Nos. 17-1618, 17-1623 and 18-107

IN THE

Supreme Court of the United States

GERALD LYNN BOSTOCK,

v.

CLAYTON COUNTY, GEORGIA.

ALTITUDE EXPRESS, INC., *et al.*,

v.

MELISSA ZARDA, AS EXECUTOR OF THE ESTATE OF DONALD ZARDA, *et al.*

R.G. & G.R. HARRIS FUNERAL HOMES, INC.,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, *et al.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE ELEVENTH, SECOND AND SIXTH CIRCUITS

BRIEF OF THE AMERICAN MEDICAL ASSOCIATION, THE AMERICAN COLLEGE OF PHYSICIANS AND 14 ADDITIONAL MEDICAL, MENTAL HEALTH AND HEALTH CARE ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF THE EMPLOYEES

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INTEREST OF *AMICI CURIAE*[1]

Amici are 16 leading medical, mental health, nursing 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 millions of nurses. In light of medical and health care issues that are specific to the transgender community, this amicus brief focuses on *Harris Funeral Homes v. Equal Employment Opportunity Commission, et al.,* Docket No. 18-107.

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

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1. Pursuant to Rule 37.6, *amici curiae* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution to the preparation or submission of this brief. The parties have consented to the filing of this brief.

The AMA appears 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, plus the District of Columbia, whose purpose is to represent the viewpoint of organized medicine in the courts.

Amicus Curiae, the American College of Physicians ("ACP"), is the largest medical specialty organization in the United States. ACP membership includes 154,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

This brief is also submitted on behalf of 14 additional medical, mental health, nursing, and other health care organizations, listed in the Appendix to this brief. 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 consensus among health care professionals regarding what it means to be transgender; the protocols for the treatment of gender dysphoria, which include living in accordance with one's gender identity in all aspects of life; and the predictable harms to the health and well-being of transgender individuals from discrimination.

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 recent estimates, approximately 1.4 million transgender adults live in the United States.

Many transgender individuals, like Respondent Aimee Stephens, 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 their identity), hormone therapy and/or gender confirming surgeries. The treatment for gender dysphoria is highly effective in reducing or eliminating the incongruence and associated distress between a person's gender identity and assigned sex at birth. It is also widely available.

Employment discrimination against transgender people frustrates the treatment of gender dysphoria by preventing transgender individuals from living

openly in accordance with their true gender identity and impeding access to needed medical care. Experiencing discrimination in one of the most important aspects of adult life—employment—makes it nearly impossible to live in full congruence with one's gender identity. The fear of facing such discrimination alone can prompt transgender individuals to hide their gender identity, directly thwarting the goal of social transition. Additionally, employment discrimination directly interferes with medical treatment of gender dysphoria when it results in transgender individuals losing income or health insurance. Lack of treatment, in turn, increases the rate of negative mental health outcomes, substance abuse, and suicide. Beyond exacerbating gender dysphoria and interfering with treatment, discrimination reinforces the perceived stigma associated with being transgender. Such stigma, in turn, leads to psychological distress and attendant mental health consequences.[2]

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

2. This brief focuses on the *Stephens* case and transgender individuals because they often suffer from gender dysphoria, a medical condition that is exacerbated by employment discrimination. Although sexual orientation is no longer classified as a psychiatric disorder, *amici* emphasize that discrimination in employment can have deleterious health consequences for gay, lesbian and bisexual people as well. All three cases before the Court are examples of LGBTQ individuals facing discrimination that is harmful to their health and well-being.

not aligned with the sex assigned to them at birth.[3] Transgender people differ from cisgender (*i.e.*, non-transgender) individuals, whose gender identity aligns with the sex assigned at birth.[4] A transgender man is someone who is assigned the sex of female at birth, but transitions to being male. A transgender woman is an individual who is assigned the sex of male at birth, but transitions to being female. A transgender man is a man. A transgender woman is a woman.

While recent estimates suggest that approximately 1.4 million transgender adults live in the United States,[5] these "population estimates likely underreport the true number of [transgender] people, given difficulties in collecting comprehensive demographic information about this group."[6] People of all different races and ethnicities

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3. Am. Psychol. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 834 (2015) [hereinafter "Am. Psychol. 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, 298 (2013) [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. Psychol. Ass'n Guidelines, at 834.

4. Am. Psychol. Ass'n Guidelines, *supra*, at 861.

5. Andrew R. Flores, et al., The Williams Inst., *How Many Adults Identify as Transgender in the United States?* 2 (2016), http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults- Identify-as-Transgender-in-the-United-States.pdf.

6. Am. Psychol. Ass'n Guidelines, *supra*, at 832.

identify as transgender.[7] They live in every state, raise children, and serve in the military.[8]

Gender identity is distinct from and does not predict sexual orientation; transgender people, like cisgender people, may identify as heterosexual, gay, lesbian, bisexual, or asexual.[9]

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

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7. *See* Halley P. Crissman, et al., *Transgender Demographics: A Household Probability Sample of US Adults*, 2014, 107 Am. J. Pub. Health 213, 214-15 (2017); Andrew R. Flores, et al., The Williams Inst., *Race and Ethnicity of Adults Who Identify as Transgender in the United States* 2 (2016), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf.

8. Gary J. Gates & Jody L. Herman, The Williams Inst., *Transgender Military Service in the United States* (2014), http://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf; Sandy E. James, et al., Nat'l Center for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 2 (2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf; Rebecca L. Stotzer, et al., The Williams Inst., *Transgender Parenting: A Review of Existing Research* (2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/transgender-parenting-oct-2014.pdf.

9. Am. Psychol. Ass'n Guidelines, *supra*, at 835-36; James et al., Nat'l Center for Transgender Equality, *Report of the 2015 U.S. Transgender Survey*, *supra*, at 246.

"perverse or deviant."[10] Practices during that period tried to "correct" this perceived deviance by attempting to force 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.[11]

Much as our professions now recognize that homosexuality is a normal form of human sexuality—and that stigmatizing gay people causes significant harm—we now recognize that being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities"—and that stigmatizing transgender people also causes significant harm.[12]

A. Gender Identity

"[G]ender identity" refers to a person's internal sense of being male, female, or another gender.[13] Every

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10. Am. Psychol. Ass'n, *Report of the APA Task Force on Gender Identity and Gender Variance* 26-27 (2008), https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf (hereinafter "Am. Psychol. Ass'n Task Force Report").

11. *Id.*; Substance Abuse and Mental Health Servs. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 13, 25 (2015), https://store.samhsa.gov/system/files/sma15-4928.pdf.

12. Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* (2012), https://www.aglp.org/APAPositionStatements/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf.

13. Am. Psychol. Ass'n, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* 1 (2014), http://www.apa.org/topics/lgbt/transgender.pdf.

person has a gender identity,[14] which cannot be altered voluntarily[15] or necessarily ascertained immediately after birth.[16] Many children develop stability in their gender identity between ages three and four.[17]

"[G]ender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, or body characteristics."[18] There are many individuals who depart from stereotypical male and female appearances and roles, but who are not transgender.[19] 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

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14. *See* Caitlin Ryan, Family Acceptance Project, *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual, & Transgender Children*, 17 (2009), http://familyproject.sfsu.edu/sites/default/files/FAP_English%20Booklet_pst.pdf.

15. Colt Meier & Julie Harris, Am. Psychol. 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* 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.

16. Am. Psychol. Ass'n Guidelines, *supra*, at 862.

17. *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.

18. Am. Psychol. Ass'n, *Answers to Your Questions About Transgender People, supra*, at 1.

19. Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, J. Sch. Nursing 1, 6 (2017).

at birth.[20] In contrast, a transgender boy or transgender girl "consistently, persistently, and insistently" identifies as a gender different than the sex they were assigned at birth.[21]

Psychologists, psychiatrists, and neuroscientists are not certain why some people are transgender. Some research suggests there may be biological influences,[22] including, for example, exposure of transgender men identified at birth as females to elevated levels of testosterone in the womb.[23] Brain scans and neuroanatomical studies of transgender individuals may also support these biological explanations.[24]

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20. World Prof'l Ass'n for Transgender Health, *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/Standards%20of%20Care_V7%20Full%20Book_English.pdf [hereinafter "WPATH Standards of Care"].

21. *See* Meier & Harris, Fact Sheet: *Gender Diversity and Transgender Identity in Children*, *supra*, at 1; *see also* Cicero & Wesp, *Supporting the Health and Well-Being of Transgender Students*, *supra*, at 6.

22. *See* Am. Acad. of Pediatrics, *Gender Non-Conforming & 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).

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

24. *See, e.g.*, Francine Russo, *Is There Something Unique About the Transgender Brain?* Sci. Am. (Jan. 1, 2016), https://www.

B. Gender Dysphoria

As noted above, being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[25] However, many transgender individuals are diagnosed with gender dysphoria, a condition that is characterized by clinically-significant distress and anxiety resulting from the incongruence between an individual's gender identity and birth-assigned sex.[26] As discussed in detail below, the recognized treatment for someone with severe gender dysphoria is medical support that allows the individual to transition from their assigned sex to the sex associated with his or her gender identity.[27] These treatments are "effective in alleviating gender dysphoria and are medically necessary for many people."[28]

1. The Diagnostic Criteria And Seriousness Of Gender Dysphoria

The Diagnostic and Statistical Manual of Mental Disorders 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

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scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/.

25. Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Variant Individuals, supra.*

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

27. WPATH Standards of Care, *supra*, at 9-10.

28. *Id.* at 5.

two" out of six criteria, and "clinically significant distress or impairment in social, occupational, or other important areas of functioning."[29] The six criteria include (1) "[a] marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics"; (2) "[a] strong desire to be rid of one's primary and/or secondary sex characteristics"; (3) "[a] strong desire for the primary and/or secondary sex characteristics of the other gender"; (4) "[a] strong desire to be of the other gender (or some alternative gender . . .)"; (5) "[a] strong desire to be treated" as a gender different from one's assigned gender; and (6) "[a] strong conviction that one has the typical feelings and reactions" of a different gender.[30]

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.[31] 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."[32]

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29. DSM-5, *supra*, at 452-53.

30. *Id.* at 452.

31. Am. Psychol. Ass'n Task Force Report, *supra*, at 45; Substance Abuse and Mental Health Servs. Admin., *Ending Conversion Therapy*, *supra*, at 3.

32. 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.[33] Like other minority groups, transgender individuals also are frequently subjected to prejudice and discrimination in multiple areas of their lives (*e.g.*, employment, housing, school, healthcare), which exacerbates these negative health outcomes and makes access to appropriate medical care all the more important.[34]

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.[35] There is no evidence that these methods alleviate gender dysphoria or

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

34. 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 Prof'l Psychol.: 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.

35. Am. Psychol. Ass'n Guidelines, *supra*, 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).

that they can prevent someone from being transgender.[36] To the contrary, they can "often result in substantial psychological pain by reinforcing damaging internalized attitudes,"[37] and can damage family relationships and individual functioning by increasing feelings of shame.[38]

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.[39] For over 30 years, the generally-accepted treatment protocols for gender dysphoria[40] have aimed at alleviating the distress associated with the incongruence between gender identity and birth-assigned

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36. Substance Abuse and Mental Health Servs. Admin., *Ending Conversion Therapy*, *supra*, at 26; Jack Drescher, *Controversies in Gender Diagnoses*, 1 LGBT Health 9, 12 (2013).

37. 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.

38. 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 Int'l J. Transgenderism 113, 119-20 (2013).

39. Am. Psychol. Ass'n Guidelines, *supra*, at 835; WPATH Standards of Care, *supra*, at 8-9.

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

sex.[41] These protocols are laid out in the *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (Version 7)* developed by *amicus curiae*, the World Professional Association for Transgender Health ("WPATH").[42] Many of 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.[43]

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.[44]

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

42. WPATH Standards of Care, *supra*.

43. Am. Med. Ass'n, Policy H-185.950, *Removing Financial Barriers to Care for Transgender Patients* (2008); Am. Psychol. Ass'n Task Force Report, *supra*, at 32; AAP Technical Report, *supra*, at 307-08.

44. Am. Psychol. Ass'n Task Force Report, *supra*, at 32-39; Am. Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria, *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists* 16-18 (2016); AAP Technical Report, *supra*, at 307-09. Some clinicians still offer versions of "reparative" or "conversion" therapy based on the idea that being transgender is a mental disorder. However, all of the leading medical professional organizations that have considered the issue have explicitly rejected such treatments. *See* Am. Med. Ass'n, Policy Number H-160.991, *Health Care Needs of Lesbian, Gay, Bisexual, and Transgender Populations* (rev. 2016), https://searchpf.ama-assn.org/SearchML/searchDetails.action?uri=%2FAMADoc%2FHOD.xml-0-805.xml; Am.

However, each patient requires an individualized treatment plan that accounts for the patient's specific needs.[45]

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.[46]

For some adults and adolescents, hormone treatment to feminize or masculinize the body may be medically necessary to treat their gender dysphoria.[47] *Amicus curiae* the Endocrine Society, the oldest and largest global

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Sch. Counselor Ass'n, *The School Counselor and LGBTQ Youth* (2016), https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS_LGBTQ.pdf; Hilary Daniel et al., *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper from the American College of Physicians*, 163 Annals Internal Med. 135, 136 (2015); AAP Technical Report, *supra*, at 301; Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression, supra*.

45. Am. Psychol. Ass'n Task Force Report, *supra*, at 32.

46. AAP Technical Report, *supra*, at 308; Am. Psychol. Ass'n Guidelines, *supra*, at 840.

47. Am. Med. Ass'n, Policy H-185.950, *Removing Financial Barriers to Care for Transgender Patients, supra*; Am. Psychol. Ass'n Guidelines, *supra*, at 861, 862; Madeline B. Deutsch, Center of Excellence for Transgender Health, University of California, San Francisco, *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People* 23 (2d ed. 2016); WPATH Standards of Care, *supra*, at 33, 54.

professional membership organization representing the field of endocrinology, considers these treatments to be the standard of care for gender dysphoria.[48] A transgender man undergoing hormone therapy, for example, will have hormone levels within the same range as other men; and just as they do in any other man, these hormones will affect most of his major body systems.[49] Hormone therapy physically changes the patient's genitals and secondary sex characteristics such as increased muscle mass, increased body and facial hair, male pattern baldness (for some), and a deepening of the voice in men, and breast growth, female-associated fat distribution, softening of the skin, and decreased muscle mass in women.[50] Hormones have been clinically proven as an effective treatment for gender dysphoria with a low rate of complications.[51]

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48. 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); *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).

49. Hembree, et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons, supra*, at 3885-87; *see also* Brill & Pepper, *The Transgender Child*, *supra*, at 217.

50. Hembree, et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons, supra*, at 3886-89.

51. Marco Colizzi, Rosalia Costa & Orlando Todarello, *Transsexual Patients' Psychiatric Comorbidity and Positive Effect of Cross-Sex Hormonal Treatment on Mental Health: Results from Longitudinal Study*, 39 Psychoneuroendocrinology 65 (2014); Henk Asscheman, at al., *A Long-Term Follow-Up Study of Mortality in Transsexuals Receiving Treatment with Cross-Sex Hormones*, 164 Eur. J. Endocrinology 635 (2011); Paul J.M. Van Kesteren, et al.,

For children experiencing the onset of puberty, treatment may include medication to prevent further progression of puberty ("puberty blockers").[52] 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.[53]

Surgical interventions may also be an appropriate and medically necessary treatment for some patients.[54] These procedures could include chest reconstruction surgery for transgender men, breast augmentation for transgender women, or genital surgeries.[55] Decades of clinical evidence show these surgical procedures are effective in reducing gender dysphoria and improving mental health.[56] Empirical studies reflect the importance

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

52. Hembree, et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons, supra*, at 3880-83.

53. *Id.* at 3880; Am. Psychol. Ass'n Guidelines, *supra*, at 842; WPATH Standards of Care, *supra*, at 18-20.

54. WPATH Standards of Care, *supra,* at 54-55.

55. Hembree, et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons, supra*, at 3893-95; *see also* WPATH Standards of Care, *supra*, at 57-58.

56. Annelou L.C. de Vries, *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*

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.[57]

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 their relationships, school, jobs, and other life activities.[58]

II. Transgender Individuals Should Be Protected From Employment Discrimination To Ensure Their Physical And Mental Health.

Transgender individuals should be protected from employment discrimination in order to safeguard their physical and mental health and well-being. Employment

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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 Res. 178 (2007); Jan Eldh, Agnes Berg & Maria Gustafsson, *Long-Term Follow Up After Sex Reassignment Surgery*, 31 Scand. J. Plastic & Reconstructive Surgery & Hand Surgery 39 (1997).

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

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

discrimination is pandemic in the transgender community. Between 67% and 78% of transgender individuals experience work place harassment or mistreatment.[59] More than a quarter have been fired, denied a promotion, or simply not hired at all due to their gender identity or expression.[60] In light of these statistics, it is unsurprising that more than 75% of employed transgender individuals hide their gender identity, delay their transition, or even quit their jobs to avoid confronting discrimination at work.[61] Further reflecting the insidious consequences of workplace discrimination, unemployment in the transgender population is triple that in the U.S. adult population at large. The poverty rate is nearly double.[62] This widespread discrimination tangibly and adversely affects the mental and physical health of transgender adults by (1) frustrating treatment protocols for gender dysphoria; and (2) exacerbating the severe health consequences of living with the perceived stigma of being transgender.

A. Employment Discrimination Exacerbates Gender Dysphoria, Frustrates Treatment, And Impedes Access To Health Care.

Treating gender dysphoria focuses on alleviating the distress caused by incongruence between gender

59. Brad Sears & Christy Mallory, *Documented Evidence Of Employment Discrimination & Its Effects On LGBT People*, The Williams Inst. at 4 (July 2011).

60. James et al., Nat'l Center for Transgender Equality, *Report of the 2015 U.S. Transgender Survey*, *supra*, at 148.

61. *Id.*

62. *Id.* at 140.

identity and birth-assigned sex, primarily through social transition, which enables transgender individuals to live in conformance with their gender identity.[63] Employment discrimination frustrates social transition, and gender dysphoria treatment more generally, *first* by preventing transgender individuals from expressing their true gender identity, and *second*, by impeding access to needed medical care.

As an initial matter, workplace discrimination prohibits transgender individuals from living life in accordance with their gender identity. Adults spend a substantial percentage of their time in the workplace.[64] Workplace interactions make up a significant amount of social contact. Workplace harassment and mistreatment due to gender identity thus subjects transgender individuals to daily humiliations, frustrations, and discrimination, exacerbating a sense of otherness and alienation.[65] Logically, experiencing discrimination in one of the most important aspects of adult life—employment—makes it nearly impossible to live in full congruence with a gender identity that is different from birth-assigned sex. The fear of facing such discrimination alone can prompt transgender individuals to hide their gender identity—directly thwarting the goal of social transition

63. Herant A. Katchadourian & Donald T. Lunde, *Fundamentals of Human Sexuality*, 38 (1972).

64. World Health Organization, *Global strategy on occupational health for all: The way to health at work* (1994), https://www.who.int/occupational_health/publications/globstrategy/en/index2.html

65. Lisa R. Miller & Eric Anthony Grollman, *The Social Costs of Gender Nonconformity for Transgender Adults: Implications for Discrimination and Health*, Sociological Forum 30(3) 809, 813 (Sept. 2015).

by preventing transgender individuals from publicly identifying their true selves.[66]

Additionally, employment discrimination directly interferes with medical treatment of gender dysphoria when it results in transgender individuals losing income or health insurance due to job loss or unemployment. Without money or insurance, transgender individuals cannot obtain medically necessary procedures, surgeries, or hormone therapies. Lack of treatment, in turn, increases the rate of mental disorders, substance abuse, and suicide.[67] This gap in coverage also promotes dangerous forms of self-medication, for example, self-surgery, self-injection with unregulated silicone to change body shape, and the use of nonprescription hormones.[68]

B. Employment Discrimination Reinforces The Perceived Stigma Of Being Transgender, Exacerbating Negative Health Outcomes.

Beyond exacerbating gender dysphoria and interfering with treatment, discrimination reinforces the perceived

66. James et al., Nat'l Center for Transgender Equality, *Report of the 2015 U.S. Transgender Survey*, *supra*, at 148.

67. Agnes Gereben Schaefer et al., *Assessing the Implications of Allowing Transgender Personnel to Serve Openly*, RAND Corporation at 9 (2016).

68. Ali Zaker-Shahrak et al., *Economic Impact Assessment: Gender Nondiscrimination in Health insurance*, Transgender Law Center at 12 (Apr. 13, 2012); Nooshin Khobzi Rotondi et al., Nonprescribed Hormone Use and Self-Performed Surgeries: "Do-It-Yourself" Transitions in Transgender Communities in Ontario, Canada, Am. Journal of Pub. Health 11, 1833, 1835 (Oct. 2013); Tonia Poteat et al., *Managing uncertainty: A grounded theory of stigma in transgender health care encounters*, Social Science & Medicine 22, 23 (2013).

stigma associated with being transgender. Such stigma, in turn, leads to psychological distress and attendant mental health consequences.[69] This societal stigma often manifests as a sense of otherness, which creates significant health disparities between transgender and cisgender individuals and leads to serious adverse health consequences for those in the transgender community.[70]

These health effects occur, in part, because of the stressful environment created by stigmatization. The stress associated with a stigmatized environment causes immediate somatic effects, including blood pressure reactivity, increased cortisol production, and elevated cardiometabolic risk.[71] Over time, the chronic and persistent stress resulting from living with stigma can lead to hypertension, diabetes, anxiety, depression, suicidality, substance abuse, acquiring HIV, and even death.[72] These health issues are the direct result of stigma and not the product of any inherent psychological impairments.[73]

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69. Walter O. Bockting et al., *Stigma, Mental Health, and Resilience in an Online Sample of the US Transgender Population*, 103(5) Am. Journal of Pub. Health 943, 948 (May 2013).

70. Institute of Medicine Committee on LGBT Issues and Research Gaps and Opportunities, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* 13 (2011); White Hughto et al., Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions, Social Science & Medicine 147, 222 (Dec. 2015).

71. *Id.* at 9.

72. *Id.*; Poteat et al., *Managing uncertainty: A grounded theory of stigma in transgender health care encounters*, *supra* at 23.

73. Mark L. Hatzenbuehler & John Pachankis, *Stigma and Minority Stress as Social Determinants of Health Among Lesbian,*

Stigma also results in transgender individuals postponing preventive medical care, even when injured,[74] a particularly invidious situation given the heightened rates of depression, anxiety, substance abuse, and suicide in the transgender community.[75]

Additional psychological distress occurs when transgender individuals conceal their gender identity to avoid stigma and victimization.[76] Transgender individuals who feel forced to hide their gender identity experience higher rates of depression and anxiety disorder.[77]

In contrast, living in congruence with one's gender identity promotes well-being.[78] Unsurprisingly, policies prohibiting employment discrimination lead to positive health outcomes in the transgender community. Transgender individuals in states with explicit employment protection for LGBTQ people experience fewer mood

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Gay, Bisexual, and Transgender Youth, Pediatric Clinics of N. America 63(6), 2 (Oct. 2016).

74. Poteat et al., *Managing uncertainty: A grounded theory of stigma in transgender health care encounters*, *supra* at 23.

75. Zaker-Shahrak et al., *Economic Impact Assessment: Gender Nondiscrimination in Health insurance*, *supra* at 10-11.

76. Brian A. Rood, et al., *Identity Concealment in Transgender Adults: A Qualitative Assessment of Minority Stress and Gender Affirmation*, Am. Journal of Orthopsychiatry 87(6), 704-13 (2017).

77. Gia Chodzen, et al., *Minority Stress Factors Associated With Depression and Anxiety Among Transgender and Gender-Nonconforming Youth*, Journal of Adolescent Health 64(4), 467-71 (Apr. 2019).

78. *Id.*

disorders and self- violence than those living in states where employers remain free to discriminate against them.[79]

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to rule in favor of the employees.

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79. John R. Blosnich, et al., *Mental Health of Transgender Veterans in US States With and Without Discrimination and Hate Crime Legal Protection*, Am. Journal of Pub. Health 106(3) (Mar. 2016); *see also* M.V. Lee Badgett, et al., *The Business Impact of LGBT-Supportive Workplace Policies*, The Williams Inst. at 9, (May 2013).

APPENDIX

APPENDIX — ADDITIONAL *AMICI CURIAE*

The **American Nurses Association** ("ANA") represents the interests of the nation's four million registered nurses. Founded in 1896, ANA has members in all 50 states and in U.S. territories and is comprised of both individual nurses and state nurses associations. ANA is an advocate for social justice and improving the quality of health care for all.

The **American Public Health Association** ("APHA") champions the health of all people and all communities; strengthens the profession of public health; shares the latest research and information; promotes best practices; and advocates for public health issues and policies grounded in scientific research. APHA represents more than 23,000 individual members and is the only organization that combines a nearly 150-year perspective, a broad-based member community, and the ability to influence federal policy to improve the public's health.

AGLP: The Association of LGBTQ Psychiatrists is a community of psychiatrists that educates and advocates on Lesbian Gay Bisexual and Transgender mental health issues. AGLP's goals are to foster a fuller understanding of LGBT mental health issues; research and advocate for the best mental health care for the LGBT community; develop resources to promote LGBT mental health; create a welcoming, safe, nurturing, and accepting environment for members; and provide valuable and accessible services to our members. AGLP strives to be a community for the personal and professional growth of all LGBT Psychiatrists, and to be the recognized expert on LGBT mental health issues.

Appendix

The **Association of Medical School Pediatric Department Chairs** seeks to improve the health and well-being of children through the development of the chairs of academic pediatric departments and support of their clinical, research, education, and advocacy missions. The Academic Pediatric Departments lead in care delivery, research, training, and advocacy in their communities and throughout the world.

The **Endocrine Society** is the oldest and largest global professional membership organization representing the field of endocrinology. Our 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, transgender health, osteoporosis, infertility, rare cancers and thyroid conditions.

GLMA: 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 **Lesbian, Bisexual, Gay and Transgender (LBGT) Physician Assistant (PA) Caucus** is the national professional association for PAs and PA students who share a common interest in the art of LGBT health. Since 1979, the LBGT PA Caucus has served the PA profession on sexual and gender minority diversity and inclusion in the workforce, medical education, and public health.

The **Medical Association of Georgia** (MAG), founded in 1849, is the largest professional association for physicians in Georgia with over 8,000 members, including physicians in every specialty and practice setting. MAG's mission is to, "Enhance patient care and the health of the public by advancing the art and science of medicine and by representing physicians and patients in the policy making process."

Mental Health America ("MHA") is the nation's leading community-based nonprofit dedicated to addressing the needs of those living with mental illness and to promoting the overall mental health of all Americans. MHA is committed to promoting mental health as a critical part of overall wellness, including prevention services for all, early identification and intervention for those at risk, integrated care, services, and support for those who need it, with recovery as the goal.

The **Michigan State Medical Society** ("MSMS") is a professional association which represents the interests of over 14,000 physicians in the State of Michigan. Organized to promote and protect the public health and to preserve the interests of its members, MSMS is frequently called

upon to express its views with respect to legal issues of significance to the medical profession.

The **National Council for Behavioral Health** is the unifying voice of America's health care organizations that deliver mental health and addiction treatment and services. Together with our 3,000 member organizations serving over 10 million adults, children and families living with mental illnesses and addiction, the National Council is committed to all Americans having access to comprehensive, high-quality care that affords every opportunity for recovery.

The **Pediatric Endocrine Society** ("PES") is the leading professional society for its specialty in the United States. The PES, with more than 1,300 members, is dedicated to promoting the endocrine health of all children and adolescents, including those that are transgender. PES is a co-sponsor of the Endocrine Society's clinical practice guidelines for transgender individuals, which promote a gender-affirmative model of care.

The **Society for Physician Assistants in Pediatrics** ("SPAP") has approximately 350 members who share a common interest in pediatric medicine. The mission of SPAP is to improve the health care of children by supporting Physician/PA teams who provide cost effective, quality care to pediatric patients and by promoting a network for communication and education between providers dedicated to the well-being of children.

The **World Professional Association for Transgender Health** ("WPATH") is an international professional

association with membership consisting of more than 2,000 physicians, psychologists, social scientists, and legal professionals committed to developing the best practices and supportive policies to promote health, research, education, respect, dignity, and equality for transgender people in all settings. WPATH develops and publishes the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People ("Standards of Care"), recognized in the medical community as the authoritative standards for the provision of transgender healthcare. The Standards of Care are informed by medical evidence and the current consensus in medical research and clinical practice to provide treatment protocols specific to the nature and severity of an individual's condition. For over forty years, the Standards of Care have emphasized the importance of social integration in an individual's gender role.