



Deborah Richardson, Executive Director
Timothy R. Macdonald, Legal Director

February 27, 2025

SENT VIA ELECTRONIC MAIL:

Re: jail policies classifying inmates inconsistent with their gender identity

Dear Sheriffs and County Attorneys:

We write to bring to your attention a recently published decision from the U.S. Court of Appeal for the Tenth Circuit, *Griffith v. El Paso Cty.*, No. 23-1135, 2025 WL 545251 (10th Cir. Feb. 19, 2025) (attached), holding that jail policies classifying transgender inmates inconsistent with their gender identity are presumptively unconstitutional and subject to heightened scrutiny under the equal protection clause of the Fourteenth Amendment. As the court made clear, policies that treat transgender inmates differently from their cisgender peers are properly analyzed as classifications on the basis of sex, which are constitutionally suspect.

The policies challenged in *Griffith* included a housing policy that assigned transgender women to male units and a commissary policy that denied transgender women access to certain feminine products that were available to cisgender women. In light of *Griffith*, it is now clearly established law in the Tenth Circuit, including Colorado, that such policies discriminate on the basis of sex. Such policies also remain separately vulnerable to constitutional challenge as unlawful discrimination on the basis of transgender status. Finally, because unlawful sex and gender identity classifications conflict with the Colorado Constitution and the Colorado Anti-Discrimination Act, maintaining such policies also exposes you and your officers to liability under C.R.S. § 13-21-131 and C.R.S. § 24-34-602.

We ask for your office's confirmation that you either do not have, or will immediately rescind, any such policies, whether formal or informal. We appreciate your attention to this important civil rights issue.

Sincerely,

Timothy R. Macdonald

Timothy R. Macdonald
Legal Director

A handwritten signature in black ink that reads "A. Kurtz".

Annie Kurtz
Senior Staff Attorney