

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,

DEFENDANT-APPELLEES,

ARTEMIS LANGFORD,

DEFENDANT.

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On Appeal from the United States District Court  
For the District of Wyoming (Cheyenne)

Case No. 2:23-CV-00051-ABJ  
The Honorable Alan B. Johnson,  
U.S. District Judge

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**BRIEF OF *AMICUS CURIAE* NATHANIEL R. JONES CENTER FOR  
RACE, GENDER, AND SOCIAL JUSTICE, THE NATIONAL CENTER  
FOR TRANSGENDER EQUALITY, THE WOMAN'S CITY CLUB OF  
GREATER CINCINNATI, JIM OBERGEFELL, AND THE AMERICAN**

**CIVIL LIBERTIES UNION (ACLU) OF OHIO FOUNDATION IN  
SUPPORT OF APPELLEES AND AFFIRMANCE**

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**Corporate Disclosure Statement for The National Center for Transgender  
Equality**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* states it is a non-profit 501(c)(3) organization. *Amicus curiae* has no corporate parent and is not owned in whole or in part by any publicly-held corporation.

**Corporate Disclosure Statement for The Woman’s City Club of Greater  
Cincinnati**

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**Corporate Disclosure Statement for The American Civil Liberties Union of  
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## INTEREST OF AMICUS CURIAE

*Amicus* is the Nathaniel R. Jones Center for Race, Gender, and Social Justice (“Center”), an educational center within the University of Cincinnati College of Law committed to supporting social change. The Center’s interest in this case stems from its position within higher education and its mission of advancing social change through collaboration and community. The Center believes that combatting harassment and violence against women requires a nuanced and expansive understanding of who women are in both scholastic theory and practice.

The National Center for Transgender Equality (“NCTE”) is a nationwide, non-profit, non-partisan organization founded in 2003 to promote public understanding, opportunity, and well-being for the millions of Americans who are transgender. In addition to conducting public education and ground-breaking national survey research, NCTE works in the nation’s capital and throughout the country to replace disrespect, discrimination, and violence with empathy, opportunity, and justice.

The Woman’s City Club of Greater Cincinnati (“WCC”) seeks to educate, empower, and engage citizens in promoting the common good. As a private organization it is important to the WCC to encourage other organizations to expand membership to those who have not traditionally been embraced in civic groups.

The WCC values collaboration, citizen empowerment, civic literacy, equity and justice, for adults, children and youth regardless of gender identity.

Jim Obergefell was the name plaintiff in *Obergefell v Hodges*, 576 U.S. 644 (2015), the case that extended same sex marriage to all 50 states. He serves as a strong advocate for equality in all dimensions including laws that extend bans on discrimination based on gender identity in housing, employment, health care, education and in public accommodations. His husband John Arthur passed away during the marriage equality litigation, but he continues their advocacy work in his honor. Mr. Obergefell is deeply committed to equal rights for transgender individuals in both public and private settings, including fraternities and sororities.

The American Civil Liberties Union (“ACLU”) of Ohio Foundation is the Ohio affiliate of the ACLU Foundation, which is one of the oldest and largest organizations in the nation dedicated to protecting the civil rights and liberties guaranteed in the United States Constitution and the laws of the United States. The ACLU of Ohio Foundation, with more than two hundred thousand members, has been at the forefront of efforts to protect the full array of civil rights and liberties provided in the United States Constitution, the laws of the United States, and the Constitution and laws of the State of Ohio. The ACLU of Ohio Foundation has appeared in numerous cases to protect the rights of LBGTQ+ individuals from discrimination under the law. Recent and current cases include, e.g., *Doe No. 1 et*

*al. v. Bethel Local School District Board of Education, et al*, no. 3:22-cv-000337, in the U.S. District Court for the Southern District of Ohio (protecting the right of transgender high school students to use communal restrooms consistent with their gender identity), *In Re: Shahani Children*, no. C-2200430, in the Ohio First District Court of Appeals (arguing as amicus in support of parental rights of same-sex spouses under Ohio statutes), and *Equitas Health v. State of Ohio*, no. 22-CV-002889 in the Franklin County Court of Common Pleas (opposing law permitting discriminatory denials of health care to LGBTQ+ patients.)

This brief was not authored by a party or party’s counsel and no monetary contribution from parties, parties’ counsels, individuals, or entities were received for its preparation or submission. The parties have granted a blanket consent for amicus filings.

## INTRODUCTION<sup>1</sup>

The district court correctly determined that Kappa Kappa Gamma (“Kappa”) is free to admit transgender women as members without court involvement. That decision recognized Kappa’s “sacrosanct, associational right to engage in protected speech” which, the court observed, included “KKG’s ‘official position’ of

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<sup>1</sup> This brief would not have been possible without research and drafting by Tori DeLaney (2024) of the University of Cincinnati College of Law. Special thanks are also extended to Audrey Homlar (2025) of the Capital University for research and to Emmaline Fisher (2024) of the University of Cincinnati College of Law for citation checking.

admitting transgender women.” *Westenbroek v. Kappa Kappa Gamma Fraternity*, No. 23-CV-51-ABJ, 2023 U.S. Dist. LEXIS 152458 at \*1, \*30 (D. Wyo. Aug. 25, 2023). Amicus seeks to put Kappa’s position in context and demonstrate why it is important to allow Kappa the opportunity to evolve as a private institution within a free society experiencing changing gender norms. Transgender women are overcoming a history of discrimination and are achieving a positive public image. Kappa is free to join in that movement and open its doors as wide as it chooses to embrace all persons who identify as women. The district court properly dismissed this lawsuit. The courts should step aside so this private sorority can take these reasonable and inclusive steps without improper government interference.

## **ARGUMENT**

### **I. Kappa is Free to Admit Transgender Women as Women Consistent With Its Mission to Empower Women<sup>2</sup>**

Kappa’s decision to allow transgender women to pledge affirms them as women, consistent with the changing norms in society. Admitting transgender women as members is also consistent with Kappa’s understanding of the meaning of “woman” and it serves Kappa’s goal of advocating for women in general and transgender women in particular. Finally, by admitting transgender women as

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<sup>2</sup> This brief addresses a private organization seeking to expand opportunities for marginalized persons and does not address any situation where membership decisions would arguably violate nondiscrimination laws.

members Kappa joins many other sororities and women's colleges who have taken this same step to bring transgender women into these single-gender institutions.

#### A. Kappa's Admission of Transgender Women Is Consistent with Developing Norms in Society

Historians have found that women assigned male at birth have existed for centuries, though they would not have been called "transgender" and likely faced social ridicule unless they "passed"<sup>3</sup> or held high social positions.<sup>4</sup> Erin Blakemore, *How Historians are Documenting the Lives of Transgender People*, National Geographic (June 24, 2022).<sup>5</sup> Most social change in this country has emerged organically from the people and from the organizations they create. Movies, advertisements, political activists, influencers, private social institutions, artists, and religious institutions all contribute to our evolving notions of equity and fairness. Appendix I gathers examples of organizations that sparked social change and the growing positive depictions of transgender people in popular life and culture. Kappa is free to align itself with this movement and remove barriers to

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<sup>3</sup> "Passing . . . refer[s] to a transgender person who is seen outwardly as the gender . . . with which they identify." *Glossary of LGBTQ Terms*, Out & Equal (2019), <https://outandequal.org/wp-content/uploads/2019/11/LGBTQ-Terminology-2019.pdf> (last visited Jan 1. 2024).

<sup>4</sup> See, e.g., Alexis Mijatovic, *A Brief Biography of Elagabalus: The Transgender ruler of Rome*, Out History, <https://outhistory.org/exhibits/show/tgi-bios/elagabalus> (last visited Dec. 28, 2023) (Roman ruler in 203 A.D.); Gary Kates, *Monsieur D'eon Is a Woman: A Tale of Political and Sexual Masquerade* 250-77 (1995) (military hero in 1775).

<sup>5</sup> <https://www.nationalgeographic.com/history/article/how-historians-are-documenting-lives-of-transgender-people>.

transgender women in its organization thereby helping transgender women overcome historical marginalization.

Admitting transgender members to the Kappa sorority places Kappa in the mainstream of its target recruitment audience. About half of young adults between age 18 and 29, the predominate age of college students pledging a sorority, believe that “someone can be a man or a woman even if that differs from the sex they were assigned at birth.” Kim Parker et al., *Americans’ Complex Views on Gender Identity and Transgender Issues*, Pew Research Center (June 28, 2022)<sup>6</sup>; *UW Demographics & Diversity Report*, College Factual, (last visited Dec. 25, 2023)<sup>7</sup> (showing 83.7% of students at the University of Wyoming are 18 to 29 years old). And, Americans are generally positive or neutral when asked if they are accepting of transgender people. Anna Brown, *Deep Partisan Divide on Whether Greater Acceptance of Transgender People is Good for Society*, Pew Research Center (Feb. 11, 2022)<sup>8</sup> (38% viewing acceptance positively and 29% neutrally).

A growing number of cases interpreting nondiscrimination statutes accept and recognize transgender women as women. *See, e.g., Bostock v. Clayton Cnty.*,

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<sup>6</sup> <https://www.pewresearch.org/social-trends/2022/06/28/americans-complex-views-on-gender-identity-and-transgender-issues/>

<sup>7</sup> [https://www.collegefactual.com/colleges/university-of-wyoming/student-life/diversity/#age\\_diversity](https://www.collegefactual.com/colleges/university-of-wyoming/student-life/diversity/#age_diversity)

<sup>8</sup> <https://www.pewresearch.org/short-reads/2022/02/11/deep-partisan-divide-on-whether-greater-acceptance-of-transgender-people-is-good-for-society/>

140 S. Ct. 1731, 1736 (2020) (“An employer who discriminates against homosexual or transgender employees necessarily and intentionally applies sex-based rules.”); *Tudor v. Se. Okla. State Univ.*, 13 F.4th 1019, 1028 (10th Cir. 2021) (“transgender discrimination . . . is discrimination “because of sex” prohibited under Title VII”); *Bd. of Educ. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 854-55 (S.D. Ohio 2016) (holding a school must allow a transgender girl to use the bathroom that corresponds to her gender identity; quoting DOE’s Title IX interpretation: “discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity”). These cases are not binding on the admission policy of a sorority, but they further reflect the growing movement to accept transgender individuals as equal members of society. In short Kappa is free to recognize that legal and social definitions of “woman” include transgender women and advance that concept. As set out below, Kappa’s decision to align itself with the movement to accept transgender women as equals is a just and principled position that will help transgender women overcome discrimination.

B. Kappa is Free to Further its Purpose of Advocating and Addressing Issues of Concern for Members and Women in General by Accepting Transgender Women

Kappa affirms its goal as a women’s only institution by allowing transgender women to pledge. Women-only institutions emerged in the late-nineteenth century to combat reductive stereotypes about women. Megan Nanney & David L.

Brunsma, *Moving Beyond Cis-terhood: Determining Gender through Transgender Admittance Policies at U.S. Women's Colleges*, 31 *J. Gender & Soc'y* 145, 149 (2017). These institutions advanced the idea that women were intelligent, capable, and deserved to be a larger part of society. *Id.* Various marginalized women were eventually accepted into these institutions, often without necessitating policy rewrites. *Id.* at 150 (“...the woman question—from women of color, lower class women, and religious minorities”) (citations omitted); *see also* Letter to the Deanery of Bryn Mawr College from M. Carey Thomas, (Dec. 12, 1930) (on file with Barnard College),<sup>9</sup> (perceiving Black women as a safety threat to (white) students because of their assumed relationship with Black men).

Kappa is free to remove barriers for transgender women in its organization like it did for other women. Nineteenth century society relied on (“masculine” and “feminine”) appearances and actions to assume biological characteristics.<sup>10</sup>

DeShaun LaChance & Angela Dwyer, *Transgender and Gender Non-Conforming Young People and the School-to-Prison Pipeline*, in *Transgender People and Criminal Justice* 73, 77-78 (Heather Panter & Angela Dwyer eds., 2023); Katie L. Kirkland, *Feminist Aims and a Trans-Inclusive Definition of “Woman,”* 5 *J.*

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<sup>9</sup> <https://sfonline.barnard.edu/wp-content/uploads/2005/12/znh-residence.pdf>

<sup>10</sup> The government criminalized individuals for dressing masculine (if assigned female at birth) or feminine (if assigned male at birth). LaChance & Dwyer, *supra* at 77-78 (equating “feminine” with “woman”).

Feminist Phil. Q. 1, 13 (2019) (“gender presentation is taken to communicate genital status”). Sufficiently masculine presentation allowed individuals to live as men, while sufficient feminine presentation allowed individuals to live as women. LaChance & Dwyer, *supra* at 77-78; see Blakemore, *supra*; Kappa was founded in 1870, and its founders would likely embrace any women that appeared to be a woman (e.g., appeared feminine). See *Humble Beginnings*, Kappa Kappa Gamma (Oct. 4, 2022)<sup>11</sup>; LaChance & Dwyer, *supra* at 77-78.

Kappa’s founders wanted a particular kind of sorority member—a “lady.” Const. of Kappa Kappa Gamma art. III (1870).<sup>12</sup> The 1880s definition of “lady” meant “the female head of a household” or “a woman of social distinction or position.” *Lady*, *Webster’s International Dictionary of the English Language* (1898).<sup>13</sup> When Kappa shifted from “lady” to “woman,” Kappa expanded its membership to include all women, not just socially distinct women. See Nanney & Brunsmma, *supra* at 150; Const. of Kappa Kappa Gamma Art. VI § 2 (1882). It’s decision not to impose “biological criterion,”<sup>14</sup> suggests it cared less about biology and more about the social understanding of “woman.” See LaChance & Dwyer,

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<sup>11</sup> [https://www.kappakappagamma.org/stay-connected/news/2022/founders-day-2022\\_humble-beginnings/](https://www.kappakappagamma.org/stay-connected/news/2022/founders-day-2022_humble-beginnings/)

<sup>12</sup> <https://bit.ly/49L8LpN>

<sup>13</sup> <https://archive.org/details/webstersinternat00port/page/824/mode/2up?q=lady;>

<sup>14</sup> Kappa’s governing documents do not require pelvic exams, genetic testing, hormone testing, etc. <https://bit.ly/3SSBMtK>

*supra* at 77-78; *See generally* *Bylaws of Kappa Kappa Gamma Fraternity*, Kappa Kappa Gamma,<sup>15</sup> (2022) [hereinafter KKG Bylaws]; *Policies of Kappa Kappa Gamma Fraternity*, Kappa Kappa Gamma,<sup>16</sup> (July 2023) [hereinafter KKG Policies]; *Standing Rules of Kappa Kappa Gamma*, Kappa Kappa Gamma,<sup>17</sup> (2022) [hereinafter KKG Standing Rules].

Kappa redoubled its commitment to “women” in 2004 when it continued to use only the words “woman”/“women” in its updated governing documents, “underscore[ing] that we [KKG] are a **single gender** organization.” Brief of Appellants at 34, *Jaylyn Westenbroek v. Kappa Kappa Gamma Fraternity*, No. 23-8065 (Dec. 4, 2023)(emphasis added); *Kappa Kappa Gamma Convention 2004 and Bylaws/Standing Rules Revisions Video*, Kappa Kappa Gamma (2004) (digitized version)<sup>18</sup>; *Gender and Health*, World Health Organization (last visited Dec. 29, 2023).<sup>19</sup> By “underscore[ing]” its commitment to “women,” Kappa was free to refuse to narrow its members to “female” or “biological” woman.

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<sup>15</sup> <https://perma.cc/WV5J-R36F>

<sup>16</sup> <https://cloud.kkg.org/wl/?id=eB8jppqDLrdGSpEwXyWGr8VBALEY8MbfF&path=Fraternity%20Policies%202023.pdf&mode=list&download=1>

<sup>17</sup> *E.g.*,

[https://activities.osu.edu/posts/studentorgs/constitutions/2023\\_03\\_21\\_04\\_28\\_16\\_2028.pdf](https://activities.osu.edu/posts/studentorgs/constitutions/2023_03_21_04_28_16_2028.pdf)

<sup>18</sup> <https://kappa.historyit.com/item-view.php?id=859094>

<sup>19</sup> [https://www.who.int/health-topics/gender#tab=tab\\_1](https://www.who.int/health-topics/gender#tab=tab_1)

Kappa, like its founders, are free to take “matters into their own hands” and embrace transgender women as women. *See Humble Beginnings, supra.* Kappa is even in step with the Cambridge Dictionary which defines as “woman...an adult who lives and identifies as female though they may have been said to have a different sex at birth.” *Compare Woman*, Cambridge Dictionary, (last visited Dec. 22, 2023)<sup>20</sup> with the Brief of Over 450 Kappa Gamma Alumna as Amici Curiae in Support of Appellants and of Reversing the Decision Below, *Jaylyn Westenbroek v. Kappa Kappa Gamma Fraternity*, No. 23-8065 (Dec. 11, 2023)<sup>21</sup> [hereinafter *Amicus Alumnae*] (suggesting incorrectly that President Rooney and KKG created, rather than interpreted “woman” inclusively).

Kappa is free to determine that admitting transgender women into Kappa aligns with its mission “to unite women” and “to advocate for and seek to address issues of concern for members and women in general” and should not be forced to rely on biological essentialism<sup>22</sup> (e.g., defining a woman by her genitalia or other physiological characteristics) contrary to its governing documents. *See* KKG Bylaws, KKG Policies, KKG Standing Rules; *see also Humble Beginnings, supra.*

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<sup>20</sup> <https://dictionary.cambridge.org/dictionary/english/woman>

<sup>21</sup> <https://www.iwf.org/wp-content/uploads/2023/12/Alumni-Brief.pdf>

<sup>22</sup> *Biological Essentialism*, Oxford Reference, <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095507973> (last visited Dec. 28, 2023).

By accepting transgender pledges, Kappa rejects the simplification of women to mere femininity or reproductive capacity. *See* KKG Bylaws, art. II. American society often compels cisgender and transgender women to “feminize” themselves, which includes regular hair removal, age-prevention, cosmetic surgery, and more. Kirkland, *supra* at 19. Transgender women are especially vulnerable to compulsory feminizing because failure to engage in normative gender roles can lead to misgendering<sup>23</sup> or violence. LaChance & Dwyer, *supra* at 77-78; Kirkland, *supra* at 11-12, 20. *Amicus* WoLF, through their brief, agreed that women deserve more than toxic gender roles that rely on normative femininity. Brief of *Amicus Curiae* Women’s Liberation Front in Support of Appellants and Reversal at 18, *Jaylyn Westenbroek v. Kappa Kappa Gamma Fraternity*, No. 23-8065 (Dec. 11, 2023) [hereinafter *Amicus* WoLF]. Kappa’s acceptance of transgender women, then, reflects its commitment to acknowledge the spectrum of womanhood and do its part to end toxic gender stereotyping.

Kappa’s holistic understanding of “women” acknowledges that, like many women, transgender women need a respite from the sexualization and persecution caused by gender stereotyping. *See* Angela Dwyer & Jace Valcore, *Policing*

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<sup>23</sup> “[T]o use the wrong pronouns or other gender-specific words when referring to or speaking to someone, especially a transgender person...” *Misgender*, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/misgender> (last visited Dec. 29, 2023).

*Transgender People*, in *Transgender People and Criminal Justice* 106-108 (Heather Panter & Angela Dwyer eds. 2023); Kirkland, *supra* at 11-13; *see also* Amicus Alumnae at 10-15.

Transgender women are also four times as likely to be victims of crime, including physical abuse, stalking, and sexual assault than cisgender people. Dwyer & Valcore, *supra* at 100. They face police harassment, often being accused of being sex workers or asked to expose their genitals to satisfy police curiosity. *Id.* at 108. Should a transgender person survive a violent attack, they may be charged and convicted of assault or murder, even if they acted in self-defense, because their gender identity is perceived as transgressive. *Id.* at 107; *see* Cecilia Dhejne et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 6 J. PLoS One, 1, 12 (2011)<sup>24</sup> (noting transgender people’s “increased risk of being **convicted**<sup>25</sup> for any crime...”).

Kappa is free to address gender-based violence and other issues impacting women by allowing transgender women to benefit from membership in its single-gender organization. *See* KKG Bylaws art. II; Amicus Alumnae 10-15.

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<sup>24</sup> <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885> (last visited Jan 2, 2024)

<sup>25</sup> Emphasis added. The study equates conviction rates with criminality without considering the profiling of transgender women as sex workers or the hyper-criminalization of transgender people. Dhejne et al., *supra* at 12; LaChance & Dwyer, *supra* at 77; Dwyer & Valcore, *supra* at 108.

C. Kappa Acknowledgment of Transgender Women as Women Align with Other Single-Gender Organizations

Kappa joins a long list of sororities and women’s colleges that believe empowering transgender women reinforces their underlying missions to empower women through single-gender institutions. *Trans\* Inclusive Policies*, National Panhellenic Council, (Fall 2018)<sup>26</sup>; *Historically Women’s Colleges with Trans-Inclusive Admissions Policies*, Campus Pride (2021) [hereinafter *Historical Women’s Colleges*].<sup>27</sup>

Women’s only institutions extend the safety and support offered by single-gender environments to transgender people without impairing the environment for cisgender women. Compare Annie Freitas, *Beyond Acceptance: Serving the Needs of Transgender Students at Women’s Colleges*, 1 Humboldt J. Soc. Rels., 294, 305-06 (2017) with Amicus WoLF at 18.

Alpha Chi Omega (“AXO”) is representative of the movement to admit transgender women into women’s sororities. Founded in 1885, AXO declares it is “dedicated to empowering real, strong women to reach their potential . . .” *About Us*, Alpha Chi Omega (last visited Dec. 27, 2023).<sup>28</sup> It began nationally accepting transgender women in 2017 when it announced “. . . as our understanding of

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<sup>26</sup> <https://cce.wsu.edu/media/gnrbaau/panhellenic-trans-inclusion-policies-fall-2018.pdf>

<sup>27</sup> <https://www.campuspride.org/tpc/womens-colleges/>

<sup>28</sup> <https://www.alphachiomega.org/About-Us>

gender identity evolves, so must Alpha Chi Omega.” Anders Koskinen, *Sorority Will Accept Transgender Women as Members Nationally*, Alpha News, (Mar. 13, 2017).<sup>29</sup> The safety concerns initially raised by some members<sup>30</sup> have not developed. Contrast Angela Costely Harris (Alpha Chi Omega Sorority), *Alpha Chi Omega’s Inclusive Position*, Facebook (Feb. 17, 2017) with Amicus WoLF 22-23 and Amicus Alumnae 7-10.

In 2014, Mills College became the first women’s only college to admit transgender students “while maintaining a positive experience for all students.” Brief for Mills College as Amicus Curiae Supporting Respondent, *Gloucester Cnty. Sch. Bd. v. G.G.*, 580 U.S. 1168 (2017) (No. 16-373).<sup>31</sup> The “seven sister colleges,” several women’s HBCUs, and even religious women’s colleges have since begun to enroll transgender people. *Barnard Decides to Admit Transgender Women; Last of the Seven Sisters Colleges to Make Decision*, Fox News, (May 3, 2016)<sup>32</sup>; Mashaun D. Simon, *Spelman College Becomes Second Women’s Only HBCU to Admit Transgender Students*, NBC News, (Sept. 11, 2017)<sup>33</sup>;

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<sup>29</sup> <https://alphanews.org/sorority-will-accept-transgender-women-members-nationally/>

<sup>30</sup> <https://www.facebook.com/alphachiomegahq/posts/10155032168930682> (comments section).

<sup>31</sup> [https://www.scotusblog.com/wp-content/uploads/2017/03/16-273\\_bsac\\_mills\\_college.pdf](https://www.scotusblog.com/wp-content/uploads/2017/03/16-273_bsac_mills_college.pdf)

<sup>32</sup> <https://www.foxnews.com/us/barnard-decides-to-admit-transgender-women-last-of-seven-sisters-colleges-to-make-decision>

<sup>33</sup> <https://www.nbcnews.com/news/nbcblk/spelman-college-becomes-second-women-s-only-hbcu-admit-transgender-n799536>

*Transgender Student Policy*, Alverno College, (last visited Dec. 27, 2023)<sup>34</sup> (“In keeping with its long-standing Catholic Franciscan foundations, Alverno College does not discriminate... on the basis of...gender, gender identity or express, genetic information...”).

No major safety issues have been reported because of transgender enrollment in women’s colleges. Instead, women’s colleges have created “more positive experiences for transgender students” helping to breakdown restrictive “traditional gender norms.” Freitas, *supra* at 305-306. By recognizing transgender women, Kappa joins many organizations breaking restrictive gender norms while also preserving its single gender organization status and benefits.

### **CONCLUSION**

Kappa has made a choice it is free to make. Kappa allows transgender women to pledge and that includes Artemis Langford. The district court was correct to stand back, dismiss this case, and allow Kappa to further explore for itself and its members the meaning of “woman.” The district court decision should be affirmed.

Dated: January 10, 2024

Respectfully submitted,

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<sup>34</sup> <https://catalog.alverno.edu/collegepolicies/studentnon-academicpolicies/transgender/>

/s/ Alphonse A. Gerhardstein

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Alphonse A. Gerhardstein (OH 0032053)

/s/ Raymond Bryant

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I hereby certify that with respect to the foregoing:

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Dated: January 10, 2024

s/ Raymond K. Bryant

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Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify as follows:

1. This Brief of Amicus Curiae complies with the type- volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,294 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016, the word processing system used to prepare the brief, in 14-point font in Times New Roman font.

Dated: January 10, 2024

s/ Raymond K. Bryant

CERTIFICATE OF SERVICE

I certify that on this 24th day of November 2021, I electronically filed the foregoing Brief of Amicus Curiae using the Court's CM/ECF system which will send notification of such filing to all parties of record.

Dated: January 10, 2024

s/ Raymond K. Bryant