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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SEXUALITY AND GENDER ALLIANCE,

Plaintiff,

v.

DEBBIE CRITCHFIELD, *et al.*,

Defendants.

Case No. 1:23-cv-00315-DCN

STATE DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION [DKT. 86]

[1] This Opposition is being filed on behalf of the State Defendants only, i.e. Superintendent Critchfield, the Idaho State Board of Education, and the individually named members of the Idaho State Board of Education. The Boise School District Defendants will file a separate response.

INTRODUCTION

On February 5, 2025, sixteen-year-old Boise High School sophomore A.C. had to use the restroom, just like millions of high school students must do every day at school. A.C. is a female and used a girls' restroom, consistent with her sex. While sitting on the toilet, she heard grunting sounds coming from the adjacent stall. It sounded like a male masturbating. A.C. looked down and saw two black shoes pointing towards her from the adjacent stall. A.C. said "excuse me," and the sounds stopped. A.C. left the stall, and a few minutes later, she saw a male student leave the restroom. A.C. made eye contact with this male student, and he said, "I'm transgender and legally allowed to be here." A.C. immediately reported the incident to school officials, and because of the incident, she had to leave school for the day. She no longer feels safe at Boise High School and is planning to attend a different school for this upcoming school year.

The Idaho legislature passed S.B. 1100 in part to prevent incidents exactly like this. However, in February 2025, Defendants were prohibited from enforcing S.B.1100 due to the injunction issued by the Ninth Circuit. Thankfully, the Ninth Circuit has since affirmed this Court's decision to deny a preliminary injunction and has allowed Defendants to enforce S.B. 1100. This Court should allow Defendants to continue to enforce S.B. 1100 to protect students' bodily privacy and should deny Plaintiff's renewed request for a preliminary injunction.

Sex-segregated restrooms are both "nearly universal" and longstanding—they have existed since time immemorial. *Adams by and through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 796 (11th Cir. 2022) (en banc). This practice reflects the real biological differences between males and females.

Neither the Constitution nor Title IX prohibits Idaho from recognizing biological differences when it comes to restrooms in K-12 public schools. The Equal Protection Clause

prohibits sex discrimination based on stereotypes, not distinctions based on biological differences that are "cause for celebration." *United States v. Virginia*, 518 U.S. 515, 533 (1996). Title IX prohibits sex discrimination, not sex blindness. It recognizes the enduring differences between the sexes and expressly permits sex-segregated toilet facilities.

Even if S.B. 1100 were subject to heightened scrutiny, it survives. Sex-segregated restrooms advance Idaho's important interests in protecting the safety and bodily privacy of developing minors. Sex-segregated restrooms provide privacy to girls and boys alike and protect girls from perverse sexual advances that could otherwise be perpetrated by men in private spaces. This is especially true where restroom stalls, like those at Boise High School, have gaps, allowing those outside to see into the stall even when the door is closed and locked.

For these reasons and others discussed below, the Court should deny Plaintiff's motion.

BACKGROUND

S.B. 1100 mandates that students attending Idaho public schools use restrooms and changing facilities corresponding to their biological sex, protecting student privacy and reducing the likelihood of sex crimes, like voyeurism and exhibitionism. Contrary to Plaintiff's belief, S.B. 1100, like similar laws, was not inspired by anti-transgender animus: it protects individual privacy and safety and requires schools to accommodate students unwilling to use sex-specific spaces. Idaho Code § 33-6701(2); Charles Adside, III, *The Caitlyn Dilemma: Transgender Bathroom Access and Unavoidable Constitutional Difficulties*, 37 QUINNIPIAC L. REV. 457, 483 (2019).

Shortly after S.B. 1100 passed, Plaintiff filed suit and sought a preliminary injunction, arguing that S.B. 1100 violated Equal Protection and Title IX. Dkt. 1, 15. This Court found that S.B. 1100 did not discriminate based on transgender status but treated the law as a sex-based classification. Dkt. 60 at 9–12. The "Ninth Circuit has, on numerous occasions, reiterated" the

constitutional right to bodily privacy, and this Court found that S.B. 1100 is substantially related to Idaho's "important interest in protecting the privacy and safety of students." *Id*. at 16, 25. Accordingly, this Court concluded S.B. 1100 satisfies heightened scrutiny and does not violate Equal Protection. *Id*. at 25.

On Plaintiff's Title IX claim, the Court recognized the circuit split as to whether Title VII's interpretation from *Bostock v. Clayton County*, 590 U.S. 644 (2020), applies to Title IX, and concluded that it likely does not: The two statutes have "differing language, implicate different legal liability structures, and serve different purposes." Dkt. 60 at 27 & n.22. The Court also concluded Plaintiff's Title IX claim was not likely to succeed because 34 C.F.R. § 106.33 expressly permits sex-separate toilet facilities. *Id*. at 28.

After finding that neither claim was likely to succeed on the merits, the Court found that the remaining factors had little impact. *Id*. 32–34. Accordingly, the Court denied Plaintiff's motion for a preliminary injunction. *Id.* at 37.

On appeal, Plaintiff did not fare much better. The Ninth Circuit applied heightened scrutiny to the Equal Protection claim but held that S.B. 1100's "means are substantially related to the governmental interest in protecting students' privacy." *Roe v. Critchfield*, 137 F.4th 912, 926 (9th Cir. 2025). The court reiterated that "[i]ntermediate scrutiny in the equal protection context requires only that the means are substantially related to the government's objective, not the least restrictive means or the means most narrowly tailored to achieve the government's interest." *Id*.

On Plaintiff's Title IX claim, the Ninth Circuit found that the claim was unlikely to succeed because Plaintiff did not "show that the State had clear notice at the time it accepted federal funding that Title IX prohibits segregated access to the facilities covered by S.B. 1100 on the basis of transgender status." *Id*. at 931. The absence of clear notice exists in part because Title IX and its

accompanying regulations expressly allow sex-segregated living, toilet, locker room, and shower facilities. *Id*. at 927, 929 (citing 20 U.S.C. § 1686 and 34 C.F.R. § 106.33).

As Plaintiff failed to show a likelihood of success on the merits, the Ninth Circuit affirmed this Court's denial of Plaintiff's motion for preliminary injunction without considering the remaining factors.

Now, just one month before the start of the 2025-2026 school year, without pointing to any changed circumstances or law, Plaintiff asks this Court to enjoin S.B. 1100's separate restroom facilities requirement at Boise High School. The result should be the same as last time.

LEGAL STANDARD

"A preliminary injunction is an 'extraordinary' equitable remedy that is 'never awarded as of right.'" *Starbucks Corp. v. McKinney*, 144 S. Ct. 1570, 1576 (2024) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). "[A] plaintiff seeking a preliminary injunction must make a *clear showing* that '[1] he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.'" *Id.* (emphasis added) (quoting *Winter*, 555 U.S. at 20). "When . . . the nonmovant is the government, the last two . . . factors merge." *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (internal quotation marks omitted).

ARGUMENT

I. Plaintiff's Equal Protection Claim is not Likely to Succeed on the Merits.

Plaintiff contends that S.B. 1100 "discriminates based on transgender status and sex." Dkt. 86-1 at 16. But *United States v. Skrmetti*, 145 S. Ct. 1816 (2025), now forecloses that argument. *Skrmetti* implicitly overruled the Ninth Circuit's conclusion that S.B. 1100 discriminates on the basis of sex and transgender status. *See Miller v. Gammie*, 335 F.3d 889, 899 (9th Cir. 2003) (circuit precedent may be implicitly overruled by a Supreme Court decision).

A. S.B. 1100 is subject to only rational basis review.

1. Under Skrmetti*, S.B. 1100 does not discriminate on the basis of sex.*

S.B. 1100 designates private spaces based on the individual's sex, while treating both sexes the same. It prohibits boys and girls alike from entering restrooms designated for the opposite sex, ensuring *no one* can access opposite-sex private spaces. *See* Idaho Code § 33-6703(1)(b)(2). The statute in *Skrmetti* likewise prohibited access to certain drugs for enabling a minor to "identify . . . inconsistent with the minor's sex." 145 S. Ct. at 1831 (quotation omitted). This prohibition applied equally to both sexes. *Id*. Thus, like the statute in *Skrmetti*, S.B. 1100 "does not prohibit conduct for one sex that it permits for the other." *Id*. In both cases, there is no sex-based classification that would require heightened scrutiny.

Skrmetti rejected "the argument that the application of SB1 turns on sex" due to its references to the sex of those receiving certain treatments. *Id*. at 1830. The challengers argued the statute was sex-based because it "prohibits certain treatments for minors of one sex while allowing those same treatments for minors of the opposite sex." *Id.* They argued "an adolescent whose biological sex is female cannot receive puberty blockers or testosterone to live and present as a male, but an adolescent whose biological sex is male can," and vice-versa. *Id.* But the Court rejected that framing because these were "different medical [procedures]" when factoring in their purpose. *Id*. In the "medical context," where procedures are "bound up in sex," the government may notice these biological realities. *See id*. at 1829, 1831 (noting that "no minor" may receive procedures with one purpose while "any minor" may receive procedures for other purposes).

Similarly, S.B. 1100 operates in the privacy context, which is also bound up in sex—it "is based upon the inherent differences between male and female bodies." Dkt. 60 at 16, *aff'd*, 137 F.4th 912 (9th Cir. 2025). Just as the law in *Skrmetti* "does not prohibit conduct for one sex that it permits for the other," 145 S. Ct. at 1831, S.B. 1100 does not prohibit conduct for one sex that

it permits for the other. Rather, it allows every minor to access restrooms consistent with their sex and prohibits every minor from accessing restrooms inconsistent with their sex, and it provides an accommodation to everyone. Idaho's law does not allow females to enter male restrooms while prohibiting males from entering female restrooms; instead, its prohibitions apply equally to both sexes. In this way, the law "distinguishes between the two sexes, but it does not advantage, or disadvantage, either," and therefore does not classify on the basis of sex.[2] Dkt. 60 at 13 n.11.

Plaintiff confuses the issue by claiming a sex-based classification exists because "a transgender girl may not use the girls' restroom, whereas a cisgender girl, by virtue of her biological sex, can." Dkt. 86-1 at 16–17. Plaintiff's argument is another way of saying any statute that references sex is a sex-based classification, which *Skrmetti* forecloses. Rather, S.B. 1100, as this Court has recognized, simply gives a "cisgender girl" access to girls' restrooms because of the historically recognized, physically grounded interest in sex-specific privacy, Dkt. 60 at 19–20 n.15, while a "transgender girl" would use that restroom not for sex-specific privacy, but to treat gender dysphoria with a social transition. Thus, Plaintiff's desired outcome would introduce an impermissible classification based upon sexual stereotypes and nothing else.

Bostock does not help Plaintiff's Equal Protection claim. *Bostock*'s "text-driven" but-for causation analysis is based on Title VII and is inapplicable to the Equal Protection Clause. *L. W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 484 (6th Cir. 2023), *aff'd sub nom. Skrmetti*, 145 S. Ct. 1816. "That such differently worded provisions . . . should mean the same thing is implausible on its face." *Id.* (quoting *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2220 (2023) (Gorsuch, J., concurring)) (cleaned up). And the Supreme Court has

[2] State Defendants acknowledge that they previously agreed that S.B. 1100 does classify on the basis of sex and is therefore subject to heightened scrutiny. However, subsequent precedent in *Skrmetti* shows the Supreme Court would not find that S.B. 1100 discriminates on the basis of sex.

long "recognized the biological differences between the sexes" when applying the Constitution. *See Adams*, 57 F.4th at 809 (collecting cases).

But even if *Bostock*'s but-for causation rationale transfers to the Equal Protection Clause, S.B. 1100 is not a sex-based classification. In *Bostock*, the employer "penalized the male employee for a trait (attraction to men) that it tolerates" in females; that classified based on sex because the sexual orientation of the employee "automatically switches . . . when his sex is changed from male to female." *Skrmetti*, 145 S. Ct. at 1835. But here, the trait at issue (restroom preference) does not automatically change when you change someone's sex. While sexual orientation is defined as attraction to the same sex, restroom preference does not automatically change when you change the individual's sex. People of different sexes prefer men's restrooms, women's restrooms, or gender-neutral restrooms. For example, stereotypically women's restrooms are cleaner, while men's have shorter lines, and a person of either sex may prioritize those values. S.B. 1100 disallows opposite-sex access whether a person wants it for cleanliness, convenience, or social transition. That treats the sexes equally; sex is not a but-for cause of any burden or disadvantage. Thus, *Bostock is* inapplicable.

2. Under Skrmetti, S.B. 1100 does not discriminate on the basis of transgender status.

S.B. 1100 does not classify based on "transgender status" either. This Court previously explained that "S.B. 1100 does not draw a line based upon gender identity, but on sex." Dkt. 60 at 13; *accord id.* at 23. The Ninth Circuit, in contrast, treated S.B. 1100 as a "transgender status" classification under circuit precedent. *Critchfield*, 137 F.4th at 923 (citing *Hecox v. Little*, 104 F.4th 1061, 1079–80 (9th Cir. 2024), *cert. granted*, No. 24-38, 2025 WL 1829165 (U.S. July 3, 2025)). *Skrmetti* has now superseded that conclusion.

In *Skrmetti*, the Tennessee statute "d[id] not exclude any individual from medical treatments on the basis of transgender status." 145 S. Ct. at 1833. Rather, it "remove[d] one set of diagnoses—gender dysphoria, gender identity disorder, and gender incongruence—from the range of treatable conditions." *Id.* But a transgender individual could be treated for another diagnosis, like precocious puberty. *Id.* Because there was "a 'lack of identity' between transgender status and the excluded medical diagnoses," there was no classification based on transgender identity. *Id.* Just so with S.B. 1100: there is "a 'lack of identity' . . . between transgender status and a policy that divides students into biological male and biological female groups—both of which can inherently contain transgender students—for purposes of separating the male and female bathrooms by biological sex." *Adams*, 57 F.4th at 809. A group of biological males may contain transgender students, and so may a group of biological females. *See Skrmetti*, 145 S. Ct. 1833 (citing *Geduldig v. Aiello*, 417 U.S. 484, 496 & n.20 (1974)). They are all treated the same under S.B. 1100 in that they must all use the restroom consistent with their sex (or use a single occupancy restroom).

Skrmetti thus abrogates the Ninth Circuit's rationale that S.B. 1100 "bars only transgender students from using facilities that align with their gender identity." 137 F.4th at 922–23. Again, context matters. Restrooms are separated by sex to protect sex-specific privacy, not to affirm gender identity or treat gender dysphoria. Thus, even assuming the continued viability of Ninth Circuit precedent treating "transgender status" as a suspect class, heightened scrutiny is not required as to S.B. 1100 because it does not discriminate based on transgender status.

3. S.B. 1100 easily passes rational basis review.

Because S.B. 1100 does not discriminate based on sex or transgender status, it is subject to rational basis review. *Skrmetti*, 145 S. Ct. at 1831–35. To succeed, Plaintiff must show that S.B. 1100 lacks any rational relationship to a legitimate government interest. But S.B. 1100 is entitled to a "strong presumption of validity," and "legislative choice is not subject to courtroom

fact-finding and may be based on rational speculation unsupported by evidence or empirical data." *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 314–15 (1993).

"[P]rotecting the privacy and safety of all students" is a legitimate governmental interest—indeed, an important one. *Critchfield*, 137 F.4th at 923; *see infra Section II.* S.B. 1100 is rationally related to these interests as applied to a school's private spaces, including restrooms. Even if Plaintiff's identified members always use restroom stalls, as asserted, Dkt. 86-1 at 19, that does not protect the sex-specific privacy interests of all other students. Consider boys using urinals, as well as A.C.'s experience when a transgender student was in the next stall. Gaps around and under stall doors and walls mean there is no sound barrier and an imperfect visual barrier. Declaration of Deborah Watts (Watts Decl.) ¶ 10. Barring access to the opposite sex is a layer of protection, and that is rationally related to Idaho's interest in protecting students' privacy and safety.

B. S.B. 1100's sex-segregated restrooms requirement survives intermediate scrutiny.

S.B. 1100 nevertheless withstands even heightened scrutiny, just as it did before. A law survives intermediate scrutiny if it "serves important governmental objectives and . . . the discriminatory means employed are substantially related to the achievement of those objectives." *Virginia,* 518 U.S. at 516 (cleaned up). Intermediate scrutiny does not require "the least restrictive means or the means most narrowly tailored to achieve the government's interest." *Critchfield*, 137 F.4th at 926. Intermediate scrutiny is satisfied if the government demonstrates that classifications are supported by more than "shoddy data or reasoning." *City of Los Angeles v. Alameda Books*, Inc., 535 U.S. 425, 438 (2002). Where the "legislative judgment" is "neither novel nor implausible," the "quantum of empirical evidence" is low. *Critchfield*, 137 F.4th at 925.

Here, S.B. 1100 meets the heightened scrutiny standard because Idaho has important interests in "enhancing school safety" and "protecting students' bodily privacy," and sex-

segregated restrooms are substantially related to that interest. *Jacobs v. Clark Cnty. Sch. Dist.*, 526 F.3d 419, 435 (9th Cir. 2008) (first quote); *Critchfield*, 137 F.4th at 924–25 (second quote).

1. Segregating restrooms by sex is a historical practice that advances the government's interest in protecting students' bodily privacy interests.

"[S]ex-separation in bathrooms . . . preceded the nation's founding." W. Burlette Carter, *Sexism in the "Bathroom Debates": How Bathrooms Really Became Separated by Sex*, 37 YALE L. & POL'Y REV. 227, 229 (2018). This has been the practice "[a]cross societies and throughout history . . . in order to address privacy and safety concerns arising from the biological differences between males and females." *G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 734 (4th Cir. 2016) (Niemeyer, J., concurring in part and dissenting in part), *vacated and remanded by Gloucester Cnty. Sch. Bd. v. G. G. ex rel. Grimm*, 580 U.S. 1168 (2017); Carter, *supra*, at 228. The practice was common at the time the Fourteenth Amendment was ratified. Peter C. Baldwin, *Public Privacy: Restrooms in American Cities*, *1869–1932*, 48 J. OF SOC. HIST. 264 (2014).

Separating restrooms by sex has provided significant protection for women. Requiring sex-specific restrooms was "among the earliest state-wide attempts to protect women from workplace sexual harassment," Carter, at 279–283, and it was a victory in the women's rights movement, Kevin Stuart & DeAnn Barta Stuart, *Behind Closed Doors: Public Restrooms and the Fight for Women's Equality*, 24 TEX. REV. L. & POL. 1, 28–29 (2019). As a future Supreme Court Justice wrote in 1975, "[s]eparate places to disrobe, sleep, [and] *perform personal bodily functions* are permitted, in some situations required, by regard for individual privacy." Ruth Bader Ginsburg, *The Fear of the Equal Rights Amendment*, WASH. POST at A21 (Apr. 7, 1975) (emphasis added).

Against this historical backdrop, but before *Skrmetti*, one Circuit held that while a policy mandating sex-segregated restrooms discriminates on the basis of sex, it does not violate the Equal

Protection Clause.[3] *Adams*, 57 F.4th at 801–08. *Adams* reasoned that a sex-segregated restroom policy advanced the important interest in "protecting students' privacy in school bathrooms" and is substantially related to that interest because it allowed students to "shield their bodies from the opposite sex in the bathroom." *Id*. at 803, 805. Some circuits disagree with *Adams*, but that is because those circuits failed to account for first principles of constitutional interpretation.

Like *Adams*, the Ninth Circuit has held that the state has important interests in promoting student safety and protecting students' bodily privacy. *Jacobs*, 526 F.3d at 435; *Critchfield*, 137 F.4th at 924. The question for the Court is whether S.B. 1100's restroom requirement is substantially related to these important governmental interests. It is.

2. Requiring sex-segregated restrooms is substantially related to Idaho's important interests.

S.B. 1100's sex-segregated restroom requirement protects students' bodily privacy and promotes safety. Without this requirement, students could be (and have been) subjected to sexual harassment, could have their bodies exposed to the opposite sex, and could be exposed to the private parts and bodily functions of those of the opposite sex. Even the risk of these harms is damaging to adolescents' emotional state, self-esteem, and sense of safety at school. Nangia Decl. ¶¶ 31–34.

i. Sex-segregated restrooms protect students' bodily privacy.

Individuals have a constitutional right to bodily privacy. *Sepulveda v. Ramirez*, 967 F.2d 1413, 1416 (9th Cir. 1992). "Indeed, this privacy interest is heightened yet further when children use communal restrooms and similar spaces, because children . . . 'are still developing, both emotionally and physically.'" *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 636 (4th Cir.

[3] Like *Critchfield*'s conclusion that S.B. 1100 is a classification based on sex and transgender status, *Adam's* conclusion that mandating sex-segregated restrooms discriminates on the basis of sex was abrogated by *Skrmetti*, 145 S. Ct. at 1831–35.

2020) (Niemeyer, J., dissenting). "[S]hield[ing] one's unclothed figure from the view of strangers, and *particularly strangers of the opposite sex*, is impelled by elementary self-respect and personal dignity." *Byrd v. Maricopa Cnty. Sheriff's Dep't*, 629 F.3d 1135, 1141 (9th Cir. 2011) (emphasis added). A policy that reduces the risk of exposure is substantially related to the government's important interest in protecting students' bodily privacy. *Critchfield*, 137 F.4th at 924–25.

Sex-segregated restrooms, specifically, are substantially related to protecting students' right to bodily privacy. When using the restroom, people inevitably disrobe, at least in part. In this sensitive setting, adults, students, and particularly women and girls object to sharing a restroom with the opposite sex and report extreme discomfort when forced to do so. Nangia Decl. ¶ 33.

This risk of exposure is particularly damaging for high school girls who use the restroom during their menstrual cycle. Nangia Decl. ¶¶ 12–17. To heighten these concerns, some stalls at Boise High School have gaps that allow those outside the stall to see inside the stall even when the stall door is closed and locked. Watts Decl. ¶ 10 & Ex. B. This can result in a student exposing her unclothed body to others. And without sex-segregated restrooms, this puts students at risk of exposing their bodies to those of the opposite sex—the exact exposure that the right to bodily privacy most protects. *Byrd*, 629 F.3d at 1141.

In *Critchfield*, the Ninth Circuit made it clear that Plaintiff did not show a likelihood of success on the merits concerning all-access locker rooms and showering facilities because students may at times expose their bodies to those of the opposite sex. 137 F.4th at 925. By the same logic, Plaintiff cannot meet its burden with respect to restrooms at Boise High School because students also risk exposing their bodies to those of the opposite sex. *See* Watts Decl. ¶ 10.

ii. Sex-segregated restrooms prevent sexual harassment and assault.

It is no secret that crimes are committed against women and adolescents in public restrooms. *People v. Waqa*, 309 Cal. Rptr. 3d 633, 639 (Cal. App. Ct. 2023) (rape against a woman

in public restroom); *In re Commitment of Thedford*, 2023 WL 107121, at *1 (Tex. App. Jan. 5, 2023) (9-year-old girl raped in a McDonald's restroom); *State v. Brown*, 164 So. 3d 395, 397 (La. App. Ct. 2015) (attempted forcible rape against a 13-year-old girl in public library restroom). The same is true of restrooms at public schools for children. *Doe v. Bibb Cnty. Sch. Dist.*, 83 F. Supp. 3d 1300, 1302 (M.D. Ga. 2015) (high school girl assaulted by multiple male students in girls' restroom); *Lincoln Cnty. Sch. Dist. v. Doe*, 749 So. 2d 943, 946 (Miss. 1999) (girl with disabilities raped in her school restroom by male student). Sex-segregated restrooms mitigate the odds of crime, including sex crimes, against women and girls in public restrooms. See *Bridge on behalf of Bridge v. Okla. State Dep't of Educ.*, 711 F. Supp. 3d 1289, 1297 (W.D. Okla. 2024) (concluding gender neutral restrooms at schools pose "major safety concern[s]").

To be sure, transgender individuals do not pose a categorical threat to public safety based only on their transgenderism. But complete access to restrooms invites danger. Gender identity, unlike sex, is not a medically or physically verifiable trait. *See* Cantor Decl. ¶¶ 41–43, 46, 257–64, 266. Schools cannot realistically "require an individual to present documentation proving they have gender dysphoria [or are transgender] before using the restroom." Adside, 37 QUINNIPIAC L. REV. at 484. This "arguably tempt[s] social predators, like rapists, pedophiles, voyeurists, or thieves to exploit relaxed bathroom policies to invade these spaces"—potentially subjecting women and girls to sex crimes.[4] *Id*.

These concerns are not hypothetical—they are real. A 12-year-old New Mexico girl was raped by a transgender classmate in the girls' restroom at school. Briana Oser, *Young Girl is Raped*

[4] Even before full access restrooms, some men have disguised themselves as women to enter women's restrooms. Melody Wood, *6 Men Who Disguised Themselves as Women to Access Bathrooms*, THE DAILY SIGNAL (June 3, 2016). For example, one Virginia man dressed as a woman, gained access to the women's restroom, and took pictures of a 5-year-old while she used the neighboring restroom stall. *Id*.

in School Bathroom by Transgender Peer, WASHINGTON EXAMINER (June 20, 2023). And, at Boise High School, during a time in which an injunction was in place prohibiting Defendants from enforcing S.B. 1100, A.C. encountered a transgender student (a biological male) masturbating, with his feet pointed toward her, in the adjacent girls' restroom stall. Decl. of A.C. ¶¶ 6–7. This could have been prevented by policies like S.B. 1100.

These examples show that opposite-sex access to restrooms poses real potential dangers to women and girls. Further, "in assessing risk, a government need not wait for the flood before building the levee." *Ramirez v. Collier*, 142 S. Ct. 1264, 1288 n.2 (2022) (Kavanaugh, J., concurring). Indeed, the Ninth Circuit stated in this case that a "harm need not have occurred before a legislature can act." *Critchfield*, 137 F.4th at 925. And "[r]eliance on the experiences of other jurisdictions is sufficient to satisfy the [government's] minimal burden at the legislative stage." *Fantasyland Video, Inc. v. Cnty. of San Diego*, 505 F.3d 996, 1003 (9th Cir. 2007) (citing *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 50–52 (1986)). S.B. 1100's restroom requirement is substantially related to Idaho's interest in promoting student safety.

Because Defendants have demonstrated that S.B. 1100's sex-segregated restroom requirement is substantially related to the advancement of two important interests, Plaintiff has not met its burden under intermediate scrutiny. Accordingly, the Court should deny Plaintiff's motion.

II. Plaintiff's Title IX Argument is not Likely to Succeed.

Plaintiff's Title IX claim also fails again, for two reasons. First, Title IX and its longstanding regulations expressly permit sex-segregated restrooms. Second, even if Title IX is belatedly interpreted to prohibit Defendants from disallowing gender-identity-based restroom access, Defendants did not have adequate notice of such a requirement.

A. Title IX and its regulations explicitly permit sex-segregated restrooms.

Title IX prohibits educational institutions that receive federal funding from discriminating against students "on the basis of sex." 20 U.S.C. § 1681(a). But because the "[p]hysical differences between men and women . . . are enduring" and because "the two sexes are not fungible," *Virginia*, 518 U.S. at 533, Title IX allows sex-based distinctions. Specifically, Title IX expressly allows educational institutions to provide "separate living facilities for the different sexes," 20 U.S.C. § 1686, and implementing regulations in place since 1975 permit "separate *toilet*, locker room, and shower facilities on the basis of sex . . . ." 34 C.F.R. § 106.33 (emphasis added).

The Ninth Circuit held there is no "contradiction between Title IX and § 106.33." *Critchfield*, 137 F.4th at 930. And even assuming "34 C.F.R. § 106.33 does not operate as a carve-out to § 1681" because "§ 106.33 is an implementing regulation of § 1681, not § 1686," as Plaintiff claims, Dkt. 86-1 at 21, this helps Defendants, not Plaintiff. Section "106.33 extends § 1681's protections against sex-based discrimination" and merely "requires that, [school] provides separate toilet, locker room, and shower facilities on the basis of sex, the facilities must be comparable." *Critchfield*, 137 F.4th at 930. Thus, as *Parents for Privacy* and *Critchfield* recognized, § 1681(a)'s antidiscrimination rule allows separate toilet facilities (i.e. restrooms).[5]

Indeed, § 106.33 shows that separating restrooms based on sex does not discriminate on the basis of sex. Rather, it is a commonsense recognition that members of each sex need their own spaces to perform bodily functions privately.

[5] Plaintiff appears to suggest that *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 371 (2024), is reason to ignore § 106.33. Dkt. 86-1 at 21. Not so. Congress may "delegate[] discretionary authority to an agency," *Loper Bright*, 603 U.S. at 395, and Congress instructed the Department of Education's predecessor to promulgate regulations implementing Title IX's nondiscrimination rule. *See* Pub. L. No. 93-380, § 844, 88 Stat. 484, 612 (1974). The resulting regulations included § 106.33. *See* 40 Fed. Reg. 24128 (June 4, 1975).

Even if § 106.33 were cast aside, as Plaintiff appears to urge, Dkt. 86-1 at 21, Title IX still permits sex-segregated restrooms. This is because § 1686 says Title IX allows "separate living facilities for the different sexes," and this includes restrooms. At schools, many living facilities, such as residence halls, include sex-segregated dorm rooms, sex-segregated communal shower facilities, and sex-segregated communal restrooms. This was true in 1972 and remains true today. And so, when Congress passed Title IX and specified that schools may provide sex-segregated living facilities, it authorized sex-segregated restrooms.

Plaintiff argues that if "separate living facilities" extends to restrooms, "separate living facilities" would necessarily extend to classrooms and gyms. Dkt. 86-1 at 21. Not so. Unlike restrooms, which are universally part of living facilities, and are typically sex-segregated, classrooms and gyms are not. Ordinary English speakers do not think of a classroom or gym as, or part of, a living facility. Moreover, biological differences necessarily matter in private spaces like restrooms, but they generally do not matter in classrooms and gyms. Thus, to answer Plaintiff's question about a limiting principle, it is this: private spaces typical to living facilities—like dorm rooms, restrooms, and shower rooms—are included in § 1686's rule, but public spaces—like gyms and classrooms—are not.

Plaintiff also suggests that because the Ninth Circuit's amended opinion removed the statement, "we do not conclude that § 1686 unambiguously carves out *only* living facilities from Title IX's general mandate . . . ." *Roe v. Critchfield*, 131 F.4th 975, 993 (9th Cir. 2025), amended and superseded by *Critchfield*, 137 F.4th (emphasis in original), § 1686 does not include restrooms. But this argument is meritless. The Ninth Circuit merely provided a narrower statement: "we do not conclude that § 1686's carve-out of living facilities from Title IX's general mandate is unambiguously limited to facilities such as dormitories." *Critchfield*, 137 F.4th at 930. The court

still did not reach whether restrooms are captured by § 1686. And it doesn't matter anyway. If § 106.33 implements § 1681(a), then sex-segregated restrooms are not "discrimination . . . on the basis of sex," and if it implements § 1686, then sex-segregated restrooms are "living facilities." Either way, Plaintiff is not likely to show that S.B. 1100 violates Title IX.

B. Plaintiff is not likely to overcome the clear notice canon.

Plaintiff's Title IX claim also fails because Defendants lack adequate notice under the Spending Power's clear-notice rule. As the Ninth Circuit held, Plaintiff cannot show that Defendants had adequate notice that "Title IX prohibits the exclusion of transgender students from restrooms . . . that correspond[] to their gender identity." *Critchfield*, 137 F.4th at 929.

Title IX funds are distributed to the states pursuant to the Spending Power of the Constitution. *See* U.S. Const. art. I, § 8, cl. 1. "Because legislation enacted pursuant to the spending power is in the nature of a contract, recipients of federal funds must accept federally imposed conditions on funds voluntarily and knowingly. States cannot knowingly accept conditions of which they are 'unaware' or which they are 'unable to ascertain." *Critchfield*, 137 F.4th at 929.

Title IX was passed in 1972. At that time, sex unambiguously referred to reproductive function. *Adams*, 57 F.4th at 812. Title IX's "post-enactment history" "corroborates . . . and verifies" that sex-specific restrooms are permissible. *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 531–32 (1982). Thus, Idaho lacked adequate notice that Title IX required separation based on gender identity. Accordingly, Plaintiff's Title IX claim is not likely to succeed.[6]

[6] Plaintiffs do not argue that they are likely to succeed on the merits of their right to informational privacy claim. Dkt. 86-1. For this reason, and because the Ninth Circuit indicated that a more fully developed record is required to address the merits of it, *Critchfield*, 137 F.4th at 932, Defendants do not address this claim.

III. The Remaining Injunction Factors Favor Defendants.

Plaintiff cannot show that it or its members will suffer irreparable harm, nor can it show that the balance of hardships tips in its favor.

A. Enforcement of S.B. 1100 will not result in irreparable harm.

Plaintiff argues that S.B. 1100 will irreparably harm it in three ways: (1) it violates the Equal Protection clause, (2) Plaintiff's members will suffer "mental and physical health" issues, and (3) it will cause Plaintiff's members to disclose their status as transgender individuals. Dkt. 86-1 at 23–24. But Plaintiff is wrong.

Equal Protection. Plaintiff asserts that a violation of equal-protection rights is a *per se* irreparable harm. *Id.* at 16. But S.B. 1100 does not likely violate those rights for the reason explained above. *Infra* Sections I-II. Accordingly, Plaintiff's argument fails.

Mental and physical health. Plaintiff argues that S.B. 1100 will "increase" its members' "risk of depression, anxiety, and self-harm." Dkt. 86-1 at 23. But Plaintiff ignores the critical fact that Boise has single-occupancy restrooms. Members therefore do not have to use the restrooms designated for their sex. Indeed, single-occupancy restrooms provide significant benefits for students with gender dysphoria or who are transitioning. Nangia Decl. ¶¶ 35–40. This is because single-occupancy restrooms provide "a protected place . . . for toileting, self-care, and to emotionally regroup." *Id*. ¶ 36. Importantly, they also lessen the risk of bullying or negative interactions with peers. *Id*. ¶ 35, 40. For these reasons, medical experts opine that single-occupancy restrooms are the best option for transgender students, as even Plaintiff's expert acknowledges. *Id*. ¶ 48; Ex. B ¶¶ 112–13. [7]

[7] Indeed, it is doubtful that social transition is beneficial to mental health. Cantor Report ¶¶ 167–77, 227–29. A recent systematic review shows the lack of scientific support for claiming that children with gender dysphoria experience "mental health improvements with social transition." *Id.* ¶ 169.

Disclosure of transgender status. Plaintiff argues that by using the single-occupancy restrooms at Boise High School, its members would be forced to disclose their transgender status. Dkt. 86-1 at 20. Not so. As mandated by S.B. 1100, and offered under prior practice, any student who is uncomfortable using a multi-occupancy restroom is granted access to the single-occupancy restrooms. Watts Decl. ¶ 5. This policy means that not every student who uses single-occupancy restrooms is transgender. *Id*. ¶ 6. Thus, using single-occupancy restrooms does not force Plaintiff's members to disclose their transgender status to any person. But even if S.B. 1100 caused transgender status disclosure, this is not a harm recognized as a constitutional injury and therefore not an irreparable harm for preliminary injunction purposes. *See Critchfield*, 137 F.4th at 931.

B. The balance of the equities and public interest favors Defendants.

Courts "should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24. "[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012). This denies the public's interest in enforcement of the State's democratically enacted laws. *See Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 419 (5th Cir. 2013) (citing *id.*).

Plaintiff's argument ignores the very real harm that transgender students' use of multi-occupancy bathrooms for the opposite sex may inflict on non-transgender students at Boise High School. Had Defendants been able to enforce S.B. 1100 in February 2025, the situation A.C. encountered would not have occurred. And, as Dr. Nangia states, "shared bathroom spaces would create the risk of negative mental health outcomes for the larger student body," including: "a) the potential for inappropriate teasing between sexes that can negatively impact evolving self-concept, b) premature exposure and awareness of the opposite sex that can negatively affect interplay between sexes and felt safety and privacy, and c) violations of personal boundaries for each sex as

emotional and physical changes are occurring during a fragile period of growth and development." Nangia Decl. ¶ 31; *see also id.* ¶¶ 32–34. Against this commonsense conclusion, Plaintiff just says transgender individuals do not pose a greater risk of assault or crime.[8] Even assuming that is right, the well-recognized interest in privacy is based on sex; it does not change based on the gender identity a particular opposite-sex student claims.

Allowing students to use the opposite-sex restroom also carries risks. Like other aspects of "social transition," opposite-sex restroom use amounts to "active intervention which affects a child's developmental trajectory." Nangia Decl. ¶ 21; Ex. B ¶¶ 55–59. Current research shows that "social transition may lead to continued gender incongruence whereas watchful waiting and a lack of social transition may lead to desistance and realignment with natal sex." *Id.*; *see also* Cantor Report ¶¶ 54–58, 155–66, 267–68.

S.B. 1100 protects the privacy and safety interests of all students by ensuring they do not have to expose their bodies to members of the opposite sex—or even to fear that exposure. *Cf. Mahmoud v. Taylor*, 2025 WL 1773627, at *23 (U.S. June 27, 2025) (explaining that a school "cannot purport to rescue one group of students from stigma and isolation by stigmatizing and isolating another"). Any alleged injury that Plaintiff or its members could suffer by using a single-occupancy restroom, or a multi-occupancy restroom that corresponds to their sex, presents a far lesser harm than requiring students to potentially expose their unclothed bodies to those of the opposite sex or to perform bodily functions in the presence of the opposite sex.

CONCLUSION

For the foregoing reasons, Plaintiff's motion should again be denied.

[8] This opinion is unreliable on its own terms, as Plaintiff's proffered expert lacks education or experience in prevention of sex-related offenses or the relevant field of forensic psychology. *See* Cantor Report ¶ 256.

DATED: July 21, 2025

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I HEREBY CERTIFY THAT on July 21, 2025, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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