

No. 23-8065

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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**JAYLYN WESTENBROEK et al.,**

**Plaintiffs-Appellants,**

**v.**

**KAPPA KAPPA GAMMA FRATERNITY et al.,**

**Defendants-Appellees.**

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On Appeal from the United States District Court for the  
District of Wyoming, Case No. 2:23-CV-51-ABJ

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**BRIEF OF OVER 450 KAPPA KAPPA GAMMA ALUMNAE AS  
AMICI CURIAE IN SUPPORT OF APPELLANTS AND  
OF REVERSING THE DECISION BELOW**

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## **STATEMENT OF INTEREST**<sup>1</sup>

Amici are a group of more than 450 Kappa Kappa Gamma (“KKG”) alumnae.<sup>2</sup> They come from across the United States. Their initiation dates span some 79 years. They represent scores of local KKG chapters, from Cornell to Stanford, and from Ohio State and Ohio Wesleyan to UCLA and USC. Some are at the heights of their careers, some have finished them, and some have just moved out of their chapter houses. They come from a variety of personal and professional backgrounds. Their political persuasions differ. But they all share at least two things in common: (1) They found their opportunities to participate in single-sex college sorority life invaluable, and (2) they want to ensure that future college women have that same opportunity and are not erased by a refashioning of the word “women” to include men.

Amici believe that KKG’s failure to abide by its own bylaws, coupled with the trial court’s backhanded dismissal of the complaint in this case, is a severe blow to women’s rights. Amici are deeply interested in this case because they do not want the college women of KKG to be deprived of the single-sex environment which allowed amici to thrive during their college years. They have come together by the hundreds and funded this brief through their own individual donations. No other

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<sup>1</sup> All parties to this appeal have consented to the filing of this brief.

<sup>2</sup> A list of the over 450 women who join this brief is attached hereto.

individuals or entities—and no party or party’s counsel—have contributed money intended to fund the preparation or submission of this brief, and no party’s counsel has authored any portion of it.

### **ARGUMENT**

KKG was founded in 1870 by—and exclusively for—women, in hopes of providing them with the same sort of academic and social advantages that the fraternity system had already been providing college men for decades. (App’x at 20.) From the very beginning, KKG’s single-sex character was fundamental to its identity and purpose. This women-only commitment is enshrined in the organization’s bylaws, which state, unequivocally, that every “new member shall be a woman.” (*Id.* at 86.) For more than 150 years, thousands and thousands of women, including all amici, have relied on KKG’s commitment to provide a women-only environment.

But KKG and its president have breached their duties to Plaintiffs—and, indeed, to all of KKG’s women members—by admitting Artemis Langford, a man (*i.e.*, an adult male person) to KKG membership in violation of the bylaws. Under normal circumstances, this would be a straightforward case of “statutory” interpretation in which Plaintiffs would quickly prevail. The bylaws say “woman”; Defendants refashioned that term to include “man.” Typically, when a party charged with executing the corporate will as set forth in a corporation’s governing documents

flouts the ordinary meaning of the words in those documents, plaintiffs like the KKG college women who brought suit here can readily hold the organization and its fiduciary to legal account. After all, fiduciaries may not, in defiance of governing documents, unilaterally change an organization's *raison d'être*.

Unfortunately, the District Court did not treat this case like a typical case of “statutory” interpretation. Instead, it permitted KKG and President Rooney to effectively amend KKG’s bylaws without going through the prescribed amendment process. That is, the District Court concluded that KKG and Rooney were permitted—in defiance of the collective will of KKG’s members as set forth in KKG’s bylaws—to “interpret” the word “woman” to include its *opposite*, “man.” In reaching this conclusion, the District Court ignored basic principles of interpretation and also basic reality.

The upshot of redefining “woman” to include man is the effective erasure of women as a separate class worthy of dignity and respect. Compounding the injury, by forcing fundamental change upon KKG without adhering to the democratic procedures for bylaw amendment mandated by KKG’s own governing documents, Defendants silenced the voices of the thousands of KKG women entitled to have a say in this transformation.

The District Court, in refusing to allow Plaintiffs to hold Defendants to account, condoned this undemocratic conduct. In so doing, that court also failed to

consider the continued importance of women-only spaces and organizations in American life. A multitude of studies make clear that women-only organizations help women thrive by providing safety, belonging, opportunities to lead, and a plethora of other benefits. Amici are living proof of these benefits, as the stories they share below show. Remaking KKG to include men, albeit men who “identify” as women, will deprive current and future generations of KKG women of these benefits.

**A. The District Court Ignored the Objective Meaning of the Word “Woman.”**

The District Court determined that KKG and Rooney were free to admit a man like Langford into the women-only organization without amending KKG’s bylaws because “woman” is an amorphous term for which the bylaws provide no explicit definition. As the District Court saw things, then, KKG and Rooney were not defying the terms of KKG’s bylaws but merely exercising their right to “interpret” the malleable term “woman” “expansively.” *Westenbroek v. Kappa Kappa Gamma Fraternity*, No. 23-CV-51, 2023 U.S. Dist. LEXIS 152458, at \*4, \*42 (D. Wyo. Aug. 25, 2023).

This conclusion ignores basic principles of construction as well as the plain meaning of the word “woman.” Under Ohio law, “[c]ommon words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall

contents of the instrument.” *Alexander v. Buckeye Pipeline Co.*, 53 Ohio St. 2d 241, 241, 374 N.E.2d 146, 150 (1978). The term “woman” is, of course, a “common word[],” and, thus, its “ordinary meaning” is to be applied when interpreting its use in KKG’s bylaws “unless some other meaning is clearly evidenced from the face or overall contents of the instrument.” *Id.* No such “other meaning” is “clearly eviden[t]” on the face of KKG’s bylaws, so Ohio’s “ordinary meaning” rule applies to the bylaws’ use of the word “woman.”

The ordinary meaning of that word is clear. A woman is “an adult female person.” *Dictionary.com*, <https://tinyurl.com/mrtrrcfw>. See also *Merriam-Webster .com Dictionary*, <https://tinyurl.com/4e2d3byw> (defining “woman” to mean “an adult female person”); *Random House Webster’s Dictionary* (4th ed. 2001) (same); *The New Oxford American Dictionary* (2001) (defining “woman” to mean “an adult human female”). Artemis Langford is a man, *i.e.*, an adult human male. (*E.g.*, App’x at 10, 23-24.) Because the bylaws allow only a “woman” to become a “new member” of KKG and its chapters, KKG and Rooney breached those bylaws when they admitted Langford to the sorority.

In concluding otherwise, the District Court determined that KKG and Rooney were permitted to interpret the word “woman” “expansively.” *Westenbroek*, 2023 U.S. Dist. LEXIS 152458, at \*4, \*42. But that is a mischaracterization of what KKG and Rooney did. KKG and Rooney did not merely supply one of several reasonable

interpretations to the words of KKG’s bylaws, they defied them. That is, by “interpreting” the word “woman” to include its *opposite*—man—KKG and Rooney turned the plain language of the bylaws on its head.

Stripped of the fraught political context of this case, the point is so rudimentary and obvious that it is in danger of being overlooked. Consider, for example, a contract between a homeowner and painter to paint a house. The contract specifies that the house is to be painted white. But the painter “expands” his definition of white to include black. Such a unilateral refashioning of the term to include its opposite is no reinterpretation at all but, instead, a vitiation—a plain-as-day breach of the contract. It is no answer to say that the painter has expanded his personal definition of white or that the paint can was labeled as white. What matters is the ordinary meaning of the word “white.”

KKG, of course, is free to amend its governing documents to provide for the initiation into the sorority of men who “identify” as women. But it must do so in accordance with its own established procedures. By arrogating to themselves the power to “reinterpret” the bylaws in a way that contradicts the plain language of those bylaws (and fundamentally alters the character of the organization), Defendants have acted *ultra vires* and disenfranchised Plaintiffs, amici, and the thousands of other KKG women who were cut out of participating in the decision-making process. In other words, by unilaterally altering KKG’s bylaws through

expansive “interpretation” rather than adhering to the mandatory process for amending those bylaws, Defendants have chosen to silence the very women whose interests they are supposed to serve. By dismissing the complaint and refusing to grant Plaintiffs even the opportunity to prove their case, the District Court has ratified this conduct.

**B. Research Shows that Women-Only Spaces Continue to Be Important to Women’s Success.**

By tossing Plaintiffs’ suit at this very earliest stage of litigation, the District Court also effectively held that the women of Kappa Kappa Gamma are no longer entitled to the benefits of a single-sex space. KKG was founded to give women an exclusive forum in which to gather, flourish, and compete with already established men’s organizations. By barring Plaintiffs’ action seeking to protect KKG’s women-only character, the District Court has declared that women as a class may no longer protect these sorts of spaces from men who seek to infiltrate them.

Elimination of women-only spaces is profoundly detrimental to women’s safety, wellbeing, and personal development. Research shows, for example, that when it comes to deliberation and debate, women are much less likely to speak, and to speak authoritatively, in mixed-gender settings. *See* Christopher Karpowitz, Tali Mendelberg & Lee Shaker, *Gender Equality in Deliberative Participation*, 106 Am. Poli. Sci. Rev. 533 (2012). Along similar lines, studies indicate that women are still underrepresented numerically in many leadership positions across our society. *See*,

e.g., Leslie Trainer, *Women's Underrepresentation in Leadership*, Claremont Graduate University LeAD Labs (Mar. 20, 2017), <https://tinyurl.com/3th6xn6v>. But “women in same-gender groups are twice as willing to accept a leadership role as those in mixed-gender groups[.]” Catherine Eckel et al., *The Gender Leadership Gap: Insights from Experiments*, Monash University (2020), <https://tinyurl.com/y48frzrw>.

Women also benefit from the safety that women-only organizations can provide. Men are, of course, on the whole far more likely than women to commit violent crime. *See FBI Crime Data Explorer*, <https://tinyurl.com/7yeve3c8> (in 2022, men committed 4.3 violent crimes for every violent crime committed by a woman). Research suggests a number of reasons for this disparity, many of them biological, including higher testosterone levels and lower resting heart rates in men. *See* Todd Armstrong et al., *Testosterone, Cortisol, and Criminal Behavior in Men and Women*, *Hormones and Behavior*, Vol. 146 (Nov. 2022) (testosterone has “a positive and statistically significant association with impulsive and violent criminal behavior”); Olivia Choy et al., *Explaining the Gender Gap in Crime: The Role of Heart Rate*, 55 *Criminology* 465 (2017) (“lower heart rates in males partly explain their higher levels of offending”).

Moreover, men who identify as transgender women—even those who have undergone hormonal and surgical “transition”—are just as, or *more*, likely to commit



violent criminal offenses. One long-range Swedish study of hundreds of transgender individuals involved two chronological cohorts. In one of the two cohorts, men who had medically transitioned to appear as “women” were just as likely as the general male population to commit violent crimes, while the violent-crime rate among men in the other cohort was *higher* than the rate in the male population at large. Cecilia Dhejne et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, PLoS ONE 6(2) (2011). See also Rose Freedman, Kathleen Stock & Alice Sullivan, *Evidence and Data on Trans Women’s Offending Rates* (2020), <https://tinyurl.com/4ceadx6n> (explaining the results of the same study).

For these and a variety of other reasons, single-sex environments like women-only sororities continue to provide women with crucial space to put their guards down, to be themselves, to speak up, to lead, and to thrive. Women-only sororities in particular provide college women a forum in which to study, bond, and share with one another without the stress, social conditioning, or fear associated with the mixed-sex environment. These are just some of the reasons why a recent Gallup poll showed a strong correlation between sorority membership and a positive “college experience, feelings of preparation for life after college[,] and general wellbeing.” *New Gallup Survey Shows Fraternity and Sorority Membership Tied to Strong*

*College Experiences*, N. Am. Interfraternity Conf. (2021), <https://tinyurl.com/yc6wx5dh>.

**C. Amici's Lived Experiences Attest to the Importance of the Women-Only Sorority.**

All 450-plus amici can, based on their own personal experiences, attest to the importance of the women-only sorority. Several have agreed to share their stories here. These stories underscore, in real-world terms, the veracity of the research conclusions discussed above. For these women, their single-sex KKG experiences had profound positive impacts on their wellbeing both in college and beyond.

One common theme in the stories shared by individual amici is the role of the sorority as a single-sex sanctuary where women can feel—and *be*—safe when sexual violence is threatened or has already occurred. Lee from Virginia tells this story:

While I was living in the KKG house junior year, I lost a dear high-school friend of mine. She was stalked and murdered by her ex-boyfriend at University of Colorado in Boulder.

Because I was living in the Kappa house with all women, there was a sense of security and togetherness during this tragic time in my life. I had the hugs and compassion of the women in the house and especially my roommates. It was a devastating time for me, but my “sisters” came to my rescue to help me through it. I was able to grieve and be open about my feelings because I was surrounded by all women. I feel very strongly that a sorority should only be open to women—those born female. Opening the sorority doors to men who believe they are women will deprive future generations of women of the

environment that helped me through such a difficult time.<sup>[3]</sup>

Another amicus, Florida State University alumna Marg Cubero, tells of her experience as a graduate student at Florida State University when, in January 1978, Ted Bundy snuck into another sorority's chapter house and attacked four women, killing two of them. Following these beatings and murders, Marg says, "the women in the sororities truly treasured their 'home away from home.'"

The girls found safety in numbers, became more aware of their surroundings and interactions with strangers, and became even more vigilant about who they let into their living spaces. They looked out for and relied on each other even more and knew that their living quarters were places that they had to be very protective of for everyone's safety. Allowing men into the sorority house at a time like that would have destroyed that sense of safety and security.

For Amicus Robbi Schupp King, an alumna of KKG's University of Arkansas chapter, the safety of the women-only chapter house was important to her not because of crimes committed against her friends or other students, but because of a sex crime committed *against her*:

My freshman year a man came into our dormitory and "flashed" a young woman from my Kappa pledge class who lived on the floor above mine while she was in the shower. He apparently did this to a couple of other women in our dorm before he landed on my floor. As I

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<sup>3</sup> This section of amici's brief relies on personal statements and stories contributed by individual amici like Lee. All of these personal statements and stories are attested to by their individual authors, each of whom has authorized counsel to share her story here. *Cf.* Br. of Over 500 Women Athletes, *Dobbs v. Jackson Women's Health*, U.S. Sup. Ct. Case No. 19-1392 (Sep. 20. 2021), at 5 n.7 (utilizing the same approach).

was sitting in front of my dorm room talking on the phone he threw open his coat and started masturbating in front of me.

I screamed and then, of course, called the police, who eventually caught the man, only to have him escape as they were taking him into the police station. We were terrified he would return to our dorm.

Our Kappa sisters offered for us to come stay at the Kappa house so that we could feel safe until the man was caught. The Kappa house did feel like a safe place, because there was no fear of a man roaming around upstairs. The women there understood the vulnerability we felt as young women, because they, too, lived with this same vulnerability that only a woman can understand.

Other amici share about the importance of the women-only environment of their KKG chapters to their social, personal, and professional lives. Caren Cook, a University of Oklahoma alumna, tells of the difficult time she and her mother—also a KKG alumna—experienced after her parents divorced. “[T]he Kappa sisterhood was a refuge for my mom and me” during those times, she says. Caren also “worked at the Murrah Federal Building during the Oklahoma City bombing of 1995.” After the trauma of that day, she says, “I didn’t leave my house or communicate with my friends. It was my Kappa sisters who eventually were able to reach me”:

These life-long bonds that saw me through some of the most difficult times in my life would never have formed had men been a part of the sorority, even if those men were sincere in their mistaken belief that they were women. When you need a sister the most is when life is messy and out of control. While it’s not fun to go through these periods of life, women can do it with each other while men often handle it poorly.

“Men don’t belong in a sisterhood,” Caren concludes, “because women need other

women for support and encouragement when we face the curve balls life throws at us.” This doesn’t mean, of course, that men are inferior. Rather, as Caren puts it, “Men are fantastic humans but not good sisters!”

The women-only environment that KKG provided for amicus Melissa Smith Golden at Bucknell University proved crucial to her success as a transfer student from an all-women’s college to the co-educational environment of Bucknell University.

Once at Bucknell, I felt bewildered and out of place, as close friendships had already been formed. I felt like I was on my own.

Then, a group of Kappa sisters took this lost “transfer” and invited me to join. Kappa membership gave me the woman-to-woman connection and support that I had always cherished throughout my life. Those connections never could have formed if men had been admitted to our chapter.

I want to add my positive message that Kappa is a lifelong pro-woman sisterhood that must continue to support the unique and challenging lives of *women* both on and off campus.

Cherie Gary, a Baylor University alumna, underscores that, during her college years, “[t]he Kappa house was a female sanctuary. Admitting men, however they identify themselves, only adds confusion and complexity to an environment meant to be a safe haven for women. Let’s never forget that Kappa is a beautiful community of strong, talented, and courageous women—let’s please keep it that way.” And Margaret from California shares:

I went through rush because I wanted to become part of a sisterhood of women who nurtured and cared for each other through life's travails and celebrated each other's accomplishments and highlights. I became a Kappa, finding a common bond of these traits with women with whom I felt comfortable sharing about almost anything, from struggles with dating guys to academic challenges. The Kappa house was a safe haven. I was shy when I joined Kappa, but by living in the house with the comfort of an all-women environment, I was able to overcome my shyness and assume a leadership role. When my father passed away suddenly, it was my Kappa sisters who comforted me and my mother. One even called all my parents' friends to notify them of my father's passing.

It is largely because of the fact that our relationships started out in the safety and intimacy of an all-women environment unencumbered by male distractions that the caring and nurturing among my dear Kappa friends has continued for more than 50 years.

Sororities are for women! Let's keep them that way!

Finally, Jeleen Fish Guttenberg's battle with breast cancer reinforced for her the lifelong positive impact that only an exclusively women's organization can have on a woman's life:

The last time I moved, I thought I was too busy to join another KKG Alumnae Association. I had lived here for just over a year when I was diagnosed with breast cancer. I had not made many close friends yet. I needed support from women. So I turned once again to Kappa.

I was welcomed. It was a relief to be surrounded by estrogen when I was on estrogen blockers. I think being involved helped keep me sane and reinforced my feelings of femininity when I felt I had lost them. After I disclosed my condition, my sisters were entirely sympathetic and uplifting. Many of us had the same surgeon for our mastectomies. We were able to share intimate details with each other on these issues that we would have never discussed in the presence of men, regardless of how those men viewed themselves.

I can't imagine Kappa just giving up that safe space for women that it has been since 1870. Women still need women's spaces. Nothing about the struggles within Kappa now are anti-trans. Kappa today is a diverse and inclusive group of women. Many of us want to keep it that way.

\* \* \*

The women whose stories are highlighted above—indeed, all 450-plus women submitting this brief—have been benefited profoundly from their experiences in a women-only sorority. Defendants should not be permitted, with the blessing of the District Court, to unilaterally deprive current and future KKG members of these benefits by ignoring KKG's bylaws and the voices of the very women it is supposed to serve.

### **CONCLUSION**

For these reasons, amici, over 450 Kappa Kappa Gamma alumnae, respectfully urge this Court to reverse the District Court's dismissal of this case.

Dated: December 11, 2023

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 3,738 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f). As permitted by Federal Rule of Appellate Procedure 32(g)(1), I have relied on the word-count function of Microsoft Word in preparing this certificate.

2. I hereby certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Emmett E. Robinson

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### **CERTIFICATE OF SERVICE**

I hereby certify that, on December 11, 2023, this Brief of Over 450 Kappa Kappa Gamma Alumnae was filed with the United States Court of Appeals for the Tenth Circuit via the Court's ECF system. Counsel of record will receive notice of, and be able to access, the filing via the ECF system.

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