

No. 18-13592

---

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

---

DREW ADAMS, *Plaintiff-Appellee*,

v.

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

---

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

---

**BRIEF OF *AMICI CURIAE* MEDICAL, NURSING, MENTAL HEALTH,  
AND OTHER HEALTH CARE ORGANIZATIONS  
IN SUPPORT OF APPELLEE**

---

Devi M. Rao  
*Counsel of Record for Amici Curiae*  
Caroline C. Cease  
Zachary S. Blau  
JENNER & BLOCK LLP  
1099 New York Ave., NW, Suite 900  
Washington, DC 20001  
Telephone: (202) 639-6000

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rule 26.1-2(b), *amici* certify that, to the best of their knowledge, the certificate of interested persons contained in Defendant-Appellant's brief is complete. Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, each *amicus curiae* hereby certifies that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

## TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT.....	i
TABLE OF AUTHORITIES .....	iv
STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE OF <i>AMICI CURIAE</i> .....	1
STATEMENT OF THE ISSUE.....	2
SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	4
I. What It Means To Be Transgender And To Suffer From Gender Dysphoria.....	4
A. Gender Identity.....	6
B. Gender Dysphoria.....	8
1. The Diagnostic Criteria And Seriousness Of Gender Dysphoria.....	9
2. The Accepted Treatment Protocols For Gender Dysphoria.....	10
II. Excluding Transgender Individuals From Facilities Consistent With Their Gender Identity Endangers Their Health, Safety, And Well-Being.....	16
A. Exclusionary Policies Exacerbate Gender Dysphoria And Are Contrary To Widely Accepted, Evidence-Based Treatment Protocols.....	18
B. Exclusionary Policies Expose Transgender Individuals To Harassment And Abuse.....	19
C. Exclusionary Policies Exacerbate Stigma And Discrimination, Leading To Negative Health Outcomes .....	21

D.	Exclusionary Policies Lead To Avoidance Of Restroom Use, Harming Physical Health .....	23
E.	Exclusionary Policies Harm Adolescent Social And Emotional Development—With Lifelong Effects .....	25
	CONCLUSION .....	27

## TABLE OF CITATIONS\*

### CASES

- Doe v. Boyertown Area School Dist.*, 276 F. Supp. 3d 324 (E.D. Pa. 2017),  
*aff'd*, 897 F.3d 518 (3d Cir. 2018), *petition for cert. filed*, 87 U.S.L.W.  
3229 (U.S. Nov. 21, 2018) (No. 18-658)..... 17-18
- Students and Parents for Privacy v. United States Department of  
Education*, No. 16-cv-4945, 2016 WL 6134121 (N.D. Ill. Oct. 18, 2016),  
*report and recommendation adopted by* 2017 WL 6629520 (N.D. Ill.  
Dec. 29, 2017).....18

### PROFESSIONAL ARTICLES

- American Academy 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-ro  
om/Pages/AAPOpposesLegislationAgainstTransgenderChildren.aspx](https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAPOpposesLegislationAgainstTransgenderChildren.aspx)....20, 21
- American Academy of Pediatrics, *Gender Identity Development in  
Children* (2015), [https://healthychildren.org/English/ages-stages/grade  
school/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx](https://healthychildren.org/English/ages-stages/grade-school/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx).....6
- American Academy of Pediatrics, *Gender Non-Conforming &  
Transgender Children* (2015), [https://healthychildren.org/English/ages-  
stages/gradeschool/Pages/Gender-Non-Conforming-Transgender-Child  
ren.aspx](https://healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Non-Conforming-Transgender-Children.aspx) .....8
- American Medical Association, Committee on Human Sexuality, *Human  
Sexuality* (1972) .....12
- American Medical Association, Policy H-65.964, *Access to Human  
Services for Transgender Individuals* (2017) .....17
- American Medical Association, Policy H-160.991, *Health Care Needs of  
Lesbian, Gay, Bisexual, and Transgender Populations* (rev. 2016),  
[https://searchpf.ama-assn.org/SearchML/searchDetails.action?uri=%2  
FAMADoc%2FHOD.xml-0-805.xml](https://searchpf.ama-assn.org/SearchML/searchDetails.action?uri=%2FAMADoc%2FHOD.xml-0-805.xml)..... 13

---

\* Authorities upon which we chiefly rely are marked with an asterisk.

American Medical Association, Policy H-185.950, <i>Removing Financial Barriers to Care for Transgender Patients</i> .....	14
* American Psychiatric Association, <i>Diagnostic and Statistical Manual of Mental Disorders</i> (5th ed. 2013) .....	8, 9, 10
American Psychiatric Association, <i>Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression</i> (2012), <a href="http://www.apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender">http://www.apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender</a> .....	11, 13, 22
American Psychiatric Association, <i>Position Statement on Discrimination Against Transgender and Gender Variant Individuals</i> (2012), <a href="https://psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2012-Transgender-Gender-Variant-Discrimination.pdf">https://psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2012-Transgender-Gender-Variant-Discrimination.pdf</a> .....	6, 8
American Psychiatric Association Workgroup on Treatment of Gender Dysphoria, <i>Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists</i> (2016).....	13
American Psychological Association, <i>Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression</i> (2014), <a href="http://www.apa.org/topicslgbt/transgender.pdf">http://www.apa.org/topicslgbt/transgender.pdf</a> .....	6, 7
* American Psychological Association, <i>Guidelines for Psychological Practice with Transgender and Gender Nonconforming People</i> , 70 <i>Am. Psychologist</i> 832 (2015) .....	4, 5, 6, 11, 14, 15, 24
American Psychological Association, <i>Report of the APA Task Force on Gender Identity and Gender Variance</i> (2008), <a href="https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf">https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf</a> .....	5, 10, 12, 13
American Psychological Association, <i>Stress in America: The Impact of Discrimination</i> (2016), <a href="https://www.apa.org/news/press/releases/stress/2015/impact-of-discrimination.pdf">https://www.apa.org/news/press/releases/stress/2015/impact-of-discrimination.pdf</a> .....	22
American Psychological Association & National Association of School Psychologists, <i>Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools</i> (2015), <a href="http://www.apa.org/about/policy/orientation-diversity.aspx">http://www.apa.org/about/policy/orientation-diversity.aspx</a> .....	13, 16, 18, 20, 23, 26

American School Counselor Ass'n, <i>The School Counselor and LGBTQ Youth</i> (2016), <a href="https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS_LGBTQ.pdf">https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS_LGBTQ.pdf</a> .....	13
Lawrence E. Armstrong, <i>Challenges of Linking Chronic Dehydration and Fluid Consumption to Health Outcomes</i> , 70 <i>Nutrition Rev.</i> S121 (2012).....	25
Walter Bockting & Eli Coleman, <i>Developmental Stages of the Transgender Coming-Out Process: Toward an Integrated Identity</i> , in <i>Principles of Transgender Medicine and Surgery</i> 137 (Randi Ettner, Stan Monstrey & Eli Coleman eds., 2d ed. 2016).....	16
Judith Bradford et al., <i>Experiences of Transgender-Related Discrimination and Implications for Health: Results from the Virginia Transgender Health Initiative Study</i> , 103 <i>Am. J. Pub. Health</i> 1820 (2013).....	21, 22
Stephanie A. Brill & Rachel Pepper, <i>The Transgender Child: A Handbook for Families and Professionals</i> (2008) .....	10, 15
William Byne et al., <i>Report of the American Psychiatric Association Task Force on Treatment of Gender Identity Disorder</i> , 41 <i>Arch. Sexual Behav.</i> 759 (2012) .....	16
Ethan C. Cicero & Linda M. Wesp, <i>Supporting the Health and Well-Being of Transgender Students</i> , <i>J. Sch. Nursing</i> 1 (2017).....	7
Peggy T. Cohen-Kettenis et al., <i>The Treatment of Adolescent Transsexuals: Changing Insights</i> , 5 <i>J. Sexual Med.</i> 1892 (2008) .....	8
Halley P. Crissman et al., <i>Transgender Demographics: A Household Probability Sample of US Adults, 2014</i> , 107 <i>Am. J. Pub. Health</i> 213 (2017).....	4
Hillary Daniel et al., <i>Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper from the American College of Physicians</i> , 163 <i>Annals Internal Med.</i> 135 (2015).....	13
Annelou L.C. de Vries, <i>Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment</i> , 134 <i>Pediatrics</i> 696 (2014).....	16
Arianne B. Dessens et al., <i>Gender Dysphoria and Gender Change in Chromosomal Females with Congenital Adrenal Hyperplasia</i> , 34 <i>Arch. Sexual Behav.</i> 389 (2005).....	8

Madeline B. Deutsch, Center of Excellence for Transgender Health, University of California, San Francisco, <i>Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People</i> (2d ed. 2016) .....	14
Jack Drescher, <i>Controversies in Gender Diagnoses</i> , 1 <i>LGBT Health</i> 9 (2013).....	11
Jack Drescher, <i>Queer Diagnoses: Parallels and Contrasts in the History of Homosexuality, Gender Variance, and the Diagnostic and Statistical Manual</i> , 39 <i>Arch. Sexual Behav.</i> 427 (2010) .....	11
Lily Durwood et al., <i>Mental Health and Self-Worth in Socially Transitioned Transgender Youth</i> , 56 <i>J. Am. Acad. Child &amp; Adolescent Psychiatry</i> 116 (2017).....	14
Marla E. Eisenberg et al., <i>Suicidality Among Gay, Lesbian and Bisexual Youth: The Role of Protective Factors</i> , 39 <i>J. Adolescent Health</i> 662 (2006).....	26-27
Randi Ettner et al., <i>Secrecy and the Pathophysiology of Hypertension</i> , <i>Int'l J. Family Med.</i> (2012) .....	22
Alessandra D. Fisher et al., <i>Cross-Sex Hormone Treatment and Psychobiological Changes in Transsexual Persons: Two-Year Follow-Up Data</i> , 101 <i>J. Clinical Endocrinology &amp; Metabolism</i> 4260 (2016) .....	14
Andrew R. Flores et al., The Williams Institute, <i>How Many Adults Identify as Transgender in the United States?</i> (2016), <a href="http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf">http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf</a> .....	4
Andrew R. Flores et al., The Williams Institute, <i>Race and Ethnicity of Adults Who Identify as Transgender in the United States</i> (2016), <a href="https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf">https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf</a> .....	4-5
Gary J. Gates & Jody L. Herman, The Williams Institute, <i>Transgender Military Service in the United States</i> (2014), <a href="http://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf">http://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf</a> .....	5



Anas I. Ghousheh et al., <i>Advanced Transitional Cell Carcinoma of the Bladder in a 16-Year-Old Girl with Hinman Syndrome</i> , 80 <i>Urology</i> 1141 (2012).....	24
Jamie M. Grant et al., Nat’l Center for Transgender Equality, <i>Injustice at Every Turn: A Report of the National Transgender Discrimination Survey</i> (2011), <a href="http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf">http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf</a> .....	21
Emily A. Greytak et al., GLSEN, <i>Harsh Realities: The Experiences of Transgender Youth in Our Nation’s Schools</i> (2009).....	26
* Wylie C. Hembree et al., <i>Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline</i> , 102 <i>J. Clinical Endocrinology &amp; Metabolism</i> 3869 (2017).....	14, 15, 16
Michael L. Hendricks & Rylan J. Testa, <i>A Conceptual Framework for Clinical Work with Transgender and Gender Nonconforming Clients: An Adaptation of the Minority Stress Model</i> , 43 <i>Prof’l Psychol.: Research &amp; Practice</i> 460 (2012).....	10
Jody L. Herman, <i>Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People’s Lives</i> , 19 <i>J. Pub. Mgmt. &amp; Soc. Pol’y</i> 65 (2013) .....	20, 24, 25
Darryl B. Hill et al., <i>An Affirmative Intervention for Families with Gender Variant Children: Parental Ratings of Child Mental Health and Gender</i> , 36 <i>J. Sex &amp; Marital Therapy</i> 6 (2010).....	11
Institute of Medicine Committee on LGBT Issues and Research Gaps and Opportunities, <i>The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding</i> (2011).....	23
Sandy E. James et al., National Center for Transgender Equality, <i>The Report of the 2015 U.S. Transgender Survey</i> (2016), <a href="http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf">http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf</a> .....	5, 19, 24
Joseph G. Kosciw et al., GLSEN, <i>The 2015 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth In Our Nation’s Schools</i> 12 (2016).....	20

* David A. Levine & Committee on Adolescence, American Academy of Pediatrics Technical Report, <i>Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth</i> , 132 Pediatrics e297 (2013).....	4, 12, 13, 14, 21, 26
Colt Meier & Julie Harris, American Psychological Association, <i>Fact Sheet: Gender Diversity and Transgender Identity in Children</i> , <a href="http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf">http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf</a> .....	6, 7
Kristina R. Olson et al., <i>Mental Health of Transgender Children Who Are Supported in Their Identities</i> , 137 Pediatrics 1 (2016).....	14
Stephen T. Russell et al., <i>Youth Empowerment and High School Gay-Straight Alliances</i> , 38 J. Youth Adolescence 891 (2009).....	27
Francine Russo, <i>Is There Something Unique About the Transgender Brain?</i> , Sci. Am. (Jan. 1, 2016), <a href="https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/">https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/</a> .....	8
Caitlin Ryan, Family Acceptance Project, <i>Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual, &amp; Transgender Children</i> (2009), <a href="http://familyproject.sfsu.edu/sites/default/files/FAP_English%20Booklet_pst.pdf">http://familyproject.sfsu.edu/sites/default/files/FAP_English%20Booklet_pst.pdf</a> .....	6
Kristie L. Seelman, <i>Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality</i> , 63 J. Homosexuality 1378 (2016).....	24
Rebecca L. Stotzer et al., The Williams Institute, <i>Transgender Parenting: A Review of Existing Research</i> (2014), <a href="http://williamsinstitute.law.ucla.edu/research/parenting/transgender-parenting-oct-2014">http://williamsinstitute.law.ucla.edu/research/parenting/transgender-parenting-oct-2014</a> .....	5
Substance Abuse and Mental Health Services Administration, <i>Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth</i> (2015), <a href="http://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf">http://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf</a> .....	5, 10, 11
Russell B. Toomey et al., <i>Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment</i> , 46 Developmental Psychology 1580 (2010) ...	23, 26

Robert Wallace & Hershel Russell, <i>Attachment and Shame in Gender-Nonconforming Children and Their Families: Toward a Theoretical Framework for Evaluating Clinical Interventions</i> , 14 Int’l J. Transgenderism 113 (2013).....	11
Sam Winter et al., <i>Transgender People: Health at the Margins of Society</i> , 388 Lancet 390 (2016).....	18
* World Professional Association for Transgender Health, <i>Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People</i> (7th Version, 2011), <a href="http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&amp;pk_association_webpage=4655">http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&amp;pk_association_webpage=4655</a> .....	7, 11, 12, 15, 16
Jessica Xavier et al, Va. Dep’t of Health, <i>The Health, Health-Related Needs, and Lifecourse Experiences of Transgender Virginians</i> (2007), <a href="http://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/THISFINALREPORTVol1.pdf">http://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/THISFINALREPORTVol1.pdf</a> .....	10
Emily B. Zimmerman et al., U.S. Dep’t of Health and Human Servs. Agency for Healthcare Research & Quality, <i>Understanding the Relationship Between Education and Health: A Review of the Evidence and an Examination of Community Perspectives</i> (2015), <a href="https://www.ahrq.gov/professionals/education/curriculum-tools/population-health/zimmerman.html">https://www.ahrq.gov/professionals/education/curriculum-tools/population-health/zimmerman.html</a> .....	26

**STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE  
OF *AMICI CURIAE*<sup>1</sup>**

*Amici* are leading medical, nursing, and other health care organizations:

- American Academy of Child & Adolescent Psychiatry (AACAP)
- American Academy of Nursing
- American Academy of Pediatrics
- American College of Physicians
- American Medical Association
- American Medical Women’s Association
- American Nurses Association
- Endocrine Society
- GLMA—Health Professionals Advancing LGBT Equality
- Mental Health America
- World Professional Association for Transgender Health (WPATH)

Collectively, *amici* represent hundreds of thousands of physicians and mental health professionals, including specialists in pediatrics and adolescent care, family medicine, internal medicine, and endocrinology; and millions of nurses. *Amici* share

---

<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. The parties have consented to the filing of this *amicus* brief.

a commitment to improving the physical and mental health of all Americans—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public health impacts of laws and policies.

*Amici* submit this brief to inform the Court of the medical consensus regarding what it means to be transgender; the protocols for the treatment of gender dysphoria; and the predictable harms to the health and well-being of transgender adolescents when they are excluded from restrooms that match their gender identity.

### **STATEMENT OF THE ISSUE**

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

### **SUMMARY OF ARGUMENT**

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

Many transgender individuals, like Plaintiff, have a condition called gender dysphoria, which is characterized by clinically significant distress and impairment of function resulting from the incongruence between one's gender identity and the sex assigned at birth. The international medical consensus regarding treatment for gender dysphoria is to assist the patient to live in accordance with his or her gender identity, thus alleviating the distress. Treatment may include any or all of the following: counseling, social transition (through, *e.g.*, use of a new name and pronouns; new clothes and grooming; and use of single-sex facilities, including restrooms, most consistent with the individual's gender identity), and 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 of gender dysphoria. By contrast, excluding transgender individuals from facilities consistent with their gender identity undermines their treatment; exposes them to stigma and discrimination; harms their physical health by causing them to avoid restroom use; and impairs their social and emotional development. Similarly, transgender students who must use separate facilities than other students are not required to use are at risk of being bullied and discriminated against and suffer psychological harm. The stigma and minority stress that result from discrimination can, in turn, lead to poorer health outcomes for transgender individuals.

## ARGUMENT

### I. What It Means To Be Transgender And To Suffer From Gender Dysphoria

Transgender individuals have a “gender identity”—a “deeply felt, inherent sense” of their gender—that is not aligned with the sex assigned to them at birth.<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>

While recent estimates suggest that approximately 1.4 million transgender adults live in the United States (0.6 percent of the adult population),<sup>4</sup> these “population estimates likely underreport the true number of [transgender] people.”<sup>5</sup>

People of all different races and ethnicities identify as transgender.<sup>6</sup> They live in

---

<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.

<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://williams>

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

---

[institute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf](http://institute.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").

<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>.



Much as our professions recognize that homosexuality is a normal form of human sexuality—and that stigmatizing gay people causes significant harm—we now recognize that being transgender “implies no impairment in judgment, stability, reliability, or general social or vocational capabilities.”<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 voluntarily<sup>14</sup> or ascertained immediately after birth.<sup>15</sup> Many children develop stability in their gender identity between ages 3 and 4.<sup>16</sup>

---

<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).

<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.

“[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 boy or transgender girl “consistently, persistently, and insistentlly” identifies as a gender different than the sex they were assigned at birth.<sup>20</sup> The District Court relied on this very definition in its decision enjoining Defendant’s bathroom policy, D.E. 192 at 7, and used the definition to support its rejection of Defendant’s argument that permitting Plaintiff to use the boys’ restroom will result in the elimination of separate sex restrooms, D.E. 192 at 47.

Psychologists, psychiatrists, and neuroscientists are not certain why some people are transgender. Some research suggests there may be biological

---

<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”).

<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.

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

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

---

<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*.

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

## 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>

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

---

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

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

identity.<sup>28</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>29</sup> Transgender individuals also are frequently subjected to prejudice and discrimination in multiple areas of their lives, which exacerbates these negative health outcomes.<sup>30</sup>

## **2. The Accepted Treatment Protocols For Gender Dysphoria**

Until the middle of the twentieth century, most mental health practitioners treated transgender people by attempting to make the patient's gender identity

---

<sup>28</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>29</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).

<sup>30</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/THISFINALREPORTVol1.pdf>.

consistent with the sex assigned at birth.<sup>31</sup> There is no evidence that these methods alleviate gender dysphoria or that they can prevent someone from being transgender.<sup>32</sup> To the contrary, they can “often result in substantial psychological pain by reinforcing damaging internalized attitudes,”<sup>33</sup> and can damage family relationships and individual functioning by increasing feelings of shame.<sup>34</sup>

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>35</sup> For over 30 years, the generally-accepted treatment protocols for gender dysphoria<sup>36</sup> have aimed at alleviating the distress associated with the

---

<sup>31</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>32</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>33</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>34</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 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>35</sup> Am. Psychol. Ass’n Guidelines, *supra*, at 835; WPATH Standards of Care, *supra*, at 8-9.

<sup>36</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.

incongruence between gender identity and birth-assigned sex.<sup>37</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>38</sup> Indeed, the District Court described WPATH as having “established the accepted standard of care for transgender persons suffering from gender dysphoria” in its decision enjoining the Defendant from enforcing its policy against Plaintiff. D.E. 192 at 8. 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 community regarding the appropriate treatment for gender dysphoria.<sup>39</sup>

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

---

<sup>37</sup> Am. Med. Ass’n, Comm. on Human Sexuality, *Human Sexuality* 38 (1972).

<sup>38</sup> WPATH Standards of Care, *supra*.

<sup>39</sup> Am. Psychol. Ass’n Task Force Report, *supra*, at 32; AAP Technical Report, *supra*, at 307-08.

body into alignment with one’s gender identity.<sup>40</sup> However, each patient requires an individualized treatment plan that accounts for the patient’s specific needs.<sup>41</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

---

<sup>40</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. 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=%2FAMADoc%2FHOD.xml-0-805.xml>; Am. Sch. Counselor Ass’n, *The School Counselor and LGBTQ Youth* (2016), [https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS\\_LGBTQ.pdf](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*.

<sup>41</sup> Am. Psychol. Ass’n Task Force Report, *supra*, at 32.



identity.<sup>42</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>43</sup>

For some adults and adolescents, hormone treatment to feminize or masculinize the body may be medically necessary to treat their gender dysphoria.<sup>44</sup> *Amicus curiae* the Endocrine Society, the oldest and largest global professional membership organization representing the field of endocrinology, considers these treatments to be the standard of care for gender dysphoria.<sup>45</sup> A transgender boy undergoing hormone treatment, for example, will be exposed to the same levels of

---

<sup>42</sup> AAP Technical Report, *supra*, at 308; Am. Psychol. Ass'n Guidelines, *supra*, at 840.

<sup>43</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>44</sup> Am. Med. Ass'n. Policy H-185.950, *Removing Financial Barriers to Care for Transgender Patients*; 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 of Transgender and Gender Nonbinary People* 23 (2d ed. 2016); WPATH Standards of Care, *supra*, at 33, 54.

<sup>45</sup> See Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clinical Endocrinology & Metabolism 3869, 3869-70 (2017); see 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).

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>46</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>47</sup> For children experiencing the onset of puberty, treatment may include medication to prevent further progression of puberty ("puberty blockers").<sup>48</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, giving them additional time to decide whether hormone treatment to feminize or masculinize the body is appropriate.<sup>49</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

---

<sup>46</sup> Hembree et al., *Endocrine Treatment of Gender Dysphoric/Gender-Incongruent Persons*, *supra*, at 3869, 3871; *see also* Brill & Pepper, *The Transgender Child*, *supra*, at 217.

<sup>47</sup> Hembree et al., *Endocrine Treatment of Gender Dysphoric/Gender-Incongruent Persons*, *supra*, at 3886-89.

<sup>48</sup> *Id.* at 3880-83.

<sup>49</sup> *Id.* at 3880; Am. Psychol. Ass'n Guidelines, *supra*, at 842; WPATH Standards of Care, *supra*, at 18-20.

women, or genital surgery.<sup>50</sup> Studies show these procedures are effective in reducing gender dysphoria and improving mental health.<sup>51</sup> Because these surgical procedures are largely irreversible, some are recommended only for transgender individuals who have reached the age of legal majority.<sup>52</sup>

Ultimately—regardless of the particular treatments required for a specific individual and when such treatment begins—the goal is for individuals with gender dysphoria to experience “identity integration,” where “being transgender is no longer the most important signifier of one’s identity” and the individual can refocus on their relationships, school, jobs, and other life activities.<sup>53</sup>

## **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>54</sup>

---

<sup>50</sup> Hembree et al., *Endocrine Treatment of Gender Dysphoric/Gender-Incongruent Persons*, *supra*, at 3893-94; *see also* WPATH Standards of Care, *supra*, at 57-58.

<sup>51</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>52</sup> WPATH Standards of Care, *supra*, at 21.

<sup>53</sup> Walter Bockting & Eli Coleman, *Developmental Stages of the Transgender Coming-Out Process: Toward an Integrated Identity*, in *Principles of Transgender Medicine and Surgery* 137, 153 (Randi Ettner, Stan Monstrey & Eli Coleman eds., 2d ed. 2016).

<sup>54</sup> APA/NASP Resolution, *supra*, at 9.

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.<sup>55</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.

In contrast, there is no evidence of any harm to the physical or mental health of other children and adolescents when transgender students use facilities that match their gender identity. *Amici* are not hearing from their members about students experiencing any such harm—even though numerous states and school districts have policies allowing transgender individuals to use restrooms that match their gender identity. Furthermore, in two cases brought by cisgender students challenging school policies allowing transgender students to access the restrooms and locker rooms consistent their gender identity, the courts rejected the cisgender plaintiffs’ preliminary injunction motions and their claims of harm.<sup>56</sup>

---

<sup>55</sup> In fact, the AMA, whose mission statement requires it to support public health, recently confirmed its support for transgender individuals’ accessing public restrooms according to their gender identities. AMA Policy H-65.964, *Access to Human Services for Transgender Individuals* (2017).

<sup>56</sup> *Doe v. Boyertown Area School Dist.*, 276 F. Supp. 3d 324, 382, 409-11 (E.D. Pa. 2017), *aff’d*, 897 F.3d 518 (3d Cir. 2018), *petition for cert. filed*, 87 U.S.L.W. 3229

### **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, *see supra* at 8-13, 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

---

(U.S. Nov. 21, 2018) (No. 18-658); *Students and Parents for Privacy v. United States Dep’t of Educ.*, No. 16-cv-4945, 2016 WL 6134121, at \*28-29, \*36-39 (N.D. Ill. Oct. 18, 2016), *report and recommendation adopted by* 2017 WL 6629520 (N.D. Ill. Dec. 29, 2017).

<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.

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 children 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

---

<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, the American Academy of Pediatrics’ guidance states

---

<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).

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, 50 percent 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

---

<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 state’s judgment 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

---

<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 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 “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.

---

<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> 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.<sup>76</sup>

---

<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 are generally less available and more inconvenient, causing people to further avoid restroom use or disrupt their schedules to go to the restroom. Separate restrooms thus do not alleviate 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

---

<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>

---

<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*

\* \* \*

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 District Court’s decision enjoining Defendant from preventing Plaintiff from using single-sex multi-user facilities in accordance with his gender identity.

---

*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).

Dated: February 28, 2019

Respectfully submitted,

JENNER & BLOCK LLP

/s/ Devi M. Rao

Devi M. Rao  
*Counsel of Record*  
Caroline C. Cease  
Zachary S. Blau  
1099 New York Ave. NW  
Suite 900  
Washington, DC 20001  
(202) 639-6000  
drao@jenner.com

*Counsel for Amici Curiae*

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this document complies with the word limit of Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 5793 words, and that this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6).

/s/ Devi M. Rao

Devi M. Rao  
JENNER & BLOCK LLP  
1099 New York Avenue NW  
Suite 900  
Washington, DC 20001  
Telephone: (202) 639-6000  
drao@jenner.com

*Counsel for Amici Curiae*



## CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2019, I electronically filed the foregoing *amici curiae* brief with the Clerk of the Court by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: February 28, 2019

/s/ Devi M. Rao

Devi M. Rao  
JENNER & BLOCK LLP  
1099 New York Ave. NW  
Suite 900  
Washington, DC 20001  
(202) 639-6000  
drao@jenner.com

*Counsel for Amici Curiae*