Nos. 20-35813, 20-35815

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LINDSAY HECOX; JANE DOE, WITH HER NEXT FRIENDS JEAN DOE AND JOHN DOE,

Plaintiffs-Appellees,

v.

BRADLEY LITTLE, ET AL.,

Defendants-Appellants,

MADISON KENYON AND MARY MARSHALL,

Intervenors-Appellants

On Appeal from the United States District Court
for the District of Idaho
Case No. 1:20-cv-00184-DCN
District Judge David C. Nye

BRIEF OF AMICI CURIAE AMERICAN ACADEMY OF PEDIATRICS, AMERICAN MEDICAL ASSOCIATION, AMERICAN PSYCHIATRIC ASSOCIATION, AND 10 ADDITIONAL HEALTH CARE ORGANIZATIONS IN SUPPORT OF APPELLEES

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CORPORATE DISCLOSURE STATEMENT

All amici curiae are non-profit organizations. They do not have parent corporations and do not issue stock.

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INTEREST OF AMICI CURIAE[1]

Amici are 13 leading medical, mental health, and other health care organizations. Collectively, amici represent hundreds of thousands of physicians and mental-health professionals, including specialists in family medicine, mental health treatment, internal medicine, and endocrinology; and millions of nurses. All amici share a commitment to improving the physical and mental health of all Americans—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public-health impacts of laws and policies.

Amici submit this brief to inform the Court of the medical consensus regarding what it means to be transgender; the protocols for the treatment of gender dysphoria, which include living in accordance with one's gender identity in all aspects of life; and the predictable harms to the health and well-being of transgender girls and women who are excluded from participating in school sports consistent with their gender identity.

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[1] Amici curiae certify that (1) all parties have consented to the filing of this brief; (2) this brief was authored entirely by counsel for amici curiae and not by counsel for any party, in whole or part; (3) no party or counsel for any party contributed money to fund preparing or submitting this brief; and (4) apart from amici curiae and their counsel, no other person contributed money to fund preparing or submitting this brief.

The American Academy of Pediatrics ("AAP") represents 67,000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults. In its dedication to the health of all children, the AAP strives to improve health care access and eliminate disparities for children and teenagers who identify as lesbian, gay, bisexual, transgender, or questioning of their sexual or gender identity.

The American Medical Association ("AMA") is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state, including Idaho.

The AMA joins this brief on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical

societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

Amicus American Psychiatric Association, with more than 38,500 members, is the Nation's leading organization of physicians who specialize in psychiatry. The American Psychiatric Association has participated in numerous cases in the Supreme Court and the United States Courts of Appeals. The American Psychiatric Association opposes all public and private discrimination against transgender and gender-diverse individuals, including in education. *See* Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* (2018).

AGLP: The Association of LGBTQ Psychiatrists ("AGLP") is a community of psychiatrists that educates and advocates on Lesbian Gay Bisexual and Transgender mental health issues. AGLP's goals are to foster a fuller understanding of LGBT mental health issues; research and advocate for the best mental health care for the LGBT community; develop resources to promote LGBT mental health; create a welcoming, safe, nurturing, and accepting environment for members; and provide valuable and accessible services to our members. AGLP strives to be a community for the personal and professional growth of all LGBT Psychiatrists, and to be the recognized expert on LGBT mental health issues.

The American Medical Women's Association ("AMWA") is an organization of women physicians, medical students and other persons dedicated to serving as the unique voice for women's health and the advancement of women in medicine. AMWA's mission is to advance women in medicine, advocate for equity, and ensure excellence in health care. Our vision is a healthier world where women physicians achieve equity in the medical profession and realize their full potential.

The American Nurses Association ("ANA") represents the interests of the nation's 4.2 million registered nurses. With members in every state**,** ANA is comprised of state nurses associations and individual nurses. ANA is an advocate for social justice with particular attention to preserving the human rights of vulnerable groups, such as the poor, homeless, elderly, mentally ill, prisoners, refugees, women, children, and socially stigmatized groups.

The American Public Health Association ("APHA") champions the health of all people and all communities, strengthens the profession of public health, shares the latest research and information, promotes best practices and advocates for evidence-based public health policies. APHA is the only organization that combines a nearly 150-year perspective, a broad-based member community and the ability to influence federal policy to improve the public's health.

The Endocrine Society is the oldest and largest global professional membership organization representing the field of endocrinology. Our more than 18,000 members care for patients and are dedicated to advancing hormone research and excellence in the clinical practice of endocrinology, focusing on diabetes, obesity, osteoporosis, infertility, rare cancers and thyroid conditions.

GLMA: Health Professionals Advancing LGBTQ Equality ("GLMA") is the largest and oldest association of lesbian, gay, bisexual, transgender, and queer (LGBTQ) healthcare professionals, including physicians, physician assistants, nurses, psychologists, social workers, and other health disciplines. Founded in 1981, GLMA (formerly known as the Gay & Lesbian Medical Association) works to ensure health equity for LGBTQ and all sexual and gender minority ("SGM") individuals, and equality for LGBTQ/SGM health professionals in their work and learning environments. To achieve this mission, GLMA utilizes the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research.

Mental Health America ("MHA") is the nation's leading community-based nonprofit dedicated to addressing the needs of those living with mental illness and to promoting the overall mental health of all. MHA is committed to promoting mental health as a critical part of overall wellness, including prevention services for

all, early identification and intervention for those at risk, integrated care, services, and support for those who need it, with recovery as the goal.

The National Council for Behavioral Health is the unifying voice of America's health care organizations that deliver mental health and addiction treatment and services. Together with our 3,000 member organizations serving over 10 million adults, children and families living with mental illnesses and addiction, the National Council is committed to all Americans having access to comprehensive, high-quality care that affords every opportunity for recovery.

The Pediatric Endocrine Society ("PES") is the leading professional society for its specialty in the United States. The PES, with more than 1,300 members, is dedicated to promoting the endocrine health of all children and adolescents, including those that are transgender. PES is a co-sponsor of the Endocrine Society's clinical practice guidelines for transgender individuals, which promote a gender-affirmative model of care.

The World Professional Association for Transgender Health ("WPATH") is a non-profit interdisciplinary medical professional and educational organization devoted to transgender health, with over 2,600 members engaged in clinical and academic research to develop evidence-based medicine and promote high quality

care for transsexual, transgender, and gender-nonconforming individuals internationally.

SUMMARY OF ARGUMENT

Transgender individuals have a gender identity that is incongruent with the sex they were assigned at birth. The health care community's understanding of what it means to be transgender has advanced greatly over the past century. It is now understood that being transgender implies no impairment in a person's judgment, stability, or general social or vocational capabilities.

According to a recent report by the Centers for Disease Control and Prevention ("CDC"), approximately 1.8 percent of high school students—roughly 300,000 high school students nationwide—identify as transgender. If the CDC's 1.8 percent figure is applied to all college and university students across the United States, roughly 350,000 identify as transgender. Thus, a total of approximately 650,000 secondary and post-secondary school students nationwide identify as transgender.

Many transgender individuals, like Plaintiff-Appellee Lindsay Hecox, experience a condition called gender dysphoria, which is characterized by clinically significant distress resulting from the incongruence between one's gender identity and the sex assigned to the individual at birth. The international consensus among

health care professionals regarding treatment for gender dysphoria is to assist the patient to live in accordance with the patient's gender identity, thus alleviating the distress or impairment. Treatment may include any or all of the following: counseling, social transition (through, *e.g.*, use of a new name and pronouns, new clothes and grooming in order to allow the person to conform to social expectations and norms associated with his or her identity), hormone therapy and/or gender-confirming surgeries. The treatment for gender dysphoria is highly effective in reducing or eliminating the incongruence and associated distress between a person's gender identity and assigned sex at birth. It is also widely available.

Barring transgender girls and women from participating in school sports consistent with their gender identity frustrates the treatment of gender dysphoria by preventing transgender girls and women from living openly in accordance with their true gender. Experiencing discrimination in a fundamental aspect of childhood, adolescence, and young adulthood—participation in school sports—makes it very difficult, if not impossible, for transgender female students to live in full accordance with their gender identity. The fear of facing such discrimination alone may prompt transgender girl and women students to hide their gender identity, directly thwarting accepted treatment protocols. Lack of treatment, in turn, increases the rate of negative mental-health outcomes, substance abuse, and suicide. Beyond

exacerbating gender dysphoria and interfering with treatment, discrimination reinforces the stigma associated with being transgender. Such stigma, in turn, leads to psychological distress and attendant mental-health consequences.

ARGUMENT

I. What It Means To Be Transgender And To Experience Gender Dysphoria

Transgender individuals have a "gender identity"—a "deeply felt, inherent sense" of their gender—that is not aligned with the sex assigned to them at birth.[2] Transgender people differ from cisgender (*i.e.*, non-transgender) individuals, whose gender identity aligns with the sex assigned at birth.[3] A transgender man is someone who is assigned the sex of female at birth, but is male and transitions to live in accordance with that male identity. A transgender woman is an individual who is assigned the sex of male at birth but is female and transitions to live in accordance

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[2] Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 834 (2015) **[hereinafter "Am. Psych. Ass'n Guidelines"]**; *see also* David A. Levine & Comm. on Adolescence, Am. Acad. of Pediatrics Technical Report, *Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 Pediatrics e297, 298 (2013), https://pediatrics.aappublications.org/content/132/1/e297 **[hereinafter "AAP Technical Report"]**. Although most people have a gender identity that is male or female, some individuals have a gender identity that is "a blend of male or female[,] or an alternative gender." Am. Psych. Ass'n Guidelines, at 834.

[3] Am. Psych. Ass'n Guidelines, *supra*, at 861.

with that female identity. A transgender man is a man. A transgender woman is a woman.

While a recent report by the Centers for Disease Control and Prevention (CDC) estimates that 1.8 percent of high school students identify as transgender,[4] such "population estimates likely underreport the true number of [transgender] people, given difficulties in collecting comprehensive demographic information about this group."[5] The CDC's estimate equates to approximately 300,000 high school students nationwide.[6] If the 1.8 percent estimate is applied to all college and university students in the United States, approximately 350,000 identify as transgender.[7] Thus, a total of approximately 650,000 secondary and post-secondary students nationwide identify as transgender.

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[4] Michelle Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017*, 68 Morbidity and Mortality Weekly Report 67–71 (2019), https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm **[hereinafter, "CDC Report"]**.

[5] Am. Psych. Ass'n Guidelines, *supra*, at 832.

[6] Inst. of Educ. Scis., Nat'l Ctr. for Educ. Stats., *Annual Reports, Digest of Education Statistics, Table 105.20, Enrollment in elementary, secondary, and degree-granting postsecondary institutions, by level and control of institution, enrollment level, and attendance status and sex of student: Selected years, fall 1990 through fall 2029*, https://nces.ed.gov/programs/digest/d19/tables/dt19_105.20.asp.

[7] *Id.*

Gender identity is distinct from and does not predict sexual orientation; transgender people, like cisgender people, may identify as heterosexual, gay, lesbian, bisexual, or asexual.[8]

The medical profession's understanding of gender has advanced considerably over the past fifty years. Throughout much of the twentieth century, individuals who were not gender conforming were often viewed as "perverse or deviant."[9] Practices during that period tried to "correct" this perceived deviance by attempting to force gender non-conforming people, including transgender people, to live in accordance with the sex assigned to them at birth. These efforts failed and caused significant harm to the individuals subjected to them.[10]

Much as our professions now recognize that homosexuality is a normal form of human sexuality—and that stigmatizing gay people causes significant harm—we

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[8] Am. Psych. Ass'n Guidelines, *supra*, at 835–36; Sandy E. James et al., Nat'l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 246 (2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf.

[9] Am. Psych. Ass'n, *Report of the APA Task Force on Gender Identity and Gender Variance* 26–27 (2008), https://www.apa.org/pubs/info/reports/gender-identity **[hereinafter "Am. Psych. Ass'n Task Force Report"]**.

[10] *Id.*; Substance Abuse and Mental Health Servs. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 13, 25 (2015), https://store.samhsa.gov/product/Ending-Conversion-Therapy-Supporting-and-Affirming-LGBTQ-Youth/SMA15-4928.

now recognize that being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities"—and that stigmatizing transgender people also causes significant harm.[11]

A. Gender Identity

"[G]ender identity" refers to a person's internal sense of being male, female, or another gender.[12] Every person has a gender identity,[13] which cannot be altered

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[11] Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* (2012), https://www.psychiatry.org/File%20Library/About-APA/Organization-DocumentsPolicies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf.

[12] Am. Psych. Ass'n, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* 1 (2014), http://www.apa.org/topics/lgbt/transgender.pdf.

[13] *See* Caitlin Ryan, Family Acceptance Project, *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual, & Transgender Children*, 17 (2009), http://familyproject.sfsu.edu/sites/default/files/FAP_English%20Booklet_pst.pdf.

voluntarily[14] or necessarily ascertained immediately after birth.[15] Many children develop stability in their gender identity between ages three and four.[16]

"[G]ender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, or body characteristics."[17] There are many individuals who depart from stereotypical male and female appearances and roles, but who are not transgender.[18] Indeed, most people who express their gender in a non-stereotypical or non-conforming manner are or become comfortable with the sex they were assigned at birth.[19] In contrast, a transgender

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[14] Colt Meier & Julie Harris, Am. Psych. Ass'n, *Fact Sheet: Gender Diversity and Transgender Identity in Children* 1, http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf; *see also* Am. Acad. of Pediatrics, *Gender Identity Development in Children* (2015), https://healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx.

[15] Am. Psych. Ass'n Guidelines, *supra*, at 862.

[16] *Id*. at 841. "Although gender identity is usually established in childhood, individuals may become aware that their gender identity is not in full alignment with sex assigned at birth in childhood, adolescence, or adulthood." *Id*. at 836.

[17] Am. Psych. Ass'n, *Answers to Your Questions About Transgender People*, *supra*, at 1.

[18] Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, 33 J. Sch. Nursing 95 (2017).

[19] World Pro. Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 5 (7th Version, 2011), https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%20of%20Care%20V7%20-%202011%20WPATH.pdf?_t=16051863 **[hereinafter "WPATH Standards of Care"]**.

boy or transgender girl "consistently, persistently, and insistently" identifies as a gender different than the sex he or she was assigned at birth.[20]

Psychologists, psychiatrists, and neuroscientists are not certain why some people are transgender. Some research suggests there may be biological influences,[21] including, for example, exposure of transgender men identified at birth as females to elevated levels of testosterone in the womb.[22] Brain scans and neuroanatomical studies of transgender individuals may also support these biological explanations.[23]

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[20] *See* Meier & Harris, *Fact Sheet: Gender Diversity and Transgender Identity in Children*, *supra*, at 1; *see also* Cicero & Wesp, *Supporting the Health and Well-Being of Transgender Students*, *supra*, at 6.

[21] *See* Am. Acad. of Pediatrics, *Gender Non-Conforming & Transgender Children* (2015), https://healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Non-Conforming-Transgender-Children.aspx; Peggy T. Cohen-Kettenis et al., *The Treatment of Adolescent Transsexuals: Changing Insights*, 5 J. Sexual Med. 1892, 1895 (2008).

[22] Arianne B. Dessens et al., *Gender Dysphoria and Gender Change in Chromosomal Females with Congenital Adrenal Hyperplasia*, 34 Arch. Sexual Behav. 389, 395 (2005).

[23] *See, e.g.*, Francine Russo, *Is There Something Unique About the Transgender Brain?*, Sci. Am. (2016), https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/.

B. Gender Dysphoria

As noted above, being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[24] However, many transgender individuals are diagnosed with gender dysphoria, a condition that is characterized by clinically significant distress and anxiety resulting from the incongruence between an individual's gender identity and birth-assigned sex.[25] As discussed in detail below, the recognized treatment for someone with gender dysphoria is medical support that allows the individual to transition from their birth assigned sex to the sex associated with their gender identity.[26] These treatments are "effective in alleviating gender dysphoria and are medically necessary for many people."[27]

1. The Diagnostic Criteria And Seriousness Of Gender Dysphoria

The Diagnostic and Statistical Manual of Mental Disorders codifies the diagnostic criteria for gender dysphoria in adults as follows: "A marked

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[24] Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Variant Individuals, supra*.
[25] Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 451–53 (5th ed. 2013) **[hereinafter "DSM-5"]**.
[26] WPATH Standards of Care, *supra*, at 9–10.
[27] *Id.* at 5.

incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two" out of six criteria, and "clinically significant distress or impairment in social, occupational, or other important areas of functioning."[28] The six criteria include (1) "[a] marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics"; (2) "[a] strong desire to be rid of one's primary and/or secondary sex characteristics"; (3) "[a] strong desire for the primary and/or secondary sex characteristics of the other gender"; (4) "[a] strong desire to be of the other gender (or some alternative gender . . .)"; (5) "[a] strong desire to be treated" as a gender different from one's assigned gender; and (6) "[a] strong conviction that one has the typical feelings and reactions" of a different gender.[29]

Transgender children often experience intensified gender dysphoria and worsening mental health as the hormonal and anatomical changes associated with puberty cause the body to develop in ways that diverge from the child's gender identity.[30] For instance, a deepening voice for male-assigned individuals or the growth of breasts and the beginning of a menstrual cycle for female-assigned

[28] DSM-5, *supra*, at 452–53.
[29] *Id.* at 452.
[30] Am. Psych. Ass'n Task Force Report, *supra*, at 45; Substance Abuse and Mental Health Servs. Admin., *Ending Conversion Therapy*, *supra*, at 3.

individuals can cause severe distress. For some, puberty manifests as "a sudden trauma that forces to consciousness the horror that they are living in a body that is totally at odds with the gender they know themselves to be but which has been kept securely underground."[31]

If untreated, gender dysphoria can cause debilitating distress, depression, impairment of function, self-mutilation to alter one's genitals or secondary sex characteristics, other self-injurious behaviors, and suicide.[32] Like other minority groups, transgender individuals also are frequently subjected to prejudice and discrimination in multiple areas of their lives (*e.g.*, school, employment, housing, healthcare), which exacerbates these negative health outcomes and makes access to appropriate medical care all the more important.[33]

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[31] Diane Ehrensaft, *From Gender Identity Disorder to Gender Identity Creativity: True Gender Self Child Therapy*, 59 J. Homosexuality 337, 345 (2012).

[32] *See, e.g.*, DSM-5, *supra*, at 455, 458; Stephanie A. Brill & Rachel Pepper, *The Transgender Child: A Handbook for Families and Professionals* 202 (2008) (discussing risk of self-mutilation).

[33] Michael L. Hendricks & Rylan J. Testa, *A Conceptual Framework for Clinical Work with Transgender and Gender Nonconforming Clients: An Adaptation of the Minority Stress Model*, 43 Pro. Psych.: Research & Practice 460 (2012); Jessica Xavier et al, Va. Dep't of Health, *The Health, Health-Related Needs, and Lifecourse Experiences of Transgender Virginians* (2007), http://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/THISFINALREPORTVol1.pdf.

2. The Accepted Treatment Protocols For Gender Dysphoria

Until the middle of the twentieth century, most mental health practitioners treated transgender people by attempting to make the patient's gender identity consistent with the patient's sex assigned at birth.[34] There is no evidence that these methods alleviate gender dysphoria or that they can prevent someone from being transgender.[35] To the contrary, they can "often result in substantial psychological pain by reinforcing damaging internalized attitudes,"[36] and can damage family relationships and individual functioning by increasing feelings of shame.[37]

In the last few decades, transgender people suffering from gender dysphoria have gained widespread access to gender-affirming medical and mental health

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[34] Am. Psych. Ass'n Guidelines, *supra*, at 835; Jack Drescher, *Queer Diagnoses: Parallels and Contrasts in the History of Homosexuality, Gender Variance, and the Diagnostic and Statistical Manual*, 39 Arch. Sexual Behav. 427, 436–40 (2010).

[35] Substance Abuse and Mental Health Servs. Admin., *Ending Conversion Therapy*, *supra*, at 26; Jack Drescher, *Controversies in Gender Diagnoses*, 1 LGBT Health 9, 12 (2013).

[36] Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), http://www.apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender.

[37] Darryl B. Hill et al., *An Affirmative Intervention for Families with Gender Variant Children: Parental Ratings of Child Mental Health and Gender*, 36 J. Sex & Marital Therapy 6, 10 (2010); Robert Wallace & Hershel Russell, *Attachment and Shame in Gender-Nonconforming Children and Their Families: Toward a Theoretical Framework for Evaluating Clinical Interventions*, 14 Int'l J. Transgenderism 113, 119–20 (2013).

support and treatment.[38] For over 30 years, the generally accepted treatment protocols for gender dysphoria[39] have aimed at alleviating the distress associated with the incongruence between gender identity and birth-assigned sex.[40] These protocols are laid out in the *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (Version 7)* developed by amicus curiae the World Professional Association for Transgender Health ("WPATH").[41] The major medical and mental health groups in the United States expressly recognize the WPATH Standards of Care as representing the consensus of the medical and mental health community regarding the appropriate treatment for gender dysphoria.[42]

The recommended treatment for gender dysphoria includes assessment, counseling, and, as appropriate, social transition, hormone therapy, and surgical

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[38] Am. Psych. Ass'n Guidelines, *supra*, at 835; WPATH Standards of Care, *supra*, at 8–9.

[39] Earlier versions of the DSM used different terminology, *e.g.*, gender identity disorder, to refer to this condition. Am. Psych. Ass'n Guidelines, *supra*, at 861.

[40] Am. Med. Ass'n, Comm. on Human Sexuality, *Human Sexuality* 38 (1972).

[41] WPATH Standards of Care, *supra* note 19.

[42] Am. Med. Ass'n, Policy H-185.950, *Removing Financial Barriers to Care for Transgender Patients* (2008), https://policysearch.ama-assn.org/policyfinder/detail/H-185.950?uri=%2FAMADoc%2FHOD.xml-0-1128.xml; Am. Psych. Ass'n Task Force Report, *supra*, at 32; AAP Technical Report, *supra*, at 307-08.

interventions to bring the body into alignment with one's gender identity.[43] However, each patient requires an individualized treatment plan that accounts for the patient's specific needs.[44]

Social transition—*i.e.*, living one's life fully in accordance with one's gender identity—is often a critically important part of treatment. This typically includes publicly identifying oneself as that gender through all of the ways that people signal their gender to others such as through their name, pronoun usage, dress, manner and

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[43] Am. Psychiatric Ass'n Task Force Report, *supra*, at 32–39; Am. Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria, *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists*, 175 Am. J. Psychiatry 1046 (2018); AAP Technical Report, *supra*, at 307–09. Some clinicians still offer versions of "reparative" or "conversion" therapy based on the idea that being transgender is a mental disorder. However, all leading medical professional organizations that have considered the issue have explicitly rejected such treatments. *See* Am. Med. Ass'n, Policy Number H-160.991, *Health Care Needs of Lesbian, Gay, Bisexual, and Transgender Populations* (2018), https://policysearch.ama-assn.org/policyfinder/detail/health%20care%20needs?uri=%2FAMADoc%2FHOD.xml-0-805.xml; Am. Sch. Counselor Ass'n, *The School Counselor and LGBTQ Youth* (2016), https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS_LGBTQ.pdf; Hilary Daniel et al., *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper from the American College of Physicians*, 163 Annals Internal Med. 135, 136 (2015); AAP Technical Report, *supra*, at 301; Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra*.

[44] Am. Psych. Ass'n Task Force Rep., *supra*, at 32.

appearance, and social interactions.[45] In the realm of school sports, in order for transgender girls and women to live their lives fully in accordance with their gender identity, they must be able to publicly identify with and compete on girls' and women's teams.

For some adults and adolescents, hormone treatment to feminize or masculinize the body may be medically necessary to treat their gender dysphoria.[46] Amicus curiae the Endocrine Society, the oldest and largest global professional membership organization representing the field of endocrinology, considers these treatments to be the standard of care for gender dysphoria.[47] A transgender woman undergoing hormone therapy, for example, will have hormone levels within the same

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[45] AAP Technical Report, *supra*, at 308; Am. Psych. Ass'n Guidelines, *supra*, at 840.

[46] Am. Med. Ass'n, Policy H-185.950, *Removing Financial Barriers to Care for Transgender Patients*, *supra*; Am. Psych. Ass'n Guidelines, *supra*, at 861, 862; Madeline B. Deutsch, Center of Excellence for Transgender Health, University of California, San Francisco, *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People* 23 (2016) https://transcare.ucsf.edu/guidelines; WPATH Standards of Care, *supra*, at 33, 54.

[47] Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clinical Endocrinology & Metabolism 3869, 3869–70 (2017) https://academic.oup.com/jcem/article/102/11/3869/4157558 **[hereinafter "Endocrine Treatment"]**; *see also* Alessandra D. Fisher et al., *Cross-Sex Hormone Treatment and Psychobiological Changes in Transsexual Persons: Two-Year Follow-Up Data*, 101 J. Clinical Endocrinology & Metabolism 4260 (2016).

range as other women; and just as they do in any other woman, these hormones will affect most of her major body systems.[48] Hormone therapy physically changes the patient's genitals and secondary sex characteristics such as breast growth, female-associated fat distribution, softening of the skin, and decreased muscle mass in women, and increased muscle mass, increased body and facial hair, male-pattern baldness (for some), and a deepening of the voice in men.[49] Hormones have been clinically proven as an effective treatment for gender dysphoria with a low rate of complications.[50]

For children experiencing the onset of puberty, treatment may include medication to prevent further progression of puberty ("puberty blockers").[51] This fully reversible treatment allows children with gender dysphoria to delay the development of secondary sex characteristics that do not match their gender identity,

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[48] *Endocrine Treatment* at 3885–87; *see also* Brill & Pepper, *The Transgender Child*, *supra*, at 217.

[49] *Endocrine Treatment* at 3886–89.

[50] Jack Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 PEDIATRICS (2020); Henk Asscheman et al., *A Long-Term Follow-Up Study of Mortality in Transsexuals Receiving Treatment with Cross-Sex Hormones*, 164 Eur. J. Endocrinology 635 (2011), https://eje.bioscientifica.com/view/journals/eje/164/4/635.xml; Paul Van Kesteren et al., *Mortality and Morbidity in Transsexual Subjects Treated with Cross-Sex Hormones*, 47 Clinical Endocrinology 337 (1997).

[51] *Endocrine Treatment* at 3880–83.

giving them additional time to decide whether hormone treatment to feminize or masculinize the body is appropriate.[52]

Surgical interventions may also be an appropriate and medically necessary treatment for some patients.[53] These procedures could include chest reconstruction surgery for transgender men, breast augmentation for transgender women, or genital surgeries, including removal of the testicles, the primary source of testosterone production, in women who are transgender.[54] Decades of clinical evidence show these surgical procedures are effective in reducing gender dysphoria and improving mental health.[55] Empirical studies reflect the importance of the interplay among treatments, finding hormone therapy in conjunction with psychotherapy and, for

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[52] *Id.* at 3880; Am. Psych. Ass'n Guidelines, *supra*, at 842; WPATH Standards of Care, *supra*, at 18–20.

[53] WPATH Standards of Care, *supra*, at 54–55.

[54] *Endocrine Treatment* at 3893–95; *see also* WPATH Standards of Care, *supra*, at 57–58.

[55] Annelou L.C. de Vries, *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 Pediatrics 696 (2014); William Byne et al., *Report of the American Psychiatric Association Task Force on Treatment of Gender Identity Disorder*, 41 Arch. Sexual Behav. 759, 778–79 (2012); Mohammad Hassan Murad et al., *Hormonal Therapy and Sex Reassignment: A Systematic Review and Meta-Analysis of Quality of Life and Psychosocial Outcomes*, 72 Clinical Endocrinology 214 (2010); Luk Gijs & Anne Brewaeys, *Surgical Treatment of Gender Dysphoria in Adults and Adolescents: Recent Developments, Effectiveness, and Challenges*, 18 Ann. Rev. Sex Res. 178 (2007); Jan Eldh et al., *Long-Term Follow Up After Sex Reassignment Surgery*, 31 Scand. J. Plastic & Reconstructive Surgery & Hand Surgery 39 (1997).

some, surgery, to be necessary elements of treating severe levels of gender dysphoria.[56]

Ultimately—regardless of the particular treatments required for a specific individual and when such treatment begins—the goal is for individuals with gender dysphoria to experience "identity integration," where "being transgender is no longer the most important signifier of one's identity" and the individual can refocus on his or her relationships, school, job, and other life activities.[57]

Some who oppose the medical protocols for gender dysphoria—including amici Drs. Quentin Van Meter[58], Miriam Grossman, Andre Van Mol, and Michael Laidlaw—"question the proposition that gender dysphoric youth suffer dire

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[56] *See* Gianna E. Israel & Donald E. Tarver II, *Transgender Care: Recommended Guidelines, Practical Information & Personal Accounts* 56–73 (1997).

[57] Walter Bockting & Eli Coleman, *Developmental Stages of the Transgender Coming-Out Process: Toward an Integrated Identity, in Principles of Transgender Medicine and Surgery* 137, 153 (2d ed. 2016).

[58] Dr. Van Meter is the current president of the American College of Pediatricians. The American College of Pediatricians "does not acknowledge the scientific and medical evidence regarding sexual orientation, sexual identity, sexual health, or effective health education." American Academy of Pediatrics, *Just the Facts: about Sexual Orientation and Youth* (2010), https://web.archive.org/web/20100418214159/http://aap.org/featured/sexualorientation.htm (alerting school administrators to a campaign by the College, "which is in no way affiliated with the American Academy of Pediatrics," and encouraging school officials, parents, and youth to "utilize the AAP developed and endorsed resources on this issue for reliable, sound, scientific, medical advice").

consequences—even dying by their own hands—unless their puberty is blocked at the first intimation of onset and they are set on a course of gender affirmation."[59] In place of generally accepted treatment protocols, these amici advocate "non-affirming psychotherapy," including "gender identity conversion therapy."[60] As amicus curiae the American Medical Association has made clear, "[a]ll leading professional medical and mental health associations reject 'conversion therapy' as a legitimate medical treatment."[61] Although amici Van Meter et al. attempt to dispute it, conversion therapy can have extremely harmful outcomes for transgender individuals, including substantially higher rates of suicide, depression, anxiety, lower self-esteem, and social isolation.[62]

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[59] Br. of Amici Curiae Medical Professionals Supporting Intervenors-Appellants and Urging Reversal, at 14.

[60] *Id.* at 17–20.

[61] Am. Med. Ass'n et al., *Issue brief: LGBTQ change efforts (so-called "conversion therapy")* (2019), https://www.ama-assn.org/system/files/2019-12/conversion-therapy-issue-brief.pdf.

[62] *Id.* Amici state that they have never practiced and disavow "coercive, discredited" conversion therapy. Br. of Amici Curiae Medical Professionals Supporting Intervenors-Appellants and Urging Reversal, at 20. But they also make clear that they do support and advocate voluntary "gender identity conversion efforts ('GICE')." *Id.* at 18. The AMA and other leading professional medical and mental health associations also oppose such conversion efforts, because, among other things, "change efforts are often prescribed without full descriptions of risks and disclosure of lack of efficacy or evidence." Am. Med. Ass'n et al., *Issue brief: LGBTQ change efforts (so-called "conversion therapy")*, *supra*, at 3.

II. Excluding Transgender Girls And Women From Organized Sports Deprives Them Of Numerous Potential Benefits And Endangers Their Health, Safety, and Well-Being.

The Idaho statute at issue in this case bans all transgender female students of all ages from participating in school sports consistent with their gender identity.[63] Under the statute, transgender female students can either (1) not participate in school sports at all or (2) participate in those sports as cisgender males.[64] If allowed to go into effect, this ban will have severe adverse consequences for the health and well-being of transgender female students. If these students forgo school sports, they will be deprived of the myriad benefits—including physical and mental-health benefits—that such sports can provide. And whether transgender female students forgo school sports or are forced to participate in them as cisgender males, the Idaho statute will frustrate the treatment of gender dysphoria and exacerbate the severe health consequences of living with the stigma of being transgender.

A. Preventing Transgender Female Students From Participating In Organized Sports Denies Them Many Potential Benefits To Their Health And Well-Being.

Participating in organized sports can greatly benefit the health and well-being of all students, including transgender female students. A 2019 Clinical Report from

[63] Idaho Code § 33-6203 (2020).
[64] *Id.*

amicus curiae American Academy of Pediatrics concludes that "organized sports participation can be an important part of overall childhood and adolescent physical, emotional, social, and psychological health."[65] More specifically, participating in organized sports can promote (1) the acquisition of critical physical, academic, and life skills, (2) psychosocial development and formation of social identity, (3) improvements in mental health, and (4) higher levels of physical fitness and weight management.[66] Excluding transgender female students from participating in organized sports deprives them of these myriad potential benefits, which may result in adverse outcomes for their health and well-being.

Skill acquisition: Participating in organized sports can promote "[f]undamental motor skills," such as "running, leaping, throwing, catching, and kicking," which "are essential for everyday functioning and are important building blocks for higher-level sports skills."[67] In addition, participating in organized sports can increase academic achievement, high school graduation rates, and the likelihood

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[65] Kelsey Logan et al., *Organized Sports for Children, Preadolescents, and Adolescents*, 143 PEDIATRICS (2019), https://pediatrics.aappublications.org/content/pediatrics/143/6/e20190997.full.pdf.
[66] *Id.* at 4–8.
[67] *Id.* at 4.

of going to college.[68] And with regard to life skills—the "skills that are required to deal with the demands and challenges of everyday life"—involvement in organized sports can help to instill self-awareness, emotional control, discipline, personal responsibility, taking initiative, goal setting, applying effort, respect, teamwork, and leadership.[69]

Social: Organized sports can also provide numerous social benefits, including the development of a positive social self-concept and the opportunity to interact with peers and learn social skills such as communication, conflict resolution, and empathy.[70] Participation in organized sports may also promote "citizenship, social success, positive peer relationships, and leadership skills."[71]

Psychology: Involvement in organized sports can positively affect mental health in children and adolescents, who develop emotional control, self-esteem, confidence and social integration, and are therefore less likely to experience

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[68] These enhanced academic skills stem in part from the fact that athletes engage in planning, self-monitoring, evaluation, reflection, and effort, and are goal oriented and problem focused. These many attributes "carry over into the educational realm." *Id.* at 5.

[69] *Id.*

[70] *Id.* at 5–6.

[71] *Id.* at 6.

emotional distress, depression, and suicidal behavior. These benefits may last well into adulthood.[72]

Physical fitness: Organized sports participation can also promote physical fitness in children and adolescents, including cardiovascular health, endurance, speed, strength, coordination, and a reduction in the likelihood of being overweight. Additionally, engaging in organized sports during adolescence may result in a high level of physical activity later in life.[73]

In light of all these potential benefits, those who seek to participate in organized sports but are prevented from doing so on the basis of, for example, gender identity, may experience adverse outcomes. They may be hindered in their acquisition of physical, academic, and life skills, and in their social development. They may also experience lower levels of mental and physical health.

B. The Exclusion Of Transgender Female Students From School Sports Consistent With Their Gender Identity Exacerbates Gender Dysphoria And Stigma.

For transgender individuals, being treated differently from other men and women can cause tremendous pain and harm.[74] More specifically, exclusionary laws

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[72] *Id.* at 6–7.
[73] *Id.* at 7.
[74] *See, e.g.*, Sam Winter et al., *Transgender People: Health at the Margins of Society*, 388 LANCET 390, 394 (2016).

that prevent transgender girls and women from participating in school sports consistent with their gender identity—an important facet of their lives—disrupt medically appropriate treatment protocols.

Exclusionary laws threaten to exacerbate the risk of "anxiety and depression, low self-esteem, engaging in self-injurious behaviors, suicide, substance use, homelessness, and eating disorders among other adverse outcomes" that many transgender individuals face.[75] Those risks are already all too serious. A recent CDC report found that transgender high school students were more likely than cisgender high school students to report violence victimization, substance use, and suicide risk, with 35 percent of transgender high school students reporting attempted suicide in the past year compared to 2 percent of cisgender high school students.[76]

In addition, exclusionary laws perpetuate the perceived stigma of being transgender by forcing transgender individuals to disclose their transgender status, by marking them as "others," and by conveying the state's judgment that they are different and deserve inferior treatment. Research increasingly shows that stigma

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[75] American Psychological Association & National Association of School Psychologists, *Resolution on gender and sexual orientation diversity in children and adolescents in schools* 4 (2015), https://www.apa.org/about/policy/orientation-diversity **[hereinafter "APA/NASP Resolution"]**.

[76] CDC Report, *supra*.

and discrimination can have deleterious health consequences,[77] including striking effects on the daily functioning and emotional and physical health of transgender persons.[78]

One study concluded that "living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses."[79] Another study demonstrated that past school victimization may result in greater risk for post-traumatic stress disorder, depression, anxiety, and suicidality.[80] As the American Psychological Association has concluded, "the notable burden of stigma and discrimination affects minority persons' health and

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[77] *See generally* Am. Psych. Ass'n, *Stress in America: The Impact of Discrimination* (2016) https://www.apa.org/news/press/releases/stress/2015/impact-of-discrimination.pdf.

[78] *See, e.g.*, Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra* ("bias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health").

[79] Judith Bradford et al., *Experiences of Transgender-Related Discrimination and Implications for Health: Results from the Virginia Transgender Health Initiative Study*, 103 Am. J. Pub. Health 1820, 1825 (2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780721/.

[80] Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 Developmental Psychology 1580, 1581 (2010), https://familyproject.sfsu.edu/sites/default/files/FAP_School%20Victimization%20of%20Gender-nonconforming%20LGBT%20Youth.pdf.

well-being and generates health disparities."[81] There is thus every reason to anticipate that the Idaho statute excluding transgender girls and women from school sports consistent with their gender identity will negatively affect their health.

Finally, exclusionary policies have a particularly deleterious effect on the social and emotional development of children and adolescents. Discrimination against and harassment of children and adolescents in their formative years may have effects that linger long after they leave the school environment. Unsurprisingly, unwelcoming school environments produce particularly poor educational outcomes for transgender individuals.[82] Poorer educational outcomes, standing alone, may lead to lower lifetime earnings and an increased likelihood of poorer health outcomes later in life.[83] Moreover, and as already discussed, exclusionary policies may

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[81] APA/NASP Resolution, *supra*, at 3–4; *see also* Institute of Medicine Committee on LGBT Issues and Research Gaps and Opportunities, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* 3 (2011), https://www.ncbi.nlm.nih.gov/books/NBK64806/ (noting that "prejudice, discrimination, and violence" underlie the "health disparities" between transgender and cisgender populations).

[82] *See* APA/NASP Resolution at 6; Emily A. Greytak et al., GLSEN, *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* (2009), https://www.glsen.org/sites/default/files/2020-04/Harsh%20Realities.pdf.

[83] *See, e.g.*, Emily B. Zimmerman et al., U.S. Dep't of Health and Human Servs. Agency for Healthcare Research & Quality, *Understanding the Relationship Between Education and Health: A Review of the Evidence and an Examination of Community Perspectives* (2015), https://www.ahrq.gov/sites/default/files/publications/files/population-health.pdf

produce and compound the stigma and discrimination that transgender children and adolescents face in the school environment. Such stigma and discrimination, in turn, are associated with an increased risk of post-traumatic stress disorder, depression, anxiety, and suicidality in subsequent years.[84]

CONCLUSION

For the foregoing reasons, amici respectfully urge this Court to affirm the judgment below.

Date: December 21, 2020

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[84] Toomey, *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth*, *supra*, at 1581; *see also* APA/NASP Resolution, *supra*, at 6.

American Psychiatric Association

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, undersigned counsel for *amici curiae* is not aware of any other related cases pending before this Court.

Date: December 21, 2020

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CERTIFICATE OF COMPLIANCE

I am the attorney for amici curiae. This brief contains 6,757 words**,** excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6). I certify that this brief is an amicus brief and complies with the word limit of Fed. R. App. P. 29(a)(5).

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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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