No. 18-13592

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DREW ADAMS, *Plaintiff-Appellee*,

v.

THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA,
Defendant-Appellant.

On Appeal from the United States District Court for the
Middle District of Florida
Case No. 17-cv-739-TJC-JBT (Hon. Timothy J. Corrigan)

EN BANC BRIEF OF *AMICI CURIAE* MEDICAL, MENTAL HEALTH, AND OTHER HEALTH CARE ORGANIZATIONS IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE

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AMENDED CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-4, the undersigned counsel certifies that, to the best of their knowledge, the Certificate of Interested Persons set forth in the Petition for Rehearing *En Banc* of Appellant, The School Board of St. Johns County, Florida at C-1–C-23 (Aug. 28, 2021) is complete, subject to the following amendments:

Added:

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American Academy of Nursing

American Nurses Association

The undersigned will enter this information in the Court's web-based CIP contemporaneously with filing this Certificate of Interested Persons.

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3 and 28-1(b), each *amicus curiae* hereby certifies that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

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STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE OF *AMICI CURIAE*[1]

Amici are leading medical, and other health care organizations:

- American Academy of Pediatrics
- American College of Physicians
- American Medical Association
- American Medical Women's Association
- Endocrine Society
- Florida Chapter of the American Academy of Pediatrics
- GLMA—Health Professionals Advancing LGBT Equality
- Mental Health America
- World Professional Association for Transgender Heath ("WPATH")

Collectively, *amici* represent hundreds of thousands of physicians and mental health professionals, including specialists in pediatrics and adolescent care, family medicine, internal medicine, and endocrinology. Through its more than 25,000 members, the Florida Chapter of the American Academy of Pediatrics (FCAAP) promotes the health and welfare of Florida's children (newborns, infants, children,

[1] Pursuant to Federal Rule of Appellate Procedure 29, *amici* hereby certify that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparation or submission of this brief, and no person other than *amici* and their counsel contributed money intended to fund preparation or submission of the brief. All parties have consented to the filing of this *amicus* brief.

adolescents, and young adults), and supports pediatricians and pediatric specialists as the best qualified providers of their healthcare. *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; and the predictable harms to the health and well-being of transgender adolescents when they are excluded from restrooms that match their gender identity.

STATEMENT OF THE ISSUE

Whether the District Court properly found unconstitutional and in violation of Title IX Defendant's policy prohibiting Plaintiff from using the boys' restrooms.

SUMMARY OF ARGUMENT

Transgender individuals have a gender identity that is incongruent with the sex they were assigned at birth. The medical community's understanding of what it means to be transgender has advanced greatly over the past century. The medical community now understands that being transgender implies no impairment in a person's judgment, stability, or general social or vocational capabilities. According to recent estimates, approximately 1.4 million transgender adults live in the United States—0.6% of the adult population.

Many transgender individuals, like Plaintiff, have a condition called gender dysphoria, which is characterized by clinically significant distress and impairment of function resulting from the incongruence between one's gender identity and the sex assigned at birth. The international medical consensus regarding treatment for gender dysphoria is to assist the patient to live in accordance with his or her gender identity, thus alleviating the distress. 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; and use of single-sex facilities, including restrooms, most consistent with the individual's gender identity), hormone therapy, and surgical interventions.

Access to single-sex facilities that correspond to one's gender identity is a critical aspect of social transition and, thus, the successful treatment of gender dysphoria. By contrast, excluding transgender individuals from facilities consistent with their gender identity undermines their treatment; exposes them to stigma and discrimination; harms their physical health by causing them to avoid restroom use; and impairs their social and emotional development. Similarly, transgender students who must use separate facilities that other students are not required to use are at risk of being bullied and discriminated against and suffer psychological harm. The stigma and minority stress that result from discrimination can, in turn, lead to poorer health outcomes for transgender individuals.

ARGUMENT

I. What It Means To Be Transgender And To Suffer From 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 was 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 was assigned the sex of male at birth but is female and transitions to live in accordance with that female identity. A transgender man is a man. A transgender woman is a woman.

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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, e298 (2013), https://publications.aap.org/pediatrics/article/132/1/e297/31402/Office-Based-Care-for-Lesbian-Gay-Bisexual [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* note 2, at 861.

While recent estimates suggest that approximately 1.4 million transgender adults live in the United States (0.6% of the adult population),[4] these "population estimates likely underreport the true number of [transgender] people."[5] People of all different races and ethnicities identify as transgender.[6] They live in every state, serve in our military, and raise children.[7] Gender identity is distinct from and does not

[4] Jody L. Herman et al., The Williams Inst., *Age of Individuals Who Identify as Transgender in the United States* 2 (2017), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Age-Trans-Individuals-Jan-2017.pdf

[5] Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 832.

[6] *See* Halley P. Crissman et al., *Transgender Demographics: A Household Probability Sample of US Adults*, 2014, 107 Am. J. Pub. Health 213, 214-15 (2017); Andrew R. Flores et al., The Williams Inst., *Race and Ethnicity of Adults Who Identify as Transgender in the United States* 2 (2016), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf.

[7] Gary J. Gates & Jody L. Herman, The Williams Inst., *Transgender Military Service in the United States* (2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Military-Service-US-May-2014.pdf; Sandy E. James et al., Nat'l Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 2 (2016), https://transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20%20FINAL%201.6.17.pdf [hereinafter "*Report of 2015 U.S. Transgender Survey*"]; Rebecca L. Stotzer et al., The Williams Inst., *Transgender Parenting: A Review of Existing Research* (2014), http://williamsinstitute.law.ucla.edu/research/parenting/transgender-parenting-oct-2014.

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 of time tried to "correct" this perceived deviance by attempting to force 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] 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."[11]

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[8] Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 835-36; *Report of 2015 U.S. Transgender Survey*, *supra* note 7.

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

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

[11] Am. Med. Ass'n et al., Issue Brief *LGBTQ change efforts (so-called "conversion therapy")* 3 (2019), https://www.ama-assn.org/system/files/2019-12/conversion-therapy-issue-brief.pdf.

Much as our professions recognize that homosexuality is a normal form of human sexuality—and that stigmatizing gay people causes significant harm—we 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."[12]

A. Gender Identity.

"[G]ender identity" refers to a person's internal sense of being male, female, or another gender.[13] Every person has a gender identity,[14] which cannot be altered

[12] Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Variant Individuals* (2012), https://psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2012-Tra nsgender-Gender-Variant-Discrimination.pdf.

[13] 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 [hereinafter "*Answers to Your Questions About Transgender People*"].

[14] *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[15] or ascertained immediately after birth.[16] Many children develop stability in their gender identity between the ages of three and four.[17]

"[G]ender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, or body characteristics."[18] There are many individuals who depart from stereotypical male and female appearances and roles, but who are not transgender.[19] 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.[20] In contrast, a transgender boy or transgender girl "consistently, persistently, and insistently" identifies as a gender

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[15] 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.

[16] Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 862.

[17] *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.

[18] *Answers to Your Questions About Transgender People*, *supra* note 13, at 1.

[19] Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, 33 J. Sch. Nursing 2 (2017).

[20] World Pro. Ass'n for Transgender Health ("WPATH"), *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 5 (7th Version, 2011), http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=4655 [hereinafter "WPATH *Standards of Care*"].

different from the sex they were assigned at birth.[21] The District Court relied on this very definition in its decision enjoining Defendant's bathroom policy, Findings of Fact and Conclusions of Law at 7, No. 17-cv-739 (M.D. Fla. July 26, 2018), Dkt. 192, and used the definition to support its rejection of Defendant's argument that permitting Plaintiff to use the boys' restroom will result in the elimination of separate sex restrooms, *id*. at 47.

Psychologists, psychiatrists, and neuroscientists are not certain why some people are transgender. Some research suggests there may be biological influences,[22] including, for example, exposure of natal females to elevated levels of testosterone in the womb.[23] Brain scans and neuroanatomical studies of transgender individuals may also support these biological explanations.[24]

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[21] *See* Meier & Harris, *supra* note 15, at 1; *see also* Cicero & Wesp, *supra* note 19, at 6.

[22] *See* Jason Rafferty, Am. Acad. of Pediatrics, *Gender-Diverse & Transgender Children* (2015), https://healthychildren.org//stages///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).

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

[24] *See, e.g*., Francine Russo, *Is There Something Unique About the Transgender Brain?* Sci. Am. (Jan. 1, 2016), https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/.

B. Gender Dysphoria.

Being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[25] However, many transgender individuals are diagnosed with gender dysphoria, a condition that is characterized by debilitating distress and anxiety resulting from the incongruence between an individual's gender identity and birth-assigned sex.[26]

The District Court's factual findings are consistent with, and rely on, this medical consensus. *See* Dkt. 192 at 7-8.

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 adolescents and adults as follows: "A marked 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."[27] The six criteria include: (1) "[a] marked

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[25] *Position Statement on Discrimination Against Transgender and Gender Variant Individuals*, *supra* note 12.

[26] Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 451-53 (5th ed. 2013) [hereinafter "*DSM-5*"].

[27] *Id*. at 452-53.

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.[28]

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.[29] For instance, a deepening voice for male-assigned individuals or the growth of breasts and the beginning of a menstrual cycle for female-assigned 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."[30]

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[28] *Id*. at 452.

[29] Am. Psych. Ass'n *Task Force Report*, *supra* note 9, at 45; *Ending Conversion Therapy*, *supra* note 10, at 3.

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

If untreated, gender dysphoria can contribute to debilitating distress, depression, impairment of function, substance use, self-mutilation to alter one's genitals or secondary sex characteristics, other self-injurious behaviors, and suicide.[31] 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.[32]

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.[33] There is no evidence that these

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[31] *See, e.g.*, *DSM-5*, *supra* note 26, at 455, 458; Stephanie A. Brill & Rachel Pepper, *The Transgender Child: A Handbook for Families and Professionals* 202 (2008) (discussing risk of self-mutilation).

[32] 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/THISFINALREPORTVoll.pdf.

[33] Am. Psych. Ass'n *Guidelines*, *supra* note 2, 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).

methods alleviate gender dysphoria or that they can prevent someone from being transgender.[34] To the contrary, they can "often result in substantial psychological pain by reinforcing damaging internalized attitudes,"[35] and can damage family relationships and individual functioning by increasing feelings of shame.[36]

In the last few decades, transgender people suffering from gender dysphoria have gained widespread access to gender-affirming medical and mental health support and treatment.[37] For over thirty years, the generally-accepted treatment protocols for gender dysphoria[38] have aimed at alleviating the distress associated with the incongruence between gender identity and birth-assigned sex.[39] These

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[34] *Ending Conversion Therapy*, *supra* note 10, at 26; Jack Drescher, *Controversies in Gender Diagnoses*, 1 LGBT Health 9, 12 (2013).

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

[36] 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).

[37] Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 835; WPATH *Standards of Care*, *supra* note 20, at 8-9.

[38] Earlier versions of the DSM used different terminology, *e.g.*, gender identity disorder, to refer to this condition. Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 861.

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

protocols are laid out in the *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (7th Version 2011) developed by *amicus curiae* WPATH.[40] Indeed, the District Court described WPATH as having "established the accepted standard of care for transgender persons suffering from gender dysphoria" Dkt. 192 at 8, in its decision enjoining Defendant from enforcing its policy against Plaintiff. The major medical and mental health groups in the United States expressly recognize WPATH's Standards of Care as representing the consensus of the medical and mental health communities regarding the appropriate treatment for gender dysphoria.[41]

The recommended treatment for transgender people with gender dysphoria includes assessment, counseling, and, as appropriate, social transition, puberty-blocking drug treatment, hormone therapy, and surgical interventions to bring the

[40] WPATH *Standards of Care*, *supra* note 20.

[41] Am. Psych. Ass'n *Task Force Report*, *supra* note 9, at 32; AAP Technical Report, *supra* note 2, at e307-08.

body into alignment with one's gender identity.[42] However, each patient requires an individualized treatment plan that takes into account the patient's specific needs.[43]

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 appearance, and social interactions. One key aspect of social transition is the ability

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[42] Am. Psych. Ass'n *Task Force Report*, *supra* note 9, at 32-39; Am. Psych. Ass'n & Nat'l Ass'n of Sch. Psychs., *Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools* (2015), http://www.apa.org/about/policy/orientation-diversity.aspx [hereinafter "APA/NASP Resolution"]; Am. Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria, *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists* 16-18 (2016); AAP Technical Report, *supra* note 2, at e307-09. Some clinicians still offer versions of "reparative" or "conversion" therapy based on the idea that being transgender is a mental disorder. However, all of the leading medical professional organizations that have considered the issue have explicitly rejected such treatments. *See* Am. Med. Ass'n, Policy H-160.991, *Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations* (2018), https://policysearch.ama-assn.org/policyfinder/detail/160.991?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; Hillary 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* note 2, at e301; *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra* note 35.

[43] Am. Psych. Ass'n *Task Force Report*, *supra* note 9, at 32.

to use restrooms and other single-sex facilities consistent with that individual's gender identity.[44] Transgender children who have not transitioned report higher levels of anxiety and depression than their non-transgender peers, while studies of transitioned children suggest that they report statistically similar levels of anxiety and depression as their peers.[45]

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 boy

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[44] AAP Technical Report, *supra* note 2, at e308; Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 840.

[45] Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 J. Am. Acad. Child & Adolescent Psychiatry 116 (2017); Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 Pediatrics 1 (2016).

[46] *See* Am. Med. Ass'n, Policy H-185.950, *Removing Financial Barriers to Care for Transgender Patients* (2016); Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 861, 862; Center of Excellence for Transgender Health, Univ. Cal., S.F., *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People* 23 (Madeline B. Deutsch ed., 2d ed. 2016), https://transcare.ucsf.edu/guidelines; WPATH *Standards of Care*, *supra* note 20, at 33-34, 54.

[47] *See* Wylie C. 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); *see*

undergoing hormone treatment, for example, will be exposed to the same levels of testosterone as other boys who go through male puberty; and just as they would in any other boy, these hormones will affect most of his major body systems.[48] Hormone treatment alters the appearance of the patient's genitals and produces secondary sex characteristics such as increased muscle mass, increased facial hair, and a deepening of the voice in transgender boys and men, and breast growth and decreased muscle mass in transgender girls and women.[49] For children experiencing the onset of puberty, treatment may include medication to prevent further progression of puberty ("pubert[y] blockers").[50] This fully reversible treatment allows children with gender dysphoria to delay the development of secondary sex characteristics that do not match their gender identity, giving them additional time to decide whether hormone treatment to feminize or masculinize the body is

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).

[48] Hembree et al., *supra* note 47, at 3869, 3871; *see also* Brill & Pepper, *supra* note 31, at 217.

[49] Hembree et al., *supra* note 47, at 3886-89.

[50] *Id*. at 3880-83.

appropriate.[51] Hormones have been clinically proven as an effective treatment for gender dysphoria with a low rate of complications.[52]

Surgical interventions may also be an appropriate and medically necessary treatment for some patients. 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.[53] Decades of clinical evidence show these surgical procedures are effective in reducing gender dysphoria and improving mental health.[54] Because these surgical procedures are largely irreversible, some are

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[51] *Id*. at 3880; Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 842; WPATH *Standards of Care*, *supra* note 20, at 18-20.

[52] *See* Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation,* 145 Pediatrics 2, 8 (2020) (finding a significant inverse association between treatment with pubertal suppression during adolescence and lifetime suicidal ideation among transgender adults who sought out this treatment); 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 J. Van Kesteren et al., *Mortality and Morbidity in Transsexual Subjects Treated with Cross-Sex Hormones*, 47 Clinical Endocrinology 337 (1997).

[53] Hembree et al., *supra* note 47, at 3893-94; *see also* WPATH *Standards of Care*, *supra* note 20, at 57-58.

[54] 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); Annelou L.C. de Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 Pediatrics 696 (2014);

recommended only for transgender individuals who have reached the age of legal majority.[55] Empirical studies reflect the importance of the interplay among treatments, finding hormone therapy in conjunction with psychotherapy and, for 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 their relationships, school, job, and other life activities.[57]

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 Rsch. 178 (2007); Jan Eldh et al., *Long-Term Follow Up After Sex Reassignment Surgery*, 31 Scand. J. Plastic & Reconstructive Surgery & Hand Surgery 39 (1997).

[55] WPATH *Standards of Care*, *supra* note 20, at 21.

[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 (Randi Ettner, Stan Monstrey & Eli Coleman eds., 2d ed. 2016).

II. Excluding Transgender Individuals From Facilities Consistent With Their Gender Identity Endangers Their Health, Safety, And Well-Being.

Transgender students should have access to the sex-segregated facilities, activities, and programs that are *consistent* with their gender identity—including but not limited to bathrooms, locker rooms, sports teams, and classroom activities.[58] Evidence confirms that policies excluding transgender individuals from facilities consistent with their gender identity (hereinafter, "exclusionary policies") have detrimental effects on the physical and mental health, safety, and well-being of transgender individuals.[59] And while schools often provide private restrooms for any student who seeks greater privacy for any reason, forcing transgender students to use those separate facilities sends a stigmatizing message that may have a lasting and damaging impact on the health and well-being of the young person.

In contrast, there is no evidence of any harm to the physical or mental health of other children and adolescents when transgender students use facilities that match their gender identity. *Amici* are not hearing from their members about students experiencing any such harm—even though numerous states and school districts have

[58] APA/NASP Resolution, *supra* note 42, at 9.

[59] In fact, the AMA, whose mission statement requires it to support public health, recently confirmed its support for transgender individuals' accessing public restrooms according to their gender identities. Am. Med. Ass'n, Policy H-65.964, *Access to Basic Human Services for Transgender Individuals* (2017).

policies allowing transgender individuals to use restrooms that match their gender identity. Furthermore, in two cases brought by cisgender students challenging school policies allowing transgender students to access the restrooms and locker rooms consistent with their gender identity, the courts rejected the cisgender plaintiffs' preliminary injunction motions and their claims of harm.[60]

A. Exclusionary Policies Exacerbate Gender Dysphoria And Are Contrary To Widely Accepted, Evidence-Based Treatment Protocols.

For transgender individuals, being treated differently from other men and women can cause tremendous pain and harm.[61] Indeed, exclusionary polices that force transgender people to disregard or deny their gender identity every time they must use a restroom disrupt medically appropriate treatment protocols. While those protocols provide that transgender individuals should live all aspects of their lives in the gender with which they identify, *see supra* pp. 12-19, exclusionary policies require transgender individuals to live one facet of their lives in contradiction with their gender identity. As a result, exclusionary policies threaten to exacerbate the

[60] *Doe v. Boyertown Area Sch. Dist*., 276 F. Supp. 3d 324, 382, 409-11 (E.D. Pa. 2017), *aff'd*, 897 F.3d 518 (3d Cir. 2018), *cert. denied*, 139 S. Ct. 2636 (2019); *Students and Parents for Privacy v. United States Dep't of Educ*., No. 16-cv-4945, 2016 WL 6134121, at *28-29, *36-39 (N.D. Ill. Oct. 18, 2016), *report and recommendation adopted by* 2017 WL 6629520 (N.D. Ill. Dec. 29, 2017).

[61] *See, e.g*., Sam Winter et al., *Transgender People: Health at the Margins of Society*, 388 Lancet 390, 394 (2016).

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.[62] Those risks are already all too serious: in a comprehensive survey of over 27,000 transgender individuals, 40% reported a suicide attempt—a rate nine times that reported by the general U.S. population.[63]

B. Exclusionary Policies Expose Transgender Individuals To Harassment And Abuse.

Exclusionary policies expose transgender individuals to harassment and abuse by forcing them to occupy gender-segregated spaces where their presence may be met with hostility, harassment, and abuse. For example, transgender men are visually recognized as men by other individuals; the presence of a transgender man in a women's restroom would be just as alarming as the presence of a cisgender man in the same women's restroom.

Exclusionary policies thus force transgender individuals to disclose their transgender status, because it is only transgender individuals who must use facilities that are incongruent with their gender identity and how they live and are recognized in the world. Because some children will have transitioned before they arrive in a

[62] APA/NASP Resolution, *supra* note 42, at 4.
[63] *Report of 2015 U.S. Transgender Survey*, *supra* note 7, at 114.

particular school, exclusionary policies may be the only way that they are forcibly "outed" to their peers as transgender.

This compelled disclosure of one's transgender status is harmful for at least two reasons. First, control over the circumstances in which a person may choose to disclose being transgender is fundamental to the development of individuality and autonomy.[64] Exclusionary policies rob transgender individuals of the personal choice regarding whether and when to reveal their transgender status. Disclosure of one's status as transgender is often anxiety-inducing and fraught; it is critical to a person's sense of safety, privacy, and dignity to have control over when and how that information is shared.

Second, such compelled disclosure exposes transgender individuals to the risk of harassment or abuse. In a 2013 survey, 68% of transgender respondents reported experiencing at least one instance of verbal harassment, and 9% reported suffering at least one instance of physical assault in gender-segregated bathrooms.[65]

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[64] Am. Acad. of Pediatrics, *American Academy of Pediatrics Opposes Legislation that Discriminates Against Transgender Children* (May 1, 2016), https://www.aapdc.org/2016/05/01/american-academy-of-pediatrics-opposes-legislation-that-discriminates-against-transgender-children/.

[65] Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives*, 19 J. Pub. Mgmt. & Soc. Pol'y 65, 73 (2013) [hereinafter "*Gendered Restrooms and Minority Stress*"].

These harms affect youth and adults alike. "[M]any gender and sexual orientation diverse children and adolescents experience harassment, bullying, and physical violence in school environments."[66] Because unwanted disclosure may cause such significant harm, the American Academy of Pediatrics' states that care should be confidential, and it is not the role of the pediatrician to inform parents/guardians about a patient's sexual identity or behavior as doing so could expose the patient to harm.[67] Indeed, the American Academy of Pediatrics announced its opposition to exclusionary policies by noting that these policies undermine children's ability "to feel safe where they live and where they learn."[68]

C. Exclusionary Policies Exacerbate Stigma And Discrimination, Leading To Negative Health Outcomes.

It is well documented that transgender individuals experience widespread prejudice and discrimination, and that this discrimination frequently takes the form of violence, harassment, or other abuse.[69] For example, in a Virginia survey of

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[66] APA/NASP Resolution, *supra* note 42, at 5; *see* Joseph G. Kosciw et al., GLSEN, *The 2015 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth In Our Nation's Schools* 12 (2016).

[67] AAP Technical Report, *supra* note 2, at e305.

[68] *American Academy of Pediatrics Opposes Legislation that Discriminates Against Transgender Children*, *supra* note 64.

[69] Jamie M. Grant et al., Nat'l Center for Transgender Equality, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 2-8 (2011), http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf.

transgender individuals, 50% of participants reported that they had experienced discrimination in healthcare, employment, or housing, and many individuals had experienced discrimination in more than one area.[70]

Exclusionary policies perpetuate such stigma and discrimination, both by forcing transgender individuals to disclose their status, and by marking transgender individuals as "others" who are unfit to use the restrooms used by everyone else. Such policies inherently convey the state's judgment that transgender individuals are different and deserve inferior treatment.

Research increasingly shows that stigma and discrimination can have deleterious health consequences,[71] including striking effects on the daily functioning and emotional and physical health of transgender persons.[72] A 2012 study of transgender adults found a rate of hypertension of twice that found in the general population, which it attributed to the known effects of emotions on cardiovascular

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[70] 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).

[71] *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.

[72] *See, e.g.*, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra* note 35 ("bias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health").

health.[73] Another study concluded that "living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses."[74] And a third study demonstrated that past school victimization may result in greater risk for post-traumatic stress disorder, depression, anxiety, and suicidality.[75] As the American Psychological Association has concluded, "the notable burden of stigma and discrimination affects minority persons' health and well-being and generates health disparities."[76] There is thus every reason to anticipate that exclusionary policies will negatively affect the health of transgender individuals.

D. Exclusionary Policies Lead To Avoidance Of Restroom Use, Harming Physical Health.

Exclusionary policies have more immediate health effects as well. Though most of us take it for granted, all individuals require regular access to a restroom.

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[73] Randi Ettner et al., *Secrecy and the Pathogenesis of Hypertension*, Int'l J. Family Med. (2012).

[74] Bradford et al., *supra* note 70, at 1827.

[75] Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 Developmental Psych. 1580, 1581 (2010).

[76] APA/NASP Resolution, *supra* note 42, at 3-4; *see also* Inst. of Med. Comm. on LGBT Health Issues and Rsch. Gaps and Opportunities, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* 13 (2011) (noting that "prejudice, discrimination, and violence" underlie the "health disparities" between transgender and cisgender populations).

Exclusionary policies that preclude transgender individuals from using restrooms consistent with their gender identity put transgender individuals to a difficult choice: (1) violate the policy and face potential disciplinary consequences; (2) use the restroom inconsistent with their gender identity or "special" single-user restrooms, which undermines their health care needs and risks discrimination or harassment; or (3) attempt not to use the restroom at all.

This difficult choice produces heightened anxiety and distress around restroom use, which may make it difficult for transgender individuals to concentrate or focus at school or work and potentially cause them to eschew social activities or everyday tasks.[77] At least one study of transgender college students associated being denied access to restrooms consistent with one's gender identity to an increase in suicidality.[78]

Studies also show that it is common for transgender students to avoid using restrooms.[79] But that avoidance can have medical consequences, including recurrent urinary tract infections and constipation, as well as the possibility of more serious health complications, including hematuria (blood in the urine), chronic kidney

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[77] *Gendered Restrooms and Minority Stress*, *supra* note 65, at 75.

[78] Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. Homosexuality 1378, 1388-89 (2016).

[79] Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 840.

disease or insufficiency, urolithiasis (stones in the kidney, bladder, or urethra), infertility, and cancer.[80]

Some transgender students experiencing fear and anxiety about restroom usage may attempt to dehydrate themselves so that they will need to urinate less frequently.[81] Chronic dehydration has been linked to a variety of conditions, including urinary tract infections, kidney stones, blood clots, kidney disease, heart disease, and colon and bladder cancers.[82]

These negative outcomes are not alleviated by forcing students into separate single-user restrooms. Being required to use separate facilities may force disclosure of one's transgender status and cause anxiety and fear related to being singled out and separated from peers. Additionally, single-user facilities are generally less available and more inconvenient, causing people to further avoid restroom use or disrupt their schedules to go to the restroom. Separate restrooms thus do not alleviate

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[80] *See, e.g.*, *Gendered Restrooms and Minority Stress*, *supra* note 65, at 75 (surveying transgender and gender non-conforming people in Washington D.C., and finding that 54% of respondents reported a "physical problem from trying to avoid using public bathrooms" including dehydration, urinary tract infections, kidney infection, and other kidney-related problems); *Report of 2015 U.S. Transgender Survey*, *supra* note 7, at 246; Anas I. Ghousheh et al., *Advanced Transitional Cell Carcinoma of the Bladder in a 16-Year-Old Girl with Hinman Syndrome*, 80 Urology 1141 (2012).

[81] *Gendered Restrooms and Minority Stress*, *supra* note 65, at 75.

[82] Lawrence E. Armstrong, *Challenges of Linking Chronic Dehydration and Fluid Consumption to Health Outcomes*, 70 Nutrition Rev. S121, 122 (2012).

the anxiety, fear, or negative health consequences that result from exclusionary bathroom policies.

E. Exclusionary Policies Harm Adolescent Social And Emotional Development—With Lifelong Effects.

Finally, exclusionary policies have a particularly deleterious effect on the social and emotional development of children and adolescents. Discrimination 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.[83] Poorer educational outcomes, alone, may lead to lower lifetime earnings, and an increased likelihood of poorer health outcomes later in life.[84]

Moreover, and as already discussed, exclusionary policies may produce and compound the stigma and discrimination that transgender children and adolescents face in the school environment. That stigma and discrimination, in turn, is associated

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[83] *See* APA/NASP Resolution, *supra* note 42, at 6; Emily A. Greytak et al., GLSEN, *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* (2009).

[84] *See, e.g.*, Emily B. Zimmerman et al., U.S. Dep't of Health and Human Servs., *Understanding the Relationship Between Education and Health: A Review of the Evidence and an Examination of Community Perspectives* (2015), http://www.ahrq.gov/professionals/education/curriculum-tools/population-health/zimmerman.html.

with an increased risk of post-traumatic stress disorder, depression, anxiety, and suicidality in subsequent years.[85]

Conversely, evidence demonstrates that a safe and welcoming school environment may promote positive social and emotional development and health outcomes. Numerous studies show that safer school environments lead to reduced rates of depression, suicidality, or other negative health outcomes.[86]

With appropriate support—including safe and supportive schools—transgender youth can become happy and productive adults who contribute much to our society. By making schools into places of stress and conflict rather than welcoming spaces, exclusionary policies worsen stigma and discrimination against transgender students, causing myriad harms to their health, safety, and overall well-being.

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[85] Toomey et al., *supra* note 75, at 1581; *see also* APA/NASP Resolution, *supra* note 42, at 6.

[86] AAP Technical Report, *supra* note 2, at e301, e302, e304-05; *see, e.g.*, Marla E. Eisenberg et al., *Suicidality Among Gay, Lesbian and Bisexual Youth: The Role of Protective Factors*, 39 J. Adolescent Health 662 (2006); Stephen T. Russell et al., *Youth Empowerment and High School Gay-Straight Alliances*, 38 J. Youth Adolescence 891 (2009).

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to affirm the District Court's decision enjoining Defendant from preventing Plaintiff from using single-sex multi-user facilities in accordance with his gender identity.

Dated: November 24, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2021, I caused the foregoing *amici curiae* brief to be electronically filed with the Clerk of the Court of the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

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