



1-1-2017

Chapter 535: Women Veterans Continue to Fight Battles on the Home Front

Bonnie Sellers

University of the Pacific, McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/uoplawreview>



Part of the [Civil Rights and Discrimination Commons](#)

Recommended Citation

Bonnie Sellers, *Chapter 535: Women Veterans Continue to Fight Battles on the Home Front*, 48 U. PAC. L. REV. 725 (2017).

Available at: <https://scholarlycommons.pacific.edu/uoplawreview/vol48/iss3/20>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in The University of the Pacific Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Chapter 535: Women Veterans Continue to Fight Battles on the Home Front

*Bonnie Sellers**

Code Sections Affected

Military and Veterans Code § 998.541(a) (amended).
SB 866 (Roth); 2016 STAT. Ch. 535

TABLE OF CONTENTS

I. INTRODUCTION..... 725

II. LEGAL BACKGROUND..... 727

 A. *Addressing the Specific Hurdles Faced by Women Veterans*..... 727

 B. *Federal and State Housing Discrimination Prevention* 728

 C. *The History of California Veterans Programs* 729

 D. *Leading the Nation in Veteran Homelessness* 730

 E. *The Impetus for Chapter 535*..... 731

III. CHAPTER 535..... 732

IV. ANALYSIS 733

 A. *Is Chapter 535 Discriminatory Under the FHA?*..... 733

 B. *Is Chapter 535 Discriminatory Under the FEHA?* 737

 C. *Does Chapter 535 Violate the California Civil Rights Initiative?* 738

 D. *Does Chapter 535 Violate Equal Protection?*..... 738

 E. *Support for Providing Safe Housing to Female Veterans* 741

V. CONCLUSION..... 741

I. INTRODUCTION

California is home to over 1.8 million veterans and has the second largest population of women veterans in the nation.¹ Veterans often suffer from service-related conditions that make it difficult for them to maintain employment and pay

* J.D. Candidate, University of the Pacific, McGeorge School of Law, to be conferred May 2018; M.A. Intelligence Studies, American Military University, Charlestown, B.A., Anthropology, University of Florida, Gainesville, 2010. I would like to thank my husband, I love you with my whole heart.

1. *Veterans Housing Plans Moves Forward in Legislature*, CENTRAL VALLEY BUSINESS TIMES (June 14, 2016), available at <http://www.centralvalleybusinesstimes.com/stories/001/?ID=30721> (on file with *The University of the Pacific Law Review*).

for housing.² From 2006–2010, the number of female veterans that identified as homeless increased 140 percent.³ According to the California Department of Veterans Affairs (VA),⁴ 40 percent of female homeless veterans report experiencing severe forms of mental illness, mostly due to higher rates of military sexual trauma (MST)⁵ for females compared to men.⁶ MST correlates directly to homelessness among women veterans.⁷ The likelihood of women veterans suffering from sexual abuse is so high that a woman serving in a combat zone is more likely to be sexually assaulted by a fellow service member than to be killed by enemy fire.⁸

California Senator Richard Roth introduced Chapter 535 as “an important measure in standing with the women who were assaulted, raped, or sexually harassed while serving our nation”⁹ Because women face unique challenges in transitioning back to civilian life, reintegration is a different experience for them than it is for men, which creates a gap in services.¹⁰ Chapter 535 addresses this gap by providing funding for women veterans to secure safe and reliable

2. *Homeless Veterans Outreach and Support*, CALIFORNIA DEPARTMENT OF VETERAN AFFAIRS, available at <http://www.calvet.ca.gov/VetServices/Pages/Homeless-Veterans-Outreach-Awareness.aspx> (last visited Jan. 14, 2016) (on file with *The University of the Pacific Law Review*).

3. *Id.*

4. Lisa K. Foster, *California’s Women Veterans: The Challenges and Needs of Those Who Serve*, CALIFORNIA RESEARCH BUREAU 1, 73 (2009), available at <https://www.library.ca.gov/crb/09/09-009.pdf> (on file with *The University of the Pacific Law Review*) (explaining that the VA’s mission is “to serve America’s veterans and their families with dignity and compassion and to be their principal advocate in ensuring that they receive medical care, benefits, social support, and lasting memorials.”).

5. 38 U.S.C. § 1720D(a) (defining sexual trauma as “psychological trauma, which the judgment of a mental health professional employed by the Department, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving on active duty, active duty for training, or inactive duty training.”).

6. *Homeless Veterans Outreach and Support*, *supra* note 2 (explaining that women have higher rates of MST than men).

7. See Donna L. Washington et al., *Risk Factors for Homelessness Among Women Veterans*, 21 J. HEALTH CARE FOR THE POOR AND UNDERSERVED 82, 87 (2010) (citing a study that found a “three to four times greater risk of homelessness among veteran than among non-veteran women and that that homeless women veterans had an MST prevalence of 53%.” The study stated that “[MST] added effect on top of other risk factors may help explain women veterans’ higher risk for homelessness.”).

8. *Military Sexual Trauma (MST)*, UNIVERSITY OF MICHIGAN, available at <https://sapac.umich.edu/article/military-sexual-trauma-mst> (last visited Oct. 1, 2016) (on file with *The University of the Pacific Law Review*).

9. E-mail from Shrujal Joseph, Press Secretary to Senator Richard D. Roth, to Bonnie Sellers, *Greensheets* Staff Writer, *The University of the Pacific Law Review* (August 1, 2016, 11:09 PST) (on file with *The University of the Pacific Law Review*).

10. *Women Veterans: The Long Journey Home, a Comprehensive Study of the Many Challenges Women Face When They Leave Military Service*, DISABLED AMERICAN VETERAN 1, 2–3, available at <https://www.dav.org/wp-content/uploads/women-veterans-study.pdf> [hereinafter *Women Veterans: The Long Journey Home*] (on file with *The University of the Pacific Law Review*) (explaining that women who return from deployment have often have difficulty with transition and need support for health care and housing issues and that VA studies show that these women go without needed care, specifically failing to provide gender-sensitive health care).

housing.¹¹ Senator Roth introduced Chapter 535 in response to a trend in Proposition 41, the Veterans Housing and Homeless Prevention Act.¹² Proposition 41 was approved by voters in 2014. It enacted the Veterans Housing and Homeless Prevention Bond Act that in part provided financing for supportive housing for homeless veterans.¹³ The main aim of the Veterans Housing and Homelessness Prevention Program was to provide \$600 million in bonds available to fund housing that focused on areas with especially high numbers of California's most vulnerable veterans.¹⁴ After two rounds of funding, no applicant has sought to build women's only housing to serve homeless or at risk veterans.¹⁵ This article provides legal background regarding changes enacted by Chapter 535 and analyzes the policy issues raised by the new law.

II. LEGAL BACKGROUND

This section explores the development of California Veterans' Bond Acts addressing the issue of veteran homelessness.¹⁶ In particular, this section discusses the passage of earlier acts aimed at providing housing to California veterans, examines proposed legislation, and analyzes California law enabling housing and services for female veterans suffering from MST.¹⁷

A. Addressing the Specific Hurdles Faced by Women Veterans

One in four women screened by the United States Department of Veterans' Affairs reported experiencing military sexual trauma (MST) while serving.¹⁸

11. See *Veterans Housing Plans Moves Forward in Legislature*, *supra* note 1 (noting that female veterans with children have specific needs that can be difficult to meet upon their return from service); see generally CAL. MIL. & VET. CODE § 987.005 (enacted by Chapter 535) (offering Chapter 535's solution to meet female veterans' unmet housing needs).

12. E-mail from Brian Flemmer, Legislative Aide to Senator Richard D. Roth, to Bonnie Sellers, *Greensheets* Staff Writer, *The University of the Pacific Law Review* (July 6, 2016, 10:42 PST) (on file with *The University of the Pacific Law Review*).

13. *California Proposition 41, Veterans Housing and Homeless Prevention Bond (2014)*, BALLOTPEdia, (last visited January 10, 2017) available at [https://ballotpedia.org/California_Proposition_41_Veterans_Housing_and_Homeless_Prevention_Bond_\(2014\)](https://ballotpedia.org/California_Proposition_41_Veterans_Housing_and_Homeless_Prevention_Bond_(2014)) (on file with *The University of the Pacific Law Review*).

14. *Veterans Housing and Homelessness Prevention Program Overview*, CALIFORNIA HOUSING AND COMMUNITY DEVELOPMENT (2016), available at <http://www.hcd.ca.gov/financial-assistance/veterans-housing-and-homelessness-prevention-program/docs/vhhp-framework-7-08-14.pdf> (on file with *The University of the Pacific Law Review*).

15. E-mail from Brian Flemmer, *supra* note 12 (explaining the need for the bill that Senator Roth introduced to amend veterans housing).

16. *Veterans Housing and Homelessness Prevention (VHHP) Program Progress*, CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, available at <http://www.hcd.ca.gov/financial-assistance/veterans-housing-and-homelessness-prevention-program/> (last visited June 30, 2016) (on file with *The University of the Pacific Law Review*).

17. CAL. MIL. & VET. CODE § 987.005(2) (enacted by Chapter 535).

18. *Id.* at § 987.005(3)(c)(3-4) (enacted by Chapter 535).

Women suffer the mental effects of MST years after leaving military service, which places them disproportionately at risk of becoming homeless compared to male veterans.¹⁹ When available veterans housing does not provide gender-specific safety accommodations, these women veterans are effectively deterred and ultimately excluded from the facilities due to legitimate health and safety concerns arising from MST.²⁰

B. Federal and State Housing Discrimination Prevention

California state law explicitly prohibits discrimination in housing.²¹ The federal Fair Housing Act (FHA) was enacted to provide fair housing throughout the United States.²² Specifically, the FHA makes it unlawful “[t]o . . . make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin” or “make unavailable or deny, a dwelling to any buyer or renter because of a handicap.”²³

Providing women veterans with the option of separate housing is not discriminatory on the basis of sex under the FHA because the FHA makes it unlawful to “refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.”²⁴ Thus, even though the option could be construed as facially discriminatory against men because it is distinguishing between two groups based on sex, it would be permissible as a reasonable accommodation²⁵ and not based merely on stereotypes.²⁶ There are legitimate and documented safety concerns for women veterans living in mixed-gender, veteran-only housing facilities. When these women veterans live in a male-dominated environment,

19. *Id.* At § 987.005(3)(c)(5) (enacted by Chapter 535).

20. *See generally* Foster, *supra* note 4 (detailing the general difficulties women face in service, both when deployed and at home); *see also* Audit of the Veterans Health Administration Domiciliary Safety, Security, and Privacy VAGAO 08-01030-05, DEPARTMENT OF VETERANS AFFAIRS OFFICE OF THE INSPECTOR GENERAL I, I (2008), available at <http://www.va.gov/oig/52/reports/2009/VAOIG-08-01030-05.pdf> (on file with *The University of the Pacific Law Review*) (where female veterans in several reports claimed they “often felt intimidated in the predominately male facilities and were concerned for their safety” while in the Domiciliary Residential Rehabilitation Treatment Program, the VA’s oldest health care program).

21. CAL. GOV. CODE § 12955(a) (West 2016) (stating “it shall be unlawful . . . for the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of that person.”).

22. 42 U.S.C. § 3601 (2016).

23. *Id.* at § 3604(f)(1) (2016).

24. *Joint Statement of the Department of Justice and the Department of Housing and Urban Development*, THE UNITED STATES DEPARTMENT OF JUSTICE, (Aug. 18, 1999) available at <https://www.justice.gov/crt/joint-statement-department-justice-and-department-housing-and-urban-development-1> (on file with *The University of the Pacific Law Review*).

25. *Id.*

26. *Community House, Inc. v. City of Boise*, 490 F.3d 1041, 1050 (9th Cir. 2007).

they risk further psychological and physical harm because their traumatic experiences arose in a similar environment.²⁷ Women veterans, especially those suffering from MST, have emphasized the importance of “sex-segregated” residential centers making them feel more secure and comfortable.²⁸

C. The History of California Veterans Programs

Both the state and federal government provide home loan assistance to two million veterans living in California.²⁹ The federal Veterans Affairs services were originally established to serve and meet the needs of male veterans, but the VA has been evolving to meet the needs of female veterans.³⁰ The VA prioritized the improvement of health care for the rapidly growing female veteran population in its health care system by increasing women’s health treatment capabilities in all VA medical centers and clinics.³¹ Every VA medical center is required to have a Women Veterans Program Manager who serves as an advocate, navigator, and coordinator when organizing their women veterans’ health care services.³² Women veterans are eligible for the same benefits as male veterans.³³

After World War I, the California Legislature passed the Veterans Farm and Home Purchase Act of 1921 (the “Cal-Vet Farm and Home Program”), and the Department of Veterans Affairs offered farm and home financing to veterans at a low interest rate.³⁴

Financed through the sale of voter-approved general obligation bonds, referred to as Qualified Veterans Mortgage Bonds (QVMB),³⁵ the Cal-Vet Home Loan Program enabled veterans to purchase homes and farms that they might not

27. See generally Foster, *supra* note 4 (detailing the housing challenges that women veterans face upon return from service).

28. *Women’s Bureau, Homeless Women Veteran Listening Sessions*, U.S. DEPARTMENT OF LABOR, available at www.dol.gov/wb/programs/listeningsessions.htm (on file with *The University of the Pacific Law Review*).

29. CAL. MIL. & VET. CODE § 998.541(a) (West 2016).

30. See Foster, *supra* note 4 (explaining how the VA provides services and benefits to qualified veterans in the form of medical care, disability compensation and education benefits).

31. See *Women Veterans: The Long Journey Home*, *supra* note 10 (explaining how the rise in the number of veterans led to changes in the VA care planning).

32. *Id.*

33. See Foster, *supra* note 4 (explaining how the VA provides services and benefits to qualified veterans in the form of medical care, disability compensation and education benefits).

34. *Veterans Farm and Home Building Fund of 1943 Financial Statements for the Years Ended June 30, 2012 and 2011, and Independent Auditors’ Report*, DEPARTMENT OF VETERANS AFFAIRS 1, 2 (2011), available at https://www.calvet.ca.gov/HomeLoans/Bonds/Financials11_12.pdf [hereinafter *Veterans Farm and Home Building Fund of 1943*] (on file with *The University of the Pacific Law Review*).

35. 26 U.S.C. § 143(I)(D)(b) (defining qualified mortgage bond as an issue by a State or political subdivision of one or more bonds, but only if all proceeds of such issue are to be used to finance owner-occupied residences, pursuant to federal law, Section 143(1) of the Internal Revenue Code).

have otherwise been able to afford.³⁶ Since the beginning of the Cal-Vet program in 1922, California voters have approved all 27 Cal-Vet bond measures.³⁷ After the Heroes Earnings Assistance and Relief Tax Act (HEART) passed in 2008, eligible veterans could use QVMB funds regardless of their service date.³⁸ Although the main goal of these programs was not directly to address veteran homelessness, all of these programs contributed to help alleviate homelessness by making housing more affordable for veterans.

D. Leading the Nation in Veteran Homelessness

California voters approved the Veterans' Bond Act of 2000 authorizing California to sell \$500 million in bonds to provide funding for veterans to receive loans to purchase primary residences.³⁹ The Veterans' Bond Act of 2008 passed and authorized the issuance of \$900 million in bonds to assist veterans in purchasing farms, homes, and mobile home properties.⁴⁰ Despite passing multiple bond measures, California continues to lead the nation in homeless veterans, with nearly 25 percent of the nation's homeless veterans living in the state.⁴¹ The California Legislature recognized the necessity of advancing a comprehensive and coordinated approach to reduce veteran homelessness.⁴² The bond programs were being significantly underutilized because of both the nation's economic crisis and the state's housing downturn.⁴³

After the Veterans Housing and Homelessness Prevention Bond Act of 2014 passed, the issue of gender-specific safety accommodations for women veterans was raised.⁴⁴ Housing facilities assigned residents to empty housing units with no pre-determined strategy or placement plan to accommodate the health and safety needs of women veterans, particularly those with disabilities resulting from

36. *Why CalVet?*, CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS, <https://www.calvet.ca.gov/HomeLoans/Pages/Why%20CalVet.aspx> (on file with *The University of the Pacific Law Review*) (detailing how the CalVet program provides low interest loans to veterans).

37. *Prop. 12 Will Continue A Program That Honors Vets At No Public Cost*, THE PRESS DEMOCRAT, (Sept. 21, 2008), available at <http://www.pressdemocrat.com/csp/mediapool/sites/PressDemocrat/News/story.csp?cid=2173475&sid=555&fid=181> (on file with *The University of the Pacific Law Review*) (explaining CalVet bonds are guaranteed by the state treasury and taxpayers have never been on the hook for the debt).

38. Laura Tillman, *Cornyn Backs Legislation to Expand Housing Assistance for Veterans*, THE BROWNSVILLE HERALD (June 19, 2008), available at http://www.brownsvilleherald.com/news/local/article_e8669f8e-6c1f-53d6-9f95-101ce8604a04.html (on file with *The University of the Pacific Law Review*) (detailing the elimination of the previous requirement that the veteran had to have served before 1977 to be eligible for housing assistance).

39. CAL. MIL. & VET. CODE § 998.540(g) (West 2016).

40. *Id.* at § 998.540(f) (West 2016).

41. *Id.* at § 998.541(c) (West 2016).

42. *Id.* at § 998.651(c) (West 2016).

43. *Id.* at § 998.540(g) (West 2016).

44. See Foster, *supra* note 4 (explaining the history of the coming together of the issues of women suffering from MST, homeless veterans and and bond money for supportive housing).

MST-related Post Traumatic Stress Disorder (PTSD).⁴⁵ PTSD is defined by the National Center for PTSD (a Federal research and education agency within the Department of Veterans Affairs) as “a mental health sometimes develops after experiencing a life-threatening event.”⁴⁶ Safety and security concerns often prevent women veterans from receiving the housing support they require when dealing with these traumatic disorders.⁴⁷ Chapter 535 responds to this recognized issue by expanding housing and service options for veterans, including safer and separate housing for women veterans.⁴⁸

E. The Impetus for Chapter 535

The California Veterans Housing and Homelessness Prevention Act (VHHP) restructured \$600 million dollars of existing bond monies to permit construction and rehabilitation of multi-family housing with services, while preserving \$500 million dollars for the CalVet Farm and Home Loan Program.⁴⁹ The VHHP recognized that veterans have high rates of PTSD, substance abuse, unemployment, and that veterans often cycle in and out of jails, hospitals, and treatment programs.⁵⁰

The VHHP acknowledged the “higher incidence[s]⁵¹ of sexual trauma experienced by our female veterans.”⁵² The VHHP authorized specified departments to “collaboratively carry out the duties and functions of prioritization for veterans⁵³ at risk for homelessness or experiencing temporary or

45. *Women Veterans Must Have Equal Access to Veteran-Only Permanent Housing Facilities Under The Fair Housing Laws*, CALIFORNIA WOMEN’S LAW CENTER 1, 4 (2015), available at <http://cwlc.org/web/wp-content/uploads/2015/03/Housing-Policy-Brief-Mar2015.pdf> [hereinafter *Women Veterans Must Have Equal Access*] (on file with *The University of the Pacific Law Review*).

46. *Understanding PTSD and PTSD Treatment*, NATIONAL CENTER FOR PTSD 1, 3 (2016), available at http://www.ptsd.va.gov/public/understanding_ptsd/booklet.pdf (on file with *The University of the Pacific Law Review*).

47. See, e.g., *Homeless Women Veterans, Actions Needed to Ensure Safe and Appropriate Housing*, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE 1, 7 (2011), available at <http://www.gao.gov/assets/590/587334.pdf> (on file with *The University of the Pacific Law Review*) (highlighting safety concerns as one of the four “significant barriers” cited by homeless women veterans as a barrier to accessing housing).

48. CAL. MIL. & VET. CODE § 987.005(3)(a) (West 2016).

49. *Id.* at § 998.541(j).

50. *Id.* at § 998.541(d) (describing Californians’ overwhelmingly gratitude to veterans by approving general obligation bonds while falling short of prescribing bonds resulting in affordable and supportive housing needs being unmet).

51. *Women, Trauma, and PTSD*, U.S. DEPARTMENT OF VETERANS AFFAIRS, available at <http://www.ptsd.va.gov/public/PTSD-overview/women/women-trauma-and-ptsd.asp> (last visited Aug. 30, 2016) (on file with *The University of the Pacific Law Review*) (explaining one possible factor why some women might get PTSD more than men being that women are more likely to experience sexual assault).

52. See CAL. MIL. & VET. CODE § 998.541(d), *supra* note 69 (explaining the chronic nature of homelessness).

53. CAL. MIL. & VET. CODE § 987.003(d) (West 2016) (defining a veteran as any person who served in the active military, naval, or air service of the United States, or as a member of the National Guard who was

chronic homelessness.”⁵⁴ Mentioned among the program goals of VHHP was the prioritization of projects that combine housing and supportive services, including, but not limited to, “job training, mental health and drug treatment, case management, care coordination, or physical rehabilitation.”⁵⁵ Notably, while homelessness among veterans is declining overall, women veterans are the fastest growing segment of the entire homeless population.⁵⁶

III. CHAPTER 535

Chapter 535 expands the Veterans Housing and Homelessness Prevention Act of 2014 by ensuring that victims of MST are given sufficient opportunities to receive housing and supportive services.⁵⁷ Chapter 535 authorizes housing and service providers receiving bond monies through the VHHP to provide housing or services to female veterans and their children in women-only facilities.⁵⁸ Chapter 535 authorizes adequate housing for MST victims as a primary goal of the Department of Veterans Affairs, the Department of Housing and Community Development, and the California Housing Finance Agency.⁵⁹

Chapter 535 clarifies and enhances the VHHP requirements through amendments to the Military and Veterans Code.⁶⁰ Specifically, the bill requires that housing developers and service providers receiving bond monies through the VHHP provide women-only housing facilities to female veterans.⁶¹ The primary goal of the VHHP is to ensure adequate housing for MST victims.⁶²

called to and released from active duty or active services, for a period of not less than 90 consecutive days or was discharged from service due to a service-related disability).

54. CAL. MIL. & VET. CODE § 987.002(c) (West 2016) (listing the specified agencies as the California Housing Finance Agency, the Department of Housing and Community Development, and the Department of Veterans Affairs).

55. CAL. MIL. & VET. CODE § 987.005(a)(1)–(5) (West 2016).

56. *Women Veterans Task Force, 2012 Report Strategies for Serving Our Women Veterans*, DEPARTMENT OF VETERANS AFFAIRS 1, 6 (2012), available at http://www.va.gov/opa/publications/Draft_2012_Women-Veterans_StrategicPlan.pdf (on file with *The University of the Pacific Law Review*) (stating that, “Women Veterans are the fastest growing segment of the homeless population.”).

57. CAL. MIL. & VET. CODE § 987.005(2)(e)(1) (enacted by Chapter 535).

58. *See id.* at § 987.005(2)(e)(1). *See also Audit of Homeless Providers Grant and Per Diem Program*, VA OFFICE OF THE INSPECTOR GENERAL 1, 3 (2012), available at <http://va.gov/oig/pubs/VAOIG-11-00334-115.pdf> (on file with *The University of the Pacific Law Review*) (according to a study, “multi-gender living arrangements can present risks of sexual harassment and assault to women and can invite perpetrator-victim relationships.”).

59. CAL. MIL. & VET. CODE § 987.005(3)(c)(6) (enacted by Chapter 535).

60. *Id.* at § 987.005(2)(e)(1) (authorizing the issuance of bonds in the amount of \$600,000,000 for expenditure by the California Housing Finance Agency, the Department of Housing and Community Development, and the Department of Veterans Affairs).

61. CAL. MIL. & VET. CODE § 987.005 (2)(e)(3) (enacted by Chapter 535) (defining “women-only facilities” as those that may house and provide services to female veterans only and their children).

62. CAL. MIL. & VET. CODE § 987.005(2)(e)(1) (enacted by Chapter 535) (authorizing housing or services in limited instances in which a female veteran has suffered any form of sexual abuse while serving in the

Dubbed the Veterans Housing and Homeless Prevention Act of 2016 Proposition 41 Expenditures: Military Sexual Trauma, Chapter 535 specifies that female veterans⁶³ may receive housing when they suffer from any form of sexual abuse, trauma, or intimidation or harassment while serving in the military.⁶⁴ Chapter 535 recognizes that women who suffer the effects of MST for years after leaving the military are disproportionately at risk of becoming homeless.⁶⁵

IV. ANALYSIS

This section examines the discrimination concerns of whether the bond money provided by Chapter 535 that contains a provision for women-only facilities violates the FHA, FEHA, CA Civil Rights Initiative, or equal protection clause under federal or state law.⁶⁶ Both the FHA and the California Fair Employment and Housing Act prohibit discrimination by housing providers on the basis of sex.⁶⁷

Overall, while it is arguable that the law is facially discriminatory, there is also an implicit understanding within the Legislature that elements of anti-discriminatory laws actually disincentivize organizations that are committed to helping veterans with housing.⁶⁸

A. *Is Chapter 535 Discriminatory Under the FHA?*

Under the federal Fair Housing Act (FHA), it is unlawful to “refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.”⁶⁹ The FHA was “designed to provide fair housing throughout the nation.”⁷⁰ The FHA prohibitions against discrimination apply to “dwellings provided in whole or in part with the aid of loans, advances, grants or contributions made by the Federal Government.”⁷¹ Advocates for women’s and veteran’s communities debate that

military and is seeking treatment for that abuse or housing as a result of being a victim of sexual abuse or domestic violence).

63. See SENATE FLOOR, SENATE RULES COMMITTEE of SB 866, at 2–3 (May 11, 2016) (explaining the unique needs of women veterans suffering from MST and the health and safety risks for female veterans living in facilities housing mainly men).

64. CAL. MIL. & VET. CODE § 987.005(2)(e)(1) (enacted by Chapter 535).

65. *Id.* at § 987.005(3)(c)(5) (recognizing victims of MST have unique needs that cannot be treated through the traditionally male-centric housing and services that are available).

66. See *infra* IV.B.

67. 42 U.S.C § 3601(a), CAL. GOV. CODE § 12955(a) (West 2016).

68. See E-mail from Brian Flemmer, *supra* note 12 (pointing to the strong support that the bill had when Senator Roth proposed it).

69. 42 U.S.C § 3604(a).

70. *Smith v. Woodhollow Apartments*, 463 F. Supp. 16, 18 1978 (W.D. Okla. 1978).

71. 24 U.S.C. § 3603(a)(1)(B).

the anti-discrimination law, the FHA, the California Fair Employment and Housing Act (FEHA),⁷² and the California Civil Rights Initiative (CCRI)⁷³ hinders the ability to meet the needs of women veterans with MST by providing separate housing.⁷⁴

The Fair Housing Act also prohibits discrimination based on handicap.⁷⁵ A “handicap” is defined as “a physical or mental impairment which substantially limits one or more of such person’s major life activities.”⁷⁶ Courts define the scope of “accommodation” under the Fair Housing Amendments Act (FHAA) by its interpretation under the Rehabilitation Act and Americans with Disabilities Act.⁷⁷

The Fair Housing Amendments Act provides that “it is unlawful to discriminate against disabled persons in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap.”⁷⁸ Furthermore, under the FHAA, discrimination includes “a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”⁷⁹

The reach of the “accommodation requirement” is difficult to discern from the language of the FHAA.⁸⁰ However, a House Committee Report on the FHAA provides further insight into accommodation providing: “This section would require that changes be made to such traditional rules or practices if necessary to permit such a person with handicaps, an equal opportunity to use and employ a dwelling.”⁸¹

The federal Veterans Health Administration⁸² (VHA) requires that veterans have access to residential or inpatient programs that offer specialized MST-

72. *Employees and Job Applicants are Protected From Bias*, DEPARTMENT OF CALIFORNIA FAIR EMPLOYMENT AND HOUSING, available at <http://www.dfeh.ca.gov/employment/> (last visited Jan. 12, 2016) (on file with *The University of the Pacific Law Review*).

73. See Eugene Volokh, *The California Civil Rights Initiative: An Interpretative Guide*, 44 UCLA L. REV. 1335, 1336 (1997) (discussing that the California Civil Rights Initiative is law under which government agencies “may not discriminate or grant preferential treatment based on race, sex, color, ethnicity, and national origin in public employment, education, and contracting” and further explaining that while the impact within the CCRI’s scope is dramatic, that scope is very limited.).

74. SENATE COMMITTEE ON VETERANS AFFAIRS, COMMITTEE ANALYSIS OF SB 866, at 4 (Apr. 12, 2016).

75. 42 U.S.C. § 3602(h)(1) (1988 ed.); *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (explaining that the ADA’s definition of disability is drawn almost verbatim from the definition of “handicap” contained in the Fair Housing Amendments Act of 1988).

76. 42 U.S.C. § 3602(h).

77. *Giebel v. M&B Assocs.*, 343 F.3d 1143, 1146 (9th Cir. 2003).

78. *Id.*

79. 42 U.S.C. § 3604(f)(3)(B).

80. *Id.* see also 42 U.S.C. §§ 3604(f)(5)(C), 3604(f)(9), 3607 (listing the exemptions to FHAA coverage and limitations on the duty to accommodate).

81. H.R. REP. NO. 100-711, at 25 (1988).

82. *Providing Health Care for Veterans*, U.S. DEPARTMENT OF VETERANS, available at <http://www.va.gov/health/> (on file with *The University of the Pacific Law Review*) (describing the Veterans

related mental health care.⁸³ There is a philosophical divide over whether same-gender or mixed-gender treatment is more beneficial.⁸⁴ On one hand, same-gender treatment provides women the psychological safety inherent in an all female environment.⁸⁵ On the other hand, mixed-gender treatment could better prepare female veterans for real-world settings by providing them a safe environment in which they can learn to be comfortable around men.⁸⁶ On balance, however, women with sexual trauma develop PTSD or other psychological disabilities, which are then exacerbated when men surround them.⁸⁷

Victims of MST have a higher risk of suffering from PTSD⁸⁸ and are more likely to develop PTSD than veterans exposed to combat.⁸⁹ Furthermore, victims of MST are nine times more likely to develop PTSD than those who have not been sexually assaulted.⁹⁰ Notably, the Americans with Disabilities Act (ADA) does not contain a list of medical conditions that constitute disabilities, but rather provides that disabilities must be determined on a case by case basis.⁹¹ Generally, a person is considered disabled under the ADA if he or she has a physical or mental impairment that substantially limits one or more major life activities.⁹² Modeled after the Civil Rights Act of 1964, the ADA aims to ensure that people with disabilities have the same opportunities as everyone else to participate in the mainstream of American life.⁹³ In 2008, the Equal Employment Opportunity

Health Administration as America's largest integrated health care system with over 1,7000 sites of care, serving 8.76 million Veterans each year).

83. *Military Sexual Trauma (MST) Programming*, DEPARTMENT OF VETERANS AFFAIRS 1, 2 (2014), available at https://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=2272 (on file with *The University of the Pacific Law Review*).

84. *Inpatient and Residential Programs for Female Veterans with Mental Health Conditions Related to Military Sexual Trauma*, DEPARTMENT OF VETERANS AFFAIRS, OFFICE OF INSPECTOR GENERAL 1, 6 (2012), available at <http://va.gov/oig/pubs/VAOIG-12-03399-54.pdf> [hereinafter *Inpatient and Residential Programs for Female Veterans*] (on file with *The University of the Pacific Law Review*).

85. *Id.* at 6.

86. *Id.*

87. *Audit of Homeless Providers Grant and Per Diem Program*, VA OFFICE OF THE INSPECTOR GENERAL 1, 3 (2012), available at <http://va.gov/oig/pubs/VAOIG-11-00334-115.pdf> (on file with *The University of the Pacific Law Review*).

88. See *Women Veterans Must Have Equal Access*, *supra* note 45 (explaining the relationship between MST and PTSD).

89. *Id.*

90. *Id.*

91. *FAQ About PTSD and the Americans with Disability Act*, SYRACUSE UNIVERSITY, available at <http://toolkit.vets.syr.edu/wp-content/uploads/2012/12/FAQ-PTSD-and-the-Americans-with-Disability-Act.pdf> (last visited Oct. 3, 2016) (on file with *The University of the Pacific Law Review*).

92. *Id.*

93. *ADA: Know your rights: Returning Service Members with Disabilities*, U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION, DISABILITY RIGHTS SECTION, available at http://www.ada.gov/servicemembers_adainfo.html (last visited Oct. 3, 2016) (on file with *The University of the Pacific Law Review*).

Commission explicitly stated that PTSD is covered under the ADA.⁹⁴ It is likely then that PTSD would qualify as a “handicap” under the FHA, since the FHA defines “handicap” as a “mental impairment which substantially limits one or more major life activities.”⁹⁵

Courts often relied on ADA cases in applying “reasonable accommodation” because “there is no significant difference in the analysis or rights and obligations created by the two acts.”⁹⁶ In *Alejandro v. Palm Beach State College*, the court found a service animal on campus to be a “reasonable accommodation” for a student suffering from PTSD, which impacted her ability to go to class and study.⁹⁷ Courts interpreted the FHA’s accommodation provisions with the goals of the FHAA in mind—namely, “to end the unnecessary exclusion of persons with handicaps from the American mainstream.”⁹⁸

In *U.S. Airways, Inc. v. Barnett*, the Supreme Court discussed the scope of the accommodation concept in ADA cases finding that “[p]references will sometimes prove necessary to achieve the [Americans with Disabilities] Act’s basic opportunity goal.”⁹⁹ The Act requires that preferences be in the form of those “reasonable accommodations” necessary disabled people to have the same occupational opportunities as people without disabilities.¹⁰⁰ The Ninth Circuit held that there must be a link or “nexus” between the disability and the requested accommodation.¹⁰¹

Safety concerns are among the most significant barriers that keep homeless women veterans from receiving services. They often report being fearful when placed with men in the shelter.¹⁰² Housing homeless women and men veterans in combined programs can present concerns because many of the women have experienced sexual trauma, which may be exacerbated in such an environment.¹⁰³

94. ADA: Definition of “Disability”; Reasonable Accommodation; Employee Misconduct, THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, available at https://www.eeoc.gov/eeoc/foia/letters/2008/ada_disability_employee_misconduct.html (last visited Oct. 3, 2016) (on file with *The University of the Pacific Law Review*).

95. See ADA: Know your rights: Returning Service Members with Disabilities, *supra* note 93 (explaining the ADA definition of a handicap).

96. *Vinson v. Thomas*, 288 F.3d 1145, 1152 n.7 (9th Cir. 2002).

97. *Alejandro v. Palm Beach State College*, 843 F. Supp. 2d 1263, 1270 (S.D. Fla. 2011).

98. *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 806 (9th Cir. 1994).

99. *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 397 (2002).

100. *Id.*

101. *United States v. California Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1381 (9th Cir. 1997) (stating “[w]ithout a causal link between defendants’ policy and plaintiff’s injury, there can be no obligation on the part of the defendants to make a reasonable accommodation.”).

102. See Foster, *supra* note 4 (explaining how mixed housing can be detrimental to women suffering trauma from a previous sexual assault).

103. See Foster, *supra* note 4 (detailing how women with MST are often in a worse position if forced to share housing with men).

According to the Inspector General for the Department of Veterans Affairs, facilities reviewed in 2012 did not adequately address security risks.¹⁰⁴ Of concern during the inspections was that female and males veterans were housed on the same floor and the locks on bathrooms were insufficient.¹⁰⁵

B. Is Chapter 535 Discriminatory Under the FEHA?

Providing separate housing¹⁰⁶ for women veterans arguably does not violate nondiscriminatory laws because such housing is necessary to give women veterans with MST-related disabilities an equal opportunity to use veteran housing.¹⁰⁷

MST research found that female veterans with a history of MST have different mental health symptoms that are often more severe than those of civilian females who have been sexually assaulted.¹⁰⁸ MST can lead to symptoms that affect a woman's ability to secure employment. These symptoms include severe depression, anger management issues, memory and attention span problems, as well as problems with maintaining relationships.¹⁰⁹ Further, MST is a predictor of psychological distress and is correlated with several mental health diagnosis, most frequently PTSD.¹¹⁰

The FHA and FEHA are liberally construed,¹¹¹ so it is likely that female veterans suffering from MST and other mental illnesses such as PTSD¹¹² would qualify as "disabled" and thus be protected by the FHA and FEHA.¹¹³ An

104. *Report raises concerns for homeless female vets*, CBSNEWS.COM (Mar. 12, 2012), available at <http://www.cbsnews.com/news/report-raises-concerns-for-homeless-female-vets/> (on file with *The University of the Pacific Law Review*).

105. *Id.*

106. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 866, 2 (Aug. 3, 2016) (explaining that according to the HCD, the VHHP program already allows requests for funding women-only housing for applicants housing veterans with specific needs, if the applicant can demonstrate that the restriction does not violate fair housing law that prohibits discrimination).

107. *See Women Veterans Must Have Equal Access*, *supra* note 45 (explaining the viewpoint that women are effectively currently being denied access to housing because they suffer from MST).

108. *See Inpatient and Residential Programs for Female Veterans*, *supra* note 84, at 3 (explaining the severity of MST among female veterans).

109. Alina Suria et al., *Sexual Assault in Women's Veterans: An Examination of PTSD Risk, Health Care Utilization, and Cost of Care*, 66 PSYCHOL. MED. 749, 756 (2004).

110. *See Inpatient and Residential Programs for Female Veterans*, *supra* note 84, at 3 (detailing how MST is a predictor for other mental health disorders).

111. CAL. GOV. CODE § 12993(a) (West 2016).

112. *See Inpatient and Residential Programs for Female Veterans*, *supra* note 84, at (explaining that PTSD is an anxiety disorder that is characterized by re-experiencing a traumatic event).

113. *Auburn Woods I Homeowners Ass'n v. Fair Emp. Housing Comm'n*, 121 Cal. App. 4th 1578, 1590 (2004).

important principle of fair housing laws is that the circumstances of the policies must accommodate the needs of residents with disabilities.¹¹⁴

Federal fair housing laws have prohibited sex discrimination in housing since 1974, but single gender homeless shelters have existed as long as the Fair Housing Act has been in place.¹¹⁵ Across the United States, homeless shelters typically separate their residents by gender, either by providing completely separate facilities for different genders or by operating a single-gender facility.¹¹⁶

C. Does Chapter 535 Violate the California Civil Rights Initiative?

Under the California Civil Rights Initiative (CCRI), “The state shall not discriminate against or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of employment, public education, or public contracting.”¹¹⁷ However, if a program—such as a battered women’s shelter is unrelated to public employment, education or contracting, the CCRI does not apply even if it is only open to women.¹¹⁸ Therefore, Chapter 535 is not in conflict with the CCRI.

D. Does Chapter 535 Violate Equal Protection?

Women veterans are faced with an extreme gender imbalance while deployed, and living in a male-dominated environment is strongly reminiscent of that experience.¹¹⁹ There are already housing facilities limited to homeless veterans,¹²⁰ but the residents of these facilities are mostly male.¹²¹ “[C]oncern for their own safety often leads female veterans, especially those who have previously suffered from MST, to be deterred from accessing the housing and supportive services they need and deserve.”¹²² Female veterans often feel intimidated and concerned about their safety while in predominately male

114. See *Women Veterans Must Have Equal*, *supra* note 45, at 4 (explaining the concept of reasonable accommodation).

115. Karen Wong, *Narrowing the Definition of “Dwelling” Under the Fair Housing Act*, 56 UCLA L. REV. 1868, 1871 (2009).

116. Dean Spade, *Documenting Gender*, 59 HASTINGS L.J. 731, 738 (2008).

117. Bob Dole, *A California Renewal of Civil Rights’ Goal: Vote: The State Can Lead the Way in Affirming Equal Opportunity, Not Equal Results*, LA TIMES (Nov. 19, 1995), available at http://articles.latimes.com/1995-11-19/opinion/op-4898_1_civil-rights-initiative (on file with *The University of the Pacific Law Review*).

118. Eugene Volokh, *The California Civil Rights Initiative: An Interpretative Guide*, 44 UCLA L. REV. 1335, 1385 (1997).

119. See *Women Veterans Must Have Equal Access*, *supra* note 45, at 4 (detailing the similarly male dominated environments of a military deployment and a homeless shelter).

120. *Id.* at 2.

121. *Id.* at 4.

122. See E-mail from Shrujal Joseph, *supra* note 9 (explaining what drove the need for a change in the legislation).

facilities.¹²³ Incidents of sexual assault and harassment are not uncommon at these veteran-only facilities.¹²⁴ In 2011, there were 284 cases of sexual assault in Department of Veteran Affairs medical facilities, ranging from inappropriate touching to rape.¹²⁵

Chapter 535 provides that different treatment be accorded to the applicants on the basis of sex, and so it may bring up a classification subject to intermediate scrutiny under the Equal Protection Clause.¹²⁶ Both the California Equal Protection Clause and the Fourteenth Amendment “require that those similarly situated not be treated differently unless the disparity is justified.”¹²⁷ While Chapter 535 does address women who suffer from MST, it does not address males suffering from MST.¹²⁸

Under Chapter 535, male veterans do not receive provisions such as segregated housing, so there exists “dissimilar treatment for men and women who are . . . similarly situated.”¹²⁹ The dissimilar treatment for male veterans under Chapter 535 may verge on the, “very kind of arbitrary legislative choice forbidden by the [Constitution]”¹³⁰ Therefore, in order for the sex based line to be drawn it must pass intermediate scrutiny, meaning that the government must show an exceedingly persuasive or important purpose in addition to real difference between the male and female group of veterans.¹³¹ Furthermore, the governmental discrimination of sex segregated housing must not only be persuasive, but also related to the governmental objective—preventing chronic homelessness in California.¹³² Because of the greater number of women suffering from MST, reportedly 22 percent of female and one percent of male veterans,

123. *Audit of the Veterans Health Administration’s Domiciliary Safety, Security and Privacy*, DEPARTMENT OF VETERANS AFFAIRS OFFICE OF INSPECTOR GENERAL i (2008), available at <http://www.va.gov/oig/52/reports/2009/VAOIG-08-01030-05.pdf> (on file with *The University of the Pacific Law Review*).

124. See *Women Veterans Must Have Equal Access*, *supra* note 45, at 2 (highlighting the issue of sexual assault in homeless shelters).

125. Greg Zoroya, *Report Reveals Sexual Assaults at Veteran Facilities*, USA TODAY, (June 8, 2011) available at <http://usatoday30.usatoday.com/news/military/2011-06-07-VA-facilities-sexual-assaults-n.htm> (on file with *The University of the Pacific Law Review*).

126. SENATE FLOOR, SENATE RULES COMMITTEE OF SB 866, 3 (May 11, 2016); see also U.S. CONST. art. XIV, § 1 (stating “[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”).

127. Neil Gotanda et al., *Legal Implications of Proposition 209—The California Civil Rights Initiative*, 24 W. ST. U. L. REV. 3, 81 (1996).

128. CAL. MIL. & VET. CODE § 987.005 (2)(e)(3) (enacted by Chapter 535).

129. *Reed v. Reed*, 404 U.S. 71, 77 (1971).

130. *Id.* at 76.

131. Kristapor Vartanian, *Equal Protection*, 10 Geo. J. Gender & L. 229, 237 (2009).

132. *Id.* at 238.

there is arguably a real difference between the female and male group of veterans which justifies the sex based line drawing for housing.¹³³

However, it is true that men also suffer from MST and men suffering from MST also risk increased levels of homelessness.¹³⁴ In early versions of Chapter 535, the issue of men suffering from MST and receiving services was addressed by including “male-only” facilities.¹³⁵ Further amendments made to Chapter 535’s language included changing the term “veterans” to “female veterans . . . now face additional hurdles that disproportionately affect female veterans over male veterans.”¹³⁶ Yet the argument against male-only housing is that assaults on men are predominately conducted by men, and therefore male-only housing would not benefit victims that are themselves male and therefore male only housing would not substantially be related to achievement of the government objectives of preventing homelessness.¹³⁷

It is also true that California considers gender equality issues of great importance, as it demonstrated by the landmark 2008 *In re Marriage* cases where the California Supreme Court held that laws discriminating on the basis of sexual orientation should be subject to strict judicial scrutiny.¹³⁸ Likewise, California was the first state to pass a transgender-student bill allowing the state’s 6.2 million elementary and high school children choose which restroom they use and to respect a transgender student’s identity to participate in all school programs and activities, including athletic teams.¹³⁹

Therefore, there may be potential opposition to Chapter 535 that argues that men also suffer from MST and men suffering from MST also risk increased levels of homelessness.¹⁴⁰ However, the argument against male-only housing is that assaults on men are predominately conducted by men, and therefore male-only housing would not benefit victims that are themselves male.¹⁴¹ Further, because men committed sexual assaults on men, the nexus is not as strong in an equal protection argument for men’s only housing.¹⁴²

133. Rachel Kimerling et al., *The Veterans Health Administration and Military Sexual Trauma*, 97 AM. J. PUB. HEALTH 2160, 2160 (2007).

134. Brigone E, Gundlapalli et al., *Differential Risk for Homelessness Among US Male and Female Veterans With a Positive Screen for Military Sexual Trauma*, 73 JAMA PSYCH. 582, 588 (2016).

135. MIL. & VET. CODE § 987.005(2)(e)(3) (enacted by Chapter 535).

136. *Id.*

137. E-mail from Brian Flemmer, *supra* note 12.

138. *In re Marriage Cases*, 43 Cal. 4th 757, 761 (2008).

139. *California Gov. Brown Signs Transgender-Student Bill*, FOX NEWS (Aug. 13, 2013), available at <http://www.foxnews.com/politics/2013/08/13/california-gov-brown-signs-transgender-student-bill.html> (on file with *The University of the Pacific Law Review*).

140. Brigone E, Gundlapalli et al., *Differential Risk for Homelessness Among US Male and Female Veterans With a Positive Screen for Military Sexual Trauma*, 73 JAMA PSYCH. 582, 588 (2016).

141. E-mail from Brian Flemmer, *supra* note 12.

142. *Id.*

There are stronger statistics to support female-only housing than male-only housing and therefore the sex-based line drawing created by sex segregated housing is likely constitutional because female-only housing is substantially related to the governmental purpose of preventing veteran homelessness because military members that suffer from PTSD generally are at a higher risk of becoming homeless and more women suffer from MST than men.¹⁴³ In conclusion, it is likely that Chapter 535 would pass the equal protection intermediate scrutiny test and is therefore constitutional under the Fourteenth Amendment.

E. Support for Providing Safe Housing to Female Veterans

Chapter 535 amends prior VHHP law by providing that a housing developer receiving VHHP bond money may provide women-only housing to female veterans.¹⁴⁴ Chapter 535 specifically indicates that women-only housing is exclusive to women and their dependents when the female veteran has suffered any form of sexual abuse while serving in the military and is seeking treatment.¹⁴⁵

Chapter 535 makes the option of separate housing available to women veterans suffering from MST in order to accommodate health and safety needs of women veterans and the “higher incidences of sexual trauma experienced by women veterans.”¹⁴⁶ Prior to this addition, the VHHP Bond Act of 2014 recognized that veterans have higher rates of PTSD, substance abuse, and unemployment, as well as recognizing that they are “disproportionately at risk for becoming homeless.”¹⁴⁷ Chapter 535 incentivizes housing providers to provide gender-specific safety accommodations for women veterans in order to receive bond funds.¹⁴⁸

V. CONCLUSION

Chapter 535 will accomplish its goal of refining the prioritization of Proposition 41 bond monies by specifying that a priority for the use of the funds be for segregated housing for women veterans suffering from MST.¹⁴⁹ While it is

143. Stephen Metraux et al., *Risk Factors for Becoming Homeless Among a Cohort of Veterans Who Served in the Era of the Iraq and Afghanistan Conflicts*, 103 AM. J. PUB. HEALTH 255, (2013).

144. CAL. MIL. & VET. CODE § 987.005(3)(c)(5) (enacted by Chapter 535).

145. See SENATE FLOOR, SENATE RULES COMMITTEE of SB 866, 2–3 (May 11, 2016).

146. See *Women Veterans Must Have Equal Access*, *supra* note 45 (emphasizing that women veterans have higher overall MST rates than their male counter-parts).

147. CAL. MIL. & VET. CODE § 987.005 (3)(c)(5) (enacted by Chapter 535).

148. See *Women Veterans Must Have Equal Access*, *supra* note 45 (detailing how Chapter 535 goes farther in terms of assisting veterans than the VHHP Bond Act of 2014).

149. See E-mail from Brian Flemmer, *supra* note 12 (reflecting on the purpose of Chapter 535).

true that the California Legislature has made its zero tolerance stance on gender discrimination clear with its “bathroom bill”¹⁵⁰ and two recent friend-of-the-court briefs supporting transgender rights, the sex segregated housing discrimination issue will likely be given very little attention as it does not completely exclude males from receiving supportive services in other housing.¹⁵¹ Therefore, given California’s propensity for supporting veterans and combatting homelessness and the alternative housing options available to male veterans the likelihood of opposition and potential lawsuits is low and Chapter 535 would be constitutional if challenged as violating equal protection under the Constitution.

The legislative findings and declarations made in Chapter 535 are purposefully in line with a brief by the California Women’s Law Center.¹⁵² The brief argues that separate facilities are not discriminatory and that PTSD should be recognized by the ADA as a disability requiring reasonable accommodation.¹⁵³ Due to the sex-segregated housing provisions within Chapter 535, there is certainly always the possibility for Chapter 535 to be contested as discriminatory under the FHA, FEHA, or equal protection principles.¹⁵⁴

Overall, Chapter 535 will successfully ensure that a significant portion of the homeless veteran population receives treatment and housing, and in turn the bill will reduce the number of homeless veterans in California.¹⁵⁵ To effectively accommodate women suffering from MST-related disabilities, funds to develop new facilities should be contingent upon the availability of appropriate health and safety accommodations, including the option of separate housing.¹⁵⁶

150. Joseph McCormick, *What is North Carolina’s Bathroom Bill? And Other Questions About the Anti-Transgender HB2*, PINKNEWS (May 22, 2016), pinknews.co.uk/2016/05/22 (on file with *The University of the Pacific Law Review*) (explaining that the bathroom law is a North Carolina state law which specifies that people must use the bathroom which corresponds with the gender on their birth certificate).

151. Debbie Sklar, *CA Joins Friend-of-the-Court Briefs Supporting 2 Transgender Cases*, MYNEWSLA.COM (July 28, 2016), <http://mynews.com/government/2016/07/28/ca-joins-friend-of-the-court-briefs-supporting-2-transgender-cases/> (on file with *The University of the Pacific Law Review*).

152. See E-mail from Brian Flemmer, *supra* note 12 (highlighting the significance of the brief by the Women’s Law Center).

153. *Id.*

154. See *supra* Part IV.A (discussing the arguments for sex segregated housing).

155. See *supra* Part IV.A (explaining the significance of an effective housing program that addresses MST in women veterans).

156. See *Women Veterans Must Have Equal Access*, *supra* note 45 (emphasizing the importance of separate housing in order to adequately support women suffering from MST).