.com/2017/connecticut-transgender-sprinter-andraya-yearwood-wins-two-state-titles-amidst-controversy>.

gender” results in the elimination of numerous human rights for women.²⁰ If crimes are reported as having been committed by males who claim some sort of “woman identity,” the result will be skewed crime statistics, making it appear that female people are committing a higher percentage of crime than we actually do. If medical patients are recorded according to self-declared “gender identity” for purposes of recording vital statistics, that will undermine the Center for Diseases Control’s ability to conduct sex-specific public health research. These are just a sampling of the long-term consequences of allowing individuals to self-identify their “gender identity.”

CONCLUSION

This Court is bound to apply the Illinois Human Rights Act as it is written, including the explicit prohibition of discrimination on the basis of “sex.” Allowing any individual simply to self-define her or his “gender identity” *in lieu* of his or her sex is dangerous. It renders the term “sex” virtually meaningless, and thereby undermines or eliminates the sex-specific protections preserved for women and girls under Illinois law. To the extent that “gender identity” ideology exists as a belief system, it relies entirely on outmoded and sexist stereotypes. There are numerous long-term consequences to allowing individuals to “self-identify their gender” that do not appear to have been considered or addressed in Appellant’s brief. For all of these reasons, the ruling below should be upheld.

²⁰ *Transgender Rights: The Elimination of the Human Rights of Women*, GenderTrender, <https://gendertrender.wordpress.com/2013/07/11/transgender-rights-the-elimination-of-the-human-rights-of-women/amp/> (last visited April 12, 2018).

Respectfully submitted this 13th day of April, 2018.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 10 pages.

/s/ Vincent Auricchio
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