

MY BROTHER'S KEEPER, MY SISTER'S NEGLECTOR: A CRITIQUE AND EXPLANATION OF SINGLE-SEX INITIATIVES FOR BLACK BOYS

LAURA LANE-STEELE*

Abstract

The urgent problems facing Black boys and young men have triggered the proliferation of single-sex initiatives aimed at tackling these obstacles, namely public single-sex schools and programs inspired by President Obama's My Brother's Keeper initiative. Black girls have largely been left out of these initiatives despite facing many of the same barriers as Black boys and disadvantages of their own. This Article identifies, critiques, and explains this disproportionate intervention for Black boys. It argues that these single-sex initiatives are a poor policy tool for fighting racial oppression because (1) there is no evidence that these boys-only initiatives work to achieve their stated goals; (2) statistical gender gaps between Black boys and girls are not large enough to warrant disproportionate intervention; and (3) these initiatives have great potential to reify destructive aspects of dominant Black masculinity. It then employs critical race theory to explain how this current disproportionate intervention is part of a historically-based discourse that prioritizes Black men's needs over those of Black women, casts Black men as "privileged victims" of racism, and seeks to restore patriarchy in the Black community. Finally, it predicts that these initiatives will continue to proliferate for two reasons. First, the current legal frameworks, specifically Title IX and the Equal Protection Clause, do not necessarily prevent the increasing disproportionality of these initiatives and the resulting unfairness to Black girls. Second, there is insufficient political will to halt the expansion of these initiatives—they face little to no political opposition, even from politicians on the Left who claim to champion gender equity.

INTRODUCTION

Washington, D.C.'s first all-male public high school, Ron Brown, opened in August 2016 with a mission to improve Black¹ boys' "disproportionate rates of graduation,

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¹ This Article capitalizes "Black" but not "white" because, as Kimberlé Williams Crenshaw has explained, Blacks "constitute a specific cultural group and, as such, require denotation as a proper noun," while whites,

suspension, attendance, student satisfaction, and performance on college readiness exams.”² But the impetus for creating this school extends further than troubling academic statistics—many people in the Black community and beyond are urgently seeking ways to reduce the large numbers of Black boys and young men who are killed³ or incarcerated.⁴ As one mother of a Ron Brown student said of her son, “I’m really scared for him, really scared. And I just feel like there is nothing else I can do.”⁵ Faced with the fear of losing her son to prison or the morgue, she hopes Ron Brown can help keep him out of both.

Ron Brown is just one of hundreds of public single-sex schools charged with the mission to improve the lives of Black boys. But single-sex schools are not the only initiatives striving towards this goal. President Obama’s My Brother’s Keeper initiative, created in 2014, called on local communities to address the academic, career, and criminal justice barriers faced by Black boys and young men. Since then, most U.S. cities have taken up the My Brother’s Keeper challenge and created or funded initiatives for young men of color, specifically Black boys. These resulting initiatives vary but tend to

on the other hand, do not. Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988) (citing Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS: J. WOMEN IN CULTURE & SOC’Y 515, 516 (1982)); see also Neil Gotanda, *A Critique of “Our Constitution is Color-Blind”*, 44 STAN. L. REV. 1, 4 n.12 (1991) (explaining that Black should be capitalized because it “has deep political and social meaning as a liberating term”).

² Overview, RON BROWN HIGH SCH., <http://www.rbhsmonarchs.org/overview> [https://perma.cc/PQC8-V9RY].

³ About 50% of Black males who die between the ages of fifteen and twenty-four die from homicide. *Leading Causes of Death (LCOD) by Age Group, Black Males—United States, 2015*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/healthequity/lcod/men/2015/black/index.htm> [https://perma.cc/T8TS-HGEC]. The comparable percentage for white males is 4.25%, Melonie Heron, *Deaths: Leading Causes for 2015*, 66 NAT’L VITAL STAT. REP. 1, 27 (2017), and 16.8% for Black females. *Leading Causes of Death (LCOD) by Age Group, Black Females—United States, 2015*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/women/lcod/2015/black/index.htm> [https://perma.cc/5CF4-9ANW].

⁴ In 2015, the incarceration rate per 100,000 was 2,613 for Black men, 547 for white men, 103 for Black women, and 52 for white women. See Eli Hager, *A Mass Incarceration Mystery*, THE MARSHALL PROJECT (Dec. 15, 2017, 7:00 AM), <https://www.themarshallproject.org/2017/12/15/a-mass-incarceration-mystery> [https://perma.cc/GTD7-2GXM] (analyzing data from the Bureau of Justice Statistics).

⁵ See Cory Turner & Kavitha Cardoza, *Raising Kings: A Year of Love and Struggle at Ron Brown College Prep, Episode 1: A Year of Love and Struggle in A New High School*, CODE SWITCH, NPR (Oct. 18, 2017), <https://www.npr.org/sections/codeswitch/2017/10/18/558104287/a-year-of-love-and-struggle-in-a-new-high-school> [https://perma.cc/846C-WUCT], at 1:20–2:25.

focus on mentorship, educational interventions, job training, and/or college readiness. Millions of public and private dollars and significant amounts of political capital have been invested in improving the lives of Black boys through these single-sex schools serving primarily Black boys and My Brother's Keeper-like initiatives (together "single-sex initiatives"). Black girls, on the other hand, have been left out. Despite facing many of the same problems as Black boys and unique challenges of their own, far less money and political will has been devoted to improving the lives of Black girls.

This Article responds to this disproportionate proliferation of single-sex initiatives for Black boys and posits that these initiatives specifically, and sex-segregation more broadly, are ineffective and problematic tools for racial justice. It concludes that disproportionate initiatives for Black boys, as opposed to those for Black girls, are empirically unwarranted and have not been proven to be effective in achieving their stated goals. It also emphasizes the harm these initiatives exact on Black girls and young women, both by their exclusion of Black girls and by their potential to increase and perpetuate harmful patriarchal norms and destructive forms of dominant masculinity. It then analyses why these initiatives persist despite being both ineffective for Black boys and unfair to Black girls. It concludes with a warning that Black girls' interests will continue to be overlooked because the current legal framework does not protect against the increasing disproportionality of these initiatives and because these initiatives lack significant political opposition. The point this Article makes is not that the issues facing Black boys do not merit serious attention—they do. But Black girls are also facing urgent problems and leaving them out does nothing but perpetuate their erasure in antiracist discourse and policy.

The Article is structured as follows. Section I provides background on why sex segregation is being employed as a racial justice strategy in the first place. It then demonstrates that Black boys are in fact receiving disproportion intervention. Section II makes three independent arguments against these initiatives. First, there is no evidence that sex segregation works to ameliorate the problems these initiatives target. Second, given the significant disproportionality of resources spent on Black boys versus Black girls, one would expect there to be a large statistical gender gap on the measures these single-sex initiatives seek to address. There's not. With the exception of imprisonment, Black girls' educational and career outcomes are similar to Black boys', and on other measures, they perform worse. Third, even if these initiatives did work to improve academic, career, and/or incarceration outcomes, they should still be avoided because all-male environments tend to perpetuate and reinforce destructive forms of masculinity. As such, these single-sex initiatives have great potential to harm Black women and girls,

gender non-conforming individuals, and gender-conforming Black boys who participate in these initiatives.

Section III offers an explanation for why this disproportionality exists. First, it employs critical race theory to argue that the increasing and disproportionate number of single-sex initiatives for Black boys and young men is a product of a larger, historically-based discourse that is rooted in a familiar narrative that restoring white patriarchal norms to Black families and communities is key to racial equity, thus privileging the needs of Black men over those of Black women. It also posits that the broader narrative that “all boys are in crisis” plays a role in fueling the “Black boys are in crisis” narrative that underpins the justification for many of these initiatives.

Section IV predicts that these initiatives will continue to proliferate and the current unfairness to Black girls will be exacerbated for two reasons. First, the law—specifically Title IX and the Equal Protection Clause—does not necessarily provide a legal remedy for the unequal treatment of Black girls in this context. Second, even if there is a viable legal argument in support of ending disproportionate intervention, there is insufficient political will to end the use of sex segregation as a tool for ending racial oppression. Given the blatant exclusion of Black girls, progressive politicians and institutions that supposedly champion gender equity should be advocating for the inclusion of women. Yet, they have been largely silent in this debate. The Conclusion of this Article argues that these same-sex initiatives should be replaced with coeducational interventions designed to ameliorate the effects of institutional racism and white supremacy on young Black people of all genders. It also explains that creating proportionate single-sex initiatives for Black girls is not an adequate remedy because although this solution would ameliorate the current unfairness to Black girls, it would not fully cure the harms of sex segregation.

I. The Recent Proliferation in Single-Sex Initiatives for Black Boys

A. Sex Segregation as a Tool for Racial Equity

The number of public single-sex schools and related sex-segregated educational programs has significantly increased over the last fifteen years. In 2002, approximately a dozen public schools offered single-sex educational opportunities, according to the National Association for Single Sex Public Education (NASSPE).⁶ By 2012, that number

⁶ *Single-Sex Schools / Schools with Single-Sex Classrooms / What's the Difference?*, NAT'L ASS'N FOR SINGLE SEX PUB. EDUC., <http://www.singlesexschools.org/schools-schools.htm> [<https://perma.cc/KJU8-CWCG>]. More recent data are not available from the NASSPE, as it stopped publishing this data after the

had ballooned to 506, 116 of which qualified as single-sex schools.⁷ During the 2014–15 school year, there were 283 single-sex public schools.⁸ This increase in sex-segregated institutions is not limited to schools, however. There are growing numbers of single-sex initiatives that provide mentorship and/or seek to improve criminal and juvenile justice, academic, employment, and health outcomes for young people.⁹

These single-sex initiatives have not been evenly dispersed. Urban, low-income communities host a disproportionate number of single-sex schools, and these initiatives serve mostly students of color.¹⁰ Indeed, 61% of the students who attend public single-sex schools are Black, 22% are Latino, and 11% are white.¹¹ In comparison, 50% of the students who attend coeducational public schools nationwide are white, 25% are Latino, and 16% are Black.¹² Moreover, 78% of students attending sex-single schools qualify for free or low-cost meals, compared to 52% of their peers in coeducational schools.¹³

Black, low-income communities have largely welcomed these initiatives, viewing them as a potential avenue for closing an entrenched racial achievement gap created by centuries of institutionalized racism. Enthusiasm for these schools is not surprising given that Black communities have historically had, and to a large extent still have, little or no

2011–12 school year. According to the NASSPE website, the organization stopped because the American Civil Liberties Union (ACLU) was using its data to “send out harassing letters” to single-sex schools. *Id.*

⁷ *Id.*

⁸ *Single-Gender Public Schools in 5 Charts*, EDUC. WEEK (Nov. 2, 2017), <https://www.edweek.org/ew/section/multimedia/single-gender-public-schools-in-5-charts.html> [<https://perma.cc/K77C-FSB7>] (analyzing data from the U.S. Department of Education); *see also* SUE KLEIN ET AL., FEMINIST MAJORITY FOUND., TRACKING DELIBERATE SEX SEGREGATION IN U.S. K-12 PUBLIC SCHOOLS 1 (2018), <http://feminist.org/education/pdfs/SexSegReport2018.pdf> [<https://perma.cc/ZE3L-4EV6>] (estimating that there are “over 1000 K-12 U.S. public schools with deliberate sex-segregated education”).

⁹ *See infra* Section I.B.

¹⁰ 42% of single-sex schools are located in urban areas, 34% in rural, and 24% in towns or suburbs. *Single-Gender Public Schools in 5 Charts*, *supra* note 8.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

choice in where to send their children.¹⁴ As such, single-sex schools and other alternatives to traditional public schools, like charter schools, offer a form of educational experimentation and choice to which Black communities have historically been denied access.¹⁵

B. Single-Sex Initiatives Disproportionately Serve Black Boys

Not only are these single-sex initiatives disproportionately located in low-income communities of color, they often disproportionately serve Black boys and young men. In many cities and communities, sex-segregated initiatives for Black boys outnumber similar initiatives for Black girls, and often there are no corresponding programs for Black girls. As for single-sex schools, Chicago enrolls almost two times more boys than girls in public single-sex schools. The city has two all-girls high schools that serve about 400 students,¹⁶ and three all-boys high schools with a total enrollment of at least 789.¹⁷

¹⁴ Until *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), was decided, Black families in many states were required by law to send their children to racially-segregated schools, and even after *Brown*, many school districts refused to follow its mandate of integration and denied admission to Black students. See James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043, 2093–94 (2002).

¹⁵ The acceptance of sex segregation in schools from communities that experienced decades of *de jure* racial segregation may seem unanticipated. Indeed, other critics of single-sex schools have compared racial segregation to sex segregation and employed the oft-quoted language from *Brown v. Board* that “in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.” 347 U.S. at 495. See also Valorie K. Vojdik, *Girls’ Schools after VMI: Do they Make the Grade?*, 4 DUKE J. GENDER L. & POL’Y 69, 71 (1997) (“To reinforce the doctrine of separate but equal is to further entrench the cultural myth of difference that renders distinctions and discrimination against women as natural and essential.”). However, there are a number of problems with uncritically analogizing race to sex in this context and concluding that sex segregation is bad because race segregation is bad. First, racial segregation was forced upon Black communities, whereas sex segregation offers choice where choice has historically been severely restricted. Second, segregation on the basis of race carries with it historical meaning and cultural symbolism different from that of sex segregation. The former signifies the inferiority of Black people and the supremacy of whites. The latter signals essential differences between the sexes, which does lead to the oppression of women and gender non-conforming people, but not in the direct and blatant way that racial segregation signals and reinforces racism.

¹⁶ *About*, YOUNG WOMEN’S LEADERSHIP CHARTER SCH., https://www.ywlc.org/apps/pages/index.jsp?uREC_ID=325149&type=d [<https://perma.cc/2PFW-XR7X>]; KLEIN ET AL., *supra* note 8, at 107.

¹⁷ See *URBAN PREP CHTR ACAD ENGLEWOOD HS (9–12)*, ILL. REP. CARD 2017–2018, <https://www.illinoisreportcard.com/School.aspx?source=studentcharacteristics&source2=enrollment&Schoolid=15016299025010C> [<https://perma.cc/D6E4-5PZ5>] (serving 260 students); *URBAN PREP CHTR ACAD BRONZEVILLE HS (9–12)*, ILL. REP. CARD 2017–2018, <https://www.illinoisreportcard.com/School.aspx?source=studentcharacteristics&source2=enrollment&Schoolid=15016299025013C> [<https://perma.cc/M234->

Indianapolis, Indiana; Lexington, Kentucky; Memphis, Tennessee; and Beaverton/Portland, Oregon, all have at least one public all-boys school but no public all-girls school.¹⁸ Rochester, New York, has three all-boys schools but no all-girls school.¹⁹ Ron Brown was Washington, D.C.'s only public single-sex school until Excel Academy recently reopened, after being shut down due to poor performance.²⁰ Excel serves girls from pre-kindergarten to eighth grade and enrolls approximately 600 students.²¹ Ron Brown currently serves fewer students and grade levels but is planning to grow and, unlike Excel, is backed by millions of dollars in public and private funding.²² To be sure, there are some cities with equal numbers of boys' and girls' single-sex schools with similar enrollment numbers²³ and other cities that have more single-sex schools for girls

HAL7] (serving 316 students); *URBAN PREP CHTR ACAD WEST CAMPUS HS (9–12)*, ILL. REP. CARD 2017–2018, <https://www.illinoisreportcard.com/School.aspx?source=studentcharacteristics&Schoolid=15016299025016C> [<https://perma.cc/NG98-GGLM>] (serving 213 students). The Feminist Majority reported that these three schools had a total of 1,205 students in 2017. See KLEIN ET AL., *supra* note 8, at 115.

¹⁸ See KLEIN ET AL., *supra* note 8, at 107, 115.

¹⁹ *Id.*

²⁰ Jennifer Ortiz, *Excel Academy Reopens as DC's Only All-Girls Public School*, WASH.'S TOP NEWS (Aug. 20, 2018), <https://wtop.com/dc/2018/08/excel-academy-reopens-as-dcs-only-all-girls-public-school/slide/1/> [<https://perma.cc/ZX5G-MMJE>]; Perry Stein, *City Charter Board Votes to Shut Down D.C.'s Only All-girls Public School*, WASH. POST (Jan. 12, 2018), https://www.washingtonpost.com/local/education/city-charter-board-votes-to-shut-down-dcs-only-all-girls-public-school/2018/01/12/a3a6176e-f7b8-11e7-beb6-c8d48830c54d_story.html?utm_term=.554a4694c495 [<https://perma.cc/8YEQ-NUTQ>].

²¹ EXCEL ACADEMY, <https://excelps.org/> [<https://perma.cc/Z647-D858>].

²² Ron Brown is part of a \$20 million-dollar initiative called Empowering Males of Color. See *Empowering Males of Color*, D.C. PUB. SCHS., https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/EMOC_1pager.pdf [<https://perma.cc/62WV-DF5N>].

²³ For example, in Houston, Mickey Leland College Preparatory Academy for Young Men enrolls approximately 420 students, and KIPP Polaris Academy for Boys enrolls about 330 students. See *School Profile*, MICKEY LELAND C. PREPARATORY ACAD. FOR YOUNG MEN <https://www.houstonisd.org/Page/79073> [<https://perma.cc/H8G5-2HXS>]; *About*, KIPP POLARIS ACAD. FOR BOYS, <https://www.kipp-houston.org/polaris> [<https://perma.cc/8G7Z-B8UV>]. Houston only has one all-girls school, but it enrolls about 625 students, only 100 fewer than the two boys' schools combined. See *Young Women's College Preparatory Academy 2015–16 Data Report*, YOUNG WOMEN'S C. PREPARATORY ACAD., <https://perma-archives.org/warc/9SUE-LZEU> [<https://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/6686/YWCPA%20201516%20data%20report.pdf>] [<https://perma.cc/9SUE-LZEU>].

than boys.²⁴ But in many parts of the country, girls of color do not have the same breadth of options when it comes to public single-sex schooling.²⁵

This disproportionality is even more pronounced in single-sex initiatives that are not public schools, or what this Article calls My Brother's Keeper-like initiatives. President Obama's My Brother's Keeper initiative called on communities to address barriers faced by young men of color by implementing "cradle-to-college-and-career action plans" addressing six target areas: (1) entering school ready to learn, (2) reading on grade level by third grade, (3) graduating from high school ready for college and career, (4) completing postsecondary education or training, (5) successfully entering the workforce, and (6) reducing violence and providing a second chance.²⁶ Since the initiative's 2014 launch, the number of government-funded or government-run programs for Black boys and young men has exploded. As of 2016, 250 communities in all fifty states had accepted the My Brother's Keeper challenge, and more than "\$600 million in private sector and philanthropic grants and in-kind resources and \$1 billion in low-interest financing have been committed" to fund these initiatives.²⁷

Many cities have accepted the My Brother's Keeper challenge and have created or funded programs for boys and young men of color focused the six target areas listed

²⁴ For instance, Los Angeles hosts four all-girls schools and two all-boys schools. *See* KLEIN ET AL., *supra* note 8, at 107, 115.

²⁵ For an in-depth discussion about the birth of the use of single-sex schools and classes to address the high incarceration rates and poor educational outcomes for Black boys, *see* JULIET A. WILLIAMS, *THE SEPARATION SOLUTION? SINGLE-SEX EDUCATION AND THE NEW POLITICS OF GENDER EQUITY* 61–72 (2016) [hereinafter WILLIAMS, *THE SEPARATION SOLUTION*].

²⁶ *See* MY BROTHER'S KEEPER TASK FORCE, *ONE-YEAR PROGRESS REPORT TO THE PRESIDENT* 3–4 (2015), https://perma-archives.org/warc/FXK7-ALJM/https://obamawhitehouse.archives.gov/sites/default/files/docs/mbk_one_year_report_2.pdf [<https://perma.cc/FXK7-ALJM>].

²⁷ *See* MY BROTHER'S KEEPER TASK FORCE, *MY BROTHER'S KEEPER 2016 PROGRESS REPORT* 4, <https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/images/MBK-2016-Progress-Report.pdf> [<https://perma.cc/FHR3-6JY3>]. To be sure, not all programs affiliated with My Brother's Keeper are exclusively for boys of color—many are for youth of all genders. *See id.* Moreover, the Obama Administration created the Council on Women and Girls in 2009. *See* Exec. Order 13,506, 74 Fed. Reg. 11,271 (Mar. 11, 2009). But it does not specifically focus on women and girls of color and it does not receive nearly the same level of public or private funding that My Brother's Keeper does. *See* Press Release, White House, Office of the Press Secretary, Fact Sheet: Opportunity for All: President Obama Applauds New Commitments in Support of the My Brother's Keeper Initiative (Jul. 21, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/07/21/fact-sheet-president-obama-applauds-new-commitments-support-my-brother-s> [<https://perma.cc/LV7Y-L4Q4>].

above, i.e., improving their education and career outcomes and decreasing their involvement in the criminal justice system.²⁸ The specific type of programming these initiatives provide varies but many provide mentorship, work readiness, career exploration, job placement programs, leadership development, and/or life skills training. What they all have in common is a focus on Black boys and young men and the goal of improving some aspect of their lives. Some examples include:

1. New York City's Young Men's Initiative: A \$127 million program aimed at improving the education, criminal and juvenile justice, employment, and health outcomes for Black and Latino men and boys.²⁹ It provides a variety of programs, including mentorship, employment and career services, and literacy programs.³⁰
2. My Brother's Keeper Detroit: This is a public-private partnership that sponsors various different initiatives all aimed at ensuring all boys of color "enter school cognitively, physically, and emotionally ready," are "present, participating, and progressing in school," and are "prepared for career success."³¹
3. The District of Columbia Commission on Fathers, Men, and Boys: Created by legislation passed in 2014, the Commission's mission is "to address the disparities that adversely impact men and boys of color in the District of Columbia," including "issues of fatherlessness, educational disparities, economic opportunity, health and well-being as well as public safety."³²

²⁸ See, e.g., MILWAUKEE BLACK MALE ACHIEVEMENT ADVISORY COUNCIL, MY BROTHER'S KEEPER: A MESSAGE TO ALL BLACK BOYS AND MEN OF COLOR 5 (2016), <https://perma-archives.org/warc/CDU5-FJ7H/https://city.milwaukee.gov/MBKDRAFT> [<https://perma.cc/CDU5-FJ7H>] ("We arrived at our vision, objectives, and goals as a response to President Obama's national call to action. In February 2014, President Obama launched My Brother's Keeper (MBK), a national effort dedicated to creating opportunities for all boys and young men of color.").

²⁹ Home, NYC YOUNG MEN'S INITIATIVE, <https://www1.nyc.gov/site/yimi/index.page> [<https://perma.cc/R8BD-KHY>] ("Launched in August 2011, the New York City Young Men's Initiative (YMI) continues to be the nation's most comprehensive municipal strategy tackling the disparities faced by young men of color.").

³⁰ Programs, NYC YOUNG MEN'S INITIATIVE, <https://www1.nyc.gov/site/yimi/initiatives/programs.page> [<https://perma.cc/5383-P96M>].

³¹ MY BROTHER'S KEEPER DETROIT, RECOMMENDATIONS FOR ACTION 2 (2015), <https://detroitmi.gov/Portals/0/docs/MyBrotherKeeper/MBK-Report.pdf> [<https://perma.cc/ZZP5-ZG79>].

³² ABOUT THE COMMISSION ON FATHERS, MEN AND BOYS, <https://cfmb.dc.gov/page/about-cfmb> [<https://perma.cc/9XSJ-7F8L>].

4. **Our Best: Seattle's Commitment to Young Black Men:** This initiative began in 2017, and its goals include "increasing the percentage of black male high school graduates and postsecondary attainment," increasing the number of Black males engaged in meaningful employment, mentoring Black boys, and reducing the number of Black boys in the criminal justice system.³³ Seattle's lack of corresponding programming for girls has faced critique.³⁴
5. **Milwaukee's Black Male Achievement Advisory Council:** Formed in 2013, this initiative's stated mission is to "create hope and opportunities for black men and boys who are significantly marginalized from economic, social, educational, and political life."³⁵
6. **Chicago's Becoming a Man (BAM):** This initiative will grow to serve 6,000+ boys in 107 schools. It focuses on the development of social-emotional skills primarily through after-school programs.³⁶

In addition to providing direct services, many of these programs also work on implementing laws and policies aimed at improving the lives of Black boys and young

³³ OUR BEST: SEATTLE'S COMMITMENT TO YOUNG BLACK MEN, <http://murray.seattle.gov/ourbest/> [<https://perma.cc/K7MG-QUN2>].

³⁴ See Erica C. Barnett, *Seattle is Working to Make a Better Future for Black Boys. But What About Black Girls?*, SEATTLE MAG. (Aug. 2017), <https://www.seattlemag.com/news-and-features/seattle-working-make-better-future-black-boys-what-about-black-girls> [<https://perma.cc/53EJ-LS9Q>] (critiquing disproportionate intervention for boys).

³⁵ *Black Male Achievement*, CITY OF MILWAUKEE, https://city.milwaukee.gov/bma#.XLkl_KZ7mqC [<https://perma.cc/B64H-M3ZM>]; see also MILWAUKEE BLACK MALE ACHIEVEMENT ADVISORY COUNCIL, *supra* note 28.

³⁶ *Becoming a Man*, YOUTH GUIDANCE, <https://www.youth-guidance.org/bam/> [<https://perma.cc/CDU5-FJ7H>]. Youth Guidance, the organization that runs BAM, does have a corresponding initiative for women called Working on Womanhood (WOW) that also works to improve "social-emotional competencies" for girls, but WOW serves 1,750 students in 30 schools, which is significantly fewer students and schools than BAM. See *Working on Womanhood*, YOUTH GUIDANCE, <https://www.youth-guidance.org/wow/> [<https://perma.cc/WZ3U-CQLC>].

men.³⁷ Moreover, there are other nationwide initiatives in addition to My Brother's Keeper that provide funding and programming to support Black men and boys.³⁸

The above list of six initiatives is illustrative, not exhaustive. There are numerous other single-sex initiatives for Black boys across the country without corresponding and/or equivalent initiatives for Black girls.³⁹ The Campaign for Black Male Achievement, one of the aforementioned nationwide initiatives, reports that there are over forty-five city-led initiatives for Black men and boys across the country.⁴⁰ To be sure, there are some programs focused on Black girls and young women,⁴¹ and some of

³⁷ For example, New York's Young Men's Initiative advocated for Executive Order 150, which "instructs City employers not to ask job-seekers about any criminal convictions during their first interview, or on any preliminary application documents" and is currently working to change the City's Discipline Code. YMI POLICIES, <https://www1.nyc.gov/site/yimi/initiatives/initiatives.page> [<https://perma.cc/TGF4-FMGY>].

³⁸ Some of these nationwide initiatives are Concerned Black Men National, 100 Black Men of America, and the Campaign for Black Male Achievement. The Campaign for Black Male Achievement compiled a list of these nationwide initiatives. See JAMEELAH MORRIS ET AL., CAMPAIGN FOR BLACK MALE ACHIEVEMENT, THE PROMISE OF PLACE: BUILDING BELOVED COMMUNITIES FOR BLACK MEN AND BOYS 56, <https://storage.googleapis.com/cbma-files/downloads/FINAL-CBMA-POP-18-Report.pdf> [<https://perma.cc/RG24-W4GD>].

³⁹ For additional initiatives, see MY BROTHER'S KEEPER TASK FORCE, MY BROTHER'S KEEPER 2016 PROGRESS REPORT, *supra* note 27; Paul Butler, *Black Male Exceptionalism? The Problems and Potential of Black Male-Focused Interventions*, 10 DU BOIS REV. 485, 491–95 (2013) (discussing numerous programs for boys of color and the lack of similar programs for girls of color); JAMEELAH MORRIS ET AL., *supra* note 38.

⁴⁰ JAMEELAH MORRIS ET AL., *supra* note 38, at 54. This finding was part of the Campaign's larger report that ranks cities based on their efforts to target Black men and boys through these kinds of initiatives. *Id.* The index ranks each city based on city-led commitments to and targeted funding for Black men and boys, among other things. *Id.* at 18.

⁴¹ For example, Black Girls Code is a non-profit operating in at least seven states whose mission is to introduce "underprivileged girls to basic programming skills" through "community outreach programs such as workshops and after school programs." *What We Do*, BLACK GIRLS CODE, <http://www.blackgirlscode.com/what-we-do.html> [<https://perma.cc/PK5S-9GRL>]. The New York City STARS Initiative, funded by the New York City Council, "helps girls and young women of color overcome barriers to success, grow emotionally, academically and physically stronger, and develop as leaders in their communities." *STARS Citywide Girls Initiative*, POWER PLAY, <https://www.powerplaynyc.org/stars-citywide-girls-initiative> [<https://perma.cc/9XC7-N3ZV>]. The District of Columbia Public School system recently launched a program called Reign, which organizes conferences for young women of color, provides teachers with resources on gender and racial equity, expands the gender and health curriculum in schools, and provides grants to further academic and social-emotional developed for young women of color. See *Student Empowerment and Equity Programs*, DCPS, <https://dcps.dc.gov/reign> [<https://perma.cc/7LA4-9CSQ>]; see also Mia Hall, *7 Nonprofits Dedicated to Empowering Young Brown Girls*, NBC NEWS (May 16, 2017), <https://www.nbcnews.com/news/nbcblk/7-nonprofits-dedicated-empowering-young-brown-girls-n742776> [<https://perma.cc/BEP6-LZPR>].

these My Brother's Keeper-like programs are gender inclusive.⁴² But taking together the recent uptake in single-sex schools for boys of color and the proliferation of My Brother's Keeper-type programs, the amount of money, resources, and political capital aimed at improving the academic, social, and emotional well-being of Black girls pales in comparison to the amount being invested in Black boys.

II. Unjustified, Ineffective, and Harmful: The Case Against These Initiatives⁴³

Having established that single-sex initiatives aimed at improving the lives of young Black people disproportionately serve Black boys over Black girls, this Section makes the case against this disproportionality and against single-sex initiatives as an effective tool for racial justice through three independent arguments. First, this Section shows that there is no reliable evidence that these initiatives actually work to achieve their stated goals. Second, it challenges an assumption underlying many of these initiatives—that Black boys are at the statistical bottom of the barrel of the measures these initiatives aim to improve. While this may be true on some measures, Black girls perform at the same level or worse than Black boys on others and face unique challenges of their own. Finally, it argues that even if these initiatives were effective and even if disproportionate and sex-specific intervention was empirically warranted, these initiatives are still a bad idea. All-male programs tend to reify and exacerbate harmful forms of dominant masculinity; thus, these initiatives may damage Black women, gender non-conforming individuals, and the Black boys participating in these programs.

Importantly, this critique is not aimed at families who choose to enroll their sons in these initiatives. For many families, these initiatives may be the best educational option in their communities. This Section's criticism is aimed at the political bodies and other powerful institutions that have decided that sex segregation is an effective policy solution for Black boys and young Black people as a whole. Black youth need better options, and this critique is aimed at motivating institutions to create more effective, equitable options.

⁴² For example, some of the programs associated with My Brother's Keeper Detroit are not sex segregated. See MY BROTHER'S KEEPER DETROIT, *supra* note 31, at 3.

⁴³ To be clear, this Section's focus on the problems with single-sex initiatives for boys of color does not mean to exonerate single-sex initiatives serving mostly white boys. This Article takes the position that single-sex programs serving all boys of any race are problematic, do not work, and exacerbate problematic iterations of masculinity. That said, the Article's targeted critique of single-sex initiatives for Black boys stems from the pressing, but overlooked, needs of Black girls. White girls are not facing these same issues, and thus a critique of single-sex schools for white boys is less urgent.

A. Single-Sex Initiatives Have Not Been Shown to be Effective

In spite of the amount of money and resources being invested in these initiatives, there is no reliable empirical support showing that they actually work to improve education, career, criminal justice, or any other outcome for Black boys. As for single-sex schools in general, the data show that they are not more effective in improving academic outcomes than coeducational schools. However, there are not enough studies on the single-sex schools serving mostly low-income boys of color, or the My Brother's Keeper-type initiatives, to come to any definitive conclusions regarding their efficacy on the measures that they target.

As for single-sex schools, a 2014 meta-analysis of 184 studies on the efficacy of these schools found that when the studies were controlled, they showed little to no advantage of single-sex schools as compared to coeducational schools.⁴⁴ The idea that single-sex education is effective, according to the meta-analysis, is fueled by studies with "inadequate methods, when selection effects are not controlled."⁴⁵ In other words, the studies concluding that single-sex education is more beneficial than coeducation are of lower quality and/or have no random assignment.⁴⁶

The questions of whether single-sex education works in general and whether single-sex education works for Black boys living in poverty are related but distinct questions. There were too few controlled studies involving schools serving mostly lower socioeconomic status students and/or students of color in this meta-analysis to come to any certain conclusions regarding the single-sex schools at issue in this Article.⁴⁷ However, uncontrolled studies did not find any substantial advantage for Black students attending single-sex schools.⁴⁸

Another meta-analysis confirms there is no strong empirical support for single-sex education. In 2005, the National Center for Education Statistics reviewed 2,221 studies

⁴⁴ Erin Pahlke et al., *The Effects of Single-Sex Compared with Coeducational Schooling on Students' Performance and Attitudes: A Meta-Analysis*, 140 PSYCHOL. BULL. 1042, 1065 (2014).

⁴⁵ *Id.*

⁴⁶ *Id.* at 1044–45.

⁴⁷ *Id.*

⁴⁸ *Id.*

on the efficacy of single-sex schools.⁴⁹ After eliminating methodologically inadequate studies and studies about single-sex classrooms in a coeducational school, only forty studies remained.⁵⁰ The results revealed that only 35% of the studies concluded that single-sex schools performed better than coeducational school in terms of concurrent academic achievement,⁵¹ and only 25% concluded that single-sex schools performed better in terms of long-term achievement.⁵² Here again, too few studies looked at race and/or socioeconomic status as a variable to make any conclusions regarding the efficacy of single-sex education for Black boys specifically.⁵³

Anecdotally, there are some single-sex schools serving primarily Black boys that have been successful on certain academic measures. For example, Chicago's Urban Prep Academies typically send 100% of their graduating classes to college.⁵⁴ Other emerging single-sex schools for Black boys, including Washington, D.C.'s Ron Brown, have used Urban Prep as a model for their schools as well as a justification for their schools' existence.⁵⁵ However, there is no indication this success is due to the single-sex nature of

⁴⁹ FRED MAEL ET AL., U.S. DEP'T OF EDUC., SINGLE-SEX VERSUS COEDUCATIONAL SCHOOLING: A SYSTEMATIC REVIEW x (2005), <https://www2.ed.gov/rschstat/eval/other/single-sex/single-sex.pdf> [<https://perma.cc/V5PA-6ZZB>].

⁵⁰ *Id.* at xii.

⁵¹ *Id.* at xiii. Concurrent academic achievement included subject-based test scores and grades.

⁵² *Id.* at xiii. Long-term academic achievement included postsecondary test scores, college graduation, and graduate school attendance.

⁵³ *Id.* at xviii, 89.

⁵⁴ *100% College Acceptance*, URBAN PREP ACAD., <http://www.urbanprep.org/about/100-percent> [<https://perma.cc/G4F6-SZU8>].

⁵⁵ In a memo to Mary Cheh, the sole D.C. Councilmember who opposed the high school, the D.C. Attorney General points to the single-sex nature of the school as the reason for its success:

Urban Prep is a college preparatory high school serving mostly lower-income boys of color, whose students have had a 100% college acceptance rate over the past five years. *It is reasonable to conclude that Urban Prep's success is to an extent owed to its single-gender model for the particular challenges of the boys of color in that city enrolled in the program.*

Letter from Karl Racine, Att'y Gen., D.C., to Mary Cheh, Councilwoman, D.C. (Mar. 30, 2015), <https://assets.documentcloud.org/documents/1698174/minority-school-oag-opinion.pdf> [<https://perma.cc/D974-C9TQ>] (emphasis added); *see also* Ericka Mellon, *HISD Will Open All-Boys School Next Fall in 5th Ward*, HOUSTON CHRON. (Dec. 10, 2010), <https://www.chron.com/news/houston->

the schools.⁵⁶ Many other coeducational charter schools with similar models send close to 100% of their graduating class to college: IDEA Public Schools,⁵⁷ KIPP D.C. College Preparatory Academy,⁵⁸ and YES Prep,⁵⁹ just to name a few. All of these schools serve low-income students of color, just like Urban Prep.

Additionally, a deeper dive into Urban Prep's statistics reveals it might not be the hero of single-sex urban education that it is held out to be. Like many other charter high schools espousing high-expectations and no-excuses approaches to education, Urban Prep only graduates around two-thirds of its incoming freshman class.⁶⁰ In other words, Urban Prep engages in a significant "weeding out" process to achieve their 100% college attendance badge. And some of the schools' test scores are significantly lower than both the district and the state averages. For example, in 2018, only 5.2% of the students at Urban Prep's Englewood campus met or exceeded standards on the SAT Verbal Section, compared with 25% in the district and 37% in the state.⁶¹

texas/article/HISD-will-open-all-boys-school-next-fall-in-5th-1711315.php [https://perma.cc/X7D2-SPV5] (describing how the first all-boys school in Houston was "modeled off the nationally touted Chicago Urban Prep Academy").

⁵⁶ See Amy Novotney, *Coed Versus Single-Sex Ed*, 42 AM. PSYCHOL. ASS'N MONITOR ON PSYCHOL. 58 (2011), <https://www.apa.org/monitor/2011/02/coed> [https://perma.cc/K2HY-WGGF] (quoting a psychology professor saying, "You can't simply attribute the outcome to the fact that they're single-sex when you're changing lots of other things at the same time.").

⁵⁷ See IDEA PUB. SCHS., <https://www.ideapublicschools.org/> [https://perma.cc/AW5W-L3BY] ("Since our first graduating class in 2007, 100% of our seniors have been accepted to colleges and universities nationwide.").

⁵⁸ *KIPP DC's College Send-Off Kicks Off June 5*, KIPP DC, <https://www.kippdc.org/kipp-dcs-college-send-off-kicks-off-june-5/> [https://perma.cc/59DK-NZHC] (stating that, in 2018, 100% of seniors "were accepted into colleges, universities, and trade and workforce development programs").

⁵⁹ YES PREP, COLLEGE INITIATIVES REDEFINED: A RESPONSIVE APPROACH TO COLLEGE COUNSELING & ALUMNI SUPPORT 10 (2014), <https://www.yesprep.org/sites/default/files/forparents/College%20Initiatives%20Redefined.pdf> [https://perma.cc/NU7D-6MNG] ("100% of our graduating seniors have earned an acceptance into at least one college or university, and, historically, 97% of our students have matriculated to college within one year of high school graduation.").

⁶⁰ Diane Ravitch, *Waiting for a School Miracle*, N.Y. TIMES (May 31, 2011), <https://www.nytimes.com/2011/06/01/opinion/01ravitch.html> [https://perma.cc/AW4X-B8XQ] ("Of 166 students who entered as ninth graders, only 107 graduated.").

⁶¹ *URBAN PREP CHTR ACAD ENGLEWOOD HS (9–12)*, *supra* note 17. As to the Math Section, 14% of students at Englewood met or exceeded expectations. *Id.* 25% and 34% of students in the district and state, respectively, met or exceeded expectations. *Id.*

With regard to My Brother's Keeper-type initiatives, there has not been sufficient data collected to make any conclusions about their efficacy.⁶² But to a certain extent, whether these single-sex initiatives work is beside the point. Improved graduation rates and college attendance for Black boys are obviously desirable goals. But if these single-sex initiatives were causing (or were correlated with) such improvements, the unfairness to Black girls would be even more pronounced for two reasons. The obvious reason is that Black girls cannot benefit from most of these programs. Moreover, the success of these programs would likely lead to their continued proliferation and increase the number of programs to which Black girls are denied access. Indeed, BAM's success prompted the Chicago Mayor to expand the program by about 30%.⁶³

B. Sex-Based Intervention is Unwarranted

This Article takes the position that sex segregation is not beneficial regardless of statistical gaps between Black boys and girls because of its tendency to exacerbate and reify destructive models of masculinity, as discussed in Section II(C). However, disproportionate intervention for Black boys may make intuitive sense if the performance gaps between Black boys and Black girls were glaring. This assumption—that Black boys' performance is so much lower than everyone else's, including Black girls', that sex-specific intervention is needed—is a foundational premise underlying the creation of many of these single-sex initiatives. When discussing the rationale behind opening Ron Brown High School, the Attorney General of Washington, D.C., stated that the school was created “to reduce the academic achievement gap between African-American and

⁶² There have been some studies on these initiatives. For example, one study evaluated New York City's Young Men's Initiative over five years and found no improvement in “Black and Latino young men's academic outcomes, college readiness, or college enrollment.” ADRIANA VILLAVICENCIO ET AL., THE RES. ALLIANCE FOR N.Y.C. SCHS, THE EXPANDED SUCCESS INITIATIVE CHALLENGES AND PROGRESS IN THE PURSUIT OF COLLEGE AND CAREER READINESS FOR BLACK AND LATINO YOUNG MEN ii, xi (May 2018), https://steinhardt.nyu.edu/scmsAdmin/media/users/ks191/ESI_progress_challenges/ESI_Progress_and_Challenges_Executive_Summary.pdf [https://perma.cc/7AW9-G8RP]. The University of Chicago studied the BAM initiative and found that participation in the program was correlated with a reduction in violent crime arrests, weapons crimes, vandalism, as well as increases in school engagement. See U. OF CHI. CRIME LAB, BAM-SPORTS EDITION: UNIVERSITY OF CHICAGO CRIME LAB RESEARCH AND POLICY BRIEF (2012), https://perma-archives.org/warc/ZN9T-JUUG/https://www.sportanddev.org/sites/default/files/downloads/bam__sports_edition.pdf [https://perma.cc/ZN9T-JUUG]; *Becoming a Man*, *supra* note 36.

⁶³ Karen Jordan, *BAM Mentorship Program Expanding to Serve Additional 1,300 Chicago Students*, ABC CHI. NEWS (OCT. 3, 2016), <https://abc7chicago.com/news/bam-program-expanding-to-serve-more-chicago-students/1536892/> [https://perma.cc/8UVC-ZJR9].

Latino boys, as a cohort, and *all other District schoolchildren*,” presumably including non-male Black students.⁶⁴

Some data support this narrative. Black boys are at the statistical bottom of the barrel on many academic measures. Black boys have the lowest high school graduation rate nationwide: Black boys (57.4%), Black girls (69.9%), white boys (79.3%), and white girls (85.5%).⁶⁵ They also have the highest suspension rate compared to any of their peer groups: Black boys (20%), Black girls (12%), white boys (6%), and white girls (2%).⁶⁶

However, other data complicate and undermine the assumption that Black boys’ educational outcomes are worse than Black girls’, or at least sufficiently worse to warrant sex-specific remedies. Essentially the same percentage of Black boys (6.4%) and Black girls (6.5%) drop out of high school.⁶⁷ Black women and Black men enroll in post-secondary, degree-granting institutions at about the same rate.⁶⁸ By age 29, approximately the same percentage of Black men and Black women have graduated from high school or attained a GED (93.5% for men, 90.5% for women).⁶⁹ Black boys and

⁶⁴ Letter from Karl Racine, Att’y Gen., D.C., to Mary Cheh, Councilwoman, D.C., *supra* note 55, at 1 (emphasis added); *see also* Martha Woodall, *Reworked Charter for Boys Approved Despite Legal Objections by the ACLU and Others, the School Reform Commission Set a 2007 Opening*, PHILA. INQUIRER (June 29, 2006) (reporting that the first public all-boys school in Philadelphia was created to “address persistent low achievement among male students”).

⁶⁵ *Averaged Freshman Graduation Rate (AFGR) by Race/Ethnicity, Gender, State or Jurisdiction, and Year: School Years 2002–03 Through 2008–09*, NAT’L CTR. FOR EDUC. STATS., U.S. DEP’T OF EDUC., <https://nces.ed.gov/ccd/tables/AFGR.asp> [<https://perma.cc/A27B-F7C9>].

⁶⁶ *See* U.S. Dep’t Educ. Office for Civ. Rights, *Civil Rights Data Collection, Data Snapshot: School Discipline* (Issue Brief No. 1, 2014), <http://blogs.edweek.org/edweek/rulesforengagement/CRDC%20School%20Discipline%20Snapshot.pdf> [<https://perma.cc/YB7R-J9JG>].

⁶⁷ *Table 219.70. Percentage of High School Dropouts Among Persons 16 Through 24 years Old by Sex and Race/Ethnicity: Selected years, 1960 Through 2015*, U.S. DEP’T EDUC. NAT’L CTR. FOR EDUC. STATS., https://nces.ed.gov/programs/digest/d16/tables/dt16_219.70.asp?current=yes [<https://perma.cc/FA53-LBKT>].

⁶⁸ *Table 302.60. Percentage of 18- to 24-Year-Olds Enrolled in Degree-Granting Postsecondary Institutions, by Level of Institution and Sex and Race/Ethnicity of Student: 1967 through 2015*, U.S. DEP’T EDUC. NAT’L CTR. FOR EDUC. STATS., https://nces.ed.gov/programs/digest/d16/tables/dt16_302.60.asp [<https://perma.cc/NE3J-A753>] (showing that enrollment rates in post-secondary, degree-granting institutions are 35.7% for Black women and 34.1% for Black men).

⁶⁹ *Table 104.20. Percentage of Persons 25 to 29 Years Old with Selected Levels of Educational Attainment, by Race/Ethnicity and Sex*, U.S. DEP’T EDUC. NAT’L CTR. FOR EDUC. STATS., https://nces.ed.gov/programs/digest/d16/tables/dt16_302.60.asp [<https://perma.cc/3WJX-EXTZ>].

girls have approximately the same SAT scores.⁷⁰ Black girls are disciplined at a much higher rate than their white girl peers; this disproportionality is higher than the one between Black boys and white boys.⁷¹

Moreover, Black girls' marginally higher outcomes on certain academic measures, such as graduation rates, do not translate into higher incomes or increased autonomy. On the contrary, Black men earn about \$60 more per week than Black women.⁷² Black men who have dropped out of high school earn almost twice as much as Black women who dropped out: \$43,407 compared to \$23,120.⁷³ In fact, Black women earn less than Black men at *every level of education*, and the disparity increases as the level of education increases.⁷⁴ Although this economic disparity contradicts the "Black men at the bottom of the barrel" narrative, it is also not surprising, given that the wage gap between sexes exists for women of all races.⁷⁵ In addition to these economic disparities, Black women

⁷⁰ COLLEGEBOARD, 2016 COLLEGE-BOUND SENIORS TOTAL GROUP PROFILE REPORT 3 (2013), <https://reports.collegeboard.org/pdf/total-group-2016.pdf> [<https://perma.cc/CYR5-A9TJ>]. The average scores for Black boys in 2016 were 425 (critical reading), 430 (math), and 404 (writing) and 434, 422, and 424, respectively, for Black girls. *Id.*

⁷¹ See U.S. Dep't Educ. Office for Civ. Rights, *supra* note 66.

⁷² See U.S. DEP'T OF LABOR, THE AFRICAN-AMERICAN LABOR FORCE IN THE RECOVERY 1 (2012), https://perma-archives.org/warc/7DFA-NCHZ/https://www.dol.gov/_sec/media/reports/BlackLaborForce/BlackLaborForce.pdf [<https://perma.cc/7DFA-NCHZ>]. Black men earn \$653 per week; Black women earn \$595 per week. *Id.*

⁷³ NAT'L COAL. OF BLACK CIVIC PARTICIPATION, BLACK WOMEN IN THE UNITED STATES 4 (2015), <https://www.ncbcp.org/news/releases/BWRRReport.BlackWomeninU.S.2015.3.26.15FINAL.pdf> [<https://perma.cc/7MYZ-SVX8>].

⁷⁴ *Id.* To be sure, this statistic is complicated by the fact that large numbers of Black men are not in the work force because they are incarcerated. But that does not detract from the point that when in the work force, Black men earn more than Black women.

⁷⁵ See MILIA FISHER, CTR. FOR AM. PROGRESS, WOMEN OF COLOR AND THE GENDER WAGE GAP 1 (2015), <https://perma-archives.org/warc/I23C-V38W/https://cdn.americanprogress.org/wp-content/uploads/2015/04/WomenOfColorWageGap-brief.pdf> [<https://perma.cc/I23C-V38W>].

are particularly vulnerable to domestic and sexual violence⁷⁶ and sex trafficking,⁷⁷ and have shockingly high maternal mortality rates.⁷⁸

To be sure, there are certain areas where the disadvantage of Black men relative to Black women is more pronounced, the most obvious being incarceration rates. Black men are incarcerated at a much higher rate than Black women,⁷⁹ so disrupting the school-to-prison pipeline and decreasing the incarceration rate of Black men is a common justification for creating these single-sex initiatives for Black boys. For instance, in direct response to these incarceration rates, Ron Brown High School suspends very few

⁷⁶ Approximately 40% of Black women reported that they have been the victim of rape, physical violence, and/or stalking by an intimate partner in their lifetime, as compared to 34.6% of white women. See MICHELE C. BLACK ET AL., CTNS. FOR DISEASE CONTROL AND PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 39 (2011), https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf [<https://perma.cc/6XT9-Q5HG>]. This disparity is likely higher because Black women severely under-report sexual violence. See WOMEN OF COLOR NETWORK, FACTS & STATS: SEXUAL VIOLENCE IN COMMUNITIES OF COLOR 2 (2006), <http://nsrh.org/resources/Pictures/Intimate-Partner-Violence-Supplements.pdf> [<https://perma.cc/M99Y-Z64V>] (“For every African American/Black woman that reports her rape, at least 15 African American/Black women do not report theirs.”).

⁷⁷ Of victims whose race was known, 26% percent were white, 24% were Hispanic, and 40% were Black. NAT’L CRIME VICTIMS’ RTS. WK., RESOURCE GUIDE 24–25 (2013), http://victimsofcrime.org/docs/necvrw2013/2013necvrw_stats_humantrafficking.pdf?sfvrsn=0 [<https://perma.cc/2PV7-X8P5>].

⁷⁸ According to the CDC, between 2011 and 2014 there were 12.4 deaths per 100,000 live births for white women, 40.0 deaths per 100,000 live births for Black women, and 17.8 deaths per 100,000 live births for women of other races. *Pregnancy Mortality Surveillance System*, CDC, <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-mortality-surveillance-system.htm> [<https://perma.cc/JP6U-ZHKP>]. This disparity exists even when controlling for socioeconomic status. A study on mothers in New York City found that “Black non-Latina women with at least a college degree had higher SMM [severe maternal morbidity] rates than women of other race/ethnicities who never graduated high school.” MEGHAN ANGLEY ET AL., NYC DEP’T HEALTH & MENTAL HYGIENE, NEW YORK CITY, 2008–2012, SEVERE MATERNAL MORBIDITY 15 (2016), <https://www1.nyc.gov/assets/doh/downloads/pdf/data/maternal-morbidity-report-08-12.pdf> [<https://perma.cc/H5J6-JQC2>].

⁷⁹ See Hager, *supra* note 4 (noting the incarceration rate for Black men is 2,613 per 100,000 versus 103 per 100,000 for Black women).

students and has instituted restorative justice practices in lieu of suspension and expulsion,⁸⁰ as these disciplinary practices increase the likelihood of incarceration.⁸¹

However, just because Black men are incarcerated at higher rates than Black women does not mean that Black women should be excluded from initiatives aimed at reducing mass incarceration. First, Black women's incarceration rate is twice that of white women's,⁸² and the racial gap for young women is even greater. Black women between the ages of eighteen and nineteen are 3.1 times more likely than white females of the same age to be incarcerated.⁸³ Second, while the total prison population has been decreasing, women's incarceration rates have been growing at twice the pace of men's.⁸⁴ In other words, recent reforms around mass incarceration have only been helping men. Thus, policies and practices like the ones implemented at Ron Brown would certainly benefit young women, and such restorative justice practices would benefit from the inclusion of women. Third, there is no research suggesting that sex segregation and ameliorating mass incarceration are correlated. Not only are the two not correlated but excluding women from programs aimed at reducing incarceration rates of Black men sends an implicit message that somehow the presence of women in these initiatives is contributing to this problem.⁸⁵

The point is not that Black boys do not need interventions or that the mass incarceration of Black boys and men does not merit serious attention. The point is that the

⁸⁰ *Restorative Justice & the C.A.R.E. Team*, RON BROWN HIGH SCH., <http://www.rbhsmoarchs.org/restorative-justice/> [<https://perma.cc/T3XQ-SHPY>] (stating that Ron Brown has a “comprehensive initiative to disrupt the school to prison pipeline through the empowerment of Young Kings as a catalysts [*sic*] for social and economic change.”). Ron Brown refers to its students as “Young Kings.” *Id.*

⁸¹ Christine A. Christle et al., *Breaking the School to Prison Pipeline: Identifying School Risk and Protective Factors for Youth Delinquency*, 13 *EXCEPTIONALITY* 69, 70 (2005) (citing exclusionary disciplinary practices as one of three “key elements in a school to prison pipeline”).

⁸² Black women are incarcerated at a rate of 103 per 100,000 versus 52 per 100,000 for white women. See Hager, *supra* note 4.

⁸³ See ANN CARON, U.S. DEP'T OF JUST., BUREAU OF PRISON STATS., PRISONERS IN 2016: FULL REPORT 13 (2018), <https://www.bjs.gov/content/pub/pdf/p16.pdf> [<https://perma.cc/A3WM-XWAS>].

⁸⁴ Wendy Sawyer, *The Gender Divide: Tracking Women's State Prison Growth*, PRISON POL'Y INITIATIVE (Jan. 9, 2018), https://www.prisonpolicy.org/reports/women_overtime.html [<https://perma.cc/P5JP-Z6X6>] (“Since 1978, the number of women in state prisons nationwide has grown at over twice the pace of men, to over 9 times the size of the 1978 population.”).

⁸⁵ See *infra* notes 123, 127, and accompanying text.

data as a whole does not support such disproportionate (and ineffective) interventions for Black boys. An obvious solution in response to this critique—that disproportionate sex-based intervention is unwarranted—is to create equal numbers of single-sex schools and related initiatives for Black girls. This “separate and equal” solution would certainly lessen the current unfairness for Black girls. However, for the reasons discussed in next Section, creating proportionality in these initiatives while maintaining their sex-segregated nature is not the best answer. Rather, sex segregation should be abandoned as a policy tool for addressing racial oppression.

C. Single-Sex Initiatives May be Harmful to Black Girls, Black Boys, and Gender Non-Conforming Individuals

The final point in this Article’s case against these initiatives is that, regardless of whether the disparities between Black boys and girls merit disproportionate intervention or whether these initiatives actually improve outcomes, these single-sex initiatives are still a poor policy choice because sex segregation both creates and perpetuates harmful patriarchal practices and norms. Single-sex initiatives for Black boys may prove detrimental to Black women and girls, gender non-conforming individuals, and the Black boys who participate in these programs.

1. Dominant Black Masculinity

In order to demonstrate how these single-sex initiatives exacerbate destructive forms of Black masculinity, it is necessary to provide a theoretical and historical framework for dominant Black masculinity. All forms of dominant masculinity strive to emulate, and are positioned in relation to, a masculinity that embodies “the currently most honored way of being a man,” or what gender scholars call *hegemonic masculinity*.⁸⁶ Hegemonic masculinity is characterized by “the exclusion of ‘others’—women, nonwhite men, nonnative-born men, homosexual men.”⁸⁷ It is homophobic, physically aggressive, not feminine, and is committed to the binary sex/gender framework. Sexism and misogyny are also core elements of hegemonic masculinity in Western society, as “men achieve masculinity at the expense of women—at best by being ‘not a woman,’ at worst by excluding, hurting, exploiting, or otherwise abusing actual women.”⁸⁸

⁸⁶ R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC’Y 829, 832 (2005); see also R.W. Connell, MASCULINITIES 77 (2005).

⁸⁷ Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity*, in THEORIZING MASCULINITIES 119, 124 (Harry Brod & Michael Kaufman eds., 1994).

⁸⁸ Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 785 (2000).

Dominant Black masculinity is subordinate to hegemonic masculinity and has also been shaped by it through centuries of systemic racism. The structural violence enacted against Black men and Black masculinity through slavery, racism, and white supremacy has “prevented [Black men] from asserting public claims to manhood.”⁸⁹ Since slavery, white patriarchal society has cast Black men “as animals, brutes, natural born rapists, and murderers,” and Black men have had “no real dramatic say when it comes to the way they are represented.”⁹⁰ Black men are still “victimized by stereotypes that were first articulated in the nineteenth century but hold sway over the minds and imaginations of citizens of this nation in the present day.”⁹¹

But the assault on Black men and Black masculinity by white supremacy and hegemonic masculinity does not make dominant Black masculinity immune from adopting many of the harmful aspects of hegemonic masculinity. Dominant Black masculinity draws on the aspects of hegemonic masculinity that it is able to perform and focuses on the elements of hegemonic masculinity that privilege Black men—namely the rejection of femininity and gender nonconformity—as well as the subordination of women.⁹² Scholars have characterized dominant Black masculinity’s tendency to subordinate others as a form of “compensatory subordination,” whereby “people who are subordinated may seek to compensate themselves for their own oppression by subordinating others,” and “by doing so . . . they accept the principle that identities should be hierarchized and thereby weaken their ability to reject the legitimacy of their own oppression.”⁹³

⁸⁹ MICHELLE MITCHELL, *RIGHTEOUS PROPAGATION: AFRICAN AMERICANS AND THE POLITICS OF RACIAL IDENTITY AFTER RECONSTRUCTION* 73–74 (2004).

⁹⁰ bell hooks, *WE REAL COOL: BLACK MEN AND MASCULINITY* 6 (2004).

⁹¹ *Id.*

⁹² Tony Coles, *Finding Space in the Field of Masculinity: Lived Experiences of Men’s Masculinities*, 44 *J. SOCIOLOGY* 233, 238 (2008).

⁹³ Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 29 *U.C. DAVIS L. REV.* 853, 901 (2006); see also Elijah Ward, *Homophobia, Hypermasculinity, and the US Black Church*, 7 *CULTURE, HEALTH & SEXUALITY* 493, 498–99 (2005) (arguing that dominant Black masculinity “seizes upon opportunities for projecting male dominance, possibly functioning as a means to vent the extra frustrations that black men experience in a racist society”).

2. The Link Between All-Male Environments and Destructive Masculinity

All-male environments have been shown to exacerbate destructive forms of dominant masculinities, including dominant Black masculinity.⁹⁴ Thus, these single-sex initiatives for Black boys and young men have the potential to intensify the subordination of Black women, girls, and gender non-conforming individuals and to heighten the policing of Black masculinity. First, these environments have been shown to increase sexist attitudes among men. For instance, all-male sports teams create and support a “form of masculinity that devalues femininity, and promotes sexism and misogyny,”⁹⁵ and men on university basketball and football teams have been found to have high levels of rape myth acceptance, i.e., the idea that women are responsible for their own victimization.⁹⁶ There is also a well-documented association between fraternity membership and attitudes that support violence against women as well as perpetration of sexual violence against women.⁹⁷ Similar trends have been noted for men in the military, a male-dominated though no longer sex-segregated institution.⁹⁸

Gender bias and sexism also increase in the context of single-sex education. Students in single-sex schools tend to have increased group membership bias and engage in increased gender stereotyping.⁹⁹ A report on California’s pilot program on single-sex

⁹⁴ See David Cohen, *Keeping Men “Men” and Women Down: Sex-Segregation, Anti-Essentialism, and Masculinity*, 33 HARV. J. L. & GENDER 509, 522–32 (2010). Cohen’s article articulates four ways in which sex segregation contributes to hegemonic masculinity and the hegemony of men: First, it “contributes to the social acceptance of the category of ‘men.’” *Id.* at 537. Second, “sex-segregated space occupied by men restricts the transfer of socially valued knowledge to other men and keeps it from women.” *Id.* Third, it “gives men an opportunity to foster and grow negative attitudes about women that contribute to the oppression of women.” *Id.* And fourth, it is “a site for policing gender conformity and punishing those men who do not exhibit hegemonic masculinity.” *Id.*

⁹⁵ Eric Anderson, *I Used to Think Women Were Weak: Orthodox Masculinity, Gender Segregation, and Sport*, 23 SOCIOLOGICAL F. 257, 273 (2008) (citing a variety of sources finding the same).

⁹⁶ See Michael Flood & Bob Pease, *Factors Influencing Attitudes Towards Violence Against Women*, 10 VIOLENCE, TRAUMA, & ABUSE 125, 132–33 (2009).

⁹⁷ See *id.*; A. Ayres Boswell & Joan Z. Spade, *Fraternities and Collegiate Rape Culture: Why Are Some Fraternities More Dangerous Places for Women?*, 10 GENDER & SOC’Y 133 (1996).

⁹⁸ See Flood & Pease, *supra* note 96, at 133.

⁹⁹ See Rebecca S. Bigler & Lynn S. Liben, *Developmental Intergroup Theory: Explaining and Reducing Children’s Social Stereotyping and Prejudice*, 16 CURRENT DIRECTIONS IN PSYCHOL. SCI., 162, 162–66 (2007)

education found that separating boys and girls “heightened students’ sense of boys as a unified group in opposition to girls” and reinforced the gender hierarchy of boys as superior to girls.¹⁰⁰

Single-sex initiatives for Black boys and young men are not immune from sex segregation’s tendency to perpetuate narratives of male dominance over women and to increase misogynistic attitudes and behaviors. Two sociological studies on masculinity at Morehouse College (the country’s only historically Black college for men) found sexist discourse to be prevalent on campus. One study noted, “No single point was reiterated as consistently, and nearly identically, by the straight participants in this study as a mantra about sexually ranking and consuming female bodies.”¹⁰¹ The second study, whose focus was primarily sexual assault, found that Morehouse students had a largely “apathetic” attitude towards sexual violence, meaning that most men “would get away with it” and that Morehouse students would “rally behind another Morehouse student’s reputation, rather than the actual victim.”¹⁰²

Anecdotal evidence of sexist attitudes in the all-boys initiatives discussed in this Article comes from a female teacher at Ron Brown High School. She commented on the prevalence of verbal and physical harassment of women at the school, stating:

This is a very sexist environment. Every woman that I’ve encountered in this school has encountered some sort of slant or slur on a daily basis by the students here . . . So female teachers were called bitches in the hallway or in class. One student slipped a suggestive—sexually

(finding sexism in coeducational and single-sex education environments but that gender reinforcement and discrimination were higher in single-sex environments); *see also* WILLIAMS, *THE SEPARATION SOLUTION*, *supra* note 25, at 128–31 (discussing how single-sex educational environments reinforce gender stereotypes).

¹⁰⁰ Elisabeth L. Woody, *Constructions of Masculinity in California’s Single-Gender Academies*, in *GENDER IN POLICY & PRACTICE: PERSPECTIVES ON SINGLE-SEX & COEDUCATIONAL SCHOOLING* 537, 557 (Amanda Datnow & Lea Hubbard eds., 2002) (ebook).

¹⁰¹ Saida Grundy, “*An Air of Expectancy*”: *Class, Crisis, and the Making of Manhood at a Historically Black College for Men*, 642 *ANNALS AM. ACAD. POL. & SOC. SCI.* 43, 56 (2012).

¹⁰² Eva M. Cooke, #WeKnowWhatYouDid: An Ethnographic Exploration of Male Socialization and Rape Culture at a Black College for Men 54–57 (Dec. 13, 2018) (unpublished thesis, Georgia State University) (on file with the Georgia State University Library).

suggestive note to a teacher. Another one touched a teacher on her bottom.¹⁰³

Not only are these single-sex initiatives likely to increase sexism, but they also have great potential to harm gender non-conforming individuals in these programs and in the community at large because they are based on binary, essentialized notions of gender. Any sex-segregated program must be, at least in part, based upon an idea that there are fundamental and essential differences between boys and girls; otherwise, what would be the point of separating by sex? Thus, by their very nature, single-sex initiatives reify the falsehood that there are two distinct, non-overlapping genders and support the oppressive conflation of sex (male), gender (boy), and gender performance (masculinity).

Legal scholar David Cohen makes a similar argument—that single-sex initiatives for boys are premised on the notion “that school-aged boys naturally possess a dominant form of heterosexual masculinity and need to be taught differently as a result.”¹⁰⁴ Single-sex schools for boys, he explains, are both a result of this idea of an “essential” masculinity and reinforce an essential masculinity.¹⁰⁵ Thus, when these initiatives are founded on this premise of fundamental sex and gender differences and teach and mentor young Black boys with this idea of an essential masculinity in mind, they become institutions that reinforce and police dominant forms of masculinity.

The concept of a dominant, essential masculinity that pervades many all-boys initiatives harms individuals—both in the program and the community at large—who do not conform to traditional gender norms. Boys who adopt “alternative masculinities can incur high social and emotional costs” and are “subordinated and pathologized.”¹⁰⁶ Boys police each other’s masculinity through physical and verbal bullying, so boys who are disabled, gay, short, or feminine in any way (not good at sports, not aggressive enough, too emotional) are continuously harassed by other boys.¹⁰⁷

¹⁰³ *Reflections on a Year at Ron Brown*, CODE SWITCH, NPR (Nov. 8, 2017), <https://www.npr.org/templates/transcript/transcript.php?storyId=562566811> [<https://perma.cc/5GPB-8YDS>].

¹⁰⁴ David S. Cohen, *No Boy Left Behind? Single-Sex Education and the Essentialist Myth of Masculinity*, 84 IND. L.J. 135, 153 (2009).

¹⁰⁵ *Id.* at 153–68.

¹⁰⁶ *Id.* at 170–71.

¹⁰⁷ See C.J. Pascoe, *Dude You’re a Fag: Adolescent Masculinity and the Fag Discourse*, 8 SEXUALITIES 329, 330 (2005).

This sort of gender policing and bullying happens in coeducational spaces as well. However, the environment of a single-sex, all-male space is more conducive to this type of harassment because of the foundational premise of these initiatives: that there are fundamental differences between boys—who embody masculinity—and girls—who embody femininity. Thus, when boys deviate from dominant Black masculinity, they are deviating from the very premise on which the initiative is based. They are not acting sufficiently masculine to justify their boyhood and therefore their inclusion in the school or program.

Women and gender non-conforming individuals are not the only ones who may be harmed by these initiatives' tendency to perpetuate dominant Black masculinity. Dominant Black masculinity also damages Black boys in these programs who largely conform to gender norms. Boys who adopt dominant forms of masculinity are significantly restrained in their gender expression and their identities more broadly because dominant masculinity punishes deviance from traditional gender norms.¹⁰⁸ Boys have to constantly police their own behavior, ensuring that it fits within the proper and narrow confines of dominant masculinity because they know that bullying and harassment await them if they deviate.

This sort of policing was described in the two ethnographic studies on Morehouse. One participant discussed how the straight students were careful not to associate with the gay students on campus to ensure their heterosexuality was not challenged. Although anxiety around being accused of homosexuality is ever-present for many men, this concern was heightened because they attended an all-male school.¹⁰⁹ The participant stated:

I think people would automatically vibrate the other way to disassociate themselves with [gay students.] [Y]ou'll get a lot of guys just doing the most basically. Just to make sure that their rep[utation] isn't tainted or associated with that.¹¹⁰

In other words, the all-male nature of the school motivated additional self-policing of masculinity. The other study on Morehouse also highlighted intense gender policing on campus. It concluded that Morehouse men police the "Morehouse brand" of masculinity

¹⁰⁸ See Cohen, *supra* note 104, at 172–73.

¹⁰⁹ Cooke, *supra* note 102, at 43–44.

¹¹⁰ *Id.*

through “aggression, intimidation, humiliation, or, in some cases, even violence as men desperately seek cultural compliance from other students around them or push noncompliant men to leave.”¹¹¹ This gender policing serves to reinforce the narrative of an essential, dominant masculinity which, as Cohen argues, has particularly negative consequences for Black boys because the narrative of essential Black masculinity is rooted in historically racialized stereotypes about Black men.¹¹²

However, just because all-male spaces have been shown to reinforce dominant forms of masculinity does not mean that all of the same-sex initiatives discussed in this Article are destined for the same fate. In fact, some of these initiatives recognize the problems with dominant, essential masculinity and are striving to give their participants broader conceptions of Black masculinity. For instance, an administrator at a single-sex school serving boys of color noted the need to change Black boys’ perceptions of desirable forms of masculinity to include more than “what they see out there in the streets (drugs, gangs, violence, etc.)”¹¹³ But even if these initiatives recognize that reforming dominant Black masculinity is important, they are not well-positioned to do it. First, inviting broader forms of gender expression would undercut the founding premise of these single-sex initiatives. Single-sex initiatives for boys make less intuitive sense if masculinity is not strictly tied to boyhood and distinct from femininity. Second, redefining dominant Black masculinity cannot be realized through programs that deny access to Black women. In other words, if broader conceptualizations of masculinity are the aim, excluding girls is neither necessary nor even helpful. For one, women and girls also embody dominant

¹¹¹ Grundy, *supra* note 101, at 52.

¹¹² Cohen, *supra* note 104, at 174. Cohen argues:

When this story of ‘true’ masculinity for boys is told in the context of a predominantly African-American school, the effects are more complex and more damaging. The dominant form of masculinity described here conforms in many ways with the historical construction of African-American masculinity . . . African-American males have been viewed as oversexed, dangerous, and threatening. Proclaiming that they need to be sex-segregated because of these characteristics furthers racial stereotypes and subordination for all African-American boys and men.

Id.

¹¹³ NYU STEINHARDT, THEORIES OF CHANGE AMONG SINGLE-SEX SCHOOLS FOR BLACK AND LATINO BOYS: AN INTERVENTION IN SEARCH OF THEORY 16 (2010), https://steinhardt.nyu.edu/scmsAdmin/media/users/eaf7/An_Intervention_in_Search_of_Theory_Research_Brief.pdf [<https://perma.cc/WMQ6-2RFM>].

Black masculinity.¹¹⁴ As such, by excluding Black women who embody the iteration of Black masculinity that these initiatives are trying to reform, they are under-inclusive and undermining their project of reshaping masculinity.¹¹⁵ Second, excluding women does not help, and may worsen, one of the large problems with dominant Black masculinity that these initiatives are trying to steer (or should be trying to steer) their students away from: the ways this version of masculinity instructs men and boys to treat women and girls. Black masculinity's relationship to women and femininity cannot be reformed without the inclusion of women.

Dominant Black masculinity cannot be truly reformed through all-male initiatives, but it is not a foregone conclusion that all single-sex initiatives for boys will increase misogynistic attitudes and behaviors towards women and gender non-conforming individuals. With the right leadership, curriculum, and culture, an all or mostly male space may be able to improve some destructive aspects of dominant masculinity. And certain work around reforming masculinity may be best achieved through masculine-only spaces. However, these spaces are uncommon and difficult to achieve. All-male spaces alone will never reform masculinity, and the exclusion of women is not necessary to achieve an all-masculine space.

III. An Explanation: The Privileged Victim Status of Black Men & Boys

This Section offers an explanation for why disproportionate intervention for Black boys persists, despite the three points made in Section II against these initiatives. Building on the work of critical race theorists Kimberlé Williams Crenshaw, Devon Carbado, and Paul Butler, this Section argues that the increasing and disproportionate number of single-sex initiatives for Black boys and young men is both caused by and fuels a larger and historically rooted narrative that privileges the needs of Black men over those of Black women.

¹¹⁴ See Laura Lane-Steele, *Studs and Protest-Hypermasculinity: The Tomboyism within Black Lesbian Female Masculinity*, 15 J. LESBIAN STUD. 480 (2011) (discussing Black lesbian masculinity).

¹¹⁵ Black women who embody this form of Black masculinity also engage in misogynistic and homophobic behavior:

[M]isogyny, and homophobia [allow these women] to relate to the men who embody protest-hypermasculinity in their community. Because of the patriarchal structure of this community, and of this country in general, being one of the boys enables them to access some of the benefits of male privilege and avoid the sexism and the homophobia that they might otherwise be subjected to.

Id. at 491.

Crenshaw has exposed the ways in which both antiracist and feminist discourse and policy initiatives have left out Black women, choosing instead to focus on white women and Black men.¹¹⁶ Sexism and patriarchy push antiracist efforts towards Black men, and white supremacy and racism push feminist efforts towards white women. Black women are largely absent from both and are subsequently erased due to both their racial and gendered identities. In *Mapping the Margins*, Crenshaw provides an example of what she calls the intersectional erasure of Black women in the context of rape and violence. On one hand, antiracists have not combatted the widespread rape and violence against Black women. Crenshaw explains that because Black men have historically been conceptualized as hypersexual and dangerous, rape accusations against Black men “have stood as hallmarks of injustice” within the Black community.¹¹⁷ Thus, antiracists generally prioritize combatting the portrayal of Black men as rapists over the elimination of sexual and domestic violence against Black women.¹¹⁸ On the other hand, feminists’ work to combat rape and violence has also systematically erased Black women. Crenshaw notes how legislative efforts to reduce violence against women have focused on the assault of white women because domestic violence is only a politically visible problem when perpetrated against white women.¹¹⁹ Black women’s interests, because of their identities as Black people *and* as women, are ignored by both movements.

Devon Carbado builds on Crenshaw’s work and names the focus on Black men in antiracist discourse and policies “the privileged victim status of black men.”¹²⁰ He argues that Black men “are perceived to be significantly more vulnerable and significantly more

¹¹⁶ See Kimberlé Williams Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN L. REV. 1241 (1993) [hereinafter Crenshaw, *Mapping the Margins*]; Kimberlé Williams Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989).

¹¹⁷ See Crenshaw, *Mapping the Margins*, *supra* note 116, at 1272.

¹¹⁸ *Id.* at 1273. When the rape of Black women is accounted for in antiracist discourse, Crenshaw argues, it is “usually cast as an assault on black manhood, demonstrating his inability to protect black women.” *Id.*

¹¹⁹ *Id.* at 1259–61.

¹²⁰ Devon W. Carbado, *Men in Black*, 3 J. GENDER RACE & JUST. 427 (2000). Carbado also discusses Black men occupying “a privileged victim status” in antiracist discourse in *Black Male Racial Victimhood*, 21 CALLALOO 337, 337 (1998) (“[A]s a result of this focus on Black men, without similar focus on Black women, Black men are perceived to be *significantly* more vulnerable and *significantly* more endangered than Black women. They become the quintessential example of the effects of racial subordination.”) (emphasis in original).

endangered than Black women.”¹²¹ The result is that “whatever the status of Black girls, it is Black boys, members of the first sex, who have the potential to become strong Black men, the potential to save themselves and thus the Black community.”¹²² Carbado includes the discourse supporting the establishment of schools serving primarily Black boys in his examples of Black boys’ privileged victim status. He notes that while these institutions are not meant to marginalize Black girls, they still ignore the impact of racism on Black girls and send the message that there is a relationship between the existence of Black girls and teachers in schools and the educational success (or failure) of Black boys.¹²³

The disproportionality addressed in this Article reflects the privileged victim status of Black boys. After setting aside the false narrative that Black boys are significantly lagging behind Black girls on every measure these initiatives target,¹²⁴ excluding Black girls from these initiatives means that Black boys are privileged victims—either because no one is thinking about Black girls’ needs, because helping Black boys is the first priority, because Black girls will eventually benefit through Black boys’ improvement, or because Black girls need to be separated from Black boys in order for these initiatives to work.

Similar to Carbado’s conception of the privileged victim status of Black men is what Paul Butler calls “Black male exceptionalism”: The “central premise [of this discourse] is that African American men and boys fare worse than any other group in the United States” and that “by almost every index of inequality, Black males are on the bottom—exceptionally burdened and marginalized.”¹²⁵

This discourse is used as “an appeal for intervention” on behalf of Black men and boys and justifies such interventions even when Black women and girls are excluded. Butler identifies four “meta-texts”¹²⁶ (or narratives) of Black male exceptionalism: (1)

¹²¹ Carbado, *Men in Black*, *supra* note 120, at 429.

¹²² *Id.* at 434.

¹²³ *Id.*

¹²⁴ *See supra* Section II.B.

¹²⁵ Butler, *supra* note 39, at 485.

¹²⁶ Butler does not define the term “meta-text” in his article, but it seems to mean sub-narratives that are embodied in the larger Black Male Exceptionalism narrative.

“fixing Black male problems is a way to establish racial justice”; (2) “African American women bear some responsibility for the subordination of African American men”; (3) “Black male problems are more deserving of remedies than Black female problems”; (4) “racism, discrimination, and White supremacy have affected Black men more adversely than Black women”; and (5) “African American masculinity should be championed as a matter of public policy.”¹²⁷

Single-sex initiatives for Black boys exemplify each of these meta-texts, and these meta-texts do a lot of work in explaining the disproportionate proliferation of single-sex initiatives for Black boys as opposed to Black girls. If the statistical differences between Black boys’ and Black girls’ achievements are insufficient to justify sex-based interventions and if the goal of these single-sex initiatives for Black boys is to combat the effects of racism, then disproportionate intervention for Black boys must be motivated by a belief that racial justice is best accomplished by serving the needs of Black men only, or at least serving them first (meta-texts 1, 3–5). Crenshaw has called this notion that helping Black men first will lead to the improvement of all Black people’s well-being “trickle down” equality/social justice.¹²⁸ Moreover, these initiatives reflect the idea that because Black boys’ interests are best served through single-sex education and related initiatives, then there must be something about the presence of (Black) women and girls that hinders their achievement (meta-text 2). Additionally, these initiatives’ frequent focus on the incarceration rates of Black men when explaining their purpose or mission invoke the narrative that Black men have been more harshly affected by white supremacy than Black women, rather than just differently affected (meta-texts 3, 4).

Butler identifies ways in which these meta-texts are employed through the use of statistics that are particularly salient in this context. He explains that “statistics about [Black] males are used to support the necessity of special interventions for Black men, with no description of what the corresponding data is for Black women.”¹²⁹ Single-sex initiatives for Black boys often use statistics in this way. For instance, Urban Prep and Ron Brown High Schools cite to academic performance statistics for Black boys but do not reference corresponding data on Black girls or indicate to which group they are

¹²⁷ Butler, *supra* note 39, at 488.

¹²⁸ Kimberlé Williams Crenshaw, *Women, Girls of Color Cannot Wait for Trickle-Down Equality*, CANTON REPOSITORY (Oct. 17, 2017), <https://www.cantonrep.com/opinion/20171013/kimberle-crenshaw-women-girls-of-color-cannot-wait-for-trickle-down-equality> [<https://perma.cc/5G2M-LXCX>].

¹²⁹ Butler, *supra* note 39, at 489.

comparing Black boys' performance.¹³⁰ When the principal of Ron Brown, Benjamin Williams, was asked in an interview why Ron Brown's single-sex environment was more beneficial than a coeducational school, he cited to a single statistic for Black boys but did not reference Black girls. He said:

I want to be careful with that question, so I can just talk about the opportunity that it provides. We identified as a district that we have a problem. We've identified that only 48 percent of our African American and Latino young men are graduating from high school. And so this school came about because of that. We wanted to provide another resource in the city for young people, and it just so happens that it's an all-male academy.¹³¹

Not only did Williams' answer avoid any mention of Black girls, he did not even articulate a defense of single-sex education. His justification for the single-sex nature of Ron Brown relied entirely on a statistic about Black boys without providing any corresponding statistic for any other group.

Similarly, the My Brother's Keeper initiative states that it strives to "address persistent opportunity gaps faced by boys and young men of color,"¹³² and New York City's Young Men's Initiative says that it was created to "address increasing disparities among [B]lack and Latino men between the ages of 16 and 24 in education, employment, health and justice."¹³³ But here again, these programs do not cite any data on Black girls' performance or explain whether these gaps pertain to all Black young people as

¹³⁰ *About*, URBAN PREP, <http://www.urbanprep.org/about> [<https://perma.cc/2ND2-HHPW>] ("The schools are a direct response to the urgent need to reverse abysmal graduation and college completion rates among boys in urban centers."); *About RBHS*, RON BROWN HIGH SCH., <http://www.rbhsmonarchs.org/overview> [<https://perma.cc/8FJ7-XWY3>] ("Disproportionate rates of graduation, suspension, attendance, student satisfaction, and performance on college readiness exams (such as PARCC and the Advanced Placement exam) all point to the need for a renewed focus on Black and Latino males.").

¹³¹ Greta Weber, *5 Questions for the Principal of DC's First All-Boys Public High School*, WASHINGTONIAN (Aug. 8, 2016), <https://www.washingtonian.com/2016/08/08/5-questions-principal-dcs-first-boys-public-high-school/> [<https://perma.cc/ER4P-X249>].

¹³² *About My Brother's Keeper*, PRESIDENT BARACK OBAMA WHITE HOUSE ARCHIVES, <https://obamawhitehouse.archives.gov/my-brothers-keeper#section-about-my-brothers-keeper> [<https://perma.cc/M9HC-VBZP>].

¹³³ *About Young Men's Initiative*, NYC YOUNG MEN'S INITIATIVE, <https://www1.nyc.gov/site/yimi/about/about.page> [<https://perma.cc/8BDC-ZWG9>].

compared to their white peers, or just Black boys. The reader is led to think that Black boys and young men are far worse off than Black girls, which is not supported by the data, or are not prompted to think about Black girls at all.¹³⁴

Butler's meta-texts are related to an additional narrative driving the proliferation of single-sex initiatives for Black boys—that adherence to white patriarchal gender norms can end racial oppression. Since Jim Crow, restoring patriarchy in the Black family and community has been a racial justice strategy used by both Black elites and whites.¹³⁵ Under this narrative, Black men's failure to serve as strong heads of household, and Black women's deviation from "proper" (read: white middle-class) performances of mothering and homemaking can explain a variety of social problems in the Black community, including poverty, unemployment, and low graduation rates.¹³⁶ Perhaps the most famous iteration of this narrative is the Moynihan Report, which largely blamed disproportionate poverty in Black communities on the "dysfunction" in and the matriarchal nature of the Black family. Deviance from the traditional white family structure in which men serve as breadwinners, Moynihan argued, harmed Black children in myriad ways and further emasculated Black men.¹³⁷ This narrative instructs that racial subordination can be rectified by addressing Black boys' and young men's poor academic achievement, incarceration rates, and joblessness, as these must be fixed before Black men can regain and retain their rightful places as leaders of their families and communities.¹³⁸

Single-sex initiatives for Black boys, then, are effective tools for achieving this project. Black women, on the other hand, do not need the same level of intervention to be able to achieve their appropriate place in a patriarchal structure because when Black men are serving as the providers, husbands, and fathers they should be, Black women will be uplifted as a result.

¹³⁴ For an additional example of a single-sex initiative's use of statistics in this way, see WILLIAMS, *THE SEPARATION SOLUTION*, *supra* note 25, at 68.

¹³⁵ See KEVIN GAINES, *UPLIFTING THE RACE: BLACK LEADERSHIP, POLITICS, AND CULTURE IN THE TWENTIETH CENTURY* (1996).

¹³⁶ See, e.g., *id.*; DANIEL PATRICK MOYNIHAN, U.S. DEP'T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965).

¹³⁷ MOYNIHAN, *supra* note 136, at 16–17, 31, 35.

¹³⁸ See CATHY J. COHEN, *THE BOUNDARIES OF BLACKNESS* (1999).

Vera Williams discusses how this “raced and gendered project of reifying white patriarchy for [B]lack promise” articulated in the Moynihan Report is apparent in the “reinvigorat[ion] of single-sex schools” and the My Brother’s Keeper initiative.¹³⁹ She points to two ways in which My Brother’s Keeper continues this project. First, a progress report issued by My Brother’s Keeper listed “being raised in women-headed households as one of the ‘persistent challenges’ confronting boys and young men of color—along with poverty, joblessness, criminal involvement, and murder.”¹⁴⁰ Second, the program’s focus on men of color and the Administration’s lack of emphasis on girls of color “suggest[] that denial of civil and human rights matters most when it affects the ability of men to exercise their masculinity.”¹⁴¹

To be sure, Moynihan was not the first to suggest that restoring Black manhood and patriarchal gender norms are crucial to racial equality; this discourse is historically rooted, particularly in the context of education. When Black people were first allowed access to any sort of formal education, Black women were trained in schools to care for white people’s homes, and Black men were trained to perform labor for white people.¹⁴² When Black people fought back against this educational plan designed to maintain their inferiority, Black leaders like W.E.B. Du Bois and Booker T. Washington focused on the education of Black men. Du Bois envisioned Black liberation through the classical education of a “talented tenth” of the Black population. But the talented tenth could consist of only men:

The Negro race, like all races, is going to be saved by its exceptional men . . . Men we shall have only as we make manhood the object of the work of the schools—intelligence, broad sympathy, knowledge of the world that was and is, and of the relation of men to it—this is the curriculum of that Higher Education which must underlie true life.¹⁴³

¹³⁹ Verna L. Williams, *The Patriarchy Prescription: Cure or Containment*, 8 GEO. J.L. & MOD. CRITICAL RACE PERSP. 61, 73–74 (2016).

¹⁴⁰ *Id.* at 74 (quoting MY BROTHER’S KEEPER TASK FORCE, REPORT TO PRESIDENT 13 (2004)).

¹⁴¹ *Id.* 74–75; see also WILLIAMS, THE SEPARATION SOLUTION, *supra* note 25, at 148–49 (discussing how My Brother’s Keeper and related initiatives are an example of the “Black male exceptionalism” discourse).

¹⁴² Verna L. Williams, *Reform or Retrenchment? Single-Sex Education and the Construction of Race and Gender*, 2004 WIS. L. REV. 15, 67 (2004) [hereinafter Williams, *Reform or Retrenchment*].

¹⁴³ W. E. B. DU BOIS, THE TALENTED TENTH (1903).

This idea of the talented tenth formed the basis for opening an all-Black, all-boys high school in Washington, D.C., later known as Dunbar High School.¹⁴⁴ This school was highly successful, sending many of its male students to Ivy League universities, yet it denied Black women access to these educational benefits.

While Du Bois advocated for elite education for talented Black men, Washington planned to use education to keep Black women in domestic servitude.¹⁴⁵ He thought that having well-trained Black women working in white people's homes would improve Black people's condition by "assur[ing] white society that African Americans were capable of assimilation."¹⁴⁶ Thus, these single-sex initiatives are a modern day example of prioritizing Black men and boys over Black women and girls in the context of antiracist education policies.

Intersectional erasure of Black women, Black male exceptionalism, and Black men as privileged victims partially explain and reflect the vigorous educational interventions on behalf of Black boys in the name of antiracism, even though the data do not support disproportionate or sex-specific interventions. The rest of the explanation is two-fold. First, Black boys do face urgent, existential problems. Second, the frame for the current "Black man in crisis" narrative has been partially fueled by a larger narrative that all boys are in a state of crisis.

When Christina Hoff Sommers published *The War Against Boys: How Misguided Feminism is Harming Our Young Men* in 2000, she thrust the narrative that boys were in a state of crisis into the country's imagination. Sommers' primary argument is that the nation, and the school system in particular, "ha[s] turned against boys and forgotten a simple truth: the energy, competitiveness, and corporal daring of normal males are responsible for much of what is right in the world," and concludes that "it's a bad time to be a boy in America."¹⁴⁷ A plethora of publications pushing the same thesis followed. In

¹⁴⁴ Charles Lemert, *Anna Julia Cooper: The Colored Woman's Office*, in *THE VOICE OF ANNA JULIA COOPER* 1 (Charles Lemert & Esme Bhan eds., 1998).

¹⁴⁵ BEVERLY GUY-SHEFTALL, *DAUGHTERS OF SORROW: ATTITUDES TOWARD BLACK WOMEN, 1880–1920* 147 (1990). Washington established "Industries for Girls," which trained women in "dress making, millinery, horticulture, printing, broom making, mattress making, upholstery, cooking (required) and basketry." *Id.* at 148.

¹⁴⁶ Williams, *Reform or Retrenchment*, *supra* note 142, at 57 (citing GUY-SHEFTALL, *supra* note 145, at 147–48).

¹⁴⁷ CHRISTINA HOFF SOMMERS, *THE WAR AGAINST BOYS: HOW MISGUIDED FEMINISM IS HARMING OUR YOUNG MEN* (2000); *see also* Christina Hoff Sommers, *The War Against Boys*, *THE ATLANTIC* (May 2002),

2006, *Esquire*¹⁴⁸ and *The New Republic*¹⁴⁹ published articles pointing to data that boys are lagging behind girls on certain academic measures and that educational reforms are needed to remedy these gaps. Peg Tyre published *The Trouble With Boys* in 2008 in which she repeats the argument that boys are struggling in school and that educators and politicians must act.¹⁵⁰ Last year, Warren Pharell and John Gray published *The Boy Crisis: Why Our Boys Are Struggling and What We Can Do About It* in which they argue that boys are suffering a crisis of education, mental health, fathering, and overall purpose.¹⁵¹

These Sommers-like formulations of the boy crisis are not really about Black boys and are rejected by most on the Left as thinly veiled attempts to undercut feminist progress. To many progressive advocates of single-sex initiatives for Black boys, drawing this comparison may seem absurd or offensive. It is certain that Black boys encounter deprivations of life and liberty fueled by centuries of institutionalized racism that boys of other races, and white boys in particular, do not. And these single-sex initiatives can be understood as a response to institutionalized racism while Sommers-like arguments can be understood as more of a backlash to progress made by (mostly white) women. However, when Sommers' work and its progeny announced that a "boy crisis" existed in this country (regardless of whether all boys or just some boys are actually in crisis), they paved a pathway in the national consciousness for these single-sex initiatives. In other words, they helped create a framework for understanding a need for single-sex

<https://www.theatlantic.com/magazine/archive/2000/05/the-war-against-boys/304659/> [<https://perma.cc/AFR7-W4Q8>] ("The widening gender gap in academic achievement [between boys and girls] is real. It threatens the future of millions of American boys. Boys do not need to be rescued from their masculinity. But they are not getting the help they need.").

¹⁴⁸ Tom Chiarella, *The Problem with Boys*, *ESQUIRE* (July 1, 2006), <https://www.esquire.com/news-politics/news/a865/esq0706sotamboys-94/> [<https://perma.cc/VD8J-B7SX>] (arguing that schools' curricula should be adjusted to match boys' learning styles).

¹⁴⁹ Richard Whitmire, *Boy Trouble*, *THE NEW REPUBLIC*, (Jan. 23, 2006), <https://newrepublic.com/article/65240/boys-and-books> [<https://perma.cc/6KC7-C8CX>] (critiquing the lack of public response to boys' failures in school).

¹⁵⁰ PEG TYRE, *THE TROUBLE WITH BOYS: A SURPRISING REPORT CARD ON OUR SONS, THEIR PROBLEMS AT SCHOOL, AND WHAT PARENTS AND EDUCATORS MUST DO* (2008).

¹⁵¹ WARREN PHARRELL & JOHN GRAY, *THE BOY CRISIS: WHY OUR BOYS ARE STRUGGLING AND WHAT WE CAN DO ABOUT IT* (2018).

intervention on behalf of *boys*, when previously, girls (but only white girls)¹⁵² were thought of as the sex in need of intervention.

Thus, the increase in and popularity of single-sex initiatives for Black boys can be understood as a product of a discourse that treats Black men as privileged victims of racism. It is also fueled by a narrative that racial equity is best achieved by restoring white middle-class, patriarchal structures within Black families and communities, such that once Black men and boys are back on track, Black women and the Black community will be as well.

IV. No End in Sight: No (Political) Will, No (Legal) Way

Black girls' and young women's interests will continue to be ignored and the proliferation of single-sex initiatives for Black boys will likely continue because (1) the current legal landscape does not clearly protect against increased disproportionate opportunities for Black boys; and (2) even if the law did protect against such disproportionality, there would be insufficient political will to halt the expansion of these initiatives.

A. The Legal Framework

The two primary federal laws¹⁵³ that relate to sex equity in state-sponsored schools and other educational initiatives are Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the 14th Amendment to the United States Constitution. This Section will first discuss Title IX, concluding that it currently permits the existing disproportionality in single-sex initiatives despite its original purpose of remedying discrimination against women. It will then address the Equal Protection Clause, determining that it provides a more viable—but still difficult—legal path to ending this disproportionality.

¹⁵² Black girls have not been the intended beneficiaries of single-sex education. All-girls educational spaces have historically been seen as a way of “putting girls in a safe place, away from the male terrors,” also known as romantic paternalism. Nancy Levit, *Separating Equals: Educational Research and the Long-Term Consequences of Sex Segregation*, 67 GEO. WASH. L. REV. 451, 525 (1999); see also Galen Sherwin, *Single Sex Schools and the Antisegregation Principle*, 30 N.Y.U. REV. L. & SOC. CHANGE 35, 69–70 (2005). But, of course, only white women benefited from romantic paternalism. Black women, on the other hand, have never been seen as deserving of protection. See Williams, *Reform or Retrenchment*, *supra* note 142, at 61–65.

¹⁵³ Many of these initiatives are also subject to regulation by various state statutes and constitutional provisions; however, a state-level legal analysis is beyond the scope of this Article.

1. Title IX

Title IX prohibits discrimination on the basis of sex in any “education program or activity receiving Federal financial assistance.”¹⁵⁴ When Title IX was first enacted in the early 1970s, one of its primary functions was responding to historical sex discrimination against women in education.¹⁵⁵ This purpose can be found in the initial regulations implementing the statute and its legislative history. The regulations provide that if a recipient of federal funds has “discriminated against persons on the basis of sex . . . such recipient *shall* take such remedial action as the Department of Education [DOE] deems necessary to overcome the effects of such discrimination;”¹⁵⁶ and even if the DOE has not found sex discrimination, “a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex.”¹⁵⁷ Thus, affirmative action to remedy sex discrimination is either mandatory or voluntary under Title IX.

Although the regulations do not explicitly state as much, women, as the historically excluded and subordinated sex, were the intended beneficiaries of Title IX’s sex-based affirmative action. The testimony from the primary author of Title IX confirms this remedial purpose of the statute. Senator Bayh stated:

¹⁵⁴ 20 U.S.C. § 1681(a). Public schools, as a general matter, do receive federal funding, but some non-school single-sex initiatives do not and thus, are not subject to Title IX. However, they are subject to the Equal Protection Clause even if they do not receive federal funding as long as the state is sufficiently involved in the initiative. U.S. Const. amend. XIV. Because the vast majority of these initiatives receive at least some public funding, and many are created by a state or local government, most—if not all—are subject to the Equal Protection Clause.

¹⁵⁵ Other scholars have made this argument about the remedial purpose of Title IX. See Dawinder S. Sidhu, *Are Blue and Pink the New Brown? The Permissibility of Sex-Segregated Education as Affirmative Action*, 17 CORNELL J.L. & PUB. POL’Y 579, 585–93 (2008) (arguing that single-sex education for girls is permissible under Title IX as a form of affirmative action); Fred Von Lohmann, Note, *Single-Sex Courses, Title IX, and Equal Protection: The Case for Self-Defense for Women*, 48 STAN. L. REV. 177, 185 (1995) (arguing that the words “affirmative action” in the context of the regulation “authorizes the use of gender-based classifications designed to assist the historically-disadvantaged gender”). Courts of appeals have also commented on the affirmative action rationales of Title IX. See McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck, 370 F.3d 275, 297 n.20 (2d Cir. 2004) (commenting that Title IX authorizes affirmative action to “overcome effects of historical conditions that have limited participation by members of one sex”); Cohen v. Brown Univ., 101 F.3d 155, 171 n.11 (1st Cir. 1996) (same).

¹⁵⁶ 4 C.F.R. § 106.3(a) (emphasis added).

¹⁵⁷ 4 C.F.R. § 106.3(b).

[O]ne of the great failings of the American education system is the continuation of corrosive and unjustified discrimination against women . . . [T]he heart of this amendment is a provision banning sex discrimination in educational programs receiving Federal funds.¹⁵⁸

Thus, Title IX's regulation of single-sex initiatives should be grounded in its intended purpose of sex-based affirmative action. However, as discussed next, Title IX has not stayed true to this purpose.¹⁵⁹

Prior to 2006, Title IX prohibited single-sex programs from discriminating on the basis of sex unless the local education agency (LEA) "otherwise makes available, to [the excluded sex], pursuant to the same policies and criteria of admission" comparable "courses, services, and facilities."¹⁶⁰ In other words, under this regulation, if an LEA were to create a single-sex initiative, it would need to create a comparable program for the excluded sex.¹⁶¹ But in 2006, the DOE passed new regulations regarding single-sex education that eliminated the proportionality requirement for single-sex classes, schools, and programs. The new regulations no longer require LEAs to establish single-sex initiatives for the excluded sex. Rather, they must "provide students of the excluded sex a substantially equal single-sex school *or coeducational school*."¹⁶² As long as the excluded sex has access to a substantially equal coeducational program, the LEA has not violated Title IX's prohibition on sex discrimination.¹⁶³

¹⁵⁸ 118 CONG. REC. S5803–07 (daily ed. Feb. 28, 1972) (statement of Sen. Bayh).

¹⁵⁹ Because white women, not Black women, were the intended beneficiaries of Title IX's sex-based affirmative action, the current disproportionality does not directly undermine this original purpose.

¹⁶⁰ 34 C.F.R. § 106.35(b) (2006) (*superseded*).

¹⁶¹ *See id.*; Rebecca A. Kiselewich, *In Defense of the 2006 Title IX Regulations for Single-Sex Public Education: How Separate Can be Equal*, 49 B.C. L. REV. 217, 227 (2008) ("Nonvocational schools may be single-sex so long as there is also a 'substantially equal' single-sex school for students of the excluded sex or a coeducational school—whereas previously only a single-sex school for students of the excluded sex had sufficed.").

¹⁶² 34 C.F.R. § 106.34(c)(1) (2006) (emphasis added).

¹⁶³ In order to be considered "substantially similar," the department considers factors including:

The policies and criteria of admission, the educational benefits provided, including the quality, range, and content of curriculum and other services and the quality and availability of books, instructional materials, and technology, the quality and range of extracurricular offerings, the qualifications of faculty and staff, geographic accessibility,

In light of Title IX's remedial purpose, this change in the regulation should in theory advance the goal of rectifying historical discrimination against women in education. However, this is not how these regulations have been used and interpreted. Instead, school districts and other recipients of federal funding now have a large number of single-sex initiatives for boys with few or no initiatives for girls. In fact, Karl Racine, the Attorney General of Washington D.C., relied on this regulation's lack of a proportionality requirement when justifying the fact that Ron Brown High School would be the only single-sex high school in DCPS. He wrote: "DCPS is certainly on firm footing, and in good company, in accepting the express assurance from DOE [Department of Education] . . . that it may operate an all-boys school without violating Title IX."¹⁶⁴ He argued that because DCPS has (1) "existing application-based high schools that are equally available to all students, which offer college preparatory curricula and career education programs," (2) "supportive programming, including advanced placement classes, remedial services for 9th graders, extended day options, and tutoring, that is available at all DCPS high schools," and (3) a program for new and expecting mothers, DCPS was in compliance with Title IX's mandate to provide "substantially equal" coeducational opportunities for girls, the excluded sex.¹⁶⁵ Thus, disproportionate initiatives for Black boys are permitted under Title IX as long as Black girls have access to substantially similar coeducational initiatives.

2. Equal Protection Clause

Even though Title IX currently allows for disproportionate single-sex schools and programs for boys, in contradiction of one of its original purposes of remedying sex discrimination against women, it is unclear whether such disproportionality would withstand a challenge under the Equal Protection Clause. As interpreted by the Supreme Court, the Equal Protection Clause requires any state action that classifies individuals based on sex to pass "intermediate scrutiny." Under this test, the party seeking to uphold a sex-based classification must show "an exceedingly persuasive justification" for the

the quality, accessibility, and availability of facilities and resources, and intangible features, such as reputation of faculty.

34 C.F.R. § 106.34(c)(3).

¹⁶⁴ Letter from Karl Racine, Att'y Gen., D.C., to Mary Cheh, Councilwoman, D.C., *supra* note 55, at 6.

¹⁶⁵ *See id.*

classification.¹⁶⁶ To satisfy this burden, a party must establish that (1) “the classification serves important governmental interests”¹⁶⁷ and (2) the “discriminatory means employed are substantially related to the achievement of those objectives.”¹⁶⁸

The opinion analyzing a situation most analogous to the issue presented in this Article is a 1991 district court decision, *Garrett v. Board of Education of the School District of the City of Detroit*,¹⁶⁹ in which the court found that Detroit’s creation of public single-sex schools serving primarily boys of color did not pass intermediate scrutiny.¹⁷⁰ The court found that the state’s goal of combating the poor educational outcomes, unemployment, and homicide rates of Black boys and men was not sufficiently related to the coeducational nature of the existing public schools.¹⁷¹ The school district had six single-sex schools for boys, and although it had begun to establish a school for girls, the court found that girls suffered irreparable harm if they were deprived of the same benefits that boys received for any amount of time.¹⁷²

In spite of its factual similarities to the disproportionality described in this Article, *Garrett* provides little insight as to how a court may rule on a similar case today. First, it was written before the 2006 amendments to Title IX, which reflect the DOE’s interpretation of current Supreme Court jurisprudence on single-sex education and are

¹⁶⁶ *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982) (citing *Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981) and *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 273 (1979)).

¹⁶⁷ *Id.* (citing *Wengler v. Druggists Mutual Ins. Co.*, 446 U.S. 142, 150 (1980)).

¹⁶⁸ *Id.* Kimberly Jenkins notes that the Court does not apply this test consistently; sometimes it requires that the sex classification be “necessary” to achieve the states’ goals, while other times it is sufficient to ask whether the classification “merely helps” in achieving the goal. Kimberly J. Jenkins, *Constitutional Lessons for the Next Generation of Public Single Sex Elementary and Secondary Schools*, 47 WM. & MARY L. REV. 1953, 1990–96 (2006).

¹⁶⁹ 775 F. Supp. 1004 (E.D. Mich. 1991).

¹⁷⁰ *Id.* at 1012–13.

¹⁷¹ *Id.* at 1007–08.

¹⁷² *Id.* at 1013. “Even more dangerous,” the court noted, “is the prospect that should the male academies proceed and succeed, success would be equated with the absence of girls rather than any of the educational factors that more probably caused the outcome.” *Id.* at 1007.

meant to comply with the Equal Protection Clause.¹⁷³ As such, these amendments may replace *Garrett*'s holding. Second, it was decided in a different political climate—before mass incarceration of Black men and police violence against Black boys had entered into the public imagination and before Obama launched *My Brother's Keeper*.

The Supreme Court has not directly addressed K-12 single-sex education since 1977, where it affirmed (without an opinion) the Third Circuit's finding that having single-sex schools of similar quality for *both sexes* conformed with constitutional requirements.¹⁷⁴ However, in the context of higher education, two cases are instructive.

First, in *Mississippi University for Women v. Hogan*,¹⁷⁵ the Court held that a women-only nursing school did not pass intermediate scrutiny.¹⁷⁶ Regarding the first prong of the test, the Court rejected the state's argument that its policy served the important interest of remedying discrimination against women because: (1) women had not been historically excluded from nursing programs and (2) the school's women-only admissions policy aligned with the stereotype that nursing was for women. The Court explained that the government may "evoke a compensatory purpose to justify an otherwise discriminatory classification," but "only if members of the gender benefited by the classification actually suffer a disadvantage related to the classification."¹⁷⁷ The state also failed on the second prong because the nursing program's policy of excluding men was not substantially related to its compensatory objective. The school's policy of "permitting men to attend classes as auditors fatally undermine[d] its claim that women . . . are adversely affected by the presence of men."¹⁷⁸

In the second case, *United States v. Virginia* ("VMI"),¹⁷⁹ the Court held that the all-male admissions policy at Virginia Military Institute did not pass intermediate scrutiny

¹⁷³ See *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 69 FED. REG. 11, 11277 n.4 (proposed Mar. 9, 2004).

¹⁷⁴ *Vorchheimer v. Sch. Dist. (Vorchheimer III)*, 430 U.S. 703 (1977); *Vorchheimer v. Sch. Dist. (Vorchheimer II)*, 532 F.2d 880, 888 (3d Cir. 1976).

¹⁷⁵ 458 U.S. 718 (1982).

¹⁷⁶ *Id.* at 724.

¹⁷⁷ *Id.* at 728.

¹⁷⁸ *Id.* at 730–31.

¹⁷⁹ 518 U.S. 515 (1996).

and reiterated *Hogan*'s message that single-sex education may be used for compensatory purposes,¹⁸⁰ but may not perpetuate gender-based stereotypes that have historically been used to discriminate against women.¹⁸¹ Important to the decision was the Court's finding that Virginia had not provided substantially equal opportunities for women, characterizing the all-female counterpart of VMI, Virginia Women's Institute for Leadership, as a "pale shadow" of VMI.¹⁸²

Applying principles from *Hogan* and *VMI* to these single-sex initiatives, it is not certain whether these initiatives would pass intermediate scrutiny.¹⁸³ As to the "important government interest" prong, the state would likely point to many of the same rationales these single-sex initiatives cite—Black boys' low academic performance, high incarceration rates, and poor job and health outcomes, among others. A court may readily accept these reasons, as the *Garrett* court did, as they are certainly important. However, a court may interpret these justifications to be based on a compensatory purpose because they imply that boys have been "disproportionately burdened."¹⁸⁴ If a court determines that the sex-based classification is being used for compensatory purposes, the state would need to show that "members of the gender benefited by the classification [boys] actually suffer a disadvantage *related to* the classification."¹⁸⁵ In other words, the state must show that Black boys suffer a disadvantage because they are boys.

Thus, in order for the State to show an important government interest under this view, a court must accept that Black boys are more disadvantaged than Black girls and that the disadvantage is due to their sex. The data in Section II(B) belies this conclusion. And while it is certainly true that gender interacts with racism in ways that may subject

¹⁸⁰ *Id.* at 533.

¹⁸¹ *Id.* at 541–42.

¹⁸² *Id.* at 553.

¹⁸³ In addition to the doctrinal analysis below, another reason the law may not protect against this disproportionality is because plaintiffs who have multiple disadvantaged identities or who lodge discrimination claims based on two or more identities are unlikely to be successful. See Rachel Kahn Best et al., *Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation*, 45 *LAW & SOC'Y REV.* 991, 1014 (2011) (finding that nonwhite women have a 15% chance of complete victory in an employment discrimination suit versus about 20% for nonwhite men, 37% for white men, and 46% for white women). Thus, the Black women plaintiffs in an Equal Protection challenge to these single-sex initiatives may be at a disadvantage because of their identity and because their claim is based on their identity.

¹⁸⁴ *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 728 (1982).

¹⁸⁵ *Id.* (emphasis added).

Black boys and men to different forms of disadvantage than Black women and girls, it does not hold that Black boys and men are across the board more disadvantaged by racism.

However, the state may still be able to satisfy the first prong because the narrative that Black boys are substantially worse off than Black girls fits squarely within the meta-texts of Black male exceptionalism, namely that “by almost every index of inequality, Black males are on the bottom—exceptionally burdened and marginalized,”¹⁸⁶ and that “racism, discrimination, and White supremacy have affected Black men more adversely than Black women.”¹⁸⁷ Moreover, justifications based on Black men’s and boys’ incarceration rates do have empirical support, and mass incarceration is a disadvantage Black men suffer, in part, because of their gender.¹⁸⁸ As such, it is possible that a court could find that these single-sex initiatives support “an important governmental interest,” even if it requires the state to show that Black boys suffer a disadvantage related to their gender.

To pass the second prong of intermediate scrutiny, the state must show that these initiatives’ sex classification is substantially related to the state interest of improving outcomes for Black boys.¹⁸⁹ The specifics of a court’s analysis would depend on exactly what justifications the state put forth, but the state would at least need to point to some evidence that single-sex education actually works to further its stated purpose. As noted in Section II(A), there is no strong evidence to support the efficacy of single-sex education in general.¹⁹⁰ Moreover, the state may need to show that the presence of girls has an adverse effect on boys’ education.¹⁹¹ Although it would be more difficult to satisfy

¹⁸⁶ Butler, *supra* note 39, at 485.

¹⁸⁷ *Id.* at 488.

¹⁸⁸ Devon W. Carbado & Patrick Rock, *What Exposes African Americans to Police Violence?*, 51 HARV. C.R.-C.L. L. REV. 159, 180–83 (2016) (discussing that police violence against Black men is partially due to a “masculinity challenge” between Black men and police officers, where “[a]ctual or perceived aggressive conduct by either the police officer or the suspect could . . . heighten[] either party’s masculinity threat and thus the likelihood that either party would exhibit aggressive behavior in response”).

¹⁸⁹ *Hogan*, 458 U.S. at 724.

¹⁹⁰ To be sure, a state could prevent a successful legal challenge under either Title IX or the Equal Protection Clause by ensuring that Black girls had access to single-sex initiatives of the same breadth and caliber as those offered to boys. Although this solution would be legally adequate, separate and equal initiatives are not the best answer to this problem, as discussed in the Conclusion, *infra*.

¹⁹¹ *Hogan*, 458 U.S. at 730–31.

this prong, it is possible. The state could point to certain studies and anecdotal evidence, like Chicago's Urban Prep, to demonstrate that single-sex initiatives work and that the sex-segregated nature of the initiative is responsible for their success.¹⁹²

B. No Political Will

The Equal Protection Clause may present a viable mechanism to raise a legal challenge to single-sex initiatives' unequal treatment of Black girls. However, even if it does, there is insufficient political will to do anything—including initiating legal action—to halt the progress of these types of initiatives. Despite all of the problems with sex-segregated educational initiatives detailed in Section II, they have very few outspoken critics. Kimberlé Williams Crenshaw is one of the most vocal critics of My Brother's Keeper's exclusion of women.¹⁹³ She founded the African American Policy Forum (AAPF), an organization that has been calling for equitable resources for Black girls since its inception¹⁹⁴ and that advocates for the inclusion of women in antiracist efforts.¹⁹⁵ The American Civil Liberties Union (ACLU) has been the primary institution challenging the legality of single-sex initiatives and has brought a number of lawsuits and complaints attacking the legality of single-sex schools.¹⁹⁶ But Crenshaw, the AAPF, and

¹⁹² Creating a comprehensive, intersectional framework for this sort of Equal Protection claim is an area for future research, as the literature is undeveloped on this point.

¹⁹³ See Kimberlé Williams Crenshaw, *The Girls Obama Forgot*, N.Y. TIMES (July 29, 2014), <https://www.nytimes.com/2014/07/30/opinion/Kimberl-Williams-Crenshaw-My-Brothers-Keeper-Ignores-Young-Black-Women.html> [<https://perma.cc/4CGU-FEKJ>] (“My Brother’s Keeper . . . amounts to an abandonment of women of color, who have been among [President Obama’s] most loyal supporters.”).

¹⁹⁴ See KIMBERLÉ WILLIAMS CRENSHAW ET AL., AFRICAN AM. POLICY FORUM, BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED, AND UNDERPROTECTED (2015), https://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/54dcc1ece4b001c03e323448/1423753708557/AAPF_BlackGirlsMatterReport.pdf [<https://perma.cc/W7YW-WVYN>].

¹⁹⁵ The AAPF wrote a letter to Barack Obama in 2014 critiquing the exclusion of women and girls from My Brother's Keeper. *Why We Can't Wait: Women of Color Urge Inclusion in "My Brother's Keeper,"* AFRICAN AM. POLICY FORUM (July 17, 2014), <http://aapf.org/recent/2014/06/woc-letter-mbk> [<https://perma.cc/NT3N-S339>] [hereinafter *AAPF Letter*]. This letter has a significant number of signees—over 1600 individuals have signed it. But the persistence and proliferation of these single-sex initiatives indicate that there remains a larger, and more powerful, coalition committed to their continuation.

¹⁹⁶ For a non-exhaustive list of ACLU complaints and lawsuits, see *Sex Segregated Schools: Separate and Unequal*, ACLU, <https://www.aclu.org/sex-segregated-schools-separate-and-unequal> [<https://perma.cc/8UVK-BM4W>].

the ACLU lack allies from institutions and politicians who one would expect to oppose these initiatives outright, or at least the disproportionate allocation of resources to boys.

In light of the substantial evidence linking single-sex initiatives for boys with increases in sex stereotyping and negative behaviors towards gender non-conforming individuals, as well as these initiatives' role in reifying notions of binary and essentialized gender and sex, LGBTQ advocacy organizations should have something to say on this issue. However, all the major players, including Lambda Legal; the Human Rights Campaign; the Trevor Project; the National Center for Transgender Equality; the National Center for Lesbian Rights; Gay & Lesbian Advocates & Defenders (GLAD); and Parents, Family & Friends of Lesbians and Gays (PFLAG) have all been silent.¹⁹⁷ Thus, as the antiracist movement has ignored Black girls, so has majority-white led LGBTQ movement, and the "intersectional erasure"¹⁹⁸ of Black women and girls continues.

National feminist organizations have a better track record than LGBTQ institutions when it comes to advocating for the inclusion of Black girls. For example, the National Organization for Women (NOW) has called out single-sex schools for boys and My Brother's Keeper for their unfairness to Black girls,¹⁹⁹ and the National Women's Law Center urged Washington, D.C., to include women in its Empowering Males of Color initiative.²⁰⁰ Still, considering (1) the correlation between all-male environments and increases in misogynic attitudes and behaviors and (2) the blatant unfairness to Black

¹⁹⁷ The one exception concerns the ability of transgender students to enroll in single-sex programs. LGBT groups have advocated for the inclusion of transgender students in single-sex initiatives, rather than the eradication of sex segregation. See, e.g., Remington A. Gregg, *U.S. Department of Education Releases Guidelines to Protect Trans Students in Single-Sex Classrooms*, HUMAN RIGHTS CAMPAIGN (Dec. 2, 2014), <https://www.hrc.org/blog/u.s.-department-of-education-releases-guidelines-to-protect-trans-students> [<https://perma.cc/EW7P-AT8G>].

¹⁹⁸ See Section III, *supra*.

¹⁹⁹ See Letter from Terry O'Neill, et al., Nat'l Org. for Women, to Mayor Muriel Bowser, et al. (May 7, 2015), <https://now.org/resource/girls-of-color-educational-needs-are-equally-critical-to-those-of-boys-of-color/> [<https://perma.cc/5UPA-6XPX>]; Press Release, Terry O'Neill, Nat'l Org. for Women, NOW Applauds Focus on Communities of Color in "My Brother's Keeper" Initiative, Urges President Obama to Include Girls and Young Women of Color (May 30, 2014), <https://now.org/media-center/press-release/now-applauds-focus-on-communities-of-color-in-my-brothers-keeper-initiative-urges-president-obama-to-include-girls-and-young-women-of-color/> [<https://perma.cc/XTJ7-8GHD>].

²⁰⁰ Fatima Goss Graves, Vice President for Educ. & Emp't, Nat'l Women's Law Ctr., Testimony Before the Council of the District of Columbia (Apr. 23, 2015), <https://nwlc.org/resources/fatima-goss-graves-testifies-council-d-c-empowering-males-color-initiative/> [<https://perma.cc/ES3X-GY3V>].

girls, *all* feminist organizations should be lodging sustained public critiques of these single-sex initiatives.²⁰¹

Notwithstanding robust critiques from Crenshaw, legal action from the ACLU, and advocacy from some feminist organizations, state and local politicians continue to allocate disproportionate capital towards initiatives for boys. Many, if not most, of these politicians identify as liberal or progressive and affiliate themselves with a political platform that, at least in theory, subscribes to gender equality. Take Washington, D.C., for example—a city where Hillary Clinton won 90% of the votes in the 2016 general election,²⁰² whose city council is made up entirely of independents and Democrats,²⁰³ and whose Black, progressive, female mayor was recently elected to her second term.²⁰⁴ Despite D.C.’s overwhelmingly liberal population and representation, only one council member—Mary Chen—lodged any opposition to the Empowering Males of Color Initiative.²⁰⁵ The mayor and the remainder of the council either openly supported the initiative or remained silent about its problematic exclusion of Black girls.

Explanations for why many progressive politicians and organizations overwhelmingly actively advocated for these initiatives or have remained silent in spite of glaring sex inequities are beyond the scope of this Article and should be explored in future projects.²⁰⁶ But ignorance of these initiatives’ problems cannot be blamed. NWLC

²⁰¹ Juliet Williams documents more robust legal and political opposition to single-sex schools for boys from the late 1980s through 2000. See WILLIAMS, *supra* note 25, at 63 (explaining how the Department of Education Office for Civil Rights threatened legal action against a program for all-boys classes); *id.* at 71 (noting how ACLU and NOW initiated the *Garrett* lawsuit); *id.* at 73–76 (describing a *Nightline* episode regarding disagreements on the *Garrett* lawsuit). The resistance to these initiatives has waned in the past decade.

²⁰² *District of Columbia Presidential Race Results: Hillary Clinton Wins*, N.Y. TIMES (Aug. 1, 2017), <https://www.nytimes.com/elections/2016/results/district-of-columbia-president-clinton-trump> [<https://perma.cc/GD3T-N8ZB>].

²⁰³ *Councilmembers*, COUNCIL OF D.C., <https://dccouncil.us/councilmembers/> [<https://perma.cc/5EM4-B5MU>].

²⁰⁴ *Executive Office of the Mayor*, D.C. GOV., <https://mayor.dc.gov/> [<https://perma.cc/F6L4-X45J>] (recognizing Muriel Bowser as D.C.’s mayor).

²⁰⁵ See Letter from Karl Racine, Att’y Gen., D.C., to Mary Cheh, Councilwoman, D.C., *supra* note 55.

²⁰⁶ Juliet Williams describes how feminist oppositions to single-sex schools have been inaccurately characterized as “indifferent (if not antagonistic) to a broader social agenda committed to addressing the devastating effects of racial and economic inequalities.” WILLIAMS, *supra* note 25, at 144. Thus, a fear of

testified before the D.C. Council to oppose the exclusion of women from the Empowering Males of Color Initiative,²⁰⁷ and Crenshaw and the AAPF reached out to President Obama about My Brother's Keeper.²⁰⁸ Whatever the reason, this lack of opposition from progressive politicians indicates that there is something about initiatives aimed at helping Black boys and men that shields them from progressive critique.

CONCLUSION

There is no doubt that Black boys experience tremendous amounts of systemic and individualized racism that have significant detrimental effects on their educations and their entire livelihoods. However, this experiment of single-sex initiatives that are disproportionately offered to Black boys is both ineffective and unfair. Sex-specific approaches to racial equity do not make sense when young Black people of all genders are significantly behind their white peers.

Indeed, the gaps between Black students' (of all genders) and white students' educational outcomes is and always has been the most glaring and entrenched gap in education. This is the gap that must be attacked. As opposed to the comparison across Black boys and Black girls, there are no close calls or complications when comparing white students' outcomes with those of Black students. For example, white people are almost two times as likely as Black people to have bachelor's degrees (42.9% vs. 22.7%). This gap was *smaller* in 1970 (17.3% vs. 10%).²⁰⁹ High school graduation rates are almost 20% higher among white people than Black people (81.8% vs. 63.6%).²¹⁰ The gap between white students' and Black students' SAT scores is about 100 points *per section*: critical reading 528 vs. 430, mathematics 533 vs. 425, writing 511 vs. 415.²¹¹ This list could go on endlessly, as there is certainly no dearth of evidence proving the existence

being mischaracterized as indifferent, or hostile, to racial justice efforts may be one explanation for progressives' silence.

²⁰⁷ See Graves, *supra* note 200.

²⁰⁸ See AAPF Letter, *supra* note 195.

²⁰⁹ Table 104.20. Percentage of Persons 25 to 29 Years Old with Selected Levels of Educational Attainment, by Race/Ethnicity and Sex, *supra* note 69.

²¹⁰ Averaged Freshman Graduation Rate (AFGR) by Race/Ethnicity, Gender, State or Jurisdiction, and Year: School Years 2002–03 Through 2008–09, *supra* note 65.

²¹¹ COLLEGEBOARD, *supra* note 70.

and persistence of this gap.²¹² Thus, to use tax dollars, political will, and institutional momentum to create disproportionate single-sex initiatives for Black boys that exclude Black girls is both unfair to Black girls and makes little sense when any Black boy/Black girl statistical gaps pale in comparison to the white/Black gap.

One obvious solution to the problem of disproportionate interventions for Black boys is to create companion programs for Black girls. This solution certainly would protect these initiatives from any legal challenge and would mitigate the current unfairness to Black girls. But this Article does not propose creating equal numbers of single-sex initiatives for Black girls as a solution. Single-sex initiatives for boys need to be abandoned as a tool for racial justice because of their potential to reify destructive forms of masculinity, increase violence, and escalate homophobia and sexism. Merely creating additional programs for Black girls does not solve all the problems with single-sex initiatives for boys.²¹³

This Article's opposition to these initiatives is not rooted in an opposition to an investment in racial justice.²¹⁴ Rather, this opposition is motivated by a desire for more effective and equitable investments in racial justice policy initiatives. These initiatives need to be directed at all students of color, not just boys; they should avoid exacerbating sexism, sex stereotyping, and the reinforcement of dominant masculinity; and they should, whenever possible, be based on sound empirical evidence. To be sure, alternative interventions must still address the issues that disproportionately impact Black boys and men, namely mass incarceration. Indeed, focusing on educational outcomes can have a positive effect on mass incarceration, as there is a close correlation between risk of incarceration and education level. Black men who have a college degree have less than a 10% cumulative risk of imprisonment, while Black men who do not have a high school

²¹² For more statistics, see *Have the Achievement Gaps Changed?*, THE NATION'S REPORT CARD (2013), https://www.nationsreportcard.gov/reading_math_2013/#/achievement-gaps [<https://perma.cc/5JNB-ZVJA>].

²¹³ This Article does not address the merits of single-sex initiatives for Black girls or their viability as tools for racial justice. That said, the Article's ultimate conclusion that single-sex initiatives for boys should not exist does not equally extend to single-sex initiatives for Black girls. These initiatives are not as likely as all-male initiatives to exacerbate harmful forms of dominant masculinity, though, as this Article purports to show, all-female initiatives may also contribute to an essentialist view of gender and may therefore be harmful to gender non-conforming students.

²¹⁴ See WILLIAMS, *supra* note 25, at 175 (describing how feminist critiques of single-sex initiatives for Black boys have been characterized as being a "flimsy cover for racist anxiety about Black empowerment").

diploma have over a 70% cumulative risk.²¹⁵ But these programs must be open to Black people of all genders.

Alternatives that meet these criteria include school-based mentorship programs, childcare centers for parents with children, and mental health/social work services. Mentorship programs have been found to reduce drug and alcohol use, school absenteeism, and violence and to increase GPA.²¹⁶ School-based childcare centers can improve student parents' GPA and reduce absences.²¹⁷ And school-based mental health services tend to decrease absences, class failures, disciplinary referrals, and unnecessary referrals into special education and to increase GPAs.²¹⁸

It is time to abandon sex segregation as a mechanism for fighting racial oppression, particularly when single-sex initiatives for Black boys are receiving most of the funding and capital. At bottom, these single-sex initiatives are neither effective nor fair—and Black youth deserve initiatives which are both.

²¹⁵ Bruce Western & Becky Pettit, *Incarceration & Social Inequality*, 139 DAEDALUS 8, Fig. 1 (2010). This study did not analyze cumulative risk of imprisonment for women.

²¹⁶ JOSEPH P. TIERNEY ET AL., MAKING A DIFFERENCE: AN IMPACT STUDY OF BIG BROTHERS/BIG SISTERS (Pub./Private Ventures ed., 1995), http://visionforchildren.org/wp-content/uploads/2014/03/111_publication.pdf [<https://perma.cc/7VM3-UPLQ>]; see also Marc E. Wheeler et al., *Review of Three Recent Randomized Trials of School-Based Mentoring*, 24 SOC. POL'Y REP. 1 (2010); Michael J. Karcher, Address at Mentor Michigan, Michigan's Premier Mentoring Conference (Nov. 17, 2010) (“[S]chool-based mentoring resulted in statistically significant effects on truancy, attendance, and classroom misbehavior as well as in peer acceptance, the quality of students' relationships with adults, and academic self-efficacy.”).

²¹⁷ Elizabeth Gillis Williams & Lois S. Sadler, *Effects of an Urban High School-Based Child Care Center on Self-Selected Adolescent Parents and Their Children*, 71 J. SCH. HEALTH 47, 49-51 (2001); see also Lois Sadler et al., *Promising Outcomes in Teen Mothers Enrolled in a School-Based Parent Support Program and Child Care Center*, 77 J. SCH. HEALTH 121, 127 (2007) (finding that enrollees in high-school based parent support program “demonstrated good rates of high school continuation and graduation, positive mother-child interactions, low rates of subsequent births, and the children showed positive indicators of child health and development”).

²¹⁸ See Jenni Jennings et al., *Implementing and Maintaining School-Based Mental Health Services in a Large, Urban School District*, 70 J. SCH. HEALTH, 201, 201-05 (2000); Cheryl Whitman et al., *Strategies to Address Mental Health Through Schools with Examples from China*, 20 INT'L REV. PSYCHIATRY 237, 237-49 (2008).