

No. 18-35708

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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PARENTS FOR PRIVACY; KRIS GOLLY and JON GOLLY, individually and as guardian ad litem for A.G.; NICOLE LILLY; MELISSA GREGORY, individually and as guardian ad litem for T.F.; and PARENTS RIGHTS IN EDUCATION,  
*Plaintiff-Appellants,*

v.

DALLAS SCHOOL DISTRICT NO. 2; OREGON DEPARTMENT OF EDUCATION; GOVERNOR KATE BROWN, in her official capacity as SUPERINTENDENT OF PUBLIC INSTRUCTION; UNITED STATES DEPARTMENT OF EDUCATION; BETSY DEVOS, in her official capacity as United States Secretary of Education as successor to JOHN B. KING; UNITED STATES DEPARTMENT OF JUSTICE; JEFF SESSIONS, in his official capacity as United States Attorney General, as successor to LORETTA F. LYNCH,  
*Defendants-Appellees,*

BASIC RIGHTS OREGON,  
*Intervenor-Defendant-Appellee*

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On Appeal from the United States District Court for the District of Oregon  
The Honorable Marco A. Hernandez  
Case No. 3:17-cv-01813-HZ

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**BRIEF OF *AMICI CURIAE* AMERICAN ACADEMY OF PEDIATRICS,  
AMERICAN MEDICAL ASSOCIATION, AMERICAN PUBLIC HEALTH  
ASSOCIATION, AND 13 OTHER MEDICAL, MENTAL HEALTH, AND  
OTHER HEALTH CARE ORGANIZATIONS IN SUPPORT OF DEFENDANTS-  
APPELLEES**

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### INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici* are sixteen leading medical, mental health, and other health care organizations: the American Academy of Pediatrics (“AAP”), the Association of LGBTQ Psychiatrists (“AGLP”), the American Medical Association (“AMA”), the American Medical Student Association (“AMSA”), the American Medical Women’s Association (“AMWA”), the American Nurses Association (“ANA”), the Association of Nurses in AIDS Care (“ANAC”), the American Public Health Association (“APHA”), the Endocrine Society, GLMA: Health Professionals Advancing LGBTQ Equality (“GLMA”), the HIV Medicine Association (“HIVMA”), the Lesbian, Bisexual, Gay and Transgender (“LBGT”) Physician Assistant (“PA”) Caucus of the American Academy of PAs, the Oregon Medical Association (“OMA”), the Pediatric Endocrine Society (“PES”), the Society of Physician Assistants in Pediatrics (“SPAP”), and the World Professional Association for Transgender Health (“WPATH”).

Collectively, *amici* represent millions of medical and mental health professionals, including physicians, nurses, physician assistants, as well as specialists in pediatrics and adolescent care, family medicine, internal medicine,

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<sup>1</sup> *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 brief.

psychiatry, and endocrinology. *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 consensus among health care professionals regarding what it means to be transgender; the protocols for the treatment of transgender and gender dysphoric people; and the potential predictable harms to the health and well-being of transgender adolescents when they are excluded from restrooms that match their gender identity.

### **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici* state that none of them has a parent corporation, and that no publicly held corporation owns a 10% or more ownership interest in any of the *amici*.

### **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 recent estimates,

approximately 1.4 million transgender adults live in the United States—0.6 percent of the adult population.

Many transgender individuals have a condition called gender dysphoria, which is characterized by clinically significant distress and anxiety resulting from the incongruence between one's gender identity and the sex assigned at birth. The international consensus among health care professionals regarding treatment for transgender and gender dysphoric people is to assist the patient to live in accordance with his or her gender identity, thus alleviating and avoiding 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, successful treatment for transgender and gender dysphoric individuals. By contrast, excluding transgender individuals from facilities consistent with their gender identity undermines their treatment; exposes them to stigma and discrimination; potentially 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 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.<sup>2</sup> Transgender people differ from cisgender (*i.e.*, non-transgender) individuals, whose gender identity aligns with the sex assigned at birth.<sup>3</sup>

Recent estimates suggest that approximately 1.4 million transgender adults live in the United States, or 0.6 percent of the adult population.<sup>4</sup> That said, “population estimates likely underreport the true number of [transgender] people.”<sup>5</sup>

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<sup>2</sup> Am. Psychol. Ass’n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 834 (2015) [hereinafter “Am. Psychol. 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) [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. Psychol. Ass’n Guidelines at 834.

<sup>3</sup> Am. Psychol. Ass’n Guidelines, *supra*, at 861.

<sup>4</sup> Andrew R. Flores et al., The Williams Inst., *How Many Adults Identify as Transgender in the United States?* 2 (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

<sup>5</sup> Am. Psychol. Ass’n Guidelines, *supra*, at 832.

People of all different races and ethnicities identify as transgender.<sup>6</sup> They live in every state, serve in our military, and raise children.<sup>7</sup> 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.<sup>8</sup>

The health care 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.”<sup>9</sup> Medical practices during that period tried to “correct” this perceived deviance by attempting to force transgender people to live in accordance with the

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<sup>6</sup> 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>.

<sup>7</sup> Gary J. Gates & Jody L. Herman, The Williams Inst., *Transgender Military Service in the United States* (2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-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), <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>; 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>.

<sup>8</sup> Am. Psychol. Ass'n Guidelines, *supra*, at 835-36; James et al., Nat'l Center for Transgender Equality, *Report of the 2015 U.S. Transgender Survey*, *supra*, at 246.

<sup>9</sup> Am. Psychol. Ass'n, *Report of the APA Task Force on Gender Identity and Gender Variance* 26-27 (2008), <https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf> [hereinafter “Am. Psychol. Ass'n Task Force Report”].

sex assigned to them at birth. These efforts failed and caused significant harm to the individuals subjected to them.<sup>10</sup>

Much as the health care 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.”<sup>11</sup>

### **A. Gender Identity**

“[G]ender identity” refers to a person’s internal sense of being male, female, or another gender.<sup>12</sup> Every person has a gender identity,<sup>13</sup> which cannot be altered

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

<sup>11</sup> 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-Transgender-Gender-Variant-Discrimination.pdf>.

<sup>12</sup> Am. Psychol. Ass’n, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* 1 (2014), <http://www.apa.org/topics/lgbt/transgender.pdf>.

<sup>13</sup> 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](http://familyproject.sfsu.edu/sites/default/files/FAP_English%20Booklet_pst.pdf).



voluntarily<sup>14</sup> or ascertained immediately after birth.<sup>15</sup> Many children develop stability in their gender identity between ages three and four.<sup>16</sup>

“[G]ender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, or body characteristics.”<sup>17</sup> There are many individuals who depart from stereotypical male and female appearances and roles, but who are not transgender.<sup>18</sup> 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.<sup>19</sup> In contrast, a transgender

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<sup>14</sup> Colt Meier & Julie Harris, Am. Psychol. 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>.

<sup>15</sup> Am. Psychol. Ass’n Guidelines, *supra*, at 862.

<sup>16</sup> *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.

<sup>17</sup> Am. Psychol. Ass’n, *Answers to Your Questions About Transgender People*, *supra*, at 1.

<sup>18</sup> Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, *J. Sch. Nursing* 1, 6 (2017).

<sup>19</sup> World Prof’l Ass’n for Transgender Health, *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](http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=4655) [hereinafter “WPATH Standards of Care”].

boy or transgender girl “consistently, persistently, and insistentlly” identifies as a gender different than the sex they were assigned at birth.<sup>20</sup>

Psychologists, psychiatrists, and neuroscientists are not certain why some people are transgender. Some research suggests there may be biological influences,<sup>21</sup> including, for example, exposure of natal females to elevated levels of testosterone in the womb.<sup>22</sup> Brain scans and neuroanatomical studies of transgender individuals may also support these biological explanations.<sup>23</sup>

## **B. Gender Dysphoria**

Being transgender “implies no impairment in judgment, stability, reliability, or general social or vocational capabilities.”<sup>24</sup> However, many transgender individuals are diagnosed with gender dysphoria, a condition that is characterized

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<sup>20</sup> 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.

<sup>21</sup> 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).

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

<sup>23</sup> 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/>.

<sup>24</sup> Am. Psychiatric Ass’n, *Position Statement on Discrimination Against Transgender and Gender Variant Individuals*, *supra*.

by debilitating distress and anxiety resulting from the incongruence between an individual's gender identity and birth-assigned sex.<sup>25</sup>

### **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.”<sup>26</sup> 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.<sup>27</sup> Similarly, the World Health Organization’s International Classification of Diseases has recognized that

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<sup>25</sup> Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* 451-53 (5th ed. 2013) [hereinafter “DSM-5”].

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 452.

gender dysphoria is “characterized by a persistent and intense distress about assigned sex, together with a desire to be (or insistence that one is) of the other sex.”<sup>28</sup>

Gender non-conforming 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.<sup>29</sup> 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.

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.<sup>30</sup> Transgender individuals also are frequently subjected to prejudice and

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<sup>28</sup> World Health Organization (“WHO”), International Classification of Diseases-10 F64.2 (2016 ed.), <https://icd.who.int/browse10/2016/en#/F64.2>. In its recently-released International Statistical Classification of Diseases-11, the WHO uses “gender incongruence” as the name for the gender identity-related diagnoses. 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, 3875 (2017). “Not all individuals with gender incongruence have gender dysphoria or seek treatment.” *Id.*

<sup>29</sup> Am. Psychol. Ass’n Task Force Report, *supra*, at 45; Substance Abuse and Mental Health Servs. Admin., *Ending Conversion Therapy*, *supra*, at 3.

<sup>30</sup> *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).

discrimination in multiple areas of their lives, which exacerbates these negative health outcomes.<sup>31</sup>

## **2. The Accepted Treatment Protocols For Transgender and Gender Dysphoric People**

Until the middle of the twentieth century, most mental health practitioners treated gender non-conforming people by attempting to make the patient's gender consistent with the sex assigned at birth.<sup>32</sup> There is no evidence that these methods alleviate gender dysphoria or that they can prevent someone from being transgender.<sup>33</sup> To the contrary, they can “often result in substantial psychological pain by reinforcing damaging internalized attitudes,”<sup>34</sup> and can damage family relationships and individual functioning by increasing feelings of shame.<sup>35</sup>

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<sup>31</sup> 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 Prof'l Psychol.: 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/THISFINALREPO RTVol1.pdf>.

<sup>32</sup> Am. Psychol. 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).

<sup>33</sup> 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).

<sup>34</sup> 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>.

<sup>35</sup> 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

In the last few decades, transgender people and those suffering from gender dysphoria have gained widespread access to gender-affirming psychological and medical support.<sup>36</sup> For over 30 years, the generally-accepted treatment protocols for transgender and gender dysphoric people<sup>37</sup> have aimed at alleviating the distress associated with the incongruence between gender identity and birth-assigned sex.<sup>38</sup> These protocols are laid out in the *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (Version 7)* developed by the World Professional Association for Transgender Health (“WPATH”).<sup>39</sup> Many of the major medical and mental health groups in the United States recognize the WPATH Standards of Care as representing the consensus of the medical and mental health

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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).

<sup>36</sup> Am. Psychol. Ass’n Guidelines, *supra*, at 835; WPATH Standards of Care, *supra*, at 8-9. While *amici* write here about treatment for transgender people diagnosed with gender dysphoria in accordance with DSM-V, these gender-affirming treatments are also often necessary for transgender people diagnosed with gender incongruence in accordance with the most recent Endocrine Society treatment guidelines. See, e.g., Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, *supra*, at 3869-72.

<sup>37</sup> Earlier versions of the DSM used different terminology, e.g., gender identity disorder, to refer to this condition. Am. Psychol. Ass’n Guidelines, *supra*, at 861.

<sup>38</sup> Am. Med. Ass’n, Comm. on Human Sexuality, *Human Sexuality* 38 (1972).

<sup>39</sup> WPATH Standards of Care, *supra*.

community regarding the appropriate treatment for transgender and gender dysphoric people.<sup>40</sup>

The recommended treatment for transgender people and those experiencing gender dysphoria includes assessment, counseling, and, as appropriate, social transition, puberty-blocking drug treatment, hormone therapy, and surgical interventions to bring the body into alignment with one's gender identity.<sup>41</sup> Each

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<sup>40</sup> See, e.g., Am. Psychol. Ass'n Task Force Report, *supra*, at 32; AAP Technical Report, *supra*, at 307-08.

<sup>41</sup> Am. Psychol. Ass'n Task Force Report, *supra*, at 32-39; Am. Psychol. Ass'n & Nat'l Ass'n of Sch. Psychologists, *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*, at 307-09. Some clinicians still offer versions of "reparative" or "conversion" therapy based on the idea that being transgender is a mental disorder and that gender identity can be changed. However, all of the 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* (rev. 2016), [https://searchpf.ama-assn.org/SearchML/searchDetails.action?uri=%2FAMA\\_Doc%2FHOD.xml-0-805.xml](https://searchpf.ama-assn.org/SearchML/searchDetails.action?uri=%2FAMA_Doc%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](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*, at 301; Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra*.

patient requires an individualized treatment plan that accounts for the patient's specific needs.<sup>42</sup>

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; adopting a new name; using different pronouns; grooming and dressing in a manner typically associated with one's gender identity; and using restrooms and other single-sex facilities consistent with that identity.<sup>43</sup> 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.<sup>44</sup>

For some transgender and/or gender dysphoric adults and adolescents, hormone treatment to feminize or masculinize the body may be medically necessary.<sup>45</sup> Amici curiae the Endocrine Society and the Pediatric Endocrine

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<sup>42</sup> Am. Psychol. Ass'n Task Force Report, *supra*, at 32.

<sup>43</sup> AAP Technical Report, *supra*, at 308; Am. Psychol. Ass'n Guidelines, *supra*, at 840.

<sup>44</sup> 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).

<sup>45</sup> Am. Med. Ass'n, Policy No. H-185.950, *Removing Financial Barriers to Care for Transgender Patients* (Rev. 2016); Am. Psychol. 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*



Society consider these treatments to be the standard of care for transgender and gender dysphoric individuals.<sup>46</sup> A transgender boy 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.<sup>47</sup> 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.<sup>48</sup> For children experiencing the onset of puberty, treatment may include medication to prevent further progression of puberty ("puberty blockers").<sup>49</sup> 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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*of Transgender and Gender Nonbinary People* 23 (2d ed. 2016); WPATH Standards of Care, *supra*, at 33, 54.

<sup>46</sup> See Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, *supra*, at 3869-70; 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).

<sup>47</sup> Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, *supra*, at 3885; see also Brill & Pepper, *The Transgender Child*, *supra*, at 217.

<sup>48</sup> Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, *supra*, at 3888-89 (describing effects on adults).

<sup>49</sup> *Id.* at 3880-83.

giving them additional time to decide whether hormone treatment to feminize or masculinize the body is appropriate.<sup>50</sup>

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 (*i.e.* implants) for transgender women, or genital surgery.<sup>51</sup> Studies show these procedures are effective in reducing gender dysphoria and improving mental health.<sup>52</sup> Because these surgical procedures are largely irreversible, some are recommended only for transgender individuals who have reached the age of legal majority.<sup>53</sup>

Ultimately—regardless of the particular treatments required for a specific individual and when such treatment begins—the goal is for transgender and/or gender dysphoric individuals 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, jobs, and other life activities.<sup>54</sup>

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<sup>50</sup> *Id.* at 3880; Am. Psychol. Ass’n Guidelines, *supra*, at 842; WPATH Standards of Care, *supra*, at 18-20.

<sup>51</sup> Hembree et al., *Endocrine Treatment of Transsexual Persons*, *supra*, at 3893-95; *see also* WPATH Standards of Care, *supra*, at 57-58.

<sup>52</sup> 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, *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 *Pediatrics* 696 (2014).

<sup>53</sup> WPATH Standards of Care, *supra*, at 21.

<sup>54</sup> Walter Bockting & Eli Coleman, *Developmental Stages of the Transgender Coming-Out Process: Toward an Integrated Identity*, in *Principles of Transgender*

## **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.<sup>55</sup> 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. In fact, *amicus curiae* the American Medical Association, whose mission statement requires it to support public health, recently confirmed its support for transgender individuals’ accessing public restrooms according to their gender identities.<sup>56</sup> 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 can have a lasting and damaging impact on the health and well-being of the young person.

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*Medicine and Surgery* 137, 153 (Randi Ettner, Stan Monstrey & Eli Coleman eds., 2d ed. 2016).

<sup>55</sup> APA/NASP Resolution, *supra*, at 9.

<sup>56</sup> Am. Med. Ass’n, Policy No. H-65.964, *Access to Human Services for Transgender Individuals* (Rev. June 2017).

**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.<sup>57</sup> Indeed, exclusionary policies 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 life in the gender with which they identify, 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 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.<sup>58</sup> Those risks are already all too serious: in a comprehensive survey of over 27,000 transgender individuals, 40 percent reported a suicide attempt – a rate *nine times* that reported by the general U.S. population.<sup>59</sup>

**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 youth will have transitioned before they arrive in a particular school, exclusionary policies may be the only way that they are forcibly “outed” to their peers as transgender.

Such 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

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<sup>57</sup> See, e.g., Sam Winter et al., *Transgender People: Health at the Margins of Society*, 388 *Lancet* 390, 394 (2016).

<sup>58</sup> APA/NASP Resolution, *supra*, at 4.

<sup>59</sup> James et al., Nat’l Center for Transgender Equality, *Report of the 2015 U.S. Transgender Survey*, *supra*, at 114.

autonomy.<sup>60</sup> 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 percent of transgender respondents reported experiencing at least one instance of verbal harassment, and 9 percent reported suffering at least one instance of physical assault in gender-segregated bathrooms.<sup>61</sup>

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.”<sup>62</sup> Because unwanted disclosure may cause such significant harm, *amicus curiae* the American Academy of Pediatrics’

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<sup>60</sup> Am. Acad. of Pediatrics, *American Academy of Pediatrics Opposes Legislation that Discriminates Against Transgender Children* (Apr. 18, 2016), <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAPOpposesLegislationAgainstTransgenderChildren.aspx>.

<sup>61</sup> 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).

<sup>62</sup> APA/NASP Resolution, *supra*, 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).

guidance 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.<sup>63</sup> Indeed, the American Academy of Pediatrics announced its opposition to exclusionary policies by noting that they undermine children's ability "to feel safe where they live and where they learn."<sup>64</sup>

### **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.<sup>65</sup> For example, in a Virginia survey of transgender individuals, half of participants reported that they had experienced discrimination in healthcare, employment, or housing, and many individuals had experienced discrimination in more than one area.<sup>66</sup>

Exclusionary policies perpetuate such stigma and discrimination, both by forcing transgender individuals to disclose their status, and by marking transgender

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<sup>63</sup> AAP Technical Report, *supra*, at 305.

<sup>64</sup> Am. Acad. of Pediatrics, *American Academy of Pediatrics Opposes Legislation that Discriminates Against Transgender Children*, *supra*.

<sup>65</sup> 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](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf).

<sup>66</sup> 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).

individuals as “others” who are unfit to use the restrooms used by everyone else. Such policies inherently convey the message that transgender individuals are different and deserve inferior treatment.

Research increasingly shows that stigma and discrimination can have deleterious health consequences,<sup>67</sup> including striking effects on the daily functioning and emotional and physical health of transgender persons.<sup>68</sup> A 2012 study of transgender adults found a rate of hypertension twice that in the general population, which it attributed to the known effects of emotions on cardiovascular health.<sup>69</sup> Another study concluded that “living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses.”<sup>70</sup> And a third study demonstrated that past school victimization may result in greater risk for post-traumatic stress disorder, depression, anxiety, and

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<sup>67</sup> See generally Am. Psychol. Ass’n, *Stress in America: The Impact of Discrimination* (2016), <https://www.apa.org/news/press/releases/stress/2015/impact-of-discrimination.pdf>.

<sup>68</sup> 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”).

<sup>69</sup> Randi Ettner et al., *Secrecy and the Pathophysiology of Hypertension*, *Int’l J. Family Med.* (2012).

<sup>70</sup> Bradford et al., *Experiences of Transgender-Related Discrimination and Implications for Health*, *supra*, at 1827.



suicidality.<sup>71</sup> 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.”<sup>72</sup> There is thus every reason to anticipate that stigmatizing 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. 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 single-user restrooms that no other students are required to use, which undermines their health care needs and risks discrimination or harassment; or (3) attempt not to use the restroom at all.

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<sup>71</sup> 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).

<sup>72</sup> 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* 13 (2011) (noting that “prejudice, discrimination, and violence” underlie the “health disparities” between transgender and cisgender populations).

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.<sup>73</sup> 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.<sup>74</sup>

Studies also show that it is common for transgender students to avoid using restrooms.<sup>75</sup> 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 disease or insufficiency, urolithiasis (stones in the kidney, bladder, or urethra), infertility, and cancer.<sup>76</sup>

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<sup>73</sup> Herman, *Gendered Restrooms and Minority Stress*, *supra*, at 75.

<sup>74</sup> Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. Homosexuality 1378, 1388-89 (2016).

<sup>75</sup> Am. Psychol. Ass'n Guidelines, *supra*, at 840.

<sup>76</sup> See, e.g., Herman, *Gendered Restrooms and Minority Stress*, *supra* at 75 (surveying of 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); James et al., Nat'l Center for Transgender Equality, *Report of the 2015 U.S. Transgender Survey*, *supra*, 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).

Some transgender students experiencing fear and anxiety about restroom usage may attempt to dehydrate themselves so that they will need to urinate less frequently.<sup>77</sup> 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 cancer.<sup>78</sup>

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 may be 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 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

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<sup>77</sup> Herman, *Gendered Restrooms and Minority Stress*, *supra*, at 75.

<sup>78</sup> Lawrence E. Armstrong, *Challenges of Linking Chronic Dehydration and Fluid Consumption to Health Outcomes*, 70 *Nutrition Rev.* S121, 122 (2012).

linger long *after* they leave the school environment. Unsurprisingly, unwelcoming school environments produce particularly poor educational outcomes for transgender individuals.<sup>79</sup> Poorer educational outcomes, standing alone, may lead to lower lifetime earnings and an increased likelihood of poorer health outcomes later in life.<sup>80</sup>

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 with an increased risk of post-traumatic stress disorder, depression, anxiety, and suicidality in subsequent years.<sup>81</sup>

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.<sup>82</sup>

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<sup>79</sup> See APA/NASP Resolution, *supra*, at 6; Emily A. Greytak et al., GLSEN, *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* (2009).

<sup>80</sup> 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/professionals/education/curriculum-tools/population-health/zimmerman.html>.

<sup>81</sup> Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth*, *supra*, at 1581; see also APA/NASP Resolution, *supra*, at 6.

<sup>82</sup> AAP Technical Report, *supra*, at 301, 302, 304-05; see, e.g., Marla E. Eisenberg et al., *Suicidality Among Gay, Lesbian and Bisexual Youth: The Role of Protective*

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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.

### CONCLUSION

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

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*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).

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Respectfully submitted,

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## CERTIFICATES

Devi M. Rao, counsel for *amici curiae* AAP, AGLP, AMA, AMSA, AMWA, ANA, ANAC, APHA, the Endocrine Society, GLMA, HIVMA, LBGT PA Caucus of the American Academy of PAs, OMA, PES, SPAP, and WPATH, hereby certifies that:

1. I hereby certify that I am a member in good standing of the Bar of the United States Court of Appeals for the Ninth Circuit.

2. This Brief complies with the type-volume limitation in Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because, excluding the parts of the document exempted by Rule 32(f), this document contains 5,975 words.

3. This Brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this document has been prepared in a proportionally-spaced typeface using Microsoft Word 2013 in 14-point Times New Roman.

4. On this date, the foregoing Brief of Amici Curiae AAP, AGLP, AMA, AMSA, AMWA, ANA, ANAC, APHA, Endocrine Society, GLMA, HIVMA, LBGT PA Caucus of the American Academy of PAs, OMA, PES, SPAP, and WPATH was filed electronically and served on the other parties via the Court's ECF system.

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