

NO. 23-1078

**In the United States Court of Appeals
for the Fourth Circuit**

**B.P.J., by her next friend and mother: HEATHER JACKSON,
*Plaintiffs-Appellants,***

v.

**WEST VIRGINIA STATE BOARD OF EDUCATION; HARRISON
COUNTY BOARD OF EDUCATION; WEST VIRGINIA SECONDARY
SCHOOL ACTIVITIES COMMISSION; W. CLAYTON BURCH, *in his
official capacity as State Superintendent; and DORA STUTLER, in her official
capacity as Harrison County Superintendent,*
*Defendants-Appellees,***

and

**THE STATE OF WEST VIRGINIA *and* LAINEY ARMISTEAD,
*Intervenors-Appellees.***

On Appeal from the United States District Court
for the Southern District of West Virginia, Charleston Division
Case No. 2:21-cv-00316
Hon. Joseph R. Goodwin, District Court Judge

**BRIEF OF *AMICI CURIAE* AMERICAN ACADEMY OF PEDIATRICS, AMERICAN
MEDICAL ASSOCIATION, AND FOUR ADDITIONAL HEALTH CARE
ORGANIZATIONS IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL**

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
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- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
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- Counsel has a continuing duty to update the disclosure statement.

No. 23-1078 Caption: B.P.J. et al. v. West Virginia State Board of Education et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

American Acad. of Pediatrics, American Medical Ass'n, American Medical Women's Ass'n, The Endocrine
(name of party/amicus)

Society, GLMA: Health Pros Advancing LGBTQ+ Equality, World Pro. Ass'n for Transgender Health

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(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO
2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? YES NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.
7. Is this a criminal case in which there was an organizational victim? YES NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Howard S. Suskin

Date: April 3, 2023

Counsel for: Amici Curiae

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Rules	
Fed. R. App. P. 29.....	1
Other Authorities	
Am. Med. Ass’n, Comm. on Human Sexuality, <i>Human Sexuality</i> (1972).....	15
Am. Med. Ass’n, Policy H-160.991, <i>Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations</i> (2018), https://policysearch.ama-assn.org/policyfinder/detail/Health%20Care%20Needs%20of%20Lesbian,%20Gay,%20Bisexual,%20Transgender%20and%20Queer%20Populations%20H-160.991?uri=%2FAMADoc%2FHOD.xml-0-805.xml	16
Am. Med. Ass’n, Policy H-185.950, <i>Removing Financial Barriers to Care for Transgender Patients</i> (last modified 2022), https://policysearch.ama-assn.org/policyfinder/detail/Removing%20Financial%20Barriers%20to%20Care%20for%20Transgender%20Patients%20H-185.950?uri=%2FAMADoc%2FHOD.xml-0-1128.xml	19
Am. Psych. Ass’n, <i>Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression</i> (2014), http://www.apa.org/topics/lgbt/transgender.pdf	10
Am. Psych. Ass’n, <i>Guidelines for Psychological Practice with Transgender and Gender Nonconforming People</i> , 70 <i>Am. Psychologist</i> 832 (2015), https://www.apa.org/practice/guidelines/transgender.pdf	5, 7, 8, 10, 15, 17, 19
Am. Psych. Ass’n, <i>Report of the APA Task Force on Gender Identity and Gender Variance</i> (2009), https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf	9, 14, 16, 17

Am. Psych. Ass'n, <i>Stress in America: The Impact of Discrimination</i> (2016), https://www.apa.org/news/press/releases/stress/2015/imp-act-of-discrimination.pdf	25
Am. Psych. Ass'n & National Ass'n of School Psychs., <i>Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools</i> (2015), https://www.apa.org/about/policy/orientation-diversity	24, 26, 27
Am. Psychiatric Ass'n, <i>Diagnostic and Statistical Manual of Mental Disorders</i> (5th ed. 2013)	12, 13, 14
Am. Psychoanalytic Ass'n, <i>Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression</i> (2012), https://apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender	16-17, 25
Am. Sch. Counselor Ass'n, <i>The School Counselor and LGBTQ+ Youth</i> (2022), https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-LGBTQ-Youth	16
Henk Asscheman et al., <i>A Long-Term Follow-Up Study of Mortality in Transsexuals Receiving Treatment with Cross-Sex Hormones</i> , 164 <i>Eur. J. Endocrinology</i> 635 (2011), https://ej.e.bioscientifica.com/view/journals/eje/164/4/635.xml	20
Walter Bockting & Eli Coleman, <i>Developmental Stages of the Transgender Coming-Out Process: Toward an Integrated Identity</i> , in <i>Principles of Transgender Medicine and Surgery</i> 185 (Randi Ettner et al., eds., 2d ed. 2013)	21
Judith Bradford et al., <i>Experiences of Transgender-Related Discrimination and Implications for Health: Results From the Virginia Transgender Health Initiative Study</i> , 103 <i>Am. J. Pub. Health</i> 1820 (2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780721/	25
Stephanie A. Brill & Rachel Pepper, <i>The Transgender Child: A Handbook for Families and Professionals</i> (2008)	14

William Byne et al., Am. Psychiatric Ass’n Workgroup on Treatment of Gender Dysphoria, <i>Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists</i> , 175 Am. J. Psychiatry (2018)	17
Center of Excellence for Transgender Health, Univ. of Cal., S.F., <i>Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People</i> (Madeline B. Deutsch ed., 2d ed. 2016), https://transcare.ucsf.edu/sites/transcare.ucsf.edu/files/Transgender-PGACG-6-17-16.pdf	19-20
Ethan C. Cicero & Linda M. Wesp, <i>Supporting the Health and Well-Being of Transgender Students</i> , 33 J. Sch. Nursing 1 (2017).....	11
Hilary Daniel et al., <i>Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper From the American College of Physicians</i> , 163 Annals Internal Med. 135 (2015).....	16
Jack Drescher et al., Am. Psychiatric Ass’n, <i>Position Statement on Discrimination Against Transgender and Gender Diverse Individuals</i> (2018), https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf	12
Lily Durwood et al., <i>Mental Health and Self-Worth in Socially Transitioned Transgender Youth</i> , 56 J. Am. Acad. Child. Adolesc. Psychiatry 116 (2017).....	17-18
Diane Ehrensaft, <i>From Gender Identity Disorder to Gender Identity Creativity: True Gender Self Child Therapy</i> , 59 J. Homosexuality 337 (2012).....	14
Alessandra D. Fisher et al., <i>Cross-Sex Hormone Treatment and Psychobiological Changes in Transsexual Persons: Two-Year Follow-Up Data</i> , 101 J. Clinical Endocrinology & Metabolism 4260 (2016).....	20

Gay, Lesbian & Straight Education Network (“GLSEN”), <i>Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline Among LGBTQ Youth</i> (2016), https://www.glsen.org/sites/default/files/2019-11/Educational_Exclusion_2013.pdf	28
Emily A. Greytak et al., GLSEN, <i>Harsh Realities: The Experiences of Transgender Youth in Our Nation’s Schools</i> (2009), https://www.glsen.org/sites/default/files/2020-04/Harsh%20Realities.pdf	26
Wylie C. Hembree et al., <i>Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline</i> , 102 J. Clinical Endocrinology & Metabolism 3869 (2017), https://academic.oup.com/jcem/article/102/11/3869/4157558	18-19, 20
Michael L. Hendricks & Rylan J. Testa, <i>A Conceptual Framework for Clinical Work with Transgender and Gender Nonconforming Clients: An Adaptation of the Minority Stress Model</i> , 43 Pro. Psych.: Rsch. & Practice 460 (2012).....	15
Jody L. Herman et al., The Williams Institute, <i>How Many Adults and Youth Identify as Transgender in the United States?</i> (June 2022), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf	5
Institute of Medicine (US), Committee on LGBT Health Issues & Research Gaps and Opportunities, <i>The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding</i> (2011), https://www.ncbi.nlm.nih.gov/books/NBK64806/	25-26
Sandy E. James et al., Nat’l Ctr. for Transgender Equality, <i>The Report of the 2015 U.S. Transgender Survey</i> (Dec. 2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf	8

- Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students —19 States and Large Urban School Districts, 2017*, 68 *Morbidity and Mortality Weekly Report* 67 (2019), <http://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf>.....24
- Nick Lehr, *What’s Behind the Rising Profile of Transgender Kids? 3 Essential Reads*, *The Conversation* (June 21, 2021), <https://theconversation.com/whats-behind-the-rising-profile-of-transgender-kids-3-essential-reads-161962>5
- Kelsey Logan et al., *Organized Sports for Children, Preadolescents, and Adolescents*, 143 *Pediatrics* (2019), <https://publications.aap.org/pediatrics/article/143/6/e20190997/37135/Organized-Sports-for-Children-Preadolescents-and>27, 28, 29, 30
- Letter from James L. Madara, CEO/Exec. Vice President, Am. Med. Ass’n, to Robert Wilkie, Sec’y, U.S. Dep’t Veterans Affs. (Sept. 6, 2018), <https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2018-9-6-Letter-to-Wilkie-re-Exclusion-of-Gender-Alterations-from-Medical-Benefits-Package.pdf>..... 16
- Letter from James L. Madara, CEO/Exec. Vice President, Am. Med. Ass’n to Bill McBride, Exec. Dir., Nat’l Governors Ass’n (Apr. 26, 2021), <https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2021-4-26-Bill-McBride-opposing-anti-trans-bills-Final.pdf> 9-10
- Colt Meier & Julie Harris, Am. Psych. Ass’n, *Fact Sheet: Gender Diversity and Transgender Identity in Children*, <http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf>11
- Jason Rafferty, Am. Acad. of Pediatrics, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 *Pediatrics* (2018), <https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for> 7-8, 16, 17, 23

Robin Respaut & Chad Terhune, *Putting Numbers on the Rise in Children Seeking Gender Care*, Reuters (Oct. 6, 2022), [reuters.com/investigates/special-report/usa-transyouth-data/](https://www.reuters.com/investigates/special-report/usa-transyouth-data/)4

C. E. Roselli, *Neurobiology of Gender Identity and Sexual Orientation*, J. Neuroendocrinology (July 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6677266/pdf/nihms-1042560.pdf>.....11

Francine Russo, *Is There Something Unique About the Transgender Brain?*, Sci. Am. (Jan. 1, 2016), <https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/>12

Caitlin Ryan, Family Acceptance Project, S.F. State Univ., *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual, & Transgender Children* (2009), https://familyproject.sfsu.edu/sites/default/files/FAP_English%20Booklet_pst.pdf.....10

Mostafa Sadr et al., *2D:4D Suggests a Role of Prenatal Testosterone in Gender Dysphoria*, 49 Archives Sexual Behav. 421 (2020)11

Substance Abuse and Mental Health Servs. Admin. (“SAMHSA”), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* (2015), <https://store.samhsa.gov/sites/default/files/d7/priv/sma15-4928.pdf>.9, 14

Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 Developmental Psychology 1580 (2010), https://familyproject.sfsu.edu/sites/default/files/FAP_School%20Victimization%20of%20Gender-nonconforming%20LGBT%20Youth.pdf.....23, 27

Diana M. Tordoff et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, JAMA Network Open (Feb. 25, 2022), http://jamanetwork.com/journals/jamanetworkopen/articlepdf/2789423/tordoff_2022_oi_220056_1658508882.09639.pdf21

Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 Pediatrics 1 (2020)6, 20, 23

Paul J. van Kesteren et al., <i>Mortality and Morbidity in Transsexual Subjects Treated with Cross-Sex Hormones</i> , 47 <i>Clinical Endocrinology</i> 337 (1997).....	20
Sam Winter et al., <i>Transgender People: Health at the Margins of Society</i> , 388 <i>Lancet</i> 390 (2016)	22
The World Professional Association for Transgender Health, <i>Standards of Care for the Health of Transgender and Gender Diverse People, Version 8</i> (Sept. 2022), https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644	12, 13, 15, 17, 18, 19, 20, 23
Jessica Xavier et al., Va. Dep't of Health, <i>The Health, Health-Related Needs, and Lifecourse Experiences of Transgender Virginians</i> (2007), https://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/THISFINALREPORTVol1.pdf	15
Emily B. Zimmerman et al., <i>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</i> (Robert M. Kaplan et al., eds. 2015), https://www.ahrq.gov/sites/default/files/publications/files/population-health.pdf	27

IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae are six leading medical, mental health, and other health care organizations.¹ Collectively, *amici* represent hundreds of thousands of physicians and mental-health professionals, including specialists in family medicine, internal medicine, pediatrics, women’s health, endocrinology, and transgender health.

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

The American 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

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

medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state.

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

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, which focuses on hormone conditions such as diabetes, obesity, osteoporosis, infertility, rare cancers, thyroid conditions, and the care of gender dysphoria/incongruence and transgender medicine. The Endocrine Society has published evidence-based clinical practice guidelines on gender dysphoria/incongruence, which are recognized around the world.

GLMA: Health Professionals Advancing LGBTQ+ Equality is a national organization committed to ensuring health equity for lesbian, gay, bisexual, transgender, and queer (“LGBTQ+”) and equality for LGBTQ+ health professionals in their work and learning environments. To achieve this mission, GLMA utilizes the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research.

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

All *amici* share a commitment to improving the physical and mental health of everyone—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public-health consequences of laws and policies that impact LGBTQ+ individuals. *Amici* submit this brief to

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

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.

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. According to a recent report, 121,882 American children ages six to seventeen were diagnosed with gender dysphoria between 2017 and 2021. Robin Respaut & Chad Terhune, *Putting Numbers on the Rise in Children Seeking Gender Care*, Reuters (Oct. 6, 2022), [reuters.com/investigates/special-report/usa-trans-youth-data/](https://www.reuters.com/investigates/special-report/usa-trans-youth-data/). About 42,000 of these children and teens were diagnosed with gender dysphoria in 2021. *Id.* In West Virginia, between 0.16% to 2.47%, or 168 to 2,569

youth between the ages of thirteen and seventeen identify as transgender. Jody L. Herman et al., The Williams Institute, *How Many Adults and Youth Identify as Transgender in the United States?* 22 *tbl.A4* (June 2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf>. Such “population estimates likely underreport the true number of [transgender] people, given difficulties in collecting comprehensive demographic information about this group.” Am. Psych. Ass’n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 *Am. Psychologist* 832, 832 (2015), <https://www.apa.org/practice/guidelines/transgender.pdf> [hereinafter “Am. Psych. Ass’n *Guidelines*”]. Nevertheless, growing acceptance and destigmatization from parents, doctors, and peers are allowing young people with gender dysphoria to become increasingly comfortable with publicly disclosing their transgender status and transitioning process. See Nick Lehr, *What’s Behind the Rising Profile of Transgender Kids? 3 Essential Reads*, *The Conversation* (June 21, 2021), <https://theconversation.com/whats-behind-the-rising-profile-of-transgender-kids-3-essential-reads-161962>.

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 that not living in accordance with one’s gender identity can cause. Treatment can include any or all

of the following: counseling, social transition (through, *e.g.*, use of a new name and pronouns, new clothes and grooming in order to allow the person to conform to social expectations and norms associated with his or her identity), hormone therapy and/or gender-confirming surgeries. These treatments for gender dysphoria are highly effective in reducing or eliminating the incongruence and associated distress between a person's gender identity and assigned sex at birth.

Disrupting or denying the medically accepted treatment for gender dysphoria can negatively impact mental health and well-being. Without the appropriate treatment for gender dysphoria, transgender individuals face increased rates of negative mental-health outcomes, substance use, and suicide. *See* Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 *Pediatrics* 1, 1 (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). Disruption of or denying this treatment through exclusionary laws also exacerbates and reinforces the real and perceived stigma experienced by transgender individuals, particularly transgender youth. The fear of facing such discrimination can prompt transgender students to hide their gender identity, directly thwarting accepted treatment protocols and creating a vicious cycle with serious negative consequences for individuals with gender dysphoria.

Banning transgender student athletes from participating in school sports consistent with their gender identity, as required by West Virginia Code § 18-2-25d, harms transgender student health in several ways. For transgender girls and women forced by the State to play on a boys sports team, the statute frustrates the treatment of gender dysphoria by preventing these student athletes from living openly in accordance with their gender. For transgender girls who refuse to compromise their medical treatment by playing on a boys sports team as mandated by the statute, West Virginia denies them the numerous health and developmental benefits of participation in sports activities. For all transgender students, the statute also reinforces the stigma associated with being transgender. Such stigma, combined with the denial of appropriate treatment for gender dysphoria, leads to psychological distress and the attendant mental-health consequences.

ARGUMENT

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

Most people have a “gender identity”—a “deeply felt, inherent sense” of their gender. Am. Psych. Ass’n *Guidelines, supra*, at 832, 834, 862; *see also* Jason Rafferty, Am. Acad. of Pediatrics, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 *Pediatrics* at 2 (2018), <https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring>

ing-Comprehensive-Care-and-Support-for [hereinafter “AAP Policy Statement”]. Transgender individuals have a gender identity that is not aligned with the sex assigned to them at birth.² Transgender people differ from cisgender (*i.e.*, non-transgender) individuals, whose gender identity aligns with the sex they were assigned at birth. Am. Psych. Ass’n *Guidelines, supra*, at 861, 863. A transgender man or boy is an individual who is assigned the sex of female at birth but identifies as male and transitions to live in accordance with that male identity. *See id.* at 863. A transgender woman or girl is an individual who is assigned the sex of male at birth but identifies as female and transitions to live in accordance with that female identity. *See id.* A transgender boy is a boy. A transgender girl is a girl.

Gender identity is distinct from and does not correlate with sexual orientation. Transgender people, like cisgender people, may identify as heterosexual, gay, lesbian, bisexual, or asexual. Am. Psych. Ass’n *Guidelines, supra*, at 835-36; *see* Sandy E. James et al., Nat’l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 246 (Dec. 2016), <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

² Although most people have a gender identity that is male or female, some individuals have a gender identity that is “a blend of male or female[,] or an alternative gender.” Am. Psych. Ass’n *Guidelines, supra*, at 834.

The medical profession's understanding of gender has advanced considerably over the past fifty years. Throughout much of the twentieth century, individuals who did not conform with their gender assigned at birth were often viewed as “perverse or deviant.” Am. Psych. Ass'n, *Report of the APA Task Force on Gender Identity and Gender Variance* 26-27 (2009), <https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf> [hereinafter “Am. Psych. Ass'n *Task Force Report*”]. Medical practices during that time period tried to “correct” this perceived deviance by attempting to force gender non-conforming people, including transgender people, to live in accordance with the sex assigned to them at birth. These efforts failed and caused significant harm to the individuals subjected to them. *Id.*; Substance Abuse and Mental Health Servs. Admin. (“SAMHSA”), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 13, 24-25 (2015), <https://store.samhsa.gov/sites/default/files/d7/priv/sma15-4928.pdf> [hereinafter “SAMHSA *Ending Conversion Therapy*”]. Much as our professions now recognize that homosexuality is a normal form of human sexuality—and that stigmatizing homosexual people causes significant harm—we now recognize that being transgender is a “normal variation[] of human identity and expression”—and that stigmatizing transgender people also causes significant harm. *See* Letter from James L. Madara, CEO/Exec. Vice President, Am. Med. Ass'n, to Bill McBride, Exec. Dir., Nat'l Governors Ass'n 1 (Apr. 26, 2021), <https://searchlf.ama-assn.org/letter/>

documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2021-4-26-Bill-McBride-opposing-anti-trans-bills-Final.pdf.

A. Gender Identity

“*Gender identity*” refers to a “person’s internal sense” of being male, female, or another gender. Am. Psych. Ass’n, *Answers to Your Questions About Transgender People, Gender Identity and Gender Expression* 1 (2014), <http://www.apa.org/topics/lgbt/transgender.pdf> [hereinafter “Am. Psych. Ass’n *Answers*”]. Every person has a gender identity. Caitlin Ryan, Family Acceptance Project, S.F. State Univ., *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual & Transgender Children* 17 (2009), https://familyproject.sfsu.edu/sites/default/files/FAP_English%20Booklet_pst.pdf. Further, gender identity cannot necessarily be ascertained immediately after birth. *See* Am. Psych. Ass’n *Guidelines, supra*, at 862. Many children develop stability in their gender identity between ages three and four.³ *Id.* at 841.

“[*G*]ender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, or body characteristics.” Am. Psych. Ass’n *Answers, supra*, at 1. There are many individuals

³ “Although gender identity is usually established in childhood, individuals may become aware that their gender identity is not in full alignment with sex assigned at birth in childhood, adolescence, or adulthood.” Am. Psych. Ass’n *Guidelines, supra*, at 836.

who depart from stereotypical male and female appearances and roles, but who are not transgender. *See* Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, 33 J. Sch. Nursing 1, 6 (2017). By contrast, a transgender boy or a transgender girl “consistently, persistently, and insistentlly” identifies as a gender different from the sex they were assigned at birth. *See* Colt Meier & Julie Harris, Am. Psych. Ass’n, Fact Sheet: *Gender Diversity and Transgender Identity in Children* at 1, <http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf>; *see also* Cicero & Wesp, *supra*, at 5-6.

As recognized by the district court, “being transgender is natural and is not a choice.” *B.P.J. v. W. Va. State Bd. of Educ.*, No. 21-cv-00316, 2023 WL 111875, at *7 (S.D. W. Va. Jan. 5, 2023). While psychologists, psychiatrists, and neuroscientists have not pinpointed why some people are transgender, research suggests there may be biological or genetic influences, including, for example, exposure of transgender men identified at birth as females to elevated levels of testosterone in the womb. *See, e.g.*, Mostafa Sadr et al., *2D:4D Suggests a Role of Prenatal Testosterone in Gender Dysphoria*, 49 Archives Sexual Behav. 421, 427 (2020); C. E. Roselli, *Neurobiology of Gender Identity and Sexual Orientation*, J. Neuroendocrinology (July 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6677266/pdf/nihms-1042560.pdf>. Brain scans and neuroanatomical studies of transgender individuals also support the existence of biological explanations. *See,*

e.g., Francine Russo, *Is There Something Unique About the Transgender Brain?*, *Sci. Am.* (Jan. 1, 2016), <https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/>.

B. Gender Dysphoria

As noted above, being transgender “implies no impairment in judgment, stability, reliability, or general social or vocational capabilities.” Jack Drescher et al., *Am. Psychiatric Ass’n, Position Statement on Discrimination Against Transgender and Gender Diverse Individuals 1* (2018), <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf>.

However, many transgender individuals are diagnosed with gender dysphoria, a condition that is characterized by clinically significant distress and anxiety resulting from the incongruence between an individual’s gender identity and birth-assigned sex. *Am. Psychiatric Ass’n, Diagnostic and Statistical Manual of Mental Disorders 451-53* (5th ed. 2013) [hereinafter “*DSM-5*”]. As discussed in detail below, the recognized treatment for someone with gender dysphoria is support that addresses “their social, mental, and medical health needs and well-being while respectfully affirming their gender identity.” The World Professional Association for Transgender Health, *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, Sept. 2022, at S7, <https://www.tandfonline.com/doi/pdf/>

10.1080/26895269.2022.2100644 [hereinafter “WPATH *Standards of Care*”]. These treatments are effective in alleviating gender dysphoria and are medically necessary for many people. *Id.* at S16-S18.

1. The Diagnostic Criteria And Seriousness Of Gender Dysphoria

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition codifies the diagnostic criteria for gender dysphoria in adults as follows: “[a] marked incongruence between 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.” *DSM-5, supra*, at 452-53. The six criteria include (1) “[a] marked incongruence between one’s experienced/expressed gender and primary and/or secondary sex characteristics”; (2) “[a] strong desire to be rid of one’s primary and/or secondary sex characteristics”; (3) “[a] strong desire for the primary and/or secondary sex characteristics of the other gender”; (4) “[a] strong desire to be of the other gender (or some alternative gender)”; (5) “[a] strong desire to be treated” as a gender different from one’s assigned gender; and (6) “[a] strong conviction that one has the typical feelings and reactions” of a different gender. *Id.* at 452.

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

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. *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). 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, health care), which exacerbates these negative health

outcomes and makes access to appropriate medical care all the more important. Michael L. Hendricks & Rylan J. Testa, *A Conceptual Framework for Clinical Work with Transgender and Gender Nonconforming Clients: An Adaptation of the Minority Stress Model*, 43 *Pro. Psych.: Rsch. & Practice* 460, 462-64 (2012); Jessica Xavier et al., Va. Dep't of Health, *The Health, Health-Related Needs, and Lifecourse Experiences of Transgender Virginians* (2007), <https://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/THISFINALREPORTVol1.pdf>.

2. The Accepted Treatment Protocols For Gender Dysphoria

In the last few decades, transgender people suffering from gender dysphoria have gained widespread access to gender-affirming medical and mental health support and treatment. *Am. Psych. Ass'n Guidelines, supra*, at 833, 835. For over thirty years, the generally accepted treatment protocols for gender dysphoria⁴ have aimed at alleviating the distress associated with the incongruence between gender identity and birth-assigned sex. *Am. Med. Ass'n, Comm. on Human Sexuality, Human Sexuality* 38 (1972). These protocols are laid out in the *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8* developed by the World Professional Association for Transgender Health (“WPATH”). *WPATH Standards of Care, supra*. The major medical and mental health groups in the United

⁴ Earlier versions of the *DSM* used different terminology, *e.g.*, “gender identity disorder,” to refer to this condition. *Am. Psych. Ass'n Guidelines, supra*, at 861.

States recognize the WPATH *Standards of Care* as representing the consensus of the medical and mental health communities regarding the appropriate treatment for gender dysphoria. Am. Psych. Ass'n *Task Force Report, supra*, at 32; AAP Policy Statement, *supra*, at 6; Letter from James L. Madara, CEO/Exec. Vice President, Am. Med. Ass'n, to Robert Wilkie, Sec'y, U.S. Dep't Veterans Affs. 2 (Sept. 6, 2018), <https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2018-9-6-Letter-to-Wilkie-re-Exclusion-of-Gender-Alterations-from-Medical-Benefits-Package.pdf>.

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.⁵ Am.

⁵ Some clinicians still offer versions of “reparative” or “conversion” therapy based on the idea that being transgender is a mental disorder. However, all leading medical professional organizations that have considered the issue have explicitly rejected such treatments. See Am. Med. Ass'n, Policy H-160.991, *Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations* 1 (2018), <https://policysearch.ama-assn.org/policyfinder/detail/Health%20Care%20Needs%20of%20Lesbian,%20Gay,%20Bisexual,%20Transgender%20and%20Queer%20Populations%20H-160.991?uri=%2FAMADoc%2FHOD.xml-0-805.xml>; Am. Sch. Counselor Ass'n, *The School Counselor and LGBTQ+ Youth* (2022), <https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-LGBTQ-Youth>; Hilary Daniel et al., *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper From the American College of Physicians*, 163 *Annals Internal Med.* 135, 136 (2015); AAP Policy Statement, *supra*, at 4; see Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), <https://apsa.org/cont>

Psych. Ass'n *Task Force Report*, *supra*, at 32-39; William Byne et al., Am. Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria, *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists*, 175 Am. J. Psychiatry 1046 (2018); AAP Policy Statement, *supra*, at 6-7. However, each individual requires an individualized treatment plan that accounts for that person's specific needs. Am. Psych. Ass'n *Task Force Report*, *supra*, at 32.

Social transition—*i.e.*, living one's life fully in accordance with one's gender identity—is often a critically important part of treatment. This typically includes publicly identifying oneself as that gender through all of the ways that people signal their gender to others such as through their name, pronoun usage, dress, manner and appearance, and social interactions. AAP Policy Statement, *supra*, at 6; Am. Psych. Ass'n *Guidelines*, *supra*, at 841-83. Transgender people of all ages benefit from social transition, including children. Socially transitioned transgender youth largely mirror the mental health of age-matched cisgender siblings and peers. WPATH *Standards of Care*, *supra*, at S77. They also tend to report lower rates of anxiety and depression and a better sense of self-worth compared to transgender youth who have not socially transitioned to fit their gender identity. *See* Lily Durwood et al., *Mental*

ent/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender.

Health and Self-Worth in Socially Transitioned Transgender Youth, 56 J. Am. Acad. Child. Adolesc. Psychiatry 116 (2017); *see also* WPATH *Standards of Care*, *supra*, at S77. In the realm of school sports, in order for transgender youth to live their lives fully in accordance with their gender identity, they should be able to publicly identify with and compete on teams that correspond to their gender identity.

For some children, psychotherapy is an appropriate and helpful tool that allows them a protected space to resolve conflicts and distress regarding their gender identity and/or manage other issues (including family matters) that are related to or independent of their gender identity. WPATH *Standards of Care*, *supra*, at S73. Psychotherapy is designed to “foster protective social and emotional coping skills to promote resilience,” “collaboratively problem-solve social challenges” to reduce stress, “strengthen environmental supports for the child,” and provide the child opportunities “to further understand their internal gender experiences.” *Id.* Psychotherapy may involve parents, siblings, caregivers, and other family members to guide them through the child’s and their experiences. *Id.* at S74. However, psychotherapy is not aimed to modify a child’s gender identity overtly or covertly; the purpose is to guide and support the child and family through the different challenges and needs as they emerge. *Id.* at S73-S74.

For children experiencing the onset of puberty, treatment can include medication to prevent further progression of puberty (“pubert[y] blockers”). 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, 3880-83 (2017), <https://academic.oup.com/jcem/article/102/11/3869/4157558>. 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 their body is appropriate. *Id.* at 3880; Am. Psych. Ass'n *Guidelines, supra*, at 842; WPATH *Standards of Care, supra*, at S112-S113.

Other treatments can be medically beneficial for older transgender individuals. For example, for some adults and adolescents, hormone treatment which helps develop secondary sex characteristics that affirm an individual's gender identity is medically necessary to treat their gender dysphoria. *See* Am. Med. Ass'n, Policy H-185.950, *Removing Financial Barriers to Care for Transgender Patients* (last modified 2022), <https://policysearch.ama-assn.org/policyfinder/detail/Removing%20Financial%20Barriers%20to%20Care%20for%20Transgender%20Patients%20H-185.950?uri=%2FAMADoc%2FHOD.xml-0-1128.xml>; Am. Psych. Ass'n *Guidelines, supra*, at 861, 862; Center of Excellence for Transgender Health, Univ. of Cal., S.F., *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People* 23 (Madeline B. Deutsch ed., 2d ed.

2016), <https://transcare.ucsf.edu/sites/transcare.ucsf.edu/files/Transgender-PGACG-6-17-16.pdf>; WPATH *Standards of Care*, *supra*, at S110-S112. *Amicus curiae* the Endocrine Society, the oldest and largest global professional membership organization representing the field of endocrinology, considers these treatments to be the standard of care for gender dysphoria. Wylie C. Hembree et al., *supra*, at 3869-70; *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, 4260-61 (2016). Hormones have been clinically proven as an effective treatment for gender dysphoria with a low rate of complications. Jack L. Turban et al., *supra*; *see* Henk Asscheman et al., *A Long-Term Follow-Up Study of Mortality in Transsexuals Receiving Treatment with Cross-Sex Hormones*, 164 *Eur. J. Endocrinology* 635 (2011), <https://ejebio.scientifica.com/view/journals/eje/164/4/635.xml>; Paul J. van Kesteren et al., *Mortality and Morbidity in Transsexual Subjects Treated with Cross-Sex Hormones*, 47 *Clinical Endocrinology* 337 (1997). Additionally, with regard to adults, surgical interventions can also be an appropriate and medically necessary treatment for some patients. WPATH *Standards of Care*, *supra*, at S128-S130.

Ultimately—regardless of the particular treatments required for a specific individual and when such treatments begin—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. Walter Bockting & Eli Coleman, *Developmental Stages of the Transgender Coming-Out Process: Toward an Integrated Identity*, in *Principles of Transgender Medicine and Surgery* 185, 202-03 (Randi Ettner et al., eds., 2d ed. 2013). Adopting appropriate gender-affirming medical treatment, particularly during adolescence, can result in dramatic improvements in mental well-being. *See, e.g.*, Diana M. Tordoff et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, JAMA Network Open (Feb. 25, 2022), https://jamanetwork.com/journals/jamanetworkopen/articlepdf/2789423/tordoff_2022_oi_220056_1658508882.09639.pdf (finding youth receiving puberty blockers and gender-affirming hormones to experience 60% lower odds of moderate to severe depression and 73% lower odds of self-harm or suicidal thoughts).

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

The West Virginia statute at issue in this case bans all transgender female students from participating in school sports consistent with their gender identity. West Virginia Code § 18-2-25d(c). Under the statute, transgender female students can either: (1) not participate in school sports at all, or (2) participate in those sports as cisgender males. *Id.* This ban can lead to severe adverse consequences for the

health and well-being of transgender female students. Forcing a transgender female student to participate on a sports team identifying as a cisgender male can exacerbate the harmful effects of gender dysphoria and goes against the medical consensus to treat gender dysphoria by supporting the transgender individual in living her life according to her gender identity. Alternatively, if they refuse to identify as a cisgender male, transgender female students can be forced to forgo student athletics entirely, depriving them of the myriad benefits—including social, physical, and mental-health benefits—that participation in sports can provide. Either way, the effect of the West Virginia statute is deleterious to the health and well-being of transgender female students.

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

For transgender individuals, being treated differently as a result of their transgender identity can cause tremendous pain and harm. *See, e.g.,* Sam Winter et al., *Transgender People: Health at the Margins of Society*, 388 *Lancet* 390, 394 (2016). Exclusionary laws that prevent transgender girls and women from participating in school sports consistent with their gender identity—an important facet of their lives—can disrupt medically appropriate treatment protocols.

As discussed above, the appropriate protocol for treating gender dysphoria includes aligning the body and outward expression with one's gender identity. This

is particularly important in school environments, which “play a significant role in the social and emotional development of children” and where “[e]very child has a right to feel safe and respected at school.” AAP Policy Statement, *supra*, at 9. Bullying, harassment, and abuse experienced by transgender students can result in greater risk for post-traumatic stress disorder, depression, anxiety, and suicidality. Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 *Developmental Psych.* 1580, 1581-82 (2010), https://familyproject.sfsu.edu/sites/default/files/documents/FAP_School%20Victimization%20of%20Gender-nonconforming%20LGBT%20Youth.pdf. As noted above, social transition by transgender youth is a critical part of treating gender dysphoria, and this includes all types of school activities such as participating on school sports teams that align with their gender identity. WPATH *Standards of Care*, *supra*, at S76. Denying children the ability to fully express their gender identity in schools, as the West Virginia law does, makes it difficult if not impossible for transgender children to live in accordance with their gender identity and thwarts the appropriate medical treatment for these children. Lack of appropriate treatment, in turn, increases the rate of negative health outcomes, substance use, and suicide for transgender children. *See* Turban et al., *supra*, at 6-7 (finding a significant inverse association between

treatment with pubertal suppression during adolescence and lifetime suicidal ideation among transgender adults who sought out this treatment).

Exclusionary laws can exacerbate the risk of “anxiety and depression, low self-esteem, engaging in self-injurious behaviors, suicide, substance use, homelessness, and eating disorders among other adverse outcomes” that many transgender individuals face. Am. Psych. Ass’n & Nat’l Ass’n of School Psychs., *Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools* (2015), <https://www.apa.org/about/policy/orientation-diversity> [hereinafter “APA/NASP Resolution”]. Those risks are already all too serious. A 2019 report from the Centers for Disease Control and Prevention found that transgender high school students were more likely than cisgender high school students to report violence victimization, substance use, and suicide risk, with almost thirty-five percent of transgender high school students reporting attempting suicide compared to two percent of cisgender high school students. Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students —19 States and Large Urban School Districts, 2017*, 68 *Morbidity and Mortality Weekly Report* 67, 69 tbl.2 (2019), <http://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf>.

In addition, exclusionary laws perpetuate the perceived stigma of being transgender by forcing transgender individuals to disclose their transgender status, by marking them as “others,” and by conveying the State’s judgment that they are different and deserve inferior treatment. Research increasingly shows that stigma and discrimination have deleterious health consequences. *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>. These consequences have striking effects on the daily functioning and emotional and physical health of transgender people. *See, e.g.*, Am. Psychoanalytic Ass’n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra* (“[B]ias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health.”).

One study concluded that “living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses.” 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/>. As the American Psychological Association and the National Association of School Psychologists have concluded, “the notable burden of stigma and discrimination affects minority persons’ health

and well-being and generates health disparities.” APA/NASP Resolution, *supra*; see also Inst. of Medicine (US), Comm. on LGBT Health Issues & Rsch. Gaps & Opportunities, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* 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). There is thus every reason to anticipate that the West Virginia statute excluding transgender girls and women from school sports consistent with their gender identity can negatively affect their health.

Finally, exclusionary policies have a particularly deleterious effect on the social and emotional development of children and adolescents. Discrimination against and harassment of children and adolescents in their formative years can have negative effects that linger long after they leave the school environment. Unsurprisingly, unwelcoming school environments produce particularly poor educational outcomes for transgender individuals. See APA/NASP Resolution, *supra*; Emily A. Greytak et al., Gay, Lesbian & Straight Education Network (“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>. Poorer educational outcomes, standing alone, can lead to lower lifetime earnings and an increased likelihood of poorer health outcomes later in life.

See, e.g., Emily B. Zimmerman et al., *Understanding the Relationship Between Education and Health: A Review of the Evidence and an Examination of Community Perspectives in Population Health: Behavioral and Social Science Insights* 347 (Robert M. Kaplan et al., eds. 2015), <https://www.ahrq.gov/sites/default/files/publications/files/population-health.pdf>. Moreover, and as already discussed, exclusionary policies can 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. Toomey et al., *supra*, at 1581-82; see also APA/NASP Resolution, *supra*.

B. Preventing Transgender Female 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* the American Academy of Pediatrics concludes that “[o]rganized sports participation can be an important part of overall childhood and adolescent physical, emotional, social, and psychological health.” Kelsey Logan et al., *Organized Sports for Children, Preadolescents, and Adolescents*, 143 *Pediatrics* at 13 (2019), <https://publications.aap.org/pediatrics/article/143/6/e20190997/37135/Organized-Sports-for-Children-Preadolescents-and>. 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. *Id.* at 4-8. Excluding transgender female students from participating in organized sports based on their gender identity deprives them of these myriad potential benefits, which can adversely affect 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.” *Id.* at 4. In addition, participating in organized sports can increase academic achievement, high school graduation rates, and the likelihood of going to college.⁶ *Id.* at 5. This is especially relevant with regard to transgender students, who reported significantly higher drop-out rates as compared to their cisgender counterparts. *See* GLSEN, *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline Among LGBTQ Youth* 27 & fig.16 (2016), https://www.glsen.org/sites/default/files/2019-11/Educational_Exclusion_2013.pdf (finding 7.6% of transgender students said they may drop out of high school, as

⁶ 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.” Logan et al., *supra*, at 5.

opposed to 6% of genderqueer students, 2.3% of cisgender female students, and 2.1% of cisgender male students). With regard to life skills—the “skills that are required to deal with the demands and challenges of everyday life”—such as 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.” Logan et al., *supra*, at 5.

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.” *Id.* at 5-6. Participation in organized sports can promote “citizenship, social success, positive peer relationships, and leadership skills.” *Id.* at 6.

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 emotional distress, depression, and suicidal behavior. These benefits can last well into adulthood. *Id.* at 6-7.

Physical fitness: Organized sports participation can also promote physical fitness in children and adolescents, including cardiovascular health, “endurance, speed, strength, and coordination,” and a lower likelihood of being overweight.

Additionally, engaging in organized sports during adolescence increases the likelihood of a physically active lifestyle later in life. *Id.* at 7-8.

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, can experience adverse health outcomes. They can be hindered in their acquisition of physical, academic, and life skills, and in their social development. They can also experience lower levels of mental and physical health.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully urge this Court to reverse the district court's opinion and order.

Date: April 3, 2023

Respectfully submitted,

/s/ Howard S. Suskin

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CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 6,090 words, excluding those parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5), (6) because it has been prepared in a proportionately spaced typeface using Microsoft Office Word 365 in Times New Roman using 14-point font for the main text and footnotes.

Dated: April 3, 2023

/s/ Howard S. Suskin

Howard S. Suskin

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Brief to be electronically filed with the Clerk of Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on April 3, 2023. I further certify that all participants in this case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

Date: April 3, 2023

/s/ Howard S. Suskin

Howard S. Suskin

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
APPEARANCE OF COUNSEL FORM

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THE CLERK WILL ENTER MY APPEARANCE IN APPEAL NO. 23-1078 as

Retained Court-appointed(CJA) CJA associate Court-assigned(non-CJA) Federal Defender

Pro Bono Government

COUNSEL FOR: American Academy of Pediatrics, American Medical Ass'n, American Medical

Women's Ass'n, Endocrine Society, GLMA, World Pro. Ass'n for Transgender Health as the
 (party name)

appellant(s) appellee(s) petitioner(s) respondent(s) amicus curiae intervenor(s) movant(s)

/s/ Howard S. Suskin

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Date

NO. 23-1078

**In the United States Court of Appeals
for the Fourth Circuit**

B.P.J., by her next friend and mother: HEATHER JACKSON,
Plaintiffs-Appellants,

v.

**WEST VIRGINIA STATE BOARD OF EDUCATION; HARRISON
COUNTY BOARD OF EDUCATION; WEST VIRGINIA SECONDARY
SCHOOL ACTIVITIES COMMISSION; W. CLAYTON BURCH, in his
official capacity as State Superintendent; and DORA STUTLER, in her official
capacity as Harrison County Superintendent,**
Defendants-Appellees,

and

THE STATE OF WEST VIRGINIA and LAINEY ARMISTEAD,
Intervenors-Appellees.

On Appeal from the United States District Court
for the Southern District of West Virginia, Charleston Division

Case No. 2:21-cv-00316

Hon. Joseph R. Goodwin, District Court Judge

**MOTION OF *AMICI CURIAE* AMERICAN ACADEMY OF PEDIATRICS,
AMERICAN MEDICAL ASSOCIATION, AND FOUR ADDITIONAL
HEALTH CARE ORGANIZATIONS FOR LEAVE TO FILE BRIEF IN
SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL**

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Pursuant to Federal Rule of Appellate Procedure 29(a), the American Academy of Pediatrics, the American Medical Association, and Four Additional Health Care Organizations move for leave to file an *amici curiae* brief in support of Plaintiffs-Appellants and reversal. The proposed brief accompanies this Motion.

INTEREST AND IDENTITY OF *AMICI CURIAE*

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

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

The American Medical Association (“AMA”) is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and

medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state.

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

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, which focuses on hormone conditions such as diabetes, obesity, osteoporosis, infertility, rare cancers, thyroid conditions, and the care of gender dysphoria/incongruence and transgender medicine. The Endocrine Society has published evidence-based clinical practice guidelines on gender dysphoria/incongruence, which are recognized around the world.

GLMA: Health Professionals Advancing LGBTQ+ Equality is a national organization committed to ensuring health equity for lesbian, gay, bisexual, transgender, queer (“LGBTQ+”) and equality for LGBTQ+ health professionals in their work and learning environments. To achieve this mission, GLMA utilizes the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research.

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

All *amici* share a commitment to improving the physical and mental health of everyone—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public-health consequences of laws and policies. *Amici* submit this proposed 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.

DESIRABILITY OF AN *AMICUS* BRIEF

Amici feel a responsibility to inform this Court about the nearly-universally agreed upon best practices when treating transgender individuals for gender dysphoria and providing gender-affirming care. *Amici*, as leading healthcare providers, are in a unique position to inform the Court about the proper treatments for people experiencing gender dysphoria, and the negative health outcomes when gender dysphoria is left untreated. *Amici* believe that the information contained in their proposed brief will assist the Court in its deliberations in the present appeal by presenting a complete and accurate description of the medical conditions and treatments at issue in this appeal.

Proposed *Amici Curiae* therefore respectfully request that the Court grant them permission to file an *amicus curiae* brief in support of Plaintiffs-Appellants and reversal. Counsel for *Amici Curiae* reached out to the parties to seek consent to file this brief. Counsel for Plaintiffs consented to the filing of the *amicus* brief, as did Counsel for the Intervenors, the State of West Virginia and Lainey Armistead, and Counsel for Defendants-Appellees the West Virginia State Board of Education and W. Clayton Burch, and Harrison County Board of Education and Superintendent

Stutler. Counsel for Defendant-Appellee the West Virginia Secondary School Activities Commission took no position on the filing of the brief. Although *amici* do not wish to waste the Court's and parties' resources litigating this issue, Federal Rule of Appellate Procedure 29(a)(2) suggests a motion is necessary in this instance.

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

WHEREFORE, for the foregoing reasons and those included in the brief of *amici curiae*, the American Academy of Pediatrics, the American Medical Association, and Four Additional Health Care Organizations respectfully request leave to file the proposed brief.

Dated: April 3, 2023

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because it contains 984 words, excluding those parts of the brief exempted by Federal Rule of Appellate Procedure 27(a)(2)(B).

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Dated: April 3, 2023

/s/ Howard S. Suskin
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CERTIFICATE OF SERVICE

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Date: April 3, 2023

/s/ Howard S. Suskin

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