24-11382

United States Court of Appeals

for the

Eleventh Circuit

JANE DOE,

Plaintiff/Appellee,

– v. –

GEORGIA DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants/Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
CASE NO: 1:23-cv-05578-MLB

BRIEF *AMICI CURIAE* FOR HEALTH CARE ORGANIZATIONS IN SUPPORT OF APPELLEE

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 26.1-3, the undersigned *Amici Curiae* ("*Amici*") adopt each Certificate of Interested Persons ("CIP") contained in Defendants-Appellants' brief and Plaintiff-Appellee's brief, and supplement as follows, certifying that the following additional individuals and entities are known to have an interest in the outcome of this case:

[Parties 1 through 59 from Dkt. 7, repeated in Dkt. 26, adopted]

[Parties 60 through 71 from Dkt. 38, adopted]

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Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, each proposed *Amicus Curiae* hereby certifies that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock. The undersigned will enter this information into the web-based CIP contemporaneously with the filing of this CIP and Corporate Disclosure Statement.

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INTERESTS OF *AMICI CURIAE*[1]

Amici Curiae are leading health care organizations. Collectively, *Amici* represent thousands of physicians and mental health professionals. *Amici* submit this brief, by consent of the parties, to inform the Court of the medical consensus regarding what it means to be transgender; to provide an overview of the importance of a social transition to help bring one's physical form into alignment with one's gender identity; and to explain the predictable (and often irreversible) harms to the health and well-being of transgender individuals denied access to such care.

The American Medical Women's Association ("AMWA") is the oldest multispecialty organization dedicated to advancing women in medicine and improving women's health. AMWA recognizes that all patients have the right to health care, regardless of gender identity, and opposes policies that discriminate against individuals or interfere with their care.

GLMA: Health Professionals Advancing LGBTQ+ Equality ("GLMA") is the oldest and largest association of LGBTQ+ and allied health professionals in the United States. GLMA utilizes the expertise of its extensive membership to

[1] *Amici* hereby certify that no party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief, and no person—other than *Amici*, their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief. *See* Fed. R. App. P. 29(a)(4)(E). The parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2).

advance LGBTQ+ health equity through research, education, and advocacy. As a part of that mission, GLMA is dedicated to protecting and promoting access to evidence-based medical care for transgender and non-binary individuals.

The National Association of Social Workers ("NASW"), founded in 1955, is the largest association of professional social workers in the United States with 110,000 members in fifty-five chapters. NASW develops high standards of social work practice while unifying the social work profession. It promulgates professional policies, conducts research, publishes professional studies and books, provides continuing education, and enforces the NASW Code of Ethics. NASW, including the Georgia chapter, strongly advocates for the availability of culturally appropriate, comprehensive health and mental health services for LGBTQ+ people across their lifespan.[2] NASW supports the open availability of comprehensive health, psychological, and social support services for transgender people that are respectful and inclusive.[3]

The World Professional Association for Transgender Health ("WPATH") is a nonprofit, interdisciplinary professional and educational organization devoted to transgender health. WPATH's work furthers the

[2] Nat'l Ass'n of Soc. Workers, Social Work Speaks, 211, 215-16 (11th ed. 2018-2020).

[3] *Id*. at 328.

understanding and treatment of gender dysphoria by professionals in medicine, psychology, law, social work, counseling, psychotherapy, family studies, sociology, anthropology, sexology, speech and voice therapy, and other related fields.

STATEMENT OF THE ISSUE

This brief addresses the question before this Court about whether the district court abused its discretion in reviewing individualized assessments of Plaintiff's medical needs, concluding Plaintiff had a substantial likelihood of success on the merits of her medical deliberate indifference claims, and ordering Defendants to provide her two specific gender-affirming commissary items.

SUMMARY OF ARGUMENT

Many transgender individuals experience gender dysphoria, a condition involving clinically significant distress resulting from the incongruence between one's gender identity and one's sex assigned at birth. The international consensus among health care professionals regarding treatment for gender dysphoria is to assist the patient to live in accordance with their gender identity, thus alleviating the distress.[4] Treatment may include any or all of the following: counseling, social transition (e.g., changes in name, pronouns, clothes, prosthetics, and grooming to allow the person to conform to social expectations associated with their identity), hormone therapy, and/or gender-confirming surgeries. Social transition, as a treatment for gender dysphoria, is highly effective in reducing or eliminating the incongruence between a person's gender identity and assigned sex at birth, and the

[4] *See* Press Release, Am. Med. Ass'n, AMA to States: Stop Interfering in Health Care of Transgender Children (Apr. 26, 2022), https://www.ama-assn.org/press-center/press-releases/ama-states-stop-interfering-health-care-transgender-children.

associated distress that arises therefrom. Patients unable to socially transition and live as their gender of identity, in turn, experience increased rates of negative mental health outcomes.[5] Modern medical guidance and standards actively advise practitioners to consider social transitioning as a first or concurrent treatment for incarcerated transgender individuals.[6] Accordingly, denial of Jane Doe's requests for social transition aids and prostheses—as well as other medically necessary care—put her at substantial risk of psychological and bodily harm.

[5] *See* Roger P. Greenberg & Lance Laurence, *A Comparison of the MMPI Results for Psychiatric Patients and Male Applicants for Transsexual Surgery*, 169 J. OF NERVOUS AND MENTAL DISEASE 320, 322 (1981) [hereinafter "*A Comparison of the MMPI Results*"] (showing that patients' abilities to live as their gender of identity were correlated with reduced instances of negative mental health outcomes).

[6] *E.g.*, Fed. Bureau of Prisons Clinical Guidance, *Medical Management of Transgender Inmates*, 10 (Dec. 2016), https://www.bop.gov/resources/pdfs/trans_guide_dec_2016.pdf.

ARGUMENT

I. WHAT IT MEANS TO BE TRANSGENDER AND TO SUFFER FROM GENDER DYSPHORIA

Most people have a "[g]ender identity"—a "deeply felt, inherent sense" of their gender.[7] Transgender individuals have a gender identity that is not aligned with the sex assigned to them at birth.[8] Transgender people differ from cisgender (i.e., non-transgender) individuals, who have a gender identity that aligns with the sex they were assigned at birth.[9] A transgender man is a man who was assigned the sex of female at birth but transitions to live in accordance with his male identity. A transgender woman is a woman who was assigned the sex of male at birth but transitions to live in accordance with her female identity. A nonbinary person is an individual who may be assigned any sex at birth and experiences their gender as a mix of male and female—or neither.

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[7] Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 862 (Dec. 2015), https://www.apa.org/practice/guidelines/transgender.pdf [hereinafter "Am. Psych. Ass'n *Guidelines*"]; *see also* David A. Levine & Comm. on Adolescence, Am. Acad. of Pediatrics, *Technical Report: Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 PEDIATRICS e297, e298 (July 2013, reaffirmed in Apr. 2021), https://publications.aap.org/pediatrics/article/132/1/e297/31402/Office-Based-Care-for-Lesbian-Gay-Bisexual [hereinafter "AAP Tech. Rep."].

[8] 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* note 7, at 834.

[9] Am. Psych. Ass'n *Guidelines*, *supra* note 7, at 861.

The health care community's understanding of what it means to be transgender has advanced greatly over the past century. It is now understood that being transgender implies no impairment in a person's judgment, stability, or general social or vocational capabilities. According to a 2022 report, approximately 1.3 million adults identify as transgender in the United States.[10] Using probabilistic methods, this report further estimates that there are 48,700 transgender adults in the state of Georgia.[11] However, such "population estimates likely underreport the true number of [transgender] people, given difficulties in collecting comprehensive demographic information about this group."[12]

A. Gender Identity

"Gender identity" refers to a "person's internal sense" of being male, female, or another gender.[13] "[G]ender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body

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[10] Jody L. Herman et al., *How Many Adults and Youth Identify as Transgender in the United States?* UCLA SCH. OF L. WILLIAMS INST. 1, 4 (June 2022), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf.

[11] *Id.* at 9.

[12] Am. Psych. Ass'n *Guidelines*, *supra* note 7, at 832.

[13] 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*"].

characteristics."[14] There are many individuals who depart from stereotypical male and female appearances and roles, but who are not transgender.[15] By contrast, a transgender person "consistently, persistently, and insistently" identifies as a gender different from the sex they were assigned at birth.[16] "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."[17]

B. Gender Dysphoria

As noted above, being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[18] However, many transgender individuals are diagnosed with gender dysphoria, a condition that is

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[14] Am. Psych. Ass'n *Answers*, *supra* note 13, at 1.

[15] Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, 33 J. SCH. NURSING 2 (2017) [hereinafter "*Supporting the Health*"].

[16] *See* Colt Meier & Julie Harris, Am. Psych. Ass'n, *Fact Sheet: Gender Diversity and Transgender Identity in Children*, 1, http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf; *see also Supporting the Health*, *supra* note 15, at 5–6.

[17] Am. Psych. Ass'n *Guidelines*, *supra* note 7, at 836.

[18] *See* 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.

characterized by clinically significant distress and anxiety resulting from the incongruence between gender identity and birth-assigned sex.[19] As discussed below, the recognized treatment for someone with gender dysphoria is medical support that allows the individual to transition from their birth-assigned sex to the sex associated with their gender identity.[20] These treatments "are based on decades of clinical experience and research[,]" "are safe and effective at reducing gender incongruence and gender dysphoria[,]" and are medically necessary for many people.[21]

1. The Diagnostic Criteria and Seriousness of Gender Dysphoria

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, codifies the diagnostic criteria for gender dysphoria in adults as follows: "[a] marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least" two out of six criteria, and "clinically significant distress or impairment in social, occupational, or other important areas of functioning."[22] The six criteria include: (1) "[a] marked incongruence between one's experienced/expressed gender and primary and/or

[19] Am. Psych. Ass'n, *Diagnostic and Statistical Manual of Mental Disorders*, 451–53 (5th ed. 2013) [hereinafter "*DSM-5*"].

[20] Eli Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People,* Version 8, 23 INT'L J. TRANSGENDER HEALTH S1, S81–87 (2022), [hereinafter "WPATH Standards of Care"].

[21] *Id*. at S18.

[22] *DSM-5*, *supra* note 19, at 452–53.

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.[23]

If untreated, gender dysphoria can cause debilitating distress, depression, impairment of function, self-mutilation to alter one's genitals or secondary sex characteristics, other self-injurious behaviors, and suicide.[24] Like other minority groups, transgender individuals also are frequently subjected to prejudice and discrimination in multiple areas (e.g., school, employment, housing, health care), which exacerbates these negative health outcomes and makes access to appropriate care even more important.[25]

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[23] *Id.* at 452.

[24] *See, e.g.*, *id*. at 455, 458; Stephanie A. Brill & Rachel Pepper, *The Transgender Child: A Handbook for Families and Professionals* 202 (2008) (discussing risk of self-mutilation) [hereinafter "*The Transgender Child*"].

[25] Michael L. Hendricks & Rylan J. Testa, *A Conceptual Framework for Clinical Work with Transgender and Gender Nonconforming Clients: An Adaptation of the Minority Stress Model*, 43 PRO. PSYCH.: RSCH. & PRAC. 460 (2012); Jessica Xavier et al., Va. Dep't of Health, *The Health, Health-Related Needs, and Lifecourse Experiences of Transgender Virginians* (Jan. 2007), http://itgl.lu/wp-content/uploads/2015/04/THISFINALREPORTVol1.pdf.

2. The Accepted Treatment Protocols for Gender Dysphoria

In the last few decades, transgender people with gender dysphoria have gained increased access to medical and mental health treatment.[26] For over thirty years, the generally accepted treatment protocols for gender dysphoria have aimed at alleviating the distress associated with the incongruence between gender identity and birth-assigned sex.[27] These protocols are laid out in the Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People (Version 8) developed by WPATH.[28]

The major medical and mental health groups in the United States expressly recognize the WPATH Standards of Care as representing the consensus of the

[26] Am. Psych. Ass'n *Guidelines*, *supra* note 7, at 835; WPATH Standards of Care, *supra* note 20, at S81–87.

[27] Am. Med. Ass'n, Comm. on Human Sexuality, Human Sexuality, 38 (1972).

[28] WPATH Standards of Care, *supra* note 20.

medical and mental health communities regarding the appropriate treatment for gender dysphoria.[29]

The recommended treatment for gender dysphoria includes assessment, counseling, and, as appropriate, social transition, hormone therapy, and surgical interventions.[30] Some clinicians still offer versions of "reparative" or "conversion" therapy to try to change a person's gender identity. However, all leading medical

[29] Am. Med. Ass'n, Pol'y H-185.950, *Removing Financial Barriers to Care for Transgender Patients*, (modified 2022), https://policysearch.ama-assn.org/policyfinder/detail/Removing%20Financial%20Barriers%20to%20Care%20for%20Transgender%20Patients%20H-185.950?uri=%2FAMADoc%2FHOD.xml-0-1128.xml; Am. Psych. Ass'n, *Report of the APA Task Force on Gender Identity and Gender Variance*, 27, 32 (2008), https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf [hereinafter "Am. Psych. Ass'n *Task Force Rep.*"]; AAP Tech. Rep., *supra* note 7, at e307-09; William Byne et al., Am. Psych. Ass'n Workgroup on Treatment of Gender Dysphoria, *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists*, 175 AM. J. PSYCHIATRY 1046 (2018).

[30] Am. Psych. Ass'n *Task Force Rep.*, *supra* note 29, at 32–39; William Byne et al., *supra* note 29, *id*.

professional organizations that have considered the issue have not only rejected such treatments, but have condemned them as extremely harmful to a patient's health.[31]

Each patient requires an individualized treatment plan that accounts for the patient's specific needs.[32] The task of deciding on an individualized treatment plan should be left to the patient and their providers—not, as in the instant matter, a multidisciplinary committee that has not evaluated the patient. For some adults and adolescents, hormone treatment may be medically necessary to treat their gender dysphoria.[33] A transgender woman undergoing hormone therapy, for example, will

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[31] *See* Am. Med. Ass'n, Pol'y H-160.991, *Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations*, (2018), https://policysearch.ama-assn.org/policyfinder/detail/gender%20identity?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 Tech. Report, *supra* note 7, at e307-08; *see* Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, (June 2012), https://apsa.org/wp-content/uploads/2022/02/2012-Position-Statement-on-Attempts-to-Change-Sexual-Orientation-Gender-Identity-or-Gender-Expression.pdf.

[32] Am. Psych. Ass'n *Task Force Rep.*, *supra* note 29, at 32.

[33] *See* Am. Med. Ass'n, Pol'y H-185.950, *supra* note 29; Am. Psych. Ass'n *Guidelines*, *supra* note 7, at 861, 862; Center of Excellence for Transgender Health, Univ. of Cal., S.F., *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Non-binary People*, 23 (Madeline B. Deutsch ed., 2d ed. June 17, 2016), https://transcare.ucsf.edu/guidelines; WPATH Standards of Care, *supra* note 20, at S55.

have hormone levels within the same range as other women; and just as they do in other women, these hormones will affect most of her major body systems, causing breast growth, female-associated fat distribution, skin softening, and decreased muscle mass.[34] Hormones have been clinically proven as an effective treatment for gender dysphoria with a low rate of complications.[35]

Surgical interventions may also be an appropriate and medically necessary treatment for some patients such as Jane Doe.[36] These procedures could include chest reconstruction surgery for transgender men, breast augmentation for transgender women, or genital surgeries.[37] Decades of clinical evidence show these surgical procedures effectively reduce gender dysphoria and improve mental

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[34] Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. CLINICAL ENDOCRINOLOGY & METABOLISM 3869, 3885–88 (2017), https://academic.oup.com/jcem/article/102/11/3869/4157558 [hereinafter "*Endocrine Treatment*"]; *see also The Transgender Child*, *supra* note 24, at 217.

[35] Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 PEDIATRICS (2020); *see* Henk Asscheman et al., *A Long-Term Follow-Up Study of Mortality in Transsexuals Receiving Treatment with Cross-Sex Hormones*, 164 EUR. J. ENDOCRINOLOGY 635 (2011), https://pubmed.ncbi.nlm.nih.gov/21266549/; Paul van Kesteren et al., *Mortality and Morbidity in Transsexual Subjects Treated with Cross-Sex Hormones*, 47 CLINICAL ENDOCRINOLOGY 337 (1997).

[36] WPATH Standards of Care, *supra* note 20, at S86–87.

[37] *Endocrine Treatment*, *supra* note 34, at 3893–95; *see also* WPATH Standards of Care, *supra* note 20, at S86–87.

health.[38] Empirical studies reflect the importance of the interplay among treatments, finding hormone therapy in conjunction with psychotherapy and, for some, surgery, to be necessary elements of treating severe levels of gender dysphoria.[39]

In addition to these biomedical interventions, social transition—including name changes, being referred to by one's proper pronouns, wearing clothing associated with one's gender identity, and padding or other devices or treatments to feminize or masculinize the appearance of one's body—has proven to be effective in treating symptoms associated with gender dysphoria in transgender populations.[40]

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[38] Annelou L.C. de Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 PEDIATRICS 696 (2014); William Byne et al., *Report of the American Psychiatric Association Task Force on Treatment of Gender Identity Disorder*, 41 ARCH. SEXUAL BEHAV. 759, 778–79 (2012); Mohammad Hassan Murad et al., *Hormonal Therapy and Sex Reassignment: A Systematic Review and Meta-Analysis of Quality of Life and Psychosocial Outcomes*, 72 CLINICAL ENDOCRINOLOGY 214 (2010); Luk Gijs & Anne Brewaeys, *Surgical Treatment of Gender Dysphoria in Adults and Adolescents: Recent Developments, Effectiveness, and Challenges*, 18 ANN. REV. SEX RSCH. 178 (2007); Jan Eldh et al., *Long-Term Follow Up After Sex Reassignment Surgery*, 31 SCAND. J. PLASTIC RECONSTRUCTIVE SURGERY & HAND SURGERY 39 (1997).

[39] *See* GIANNA E. ISRAEL & DONALD E. TARVER II, TRANSGENDER CARE: RECOMMENDED GUIDELINES, PRACTICAL INFORMATION & PERSONAL ACCOUNTS 56–73 (Temple Univ. Press 1997).

[40] WPATH Standards of Care, *supra* note 20, at S105–06.

II. DEPRIVING TRANSGENDER PEOPLE OF THE ABILITY TO SOCIALLY TRANSITION ENDANGERS THEIR HEALTH AND SAFETY

For many people with gender dysphoria, social transition is an important part of treatment, allowing them to align their outward presentation with their gender identity.[41] Social transition may include the use of accessories or prosthetics, such as pads to enhance or binders to compress body parts, better aligning gender identity and expression.[42]

A. Social Transition is an Important Part of Treatment for Gender Dysphoria

Social transitioning can facilitate identity integration by harmonizing external gender presentation to an individual's experienced gender. Drs. Walter Bockting and Eli Coleman describe coming out as a developmental process that ranges from identity *dis*integration—characterized by the shame, low self-esteem, loneliness, and isolation caused by the stigma associated with not conforming to gender expectations—to identity integration, where "being transgender is no longer the most important signifier of one's identity, but, rather, one of several."[43] Upon

[41] *Id.* at S253.

[42] *Id.* at S252.

[43] Walter Bockting & Eli Coleman, *Developmental Stages of the Transgender Coming-Out Process: Toward an Integrated Identity*, Principles of Transgender Medicine and Surgery 137, 153 (Randi Ettner et al. eds., 2d ed. 2016).

achieving integration, an individual feels "a deeper level of self-acceptance" and may refocus on other life activities.[44]

Social transitioning care for gender dysphoria is associated with better mental health outcomes.[45] Studies show that aligning one's appearance with one's gender identity improves mental health; that transgender patients who socially transitioned had better mental health outcomes compared to those who did not; and that public gender affirmation and recognition can protect and insulate individuals against the impact of mistreatment.[46]

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[44] *Id.; see also* Aaron H. Devor, *Witnessing and Mirroring: A Fourteen Stage Model of Transsexual Identity Formation*, 8 J. GAY & LESBIAN PSYCHOTHERAPY 41, 45 (2008) ("In order for persons to socially legitimate their gender identity claims, they must ultimately have bodies which match their gender claims in socially expected ways.").

[45] Sabra L. Katz-Wise et al., *Self-Reported Changes in Attractions and Social Determinants of Mental Health in Transgender Adults*, 46 ARCHIVES SEXUAL BEHAV. 1, 11 (2017); Tiffany R. Glynn et al., *The Role of Gender Affirmation in Psychological Well-Being Among Transgender Women*, 3 PSYCH. SEXUAL ORIENTATION & GENDER DIVERSITY 1, 1 (2016); *see also* Jaclyn M. W. Hughto et al., *Social and Medical Gender Affirmation Experiences Are Inversely Associated with Mental Health Problems in a U.S. Non-Probability Sample of Transgender Adults*, 49 ARCHIVES SEXUAL BEHAV. 1, 1–2 (2020).

[46] *A Comparison of the MMPI Results*, *supra* note 5, at 321; Arjee Rester et al., *Legal Gender Marker & Name Change is Associated With Lower Negative Emotional Response to Gender-Based Mistreatment & Improve Mental Health Outcomes Among Trans Populations*, 11 SSM POPULATION HEALTH 100595, 2 (2020); Lily Durwood, Katie A. McLaughlin, & Kristina R. Olson *Mental Health and Self Worth in SociallyTransitioned Transgender Youth*, 56(2) J OF THE AM. ACAD. OF CHILD AND ADOLESCENT PSYCHIATRY 116, 121 (2016). Doi: https://doi.org/10.1016/j.jaac.2016.10.016.

Significantly, social transitioning serves a different (but sometimes overlapping) function in transgender health care than either hormone therapy or surgical intervention. Some transgender individuals find that social transitioning alone is sufficient to relieve their gender dysphoria and do not need other treatment.[47] For those who need hormone therapy and/or surgery, social transitioning can be immensely helpful *in addition to* those treatments, though not as a replacement. One study by Greenberg and Laurence found that among applicants for trans-affirming surgery, those who were allowed to identify and live as their authentic gender identity showed little evidence of psychological disturbance, as opposed to applicants who could not live as their authentic gender identity, who instead showed signs of various mental health issues.[48]

Even before the development of the WPATH Standards of Care, social transition served as an important (and for much of history, the *only available*) treatment for patients suffering from gender dysphoria (or any of its symptoms). After the discovery of hormone therapy and surgical interventions as treatments for gender dysphoria, the diagnostic guidelines for such treatments have recommended that, prior to undertaking such treatments, patients should undertake living as their

[47] WPATH Standards of Care, *supra* note 20, at S7–8.

[48] *A Comparison of the MMPI Results*, *supra* note 5, at 322.

gender of identity for at least several months—a process only possible through social transition or "real life experience."[49] Indeed, more and more transgender individuals have "start[ed] social transitioning long before they receive . . . hormone treatment."[50] The Federal Bureau of Prisons' Clinical Guidance for Medical Management of Transgender Inmates makes clear that the first step to managing the mental health of transgender persons includes the "implementation/initiation of real-life experience" of the individual's gender identity.[51]

The WPATH Standards of Care recommend standard practices for treatments and therapies, including social transitioning. They emphasize the medical importance of social transition interventions as a *concurrent* treatment for gender

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[49] Randi Ettner, *Gender Loving Care* 146–48 (1999) (identifying one potential eligibility criterion for hormone therapy to be "documented real-life experience [] undertaken for at least three months prior to the administration of hormones," while one potential eligibility criterion for genital reconstructive and breast surgery is "12 months of successful continuous full time real-life experience". "Real-life experience" is defined as gaining "awareness of what these familial, vocational, interpersonal, educational, economics, and legal consequences are likely to be" if the individual decided to undertake hormone therapy and/or surgical intervention.); *Endocrine Treatment*, *supra* note 34, at 3872 (recommending surgery for sex reassignment and gender confirmation only after "the individual has had a satisfactory social role change").

[50] *Endocrine Treatment*, *supra* note 34, at 3877.

[51] Fed. Bureau of Prisons Clinical Guidance, *Medical Management of Transgender Inmates*, 10 (Dec. 2016), https://www.bop.gov/resources/pdfs/trans_guide_dec_2016.pdf.

dysphoria, alongside hormone therapy and surgery.[52] Gender-affirming clothing, like bras for transgender women, and grooming items, such as hair removal creams, have been shown to improve the mental health outcomes for transgender patients.[53] Hormone interventions cause physical changes in transgender individuals that make items like bras necessary for mental health, physical comfort, and dignity. Hormone interventions also frequently take time to result in the desired feminizing or masculinizing effects on the patient's body—and sometimes never result in the desired outcome—further emphasizing the importance of social transitioning as a concurrent treatment to assist the patient in achieving identity integration.

Body hair removal is especially important for transgender women to alleviate gender dysphoria, as the persistence of hair characteristic of masculine bodies can be a consistent barrier to identity integration.[54] Other grooming items like feminine deodorant, moisturizer, and makeup are also considered medically necessary in

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[52] WPATH Standards of Care, *supra* note 20, at S39 ("Social transition . . . can improve the mental health of a [transgender] person seeking gender-affirming interventions").

[53] *Id.* at S39, S107 (defining social transition as the process by which transgender individuals begin and continue to express their gender identity through, for example, hairstyles, grooming products, clothing, names and pronouns associated with their gender identity).

[54] Carlotta Cocchetti et al., *Hormonal Treatment Strategies Tailored to Non-Binary Transgender Individuals*, 9(6) J. OF CLIN. MED., 1609 (2020) https://doi.org/10.3390/jcm9061609 (finding hair removal to be especially crucial for transgender women).

certain circumstances.[55] Similarly, male grooming items are critical for transgender men. These items are crucial for the mental well-being and safety of people with gender dysphoria.

Federal courts have consistently relied upon the WPATH Standards of Care as a guide to evaluating the treatment of gender dysphoric individuals.[56] So does the

[55] Mem. and Order at 27, *Hicklin v. Precynthe*, No. 4:16-CV-01357-NCC, 2018 WL 806764, at *12 (E.D. Mo. Feb. 9, 2018) ("gender affirming canteen items and permanent hair removal are not merely cosmetic treatments but, instead, medically necessary treatments to address" the serious medical condition of gender dysphoria); *see also Alexander v. Weiner*, 841 F. Supp. 2d 486, 493–95 (D. Mass. 2012) (denying hair removal treatment to a transgender woman stated a constitutional violation).

[56] *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 595 (4th Cir. 2020) (the WPATH Standards of Care "represent[s] the consensus approach of the medical and mental health community"); *Edmo v. Corizon*, Inc., 935 F.3d 757, 771 (9th Cir. 2019) (treating the WPATH Standards of Care as the "broad medical consensus"); *Campbell v. Kallas*, 936 F.3d 536, 538 (7th Cir. 2019) (relying upon the WPATH Standards of Care); *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 834 (11th Cir. 2022) (Rosenbaum, J. Dissenting) (relying upon WPATH Standards of Care); *Glenn v. Brumby*, 724 F. Supp. 2d 1284, 1289 n.4 (N.D. Ga. 2010), aff'd, 663 F.3d 1312 (11th Cir. 2011) (rejecting defendant's claims that the WPATH Standards of Care do not reflect consensus of medical professionals and finding "sufficient evidence that statements of WPATH are accepted in the medical community").

National Commission on Correctional Healthcare.[57] Notably, the Georgia Department of Corrections' own regulations require prison officials to adhere to the "[c]urrent, accepted standards of care" when treating transgender people in custody.[58] The Georgia Department of Corrections has also recognized and applied the WPATH Standards of Care in the past.[59] Following the WPATH Standards of Care, patients such as Jane Doe should be provided with the basic tools of social transition care as part of their necessary medical treatment of gender dysphoria.

[57] Nat'l Comm'n on Corr. Healthcare, *Transgender and Gender Nonconforming Health Care in Correctional Settings* (2020), https://www.ncchc.org/position-statements/transgender-and-gender-diverse-health-care-in-correctional-settings-2020 (citing to the WPATH Standards of Care regarding medical and surgical care for transgender patients in carceral settings); Nat'l Comm'n on Corr. Healthcare, *Transgender, Transsexual, and Gender Nonconforming Health Care in Correctional Settings* (2015), https://web.archive.org/web/20150611033459/https://www.ncchc.org/transgender-transsexual-and-gender-nonconforming-health-care (recognizing that medical and surgical care for transgender patients in carceral settings should follow the WPATH Standards of Care).

[58] GDC Standard Operating Proc. No. 507.04.68 (effective Feb. 1, 2022).

[59] *Lynch v. Ward*, No. 5:21-CV-461, 2022 WL 2392868, at *1 (M.D. Ga. July 1, 2022) (prisoner settled with Georgia Department of Corrections after the state agreed to provide "treatments assessed as the basic standard of care by the [WPATH]").

B. Denying Social Transition Is Damaging to Patient Health

Denying transgender patients access to social transitioning care has a damaging (and often fatal) impact on patient health.[60] This is particularly true for patients who have been unable to achieve identity integration without access to social transition care. Emphasizing this point, a 2015 study found that transgender patients in the middle[61] of the transition process (and thus still short of identity integration) express *the highest rate of suicide attempts* of all transgender patients to consider suicide.[62] Patients stuck mid-transition or forced into an earlier phase of

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[60] Other Circuits have accepted medical professionals' conclusions on the negative consequences. For example, the First Circuit adopted medical professionals' opinion that providing a transgender woman with "hormones, electrolysis, feminine clothing and accessories, and mental health services" together served to alleviate the "negative effects" and distress caused by her gender dysphoria, which included suicidal ideation and attempts to self-castrate. *Kosilek v. Spencer*, 774 F.3d 63, 89–90 (1st Cir. 2014), *cert. denied*, 135 S. Ct. 2059 (2015) (mem.).

[61] The study determined the "completeness" of a patient's transition in relation to "varying procedures based on personal needs." Greta R. Bauer, et al., *Intervenable Factors Associated With Suicide Risk in Transgender Persons: A Respondent Driven Sampling Study in Ontario, Canada*, 15:525 BMC Pub. Health, *13 (2015), DOI: 10.1186/s12889-015-1867-2.

[62] *Id.* at *14 ("While suicidal ideation was significantly reduced for those in process versus those who were planning to transition but had not begun, among the sub-group considering suicide the attempt rate was highest among those in process. These results call into question the safety of clinical practices that delay transition treatments until depressive symptoms or suicidality are well-controlled, and of procedural practices that require or result in long delays in the medical transition process, but also suggest need for supports for those who may feel suicidal while in the process of transitioning.").

transition by abrupt cessation or reduction of gender-affirming care—such as Jane Doe—are precisely within both of these high-risk cohorts particularly in need of the benefits of concurrent social transition treatment.

C. Failing to Provide Patients with Gender-Affirming Commissary Items is Inconsistent with Standards of Care for Treating Gender Dysphoria in Carceral Settings

The WPATH Standards of Care address incarcerated individuals specifically, finding that their access to "gender congruent clothing and hairstyles . . . gender-appropriate hygiene and grooming products," chosen names, and pronouns, has been found to "reduce gender dysphoria/incongruence, depression, anxiety, self-harm ideation and behavior, suicidal ideation and attempts."[63] In recommended revisions to an earlier version of the WPATH Standards of Care, medical practitioners rejected the implication that "hormonal treatment is the only issue at stake for institutionalized persons," emphasizing instead that equally important is "access to the full spectrum of potential treatments."[64] The current WPATH standards address a spectrum of gender identities and expressions and prioritize patient choice while

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[63] WPATH Standards of Care, *supra* note 20, at S107 (citing Stephen T. Russell et al., *Chosen Name Use is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, J. OF ADOLESCENT HEALTH, 503–05, (2018)).

[64] George R. Brown, *Recommended Revisions to the World Professional Association for Transgender Health's Standards of Care Section On Medical Care For Incarcerated Persons With Gender Identity Disorder*, 11:2 INT'L J. OF TRANSGENDERISM, 133, 135 (2010).

emphasizing to practitioners that nonmedical approaches may be "central" to achieving a person's integrated gender expression.[65] As a result, the American Medical Association has stated that gender-affirming care, including social transition, is a fundamental right for transgender patients in carceral settings.[66]

Despite these standards, incarcerated transgender individuals often lack access and options for care.[67] In carceral settings, it is not uncommon for transgender individuals to be denied access to surgical care for months or years, even when such delays have been shown to lead to negative health conditions. In situations where access to other care is denied or delayed, social transitioning may be the best (or only) available treatment for abating the more serious side effects of gender dysphoria.[68] In still other situations, social transitioning may be a necessary addition to hormone or surgery interventions to alleviate physical discomfort and boost

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[65] WPATH Standards of Care, *supra* note 20, at S107; Ctr. of Excellence for Transgender Health, *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Non-binary People,* 41 (2 ed. June 2016).

[66] Am. Med. Ass'n, *Transgender Prisoners Have Fundamental Right to Appropriate Care* (May 17, 2019), https://www.ama-assn.org/delivering-care/population-care/transgender-prisoners-have-fundamental-right-appropriate-care.

[67] Transgender residents in carceral facilities report that their number-one concern while incarcerated is lack of access for medically necessary transgender-specific health care. WPATH Standards of Care, *supra* note 20, at S104.

[68] *See A Comparison of the MMPI Results*, *supra* note 5, at 321 (showing that patients' abilities to live as their gender of identity were correlated with reduced instances of negative mental health outcomes).

identity integration.[69] For this reason, the United States Department of Justice has argued that social transition, in addition to biomedical interventions, should not be denied to transgender patients in prison settings.[70]

Implementing accommodations for social transition in prison settings provides a cost-effective framework for treating gender dysphoria.[71] For example, physical, noninvasive methods of affirming one's gender identity, like wearing bras and padding to reshape the chest's appearance, offer inexpensive options for prisons to support patients that are transitioning.[72] Other items, like gaffs (i.e., "uniquely crafted undergarment[s] meant to streamline the genital area") can likewise have a

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[69] Aaron H. Devor, *Witnessing and Mirroring: A Fourteen Stage Model of Transsexual Identity Formation*, 8 J. OF GAY & LESBIAN PSYCHOTHERAPY 41, 62 (2008) (finding that transgender women who "spent decades under the influence of testosterone, the physical effects of which are not undone by estrogen treatments" are often left with "difficult to disguise masculinized secondary sex characteristics.").

[70] *See* Statement of Interest of the U.S., *Cordellioné v. Commissioner of Ind. Dep't of Corr.*, No. 3:23-cv-135-RLY-CSW, 19–21 (S.D. Ind. Feb. 20, 2024), ECF No. 46, https://www.justice.gov/crt/media/1339316/dl?inline.

[71] Rishi Sane, *A Framework for Dignity and Health: Why Transgender Prisoners are Entitled to Gender Affirming Care and How Their Rights Should Be Protected*, SETON HALL LAW (2024), https://scholarship.shu.edu/cgi/viewcontent.cgi?article=2529&context=student_scholarship.

[72] *Id.* at 14.

meaningful impact on the lives of transgender people in custody.[73] Such inexpensive and easily implemented options "can be used to at the very least, establish a baseline of care to be provided to people with gender dysphoria."[74]

Denying access to treatment of gender dysphoria increases the risk a person will experience depression, suicidality, mania, and attempts to self-castrate. Social transitioning, particularly when accompanied by other necessary treatments but even on its own (when deemed appropriate by the patient and their care provider), categorically decreases the risk of negative mental health outcomes, increases identity integration, and promotes the safety of individuals experiencing gender dysphoria.

CONCLUSION

For the foregoing reasons, *Amici* respectfully urge the Court to affirm the district court's preliminary injunction order.

[73] *Id.*

[74] *Id.* at 15.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) because it contains 5,761 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman type style.

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August 9, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of August, 2024, I caused the foregoing document to be electronically filed with the Clerk of the Court using CM/ECF, which will send notice to all counsel of record in this matter.

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