No. 23-2568

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Jane Doe #1, a minor child by her mother and next friend, Jane Doe #2, *Plaintiff-Appellee*, v. MUKWONAGO AREA SCHOOL DISTRICT and SUPERINTENDENT, JOE KOCH, in his official capacity, *Defendants-Appellants*.	)	Appeal from the United States District Court for the Eastern District of Wisconsin No. 1:23-cv-00876-LA The Honorable Lynn Adelman, United States District Judge

BRIEF OF *AMICI CURIAE* AMERICAN MEDICAL WOMEN'S ASSOCIATION AND FIVE OTHER HEALTH CARE ORGANIZATIONS IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No. 23-2568

Short Caption: Jane Doe v. Mukwonago Area School District, 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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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

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Attorney's Signature /s/ Clifford W. Berlow Date: October 26, 2023 (new)

Attorney's Printed Name: Clifford W. Berlow

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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N/A

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

N/A

Attorney's Signature /s/ Illyana A. Green Date: October 26, 2023 (new)

Attorney's Printed Name: Illyana A. Green

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

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

The American Academy of Pediatrics ("AAP") represents 67,000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults. In its dedication to the health of all children, the AAP strives to improve health care access and eliminate disparities for children and teenagers who identify as lesbian, gay, bisexual, transgender, or for those questioning their sexual or gender identity.

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

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

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 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 Medical Women's Association ("AMWA") is an organization of women physicians, medical students, and other persons dedicated to serving as the unique voice for women's health and the advancement of women in medicine. AMWA's mission is to advance women in medicine, advocate for equity, and ensure excellence in health care. AMWA's vision is a healthier world where women physicians achieve equity in the medical profession and realize their full potential.

GLMA: Health Professionals Advancing LGBTQ+ Equality ("GLMA") is a national organization committed to ensuring health equity for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") and equality for LGBTQ+ health professionals in their work and learning environments. To achieve this mission,

GLMA utilizes the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research.

The World Professional Association for Transgender Health ("WPATH") is a non-profit international, multidisciplinary, medical professional and educational organization with over 4,100 members engaged in clinical and academic research to develop evidence-based medicine and promote high quality care for transgender and gender-diverse ("TGD") individuals in the United States and internationally. One of the main functions of WPATH is to promote the highest standards of healthcare for TGD people through its Standards of Care. The Standards of Care was initially developed in 1979, and the latest version, Version 8, was published in September 2022 and is publicly available at www.wpath.org. Version 8 is based on the best available science and expert professional consensus in transgender health.

All *Amici* share a commitment to improving the physical and mental health of everyone—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public-health consequences of laws and policies that impact LGBTQ+ individuals. *Amici* submit this brief to inform the Court of the medical consensus regarding what it means to be transgender; the protocols for the treatment of gender dysphoria, which include living in accordance with one's gender identity in all aspects of life; and the predictable harms to the health and well-being of transgender student athletes who are excluded from participating in school sports consistent with their gender identity.

INTRODUCTION AND SUMMARY OF ARGUMENT

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

Many transgender individuals, like Plaintiff, 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 Wisconsin, 1.75% or 6,400 youth between the ages of thirteen and seventeen identify as transgender. Jody L. Herman et al., The 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 denying this treatment through exclusionary laws also exacerbates and reinforces the real and perceived stigma experienced by transgender individuals, particularly transgender youth. The fear of facing such discrimination can prompt transgender students to hide their gender identity, directly thwarting accepted treatment protocols and creating a vicious cycle with serious negative consequences for individuals with gender dysphoria.

Access to single-sex facilities that correspond to one's gender identity is a critical aspect of successful treatment of gender dysphoria. By contrast, excluding transgender individuals from facilities consistent with their gender identity undermines their treatment; exposes them to stigma and discrimination; harms their physical health by causing them to avoid restroom use; and impairs their social and emotional development. Similarly, transgender students who must use separate facilities than other students who share their gender identity are at risk of being bullied and discriminated against and suffer psychological harm. The stigma and minority stress that result from discrimination can, in turn, lead to poorer health outcomes for transgender individuals.

ARGUMENT

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

Most people have a "gender identity"—a "deeply felt, inherent sense" of their gender. Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 834, 862 (2015), https://www.apa.org/practice/guidelines/transgender.pdf [hereinafter "Am. Psych. Ass'n *Guidelines*"]; *see also* Jason Rafferty, Am. Acad. of Pediatrics, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 Pediatrics at 2 https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for (reaffirmed 2023) [hereinafter "AAP *Policy Statement*"]. Transgender individuals have a gender identity that is not aligned with the sex assigned to them at birth.[2] Transgender people differ from cisgender (*i.e.*, non-transgender) individuals, whose gender identity aligns with the sex they were assigned at birth. Am. Psych. Ass'n *Guidelines*, *supra*, at 861, 863. A transgender man or boy is an individual who is assigned the sex of female at birth but identifies as male and transitions to live in accordance with that male identity. *See id.* at 863. A transgender woman or girl is an individual who is assigned the sex of male at birth but identifies as female and transitions to live in accordance with that female identity. *See id.* A transgender boy is a boy. A

[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.

transgender girl is a girl. Gender identity is distinct from and does not correlate with sexual orientation. Transgender people, like cisgender people, may identify as heterosexual, gay, lesbian, bisexual, or asexual. Am. Psych. Ass'n *Guidelines*, *supra*, at 835-36, 862; *see* National Academies of Sciences, Engineering, Medicine, *Measuring Sex, Gender Identity, and Sexual Orientation* 17-22 (Nancy Bates et al. eds., 2022); Sandy E. James et al., Nat'l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 246 (Dec. 2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf.

Currently, over 1.6 million adults and youth in the United States identify as transgender, which is roughly 0.6% of Americans aged thirteen years or older. *See* Jody L. Herman et al., *supra*, at 1. In Arizona, around 1.54% or 7,300 youth between the ages of thirteen and seventeen identify as transgender. *Id.* at 9 tbl.4.

The medical profession's understanding of gender has advanced considerably over the past fifty years. Throughout much of the twentieth century, individuals who did not conform with their gender assigned at birth were often viewed as "perverse or deviant." Am. Psych. Ass'n, *Report of the APA Task Force on Gender Identity and Gender Variance* 26-27 (2009), https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf [hereinafter "Am. Psych. Ass'n *Task Force Report*"]. Medical practices during that time period tried to "correct" this perceived deviance by attempting to force gender non-conforming people, including transgender people, to live in accordance with the sex assigned to them at birth. These efforts failed and caused significant harm to the individuals

subjected to them. *Id.*; Substance Abuse and Mental Health Servs. Admin. ("SAMHSA"), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 13, 24-26 (2015), https://store.samhsa.gov/sites/default/files/d7/priv/sma15-4928.pdf [hereinafter "SAMHSA *Ending Conversion Therapy*"]. Much as our professions now recognize that homosexuality is a normal form of human sexuality—and that stigmatizing homosexual people causes significant harm—we now recognize that being transgender is a "normal variation[] of human identity and expression"—and that stigmatizing transgender people also causes significant harm. *See* Letter from James L. Madara, CEO/Exec. Vice President, Am. Med. Ass'n, to Bill McBride, Exec. Dir., Nat'l Governors Ass'n (Apr. 26, 2021), https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2021-4-26-Bill-McBride-opposing-anti-trans-bills-Final.pdf.

A. Gender Identity

"*Gender identity*" refers to a "person's internal sense" of being male, female, or another gender. Am. Psych. Ass'n, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* 1 (2014), http://www.apa.org/topics/lgbt/transgender.pdf [hereinafter "Am. Psych. Ass'n *Answers*"]. Every person has a gender identity. Carl G. Streed Jr., *Health Communication and Sexual Orientation, Gender Identity, and Expression*, 106 Med. Clinics N. Am. 589 (2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9219031/pdf/nihms-1775881.pdf; Centers for Disease Control and Prevention, *Transgender Persons*, https://www.cdc.gov/lgbthealth/trans

gender.htm (last reviewed Apr. 17, 2023). Further, gender identity cannot necessarily be ascertained immediately after birth. *See* Am. Psych. Ass'n *Guidelines*, *supra*, at 862. Many children develop stability in their gender identity between ages three and four.[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. Nursing 1, 6 (2017). By contrast, a transgender boy or a transgender girl "consistently, persistently, and insistently" identifies as a gender different from the sex they were assigned at birth. *See* Colt Meier & Julie Harris, Am. Psych. Ass'n, Fact Sheet: *Gender Diversity and Transgender Identity in Children* at 1, http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf; *see also* Cicero & Wesp, *supra*, at 5-6.

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

[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.

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 birth-assigned sex. Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 511–20 (5th ed. rev. 2022) [hereinafter "*DSM-5-TR*"].

As discussed in detail below, the recognized treatment for someone with gender dysphoria is support that addresses "their social, mental, and medical health needs and well-being while respectfully affirming their gender identity."

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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.

World Professional Association for Transgender Health ("WPATH"), *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, Sept. 2022, at S7, https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644 [hereinafter "WPATH *Standards of Care*"]. These treatments are effective in alleviating gender dysphoria and are medically necessary for many people. WPATH *Standards of Care* at S16-S18.

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 the gender to which they have been assigned … and their experienced/expressed gender," of at least six months' duration, as manifested by at least two out of six criteria, and "clinically significant distress or impairment in social, school, or other important areas of functioning." *DSM-5-TR*, *supra*, at 512-13. The eight criteria include: (1) "[a] marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics"; (2) "[a] strong desire to be rid of one's primary and/or secondary sex characteristics"; (3) "[a] strong desire for the primary and/or secondary sex characteristics of the other gender"; (4) "[a] strong desire to be of the other gender (or some alternative gender . . . .)"; (5) "[a] strong desire to be treated" as a gender different from one's assigned gender; and (6) "[a] strong conviction that one has the typical feelings and reactions" of a different gender. *Id.*

Transgender children often experience intensified gender dysphoria and worsening mental health as the hormonal and anatomical changes associated with puberty cause the body to develop in ways that diverge from the child's gender identity. *See* Am. Psych. Ass'n *Task Force Report, supra*, at 45-46; SAMHSA, *Ending Conversion Therapy*, *supra*, at 2-3. For instance, a deepening voice for male-assigned individuals or the growth of breasts and the beginning of a menstrual cycle for female-assigned individuals can cause severe distress. For some, puberty manifests as "a sudden trauma that forces to consciousness the horror that they are living in a body that is totally at odds with the gender they know themselves to be but which has been kept securely underground." Diane Ehrensaft, *From Gender Identity Disorder to Gender Identity Creativity: True Gender Self Child Therapy*, 59 J. Homosexuality 337, 345 (2012); *see also* Joseph H. Bonifacio et al., *Management of Gender Dysphoria in Adolescents in Primary Care*, 191 Canadian Med. Ass'n J. E65, E72 (2019) ("Many gender-variant youth may experience the physical changes of puberty as traumatic, with further negative consequences for mental health.").

Left untreated, gender dysphoria can cause debilitating distress, depression, impairment of function, self-mutilation to alter one's genitals or secondary sex characteristics, other self-injurious behaviors, and suicide. *See*, *e.g.*, *DSM-5-TR*, *supra*, at 515-19; Nicolle K. Strand & Nora L. Jones, *Invisibility of "Gender Dysphoria,"* 23 Am. Med. Ass'n J. Ethics 557, 557 (2021) (discussing consequences of untreated gender dysphoria, including "higher rates of suicide and mental illness"). Like other minority groups, transgender individuals are also

frequently subjected to prejudice and discrimination in multiple areas of their lives (*e.g.*, school, employment, housing, health care), which exacerbates these negative health outcomes and makes access to appropriate medical care even more important. Jaclyn M. White Hughto et al., *Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions*, 147 Soc. Sci. Med. 222, 223, 226-27 (Nov. 11, 2015) (discussing the direct and exacerbated health impacts of discrimination and stigma against transgender individuals).

2. The Accepted Treatment Protocols For Gender Dysphoria

In the last few decades, transgender people suffering from gender dysphoria have gained widespread access to gender-affirming medical and mental health support and treatment. Am. Psych. Ass'n *Guidelines*, *supra*, at 832-33, 835. For over thirty years, the generally accepted treatment protocols for gender dysphoria[7] have aimed at alleviating the distress associated with the incongruence between gender identity and birth-assigned sex. Am. Med. Ass'n, Comm. on Human Sexuality, *Human Sexuality* 38 (1972). These protocols are laid out in the *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8* developed by the World Professional Association for Transgender Health ("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

[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.

health communities regarding the appropriate treatment for gender dysphoria. Am. Psych. Ass'n Task Force Report, supra, at 32; AAP Policy Statement, *supra*, at 6. [8]

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 al., Am. Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria, *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A*

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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); AAP Policy Statement, *supra*, at 4; *see* Int'l Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2022), https://www.ipa.world/IPA/en/IPA1/Procedural_Code/IPA_POSITION_STATEMENT_ON_ATTEMPTS_TO_CHANGE_SEXUAL_ORIENTATION__GENDER_IDENTITY__OR_GENDER_EXPRESSI.aspx.

Primer for Psychiatrists, 175 Am. J. Psychiatry 1046 (2018) [hereinafter "Workgroup on Treatment of Gender Dysphoria"]; AAP Policy Statement, *supra*, at 6-7. However, each patient requires an individualized treatment plan that accounts for their specific needs. 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 the American Academy of Pediatrics, the Endocrine Society, the American Medical Association, the American Psychological Association, the American Psychiatric Association, and WPATH have published policy statements and guidelines on providing age-appropriate gender affirming care. *See, e.g.*, AAP Policy Statement, *supra*, at 5-6; Am. Psych. Ass'n *Guidelines*, *supra*, at 841-43; Am Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria, *supra*. Transgender people of all ages benefit from social transition, including children. Socially transitioned transgender youth "largely mirror the mental health" of age-matched "cisgender siblings and peers." WPATH *Standards of Care*, *supra*, at S77. They also tend to report lower rates of anxiety and depression and a better sense of self-worth compared to transgender youth who have not socially transitioned to fit their gender identity. *See* Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 J. Am. Acad. Child

Adolesc. Psychiatry 116 (2017); *see also* WPATH *Standards of Care*, *supra*, at S77-S78. For transgender youth to live their lives fully in accordance with their gender identity, they should be able to use facilities that correspond to their gender identity.

Ultimately, the goal is for individuals with gender dysphoria to experience "[i]dentity integration," where "being transgender is no longer the most important signifier of one's identity" and the individual can refocus on 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. Excluding Transgender Youth From Facilities Consistent with their Gender Identity Endangers Their Health, Safety, And Well-Being.

The school policy at issue in this case bans students like Plaintiff from using the bathroom that accords with their gender identity. *Jane Doe v. Mukwonago Area School*, 1:23-cv-0876, ECF. 15 at 1 (E.D. Wisc. 2023). Under the policy, transgender female students can either: (1) use the boys' bathroom, or (2) designated bathrooms in administrative areas of the school that the district regards as gender neutral. *Id.* This policy may lead to severe adverse consequences for the health and well-being of transgender female students. Forcing a transgender female student to use a bathroom that forces them to identify as a cisgender male can exacerbate the harmful effects of gender dysphoria and goes against the medical consensus to treat gender dysphoria by

supporting the transgender individual in living her life according to her gender identity.

A. Exclusionary Policies Exacerbate Gender Dysphoria and are Contrary to Widely Accepted, Evidence-Based Treatment Protocols.

For transgender individuals, being treated differently as a result of their transgender identity can cause tremendous pain and harm. *See, e.g.*, Sam Winter et al., *Transgender People: Health at the Margins of Society*, 388 Lancet 390, 394 (2016). As the district court explained below, the "proposed [policy] options would single plaintiff out from her peers, force her to reveal to others that she was transgender without her consent, and stigmatize her." Prelim. Inj. Order at 3.

Exclusionary policies expose transgender individuals to harassment and abuse by forcing them to occupy gender-segregated spaces where their presence may be met with hostility, harassment, and abuse. Exclusionary policies force transgender individuals to disclose their transgender status because it is only transgender individuals who must use facilities that are incongruent with their gender identity and how they live and are recognized in the world. Because some children will have transitioned before they arrive in a particular school, exclusionary policies may be the only way that they are forcibly "outed" to their peers as transgender.

As discussed above, the appropriate protocol for treating gender dysphoria includes aligning the body and outward expression with one's gender identity. This is particularly important in school environments, which "play a significant

role in the social and emotional development of children" and where "[e]very child has a right to feel safe and respected at school[.]" AAP Policy Statement, *supra*, at 9. Promoting safe, supportive, and affirming school environments reduces the risk of negative health outcomes such as depression and suicidality.[10]

Bullying, harassment, and abuse experienced by transgender students can result in a greater risk for post-traumatic stress disorder, depression, anxiety, and suicidality.[11] As noted above, social transition by transgender youth is a critical part of treating gender dysphoria, and this includes in all types of school activities such as participating on school sports teams that align with their gender identity. WPATH *Standards of Care*, *supra*, at S76. Denying children the ability to fully express their gender identity in schools, as the school policy does, makes it difficult if not impossible for transgender children to live in accordance with their gender identity and thwarts the appropriate medical treatment for these children. Lack of appropriate treatment, in turn, increases the rate of negative health outcomes, substance use, and suicide for transgender children. *See* Jack L. Turban et al., *Pubertal Suppression for Transgender Youth*

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

[11] Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 Developmental Psych. 1580, 1580-82 (2010), https://familyproject.sfsu.edu/sites/default/files/documents/FAP_School%20Victimization%20of%20Gender-nonconforming%20LGBT%20Youth.pdf; *see also* Semprevivo, *supra*, at 8-10.

and Risk of Suicidal Ideation, 145 Pediatrics 1, 6-7 (2020) (finding a significant inverse association between treatment with pubertal suppression during adolescence and lifetime suicidal ideation among transgender adults who sought out this treatment).

Exclusionary policies can exacerbate the risk of "anxiety and depression, low self-esteem, engaging in self-injurious behaviors, suicide, substance use, homelessness, and eating disorders among other adverse outcomes" that many transgender individuals face. Am. Psych. Ass'n & Nat'l Ass'n of School Psychs., *Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools* (2015), https://www.apa.org/about/policy/orientation-diversity [hereinafter "APA/NASP Resolution"]. Those risks are already all too serious. A 2019 report from the Centers for Disease Control and Prevention found that transgender high school students were more likely than cisgender high school students to report violence victimization, substance use, and suicide risk, with almost thirty-five percent of transgender high school students reporting attempting suicide compared to roughly six percent of cisgender high school students.[12]

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

[12] Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students —19 States and Large Urban School Districts, 2017*, 68 Morbidity & Mortality Weekly Report 67, 69 tbl.2 (2019), http://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf.

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.[13] These consequences have striking effects on the daily functioning and emotional and physical health of transgender people. *See, e.g.*, Int'l Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra* ("[B]ias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health.").

One study concluded that "living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses."[14] As both the American Psychological Association and the National Association of School Psychologists have concluded, "the notable burden of stigma and discrimination affects minority persons' health and well-being and generates health disparities." APA/NASP Resolution, *supra*; *see also* White Hughto et al., *supra*, at 223 (discussing how anti-transgender stigma is "linked to adverse health outcomes including depression, anxiety, suicidality, [and] substance abuse"). There is thus every

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[13] *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.

[14] Judith Bradford et al., *Experiences of Transgender-Related Discrimination and Implications for Health: Results From the Virginia Transgender Health Initiative Study,* 103 Am. J. Pub. Health 1820, 1827 (2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780721/.

reason to anticipate that the Wisconsin school policy excluding transgender girls from using bathrooms in accordance with their gender identity can negatively affect their health.

Finally, exclusionary policies have a particularly deleterious effect on the social and emotional development of children and adolescents. Discrimination against and harassment of children and adolescents in their formative years can have negative effects that linger long after they leave the school environment. Unsurprisingly, unwelcoming school environments produce particularly "poor[] educational outcomes" for transgender individuals. *See* APA/NASP Resolution, *supra*; Jack K. Day et al., *Safe Schools? Transgender Youth's School Experiences and Perceptions of School Climate*, 47 J. Youth Adolescence 1731 (2018) (finding higher truancy rates, more victimization, lower grades, and negative perceptions of school climate). Poorer educational outcomes, standing alone, can lead to lower lifetime earnings and an increased likelihood of poorer health outcomes later in life.[15] Moreover, and as already discussed, exclusionary policies can produce and compound the stigma and discrimination that transgender children and adolescents face in a school environment. Such stigma and discrimination, in turn, are associated with an increased risk of post-traumatic stress disorder,

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

depression, anxiety, and suicidality in subsequent years. Toomey et al., *supra* note 11; *see also* APA/NASP Resolution, *supra*.

B. Exclusionary Policies Lead to Avoidance of Restroom Use, Harming Physical Health.

Exclusionary policies have more immediate health effects as well. Though most of us take it for granted, all individuals require regular access to a restroom. Exclusionary policies that preclude transgender children and adolescents from using school restrooms consistent with their gender identity leave them with a difficult choice: (1) violate the policy and face potential disciplinary consequences; (2) use the restroom inconsistent with their gender identity or "special" single-user restrooms, which undermines their health care needs and risks discrimination or harassment; or (3) attempt not to use the restroom at all.

This difficult choice produces heightened anxiety and distress around restroom use, which may make it difficult for transgender individuals to concentrate or focus at school and potentially cause them to eschew social activities or everyday tasks.[16] 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.[17]

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[16] 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 71, 75 (2013).

[17] Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. Homosexuality 1378, 1388-89 (2016).

Studies also show that it is common for transgender students to avoid using restrooms.[18] 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.[19]

Some transgender students experiencing fear and anxiety about restroom usage may attempt to dehydrate themselves so that they will need to urinate less frequently.[20] Chronic dehydration has been linked to a variety of conditions, including urinary tract infections, kidney stones, blood clots, kidney disease, heart disease, and colon and bladder cancers.[21]

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

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[18] Am. Psych. Ass'n *Guidelines*, *supra*, at 840.

[19] *See, e.g.*, *Gendered Restrooms and Minority Stress*, *supra* note 16, (surveying transgender and gender non-conforming people in Washington D.C., and finding that 54% of respondents reported a "physical problem from trying to avoid using public bathrooms" including dehydration, urinary tract infections, kidney infection, and other kidney-related problems); *Report of 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).

[20] *Gendered Restrooms and Minority Stress*, *supra* note 16.

[21] Lawrence E. Armstrong, *Challenges of Linking Chronic Dehydration and Fluid Consumption to Health Outcomes*, 70 Nutrition Rev. S121, 122 (2012).

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.

C. Exclusionary Policies Harm Adolescent Social And Emotional Development—With Lifelong Effects.

Finally, exclusionary policies have a particularly deleterious effect on the social and emotional development of children and adolescents. Discrimination and harassment of children and adolescents in their formative years may have effects that linger long *after* they leave the school environment. Unsurprisingly, unwelcoming school environments produce particularly poor educational outcomes for transgender individuals. *See* APA/NASP Resolution, *supra*, at 6; Emily A. Greytak et al., GLSEN, *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* (2009). Poorer educational outcomes, alone, may lead to lower lifetime earnings, and an increased likelihood of poorer health outcomes later in life.[22]

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

[22] *See, e.g.*, Emily B. Zimmerman et al., U.S. Dep't of Health and Human Servs., *Understanding the Relationship Between Education and Health: A Review of the Evidence and an Examination of Community Perspectives* (2015), http://www.ahrq.gov/professionals/education/curriculum-tools/population-health/zimmerman.html.

turn, is associated with an increased risk of post-traumatic stress disorder, depression, anxiety, and suicidality in subsequent years. Toomey et al., *supra* note 11; *see also* APA/NASP Resolution, *supra*, at 6.

Conversely, evidence demonstrates that a safe and welcoming school environment may promote positive social and emotional development and health outcomes. Numerous studies show that safer school environments lead to reduced rates of depression, suicidality, or other negative health outcomes.[23]

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.

[23] *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 e301, e302, e304-05 (2013); Marla E. Eisenberg et al., *Suicidality Among Gay, Lesbian and Bisexual Youth: The Role of Protective Factors*, 39 J. Adolescent Health 662 (2006); Stephen T. Russell et al., *Youth Empowerment and High School Gay-Straight Alliances*, 38 J. Youth Adolescence 891 (2009).

CONCLUSION

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

Date: October 26, 2023

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 6,989 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.

Date: October 26, 2023

/s/ Clifford W. Berlow
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CERTIFICATE OF SERVICE

I, Clifford W. Berlow, an attorney, hereby certify that on October 26, 2023 I caused the foregoing **Brief of *Amici Curiae* American Medical Women's Association and Five Other Health Care Organizations In Support Of Plaintiff-Appellee 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: October 26, 2023

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