RECORD NO. 22-1927

In The
United States Court of Appeals
For The Fourth Circuit

CHRISTOPHER FAIN; SHAUNTAE ANDERSON, individually and on behalf of all others similarly situated,
Plaintiffs – Appellees,

v.

WILLIAM CROUCH, in his official capacity as Cabinet Secretary of the West Virginia Department of Health and Human Resources; CYNTHIA BEANE, in her official capacity as Commissioner for the West Virginia Bureau for Medical Services; WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, Bureau for Medical Services,
Defendants – Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA AT HUNTINGTON

BRIEF OF *AMICI CURIAE* THE AMERICAN MEDICAL ASSOCIATION AND FOUR ADDITIONAL HEALTH CARE ORGANIZATIONS IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 22-1927 Caption: Christopher Fain et al. v. William Crouch et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

American Medical Association; American Psychiatric Association; Endocrine Society;
(name of party/amicus)

National Association of Nurse Practitioners in Women't Health; Society of OB/GYN Hospitalists

who _____ are Amicus Curiae ____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Howard S. Suskin Date: December 7, 2022

Counsel for: Amici Curiae

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are five leading medical, mental health, and other health care organizations.[1] Collectively, *amici* represent hundreds of thousands of physicians and mental-health professionals, including specialists in family medicine, mental health treatment, internal medicine, endocrinology, obstetrics and gynecology, and thousands of nurses.

Amicus 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.

Amicus the American Psychiatric Association ("APA"), with more than 37,400 members, is the Nation's leading organization of physicians who specialize

[1] 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.

in psychiatry. The American Psychiatric Association has participated in numerous cases in the Supreme Court and in the United States Courts of Appeals. The American Psychiatric Association opposes all public and private discrimination against transgender and gender-diverse individuals, including in health care. *See* Jack Drescher et al., Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* 1 (2018), https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf [hereinafter "Am. Psychiatric Ass'n, *Position Statement on Discrimination*"].

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

Amicus the National Association of Nurse Practitioners in Women's Health ("NPWH") is a national professional membership organization. NPWH is the nation's leading voice for courageous conversations about women's health. NPWH gives voice to over 12,000 certified women's health nurse practitioners in the United

States, as well as other advanced practice registered nurses (APRNs) providing women's health and gender related care. We set a standard of excellence by translating and promoting the latest research and evidence-based clinical guidance, providing high quality continuing education, and advocating for patients, providers, and the NPWH profession. NPWH's mission includes protecting and promoting a woman's right to make her own choices regarding her health and well-being within the context of her lived experience and her personal, religious, cultural, and family beliefs. Women's health and gender related nurse practitioners champion state-of-the-science healthcare that holistically and inclusively addresses the unique needs of women across their lifetimes. Since its inception in 1980 NPWH has been a trusted source of information on nurse practitioner education, practice, and women's health issues.

Women's health and gender related nurse practitioners champion state-of-the-science healthcare that holistically and inclusively addresses the unique needs of women across their lifetimes. NPWH works with a wide range of individuals and groups within nursing, medicine, the healthcare industry, and the women's health community.

Amicus the Society of OB/GYN Hospitalists ("SOGH") is a national organization of more than 1,500 women's healthcare physicians and medical professionals and is the only national medical subspecialty organization whose

members specialize in inpatient obstetrics and gynecologic care. SOGH is committed to improving outcomes for hospitalized women and to patient safety and quality care for all women. As frontline, hospital-based providers of women's healthcare, SOGH is uniquely positioned to advocate for justice and tolerance through evidence-based care, research, and policy development. SOGH rejects discriminatory practices that jeopardize patient care.

All *amici* share a commitment to improving the physical and mental health of all Americans—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public-health impacts of laws and policies. *Amici* submit this brief to inform the Court of the medical consensus regarding what it means to be transgender; the protocols for the treatment of gender dysphoria, which include living in accordance with one's gender identity in all aspects of life; and the predictable harms to the health and well-being of transgender individuals who are denied access to necessary medical treatments to do so.

SUMMARY OF ARGUMENT

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

According to a 2022 report, approximately 1.3 million adults identify as transgender in the United States. Jody Herman et al., The Williams Inst., *How Many Adults and Youth Identify as Transgender in The United States?* 1 (June 2022), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf. The same study estimated that 5,700 adults in West Virginia (or 0.4% of the state's adult population) identify as transgender. *Id.* at 12. Another survey showed that over one percent of youth in West Virginia identify as transgender, the highest per capita rate in the country. Jody Herman et al., The Williams Inst., *Age of Individuals Who Identify as Transgender in the United States* 4–5 (Jan. 2017), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Age-Trans-Individuals-Jan-2017.pdf. And a more recent study estimated that seven percent of West Virginians aged thirteen to eighteen identify as transgender or gender-diverse. Kaci M. Kidd et al., *The Prevalence of Gender-Diverse Youth in a Rural Appalachian Region*, 176 JAMA Pediatrics 1149, 1149–50 (2022).

Growing acceptance and destigmatization from parents, doctors, and peers allows young people with gender dysphoria to become increasingly comfortable disclosing their transgender status and transitioning. Nick Lehr, *What's Behind the Rising Profile of Transgender Kids? 3 Essential Reads*, The Conversation (June 21, 2021), https://theconversation.com/whats-behind-the-rising-profile-of-transgender-kids-3-essential-reads-161962 ("[T]hanks to growing acceptance from parents,

doctors and peers, young people with gender dysphoria are becoming increasingly comfortable coming out of the closet and transitioning."). However, such "population estimates likely underreport the true number of [transgender] people, given difficulties in collecting comprehensive demographic information about this group." Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 832 (2015), https://www.apa.org/practice/guidelines/transgender.pdf [hereinafter "Am. Psych. Ass'n *Guidelines*"].

Many transgender individuals experience a condition called gender dysphoria, which is characterized by clinically significant distress resulting from the incongruence between an individual's gender identity and the sex assigned to the individual at birth. The international consensus among health care professionals regarding treatment for gender dysphoria is to assist the patient to live in accordance with the patient's gender identity, thus alleviating the distress or impairment. Treatment may include any or all of the following: counseling, social transition (through, *e.g.*, use of a new name and pronouns, new clothes and grooming in order to allow the person to conform to social expectations and norms associated with his or her identity), hormone therapy and/or gender-confirming surgeries. The treatment for gender dysphoria is highly effective in reducing or eliminating the incongruence and associated distress between a person's gender identity and sex assigned at birth.

Barring coverage of gender-affirming care for state employees or their dependents effectively places such care out of reach for many West Virginia Medicaid recipients. Lack of treatment, in turn, increases the rate of negative mental-health outcomes, substance abuse, and suicide. Beyond exacerbating gender dysphoria and interfering with treatment, discrimination—including discrimination in health coverage—reinforces the stigma associated with being transgender. Such stigma, in turn, leads to psychological distress and the attendant mental-health consequences.

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*, *supra*, at 832, 834, 862; *see also* David A. Levine & Comm. on Adolescence, Am. Acad. of Pediatrics, Technical Report: *Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 Pediatrics e297, e298 (July 2013), https://www.pediatrics.org/cgi/doi/10.1542/peds2013-1283 [hereinafter "AAP Technical Report"]. 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. A transgender man is someone who is assigned the sex of female at birth, but is male and transitions to live in accordance with that male identity. A transgender woman is an individual who is assigned the sex of male at birth but is female and transitions to live in accordance with that female identity. A transgender man is a man. A transgender woman is a woman. 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. *Id*., *supra*, at 835–36; Sandy E. James et al., Nat'l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 246 (Dec. 2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf.

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." Am. Psych. 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

[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.

[hereinafter "Am. Psych. Ass'n *Task Force Report*"]. Much as our professions now recognize that homosexuality is a normal form of human sexuality—and that stigmatizing gay people causes significant harm—we now recognize that being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities"—and that stigmatizing transgender people also causes significant harm. *See* Am. Psychiatric Ass'n, *Position Statement on Discrimination*, *supra*, at 1.

A. Gender Identity

"[G]ender 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. Caitlin Ryan, Family Acceptance Project, S.F. State Univ., *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual, & Transgender Children* 17 (2009), https://familyproject.sfsu.edu/sites/default/files/FAP_English%20Booklet_pst.pdf. A person's gender identity cannot be altered voluntarily. Colt Meier & Julie Harris, Am. Psych. Ass'n, Fact Sheet: *Gender Diversity and Transgender Identity in Children* 1, http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf; *see also* Jason Rafferty, Am. Acad. of Pediatrics, *Gender Identity*

Development in Children, HealthyChildren.org (Sept. 18, 2018), https://healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx. Further, gender identity cannot necessarily be ascertained immediately after birth. Am. Psych. Ass'n *Guidelines*, *supra*, at 862. Many children develop stability in their gender identity between the ages of three and four.[3] *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 not transgender. Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, 33 J. Sch. Nursing 2 (2017). In contrast, a transgender boy or transgender girl "consistently, persistently, and insistently" identifies as a gender different from the sex they were assigned at birth. *See* Meier & Harris, *supra*, at 1; *see also* Cicero & Wesp, *supra*, at 5–6.

While psychologists, psychiatrists, and neuroscientists have not pinpointed why some people are transgender, research suggests there may be biological

[3] "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.

influences, including, for example, exposure of transgender men identified at birth as females to elevated levels of testosterone in the womb. *See* Jason Rafferty, Am. Acad. of Pediatrics, *Gender Diverse & Transgender Children*, HealthyChildren.org (June 7, 2021), 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); Arianne B. Dessens et al., *Gender Dysphoria and Gender Change in Chromosomal Females with Congenital Adrenal Hyperplasia*, 34 Arch. Sexual Behav. 389, 395 (2005). Brain scans and neuroanatomical studies of transgender individuals may also support these 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/.

B. Gender Dysphoria

As noted above, being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Am. Psychiatric Ass'n, *Position Statement on Discrimination*, *supra*, at 1. 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* 451–53 (5th ed. 2013) [hereinafter "*DSM-5*"]. As discussed in detail below, the recognized treatment for someone with gender dysphoria is medical support that allows the individual to transition from his or her birth-assigned sex to the sex associated with his or her gender identity. The World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 8th Version, 2022, at 81–87 https://doi.org/10.1080/26895269.2022.2100644 [hereinafter "WPATH *Standards of Care*"]. These treatments are effective in "alleviat[ing] gender dysphoria" and are "medically necessary" for many people. *Id*.

1. The Diagnostic Criteria And Seriousness Of Gender Dysphoria

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition codifies the diagnostic criteria for gender dysphoria in 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." *DSM-5*, *supra*, at 452–53. 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.* at 452.

If untreated, gender dysphoria can cause debilitating distress, depression, impairment of function, self-mutilation to alter one's genitals or secondary sex characteristics, other self-injurious behaviors, and suicide. *See*, *e.g.*, *id*. at 455, 458; Stephanie A. Brill & Rachel Pepper, *The Transgender Child: A Handbook for Families and Professionals* 202 (2008) (discussing risk of self-mutilation). Like other minority groups, transgender individuals also are frequently subjected to prejudice and discrimination in multiple areas of their lives (*e.g.*, school, employment, housing, health care), which exacerbates these negative health outcomes and makes access to appropriate medical care all the more important. Michael L. Hendricks & Rylan J. Testa, *A Conceptual Framework for Clinical Work with Transgender and Gender Nonconforming Clients: An Adaptation of the Minority Stress Model*, 43 Pro. Psych.: Research & Practice 460 (2012); Jessica Xavier et al., Va. Dep't of Health, *The Health, Health-Related Needs, and Lifecourse*

Experiences of Transgender Virginians (2007), https://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/THISFINALREPORTVol1.pdf.

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 835; WPATH *Standards of Care*, *supra*, at 81–87. For over thirty years, the generally accepted treatment protocols for gender dysphoria[4] 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 Transsexual, Transgender, and Gender Nonconforming People (Version 8)* developed by the World Professional Association for Transgender Health ("WPATH"). WPATH *Standards of Care*, *supra*. The major medical and mental health groups in the United States expressly recognize the WPATH *Standards of Care* as representing the consensus of the medical and mental health community regarding the appropriate treatment for gender dysphoria. Am. Med. Ass'n, Policy H-185.950, *Removing Financial Barriers to Care for Transgender Patients* (modified 2022),

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

https://policysearch.ama-assn.org/policyfinder/detail/Removing%20Financial%20Barriers%20to%20Care%20for%20Transgender%20Patients%20H-185.950?uri=%2FAMADoc%2FHOD.xml-0-1128.xml; Am. Psych. Ass'n *Task Force Report*, *supra*, at 32; AAP Technical Report, *supra*, at e307–08.

The recommended treatment for gender dysphoria includes assessment, counseling, and, as appropriate, social transition, hormone therapy, and surgical interventions to bring the body into alignment with one's gender identity.[5] 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*

[5] 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* (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 Technical Report, *supra*, at e307–08; *see* Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), https://apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender.

Psychiatrists, 175 Am. J. Psychiatry 1046 (2018); AAP Technical Report, *supra*, at e307-09. However, each patient requires an individualized treatment plan that accounts for the patient's specific needs. Am. Psych. Ass'n *Task Force Report*, *supra*, at 32. The task of deciding on an individualized treatment plan should be left to the patient and their medical professionals—not an outside organization such as an insurance provider.

For some adults and adolescents, hormone treatment that helps develop secondary sex characteristics that affirm an individual's gender identity may be medically necessary to treat their gender dysphoria. *See* Am. Med. Ass'n, Policy H-185.950, *supra*; Am. Psych. Ass'n *Guidelines*, *supra*, at 861, 862; Center of Excellence for Transgender Health, Univ. of Cal., S.F., *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People* 23 (Madeline B. Deutsch ed., 2d ed. June 17, 2016), https://transcare.ucsf.edu/sites/transcare.ucsf.edu/files/Transgender-PGACG-6-17-16.pdf; WPATH *Standards of Care*, *supra*, at 55. 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. 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),

https://academic.oup.com/jcem/article/102/11/3869/4157558; *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). A transgender woman undergoing hormone therapy, for example, will have hormone levels within the same range as other women; and just as they do in any other woman, these hormones will affect most of her major body systems. Wylie C. Hembree et al., *supra*, at 3885–88; *see also* Brill & Pepper, *supra*, at 217. Hormone therapy physically changes the patient's genitals and secondary sex characteristics such as breast growth, female-associated fat distribution, softening of the skin, and decreased muscle mass in women, and increased muscle mass, increased body and facial hair, male-pattern baldness (for some), and a deepening of the voice in men. Wylie C. Hembree et al., *supra*, at 3886–89. Hormones have been clinically proven as an effective treatment for gender dysphoria with a low rate of complications. Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 Pediatrics (2020); *see* Henk Asscheman et al., *A Long-Term Follow-Up Study of Mortality in Transsexuals Receiving Treatment with Cross-Sex Hormones*, 164 Eur. J. Endocrinology 635 (2011), https://eje.bioscientifica.com/view/journals/eje/164/4/635.xml; Paul Van Kesteren et al., *Mortality and Morbidity in Transsexual Subjects Treated with Cross-Sex Hormones*, 47 Clinical Endocrinology 337 (1997).

For children experiencing the onset of puberty, treatment may include medication to prevent further progression of puberty ("pubert[y] blockers"). Wylie C. Hembree et al., *supra*, at 3880-83. 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. *Id*. at 3880; Am. Psych. Ass'n *Guidelines*, *supra*, at 842; WPATH *Standards of Care*, *supra*, at 64.

With regard to adults, surgical interventions may also be an appropriate and medically necessary treatment for some patients. WPATH *Standards of Care*, *supra*, at 86–87. These procedures could include chest reconstruction surgery for transgender men, breast augmentation for transgender women, or genital surgeries, including removal of the testicles, the primary source of testosterone production, in women who are transgender. Wylie C. Hembree et al., *supra*, at 3893–95; *see also* WPATH *Standards of Care*, *supra*, at 86–87. Decades of clinical evidence show these surgical procedures are effective in reducing gender dysphoria and improving mental health. Annelou L.C. de Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 Pediatrics 696 (2014); William Byne et al., *Report of the American Psychiatric Association Task Force on Treatment of Gender Identity Disorder*, 41 Arch. Sexual Behav. 759, 778–79 (2012);

Mohammad Hassan Murad et al., *Hormonal Therapy and Sex Reassignment: A Systematic Review and Meta-Analysis of Quality of Life and Psychosocial Outcomes*, 72 Clinical Endocrinology 214 (2010); Luk Gijs & Anne Brewaeys, *Surgical Treatment of Gender Dysphoria in Adults and Adolescents: Recent Developments, Effectiveness, and Challenges*, 18 Ann. Rev. Sex Rsch. 178 (2007); Jan Eldh et al., *Long-Term Follow Up After Sex Reassignment Surgery*, 31 Scand. J. Plastic Reconstructive Surgery & Hand Surgery 39 (1997). Empirical studies reflect the importance of the interplay among treatments, finding hormone therapy in conjunction with psychotherapy and, for some, surgery, to be necessary elements of treating severe levels of gender dysphoria. *See* Gianna E. Israel & Donald E. Tarver II, *Transgender Care: Recommended Guidelines, Practical Information & Personal Accounts* 56–73 (1997).

Ultimately—regardless of the particular treatments required for a specific individual and when such treatment begins—the goal is for individuals with gender dysphoria to experience "identity integration," where "being transgender is no longer the most important signifier of one's identity" and the individual can refocus on his or her relationships, school, job, and other life activities. 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. The Consequences Of Living Without Gender Affirming Care Can Be Irreversibly Detrimental To Patient Health.

The treatments described above, when prescribed by a medical professional, are not elective treatments. For transgender patients struggling with gender dysphoria these treatments are urgent and medically necessary for the health of the patient. *See* WPATH *Standards of Care*, *supra*, at 18–19, 81–87. The biggest barrier to both safe hormonal therapy and to appropriate treatment for transgender patients is the lack of access to care. Daphna Stroumsa, *The State of Transgender Health Care: Policy, Law, and Medical Frameworks*, 104 Am. J. Pub. Health e31 (Mar. 2014), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953767/. By delaying care because of lack of access or denial of coverage, transgender individuals face not just the potential worsening of their gender dysphoria, but an onset of other negative health conditions that endanger the health of the patient. According to a 2015 study by the UCLA School of Law's Williams Institute, failing to receive surgical care where it was needed led to a 16.6% increase in prevalence of suicidal thoughts and 3.4% higher rate of actually attempting suicide in the preceding year. Jody L. Herman et al., The Williams Inst., *Suicide Thoughts and Attempts Among Transgender Adults Findings From the 2015 U.S. Transgender Study* 16–17 (Sept. 2019). The study also showed that failure to receive hormones similarly increased the prevalence of suicidal thoughts by 15% and increased suicide attempts by 2.4%. *Id.* Overall, where a transgender individual "wanted, and subsequently received[]

hormone therapy and/or surgical care[, they] had substantially lower prevalence of … suicide [sic] thoughts and attempts than those who wanted hormone therapy and surgical care but had not received them [in the past year]." *Id.*; *see also* Jack L. Turban et al., *supra*, at 2, 8 (finding a significant inverse association between treatment with pubertal suppression during adolescence and lifetime suicidal ideation among transgender adults who sought out this treatment). Further, other recent studies have also shown "lower depressive symptoms in gender dysphoria individuals receiving hormonal treatment. … [and] report[ed] higher levels of self-esteem due to the hormonal treatment intervention." Rosalia Costa & Marco Colizzi, *The Effect of Cross-Sex Hormonal Treatment on Gender Dysphoria Individuals' Mental Health: A Systematic Review*, 12 Neuropsychiatric Disease & Treatment 1953, 1962 (2016). Studies also report that hormone therapy leads to lower rates of anxiety, higher quality of life, fewer problems with socialization, and fewer functional impairments. *Id.* at 1964–65.

Although group health plans can negotiate lower rates for care, the costs of these treatments without insurance coverage are often unaffordable for the individual. While there may still be issues with affordability even with insurance, including issues of what the insurer deems "medically necessary," policies like the ones at issue, which create blanket bans, *ensure* that medical treatment remains outside the reach of many who need it. For many transgender patients, the result is

an inability to access medically necessary medical interventions. *See generally*, *Health Care for Transgender and Gender Diverse Individuals*, AGOC Committee Opinion No. 823 (2021), https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/03/health-care-for-transgender-and-gender-diverse-individuals.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to affirm the ruling of the district court granting summary judgment to Plaintiffs-Appellees.

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Respectfully submitted,

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CERTIFICATE OF WORD COUNT

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 4,424 words, excluding those parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2022, I caused the foregoing **Brief Of *Amici Curiae* The American Medical Association And Four Additional Health Care Organizations In Support Of Plaintiffs-Appellees And Affirmance** to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF filing system.

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