No. 23-3371

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Janiah Monroe et al., individually and on behalf of a class of similarly situated individuals, *Plaintiffs-Appellees*, v. Steven Bowman et al., *Defendants-Appellants*.	Appeal from the United States District Court for the Southern District of Illinois (East St. Louis) No. 3:18-cv-00156-NJR The Hon. Nancy J. Rosenstengel Chief District Court Judge

MOTION OF *AMICI CURIAE* AMERICAN MEDICAL ASSOCIATION, AMERICAN PSYCHIATRIC ASSOCIATION, AND THE ENDOCRINE SOCIETY FOR LEAVE TO FILE BRIEF IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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Counsel for Amici Curiae

Pursuant to Federal Rules of Appellate Procedure 27 and 29(a), the American Medical Association, the American Psychiatric Association, and the Endocrine Society respectfully move for leave to file an *amici curiae* brief in support of Plaintiffs-Appellees and affirmance. The proposed brief accompanies this Motion.

INTEREST AND IDENTITY OF *AMICI CURIAE*

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

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

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

negative mental health consequences. The APA opposes all public and private discrimination against transgender and gender-diverse individuals, including in health care.

The Endocrine Society represents approximately 18,000 physicians and scientists engaged in the treatment and research of endocrine disorders, such as diabetes, hypertension, infertility, obesity, osteoporosis, and thyroid disease.

All *amici* share a commitment to improving the physical and mental health of everyone—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public-health consequences of laws and policies that impact LGBTQ+ individuals. *Amici* seek to file this brief to inform this 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 inmates who are denied access to the medical care required to treat their gender dysphoria and who are denied the opportunity to live consistently with their gender identity while incarcerated in Illinois.

DESIRABILITY OF AN *AMICUS* BRIEF

Amici feel a responsibility to inform this Court about the nearly-universally agreed upon best practices for treating transgender individuals for gender dysphoria and providing gender-affirming care. *Amici*, as leading healthcare providers, are in a unique position to inform the Court about the proper

treatments for individuals experiencing gender dysphoria, and the negative health outcomes when gender dysphoria is left untreated. *Amici* believe that the information contained in their proposed brief will assist this Court in its deliberations by presenting a complete and accurate description of the medical conditions and treatments at issue in this appeal. In fact, in an opinion issued this week, the United States Court of Appeals for the Fourth Circuit approvingly cited to a substantially similar brief filed by these *amici*, among others in the medical community, noting that the district court relied on the *amicus* brief to "anchor its discussion in well-accepted facts about what it means to be transgender, how transgender people may be affected by gender dysphoria, and what treatments exist to mitigate the symptoms of gender dysphoria." *Kadel v. Folwell*, No. 22-1721, 2024 WL 1846802, at *20 (4th Cir. Apr. 29, 2024). Indeed, even the dissent in that case described the *amicus* brief as "thoughtful and edifying." *Id.* at *49 (Wilkinson, C.J., dissenting).

Proposed *amici curiae* therefore respectfully request that the Court grant them permission to file an *amici curiae* brief in support of Plaintiffs-Appellees and affirmance. Counsel *for amici curiae* reached out to the parties to seek consent to file this brief. Counsel for Plaintiffs consented to the filing of the *amicus* brief. Counsel for Defendants-Appellants indicated that they would not oppose the filing of the brief. Although *amici* do not wish to waste this Court's or the parties' resources litigating the issue, Federal Rule of Appellate Procedure 29(a)(2)-(3) suggests a motion is necessary in this instance.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), no party's counsel authored this brief in whole or in part. No person other than *amici* and its counsel contributed any money intended to fund the preparation or submission of this brief.

WHEREFORE, for the foregoing reasons and those included in the brief of *amici curiae*, the American Medical Association, the American Psychiatric Association, and the Endocrine Society respectfully request that this motion be granted and that *amici* be permitted leave to file the proposed brief in support of Plaintiffs and affirmance.

Date: May 1, 2024

Respectfully submitted,

/s/Howard S. Suskin

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CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Federal Rule of Appellate Procedure 27(d)(1)(E) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 27(a)(2)(B), this document contains 810 words.

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) because this document has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 in 12-point Bookman Old Style font for the main text and footnotes.

Date: May 1, 2024

/s/ Howard S. Suskin
Howard S. Suskin
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I, Howard S. Suskin, an attorney, hereby certify that on May 1, 2024 I caused the foregoing **Motion Of *Amici Curiae* American Medical Association, American Psychiatric Association, And The Endocrine Society For Leave To File Brief 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 Seventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Date: May 1, 2024

/s/ Howard S. Suskin
Howard S. Suskin
Counsel for Amici Curiae

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No. 23-3371

Short Caption: Janiah Monroe, et al. v. Steven Bowman, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

American Medical Ass'n ("AMA"); American Psychiatric Ass'n ("APA"); The Endocrine Society

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the District Court or before an administrative agency) or are expected to appear for the party in this court:

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(3) If the party or amicus is a corporation:

i) Identify all of its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases: N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2: N/A

Attorney's Signature /s/ Howard S. Suskin Date: May 1, 2024

Attorney's Printed Name: Howard S. Suskin

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** _____

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Attorney's Signature /s/ Matthew D. Cipolla Date: May 1, 2024

Attorney's Printed Name: Matthew D. Cipolla

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Attorney's Signature /s/ Illyana A. Green Date: May 1, 2024

Attorney's Printed Name: Illyana A. Green

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Attorney's Signature /s/ Isha Z. Abbasi Date: May 1, 2024

Attorney's Printed Name: Isha Z. Abbasi

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Attorney's Signature /s/ Donovan J. Hicks Date: May 1, 2024

Attorney's Printed Name: Donovan J. Hicks

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OTHER AUTHORITIES

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

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[1] This brief is filed with the consent of counsel for Plaintiffs-Appellees. Counsel for Defendants-Appellants do not oppose the filing of this brief. 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.

APA that discrimination, including against those with gender dysphoria, has negative mental health consequences. The APA opposes all public and private discrimination against transgender and gender-diverse individuals, including in health care.

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SUMMARY OF ARGUMENT

Transgender individuals have a gender identity that is incongruent with the sex they were assigned at birth. The health care community's understanding of what it means to be transgender has advanced greatly over the past century.

It is now understood that being transgender implies no impairment in a person's judgment, or social or vocational capabilities.

Many transgender adults, like Plaintiffs-Appellees ("Plaintiffs"), experience a condition called gender dysphoria, which is characterized by clinically significant distress resulting from the incongruence between one's gender identity and the sex assigned to the individual at birth. In Illinois, approximately 0.44% or 43,400 of all adults eighteen or older identify as transgender. Jody L. Herman et al., Williams Institute, *How Many Adults and Youth Identify as Transgender in the United States?* 9 tbl.4 (June 2022), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf. The medical consensus regarding treatment for gender dysphoria is to assist the patient to live in accordance with the patient's gender identity, thus alleviating the distress or impairment that not living in accordance with one's gender identity can cause. Treatment can include any or all of the following: counseling, social transition (through, *e.g.*, use of a new name and pronouns, new clothes and grooming in order to allow the person to conform to social expectations and norms associated with his or her gender identity), hormone therapy, and/or gender-confirming surgeries. These treatments for gender dysphoria are highly effective in reducing or eliminating the incongruence and associated distress between a person's gender identity and assigned sex at birth. Without the appropriate treatment for gender dysphoria, transgender individuals face increased rates of negative mental health outcomes, substance use, and suicide. Disruption of or denial of this treatment through exclusionary practices also

exacerbates and reinforces the real and perceived stigma experienced by transgender individuals.

This is also true of transgender individuals in institutional settings. According to the World Professional Association for Transgender Health ("WPATH"), a professional association that develops "best practices" and supportive policies related to the health and treatment of transsexual, transgender, and gender nonconforming people, the standard of care for transgender people living in an institutional environment should mirror that which would be available to them if they were living in a non-institutional setting within the same community. World Professional Ass'n for Transgender Health, *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, Sept. 2022, at S9, S15, S104-S109 https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644 [hereinafter WPATH *Standards of Care*]. Access to medical care that meets an individual's needs is a critical components of the successful treatment of gender dysphoria.

Amici write to respectfully request that this Court affirm the district court's permanent injunction to ensure that transgender individuals in the custody of the Illinois Department of Correction's ("IDOC" or "the Department") have access to adequate medical care. The WPATH Standards of Care recommend a range of treatments for gender dysphoria, noting that the number and type of treatments prescribed and the order in which they are administered may differ depending on the individual. WPATH recommends that health care professionals individually assess transgender adults for gender-affirming medical and surgical

treatment. WPATH *Standards of Care*, *supra*, at S5, S31. Medical professionals—not prison officials who lack medical training—should assess and determine on an individualized basis the medical treatments provided to transgender inmates with gender dysphoria.

Similarly, excluding transgender individuals from facilities consistent with their gender identity undermines their treatment; exposes them to stigma and discrimination; and has the potential to harm their physical health, particularly in an institutional setting. According to the U.S. Transgender Survey Report, trans inmates were "over *five times more likely to be sexually assaulted by facility staff* than the U.S. population in jails and prisons, and over *nine times more likely to be sexually assaulted by other inmates*." Sandy E. James et al., National Center for Transgender Equality, The Report of the 2015 U.S. Transgender Survey 246 (Dec. 2016), http://www.ustranssurvey.org/reports. Given the real harms that transgender inmates face when denied access to medically adequate care for gender dysphoria, the injunctive relief entered by the district court is necessary to ensure that transgender inmates in IDOC custody receive access to appropriate and necessary medical care.

ARGUMENT

I. What It Means To Be Transgender And To Experience Gender Dysphoria.

Most people have a "gender identity"—a "deeply felt, inherent sense" of their gender. Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 834,

862 (2015), https://www.apa.org/practice/guidelines/transgender.pdf [hereinafter Am. Psych. Ass'n *Guidelines*]. 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. *Id.* at 861, 863. A transgender man or boy is an individual "whose sex assigned at birth was female," but who identifies as male and transitions to live in accordance with that male identity. *See id.* at 863. A transgender woman or girl is an individual "whose sex assigned at birth was male," but who identifies as female and transitions to live in accordance with that female identity. *See id.* Gender identity is distinct from and does not correlate with sexual orientation. Transgender people, like cisgender people, may identify as heterosexual, gay, lesbian, bisexual, or asexual. *Id.* at 835-36, 862; *see* National Academies Sciences, Engineering, Medicine, *Measuring Sex, Gender Identity, and Sexual Orientation* 17-22 (Nancy Bates et al. eds., 2022); Sandy E. James et al., *supra*, at 246.

Currently, over 1.6 million adults and youth in the United States identify as transgender, which is roughly 0.6% of Americans aged thirteen years or older. *See* Jody L. Herman et al., *supra*, at 1.

The medical profession's understanding of gender has advanced considerably over the past fifty years. Throughout much of the twentieth century,

[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.

individuals who did not conform with their gender assigned at birth were often viewed as "perverse or deviant." Am. Psych. Ass'n, *Report of the APA Task Force on Gender Identity and Gender Variance* 26-27 (2009), https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf [hereinafter Am. Psych. Ass'n *Task Force Report*]. Medical practices during that period tried to "recondition" this perceived deviance by attempting to force gender non-conforming people, including transgender people, to live in accordance with the sex assigned to them at birth. These efforts failed and caused significant harm to the individuals subjected to them. *See id.*; Substance Abuse & Mental Health Servs. Admin. ("SAMHSA"), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 13, 24-26 (2015), https://store.samhsa.gov/sites/default/files/d7/priv/sma15-4928.pdf [hereinafter SAMHSA *Ending Conversion Therapy*]. Much as the medical profession now recognizes that homosexuality is a normal form of human sexuality—and that stigmatizing homosexual people causes significant harm—the medical community also now recognizes that being transgender is a "normal variation[] of human identity and expression"—and that stigmatizing transgender people also causes significant harm. *See* Letter from James L. Madara, CEO/Exec. Vice President, Am. Med. Ass'n, to Bill McBride, Exec. Dir., Nat'l Governors Ass'n (Apr. 26, 2021), https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2021-4-26-Bill-McBride-opposing-anti-trans-bills-Final.pdf.

A. Gender Identity

"*Gender identity*" refers to a "person's internal sense" of being male, female, or another gender. Am. Psych. Ass'n, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* 1 (2014), http://www.apa.org/topics/lgbt/transgender.pdf [hereinafter Am. Psych. Ass'n *Answers*]. Every person has a gender identity. Centers for Disease Control and Prevention, *Transgender Persons*, https://www.cdc.gov/lgbthealth/transgender.htm (last reviewed Apr. 17, 2023; *see* Carl G. Streed Jr., *Health Communication and Sexual Orientation, Gender Identity, and Expression*, 106 Med. Clin North Am. 589 (2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9219031/pdf/nihms-1775881.pdf. Further, gender identity cannot necessarily be ascertained immediately after birth. *See* Am. Psych. Ass'n *Guidelines*, *supra*, at 862. "[M]any children develop stability" in their "gender identity" between ages 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. *See* Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, 33 J. Sch.

[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.

Nursing 1, 6 (2017). By contrast, a transgender man or a transgender woman "insistent[ly], consistent[ly], and persistent[ly]" identifies as a gender different from the sex they were assigned at birth. *See id.* at 6-7.

While psychologists, psychiatrists, and neuroscientists have not pinpointed why some people are transgender, research suggests there may be biological or genetic influences, including, for example, exposure of transgender men identified at birth as females to elevated levels of testosterone in the womb.[4] Brain scans and neuroanatomical studies of transgender individuals also support the existence of biological explanations.[5]

B. Gender Dysphoria

As noted above, being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[6] 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 sex assigned at birth.

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

[5] *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/.

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

Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision, American Psychiatric Ass'n (2022) [hereinafter *DSM-5-TR*].

As discussed in detail below, the recognized treatment for someone with gender dysphoria is support that addresses "their social, mental, and medical health needs and well-being while respectfully affirming their gender identity." WPATH *Standards of Care, supra*, at S7. These treatments are effective in alleviating gender dysphoria and are medically necessary for many people. *Id.* at S16-S18.

1. The Diagnostic Criteria And Seriousness Of Gender Dysphoria.

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision ("DSM-5-TR") 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 of the following," and "clinically significant distress or impairment in social, occupational, or other important areas of functioning." *DSM-5-TR*, *supra*, at 512-13. The six criteria include: (1) "[a] marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics"; (2) "[a] strong desire to be rid of one's primary and/or secondary sex characteristics"; (3) "[a] strong desire for the primary and/or secondary sex characteristics of the other gender"; (4) "[a] strong desire to be of the other gender (or some alternative gender . . . .)"; (5) "[a] strong desire to be treated" as a gender different from one's assigned gender; and (6) "[a]

strong conviction that one has the typical feelings and reactions" of a different gender. *Id.*

"Gender dysphoria manifests itself differently in different age groups." *Id.* at 513. In adults with gender dysphoria, the DSM-5-TR explains that "the discrepancy between experienced gender and physical sex characteristics is often, but not always, accompanied by a desire to be rid of primary and/or secondary sex characteristics and/or a strong desire to acquire some primary and/or secondary sex characteristics of another gender." *Id.* at 514. The DSM-5-TR notes that for adults with gender dysphoria, it is common to feel "uncomfortable being regarded by others, or functioning in society, as members of their assigned gender." *Id.*

Left untreated, gender dysphoria can cause debilitating distress, depression, impairment of function, self-mutilation to alter one's genitals or secondary sex characteristics, other self-injurious behaviors, or suicide. *See, e.g.*, *id.* at 515-19; Nicolle K. Strand & Nora L. Jones, *Invisibility of "Gender Dysphoria,"* 23 Am. Med. Ass'n J. Ethics 557, 557 (2021) (discussing consequences of untreated gender dysphoria, including "higher rates of suicide and mental illness"). Prior to receiving gender-affirming treatment, adults with gender dysphoria are at a greater risk for suicidal thoughts and suicide attempts. *DSM-5-TR*, *supra*, at 518-19. Like other minority groups, transgender individuals are also frequently subjected to prejudice and discrimination in multiple areas of their lives (*e.g.*, school, employment, housing, health care), which exacerbates these negative health outcomes and makes access to appropriate medical care

even more important. Jaclyn M. White Hughto et al., *Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions*, 147 Soc. Sci. & Med. 222, 223, 226-27 (Nov. 11, 2015) [hereinafter *Transgender Stigma and Health*] (discussing the direct and exacerbated health impacts of discrimination and stigma against transgender individuals).

2. The Accepted Treatment Protocols For Gender Dysphoria.

In the last few decades, transgender people suffering from gender dysphoria have gained widespread access to gender-affirming medical and mental health support and treatment. Am. Psych. Ass'n *Guidelines*, *supra*, at 832-33, 835. For over thirty years, the generally accepted treatment protocols for gender dysphoria[7] have aimed to alleviate the distress associated with the incongruence between gender identity and the sex assigned at birth. Am. Med. Ass'n, Comm. on Human Sexuality, *Human Sexuality* 38 (1972). These protocols are laid out in the *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8* developed by WPATH. WPATH *Standards of Care*, *supra*. The major medical and mental health groups in the United States recognize WPATH's Standards of Care as representing the consensus of the medical and mental health communities regarding the appropriate treatment for gender dysphoria. Am. Psych. Ass'n Task Force Report, *supra*, at 32; Am. Psych.

[7] 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.

Ass'n *Guidelines*, *supra*, at 833.[8] WPATH's Standards of Care expressly provide that health care for transgender and gender nonconforming people living in an institutional environment should mirror that which would be available to them if they were living in a non-institutional setting within the same community. WPATH *Standards of Care*, *supra* at S104 (noting that institutionalized persons "must be supported in being able to receive the Standards of Care" established by WPATH).

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.[9] Am. Psych. Ass'n *Task Force Report*, *supra*, at 32-39; William Byne et

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

[9] Some clinicians still offer versions of "reparative," or "conversion" therapy based on the idea that being transgender is a mental disorder. However, all leading medical professional organizations that have considered the issue have explicitly rejected such treatments. *See* Am. Med. Ass'n, Policy H-160.991, *Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations* 1 (2018), https://policysearch.ama-assn.org/policyfinder/detail/Health%20Care%20Needs%20of%20Lesbian,%20Gay,%20Bisexual,%20Transgender%20and%20Queer%20Populations%20H-160.991?uri=%2FAMADoc%2FHOD.xml-0-805.xml; Am. Sch. Counselor Ass'n, *The School Counselor and LGBTQ+ Youth* (2022), https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-LGBTQ-Youth; Hilary Daniel et al., *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper From the American College of Physicians*, 163 Annals Internal Med. 135, 136 (2015). *See generally* Am. Psych. Ass'n, *APA Policy Statement on Affirming Evidence-Based Inclusive Care for Transgender, Gender Diverse, and Nonbinary Individuals, Addressing*

al., Am. Psychiatric Ass'n, *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists*, 175 Am. J. Psychiatry 1046 (2018), https://www.psychiatry.org/getattachment/bbbb42e2-bee7-4de0-86af-fb3cf916e5b6/Resource-Document-2018-Assessment-Treatment-Gender-Dysphoria-Gender-Variant-Patient-A-Primer-for-Psychiatrists.pdf [hereinafter Workgroup on Treatment of Gender Dysphoria]; Am. Psych. Ass'n, *APA Policy Statement on Affirming Evidence-Based Inclusive Care for Transgender, Gender Diverse, and Nonbinary Individuals, Addressing Misinformation, and the Role of Psychological Practice and Science* 1-4 (2024) [hereinafter *APA Policy Statement*]. However, each patient requires an individualized treatment plan that accounts for their specific needs. *See* Am. Psych. Ass'n *Task Force Report*, *supra*, at 32.

Social transition—*i.e.,* living one's life fully in accordance with one's gender identity—is often a critically important part of treatment. This typically includes publicly identifying oneself as that gender through all of the ways that people signal their gender to others such as through their name, pronoun usage, dress, manner and appearance, and social interactions. Leading medical organizations, including *amici* the Endocrine Society, the American Medical Association, and the American Psychiatric Association, in addition to WPATH have published

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Misinformation, and the Role of Psychological Practice and Science 1-4 (2024) [hereinafter *APA Policy Statement*]; *see* Int'l Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2022), https://www.ipa.world/IPA/en/IPA1/Procedural_Code/IPA_POSITION_STATEMENT_ON_ATTEMPTS_TO_CHANGE_SEXUAL_ORIENTATION__GENDER_IDENTITY__OR_GENDER_EXPRESSI.aspx.

policy statements and guidelines on providing age-appropriate gender-affirming care. *See, e.g.*, *APA Policy Statement, supra,* at 1-3; Am. Psych. Ass'n *Guidelines*, *supra*, at 841-43; Workgroup on Treatment of Gender Dysphoria, *supra*. Transgender people of all ages benefit from social transition. WPATH *Standards of Care*, *supra*, at S77. Transgender individuals also tend to report lower rates of anxiety and depression and a better sense of self-worth compared to transgender individuals who have not socially transitioned to fit their gender identity. *See id.* at S77-S79.

Ultimately, the goal is for individuals with gender dysphoria to experience "[i]dentity integration," where "being transgender is no longer the most important signifier of one's identity" and the individual can refocus on 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). That is the aim irrespective of whether or not individuals are in an institutional environment. Indeed, individuals "should have access to these medically necessary treatments irrespective of their housing situation within an institution." WPATH *Standards of Care*, *supra*, at S104. WPATH cautions that ceasing care, such as hormone therapy, if started before the period of institutionalization, or denying the introduction of care when medically necessary, such as separate living facilities based on one's preferred gender, carries a high likelihood of "suicidality" and "surgical self-treatment." *Id.* at S106, S108-S109. A delay of treatment in

institutional settings is associated with the same adverse risks that transgender individuals otherwise denied care may face. *Id.* at S106.

II. Denying Transgender Inmates Access To Approved Medical Treatment For Gender Dysphoria Endangers Their Health, Safety, And Well-Being.

The Department policies at issue in this case failed to provide adequate hormone therapy to transgender women, to accommodate social transition so that they can "live consistently" with their gender identity, and to recognize the need for gender affirming surgery when medically appropriate. Dkt. 1 at 2. When care was provided, the delay was substantial—up to three years—because of the then-Gender Identity Disorder Committee's unqualified reluctance to approve medical decisions for transgender inmates. *Id.* at 2, 4.

The district court's February 7, 2022 Memorandum and Order found that the Department's exclusionary policies were deliberately indifferent toward the Plaintiffs, all transgender women, and their need for evaluation and gender dysphoria treatment pursuant to the Eighth Amendment. Dkt. 383 ("Order"). Accordingly, the Department was permanently required to overhaul its policy regarding transgender inmates by providing minimum access to all forms of treatment, from hormone therapy to surgery. *Id.*; Dkt. 384. The district court ordered the Department to ensure that class members are treated "only by medical and mental health providers who have taken WPATH training and are committed to continuing education on transgender health issues." Dkt. 384 at 9. Independent monitors are continuously ensuring that the Department complies with the breadth of the district court's orders that ensure minimum

access to *all forms* of gender dysphoria treatment as recognized by WPATH—not just some of those treatments. *See* Dkt. 370.

Thus, reversing *any part* of the district court's order will lead to severe adverse consequences for the health and well-being of this class of transgender women inmates. Because gender-affirming care is individualized, limiting access to any form of treatment cripples the adequacy of the entire IDOC healthcare ecosystem.

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

For transgender individuals, being treated differently as a result of their transgender identity can cause tremendous pain and harm. *See, e.g.*, Sam Winter et al., *Transgender People: Health at the Margins of Society*, 388 Lancet 390, 394 (2016). As the district court explained below, the Department's exclusionary policies subjected the transgender women within its care to "anxiety, depression, suicidal ideation and suicide attempts, and self-mutilation—due to [the Department's] failure to provide even minimally adequate treatment of their gender dysphoria." Order at 65.

Exclusionary policies expose transgender individuals to hostility, harassment, and abuse by forcing them to occupy gender-segregated spaces. Transgender individuals disproportionately experience "interpersonal violence, HIV and other sexually transmitted infections, substance use disorders, and

suicidality" while incarcerated.[10] One study reported that 37% of transgender individuals who had been incarcerated experienced harassment by correctional officers or staff, with 16% of transgender participants reporting physical assault and 15% reporting sexual assault "perpetrated both by other inmates and by staff" while incarcerated.[11] Institutional infractions are also more likely to be issued to Transgender inmates resulting in segregation in restricted housing because of social conflicts with other inmates and correctional officers.[12] Given the known harms faced by transgender individuals in institutional settings, "[a]ccess to gender-affirming clinical care is particularly important during a period of incarceration given the known vulnerability of" the transgender inmate population.[13]

Exclusionary policies can also exacerbate the risk of "anxiety and depression, low self-esteem, engaging in self-injurious behaviors, suicide, substance use, homelessness, and eating disorders among other adverse outcomes" that many transgender individuals face. Am. Psych. Ass'n & Nat'l Ass'n of School Psychs., *Resolution on Gender and Sexual Orientation Diversity in*

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[10] Matthew Murphy et al., *Implementing Gender-Affirming Care in Correctional Settings: A Review of Key Barriers and Action Steps for Change*, 29 J. Correct Health Care 3, 3 (Nov. 2023), 10.1089/jchc.21.09.0094.

[11] Jaime M. Grant, Lisa A. Mottet, Justin Tanis, *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality 158, 166 (2011),https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf.

[12] *See id.*

[13] *Supra*, note 10, at 4.

Children and Adolescents in Schools 2 (2015), https://www.apa.org/about/policy/orientation-diversity [hereinafter *APA/NASP Resolution*]. The WPATH Standards of Care recognize that placement in a single-sex housing unit, ward, or pod on the sole basis of the appearance of the external genitalia may not be appropriate and may place the individual at risk for victimization. WPATH *Standards of Care*, *supra*, at S104. Those outcomes can be compounded by the lack of medical care incarcerated transgender people receive. In one study, nearly 40% of those "who had been incarcerated in the past year" and who had already been prescribed and began hormone therapy treatment prior to incarceration were not allowed to continue hormone therapy while in prison.[14]

In addition, exclusionary policies perpetuate the perceived stigma of being transgender by forcing transgender individuals to disclose their transgender status, by marking them as "others," and by conveying the State's judgment that they are different and deserve inferior treatment. Research increasingly shows that stigma and discrimination have deleterious health consequences.[15] These consequences have striking effects on the daily functioning and emotional and physical health of transgender people. *See, e.g.*, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra,* note 9 ("[B]ias against individuals based on actual or perceived sexual orientation,

[14] *Supra*, note 10, at 3, 5.
[15] *See generally* Am. Psych. Ass'n, *Stress in America: The Impact of Discrimination* (2016), https://www.apa.org/news/press/releases/stress/2015/impact-of-discrimination.pdf.

gender identity, or gender expression negatively affects mental health."). In prison, to avoid the weight of stigma, transgender prisoners may try to conceal their feminine gender expression and identity or may forego hormone treatment.[16]

As both the American Psychological Association and the National Association of School Psychologists have concluded, "the notable burden of stigma and discrimination affects minority persons' health and well-being and generates health disparities." *APA/NASP Resolution*, *supra*, at 2; *see also Transgender Stigma and Health*, *supra*, at 223 (discussing how anti-transgender stigma is "linked to adverse health outcomes including depression, anxiety, suicidality, substance abuse, and HIV"). There is thus every reason to anticipate that the Department's exclusionary policies can negatively affect its transgender prisoners' health.

Finally, exclusionary policies in prisons risk increased sexual violence. The Department of Justice found that roughly 35% of federal transgender prisoners report sexual violence, initiated mostly by other inmates. *PREA Data Collection Activities, 2015*, Bureau of Justice Statistics, U.S. Dep't of Justice (June 2015), https://bjs.ojp.gov/content/pub/pdf/pdca15.pdf#:~:text=An%20estimated%2035%25%20of%20transgender%20inmates%20held%20in,or%20since%20admis

[16] Jaclyn M. White Hughto et. al, *Creating, Reinforcing, and Resisting the Gender Binary: A Qualitative Study of Transgender Women's Healthcare Experiences in Sex-Segregated Jails and Prisons*, 14 Int'l J. Prison Health 69, 79-80 (2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5992494/pdf/nihms889766.pdf.

sion%2C%20if%20less%20than%2012%20months. The sexual assault that transgender prisoners face is mainly the result of coercion, threat, or force. *Id.* Many suffer physical injury, apart from the emotional and mental harm that being a victim of unwanted sex creates. Allen J. Beck, U.S. Dep't of Just., *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12 Supplemental Tables*, tbl. 3 (2014), https://bjs.ojp.gov/content/pub/pdf/svpjri1112_st.pdf.

B. Proper Medical Treatment For Gender Dysphoria Requires Access To All Forms Of Medically Accepted Treatment.

The protocol for treating gender dysphoria includes, where appropriate, aligning the body and outward expression with one's gender identity.[17]

The WPATH Standards of Care recommend a range of treatments for gender dysphoria, noting that the number and type of treatments prescribed and the order in which they are administered should be individualized. WPATH *Standards of Care, supra*, at S7, S31. Appropriate treatments for gender dysphoria may include but are not limited to: changes in gender expression and role; hormone therapy; hair removal through electrolysis, laser treatment, or waxing; surgery; and psychotherapy. *Id.* at S130. As WPATH is careful to note, treatment for gender dysphoria must be individualized as "[a]n individual's gender identity is an internal identification and experience." *Id.* at S31. Both the American Medical Association and the American Psychological Association

[17] Am. Psych. Ass'n *Task Force Report*, *supra*, at 32-39.

recognize as much. Am. Psych. Ass'n *Task Force Report*, *supra*, at 32; *APA Policy Statement*, *supra*. Gender identities and expressions are diverse, and hormones and surgery are just two of many options available to assist people with achieving comfort with self and identity. *See* WPATH *Standards of Care*, *supra*, at S86.

The medical community overwhelmingly recognizes the vital role of gender-affirming care in improving the physical health and mental well-being of transgender individuals. As the American Medical Association has noted, "[s]tudies have consistently demonstrated that providing gender-affirming care that is both age-appropriate and evidence-based leads to improved mental health outcomes. Conversely, denying such care is linked to a greater incidence of anxiety, depression and self-harm."[18]

Amici respectfully urge this Court to affirm that Plaintiffs must be provided access to adequate medical care, which for transgender inmates, means access to all—not just some—of the medically recognized treatment options for gender dysphoria.

[18] Jack Resneck Jr., Am. Med. Ass'n, *Everyone Deserves Quality Medical Care Delivered Without Bias* (Aug. 16, 2022), https://www.ama-assn.org/about/leadership/everyone-deserves-quality-medical-care-delivered-without-bias.

CONCLUSION

For the foregoing reasons, *Amici curiae* respectfully urge this Court to affirm the district court's grant of a permanent injunction.

Date: May 1, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the word limit of Federal Rule of Appellate Procedure 29(a)(5) and Circuit Rule 29 because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 5,005 words. 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) because this document has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 in 12-point Bookman Old Style font for the main text and footnotes.

Date: May 1, 2024

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CERTIFICATE OF SERVICE

I, Howard S. Suskin, an attorney, hereby certify that on May 1, 2024 I caused the foregoing **Brief Of *Amici Curiae* American Medical Association, American Psychiatric Association, and Endocrine Society 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 Seventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Pursuant to ECF procedure (h)(2) and circuit rule 31(b), and upon notice of this Court's acceptance of the electronic brief for filing, I certify that I will cause fifteen copies of the above cited brief to be transmitted to the Court via UPS overnight delivery, delivery fee prepaid within five days of that date.

Date: May 1, 2024

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