

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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**Nos. 19-2193, 19-2648, 19-2695  
(consolidated with No. 19-1329)**

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**THERESA VICTORY, et al.,**

*Plaintiffs-Appellees,*

**v.**

**COUNTY OF BERKS, et al.,**

*Defendants-Appellants.*

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Appeals from the May 20, 2019 (ECF No. 135), July 11, 2019 (ECF No. 192), and July 15, 2019 (ECF No. 196) Orders of the United States District Court for the Eastern District of Pennsylvania, Civil Action No. 5:18-cv-5170

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**BRIEF OF *AMICI CURIAE* 21 ORGANIZATIONS DEDICATED TO  
JUSTICE AND EQUITY FOR INCARCERATED WOMEN  
AND GIRLS, IN SUPPORT OF APPELLEES  
AND FOR AFFIRMANCE**

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Center for Constitutional Rights  
Community Legal Services  
Equal Rights Advocates  
Gender Justice  
Legal Voice  
Maternity Care Coalition  
National Crittenton  
National Girls Health and Justice Institute  
National Organization for Women Foundation  
National Women's Law Center  
New Voices for Reproductive Justice  
Pennsylvania Prison Society  
People's Paper Co-op  
Reentry Think Tank  
Sisters Returning Home  
Southwest Women's Law Center  
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Women's Law Project

## CORPORATE DISCLOSURE STATEMENT

As required under Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), undersigned counsel for *amici curiae* 21 Organizations Dedicated to Justice and Equity for Incarcerated Women and Girls, states that *amici* are nonprofit, public-interest organizations, none of which has a parent corporation, and none of which issues public stock.

Dated: August 19, 2019

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	v
STATEMENT OF INTEREST OF THE <i>AMICI CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	3
ARGUMENT .....	5
I.    The incarcerated women’s population is small but increasing dramatically, yet prisons’ and jails’ facilities for this growing and vulnerable population are often substandard.....	5
A. Although women comprise a small share of the incarcerated population, their numbers have risen precipitously in recent years. ....	5
B. Prisons’ and jails’ women’s facilities are often overcrowded and inferior to men’s facilities, putting already vulnerable incarcerated women at greater risk of harm.....	9
II.   Berks County’s second-tier treatment of “Trusty” incarcerated women is unconstitutional.....	15
A. Compared to similarly situated incarcerated men, Berks County provides inferior housing and privileges to “Trusty” incarcerated women. ....	15
B. Berks County’s disparate treatment of “Trusty” incarcerated women violates the Equal Protection Clause.....	18

- III. Security and administrative concerns do not shield prisons and jails from the Equal Protection Clause’s ban on sex discrimination.....21
  - A. Cost containment cannot justify discrimination on the basis of sex. ....22
  - B. The Court should not allow sex discrimination to persist by unduly deferring to corrections officials’ judgment. ....25
- CONCLUSION .....27
- CERTIFICATES .....28
- ADDENDUM OF INDIVIDUAL STATEMENTS OF *AMICI CURIAE*.....30

## TABLE OF AUTHORITIES

### Cases

<i>Bradwell v. Illinois</i> , 83 U.S. 130 (1873).....	25
<i>Braggs v. Dunn</i> , 257 F. Supp. 3d 1171 (M.D. Ala. 2017).....	9, 11, 13, 15
<i>Bukhari v. Hutto</i> , 487 F. Supp. 1162 (E.D. Va. 1980).....	10, 23
<i>Council of Alternative Political Parties v. Hooks</i> , 121 F.3d 876 (3d Cir. 1997) .....	20
<i>Craig v. Boren</i> , 429 U.S. 190 (1976).....	22
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**STATEMENT OF INTEREST OF THE *AMICI CURIAE***

*Amici curiae* are 21 nonprofit organizations that seek equity and justice for incarcerated women and girls. *Amici* include organizations that advocate for the rights of women, girls, and prisoners and detainees, as well as organizations that provide services to incarcerated and formerly incarcerated individuals.

*Amici* have expertise on the experiences of incarcerated women and girls, whose unique needs often are not appropriately addressed by prisons and jails. *Amici* share a common interest in improving incarcerated women and girls' conditions of confinement, thereby promoting positive outcomes for this population both during the period of incarceration and post-release. They seek to supplement the parties' briefs by providing the Court with information situating this case within historical data and trends relating to incarcerated women and girls. *Amici* submit this brief in support of Appellees and in support of a determination that Berks County's refusal to provide its incarcerated men and women with comparable housing and privileges violates the Equal Protection Clause.

The identities of the *amici curiae* are as follows: ACLU of Pennsylvania; Atlanta Women for Equality; California Women's Law Center; Center for Constitutional Rights; Community Legal Services; Equal Rights Advocates; Gender Justice; Legal Voice; Maternity Care Coalition; National Crittenton; National Girls Health and Justice Institute; National Organization for Women

Foundation; National Women's Law Center; New Voices for Reproductive Justice; Pennsylvania Prison Society; People's Paper Co-op; Reentry Think Tank; Sisters Returning Home; Southwest Women's Law Center; Women's Law Center of Maryland, Inc.; and Women's Law Project. Individual statements of interest for each *amicus* are included as an addendum to this brief. Once the Court grants *amici* leave to file this brief, *amici* are authorized to file this brief under Federal Rule of Appellate Procedure 29(a)(2).

No counsel for a party authored this brief in whole or in part, and no one other than *amici* and their counsel made any monetary contribution toward this brief's preparation or submission.

## SUMMARY OF ARGUMENT

Although incarcerated women still comprise only a small share of the incarcerated population, the number of incarcerated women has increased precipitously in recent years, multiplying twelve-fold in prisons in Pennsylvania, nine-fold in prisons nationwide, and fourteen-fold in jails nationwide since the 1970s. Yet, historically, prisons and jails have often provided inadequate and subpar housing facilities, medical care, and other necessities for incarcerated women, failing to bring their women's facilities to the same standard provided to incarcerated men.

Berks County is a case in point. Berks County houses all of its lowest-risk "Trusty" incarcerated men in its Community Reentry Center, where, relative to Berks County Jail, the men have more freedom and less direct supervision. Trusty men are free, for example, to move throughout their assigned unit for up to thirteen hours each day. Within each unit, sleeping rooms are separated from bathrooms and showers.

Berks County refuses to allow "Trusty" incarcerated women—whom Berks County classifies as "Trusty" using the same security risk classification system it uses for incarcerated men—to live at the Reentry Center. All Trusty women must instead live at the Jail, where they have less freedom and face more unpleasant conditions. Trusty women receive at most six hours each day when they can leave

their locked cells. In addition, their locked cells include open toilets, which do not always flush and sometimes force Trusty women to remain in a cell with feces left in the toilet.

Berks County's second-tier treatment of Trusty women violates the Equal Protection Clause. Trusty women and Trusty men are similarly situated, Berks County provides Trusty women with inferior housing conditions, and Trusty women's inequitable treatment is not substantially related to the achievement of any important government objectives. Although Berks County tries to defend its unconstitutional conduct with arguments based on cost containment and deference to corrections officials' judgment, those arguments fall short because, in this case, Trusty women's right to be free from sex discrimination is not a right that "need necessarily be compromised for the sake of proper prison administration."

*Johnson v. California*, 543 U.S. 499, 510 (2005).

For these reasons, as well as those set forth in Appellees' Briefs, the district court's orders should be affirmed.



## ARGUMENT

**I. The incarcerated women’s population is small but increasing dramatically, yet prisons’ and jails’ facilities for this growing and vulnerable population are often substandard.**

***A. Although women comprise a small share of the incarcerated population, their numbers have risen precipitously in recent years.***

As the district court remarked below, perhaps “due to their small population size,” “[p]risons do not always meet the needs of female inmates.” (A162, No. 19-2648.)<sup>1</sup> Indeed, incarcerated women comprise only a small share of the incarcerated population: just 6% of the Pennsylvania prison population,<sup>2</sup> 7% of the total prison population,<sup>3</sup> and 15.3% of inmates in local jails<sup>4</sup> in 2017.

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<sup>1</sup> See *infra* Section I.B for discussion of the ways prisons and jails have failed to meet incarcerated women’s needs.

<sup>2</sup> Michael Krauss et al., Pa. Dep’t of Corr., *Annual Statistical Report 2017*, at 18 tbl.18, <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/2017%20Annual%20Statistical%20Report.pdf>.

<sup>3</sup> Jennifer Bronson & E. Ann Carson, Bureau of Justice Statistics, U.S. Dep’t of Justice, NCJ 252156, *Prisoners in 2017*, at 3 (Apr. 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>.

<sup>4</sup> Zhen Zeng, Bureau of Justice Statistics, U.S. Dep’t of Justice, NCJ 251774, *Jail Inmates in 2017*, at 6 tbl.4 (Apr. 2019), <https://www.bjs.gov/content/pub/pdf/ji17.pdf>.

However, though the incarcerated women's population remains a small proportion of the total incarcerated population, the data show that, both in Pennsylvania (where Berks County is located) and nationwide, the number of incarcerated women has increased precipitously in recent years. The number of incarcerated women has multiplied twelve-fold (from 229 to 2,863) in prisons in Pennsylvania,<sup>5</sup> nine-fold (from 12,746 to 111,422) in prisons nationwide,<sup>6</sup> and fourteen-fold (from under 8000 to nearly 110,000) in jails nationwide<sup>7</sup> since the 1970s.<sup>8</sup>

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<sup>5</sup> E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Female Prisoners under the Jurisdiction of State or Federal Correctional Authorities, December 31, 1978–2016* (Oct. 7, 2017), [https://www.bjs.gov/nps/resources/documents/QT\\_total%20jurisdiction%20count\\_female.xlsx](https://www.bjs.gov/nps/resources/documents/QT_total%20jurisdiction%20count_female.xlsx).

<sup>6</sup> *Id.*

<sup>7</sup> Elizabeth Swavola et al., *Overlooked: Women and Jails in an Era of Reform* 6 (2016), <http://www.safetyandjusticechallenge.org/wp-content/uploads/2016/08/overlooked-women-in-jails-report-web.pdf>.

<sup>8</sup> *Amici* must also highlight that women of color and LGBTQI people are grossly overrepresented in prisons and jails. See Nat'l Ctr. for Transgender Equality, *LGBTQ People Behind Bars* 5 (2018), <https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>; Ilan H. Meyer et al., *Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012*, 107 *Am. J. Pub. Health* 267, 269, 271-72 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5227944/pdf/AJPH.2016.303576.pdf>; The Sentencing Project, *Incarcerated Women and Girls* 2, 5 (updated June 2019), <https://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>; Swavola et al., *supra* note 7, at 11-12. See

Moreover, this increase in the incarcerated women's population has outpaced the concurrent increase in the incarcerated men's population.<sup>9</sup> “[F]emale prison populations have risen more quickly than male populations in all 50

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*generally* Amnesty Int'l, *LGBTQI Glossary*, [https://www.amnestyusa.org/pdfs/AIUSA\\_Pride2015Glossary.pdf](https://www.amnestyusa.org/pdfs/AIUSA_Pride2015Glossary.pdf) (last visited Aug. 19, 2019) (explaining that “LGBTQI” is “[a] common abbreviation for lesbian, gay, bisexual, transgender, queer[,] and intersexed community”).

This overrepresentation is due, in large part, to these populations' experiences of poverty, gender-based discrimination and violence, and biased policing. See Nat'l Ctr. for Transgender Equality, *supra*, at 5; Wendy Sawyer, *The Gender Divide: Tracking Women's State Prison Growth*, Prison Policy Initiative (Jan. 9, 2018), [https://www.prisonpolicy.org/reports/women\\_overtime.html](https://www.prisonpolicy.org/reports/women_overtime.html); Swavola et al., *supra* note 7, at 9-11, 21-33.

As *amici* work to combat the structural forces that underpin these numbers, we call upon officials to treat incarcerated women of color and LGBTQI people with dignity and equality, particularly in areas such as housing, safety, medical care where they are often deprived of their rights; likewise, we call upon the courts to ensure that these sex-based inequalities are remedied. See *generally* Jason Lydon et al., *Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey* 24-25, 27, 29-49, 51-57 (Oct. 21, 2015), available at <https://www.issueab.org/resources/23129/23129.pdf>; Swavola et al., *supra* note 7, at 13-18; *infra* Section I.B.

<sup>9</sup> See *generally* Lawrence A. Greenfeld & Tracy L. Snell, Bureau of Justice Statistics, U.S. Dep't of Justice, NCJ 175688, *Women Offenders* 6 (Dec. 1999), <https://www.bjs.gov/content/pub/pdf/wo.pdf> (explaining that, between 1990 and 1998, “[t]he number of women per capita involved in corrections overall ha[d] grown 48% . . . , compared to a 27% increase in the number of men per capita”).

states,”<sup>10</sup> and in Pennsylvania, state prisons experienced a 44% increase over the last decade in women entering those facilities, compared to a 12% increase in men.<sup>11</sup>

The rise in the incarcerated women’s population has been driven by an increase in the number of women charged with or convicted of nonviolent crimes.<sup>12</sup> Most incarcerated women are nonviolent offenders.<sup>13</sup> Compared to men, incarcerated women, overall, “are less likely to present a danger to their children or society.”<sup>14</sup>

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<sup>10</sup> Natasha A. Frost et al., *Hard Hit: The Growth in the Imprisonment of Women, 1977–2004*, at 9 (2006), <http://csdp.org/research/HardHitReport4.pdf>.

<sup>11</sup> See Krauss et al., *supra* note 2, at 2 tbl.1 (showing that Pennsylvania state prisons had 1,178 prison receptions of female inmates and 14,826 prison receptions of male inmates in 2007, compared to 1,697 and 16,672, respectively, in 2017).

<sup>12</sup> See Barbara Bloom et al., *Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders* 4 (June 2003), <https://info.nicic.gov/nicrp/system/files/018017.pdf>.

<sup>13</sup> *Id.* at 2, 8, 16, 77; accord Swavola et al., *supra* note 7, at 7, 9, 36 & n.12.

<sup>14</sup> Deseriee A. Kennedy, “*The Good Mother*”: *Mothering, Feminism, and Incarceration*, 18 *Wm. & Mary J. Women & L.* 161, 169 (2012), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1330&context=wmjowl> (citing Kathi J. Kemper & Frederick P. Rivara, *Parents in Jail*, 92 *Pediatrics* 261, 262 tbl.3 (1993), available at [https://www.researchgate.net/publication/14862327\\_Parents\\_in\\_jail](https://www.researchgate.net/publication/14862327_Parents_in_jail)); see also Mariel Alper et al., Bureau of Justice Statistics, U.S. Dep’t of Justice, *NCJ 250975, 2018 Update on Prisoner Recidivism: A 9-Year Follow-Up Period (2005–2014)*, at 8 & fig.7, tbl.5 (May 2018), <https://www.bjs.>

***B. Prisons' and jails' women's facilities are often overcrowded and inferior to men's facilities, putting already vulnerable incarcerated women at greater risk of harm.***

The steep rise in the incarcerated women's population has not been met by a concomitant increase in resources. Prisons and jails continue to provide subpar housing facilities, medical care, and other necessities for incarcerated women, often failing to bring their women's facilities to the same standard provided to incarcerated men.<sup>15</sup>

With respect to housing, multiple courts (including in Pennsylvania) have commented that female sections of local jails are becoming "dangerously overcrowded." *Inmates of Allegheny Cty. Jail v. Wecht*, 565 F. Supp. 1278, 1290-91, 1296 (W.D. Pa. 1983); *see also Women Prisoners of D.C. Dep't of Corr. v. District of Columbia*, 93 F.3d 910, 915 (D.C. Cir. 1996); *Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1247 (M.D. Ala. 2017); *Inmates of the Northumberland Cty. Prison v. Reish*, No. 08-0345, 2009 WL 8670860, at \*11 (M.D. Pa. Mar. 17, 2009);

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gov/content/pub/pdf/18upr9yfup0514.pdf (showing that, compared to their male counterparts, formerly incarcerated women were less likely to be arrested following release).

<sup>15</sup> Although this brief refers to correctional facilities as either "women's" or "men's" facilities, *amici* note that women's facilities may also house transgender men and nonbinary people, just as men's facilities may also house transgender women and nonbinary people.

*Laube v. Haley*, 234 F. Supp. 2d 1227, 1232, 1236-37, 1244-46, 1251 (M.D. Ala. 2002).<sup>16</sup> In addition, the women’s facilities may lack law libraries, educational opportunities, yard space, or other features available at the men’s facilities. *See, e.g., Goldyn v. Angelone*, No. 97-17185, 1999 WL 728561, at \*2 (9th Cir. Sept. 16, 1999); *Women Prisoners*, 93 F.3d at 915-16; *Pitts v. Thornburgh*, 866 F.2d 1450, 1452 (D.C. Cir. 1989); *Wecht*, 565 F. Supp. at 1287; *Glover v. Johnson*, 478 F. Supp. 1075, 1085-93 (E.D. Mich. 1979).

The pervasive overcrowding at women’s facilities results in serious harm to incarcerated women. In crowded conditions, incarcerated women often experience restricted freedom of movement or end up confined to their beds. *See, e.g., Reish*, 2009 WL 8670860, at \*12 & n.28, \*24; *Laube*, 234 F. Supp. 2d at 1232; *Bukhari v. Hutto*, 487 F. Supp. 1162, 1165, 1171 (E.D. Va. 1980). They may compete with each other for access to basic necessities, such as fans and ice to provide “relief from . . . unrelenting heat.” *Laube*, 234 F. Supp. 2d at 1236-38, 1243. Their facilities may also lack adequate medical, mental health, and pregnancy-related

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<sup>16</sup> As Appellees note, overcrowding has also occurred in the women’s unit at Berks County Jail. (*See* Appellees’ Br. 30 n.10, No. 19-2193 (citing Karen Shuey, *The Number of Women in Berks County Prison Hit a Record in July. Officials Are Trying To Find Out Why*, Reading Eagle (July 31, 2019; 5:39 PM), <https://www.readingeagle.com/news/article/berks-county-prison-sees-spike-in-female-inmates>.)

care. *See, e.g., Women Prisoners*, 93 F.3d at 914-15; *Braggs*, 257 F. Supp. 3d at 1248.<sup>17</sup> On the whole, because “addressing [incarcerated women’s] specific needs has sometimes been deferred . . . to address the . . . larger male population,” incarcerated women “tend to be ‘forgotten inmates’ in a predominantly male world.”<sup>18</sup>

These failings are particularly harmful to incarcerated women, who represent an especially vulnerable population.<sup>19</sup> Not only do many of them require

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<sup>17</sup> *See also* Bloom et al., *supra* note 12, at 7; Jennifer Bronson & Carolyn Sufrin, *Pregnant Women in Prison and Jail Don’t Count: Data Gaps on Maternal Health and Incarceration*, 134 Pub. Health Reports 57S, 59S (2019), <https://journals.sagepub.com/doi/pdf/10.1177/0033354918812088>; Carolyn B. Sufrin et al., *Incarcerated Women and Abortion Provision: A Survey of Correctional Health Providers*, 41 Perspectives on Sexual & Reproductive Health 6, 8 (2009), available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.615.1348&rep=rep1&type=pdf>.

<sup>18</sup> Gail Elias, Nat’l Inst. of Corr., NIC Accession No. 022247, *Facility Planning to Meet the Needs of Female Inmates* 2, 19 (May 2007), <https://s3.amazonaws.com/static.nicic.gov/Library/022247.pdf>.

<sup>19</sup> Although Berks County has asserted to the district court that incarcerated women’s rates of prior abuse experiences and single parenthood, discussed below, mean (1) that they are not similarly situated to incarcerated men and (2) that they present additional security concerns, *see* Mem. Law Supp. Defs.’ Mot. Summ. J. 7, 13-14, *Victory v. Berks County*, No. 18-5170 (E.D. Pa. June 3, 2019), ECF No. 146, neither of these arguments is tenable.

First, on appeal, Berks County does not challenge the district court’s conclusion (A28, No. 19-2648) that Trusty women and Trusty men are similarly situated. (*See generally* Appellants’ Br., No. 19-1329; Appellants’ Br.,

specialized reproductive or pregnancy-related health care,<sup>20</sup> but research also indicates that at least 39% of incarcerated women—and nearly six in ten women in state prisons—have experienced physical or sexual abuse.<sup>21</sup> The rates of prior abuse experiences among incarcerated women are at least three times the rates found among incarcerated men.<sup>22</sup>

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No. 19-2193; Appellants’ Br., No. 19-2648.) Indeed, Berks County’s custody classification system specifically evaluates newly admitted inmates’ “treatment and clinical needs” (A17, No. 19-2648), meaning that, when Berks County assigns the “Trusty” designation to Trusty women, Berks County has already accounted for any differences attributable to prior abuse experiences and single parenthood.

Second, any additional security concerns are fundamentally cost-based concerns, which cannot justify sex discrimination, as discussed later. *See infra* Section III.A.

<sup>20</sup> *See* Jennifer G. Clarke et al., *Reproductive Health Care and Family Planning Needs Among Incarcerated Women*, 96 *Am. J. Pub. Health* 834, 834 (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1470599/pdf/0960834.pdf> (“Nationally, at any point in time, between 6% and 10% of incarcerated women are pregnant.”).

<sup>21</sup> *See* Lauren E. Glaze & Laura M. Maruschak, Bureau of Justice Statistics, U.S. Dep’t of Justice, NCJ 222984, *Parents in Prison and Their Minor Children* 7 tbl.12 (Aug. 2008), <https://www.bjs.gov/content/pub/pdf/pptmc.pdf>; Greenfield & Snell, *supra* note 9, at 1, 8 tbl.20; Caroline Wolf Harlow, Bureau of Justice Statistics, U.S. Dep’t of Justice, NCJ 172879, *Prior Abuse Reported by Inmates and Probationers* 1-2 & tbl.1 (rev. May 1999), <https://www.bjs.gov/content/pub/pdf/parip.pdf>; Shannon M. Lynch et al., *Women’s Pathways to Jail: The Roles & Intersections of Serious Mental Illness & Trauma* 32 tbl.12 (Sept. 2012), [https://www.bja.gov/Publications/Women\\_Pathways\\_to\\_Jail.pdf](https://www.bja.gov/Publications/Women_Pathways_to_Jail.pdf).

<sup>22</sup> *See* Harlow, *supra* note 21, at 2 tbl.1.



In addition, incarcerated women are in poorer physical and mental health, experiencing “more serious health problems”<sup>23</sup> and “a significantly higher incidence rate of mental illness compared to their male counterparts,” *Braggs*, 257 F. Supp. 3d at 1248.<sup>24</sup> Many are parents and their children’s primary caretakers—“the number of children with a mother in prison . . . more than doubled, up 131%,” between 1991 and 2007—yet these mothers may have infrequent or nonexistent opportunities to see their children while they are incarcerated.<sup>25</sup> Finally, many

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<sup>23</sup> Bloom et al., *supra* note 12, at 6-7; *see also* Laura M. Maruschak, Bureau of Justice Statistics, U.S. Dep’t of Justice, NCJ 210696, *Medical Problems of Jail Inmates* 2 & tbl.1 (Nov. 2006), <https://www.bjs.gov/content/pub/pdf/mpji.pdf> (logging more reports of current medical problems from incarcerated women in jail than incarcerated men in jail); Laura M. Maruschak, Bureau of Justice Statistics, U.S. Dep’t of Justice, NCJ 221740, *Medical Problems of Prisoners* 2-3, 7-10 & tbls.1, 2 (Apr. 22, 2008), <https://www.bjs.gov/content/pub/pdf/mpp.pdf> (same, for state and federal prisoners).

<sup>24</sup> *Accord* Doris J. James & Lauren E. Glaze, Bureau of Justice Statistics, U.S. Dep’t of Justice, NCJ 213600, *Mental Health Problems of Prison and Jail Inmates* 4 & tbl.3 (Sept. 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>; Pa. Dep’t of Corr., *Inmate Statistics as of December 31, 2017*, <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/2017%20Inmate%20Profile.pdf> (last visited Aug. 15, 2019).

<sup>25</sup> Glaze & Maruschak, *supra* note 21, at 2, 3 tbl.5, 5, 6 tbl.10; *see also* Barbara Bloom & David Steinhart, *Why Punish the Children? A Reappraisal of the Children of Incarcerated Mothers in America* 26 tbl.2-9, 28 tbl.2-12 (Jan. 1993), [https://www.nccdglobal.org/sites/default/files/publication\\_pdf/why-punish-the-children.pdf](https://www.nccdglobal.org/sites/default/files/publication_pdf/why-punish-the-children.pdf); Greenfeld & Snell, *supra* note 9, at 7-8.

incarcerated women come from poor and disadvantaged backgrounds,<sup>26</sup> with 17% of incarcerated female state prisoners in 1991 having lived in a foster home or group home while growing up.<sup>27</sup>

Prisons and jails have not adjusted their facilities to adapt to this growing and vulnerable population, often wrongly assuming that “what works for male inmates will also work for female inmates” or simply ignoring the needs of these “forgotten inmates.”<sup>28</sup> Courts have held that this negligence toward incarcerated

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<sup>26</sup> See Bloom et al., *supra* note 12, at 2-3; Kennedy, *supra* note 14, at 169; Bernadette Rabuy & Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned* figs.4, 8, 9 (July 9, 2015), <https://www.prisonpolicy.org/reports/income.html>, available at <https://perma.cc/D7S4-5GP9>.

<sup>27</sup> Tracy L. Snell, Bureau of Justice Statistics, U.S. Dep’t of Justice, NCJ-145321, *Women in Prison 5 & tbl.7* (Mar. 1994), <https://www.bjs.gov/content/pub/pdf/WOPRIS.PDF>.

<sup>28</sup> Elias, *supra* note 18, at 2, 7; see, e.g., *supra* notes 16-18 and accompanying text.

These trends also arise for incarcerated girls in the juvenile justice system, where girls’ “medical needs often go unidentified and untreated, drowned out by a correctional system designed for the larger population of boys.” Leslie Acoca, *Stopping the Girls to Prison Pipeline, in Girls in Justice* 39, 40 (Richard Ross ed., 2015). Incarcerated girls are also exceptionally vulnerable: many come from low-income families or are involved with the child welfare system, and incarcerated girls “are among the sickest and most medically underserved of all adolescent populations.” Leslie Acoca et al., *Health Coverage and Care for Youth in the Juvenile Justice System: The Role of Medicaid and CHIP* 2-4 (May 2014), <https://www.kff.org/wp-content/uploads/2014/05/8591-health-coverage-and-care->

women is unlawful and unconstitutional. *See, e.g., Braggs*, 257 F. Supp. 3d at 1248; *Reish*, No. 08-0345, at \*3-8; *Laube*, 234 F. Supp. 2d at 1241-51; *Wecht*, 565 F. Supp. at 1286; *Glover*, 478 F. Supp. at 1083. Berks County’s treatment of incarcerated women, discussed below, is a case in point.

**II. Berks County’s second-tier treatment of “Trusty” incarcerated women is unconstitutional.**

***A. Compared to similarly situated incarcerated men, Berks County provides inferior housing and privileges to “Trusty” incarcerated women.***

Nearly ten years ago, Berks County converted a juvenile detention center into a Community Reentry Center to help some of the Berks County incarcerated population prepare for reentry and to reduce recidivism. (A22, No. 19-2648.) Yet the Reentry Center conversion did not account for Berks County’s incarcerated women’s population and excludes incarcerated women from the Reentry Center altogether. (A22-A23, No. 2648.) Most relevantly here, Berks County houses all of its lowest-risk “Trusty” incarcerated men at the Reentry Center, but does not allow comparably low-risk “Trusty” incarcerated women—such as Theresa

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for-youth-in-the-juvenile-justice-system.pdf. Indeed, one 2009 study of incarcerated girls entering detention found that 40% had some form of vaginal injury, 22% had experienced a sexual assault within the last seven days, and 13% had experienced a head injury within the last seven days. *See id.* at 4 & fig.4; *Acoa, Stopping the Girls to Prison Pipeline, supra*, at 40.

Victory and Alice Velazquez-Diaz—to live at the Reentry Center. (A37, No. 19-1329; A16-A17, A23, No. 19-2648.) Berks County’s blanket exclusion of women at the Reentry Center epitomizes the historical trend of treating incarcerated women like “forgotten inmates.”<sup>29</sup>

Predictably, by excluding women from the Reentry Center, Berks County denies incarcerated women many of the privileges it offers for similarly situated incarcerated men. By Berks County’s own admission, men housed at the Reentry Center receive “more freedom and less direct supervision by staff.” (A17, No. 19-2648 (quoting Berks County’s inmate handbook).) Berks County assigns men in the Reentry Center to one of four units, which each house up to twenty-two men. (A22, No. 19-2648.) Each unit includes rooms for sleeping (each of these rooms includes two or four beds and private closets), a separate bathroom and showering area, and a group community or day room. (*Id.*) For up to thirteen hours each day, men at the Reentry Center may freely move around their unit: they eat meals in the group community or day room, privately use the bathrooms and showers, play backgammon, and have the option to return to their sleeping rooms as desired. (*Id.*) During visitation periods, men in the Reentry Center are not

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<sup>29</sup> Elias, *supra* note 18, at 2.

separated from their visitors by glass. (*Id.*) And Berks County does not lock the doors to their sleeping rooms, even at night. (*Id.*)

By contrast, Berks County typically assigns Trusty women like Ms. Velazquez-Diaz to locked cells in Berks County Jail, where they experience substantially less freedom and more unpleasant conditions. (A17-A19, No. 19-2648.) Ms. Velazquez-Diaz's locked cell, for example, contains an open toilet. (A19, No. 19-2648.) At the Jail, incarcerated women are also less able to interact with their visitors because, unlike the Reentry Center, the Jail has glass separating inmates from visitors. (A20, A22, No. 19-2648.) Instead of the Trusty men's thirteen hours per day during which they can leave their sleeping rooms, Ms. Velazquez has only six scheduled hours of recreation when she can leave her cell to shower or to use a microwave. (A20, A22, No. 19-2648.) And even those six hours of greater freedom are often limited. When the Jail is on lockdown, Ms. Velazquez-Diaz must remain in her cell; in her first seven months at the jail, Ms. Velazquez-Diaz had already missed thirty recreation periods because of lockdowns. (A20, No. 19-2648.) Most unpleasantly, when Berks County forces Ms. Velazquez-Diaz to remain in her cell, she must remain in close proximity to the open toilet, which "has no lid," "locks after two flushes," and "has at times locked with feces in it, including during meal times." (A19, No. 19-2648.)

Ms. Velazquez-Diaz asserts that her conditions of confinement at the Jail—where she receives less freedom and faces more unpleasant conditions compared to similarly situated men, whom Berks County houses at Reentry Center—are unconstitutional under the federal Equal Protection Clause. *See* Second Am. Compl. ¶¶ 191-195, *Victory v. Berks County*, No. 18-5170 (E.D. Pa. Apr. 22, 2019), ECF No. 114. As summarized below, the district court correctly held that her Equal Protection Clause claim has a substantial likelihood of success.

***B. Berks County’s disparate treatment of “Trusty” incarcerated women violates the Equal Protection Clause.***

Ms. Velazquez-Diaz will succeed on her equal protection claim if she shows that (1) compared to “persons who are similarly situated,” (2) she “has been treated differently,” *Renchenski v. Williams*, 622 F.3d 315, 337 (3d Cir. 2010), and that (3) Berks County’s inequitable treatment of women is not “substantially related to the achievement of important government objectives,” *Pitts*, 866 F.2d at 1453-55; *accord Dinote v. Danberg*, 601 F. App’x 127, 130 (3d Cir. 2015). All of these criteria are met here.

First, the district court correctly concluded—and Berks County does not challenge—that, by virtue of Berks County having classified her with Trusty status, Ms. Velazquez-Diaz is similarly situated to Trusty men who are housed at

the Reentry Center. (*See* A28, No. 19-2648. *See generally* Appellants’ Br., No. 19-1329; Appellants’ Br., No. 19-2193; Appellants’ Br., No. 19-2648.)<sup>30</sup>

Second, the differing conditions between the Jail and the Reentry Center, summarized *supra* Section II.A, show that Berks County has treated Ms. Velazquez-Diaz differently from similarly situated Trusty men. (*See also* A28-A31, No. 19-2648.)

Finally, as discussed in greater detail by the district court and in Appellee’s briefs, Berks County has not demonstrated that excluding Trusty women from the Reentry Center (and from the Reentry Center’s concomitant benefits) is “substantially related to its interests in ensuring safety, preventing overcrowding, or facilitating rehabilitation.” (A31, No. 19-2648; *see* A31-A33, No. 19-2648; Appellees’ Br. 43-50, No. 19-1329; Appellees’ Br. 28-32, No. 19-2193.) To the contrary, Berks County’s safety concerns are speculative (A32, No. 19-2648); its overcrowding concerns are unfounded, given the available space within the Reentry Center (*see* A23, No. 19-2648); and admitting Trusty women to the

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<sup>30</sup> Because Ms. Velazquez-Diaz and other Trusty women are similarly situated to Trusty men, one of the cases on which Berks County frequently relies, *Klinger v. Dep’t of Corr.*, 31 F.3d 727 (8th Cir. 1994), is distinguishable. (*See, e.g.*, Appellants’ Br. 26, 30, No. 19-1329; Appellants’ Br. 18, 25, No. 19-2193.)

Reentry Center would actually facilitate their rehabilitation (*see* A17, A31-A32, No. 19-2648).

Given Berks County’s denial of Ms. Velazquez-Diaz’s and other Trusty women’s constitutional right to equal protection under the law, as well as the irreparable injury that may follow from denying preliminary injunctive relief, *see Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 883 (3d Cir. 1997), the Court should uphold the district court’s preliminary injunction. That is, the Court should confirm the fundamental principle that, where incarcerated women are similarly situated to incarcerated men, and where the correctional facility does not prove that different treatment is “substantially related” to “important government objectives,” *Pitts*, 886 F.2d at 1455; *accord Dinote*, 601 F. App’x at 130, the U.S. Constitution forbids prisons and jails from treating incarcerated women differently from incarcerated men, *see generally Renschenski*, 622 F.3d at 337. Upholding this principle is essential in the present-day, as correctional facilities grapple with the rising incarcerated women’s population and risk continuing the historical trend of treating incarcerated women as “forgotten inmates.”<sup>31</sup>

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<sup>31</sup> *Elias*, *supra* note 18, at 2; *see supra* Part I.



**III. Security and administrative concerns do not shield prisons and jails from the Equal Protection Clause’s ban on sex discrimination.**

This Court has not addressed “whether *Turner v. Safley*, 482 U.S. 78 (1987), under which a prison regulation restricting constitutional rights passes muster if it is reasonably related to legitimate penological interests, applies” to prison sex discrimination cases. *Dinote*, 601 F. App’x at 130 (cleaned up). Here, because the constitutional rights in question are not rights that “need necessarily be compromised for the sake of proper prison administration,” *Johnson*, 543 U.S. at 510, the Court should hold that *Turner*’s deferential level of scrutiny does not apply.

In asserting security and administrative concerns, Berks County asks the Court to excuse unconstitutional conduct for cost-based reasons and out of deference to corrections officials, essentially arguing that the Court should apply *Turner*’s deferential scrutiny to this case. (*See, e.g.*, Appellants’ Br. 30-31, No. 19-1329 (citing *Turner*); Appellants’ Br. 17-22, 24-26, No. 19-2193 (same).) However, as discussed below—and also ably discussed by the district court (A31-33, No. 19-2648) and in Appellees’ briefs (*see* Appellees’ Br. 43-50, No. 19-1329; Appellees’ Br. 28-32, No. 19-2193)—neither cost containment nor deference to corrections officials’ judgment are appropriate rationales here, where Ms. Velazquez-Diaz’s right to equal protection is not a right that “need necessarily

be compromised for the sake of proper prison administration,” *Johnson*, 543 U.S. at 510; *see, e.g., Glover*, 478 F. Supp. at 1085-98.

***A. Cost containment cannot justify discrimination on the basis of sex.***

Berks County’s preferential treatment of Trusty men, which includes giving them more freedom of movement and other privileges, is a discriminatory choice that Berks County cannot justify on the basis of containing costs and conserving resources.

The Equal Protection Clause requires state actors to govern impartially, thus prohibiting arbitrary or discriminatory differential treatment. *See, e.g., United States v. Virginia*, 518 U.S. 515, 532 (1996); *Craig v. Boren*, 429 U.S. 190, 211 (1976) (Stevens, J., concurring); *Reed v. Reed*, 404 U.S. 71, 76-77 (1971). A classification based on sex or gender will survive an Equal Protection challenge only when it “serves important governmental objectives” and is “substantially related to the achievement of those objectives.” *Virginia*, 518 U.S. at 533 (internal quotation marks omitted). The justifications in support of the differential treatment must be “exceedingly persuasive.” *Id.* at 534.

Recognizing the Constitution’s guarantee of equal treatment, courts have regularly rejected cost as a justification for differential treatment based on suspect or quasi-suspect classifications, such as sex or gender. In *Frontiero v. Richardson*, 411 U.S. 677 (1973), for example, the United States Supreme Court rejected

“administrative convenience” as the justification for sex-based differential treatment of military members, concluding that

any statutory scheme which draws a sharp line between the sexes, [s]olely for the purpose of achieving administrative convenience, necessarily commands “dissimilar treatment for men and women who are . . . similarly situated,” and therefore involves the “very kind of arbitrary legislative choice forbidden by the [Constitution] . . . .”

*Id.* at 690 (quoting *Reed*, 404 U.S. at 76-77); *see also Plyler v. Doe*, 457 U.S. 202, 227 (1982) (“[A] concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources.”).

Cost-based justifications for unequal treatment on the basis of suspect or quasi-suspect classifications have also been held insufficient in the prison context. As one court put it, “an inequitable distribution of resources”—e.g., the refusal to spend comparable resources for men and for women—“is not contemplated by the Fourteenth Amendment [Equal Protection Clause].” *West v. Va. Dep’t of Corr.*, 847 F. Supp. 402, 407 (W.D. Va. 1994). Likewise, “seemingly practical considerations [such as cost containment] may not be used to ‘justify official inaction or legislative unwillingness to operate a prison system in a constitutional manner.’” *Bukhari*, 487 F. Supp. at 1172 (quoting *Glover*, 478 F. Supp. at 1078).

Accordingly, cost containment and conservation of resources are not “exceedingly persuasive” or sufficiently important enough to justify providing Trusty men with more liberties and privileges than Trusty women. *Virginia*, 518

U.S. at 534. A cost justification is especially weak when the financial expense associated with providing women the same liberties and privileges as the men receive in the prison system is speculative, as it is here. (*See* A32, No. 19-2648.) Berks County may have to reallocate its staff and modify either the Jail or the Reentry Center, but there is no reason to assume that these costs are prohibitively expensive. (*See* A34-A35, No. 19-2648.) Berks County's situation therefore is distinguishable from situations in which a prison system asserts that it must construct new facilities. *See, e.g., Pitts*, 866 F.2d at 1457. Speculative costs, especially when related to modifying existing facilities and reallocating staff, do not outweigh Ms. Velazquez-Diaz's and other Trusty women's rights to be free from sex discrimination while incarcerated.

Not only is there no reasonable justification for allocating limited resources in an inequitable way, but also, when it occurs, cost containment may be a disguise for impermissible judgments about vulnerable or marginalized communities. Restricting the freedom of movement of women, but not of men, harkens back to archaic notions about women's limited role in the public sphere and relates to a long history of restricting women's autonomy in the United States.<sup>32</sup> In refusing to

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<sup>32</sup> *See, e.g.,* Meghan Boone, *The Autonomy Hierarchy*, 22 *Tex. J. C.L. & C.R.* 1, 16-20, 29-38 (2016); Daphne Spain, *Gendered Spaces and Women's Status*, 11

provide the same benefits to Trusty women as it does to Trusty men, Berks County has concluded that men are worthy of preferable treatment in comparison to women. That value judgment is impermissible under the Equal Protection Clause.<sup>33</sup>

***B. The Court should not allow sex discrimination to persist by unduly deferring to corrections officials' judgment.***

As the U.S. Supreme Court has stated, “[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution.” *Turner*, 482 U.S. at 84. Although courts have deferred to the day-to-day judgments of prison officials under some circumstances, *see id.*, they retain the responsibility of ensuring that prison officials, as government actors, meet constitutional standards.

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Sociological Theory 137, 138-39 (Jul. 1993); *see also Bradwell v. Illinois*, 83 U.S. 130, 141 (1873) (Bradley, J., concurring) (“The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood.”).

<sup>33</sup> Similarly, Berks County’s inequitable allocation of programming, which denies the vast majority of its incarcerated women access to job-related opportunities, while providing them with gardening and religion-based programming, *see* Pls.’ Resp. Opp’n Defs.’ Mot. Summ J. 6-7, No. 18-5170 (E.D. Pa. June 17, 2019), ECF No. 162, is related to and reinforces stereotypical beliefs about women that dissuaded or prohibited them from working outside of the home, *see Bradwell*, 83 U.S. at 141 (Bradley, J., concurring).

Hence, in *Johnson v. California*, the Court clarified that deference is not required in the prison context when the right at issue is otherwise “consistent with proper prison administration.” 543 U.S. at 511 (race discrimination). Just as compliance with the Equal Protection Clause’s ban on race discrimination was consistent with proper prison administration in *Johnson*, compliance with the Equal Protection Clause’s ban on sex discrimination is also consistent with proper prison administration here. *See also Pitts*, 866 F.2d at 1453-55 (adopting a more stringent standard of review for prison sex discrimination claims).

Given that women are a growing population in prisons and jails in Pennsylvania and across the country, *see supra* Section I.A, it is imperative that courts protect their constitutional rights. This Court should not ignore the constitutional rights of Berks County incarcerated women either by applying a deferential standard of review or by declining to order a clear remedy that directs prison officials to comply with the Constitution. This Court should affirm the district court’s orders requiring Berks County to provide Ms. Velazquez-Diaz with freedom of movement equivalent to Trusty men, in compliance with the Equal Protection Clause. (*See* A1-A2, No. 19-2193; A1-A2, No. 19-2648.)

## CONCLUSION

For these reasons, as well as those set forth in Appellees' Briefs, *amici* respectfully urge the Court to affirm the orders below.

Respectfully submitted,

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## CERTIFICATES

Margaret H. Zhang, counsel for *amici*, hereby certifies that:

1. As required by Third Circuit Local Appellate Rule 28.3(d), I hereby certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.
2. This brief complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f) and the addendum of individual statements of *amici curiae*, this document contains 5798 words.
3. This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5), (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.
4. On this date, the foregoing brief was filed electronically, served on all counsel of record through the Court's Electronic Case Filing system, and mailed by regular mail to:

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5. As required by Third Circuit Local Appellate Rule 31.1(c), I hereby certify that the text of the electronic version of this brief transmitted to the Court on this date is identical to the text of the paper copies to be delivered to the Clerk.
6. Before transmitting this brief to the Court electronically, a virus check was performed on the electronic PDF version of this brief using Norton LifeLock 22.17.3.50, and no virus was found.

Dated: August 19, 2019

/s/ Margaret Zhang

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**ADDENDUM OF INDIVIDUAL STATEMENTS OF *AMICI CURIAE***

**ACLU OF PENNSYLVANIA**

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. Since its founding in 1920, the ACLU has been dedicated to preserving and defending the principles of individual liberty and equality embodied in the United States Constitution and civil-rights laws. The ACLU of Pennsylvania is one of its state affiliates, with more than 40,000 members throughout Pennsylvania. The ACLU and ACLU of Pennsylvania have appeared many times as *amicus curiae* in federal and state courts at all levels, including both civil and criminal proceedings, in cases involving the rights of women to equal treatment under the law. The proper resolution of this case is thus a matter of substantial importance to the ACLU and its members.

**ATLANTA WOMEN FOR EQUALITY**

Atlanta Women for Equality is a 501(c)(3) nonprofit legal aid organization dedicated to shaping our communities according to true standards of equality and empowering women and girls to assert their rights to equal treatment. We accomplish this mission by providing free legal advocacy for women and girls facing gender discrimination at school, including sexual harassment and assault,

and by protecting and expanding educational opportunities through policy advocacy. We support equal treatment for women and girls in all contexts, including in prisons, jails, and other conditions of confinement.

### **CALIFORNIA WOMEN’S LAW CENTER**

The California Women’s Law Center (CWLC)’s mission is to break down barriers and advance the potential of women and girls through transformative litigation, policy advocacy, and education. For 30 years, CWLC has placed an emphasis on eliminating all forms of gender discrimination, including discrimination in housing and against incarcerated women and girls. By promoting vital support services and advocating for meaningful reforms in our criminal justice system, CWLC hopes to enable women, families and communities to escape the cycle of poverty and reduce the rate of recidivism.

### **CENTER FOR CONSTITUTIONAL RIGHTS**

The Center for Constitutional Rights (CCR) is a national, not-for-profit legal, educational, and advocacy organization dedicated to protecting and advancing rights guaranteed by the United States Constitution and international law. Founded in 1966 to represent civil rights activists in the South, CCR has litigated numerous landmark civil and human rights cases on behalf of individuals impacted by arbitrary and discriminatory criminal justice policies, including

policies that disproportionately impact LGBTQI communities of color and policies that violate the Eighth Amendment's prohibition against cruel and unusual punishment and cause significant harm to people in prison. CCR successfully mounted an Eighth Amendment challenge to California's use of solitary confinement in *Ashker v. Brown*, No. 4:09-cv-05796-CW (N.D. Cal 2009).

## **COMMUNITY LEGAL SERVICES**

Community Legal Services of Philadelphia (CLS) has served the legal needs of low-income Philadelphia residents by providing them with advice and representation in civil matters, advocating for their legal rights, and conducting community education about legal issues for over 50 years. CLS's practice model combines direct representation with policy advocacy that is informed by the experiences of our clients, and has engaged in significant advocacy to address the collateral civil consequences of incarceration across many units including Housing, Public Benefits, Family Advocacy, and Employment, as well as through our Youth Justice Project. CLS, along with the ACLU of Pennsylvania, co-convenes the Working Group to Enhance Services to Incarcerated Women. The Working Group brings together a coalition of programs that serve incarcerated and reentering women in the Philadelphia region and across the Commonwealth.

## **EQUAL RIGHTS ADVOCATES**

Equal Rights Advocates (ERA) is a national nonprofit civil rights advocacy organization based in San Francisco that is dedicated to protecting and expanding economic justice and equal opportunities for women and girls. Since its founding in 1974, ERA has led efforts to combat sex discrimination and advance gender equality by litigating high-impact cases, engaging in policy reform and legislative advocacy campaigns, conducting community education and outreach, and providing free legal assistance to individuals experiencing unfair treatment at work and in school through our national Advice & Counseling program. ERA has filed hundreds of suits and appeared as amicus curiae in numerous cases to defend and enforce individuals' civil rights in state and federal courts, including before the United States Supreme Court. ERA recognizes that women historically have been the targets of legally sanctioned discrimination and unequal treatment, and that discriminatory treatment of women in prison can have a directly detrimental impact on their access to opportunities outside of prison, making women more vulnerable to gender-based discrimination and exacerbating the already-existing gender wage gap.

## **GENDER JUSTICE**

Gender Justice is a nonprofit legal and policy advocacy organization based in the Midwest that is committed to the eradication of gender barriers through

impact litigation, policy advocacy, and education. As part of its litigation program, Gender Justice represents individuals and provides legal advocacy as *amicus curiae* in cases involving issues of gender discrimination. Gender Justice has an interest in ensuring that all incarcerated individuals have access to equal housing, regarding of gender.

## **LEGAL VOICE**

Legal Voice is a regional nonprofit public interest organization that works to advance the legal rights of all women, girls, and LGBTQ communities through litigation, legislation, and education. Legal Voice has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country and is currently involved in numerous legislative and litigation efforts. Legal Voice has been a regional leader in combating sexual violence, harassment, and discrimination against women and LGBTQ communities. All incarcerated people deserve to be treated with dignity and respect. This includes equitable access to treatment, facilities, and resources.

## **MATERNITY CARE COALITION**

For 40 years, the southeastern Pennsylvania–based nonprofit Maternity Care Coalition has offered various programs that supported more than 125,000 pregnant women and families with children ages 0–3. The pillar MOMobile program has

expanded since it first rolled out and has been supporting women at Philadelphia's Riverside Correctional Facility since 2006. It is one of the few embedded programs in the country. At MOMobile at Riverside, Advocates work with mothers and pregnant women to address detrimental effects of incarceration on individuals, families, and communities through a variety of programs. Nearly 80% of incarcerated women are mothers and most are the primary caregivers of their minor children. The overwhelming majority of women have a history of trauma, substance use, and mental health problems. Addressing their well-being has a two-generational impact: providing support for mothers in the criminal justice system also benefits their children. Many prisons and county jails have not adjusted to the specialized physical and mental health needs of women across the state and nation, leading to lifelong consequences to these women and their families.

## **NATIONAL CRITTENTON**

National Crittenton catalyzes social and systems change for girls, young women, and gender nonconforming young people impacted by chronic adversity, violence, discrimination, and injustice. We serve as the umbrella for the 26 members of the Crittenton family of agencies providing direct services in 31 states and the District of Columbia. Like the women in the case at bar, many of the young people we support show courage and resilience in the face of the

discrimination they have endured, including while incarcerated. To support their journey, National Crittenton stands firmly opposed to prisons and jails that deny women and girls privileges to which they are entitled under the Equal Protection Clause of the U.S. Constitution.

### **NATIONAL GIRLS HEALTH AND JUSTICE INSTITUTE**

National Girls Health and Justice Institute (NGHJI) has conducted five national studies investigating the specific conditions of confinement, health and reproductive service access, and family visitation services for incarcerated women and girls in 20 states. Our findings support this brief. Based on these studies, we have created the only evidence-based medical and trauma detention, jail, and prison screening tool designed exclusively for women and girls.

### **NATIONAL ORGANIZATION FOR WOMEN FOUNDATION**

The National Organization for Women (NOW) Foundation is a 501(c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing women's equality, among other objectives. Accordingly, we believe that treatment of incarcerated women—and incarcerated men—should be subject to the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.



## **NATIONAL WOMEN’S LAW CENTER**

The National Women’s Law Center (NWLC) is a nonprofit legal advocacy organization dedicated to the advancement and protection of the legal rights of women and girls and the rights of all people to be free from sex discrimination. Since its founding in 1972, NWLC has focused on issues of key importance to women and girls, including economic security, employment, education, and health, with special attention to the needs of low-income women and those who face multiple and intersecting forms of discrimination. NWLC has participated as counsel or amicus curiae in a range of cases before the Supreme Court, federal Courts of Appeals, and state courts to secure equal treatment and opportunity in all aspects of society through enforcement of the Constitution and other laws prohibiting sex discrimination.

## **NEW VOICES FOR REPRODUCTIVE JUSTICE**

New Voices for Reproductive Justice is a Human Rights organization with a mission to build a social change movement dedicated to the health and well-being of Black women and girls based in Pennsylvania and Ohio. Since 2004, New Voices has served over 125,000 Black women, femmes and girls, women of color and LGBTQ+ people of color through leadership development, community organizing, policy advocacy, and culture change. Reproductive Justice is the Human Right of all people to control their bodies, sexuality, gender, work,

reproduction, and ability to form their families. New Voices centers our work around six priority issues that include sexual and reproductive health, LGBTQ+ rights, health care access, ending gender-based violence, ending mass incarceration, and environmental justice.

A significant portion of our work, resources, and advocacy efforts will be focused on gender-based mass incarceration in Pennsylvania and Ohio including the disparate treatment of women inmates based on sex and gender, ending the shackling of pregnant incarcerated women, ending sexual violence, ending segregation of transgender inmates according to assigned sex at birth versus their gender, access to general healthcare and reproductive healthcare specifically, access to equal education and employment opportunities, and comprehensive treatment for trauma and drug addiction. Black women, femmes, and folx of color continue to be the fastest-growing population in prisons and they deserve to have full agency over their bodies and health and well-being and to support their families without intersectional race, gender, and class-based discrimination and biased policies.

## **PENNSYLVANIA PRISON SOCIETY**

Since 1787, the Pennsylvania Prison Society has worked to ensure humane prison and jail conditions and advocate for sensible criminal justice policies. The Society is the oldest organization in the country dedicated to sensible and humane

criminal justice and the only organization in Pennsylvania with the authority to visit any prison or jail in the Commonwealth and to privately interview any person in any jail for any reason. In the age of mass incarceration, this mission is more relevant than ever. Today the Society advocates for systemic policy change, responds to the concerns of inmates and their families, provides subsidized bus service for Philadelphia families visiting loved ones incarcerated in different parts of the state, and provides assistance to individuals returning home from incarceration.

### **PEOPLE’S PAPER CO-OP**

The People’s Paper Co-op (PPC) is an ongoing initiative by the Philadelphia-based Village of Arts and Humanities. The PPC connects formerly incarcerated individuals together with artists, civil rights lawyers, and many others to run a multitude of programs and initiatives. Through a highly collaborative and multidisciplinary process, the PPC and an array of city-wide partners work with individuals directly impacted by the criminal justice system to develop the tools, skills, and networks to advocate for themselves, their families, and residents across the city.

## **REENTRY THINK TANK**

The Reentry Think Tank connects returning citizens with artists and advocates to transform the stereotypes, social services, and platforms that impact our lives and communities. In partnership with the Philadelphia Reentry Coalition, the Think Tank works to make media campaigns that will destroy stereotypes about returning citizens; to connect returning citizens with organizations and individuals in power across the city; and to work across the city to advocate for social, educational, and political platforms that will help those in reentry succeed in their communities. Through the Think Tank's Advocacy Fellowship program for returning citizens, returning citizens consult and collaborate with service providers to transform how service providers support those in reentry, create media campaigns to transform public perceptions, take on leadership roles, and advocate for policies that can truly keep people free.

## **SISTERS RETURNING HOME**

As a female reentry organization in the state of Pennsylvania, Sisters Returning Home believes that female inmates should have equal access to the same resources, freedom, and opportunities that male inmates have.

## **SOUTHWEST WOMEN’S LAW CENTER**

The Southwest Women’s Law Center (SWLC) was founded in 2005. Our mission is to create opportunities for women to realize their full economic and personal potential by: eliminating gender bias, discrimination and harassment; lifting women and their families out of poverty; and ensuring that all women have full control over their reproductive lives through access to comprehensive reproductive health services and information. We achieve these goals through impact litigation, policy advocacy, and legislative advocacy. Berks County’s inferior treatment of women inmates as compared to similarly situated male inmates violates the Equal Protection Clause of the U.S. Constitution. The SWLC has an interest in similarly situated male and female inmates receiving equal treatment under the law with respect to the conditions under which they are each incarcerated.

## **WOMEN’S LAW CENTER OF MARYLAND, INC.**

The Women’s Law Center of Maryland, Inc. is a nonprofit, public interest, membership organization of attorneys and community members with a mission of improving and protecting the legal rights of women. Established in 1971, the Women’s Law Center achieves its mission through direct legal representation, research, policy analysis, legislative initiatives, education and implementation of innovative legal-services programs to pave the way for systematic change. The

Women's Law Center is participating as an amicus in *Victory v. County of Berks* because the Women's Law Center seeks to ensure the physical safety, economic security, and autonomy of all women. This can only be done if women are provided the same opportunities, resources, and rights as men—regardless of their status within the criminal justice system.

### **WOMEN'S LAW PROJECT**

The Women's Law Project (WLP) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of all women and girls. To this end, the WLP engages in high-impact litigation, policy advocacy, and public education. The WLP is committed to protecting the rights of incarcerated and detained women and girls. The WLP represents women seeking to vindicate their legal rights to health, safety, and equality; engages in public policy initiatives to improve the circumstances and treatment of incarcerated and detained women; and prepares and participates in *amicus curiae* briefs that seek to improve treatment of incarcerated and detained women.