No. 23-2807

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

REBECCA ROE, *by and through her parents and next friends* RYAN ROE; RACHEL ROE; SEXUALITY AND GENDER ALLIANCE, *an association*,

Plaintiffs-Appellants,

v.

DEBBIE CRITCHFIELD, *in her official capacity as Idaho State Superintendent of Public Instruction, et al*., LINDA CLARK, *in their official capacities as members of the Idaho State Board of Education*; WILLIAM G. GILBERT, JR., *in their official capacities as members of the Idaho State Board of Education*; DAVID HILL, *in their official capacities as members of the Idaho State Board of Education*; SHAWN KEOUGH, *in their official capacities as members of the Idaho State Board of Education*; KURT LIEBICH, *in their official capacities as members of the Idaho State Board of Education*; CALLY J. ROACH, *in their official capacities as members of the Idaho State Board of Education*, CINDY SIDDOWAY, *in their official capacities as members of the Idaho State Board of Education*; IDAHO STATE BOARD OF EDUCATION; INDEPENDENT SCHOOL DISTRICT OF BOISE CITY #1; DAVE WAGERS, *in their official capacities as members of the Independent School District of Boise City #1 Board of Trustees*; MARIA GREELEY, *in their official capacities as members of the Independent School District of Boise City #1 Board of Trustees*; NANCY GREGORY*, in their official capacities as members of the Independent School District of Boise City #1 Board of Trustees*; ELIZABETH LANGLEY, *in their official capacities as members of the Independent School District of Boise City #1 Board of Trustees*; BETH OPPENHEIMER, *in their official capacities as members of the Independent School District of Boise City #1 Board of Trustees*; SHIVA RAJBHANDARI, *in their official capacities as members of the Independent School District of Boise City #1 Board of Trustees*; COBY DENNIS, *in their official capacities as members of the Independent School District of Boise City #1 Board of Trustees*,

Defendants-Appellees.

[**CAPTION CONTINUED ON NEXT PAGE**]

On Appeal from the United States District Court for the
District of Idaho, Boise (Hon. David C. Nye, District Judge)

No. 1:23-cv-00315-DCN

BRIEF OF *AMICI CURIAE* AMERICAN MEDICAL ASSOCIATION, AMERICAN ACADEMY OF PEDIATRICS, AMERICAN PSYCHIATRIC ASSOCIATION, AND GLMA: HEALTH PROFESSIONALS ADVANCING LGBTQ+ EQUALITY ("GLMA")
IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), the undersigned counsel certifies that none of the Amici Curiae are nongovernmental entities with a parent corporation or a publicly held corporation that owns 10% or more of its stock.

Dated: November 29, 2023

/s/ *Illyana A. Green*
Illyana A. Green

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Roe by & through Roe v. Critchfield, No. 23-cv-00315, 2023 WL 6690596 (D. Idaho Oct. 12, 2023) 18

STATE STATUTES AND RULES

S.B. 1100, 67th Leg., 1st Reg. Sess. (Idaho 2023) 17

Idaho Code Ann. § 33-6603 18

Idaho Code Ann. § 33-6605 18

Fed. R. App. P. 29 1

OTHER AUTHORITIES

Am. Med. Ass'n, Comm. on Human Sexuality, *Human Sexuality* (1972) 14

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/Health%20Care%20Needs%20of%20Lesbian,%20Gay,%20Bisexual,%20Transgender%20and%20Queer%20Populations%20H-160.99?uri=%2FAMADoc%2FHOD.xml-0-805.xml 15

Am. Psych. Ass'n, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* (2014), http://www.apa.org/topics/lgbt/transgender.pdf 9

Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832 (2015), https://www.apa.org/practice/guidelines/transgender.pdf 5, 6, 9, 13, 14, 16, 27

Am. Psych. Ass'n, *Report of the APA Task Force on Gender Identity and Gender Variance* (2009), https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf 7, 12, 14, 15

Am. Psych. Ass'n & Nat'l Ass'n of School Psychs., *Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools* (2015), https://www.apa.org/about/policy/orientation-diversity.................... 19, 20, 21, 22, 24, 28, 29

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..20

Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. rev. 2022)..10, 11, 12, 13

Am. Sch. Counselor Ass'n, *The School Counselor and LGBTQ+ Youth* (2022), https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-LGBTQ-Youth...15

Lawrence E. Armstrong, *Challenges of Linking Chronic Dehydration and Fluid Consumption to Health Outcomes*, 70 Nutrition Rev. S121 (2012)..27

Walter Bockting & Eli Coleman, *Developmental Stages of the Transgender Coming-Out Process: Toward an Integrated Identity*, *in Principles of Transgender Medicine and Surgery* (Randi Ettner et al., eds., 2d ed. 2013) 17

Joseph H. Bonifacio et al., *Management of Gender Dysphoria in Adolescents in Primary Care*, 191 Canadian Med. Ass'n J. E65 (2019)..12

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 (2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780721/ 20

William Byne et al., Am. Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria, *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists*, 175 Am. J. Psychiatry 1046 (2018) 15, 16

Centers for Disease Control and Prevention, *Transgender Persons*, https://www.cdc.gov/lgbthealth/transgender.htm 9

Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, 33 J. Sch. Nursing 1 (2017)............................10

Hilary Daniel et al., *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper From the American College of Physicians*, 163 Annals Internal Med. 135 (2015) 15

Jack K. Day et al., *Safe Schools? Transgender Youth's School Experiences and Perceptions of School Climate*, 47 J. Youth Adolescence 1731 (2018) 21

Jack Drescher et al., Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* (2018), https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf 10

Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 J. Am. Acad. Child Adolesc. Psychiatry 116 (2017)...16

Diane Ehrensaft, *From Gender Identity Disorder to Gender Identity Creativity: True Gender Self Child Therapy*, 59 J. Homosexuality 337 (2012)..12

Marla E. Eisenberg et al., *Suicidality Among Gay, Lesbian and Bisexual Youth: The Role of Protective Factors*, 39 J. Adolescent Health 662 (2006) 29

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)..27

Emily A. Greytak et al., GLSEN, *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* (2009) 28

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 (2013)....................................24, 26, 27

Jody L. Herman et al., Williams Institute, *How Many Adults and Youth Identify as Transgender in the United States?* (June 2022), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf..3, 7

Jaclyn M. White Hughto et al., *Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions*, 147 Soc. Sci. Med. 222 (Nov. 11, 2015) 13, 20

Int'l Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2022), https://www.ipa.world/IPA/en/IPA1/Procedural_Code/IPA_POSITION_STATEMENT_ON_ATTEMPTS_TO_CHANGE_SEXUAL_ORIENTATION__GENDER_IDENTITY__OR_GENDER_EXPRESSI.aspx 15, 20

Sandy E. James et al., Nat'l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* (Dec. 2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf....................6, 27

Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students —19 States and Large Urban School Districts, 2017*, 68 Morbidity & Mortality Weekly Report 67 (2019), http://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf...19

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* (2016) 24

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 (2013)........24–25, 29

Letter from James L. Madara, CEO/Exec. Vice President, Am. Med. Ass’n, to Hon. Robert Wilkie, Sec’y, U.S. Dep’t Veterans Affs. (Sept. 6, 2018), https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2018-9-6-Letter-to-Wilkie-re-Exclusion-of-Gender-Alterations-from-Medical-Benefits-Package.pdf 14

Letter from James L. Madara, CEO/Exec. Vice President, Am. Med. Ass’n, to Bill McBride, Exec. Dir., Nat’l Governors Ass’n (Apr. 26, 2021), https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2021-4-26-Bill-McBride-opposing-anti-trans-bills-Final.pdf 8

Colt Meier & Julie Harris, Am. Psych. Ass’n, Fact Sheet: *Gender Diversity and Transgender Identity in Children*, http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf 10

National Academies of Sciences, Engineering, Medicine, *Measuring Sex, Gender Identity, and Sexual Orientation* (Nancy Bates et al. eds., 2022) 6

Jason Rafferty, Am. Acad. of Pediatrics, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 Pediatrics (reaffirmed 2023), https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for 5, 14, 15, 16, 22, 25

C. E. Roselli, *Neurobiology of Gender Identity and Sexual Orientation*, J. Neuroendocrinology (July 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6677266/pdf/nihms-1042560.pdf 8

Stephen T. Russell et al., *Youth Empowerment and High School Gay-Straight Alliances*, 38 J. Youth Adolescence 891 (2009) 29

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/ 8

Mostafa Sadr et al., *2D:4D Suggests a Role of Prenatal Testosterone in Gender Dysphoria*, 49 Archives Sexual Behav. 421 (2020) 8

Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. Homosexuality 1378 (2016) 26

Lindsay Kahle Semprevivo, *Protection and Connection: Negating Depression and Suicidality Among Bullied, LGBTQ Youth*, 20 Int'l J. Env't Rsch. Pub. Health (2023), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10379061/pdf/ijerph-20-06388.pdf....................23, 25

Nicolle K. Strand & Nora L. Jones, *Invisibility of "Gender Dysphoria,"* 23 Am. Med. Ass'n J. Ethics 557 (2021) 13

Carl G. Streed Jr., *Health Communication and Sexual Orientation, Gender Identity, and Expression*, 106 Med. Clinics N. Am. 589 (2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9219031/pdf/nihms-1775881.pdf..9

Substance Abuse and Mental Health Servs. Admin. ("SAMHSA"), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* (2015), https://store.samhsa.gov/sites/default/files/d7/priv/sma15-4928.pdf...7, 12

Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 Developmental Psych. 1580 (2010), https://familyproject.sfsu.edu/sites/default/files/documents/FAP_School%20Victimization%20of%20Gender-nonconforming%20LGBT%20Youth.pdf 22, 25, 29

Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 Pediatrics 1 (2020) 25

Sam Winter et al., *Transgender People: Health at the Margins of Society*, 388 Lancet 390 (2016) 18–19

World Professional Association for Transgender Health ("WPATH"), *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, Sept. 2022, https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644 ....11, 14, 16, 22, 25

Emily B. Zimmerman et al., *Understanding the Relationship Between Education and Health: A Review of the Evidence and an Examination of Community Perspectives in Population Health: Behavioral and Social Science Insights* 347 (Robert M. Kaplan et al., eds. 2015), https://www.ahrq.gov/sites/default/files/publications/files/population-health.pdf 21, 28

IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

Amici curiae are leading medical, mental health, and other health care organizations. Collectively, *Amici* represent physicians and mental-health professionals, including specialists in family medicine, internal medicine, pediatrics, women's health, and transgender health.

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

The American Academy of Pediatrics ("AAP") represents 67,000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-

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[1] This brief is filed with the consent of all parties. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *Amici curiae* certify that this brief was authored entirely by counsel for *Amici curiae* and not by counsel for any party, in whole or part; no party or counsel for any party contributed money to fund preparing or submitting this brief; and apart from *Amici curiae* and their counsel, no other person contributed money to fund preparing or submitting this brief.

being for all infants, children, adolescents, and young adults. In its dedication to the health of all children, the AAP strives to improve health care access and eliminate disparities for children and teenagers who identify as lesbian, gay, bisexual, transgender, or for those questioning their sexual or gender identity.

GLMA: Health Professionals Advancing LGBTQ+ Equality ("GLMA") is a national organization committed to ensuring health equity for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") individuals and equality for LGBTQ+ health professionals in their work and learning environments. To achieve this mission, GLMA utilizes the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research.

The American Psychiatric Association ("APA"), with more than 38,000 members, is the nation's leading organization of physicians who specialize in psychiatry. Its member physicians work to ensure high quality care and effective treatment for all persons with mental health disorders. It is the position of the APA that discrimination, including against those with gender dysphoria, has negative mental health consequences. The APA opposes all public and private discrimination against transgender and gender-diverse individuals, including in health care.

All *Amici* share a commitment to improving the physical and mental health of everyone—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public-health consequences

of laws and policies that impact LGBTQ+ individuals. *Amici* submit this brief to inform the Court of the medical consensus regarding what it means to be transgender; the protocols for the treatment of gender dysphoria, which include living in accordance with one's gender identity in all aspects of life; and the predictable harms to the health and well-being of transgender students who are excluded from using facilities that correspond to their gender identity.

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, or general social or vocational capabilities.

Many transgender individuals experience a condition called gender dysphoria, which is characterized by clinically significant distress resulting from the incongruence between one's gender identity and the sex assigned to the individual at birth. In Idaho, 0.76% or roughly 1,000 youth between the ages of thirteen and seventeen identify as transgender. Jody L. Herman et al., Williams Institute, *How Many Adults and Youth Identify as Transgender in the United States?* 9 tbl.4 (June 2022), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf. The medical consensus regarding treatment for gender dysphoria is

to assist the transgender individual in living in accordance with their gender identity, thus alleviating the distress or impairment that not living in accordance with one's gender identity can cause. Treatment can include any or all of the following: counseling, social transition (through, *e.g.*, use of a new name and pronouns, new clothes and grooming in order to allow the person to conform to social expectations and norms associated with his or her gender identity), hormone therapy, and/or gender-confirming surgeries. These treatments for gender dysphoria are highly effective in reducing or eliminating the incongruence and associated distress between a person's gender identity and their assigned sex at birth.

Without the appropriate support and treatment for gender dysphoria, transgender individuals face increased rates of negative mental health outcomes, substance use, and suicide. Exclusionary laws, in particular, exacerbate and reinforce the real and perceived stigma experienced by transgender individuals, especially transgender youth. The fear of facing such discrimination can prompt transgender students to hide their gender identity, directly thwarting accepted treatment protocols and creating a vicious cycle with serious negative consequences for individuals with gender dysphoria.

Access to single-sex facilities that correspond to one's gender identity is a critical aspect of 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 facilities separate from students who share their gender identity are at risk of being bullied and discriminated against and may suffer psychological harm. The stigma and minority stress that result from this 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.

Most people have a "gender identity"—a "deeply felt, inherent sense" of their gender. Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 834, 862 (2015), https://www.apa.org/practice/guidelines/transgender.pdf [hereinafter "Am. Psych. Ass'n *Guidelines*"]; *see also* Jason Rafferty, Am. Acad. of Pediatrics, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 Pediatrics at 2 (reaffirmed 2023), https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for [hereinafter "AAP *Policy Statement*"]. Transgender individuals have a gender identity 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 they were assigned at birth. Am. Psych. Ass'n *Guidelines*, *supra*, at 861, 863. A transgender man or boy is an individual who is assigned the sex of female at birth but identifies as male and transitions to live in accordance with that male identity. *See id*. at 863. A transgender woman or girl is an individual who is assigned the sex of male at birth but identifies as female and transitions to live in accordance with that female identity. *See id*. A transgender boy is a boy. A transgender girl is a girl. Gender identity is distinct from and does not correlate with sexual orientation. Transgender people, like cisgender people, may identify as heterosexual, gay, lesbian, bisexual, or asexual. Am. Psych. Ass'n *Guidelines*, *supra*, at 835–36, 862; *see* Nat'l Academies of Sciences, Engineering, Medicine, *Measuring Sex, Gender Identity, and Sexual Orientation* 17–22 (Nancy Bates et al. eds., 2022); Sandy E. James et al., Nat'l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 246 (Dec. 2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf.

[2] 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*, *supra*, at 834.

Currently, over 1.6 million adults and youth in the United States identify as transgender, which is roughly 0.6% of Americans aged thirteen years or older. *See* Jody L. Herman et al., *supra*, at 1. In Idaho, roughly 0.76% of youth between the ages of thirteen and seventeen identify as transgender. *Id.* at 9 tbl.4.

The medical profession's understanding of gender has advanced considerably over the past fifty years. Throughout much of the twentieth century, individuals who did not conform with their gender assigned at birth were often viewed as "perverse or deviant." Am. Psych. Ass'n, *Report of the APA Task Force on Gender Identity and Gender Variance* 26–27 (2009), https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf [hereinafter "Am. Psych. Ass'n *Task Force Report*"]. Medical practices during that time tried to "correct" this perceived deviance by attempting to force gender non-conforming people, including transgender people, to live in accordance with the sex assigned to them at birth. These efforts failed and caused significant harm to the individuals subjected to them. *Id.*; Substance Abuse and Mental Health Servs. Admin. ("SAMHSA"), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 13, 24–26 (2015), https://store.samhsa.gov/sites/default/files/d7/priv/sma15-4928.pdf [hereinafter "SAMHSA, *Ending Conversion Therapy*"]. *Amici's* professions now recognize that homosexuality is a normal form of human sexuality—and that stigmatizing homosexual people causes significant harm—*Amici* now recognize that being

transgender is a "normal variation[] of human identity and expression"—and that stigmatizing transgender people also causes significant harm. *See* Letter from James L. Madara, CEO/Exec. Vice President, Am. Med. Ass'n, to Bill McBride, Exec. Dir., Nat'l Governors Ass'n (Apr. 26, 2021), https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2021-4-26-Bill-McBride-opposing-anti-trans-bills-Final.pdf.

Transgender identity may have genetic or biological bases. While psychologists, psychiatrists, and neuroscientists have not pinpointed why some people are transgender, research suggests there may be biological or genetic influences, including, for example, exposure of transgender men identified at birth as females to elevated levels of testosterone in the womb.[3] Brain scans and neuroanatomical studies of transgender individuals also support the existence of biological explanations. *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/.

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[3] *See, e.g.*, Mostafa Sadr et al., *2D:4D Suggests a Role of Prenatal Testosterone in Gender Dysphoria*, 49 Archives Sexual Behav. 421, 427 (2020); C. E. Roselli, *Neurobiology of Gender Identity and Sexual Orientation*, J. Neuroendocrinology (July 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6677266/pdf/nihms-1042560.pdf.

A. Gender Identity

"*Gender identity*" refers to a "person's internal sense" of being male, female, or another gender. 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 "Am. Psych. Ass'n *Answers*"]. Every person has a gender identity. Carl G. Streed Jr., *Health Communication and Sexual Orientation, Gender Identity, and Expression*, 106 Med. Clinics N. Am. 589 (2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9219031/pdf/nihms-1775881.pdf; Centers for Disease Control and Prevention, *Transgender Persons*, https://www.cdc.gov/lgbthealth/transgender.htm (last accessed Nov. 28, 2023). Further, gender identity cannot necessarily be ascertained immediately after birth. *See* Am. Psych. Ass'n *Guidelines*, *supra*, at 862. Many children develop stability in their gender identity between ages three and four.[4] *Id*. at 841.

"[*G*]*ender expression* refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, or body characteristics." Am. Psych. Ass'n *Answers*, *supra*, at 1. There are many individuals who depart from stereotypical male and female appearances and roles, but who are

[4] "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." Am. Psych. Ass'n *Guidelines*, *supra,* at 836.

not transgender. *See* Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, 33 J. Sch. Nursing 1, 6 (2017). By contrast, a transgender boy or a transgender girl "consistently, persistently, and insistently" identifies as a gender different from the sex they were assigned at birth. *See* Colt Meier & Julie Harris, Am. Psych. Ass'n, Fact Sheet: *Gender Diversity and Transgender Identity in Children* at 1, http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf; *see also* Cicero & Wesp, *supra*, at 5–6.

B. Gender Dysphoria

As noted above, being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Jack Drescher et al., Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* (2018), https://www.psychiatry.org/File%20Library/AboutAPA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf. However, many transgender individuals are diagnosed with gender dysphoria, a condition that is characterized by clinically significant distress and anxiety resulting from the incongruence between an individual's gender identity and birth-assigned sex. Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 511–20 (5th ed. rev. 2022) [hereinafter "*DSM-5-TR*"].

As discussed in detail below, the recognized treatment for someone with gender dysphoria is support that addresses "their social, mental, and medical health needs and well-being while respectfully affirming their gender identity." World Professional Association for Transgender Health ("WPATH"), *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, Sept. 2022, at S7, https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644 [hereinafter "WPATH *Standards of Care*"]. These treatments are effective in alleviating gender dysphoria and are medically necessary for many people. *Id.* at S16-S18.

1. The Diagnostic Criteria And Seriousness Of Gender Dysphoria

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision, codifies the diagnostic criteria for gender dysphoria in adults as follows: "[a] marked incongruence between the gender to which they have been assigned … and their experienced/expressed gender," of at least six months' duration, as manifested by at least two out of six criteria, and "clinically significant distress or impairment in social, school, or other important areas of functioning." *DSM-5-TR*, *supra*, at 512–13. 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. *Id*.

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. *See* Am. Psych. Ass'n *Task Force Report, supra*, at 45–46; SAMHSA, *Ending Conversion Therapy*, *supra*, at 2–3. For instance, a deepening voice for transgender girls or the growth of breasts and the beginning of a menstrual cycle for transgender boys 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." Diane Ehrensaft, *From Gender Identity Disorder to Gender Identity Creativity: True Gender Self Child Therapy*, 59 J. Homosexuality 337, 345 (2012); *see also* Joseph H. Bonifacio et al., *Management of Gender Dysphoria in Adolescents in Primary Care*, 191 Canadian Med. Ass'n J. E65, E72 (2019) ("Many gender-variant youth may experience the physical changes of puberty as traumatic, with further negative consequences for mental health.").

Left untreated, gender dysphoria can cause debilitating distress, depression, impairment of function, self-mutilation to alter one's genitals or secondary sex characteristics, other self-injurious behaviors, and suicide. *See*, *e.g.*, *DSM-5-TR*, *supra*, at 515–19; Nicolle K. Strand & Nora L. Jones, *Invisibility of "Gender Dysphoria,"* 23 Am. Med. Ass'n J. Ethics 557, 557 (2021) (discussing consequences of untreated gender dysphoria, including "higher rates of suicide and mental illness"). Like other minority groups, transgender individuals are also frequently subjected to prejudice and discrimination in multiple areas of their lives (*e.g.*, school, employment, housing, health care), which exacerbates these negative health outcomes and makes access to appropriate medical care even more important. Jaclyn M. White Hughto et al., *Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions*, 147 Soc. Sci. Med. 222, 223, 226–27 (Nov. 11, 2015) (discussing the direct and exacerbated health impacts of discrimination and stigma against transgender individuals).

2. The Accepted Treatment Protocols For Gender Dysphoria

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. Am. Psych. Ass'n *Guidelines*, *supra*, at 832–33, 835. For

over thirty years, the generally accepted treatment protocols for gender dysphoria[5] have aimed to alleviate the distress associated with the incongruence between gender identity and birth-assigned sex. Am. Med. Ass'n, Comm. on Human Sexuality, *Human Sexuality* 38 (1972). These protocols are laid out in the *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8* developed by WPATH. WPATH *Standards of Care*, *supra*, at S7. 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 communities regarding the appropriate treatments for gender dysphoria. Am. Psych. Ass'n *Task Force Report*, *supra*, at 32; AAP *Policy Statement*, *supra*, at 6. *See also* Letter from James L. Madara, CEO/Exec. Vice President, Am. Med. Ass'n, to Hon. Robert Wilkie, Sec'y, U.S. Dep't Veterans Affs. 2 (Sept. 6, 2018), https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured %2Fbinary%2Fletter%2FLETTERS%2F2018-9-6-Letter-to-Wilkie-re-Exclusion-of-Gender-Alterations-from-Medical-Benefits-Package.pdf.

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

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

interventions to bring the body into alignment with one's gender identity.[6] Am. Psych. Ass'n *Task Force Report*, *supra*, at 32–39; William Byne et al., Am. Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria, *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists*, 175 Am. J. Psychiatry 1046 (2018) [hereinafter "*Workgroup on Treatment of Gender Dysphoria*"]; AAP *Policy Statement*, *supra*, at 6–7. However, each patient requires an individualized treatment plan centered on their specific needs. Am. Psych. Ass'n *Task Force Report*, *supra*, at 32.

[6] Some clinicians still offer versions of "reparative," or "conversion" therapy based on the idea that being transgender is a mental disorder. However, all leading medical professional organizations that have considered the issue have explicitly rejected such treatments. *See* Am. Med. Ass'n, Policy H-160.991, *Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations* 1 (2018), https://policysearch.ama-assn.org/policyfinder/detail/Health%20Care%20Needs%20of%20Lesbian,%20Gay,%20Bisexual,%20Transgender%20and%20Queer%20Populations%20H-160.991?uri=%2FAMADoc%2FHOD.xml-0-805.xml; Am. Sch. Counselor Ass'n, *The School Counselor and LGBTQ+ Youth* (2022), https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-LGBTQ-Youth; Hilary Daniel et al., *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper From the American College of Physicians*, 163 Annals Internal Med. 135, 136 (2015); AAP *Policy Statement*, *supra*, at 4; *see* Int'l Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2022), https://www.ipa.world/IPA/en/IPA1/Procedural_Code/IPA_POSITION_STATEMENT_ON_ATTEMPTS_TO_CHANGE_SEXUAL_ORIENTATION__GENDER_IDENTITY__OR_GENDER_EXPRESSI.aspx.

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. Leading medical organizations, including the Endocrine Society, the American Psychological Association, WPATH, and *amici* the American Medical Association, American Academy of Pediatrics, and the American Psychiatric Association have published policy statements and guidelines on providing age-appropriate gender affirming care. *See, e.g.*, AAP *Policy Statement*, *supra*, at 5–6; Am. Psych. Ass'n *Guidelines*, *supra*, at 841–43; *Workgroup on Treatment of Gender Dysphoria*, *supra*. Transgender people of all ages benefit from social transition, including children. Socially transitioned transgender youth "largely mirror the mental health" of age-matched "cisgender siblings and peers." WPATH *Standards of Care*, *supra*, at S77. They also tend to report lower rates of anxiety and depression and a better sense of self-worth compared to transgender youth who have not socially transitioned to fit their gender identity. *See* Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 J. Am. Acad. Child Adolesc. Psychiatry 116 (2017); *see also* WPATH *Standards of Care*, *supra*, at S77–S78. For transgender youth to live their lives fully in accordance with their gender identity, they should

be able to use school facilities, such as bathrooms and locker rooms, that correspond to their gender identity.

Ultimately, the goal is for individuals with gender dysphoria to experience "[i]dentity 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. Walter Bockting & Eli Coleman, *Developmental Stages of the Transgender Coming-Out Process: Toward an Integrated Identity*, *in Principles of Transgender Medicine and Surgery* 185, 202–03 (Randi Ettner et al., eds., 2d ed. 2013).

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

The enacted Idaho Senate Bill at issue (S.B. 1100, 67th Leg., 1st Reg. Sess. (Idaho 2023))[7] in this case bans students like Plaintiffs from using school restrooms, changing facilities, or sleeping quarters that accord with their gender identity. Complaint ¶¶ 1, 95, *Roe by & through Roe v. Critchfield*, No. 23-cv-00315 (D. Idaho July 26, 2023), ECF No. 1. Under the law, transgender female students can either: (1) use the boys' bathroom, boys' locker room, and boys' sleeping quarters, or (2) use a designated bathroom, locker room, or sleeping quarter that is gender neutral or

[7] S.B. 1100 is codified at Idaho Code Ann. § 33-6601 *et seq*. (eff. July 1, 2023).

is not designated for girls. Idaho Code Ann. § 33-6603; *see also id.* § 33-6605 (requiring that schools provide "reasonable accommodation[s]" for students unwilling to use facilities that comport with their sex and who "[p]rovide[] a written request for reasonable accommodation to the public school").

As Plaintiffs argued in support of their preliminary injunction motion, this law may result in severe adverse consequences for the health and well-being of transgender students. *See Roe by & through Roe v. Critchfield*, No. 23-cv-00315, 2023 WL 6690596, at *16 (D. Idaho Oct. 12, 2023) (recounting Plaintiffs' testimonial evidence from their expert, Dr. Stephanie Budge, who explained that "transgender students may suffer depression, anxiety, or other psychological harms if they are not allowed to socially transition and use facilities matching their gender identity"). Indeed, requiring a transgender student to use a bathroom that forces them to identify as a cisgender male or female can exacerbate the harmful effects of gender dysphoria. More importantly, this treatment goes against the overwhelming medical consensus that treatment of gender dysphoria requires supporting the transgender individual in living her life according to her gender identity.

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

For transgender individuals, being treated differently as a result of their transgender identity can cause tremendous pain and harm. *See, e.g.*, Sam Winter et

al., *Transgender People: Health at the Margins of Society*, 388 Lancet 390, 394 (2016). Exclusionary policies can 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. Am. Psych. Ass'n & Nat'l Ass'n of School Psychs., *Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools* (2015), https://www.apa.org/about/policy/orientation-diversity [hereinafter "APA/NASP Resolution"]. Those risks are already all too serious. A 2019 report from the Centers for Disease Control and Prevention found that transgender high school students were more likely than cisgender high school students to report violence victimization, substance use, and suicide risk, with almost thirty-five percent of transgender high school students reporting attempting suicide compared to roughly six percent of cisgender high school students. Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students —19 States and Large Urban School Districts, 2017*, 68 Morbidity & Mortality Weekly Report 67, 69 tbl.2 (2019), http://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf.

In addition, exclusionary policies perpetuate the perceived stigma of being transgender by forcing transgender individuals to disclose their transgender status,

by marking them as "others," and by conveying the State's judgment that they are different and deserve inferior treatment. Research increasingly shows that stigma and discrimination have deleterious health consequences. *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. These consequences have striking effects on the daily functioning and emotional and physical health of transgender people. *See, e.g.*, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra* ("[B]ias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health.").

One study concluded that "living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses." 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, 1827 (2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780721/. As both the American Psychological Association and the National Association of School Psychologists have concluded, "the notable burden of stigma and discrimination affects minority persons' health and well-being and generates health disparities." APA/NASP Resolution, *supra*; *see also* White Hughto et al., *supra*, at 223 (discussing how anti-transgender stigma is

"linked to adverse health outcomes including depression, anxiety, suicidality, [and] substance abuse"). Thus, there is every reason to anticipate that the Idaho school policy excluding transgender girls from using bathrooms in accordance with their gender identity can negatively affect their health.

Finally, exclusionary policies have a particularly deleterious effect on the social and emotional development of children and adolescents. Discrimination against and harassment of children and adolescents in their formative years can have negative effects that linger long after they leave the school environment. Unsurprisingly, unwelcoming school environments produce particularly "poor[] educational outcomes" for transgender individuals. *See* APA/NASP Resolution, *supra*; Jack K. Day et al., *Safe Schools? Transgender Youth's School Experiences and Perceptions of School Climate*, 47 J. Youth Adolescence 1731 (2018) (finding higher truancy rates, more victimization, lower grades, and negative perceptions of school climate). Poorer educational outcomes, alone, are correlated to lower lifetime earnings and an increased likelihood of poorer health outcomes later in life. *See, e.g.*, Emily B. Zimmerman et al., *Understanding the Relationship Between Education and Health: A Review of the Evidence and an Examination of Community Perspectives in Population Health: Behavioral and Social Science Insights* 347 (Robert M. Kaplan et al., eds. 2015), https://www.ahrq.gov/sites/default/files/publications/files/population-health.pdf. Moreover, and as already discussed, exclusionary policies can produce

and compound the stigma and discrimination that transgender children and adolescents face in a school environment. Such stigma and discrimination, in turn, are associated with an increased risk of post-traumatic stress disorder, depression, anxiety, and suicidality in subsequent years. Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 Developmental Psych. 1580, 1580–82 (2010), https://familyproject.sfsu.edu/sites/default/files/documents/FAP_School%20Victimization%20of%20Gender-nonconforming%20LGBT%20Youth.pdf; *see also* APA/NASP Resolution, *supra*.

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

The goal of medical treatment for gender dysphoria is to alleviate a transgender patient's distress by allowing them to live consistently with their gender identity. *See* WPATH *Standards of Care*, *supra* S77–S78. As discussed above, the appropriate protocol for treating gender dysphoria includes aligning the body and outward expression with one's gender identity. This is particularly important in school environments, which "play a significant role in the social and emotional development of children" and where "[e]very child has a right to feel safe and respected at school[.]" AAP *Policy Statement*, *supra*, at 9. Promoting safe, supportive, and affirming school environments reduces the risk of negative health

outcomes such as depression and suicidality in transgender students. *See* Lindsay Kahle Semprevivo, *Protection and Connection: Negating Depression and Suicidality Among Bullied, LGBTQ Youth*, 20 Int'l J. Env't Rsch. Pub. Health at 1–2 (2023), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10379061/pdf/ijerph-20-06388.pdf.

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. Exclusionary policies 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 at 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 autonomy. 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. 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." 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). Because unwanted disclosure may cause such significant harms, the American Academy of Pediatrics' guidance states that care should be confidential, and it is not the role of the pediatrician to inform parents or guardians about a patient's sexual identity or behavior as doing so could expose the patient to harm. 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) [hereinafter "AAP Technical Report"].

As discussed above, the appropriate protocol for treating gender dysphoria includes aligning the body and outward expression with one's gender identity. This is particularly important in school environments, which "play a significant role in the social and emotional development of children" and where "[e]very child has a right to feel safe and respected at school[.]" AAP *Policy Statement*, *supra*, at 9.

Bullying, harassment, and abuse experienced by transgender students can result in a greater risk for post-traumatic stress disorder, depression, anxiety, and suicidality. Toomey et al., *supra*; *see also* Kahle Semprevivo, *supra*, at 8–10. As noted above, social transition by transgender youth is a critical part of treating gender dysphoria. WPATH *Standards of Care*, *supra*, at S76. Denying children the ability to fully express their gender identity in schools, as S.B. 1100 does, makes it difficult if not impossible for transgender children to live in accordance with their gender identity and thwarts the appropriate medical treatment for these children. Lack of appropriate treatment, in turn, increases the rate of negative health outcomes, substance use, and suicide for transgender children. *See* Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 Pediatrics 1, 6–7 (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).

C. 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 children and adolescents from using school restrooms consistent with their gender identity leave them with 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 at school and potentially cause them to eschew social activities or everyday tasks. *Gendered Restrooms and Minority Stress*, *supra*, at 75. 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. Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. Homosexuality 1378, 1388–89 (2016).

Studies also show that it is common for transgender students to avoid using restrooms. Am. Psych. Ass'n *Guidelines*, *supra*, at 840. 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 disease or insufficiency, urolithiasis (stones in the kidney, bladder, or urethra), infertility, and cancer. *See, e.g.*, *Gendered Restrooms and Minority Stress*, *supra*, (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); James et al., *supra*, at 246; *see generally* 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 use may attempt to dehydrate themselves so that they will need to urinate less frequently. *Gendered Restrooms and Minority Stress*, *supra*. 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. Lawrence E. Armstrong, *Challenges of Linking Chronic Dehydration and Fluid Consumption to Health Outcomes*, 70 Nutrition Rev. S121, S122 (2012).

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 transgender individuals to further avoid restroom use or to 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.

D. 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. *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). Poorer educational outcomes, alone, may lead to lower lifetime earnings, and an increased likelihood of poorer health outcomes later in life. *See, e.g.*, Zimmerman et al., *supra*, at 347.

Moreover, and as already discussed, exclusionary policies may produce and/or 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. Toomey et al., *supra*; *see also* APA/NASP Resolution, *supra*, at 6.

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. *See* AAP Technical Report, *supra*, at e302, e304–05; *see generally* 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).

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 laws and policies such as S.B. 1100 worsen stigma

and discrimination against transgender students, causing myriad harms to their health, safety, and overall well-being.

CONCLUSION

For the foregoing reasons, *Amici curiae* respectfully urge this Court to reverse the district court's denial of a preliminary injunction.

November 29, 20223

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Illyana A. Green, an attorney, hereby certify that on November 29, 2023, I caused the foregoing **Brief of *Amici Curiae* American Medical Association, American Academy of Pediatrics, American Psychiatric Association, and GLMA: Health Professional Advancing LGBTQ+ Equality ("GLMA") In Support Of Plaintiffs-Appellants and Reversal** to be electronically filed with the Clerk of the Court for the United States Court Of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Date: November 29, 2023

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