No. 21-1365

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SELINA SOULE, A MINOR, BY BIANCA STANESCU, HER MOTHER, CHELSEA MITCHELL, A MINOR, BY CHRISTINA MITCHELL, HER MOTHER, ALANNA SMITH, A MINOR, BY CHERYL RADACHOWSKY, HER MOTHER, ASHLEY NICOLETTI, A MINOR, BY JENNIFER NICOLETTI, HER MOTHER,
Plaintiffs-Appellants,

v.

CONNECTICUT ASSOCIATION OF SCHOOLS, INC., DBA CONNECTICUT INTERSCHOLASTIC ATHLETIC CONFERENCE, BLOOMFIELD PUBLIC SCHOOLS BOARD OF EDUCATION, CROMWELL PUBLIC SCHOOLS BOARD OF EDUCATION, GLASTONBURY PUBLIC SCHOOLS BOARD OF EDUCATION, CANTON PUBLIC SCHOOLS BOARD OF EDUCATION, DANBURY PUBLIC SCHOOLS BOARD OF EDUCATION,
Defendants-Appellees,

ANDRAYA YEARWOOD, THANIA EDWARDS, ON BEHALF OF HER DAUGHTER T.M., AND COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES,
Intervenor-Defendants-Appellees

On Appeal from the United States District Court
for the District of Connecticut
Case No. 3:20-cv-00201 (RNC)
District Judge Robert N. Chatigny

BRIEF OF *AMICI CURIAE* AMERICAN ACADEMY OF PEDIATRICS, AMERICAN MEDICAL ASSOCIATION, AMERICAN MEDICAL WOMEN'S ASSOCIATION, AND SEVEN ADDITIONAL HEALTH CARE ORGANIZATIONS IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Amici curiae are all non-profit organizations. *Amici curiae* do not have parent corporations and do not issue stock.

Date: October 12, 2021

/s/ *Matthew D. Cipolla*
Matthew D. Cipolla

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INTEREST OF *AMICI CURIAE*[1]

Amici are ten 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, mental health treatment, internal medicine, and endocrinology, and nurses. All *amici* share a commitment to improving the physical and mental health of all Americans—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public-health impacts of laws and policies.

Amici submit this brief to inform the Court of the medical consensus regarding what it means to be transgender; the protocols for the treatment of gender dysphoria, which include living in accordance with one's gender identity in all aspects of life; and the predictable harms to the health and well-being of transgender youth who are excluded from participating in school sports consistent with their gender identity.

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-

[1] *Amici curiae* certify that: (1) all parties have consented to the filing of this brief; (2) this brief was authored entirely by counsel for *amici curiae* and not by counsel for any party, in whole or part; (3) no party or counsel for any party contributed money to fund preparing or submitting this brief; and (4) apart from *amici curiae* and their counsel, no other person contributed money to fund preparing or submitting this brief. *See* Fed. R. App. P. 29(a)(2), (a)(4)(E).

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 Hezekiah Beardsley Connecticut Chapter of the American Academy of Pediatrics ("CT-AAP") represents over 600 pediatricians, pediatric medical subspecialists and pediatric surgical subspecialists who are committed to the well-being of all infants, children and adolescents. The CT-AAP seeks to improve health care access and eliminate disparities for children and adolescents who identify as lesbian, gay, bisexual, transgender and gender fluid individuals.

The New York State American Academy of Pediatrics ("NYS AAP") District II represents over 4,000 pediatricians who believe that children are our future and are among our most valuable and vulnerable citizens. NYS AAP is committed to ensuring the health and well-being of all infants, children, adolescents, and young adults, regardless of their gender identity or sexual orientation.

The American Academy of Pediatrics Vermont Chapter ("AAPVT") represents over 200 Vermont Pediatricians dedicated to improving the physical, mental, and social health and well-being of the state's infants, children, adolescents, and young adults. The AAPVT vows to support gender diverse young people, their families, their communities and their care teams.

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, including Connecticut.

The AMA joins this brief on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

The Association of Medical School Pediatric Department Chairs ("AMSPDC") seeks to improve the health and wellbeing of all children through the development of a diverse and inclusive community of academic pediatric department chairs working collaboratively to advance departmental clinical, research, education, and advocacy missions while ensuring equity and anti-racist ideals. The AMSPDC

lead in care delivery, research, training, and advocacy in their communities and throughout the world.

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.

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

Health Professionals Advancing LGBTQ Equality ("GLMA") is the largest and oldest association of lesbian, gay, bisexual, transgender, and queer (LGBTQ) healthcare professionals, including physicians, physician assistants, nurses, psychologists, social workers, and other health disciplines. Founded in 1981, GLMA (formerly known as the Gay & Lesbian Medical Association) works to ensure health equity for LGBTQ and all sexual and gender minority ("SGM")

individuals, and equality for LGBTQ/SGM 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 interdisciplinary medical professional and educational organization devoted to transgender health, with over 2,600 members engaged in clinical and academic research to develop evidence-based medicine and promote high quality care for transsexual, transgender, and gender-nonconforming individuals internationally.

SUMMARY OF ARGUMENT

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

According to a recent report by the Centers for Disease Control and Prevention ("CDC"), approximately 1.8% of high school students—roughly 300,000 high school students nationwide—identify as transgender. If the CDC's 1.8% figure is applied to all college and university students across the United States, roughly

350,000 identify as transgender. Thus, approximately 650,000 secondary and post-secondary school students nationwide identify as transgender. However, such "population estimates likely underreport the true number of [transgender] people, given difficulties in collecting comprehensive demographic information about this group."[2]

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

[2] Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832 (2015) [hereinafter Am. Psych. Ass'n, *Guidelines*].

the incongruence between a person's gender identity and assigned sex at birth. This treatment is also widely available.

Barring transgender youth from participating in school sports consistent with their gender identity frustrates the treatment of gender dysphoria by preventing transgender youth from living openly in accordance with their true gender. Experiencing discrimination in a fundamental aspect of childhood, adolescence, and young adulthood—participation in school sports—makes it very difficult, if not impossible, for transgender students to live in full accordance with their gender identity. The fear of facing such discrimination alone may prompt transgender students to hide their gender identity, directly thwarting accepted treatment protocols. Lack of treatment, in turn, increases the rate of negative mental-health outcomes, substance use, and suicide.[3] Beyond exacerbating gender dysphoria and interfering with treatment, discrimination reinforces the stigma associated with being transgender. Such stigma, in turn, leads to psychological distress and attendant mental-health consequences.

[3] *See* Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 Pediatrics 2, 8 (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).

ARGUMENT

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

Transgender individuals have a "gender identity"—a "deeply felt, inherent sense" of their gender—that is not aligned with the sex assigned to them at birth.[4] Transgender people differ from cisgender (*i.e.*, non-transgender) individuals, whose gender identity aligns with the sex assigned at birth.[5] A transgender man is someone who was assigned the sex of female at birth, but is male and transitions to live in accordance with that male identity. A transgender woman is an individual who was assigned the sex of male at birth but is female and transitions to live in accordance with that female identity. A transgender man is a man. A transgender woman is a woman.

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[4] Am. Psych. Ass'n, *Guidelines*, *supra* note 2, at 832, 834; *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 (2013), https://pediatrics.aappublications.org/content/132/1/e297 [hereinafter AAP Technical Report]. Although most people have a gender identity that is male or female, some individuals have a gender identity that is "a blend of male or female[,] or an alternative gender." Am. Psych. Ass'n, *Guidelines*, *supra* note 2, at 834.

[5] Am. Psych. Ass'n, *Guidelines*, *supra* note 2, at 861.

Gender identity is distinct from and does not predict sexual orientation; transgender people, like cisgender[6] people, may identify as heterosexual, gay, lesbian, bisexual, or asexual.[7]

The medical profession's understanding of gender has advanced considerably over the past fifty years. Throughout much of the twentieth century, individuals who were not gender conforming were often viewed as "perverse or deviant."[8] Practices during that 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.[9] As *amicus curiae*, the American Medical

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[6] Cisgender refers to someone who identifies with the sex assigned at birth; *see Cisgender*, Oxford English Dictionary, https://www.oed.com/view/Entry/35015487?redirectedFrom=cisgender#eid (last visited Oct. 4, 2021).

[7] Am. Psych. Ass'n, *Guidelines*, *supra* note 2, at 835-36; *see* Sandy E. James et al., Nat'l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 246 (2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf.

[8] Am. Psych. Ass'n, *Report of the APA Task Force on Gender Identity and Gender Variance* 26-27 (2008), https://www.apa.org/pubs/info/reports/gender-identity [hereinafter Am. Psych. Ass'n, *Task Force Report*].

[9] *Id.*; Substance Abuse and Mental Health Servs. Admin. ("SAMHSA"), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 13, 24-25 (2015), https://store.samhsa.gov/sites/default/files/d7/priv/sma15-4928.pdf.

Association has made clear, "[a]ll leading professional medical and mental health associations reject `conversion therapy' as a legitimate medical treatment."[10]

Much as the medical professions now recognize that homosexuality is a normal form of human sexuality—and that stigmatizing gay people causes significant harm—we now recognize that being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities"—and that stigmatizing transgender people also causes significant harm.[11]

A. Gender Identity

"*Gender identity* refers to a person's internal sense of being male, female, or" another gender.[12] Every person has a gender identity,[13] which cannot be altered

[10] Am. Med. Ass'n et al., *Issue brief LGBTQ change efforts (so-called "conversion therapy")* 3 (2019), https://www.ama-assn.org/system/files/2019-12/conversion-therapy-issue-brief.pdf.

[11] Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* 1 (2012), https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf.

[12] 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.

[13] *See* Caitlin Ryan, Family Acceptance Project, *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual, & Transgender Children*, 17 (2009), https://familyproject.sfsu.edu/sites/default/files/FAP%20LDS%20Booklet%20pst.pdf.

voluntarily[14] or necessarily ascertained immediately after birth.[15] Many children develop stability in their gender identity between ages three and four.[16]

"[*G*]*ender expression* refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, or body characteristics."[17] There are many individuals who depart from stereotypical male and female appearances and roles, but who are not transgender.[18] Indeed, most people who express their gender in a non-stereotypical or non-conforming manner are or become comfortable with the sex they were assigned at birth.[19] In contrast, a

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[14] Colt Meier & Julie Harris, Am. Psych. Ass'n, *Fact Sheet: Gender Diversity and Transgender Identity in Children* 1, http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf; *see also* Jason Rafferty, Am. Acad. of Pediatrics, *Gender Identity Development in Children* (2015), https://healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx.

[15] Am. Psych. Ass'n, *Guidelines*, *supra* note 2, at 862.

[16] *Id*. at 841. "Although gender identity is usually established in childhood, individuals may become aware that their gender identity is not in full alignment with sex assigned at birth in childhood, adolescence, or adulthood." *Id*. at 836.

[17] Am. Psych. Ass'n, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression*, *supra* note 12, at 1.

[18] Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, 33 J. Sch. Nursing 2 (2017).

[19] WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* 5 (7th Version, 2011), https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?_t=1613669341 [hereinafter WPATH, *Standards of Care*].

transgender boy or transgender girl "consistently, persistently, and insistently" identifies as a gender different from the sex they were assigned at birth.[20]

Psychologists, psychiatrists, and neuroscientists are not certain why some people are transgender. Some research suggests there may be biological influences,[21] including, for example, exposure of transgender men identified at birth as females to elevated levels of testosterone in the womb.[22] Brain scans and neuroanatomical studies of transgender individuals may also support these biological explanations.[23]

B. Gender Dysphoria.

As noted above, being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[24] However, many

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[20] *See* Meier & Harris, *supra* note 14, at 1; *see also* Cicero & Wesp, *supra* note 18, at 6.

[21] *See* Jason Rafferty, Am. Acad. of Pediatrics, *Gender-Diverse & Transgender Children* (2015), https://healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Non-Conforming-Transgender-Children.aspx; Peggy T. Cohen-Kettenis et al., *The Treatment of Adolescent Transsexuals: Changing Insights*, 5 J. Sexual Med. 1892, 1895 (2008).

[22] Arianne B. Dessens et al., *Gender Dysphoria and Gender Change in Chromosomal Females with Congenital Adrenal Hyperplasia*, 34 Arch. Sexual Behav. 389, 395 (2005).

[23] *See, e.g.*, Francine Russo, *Is There Something Unique About the Transgender Brain?*, Sci. Am. (2016), https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/#.

[24] Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals*, *supra* note 11.

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.[25] As discussed in detail below, the recognized treatment for someone with gender dysphoria is medical support that allows the individual to transition from his or her birth assigned sex to the sex associated with his or her gender identity.[26] These treatments are "effective in alleviating gender dysphoria and are medically necessary for many people."[27]

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."[28] The six criteria include: (1) "[a] marked incongruence between one's experienced/expressed gender and primary and/or

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

[26] WPATH, *Standards of Care*, *supra* note 19, at 9-10.

[27] *Id* at 5.

[28] *DSM-5*, *supra* note 25, 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.[29]

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.[30] 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."[31]

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[29] *Id* at 452.

[30] *See* Am. Psych. Ass'n, *Task Force Report*, *supra* note 8, at 45; SAMHSA, *Ending Conversion Therapy*, *supra* note 9, at 3.

[31] Diane Ehrensaft, *From Gender Identity Disorder to Gender Identity Creativity: True Gender Self Child Therapy*, 59 J. Homosexuality 337, 345 (2012).

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.[32] Like other minority groups, transgender individuals also are frequently subjected to prejudice and discrimination in multiple areas of their lives (*e.g.*, school, employment, housing, healthcare), which exacerbates these negative health outcomes and makes access to appropriate medical care all the more important.[33]

2. The Accepted Treatment Protocols For Gender Dysphoria.

Until the middle of the twentieth century, most mental health practitioners treated transgender people by attempting to make the patient's gender identity consistent with the patient's sex assigned at birth.[34] There is no evidence that these methods alleviate gender dysphoria or that they can prevent someone from being

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[32] *See*, *e.g.*, *DSM-5*, *supra* note 25, at 455, 458; Stephanie A. Brill & Rachel Pepper, *The Transgender Child: A Handbook for Families and Professionals* 202 (2008) (discussing risk of self-mutilation).

[33] Michael L. Hendricks & Rylan J. Testa, *A Conceptual Framework for Clinical Work with Transgender and Gender Nonconforming Clients: An Adaptation of the Minority Stress Model*, 43 Pro. Psych.: Research & Practice 460 (2012); Jessica Xavier et al., Va. Dep't of Health, *The Health, Health-Related Needs, and Lifecourse Experiences of Transgender Virginians* (2007), http://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/THISFINALREPORTVol1.pdf.

[34] Am. Psych. Ass'n, *Guidelines*, *supra* note 2, at 835; Jack Drescher, *Queer Diagnoses: Parallels and Contrasts in the History of Homosexuality, Gender Variance, and the Diagnostic and Statistical Manual*, 39 Arch. Sexual Behav. 427, 436-40 (2010).

transgender.[35] To the contrary, they can "often result in substantial psychological pain by reinforcing damaging internalized attitudes,"[36] and can damage family relationships and individual functioning by increasing feelings of shame.[37]

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.[38] For over thirty years, the generally accepted treatment protocols for gender dysphoria[39] have aimed at alleviating the distress associated with the incongruence between gender identity and birth-assigned sex.[40] These protocols are laid out in the *Standards of Care for the Health of Transsexual,*

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[35] SAMHSA, *Ending Conversion Therapy*, *supra* note 9, at 26; Jack Drescher, *Controversies in Gender Diagnoses*, 1 LGBT Health 9, 12 (2013).

[36] Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), http://www.apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender.

[37] Darryl B. Hill et al., *An Affirmative Intervention for Families with Gender Variant Children: Parental Ratings of Child Mental Health and Gender*, 36 J. Sex & Marital Therapy 6, 10 (2010); Robert Wallace & Hershel Russell, *Attachment and Shame in Gender-Nonconforming Children and Their Families: Toward a Theoretical Framework for Evaluating Clinical Interventions*, 14 Intl J. Transgenderism 113, 119-20 (2013).

[38] Am. Psych. Ass'n, *Guidelines*, *supra* note 2, at 835; WPATH, *Standards of Care*, *supra* note 19, at 8-9.

[39] Earlier versions of the *Diagnostic and Statistical Manual of Mental Disorders* used different terminology, *e.g.*, gender identity disorder, to refer to this condition. *See* Am. Psych. Ass'n, *Guidelines*, *supra* note 2, at 861.

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

Transgender, and Gender Nonconforming People (7th Version 2011) developed by *amicus curiae* WPATH.[41] The major medical and mental health groups in the United States expressly recognize the WPATH Standards of Care as representing the consensus of the medical and mental health community regarding the appropriate treatment for gender dysphoria.[42]

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.[43]

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[41] WPATH, *Standards of Care*, *supra* note 19.

[42] AAP Technical Report, *supra* note 4, at e307-08; *cf.*, Am. Med. Ass'n, Policy H-185.950, *Removing Financial Barriers to Care for Transgender Patients* (2016), https://policysearch.ama-assn.org/policyfinder/detail/H-185.950?uri=%2FAMADoc%2FHOD.xml-0-1128.xml.

[43] Am. Psychiatric Ass'n, *Task Force Report*, *supra* note 8, at 32-39; William Byne et al., Am. Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria, *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists*, 175 Am. J. Psychiatry 1046 (2018); AAP Technical Report, *supra* note 4, at e307-09. 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, and Transgender Populations* (2018), https://policysearch.ama-assn.org/policyfinder/detail/health%20care%20needs?uri=%2FAMADoc%2FHOD.xml-0-805.xml; Am. Sch. Counselor Ass'n, *The School Counselor and LGBTQ Youth* (2016), https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-LGBTQ-Youth; Hilary Daniel et al., *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper from the American College of Physicians*, 163 Annals Internal Med. 135, 136 (2015); AAP Technical Report, *supra* note 4, at e301;

However, each patient requires an individualized treatment plan that accounts for that patient's specific needs.[44]

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.[45] In the realm of school sports, in order for transgender youth to live their lives fully in accordance with their gender identity, they must be able to publicly identify with and compete on teams that fit their gender identity.

For some adults and adolescents, hormone treatment to feminize or masculinize the body may be medically necessary to treat their gender dysphoria.[46] *Amicus curiae* the Endocrine Society, the oldest and largest global professional

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Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra* note 36.

[44] Am. Psych. Ass'n, *Task Force Report*, *supra* note 8, at 32.

[45] AAP Technical Report, *supra* note 4, at e308; Am. Psych. Ass'n, *Guidelines*, *supra* note 2, at 839-40.

[46] *See* Am. Med. Ass'n, Policy H-185.950, *supra* note 42; Am. Psych. Ass'n, *Guidelines*, *supra* note 2, at 861, 862; Center of Excellence for Transgender Health, Univ. Cal., S.F., *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People* 23 (Madeline B. Deutsch ed., 2d ed. 2016), https://transcare.ucsf.edu/guidelines; WPATH, *Standards of Care*, *supra* note 19, at 33-34, 54.

membership organization representing the field of endocrinology, considers these treatments to be the standard of care for gender dysphoria.[47] A transgender woman undergoing hormone therapy, for example, will have hormone levels within the same range as other women; and just as they do in any other woman, these hormones will affect most of her major body systems.[48] Hormone therapy physically changes the patient's genitals and secondary sex characteristics such as breast growth, female-associated fat distribution, softening of the skin, and decreased muscle mass in women, and increased muscle mass, increased body and facial hair, male-pattern baldness (for some), and a deepening of the voice in men.[49] Hormones have been clinically proven as an effective treatment for gender dysphoria with a low rate of complications.[50]

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[47] Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clinical Endocrinology & Metabolism 3869, 3869-70 (2017), https://academic.oup.com/jcem/article/102/11/3869/4157558 [hereinafter *Endocrine Treatment*]; *see also* Alessandra D. Fisher et al., *Cross-Sex Hormone Treatment and Psychobiological Changes in Transsexual Persons: Two-Year Follow-Up Data*, 101 J. Clinical Endocrinology & Metabolism 4260 (2016).

[48] *Endocrine Treatment*, *supra* note 47, at 3885-87; *see also* Brill & Pepper, *supra* note 32, at 217.

[49] *Endocrine Treatment*, *supra* note 47, at 3886-89.

[50] Jack L. Turban et al., *supra* note 3; Henk Asscheman et al., *A Long-Term Follow-Up Study of Mortality in Transsexuals Receiving Treatment with Cross-Sex Hormones*, 164 Eur. J. Endocrinology 635 (2011), https://eje.bioscientifica.com/view/journals/eje/164/4/635.xml; Paul J. Van Kesteren et al., *Mortality and*

For children experiencing the onset of puberty, treatment may include medication to prevent further progression of puberty ("puberty blockers").[51] This fully reversible treatment allows children with gender dysphoria to delay the development of secondary sex characteristics that do not match their gender identity, giving them additional time to decide whether hormone treatment to feminize or masculinize the body is appropriate.[52]

Surgical interventions may also be an appropriate and medically necessary treatment for some patients.[53] These procedures could include chest reconstruction surgery for transgender men, breast augmentation for transgender women, or genital surgeries, including removal of the testicles, the primary source of testosterone production, in women who are transgender.[54] Decades of clinical evidence show these surgical procedures are effective in reducing gender dysphoria and improving mental health.[55] Empirical studies reflect the importance of the interplay among

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Morbidity in Transsexual Subjects Treated with Cross-Sex Hormones, 47 Clinical Endocrinology 337 (1997).

[51] *Endocrine Treatment*, *supra* note 47, at 3880-83.

[52] *Id*. at 3880; Am. Psych. Ass'n, *Guidelines*, *supra* note 2, at 842; WPATH, *Standards of Care*, *supra* note 19, at 18-20.

[53] WPATH, Standards of Care, *supra* note 19, at 54-55.

[54] *Endocrine Treatment*, *supra* note 47, at 3893-95; *see also* WPATH, *Standards of Care*, *supra* note 19, at 57-58.

[55] 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*

treatments, finding hormone therapy in conjunction with psychotherapy and, for some, surgery, to be necessary elements of treating severe levels of gender dysphoria.[56]

Ultimately—regardless of the particular treatments required for a specific individual and when such treatment begins—the goal is for individuals with gender dysphoria to experience "identity integration," where "being transgender is no longer the most important signifier of one's identity" and the individual can refocus on his or her relationships, school, job, and other life activities.[57]

II. Excluding Transgender Youth From Organized Sports Deprives Them Of Numerous Potential Benefits And Endangers Their Health, Safety, and Well-Being.

The relief sought by Plaintiffs in this case would ban transgender students from participating in school athletics. The Connecticut Interscholastic Athletic

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Gender Identity Disorder, 41 Arch. Sexual Behav. 759, 778-80 (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).

[56] *See* Gianna E. Israel & Donald E. Tarver II, *Transgender Care: Recommended Guidelines, Practical Information & Personal Accounts* 56-73 (1997).

[57] Walter Bockting & Eli Coleman, *Developmental Stages of the Transgender Coming-Out Process: Toward an Integrated Identity, in Principles of Transgender Medicine and Surgery* 185, 186, 202-03 (Randi Ettner et al., eds., 2d ed. 2016).

Conference ("CIAC") policy at issue has protected the rights of transgender students to participate in school sports since 2013.[58] Plaintiffs, after losing track races due to not being as fast as other girls, launched this suit seeking to disqualify those they lost to and ban all transgender youth in Connecticut from participating in sports by permanently enjoining the CIAC policy. The edicts sought by Plaintiffs would force transgender students to either compete in the wrong category of sports, or not participate at all. Whether transgender female students forgo school sports or are forced to participate in them with cisgender males, Plaintiffs' proposed edicts would frustrate the treatment of gender dysphoria and exacerbate the severe health consequences of living with the stigma of being transgender.

A. Preventing Transgender Students From Participating In Organized Sports Denies Them Many Potential Benefits To Their Health And Well-Being.

Participating in organized sports can greatly benefit the health and well-being of all students, including transgender female students. A 2019 Clinical Report from *amicus curiae* American Academy of Pediatrics concludes that "[o]rganized sports participation can be an important part of overall childhood and adolescent physical,

[58] CIAC By-Laws, art. IX § B., *Transgender Participation* in Connecticut Interscholastic Athletic Conference Handbook (2020-2021); *see also* Press Release by J. Cookson, CIAC Statement on Transgender Policy Challenge (Feb. 12, 2020) (on file with author), http://ciacsports.com/site/?p=14124.

emotional, social, and psychological health."[59] More specifically, participating in organized sports can promote: (1) the acquisition of critical physical, academic, and life skills, (2) psychosocial development and formation of social identity, (3) improvements in mental health, and (4) higher levels of physical fitness and weight management.[60] Excluding transgender students from participating in organized sports deprives them of these myriad potential benefits, which may result in adverse outcomes for their health and well-being.

Skill acquisition: Participating in organized sports can promote "[f]undamental motor skills," such as "running, leaping, throwing, catching, and kicking," which "are essential for everyday functioning and are important building blocks for higher-level sports skills."[61] In addition, participating in organized sports can increase academic achievement, high school graduation rates, and the likelihood of going to college.[62] This is especially relevant with regard to transgender students, who reported significantly higher rates of considering leaving school before

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[59] Kelsey Logan et al., *Organized Sports for Children, Preadolescents, and Adolescents*, 143 Pediatrics 1, 13 (2019), https://pediatrics.aappublications.org/content/pediatrics/143/6/e20190997.full.pdf.

[60] *Id*. at 4-8.

[61] *Id*. at 4.

[62] These enhanced academic skills stem in part from the fact that athletes engage in planning, self-monitoring, evaluation, reflection, and effort, and are "goal oriented and problem focused." These many attributes "carry over into the educational realm." *Id*. at 5.

graduation as compared to their cisgender counterparts.[63] And with regard to life skills—the "skills that are required to deal with the demands and challenges of everyday life"—involvement in organized sports can help to instill self-awareness, emotional control, discipline, personal responsibility, "taking initiative, goal setting, applying effort, respect, teamwork, and leadership."[64]

Social: Organized sports can also provide numerous social benefits, including the development of a positive social self-concept and the opportunity to interact with peers and learn social skills such as "communication, conflict resolution, and empathy."[65] Participation in organized sports may also promote "citizenship, social success, positive peer relationships, and leadership skills."[66]

Psychology: Involvement in organized sports can positively affect mental health in children and adolescents, who develop "emotional control," self-esteem, confidence and social integration, and are therefore less likely to experience

[63] Gay, Lesbian & Straight Education Network ("GLSEN"), *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth*, 27 (2016) (finding 7.6% of transgender students said they may drop out of high school, as opposed to 6% of genderqueer students, 2.3% of cisgender female students, and 2.1% of cisgender male students).

[64] *Logan*, *supra* note 59, at 5.

[65] *Id*. at 5-6.

[66] *Id* at 6.

emotional distress, depression, and suicidal behavior. These benefits may last well into adulthood.[67]

Physical fitness: Organized sports participation can also promote physical fitness in children and adolescents, including "cardiovascular" health, "endurance, speed, strength," coordination, and a reduction in the likelihood of being overweight. Additionally, engaging in organized sports during adolescence may result in a high level of physical activity later in life.[68]

In light of all these potential benefits, those who seek to participate in organized sports but are prevented from doing so on the basis of, for example, gender identity, may experience adverse outcomes. They may be hindered in their acquisition of physical, academic, and life skills, and in their social development. They may also experience lower levels of mental and physical health.

B. The Exclusion Of Transgender Students From School Sports Consistent With Their Gender Identity Exacerbates Gender Dysphoria And Stigma.

For transgender individuals, being treated differently from other men and women can cause tremendous pain and harm.[69] More specifically, exclusionary policies like those suggested by Plaintiffs that prevent transgender youth from

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[67] *Id* at 6-7.

[68] *Id*. at 7.

[69] *See, e.g.*, Sam Winter et al., *Transgender People: Health at the Margins of Society*, 388 Lancet 390, 394-95 (2016).

participating in school sports consistent with their gender identity—an important facet of their lives—disrupt medically appropriate treatment protocols.

Exclusionary policies threaten to exacerbate the risk of "anxiety and depression, low self-esteem, engaging in self-injurious behaviors, suicide, substance use, homelessness, and eating disorders among other adverse outcomes" that many transgender individuals face.[70] Those risks are already all too serious. A recent CDC report found that transgender high school students were more likely than cisgender high school students to report violence victimization, substance use, and suicide risk, with 35% of transgender high school students reporting attempted suicide in the past year compared to 5.5% of cisgender male and 9% of cisgender female high school students.[71]

In addition, exclusionary policies perpetuate the perceived stigma of being transgender by forcing transgender individuals to disclose their transgender status, by marking them as "others," and by conveying the State's judgment that they are

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[70] Am. Psych. Ass'n & Nat'l Ass'n of Sch. Psychs., *Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools* 1, 2 (2015), https://www.apa.org/about/policy/orientation-diversity [hereinafter APA/NASP, *Resolution*].

[71] 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*, 67 Morbidity Mortality Wkly. Rpt. 69 (2019), https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm?s_cid=mm6803a3_e#T1_down.

different and deserve inferior treatment. Research increasingly shows that stigma and discrimination can have deleterious health consequences,[72] including striking effects on the daily functioning and emotional and physical health of transgender persons.[73]

One study concluded that "living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses."[74] Another study demonstrated that past school victimization may result in greater risk for post-traumatic stress disorder, depression, anxiety, and suicidality.[75] As the American Psychological Association has concluded, "the notable burden of stigma and discrimination affects minority persons' health and

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[72] *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.

[73] *See, e.g.*, Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra* note 36 ("bias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health").

[74] 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.

[75] Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 Developmental Psych. 1580, 1580-81 (2010), https://familyproject.sfsu.edu/sites/default/files/FAP_School%20Victimization%20of%020Gender-nonconforming%20LGBT%20Youth.pdf.

well-being and generates health disparities."[76] There is thus every reason to anticipate that enjoining the CIAC policy and mandating the exclusion of transgender youth from school sports consistent with their gender identity will 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 may have effects that linger long after they leave the school environment. Unsurprisingly, unwelcoming school environments produce particularly poor educational outcomes for transgender individuals.[77] Poorer educational outcomes, standing alone, may lead to lower lifetime earnings and an increased likelihood of poorer health outcomes later in life.[78] Moreover, and as already discussed, exclusionary policies may

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[76] APA/NASP, *Resolution*, *supra* note 70, at 3-4; *see also* Inst. of Med. of the Nat'l Academies, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* 1, 13 (2011), https://www.ncbi.nlm.nih.gov/books/NBK64806/ (noting that "prejudice, discrimination, and violence" underlie the "health disparities" between transgender and cisgender populations).

[77] *See* APA/NASP, *Resolution*, *supra* note 70 at 4, 6; Emily A. Greytak et al., GLSEN, *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* (2009), https://www.glsen.org/sites/default/files/2020-04/Harsh%20Realities.pdf.

[78] *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

produce and compound the stigma and discrimination that transgender children and adolescents face in the school environment. Such stigma and discrimination, in turn, are associated with an increased risk of post-traumatic stress disorder, depression, anxiety, and suicidality in subsequent years.[79]

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully urge this Court to affirm the judgment below.

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Respectfully submitted,

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(R.M. Kaplan et al., eds., 2015), https://www.ahrq.gov/sites/default/files/publications/files/population-health.pdf.

[79] Toomey et al., *supra* note 75, at 1580-81; *see also* APA/NASP, *Resolution*, *supra* note 70, at 3.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(a)(4)(G), and Local Rules 29.1(c) and 32.1(a)(4)(A), I certify that this brief complies with the length limitation because this brief contains 6,258 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Pursuant to Fed. R. App. P. 32(a)(5) and (6), as well as Local Rule 32.1, this brief complies with the typeface and type style requirements because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

October 12, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2021, I caused the foregoing brief to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. Counsel for all parties in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: October 12, 2021

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