



PFI BRIEFING

# The Privacy Debate

## & Fairness in Sports

We show respect for the dignity of all people by providing separate space for males and females in those instances where privacy between the two sexes is relevant, such as in restrooms, showers, locker rooms, and overnight accommodations like dorm rooms and hotel rooms on school trips.

Biological sex is the only valid reason to have separate locker rooms, showers, and restrooms in the first place. It is precisely our anatomical differences, which are often revealed in these settings, that we wish to shield. If that didn't matter, we'd have one locker room, shower area, and restroom for everyone. Maintaining separate spaces on any other basis than biological sex is arbitrary segregation.

Our expectation of privacy from persons of the opposite sex is so profound as to be found all across our laws—including the laws pertaining to our schools' and in our court decisions describing our personal privacy as a constitutional right. The violation of privacy is humiliating. Bathrooms and locker rooms are the only place we can go to undress or use bathrooms outside of the presence of people of the opposite sex.<sup>1</sup>

### KEY POINTS

Bathrooms and locker rooms are the only places we can go to undress or use bathrooms outside of the presence of people of the opposite sex. That is the only permissible reason to separate privacy facilities like locker rooms and bathrooms in the first place.

Women's privacy rights from men do not depend on what a man believes about anything. Women's privacy rights do not cease existing or suddenly spring into existence solely on the basis of what a man believes about gender identity.

People are free to believe what they want and to request accommodations to express their beliefs about gender within certain limits, but a request to use bathrooms with the opposite sex is an unreasonable accommodation precisely because it violates the rights of others.

Allowing boys to compete in girls' sports is unfair, shatters dreams, and steals opportunities from girls.

<sup>1</sup> See *Pennsylvania Public School Code*, 24 P.S. § 7-740 (privacy facilities “shall be suitably constructed for, and used separately, by the sexes”); 28 Pa. Code § 18.62 (“separate dressing facilities, showers, lavatories, toilets and appurtenances for each sex” at swimming pools); 25 Pa. Code § 171.16 (requiring schools to follow the provisions of the *Public Bathing Law* (35 P.S. §§ 672—680d) and 28 Pa. Code Chapter 18 (requiring separate privacy facilities at swimming and bathing places)).

## What is sex?

Sex refers to the two halves of humanity, male and female. There are only two halves of the human reproductive system. It does not depend at all on societal stereotypes about voice, clothing, likes or dislikes, etc. Sex does not depend on any internal beliefs or feelings.

## What is gender identity?

“Gender identity” refers to someone’s internal identification with cultural ideas about what is masculine or feminine, both, neither, or something else. People adopt stereotypes about the opposite sex as evidence of their gender identity. Gender identity depends completely on a person’s subjective belief.

## One Person’s Clothing Doesn’t Change Another Person’s Privacy

We can respect everyone without violating the privacy of anyone

People can dress or groom however they want, but the clothing choices of a person of the opposite sex doesn’t change or eliminate others’ right to privacy.

There are no privacy objections to sharing privacy facilities with people who dress in stereotypical male or female clothes; or groom themselves (hair/facial hair) based on male or female stereotypes, so long as those people are the same sex.

**People Who Don’t Want to Use Facilities With Other People of the Same Biological Sex as Them, Whether It Is Because of Their Beliefs About the Nature of Gender, or Whether They for Any Reason Desire Greater Privacy, Should be Given Access to Reasonable Accommodations, Such as Single-User Facilities. They Should Not be Given Access to Private Facilities of the Opposite Sex.**

As a society, we try to permit people to live according to the dictates of their conscience, but we draw the line if the requested accommodation would violate other people’s rights. For example, we would permit a religious group that did not believe in any separation of the sexes to have various reasonable accommodations, such as perhaps wearing the color graduation gown that the opposite sex students wear or calling them a name they prefer. Those would not necessarily violate another person’s rights. But we would not allow the religious group to cite religion, nor should we allow a person to cite their beliefs about gender identity, in order to enter restrooms or locker rooms of the opposite sex, even if they are nice people and would not do anything otherwise illegal when in that facility, because that requested accommodation would violate other people’s privacy rights.

## **Are People Who Identify As Transgender “Excluded” From Using Locker Rooms and Bathrooms if They Can’t Use the Locker Room or Restroom of the Opposite Sex?**

No, if you are male, you have every right to use the male locker room, no matter what you believe about gender or how you identify, no matter who you are attracted to, no matter what you wear, no matter your hairstyle, lack or existence of facial hair, etc. And vice versa for females.

If a person doesn't want to use privacy facilities with others of the same sex, whether because the person identifies as transgender or for any other reason, they should be given an option to use a reasonable accommodation that doesn't violate other people's rights, like a single user facility if they prefer that over using the one consistent with their sex.

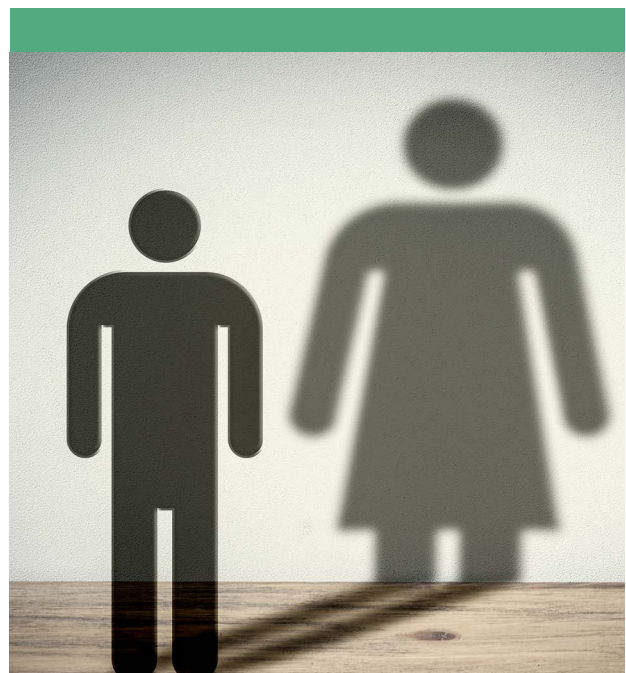
## **What if a Person is Fearful of Being Bullied When Using the Locker Room or Bathroom with Others of Their Actual Sex?**

If someone is fearful of bullying in the locker room or restroom because of how they choose to dress or what they believe about gender, the solution is for the school and other students to stop the bullying, NOT to permit use of privacy facilities of the opposite sex, which violates those students' privacy.

## **A Woman's Privacy Does Not Spring Into Existence or Cease to Exist Based on the Internal Beliefs or Motives of a Man. Her Right to Privacy Belongs to Her and is Not Dependent on a Biological Man's Mindset. The Same is True for a Man's Privacy Rights; They Do Not Depend on the Beliefs or Motives of a Woman.**

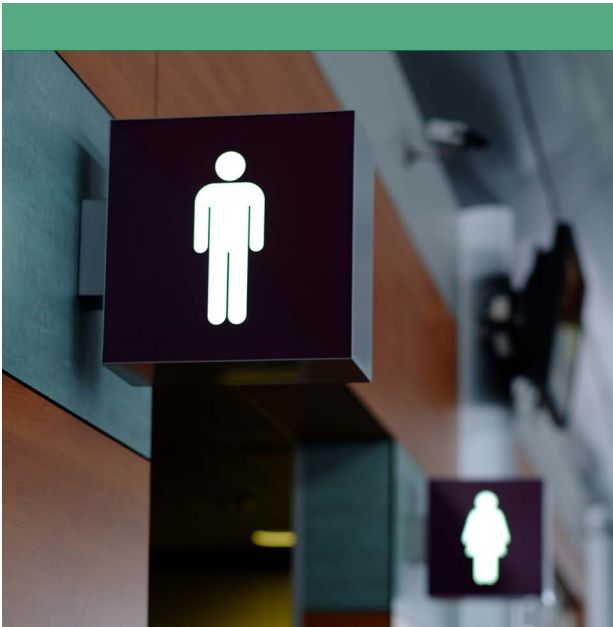
A person's desire to live out their beliefs of gender, even though sincere, doesn't justify giving them an accommodation that infringes on the rights of others.

People are free to believe whatever they want about the nature of gender, and express themselves based on those beliefs within reasonable limits, but their beliefs cannot change or eliminate another person's right to privacy. Likewise, their right to live like they want should not be a license to violate other people's right to privacy in bathrooms and locker rooms.



## **What About People Who Are Sincere in Their Transgender Beliefs? Are You Saying They Are a Safety Hazard to Other Students?**

No. A biological male's presence in the girls' locker room violates women's rights to bodily privacy, and that doesn't change depending on whether he has proper or improper internal motives for being there. Example:



Maintenance workers presence in a girls' locker room while girls are using it would still violate the girls' right to bodily privacy even if they are nice men and just there to unclog a drain or fix a toilet and would never dream of doing anything wrong. Maintenance workers would be there for a good reason, to do their job. But we don't tell maintenance workers they can't do their work while women are using it because anyone thinks all maintenance workers are potential rapists. We do it because even the nicest guy in the world who is simply there to unclog a drain, violates the girls' right to privacy who are using it. Girls' right to privacy doesn't depend on good motives or intentions of a male who enters the facility when she is in it.

## **Opening Privacy Facilities Does Give Opportunity for Bad Actors to Do Bad Things in Addition to Violating Privacy.**

Opening up these spaces based on internal beliefs rather than objective sex gives increased opportunity for bad people (both transgender and not transgender) to access potential victims.

## **Privacy Violations Aside, What if Nothing Otherwise Illegal Happens in Those Private Facilities?**

A woman's right to privacy doesn't depend on whether a man did some additional improper or illegal action, like recording, leering, assault, or rape. Those would be wrong even if one woman did it to another woman.

What if the woman doesn't even know a man saw her undressing? A woman's right to privacy is violated even if a biological man viewed her secretly, perhaps while wearing stereotypical female clothing and she didn't find out until later, because a woman's right to privacy doesn't change based on what a man personally believes about the nature of gender. No male gets to decide for the girl whether her privacy is violated or not. Her privacy is hers and hers alone.



## **If You Care About Privacy, Can't You Just Use a Stall or Change Behind a Shower Curtain?**

Privacy rights begin at the door of the locker room or restroom, not at the door of the stall or shower curtain. Stalls and shower curtains exist to provide a bit of extra privacy between members of the same sex. Stalls are NOT sufficient for privacy from members of the opposite sex. If stalls were enough to protect privacy, there would be no reason to have separate bathrooms and locker rooms at all.

## **Why Not Force Students Uncomfortable with Changing and Using the Bathroom or Locker Room with Members of the Opposite Sex to Leave and Go Elsewhere?**

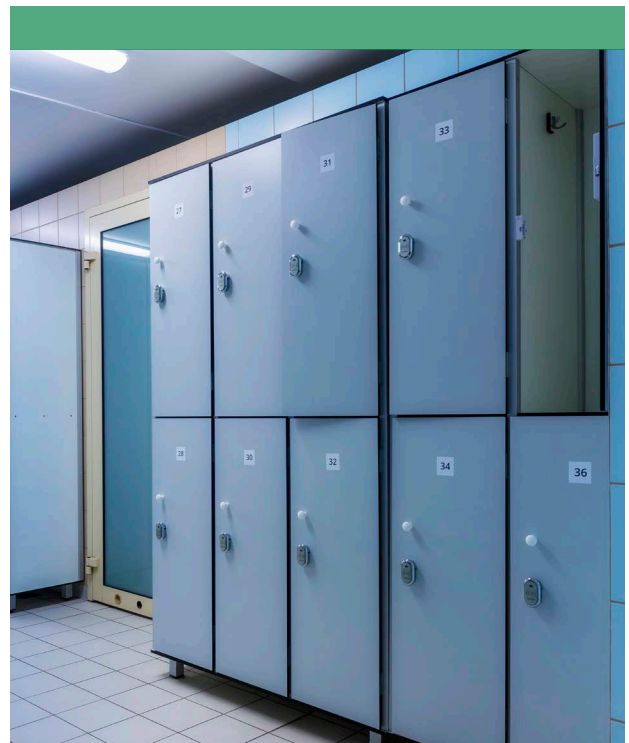
Just as it would be improper to tell a student who is being bullied that, instead of stopping the bullying, the bullied student should go elsewhere, it is improper to tell a student who simply wants to use privacy facilities without members of the opposite sex present that if they don't like it, they should go elsewhere.

It is also unfair because a student who identifies with the opposite sex can choose three options. They could continue to use the restroom of their sex, because to deny them that would be sex discrimination. They could use the restroom of the opposite sex that they identify themselves with (because they would argue it is gender identity discrimination) or they could use the single user space. Meanwhile, other students who just want privacy from the opposite sex, can no longer use their multi-user space. They can't use the restroom consistent with their sex if the school permits opposite sex people to use it, and they obviously can't go to the opposite sex restroom either. They would ONLY have one option, a single user space. This is unfair.

It's also unworkable. There are scores of gender identities. There are only two sexes. And, there are only two sets of bathrooms and locker rooms, which demonstrate they exist for privacy based on binary sex, not to identify with non-binary gender. They don't exist to demonstrate what gender identity stereotypes we feel most aligns with our personal beliefs.

## **Are Sex-Specific Bathrooms the Same as Segregation of Bathrooms on Race?**

No. In fact, the opposite is true. Sex based policies are reasonable, but replacing sex-based privacy facilities with segregated bathrooms on the basis of what someone believes about gender IS analogous to segregation on the



basis of race since both race and beliefs about gender have nothing to do with our bodily privacy from members of the opposite sex. We have separate bathrooms and locker rooms for the two sexes because those are areas where we enter into some state of undress. Race has nothing to do with bathrooms or locker rooms. Beliefs about gender identity have nothing to do with bathroom/locker rooms either. Both of those categories are improper reasons to segregate bathrooms. We don't have separate facilities based on what we wear, personal beliefs, or color of skin. Biological sex is the only valid reason to have separate showers and restrooms in the first place because in these settings, our anatomical differences are often revealed. If this didn't matter, we'd have one locker room the way we have one water fountain for all human beings.

**“We have separate bathrooms and locker rooms for the two sexes because those are areas where we enter into some state of undress. Race has nothing to do with bathrooms or locker rooms. Beliefs about gender identity have nothing to do with bathroom/locker rooms either.”**



**The Debate Isn't About One Side Discriminating and Another Side Wanting to Stop Discrimination. Those in Favor of Permitting People to Use Privacy Facilities of the Opposite Sex Want to Segregate Restrooms. They Want to Do So Based on a New Category That is Unrelated to the Reason We have Separate Bathrooms and Locker Rooms.**

Supporters of permitting people of one sex to enter privacy facilities of the opposite sex based on their beliefs about gender are not asking to stop treating people differently, and for one bathroom for everyone. Instead, they want a NEW system of segregation, one that separates restrooms and locker rooms based on subjective beliefs about gender

identity instead of common sense separation based on objective biological / anatomical sex.

### **Do People Who Believe In Privacy Hate Transgender People? Do They Want to Exclude Transgender People In Privacy Facilities?**

Absolutely not. Just because they don't want to change or use restrooms with any members of the opposite sex, doesn't mean they hate them. We can love all our friends of the opposite sex, but we shouldn't be forced to disrobe or use bathrooms together to prove it! The Privacy concerns are with sharing privacy facilities with

anyone of the opposite sex; it does not matter what “gender” the person identifies with. Nobody has any objection to sharing privacy facilities with *all* students identifying as “transgender” contrary to what some claim. The only thing that matters is that those sharing the restroom or locker room are the same sex, regardless of what they believe about gender identity.

### **Is Sex “Assigned at Birth”?**

No. Sex isn’t “assigned” at birth any more than a baby’s blood type or the county in which they were born are “assigned.” Doctors simply write an objectively recognizable fact.

Everyone knows their own sex. Even people who identify themselves as transgender do so precisely because they believe their gender is different from their sex.

Gender identity is not immutable but is based on a person’s beliefs associating themselves with whatever stereotypes they have about people of the opposite sex. It is a subjective perception not limited to the two sexes, but expands to categories other than male or female. Contrarily, sex is not a belief.

### **Are People Born in the “Wrong Body”?**

No. The notion regarding gender identity that says a person has a boy mind in a girl body or vice versa, is merely an idiom used by a person seeking to describe some type of distress to others. Some people may feel a deep affinity towards things that are culturally and stereotypically associated with girls. But a boy is not a girl no matter how many of the stereotypes about girls the boy adopts and no matter how deeply that boy believes that affinity for those stereotypes about females transforms him into a female. Simply put, the body is not a problem, it is the mistaken belief that does not align with reality.



No matter how difficult the condition of gender dysphoria may be, nothing about it affects the objective reality that those suffering from it remain the male or female persons that they were in the womb, at birth, and thereafter – any more than an anorexic’s belief that she is overweight changes the fact that she is, in reality, slender.

### **Are There “Boy Brains and Girl Brains”?**

No. There are only human brains. Dr. Paul McHugh and Dr. Lawrence Mayer explain that “girl brain” and “boy brain” theories are unwarranted:

“[I]t is now widely recognized among psychiatrists and neuroscientists who engage in brain imaging research that there are inherent and ineradicable methodological limitations of any neuroimaging study that simply associates a particular trait, such as a certain behavior, with a particular brain morphology. (And when the trait in question is not a concrete behavior but something as elusive and vague as “gender identity,” these methodological problems are even more serious)... All interpretations, usually in popular outlets, claiming or suggesting that a statistically significant difference between the brains of people who are transgender and those who are not is the cause of being transgendered or not — that is to say, that the biological differences determine the differences in gender identity — are unwarranted.” *New Atlantis Sexuality and Gender: Findings from the Biological Psychological, and Social Sciences*, Fall 2016, 103-04.

Even if evidence existed that brain studies showed differences, which they do not, it would not tell us whether the brain differences are the cause of transgender identity or a result of identifying and acting upon their own stereotypes about the opposite sex, through what is known as “neuroplasticity.” And regardless of the extent transgender identities and aspects of the brain could correlate in some way, one’s biological sex remains the same.

## **SPORTS**

### **Should People Who Identify as the Opposite Sex Get to Compete in Athletics Designated Solely for the Opposite Sex?**

Treating sex as meaningless erases protections meant for women, like Title IX which was intended to create more opportunities for women in education and athletics. Biological men have begun taking women’s spots in competitions, women’s scholarships, and reducing opportunities for women. Recently in Connecticut,



two boys identifying as girls won more than ten (and counting) state titles in girls’ races. In Alaska, the third place state champion in the girls’ 100 meters was a boy. That means the 4th place girl didn’t medal. The 9th place girl in the preliminary heat didn’t even get to race in the final heat. A biological man recently won a world bicycling championship in the women’s division. A male college runner won three titles in the Northeast 10 Championships for women’s track and received the most outstanding track athlete award. This is unfair to women.

Co-ed sports are fine when they permit all members of both sexes to compete. But where sports are designated based on sex, permitting opposite sex involvement is unfair and steals opportunities from women. Girls should



not lose their ability to compete based on a man's beliefs about the nature of gender, or because a man adopts stereotypically female appearances. Just as a boy (who identifies as a man) does not make the boys' varsity team cannot then tryout for the girls' varsity team, a boy who identifies as a girl should not be able to try out for the girls' team.

**A man's belief about his gender does not cancel out his physical advantage over women.**

In the context of religious liberty and rights of conscience, you can believe things others disagree with. You can express your beliefs within certain limits. In the same way, you can express yourself by adopting stereotypes about the opposite sex. You can even believe that if you are drawn to stereotypes about the opposite sex that means you are the opposite sex. But your beliefs do not give you the right to steal opportunities from women or to compete for women's

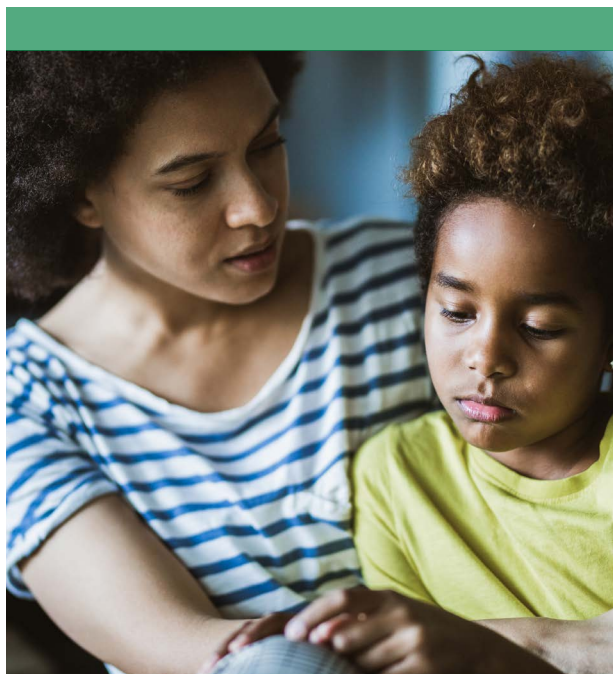
spots on podiums. Nor does even a deeply held belief about the nature of your own "gender" cause a woman's privacy rights to disappear (and vice versa). Women's bodily privacy and women's only-competitions do not depend on a man's beliefs about himself. It doesn't depend on how sincere he is in his desire to adopt stereotypes about the opposite sex.

### **Why Not At Least Let Girls Who Identify as Boys Play on Boys Sports Teams?**

Even a girl who wants to participate on a boys-only team can be problematic because girls' identifying as boys often take performance enhancing drugs in order to appear more stereotypically male. But boys are not permitted to take those drugs, even though the boy may be the same size and strength as the girl prior to her taking performance enhancing drugs.

### **"Transitioning" is Causing Great Harm**

Seeking to align one's mind with reality has always been the preferred method for treating other dysphorias, such as anorexia, xenomelia (the feeling that one or more limbs do not belong), or transdisability (believing one has a physical disability that does not actually exist). No school would ever address anorexic students' needs by providing only minute portions of low-calorie food in their lunches. Surgery results in many harms, including permanent sterility. One of the most comprehensive scientific studies tracking individuals who underwent sex-reassignment surgery revealed that (1) the rate of



psychiatric hospitalization was approximately three times higher for postoperative individuals than a control group; (2) mortality rates and rates of criminal conviction also increased; (3) suicide attempts were almost five times more likely than before surgery; and (4) the likelihood of suicide following surgery was 19 times higher than the control group, adjusted for prior psychiatric illness (Cecilia Dhejne, *Long-term follow-up of transsexual persons undergoing sex reassignment surgery* (Feb. 22, 2011), <https://bit.ly/2xl6HDr>.)

In 2016, the Obama administration acknowledged a similar reality. In a discussion of the largest and most robust study on sex-reassignment, the Centers for Medicare and Medicaid pointed out, “The study identified increased mortality and psychiatric hospitalization compared to the matched controls. The mortality was primarily due to completed suicides (19.1-fold greater than in control Swedes).”<sup>2</sup>

Even when the procedures are successful technically and cosmetically, and even in cultures that are relatively “trans-friendly,” transitioners still face poor outcomes. Dr. Paul McHugh, former University Distinguished Service Professor of Psychiatry at the Johns Hopkins University School of Medicine, explains:

Transgendered men do not become women, nor do transgendered women become men. All (including Bruce Jenner) become feminized men or masculinized women, counterfeits or impersonators of the sex with which they “identify.” In that lies their problematic future. When “the tumult and the shouting dies,” it proves not easy nor wise to live in a counterfeit sexual garb. The most thorough follow-up of sex-reassigned people—extending over thirty years and conducted in Sweden, where the culture is strongly supportive of the transgendered—documents their lifelong mental unrest. Ten to fifteen years after surgical reassignment, the suicide rate of those who had undergone sex-reassignment surgery rose to twenty times that of comparable peers.

Dr. McHugh points to the reality that because sex change is physically impossible, it frequently does not provide the long-term wholeness and happiness that people seek.

<sup>2</sup> Ryan Anderson, “The New York Times Reveals the Painful Truth about Transgender Lives”, November 25, 2018, <https://www.thepublicdiscourse.com/2018/11/47220/>

<sup>3</sup> Ryan Anderson, “Sex Change: Physically Impossible, Psychosocially Unhelpful, and Philosophically Misguided”, March 5, 2018, <https://www.thepublicdiscourse.com/2018/03/21151/>



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