No. 21-10486

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DARCY CORBITT, et al.,
Plaintiffs-Appellees,

v.

HAL TAYLOR, in his official capacity as Secretary of the Alabama Law Enforcement Agency, et al.,
Defendants-Appellants.

On Appeal from the United States District Court for the
Middle District of Alabama, Northern Division (No. 2:18-cv-00091-MHT-SMD)

BRIEF OF AMERICAN MEDICAL ASSOCIATION, AMERICAN PSYCHIATRIC ASSOCIATION, NATIONAL ASSOCIATION OF NURSE PRACTITIONERS IN WOMEN'S HEALTH, AND SOCIETY OF OB/GYN HOSPITALISTS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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CERTIFICATE OF INTERESTED PERSONS
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Pursuant to Circuit Rule 26.1-1 and Federal Rule of Appellate Procedure 29(a)(4)(A), *amici curiae* hereby certify that the following individuals and entities are known to have an interest in the outcome of this case:

Alabama Center for Law and Liberty

Alabama Law Enforcement Agency

Alabama Policy Institute

American Civil Liberties Union Foundation

American Civil Liberties Union Foundation of Alabama

American Civil Liberties Union of Alabama

American Medical Association

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Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 through 26.1-3, each proposed *amicus curiae* hereby certifies that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

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STATEMENT OF THE ISSUE

The question for this Court's consideration is whether the district court's Order declaring Policy Order 63 unconstitutional should be affirmed.

INTERESTS OF *AMICI CURIAE*[1]

Amici curiae submit this brief to inform this Court of the medical consensus regarding what it means to be transgender; provide a brief overview of the treatment protocols used to bring the body into alignment with one's gender identity; and the predictable harms to the health and well-being of transgender individuals that would occur if Policy Order 63 is held to be constitutional.

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 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

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

betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state, including Alabama.

Amicus curiae, the American Psychiatric Association ("APA") is a nonprofit organization representing over 38,800 physicians who specialize in the practice of psychiatry. APA members engage in research and education diagnosis and treatment of mental health and substance use disorders, and are frontline physicians treating patients who experience mental health and/or substance use disorders.

Amicus curiae, the National Association of Nurse Practitioners in Women's Health ("NPWH") is a national professional membership organization. NPWH is the nation's leading voice for courageous conversations about women's health. NPWH represents nearly 12,000 certified women's health nurse practitioners in the United States. In its clinics and in its culture, women's health nurse practitioners champion state-of-the-science healthcare that holistically addresses the unique needs of women across their lifetimes. NPWH elevates the health issues others overlook and compel attention on women's health from providers, policymakers, and researchers.

Other advanced practice registered nurses rely on NPWH for authoritative resources and education that improve women's health and wellness through evidence-based practice. NPWH pioneers policies to address gender disparities and forges strategic partnerships that advance health equity and holistic models of care. NPWH's mission is to ensure the provision of quality primary and specialty

healthcare to women of all ages by women's health and women's health-focused nurse practitioners and includes protecting and promoting a woman's right to make her own choices regarding her health within the context of her personal, religious, cultural, and family beliefs.

Since its inception in 1980, NPWH has been a trusted source of information on nurse practitioner education, practice, and women's health issues. NPWH works with a wide range of individuals and groups within nursing, medicine, the healthcare industry, and the women's health community.

Amicus curiae, the Society of OB/GYN Hospitalists ("SOGH") is a national organization of more than 1,500 women's healthcare physicians and medical professionals and is the only national medical subspecialty organization whose members specialize in inpatient obstetrics and gynecologic care. The SOGH is committed to improving outcomes for hospitalized women and to patient safety and quality care for all women. As frontline, hospital-based providers of women's healthcare, the SOGH is uniquely positioned to advocate for justice and tolerance through evidence-based care, research, and policy development. The SOGH rejects discriminatory practices that jeopardize patient care.

SUMMARY OF ARGUMENT

Transgender individuals have a gender identity that is incongruent with the sex they were assigned at birth. The medical community's understanding of what it means to be transgender has advanced greatly over the past century. The medical community now understands 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—0.6% of the adult population.

Many transgender individuals, like Plaintiffs, have a condition called gender dysphoria, which is characterized by clinically significant distress and impairment of function resulting from the incongruence between one's gender identity and the sex assigned at birth. The international medical consensus regarding treatment for gender dysphoria is to assist the patient to live in accordance with their gender identity, thus alleviating the distress. 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; and use of identity documents most consistent with the individual's gender identity), and hormone therapy and surgical interventions.

Critically, not all transgender people want or need surgery. One reason is because the surgical interventions required by Alabama law effectively sterilize the

patient in almost all cases. Transgender people who wish to conceive and/or give birth to biological children thus may not want surgical intervention. Surgery that is contrary to a patient's wishes and obtained only to access the benefits of an accurate driver's license runs contrary to best practices for treating gender dysphoria. Treatment should be shaped by what alleviates the patient's distress and anxiety—not by what the State requires to update certain documentation. It is also inconsistent with medical ethics to perform unwanted surgery that undermines patient autonomy, which medical professionals have a duty to respect. Moreover, the psychological and physiological consequences of this coerced sterilization could be severe.

ARGUMENT AND CITATIONS OF AUTHORITY

I. What It Means To Be Transgender And To Suffer From Gender Dysphoria.

Transgender individuals have a "gender identity"—a "deeply felt, inherent sense" of their gender—that is not aligned with the sex assigned to them at birth.[2] Transgender people differ from cisgender (*i.e.*, non-transgender) individuals, whose

[2] Am. Psych. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 834 (2015) (hereinafter "Am. Psych. Ass'n *Guidelines*"); *see also* David A. Levine & Comm. on Adolescence, American Academy of Pediatrics Technical Report, *Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 Pediatrics e297, e298 (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. Psych. Ass'n *Guidelines*, *supra*, at 834.

gender identity aligns with the sex assigned at birth.[3]

While recent estimates suggest that approximately 1.4 million transgender adults live in the United States (0.6% of the adult population),[4] these "population estimates likely underreport the true number of [transgender] people."[5] People of all different races and ethnicities identify as transgender.[6] They live in every state, serve in our military, and raise children.[7] Gender identity is distinct from and does not predict sexual orientation; transgender people, like cisgender people, may identify

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

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

[5] Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 832.

[6] *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., *Race and Ethnicity of Adults Who Identify as Transgender in the United States*, Williams Inst. 2 (2016), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Iden tified-Adults-in-the-US.pdf.

[7] Gary J. Gates & Jody L. Herman, *Transgender Military Service in the United States,* Williams Inst. (2014), http://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf; Sandy E. James et al., Nat'l Ctr. for Transgender Equal., *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., *Transgender Parenting: A Review of Existing Research,* Williams Inst. (2014), http://williamsinstitute.law.ucla.edu/research/parenting/transgender-parenting-oct-2014.

as heterosexual, gay, lesbian, bisexual, or asexual.[8]

The medical profession's understanding of gender has advanced considerably over the past fifty years. Throughout much of the twentieth century, individuals who were not gender conforming were often viewed as "perverse or deviant."[9] 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 caused significant harm to the individuals subjected to them.[10] The medical profession now recognizes that being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[11]

A. Gender Identity.

"*Gender identity* refers to a person's internal sense of being male, female, or

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[8] Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 835-36; James et al., *supra* note 7, at 246.

[9] Am. Psych. 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. Psych. Ass'n Task Force Report*").

[10] *Id.*; Substance Abuse and Mental Health Servs. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 13, 24-25 (2015), http://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf (hereinafter "*Ending Conversion Therapy*").

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

[another gender]."[12] Every person has a gender identity,[13] which cannot be altered voluntarily[14] or ascertained immediately after birth.[15] Gender identity is usually established in childhood, and many individuals become aware during childhood or later that their gender identity is not fully aligned with the sex they were assigned at birth.[16]

Some research—supported by brain scans and neuroanatomical studies[17]—suggests there may be biological influences for why some people are transgender,[18]

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

[13] *See* Caitlin Ryan, Family Acceptance Project, S.F. State Univ., *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.

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

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

[16] *Id.* at 836, 841-43.

[17] 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/.

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

including, for example, exposure of female-assigned individuals to elevated levels of testosterone in the womb.[19]

B. Gender Dysphoria.

Being transgender does not indicate any diminished social or professional capabilities, judgment, dependability, or stability.[20] However, many transgender individuals are diagnosed with gender dysphoria, a condition that is characterized by clinically significant distress or impairment in social, occupational, or other important areas of functioning resulting from the incongruence between an individual's gender identity and birth-assigned sex.[21] Plaintiffs in this case are among the many transgender individuals who suffer from gender dysphoria.[22]

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 adolescents and adults as follows: "A

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

[20] *Position Statement on Discrimination Against Transgender and Gender Variant Individuals*, *supra* note 11.

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

[22] Corbitt Dep. at 30:1-33:22, *Corbitt v. Taylor*, No. 18-cv-00091 (M.D. Ala. Feb. 8, 2019), ECF No. 48-2; Clark Dep. at 24:4-27:5, *Corbitt*, No. 18-cv-0009, (M.D. Ala. Feb. 8, 2019), ECF No. 48-1; Memorandum in Support of Plaintiffs' Motion for Summary Judgment at 17, *Corbitt*, No. 18-cv-00091 (M.D. Ala. Jan. 15, 2021), ECF No. 51.

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."[23] 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.[24]

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.[25] 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.

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[23] *DSM-5*, *supra* note 21, at 451-53.

[24] *Id.* at 452.

[25] *See* Am. Psych. Ass'n Task Force Report, *supra* note 9, at 45; *Ending Conversion Therapy*, *supra* note 10, at 2-3.

If untreated, gender dysphoria can contribute to debilitating distress, depression, impairment of function, substance use, self-mutilation to alter one's genitals or secondary sex characteristics, other self-injurious behaviors, and suicide.[26] Transgender individuals also are frequently subjected to prejudice and discrimination in multiple areas of their lives, which exacerbates these negative health outcomes.[27]

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 sex assigned at birth.[28] There is no evidence that these methods alleviate gender dysphoria or that they can prevent someone from being

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[26] *See, e.g.*, *DSM-5*, *supra* note 21, at 455, 458; Stephanie A. Brill & Rachel Pepper, *The Transgender Child: A Handbook for Families and Professionals* 202 (2008) (Discussing risk of self-mutilation).

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

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

transgender.[29] To the contrary, they can "often result in substantial psychological pain by reinforcing damaging internalized attitudes,"[30] and can damage family relationships and individual functioning by increasing feelings of shame.[31]

Now, the medical community's consensus is not to seek to change a patient's gender identity but rather to help transgender individuals live consistently with their gender identity.[32] That consensus reflects the understanding that a transgender

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[29] *Ending Conversion Therapy*, *supra* note 10, at 26; Jack Drescher, *Controversies in Gender Diagnoses*, 1 LGBT Health 9, 12 (2013).

[30] 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.

[31] 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).

[32] *See, e.g.*, American Medical Ass'n Policy No. H-160.991, *Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations* (2018), https://policysearch.ama-assn.org/policyfinder/detail/transgender?uri=%2FAMADoc%2FHOD.xml-0-805.xml (Noting that the AMA "opposes, the use of 'reparative' or 'conversion' therapy for sexual orientation or gender identity."); Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 847 ("Given the strong evidence for the positive influence of affirmative care, psychologists are encouraged to facilitate access to and provide trans-affirmative care to TGNC people. Whether through the provision of assessment and psychotherapy, or through assisting clients to access hormone therapy or surgery, psychologists may play a critical role in empowering and validating TGNC adults' and adolescents' experiences and increasing TGNC people's positive life outcomes . . . ."); American Academy Child & Adolescent Psychiatry, Policy Statements, *Sexual Orientation, Gender Identity, and Civil Rights*

individual "consistently, persistently, and insistently" identifies as a gender different from the sex they were assigned at birth.[33] In the last few decades, transgender people and those suffering from gender dysphoria have gained widespread access to gender-affirming psychological and medical support.[34] For over thirty years, the generally-accepted treatment protocols for gender dysphoria[35] have aimed at alleviating the distress associated with the incongruence between gender identity and birth-assigned sex.[36] These protocols are laid out in the *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (7th Version, 2011)

(2009), https://www.aacap.org/aacap/Policy_Statements/2009/Sexual_Orientation_Gender_Identity_and_Civil_Rights.aspx (Noting that the AACAP "affirms the right of all people to their orientation and identity without interference or coercive interventions attempting to change sexual orientation or gender identity.").

[33] *See* Meier & Harris, *supra* note 14, at 1; *see also* Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, J. Sch. Nursing 1, 5-6 (2017)*; Adams v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1302 (11th Cir. 2020) ("Because Mr. Adams was assigned a female sex at birth but identifies consistently and persistently as a boy and presents as masculine, he defies the stereotype that one's gender identity and expression should align with one's birth sex.").

[34] Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 835; World Pro. Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, at 8-9 (7th Version, 2011) (hereinafter "WPATH *Standards of Care*").

[35] Earlier versions of DSM-5 used different terminology, *e.g.*, gender identity disorder, to refer to this condition. *See* Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 861.

[36] American Medical Ass'n, Comm. on Human Sexuality, *Human Sexuality* 38 (1972).

developed by the World Professional Association for Transgender Health ("WPATH").[37] Many of the major medical and mental health groups in the United 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.[38]

The recommended treatment for transgender people with gender dysphoria includes assessment, counseling, and, as appropriate, social transition, puberty-blocking drug treatment, hormone therapy, and surgical interventions to bring the body into alignment with one's gender identity.[39] However, each patient requires an

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[37] WPATH *Standards of Care*, *supra* note 34.

[38] These organizations include the American Psychological Association and the American Academy of Pediatrics. *See* Am. Psych. Ass'n Task Force Report, *supra* note 9, at 32; AAP Technical Report, *supra* note 2, at e307-08. Additionally, "[p]rofessional associations that have issued statements in support of the WPATH Standards of Care include the American Medical Association, the Endocrine Society, the American Psychiatric Association, the American Psychological Association, the American Academy of Family Physicians, the National Commission of Correctional Health Care, the American Public Health Association, the National Association of Social Workers, the American College of Obstetrics and Gynecology, the American Society of Plastic Surgeons, and the World Health Organization." World Professional Ass'n for Transgender Health, WPATH Policy Statements, *Position Statement on Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A.* (Dec. 21, 2016), https://www.wpath.org/newsroom/medical-necessity-statement.

[39] Am. Psych. Ass'n Task Force Report, *supra* note 9, at 32-39; *see* Am. Psych. Ass'n & Nat'l Ass'n of Sch. Psychologists, *Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools* (2015), http://www.apa.org/about/policy/orientation-diversity.aspx (hereinafter "APA/NASP *Resolution*"); Am. Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria,

individualized treatment plan that accounts for that patient's specific needs.[40]

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 includes grooming and dressing in a manner typically associated with one's gender identity; using restrooms and other single-sex facilities consistent with that identity; publicly identifying oneself as that gender; adopting a new name; and using different pronouns.[41] Living consistently with one's gender identity also includes carrying identification consistent with that gender identity, and having that identity properly recognized on official documents.[42] Not only are accurate driver's licenses important for many

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Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists 16-18 (2016); AAP Technical Report, *supra* note 2, at e307-09. Some clinicians still offer versions of "reparative" or "conversion" therapy based on the idea that being transgender is a mental disorder. However, all of the leading medical professional organizations that have considered the issue have explicitly rejected such treatments. *See* American Medical Ass'n, Policy No. H-160.991, *supra* note 32; Am. Sch. Counselor Ass'n, *The School Counselor and LGBTQ Youth* 37, 38 (2016), http://moschoolcounselor.org/files/2014/07/ASCA_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* note 2, at e307; *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression, supra* note 30.

[40] Am. Psych. Ass'n Task Force Report, *supra* note 9, at 32.

[41] AAP Technical Report, *supra* note 2, at e308; Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 840.

[42] *See, e.g.*, Arjee Restar et al., *Legal gender marker and name change is associated with lower negative emotional response to gender-based mistreatment and improve mental health outcomes among trans populations*, 11 SSM Population Health 1, 6 (2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7229467/pdf/main.pdf

transgender individuals, but access to accurate identification is also a matter of physical and psychological safety.[43]

For some adults and adolescents, hormone treatment to feminize or masculinize the body may be medically necessary to treat their gender dysphoria.[44] 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.[45] Hormone treatment alters the appearance of the

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(noting that "[c]ompared to participants who did not change their gender ma[r]ker on their passport or driver's license, those who changed their gender marker on both documents had significantly lower odds of experiencing emotionally upsetting response due to gender-based mistreatment . . . , anxiety . . . , somatization . . . , and global psychiatric distress . . . ."); *see also* American Medical Ass'n Policy No. H-65.967, *Conforming Sex and Gender Designation on Government IDs and Other Documents* (2019), https://policysearch.ama-assn.org/policyfinder/detail/Conforming%20Sex%20and%20Gender%20Designation%20on%20Government%20IDs%20and%20Other%20Documents%20H-65.967?uri=%2FAMADoc%2FHOD.xml-0-5096.xml ("support[ing] policies that allow for a sex designation or change of designation on all government IDs to reflect an individual's gender identity, as reported by the individual and without need for verification by a medical professional") (emphasis omitted).

[43] *See* Restar et al., *supra* note 42, at 6-7.

[44] American Medical Ass'n, Policy No. H-185.950, *Removing Financial Barriers to Care for Transgender Patients* (2016); Am. Psych. Ass'n *Guidelines*, *supra* note 2, at 861, 862; Madeline B. Deutsch, Center of Excellence for Transgender Health, Univ. Cal., S.F., *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People* 23 (2d ed. 2016); WPATH *Standards of Care, supra* note 34, at 33-34, 54.

[45] *See* Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clinical Endocrinology & Metabolism 3869, 3869-70 (2017); *see also* Alessandra D. Fisher et al., *Cross-Sex Hormone Treatment and Psychobiological Changes in*

patient's genitals and produces secondary sex characteristics such as increased muscle mass, increased facial hair, and a deepening of the voice in transgender boys and men, and breast growth and decreased muscle mass in transgender girls and women.[46]

Surgical interventions are part of an appropriate course of medical care for *some* transgender individuals, but they are not universally necessary.[47] These procedures include chest reconstruction surgery for transgender men, breast augmentation (*i.e.* implants) for transgender women, or genital surgery.[48] Although these surgical procedures can be effective in reducing gender dysphoria and improving mental health,[49] genital surgery, in particular, for many reasons is not universally recommended.[50] Importantly, the WPATH Standards of Care explain that surgical interventions may not "achiev[e] a result that will alleviate their gender dysphoria" if patients do not first "have a realistic expectation of outcomes" that can

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Transsexual Persons: Two-Year Follow-Up Data, 101 J. Clinical Endocrinology & Metabolism 4260 (2016).

[46] Hembree et al., *supra* note 45, at 3886-89.

[47] WPATH *Standards of Care*, *supra* note 34, at 54.

[48] Hembree et al., *supra* note 45, at 3893-94; *see also* WPATH *Standards of Care*, *supra* note 34, at 57-58.

[49] 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); Annelou L.C. de Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 Pediatrics 696 (2014).

[50] *See* WPATH *Standards of Care*, *supra* note 34, at 21.

typically only be reached after consultation with both the individual's mental health provider and surgical team.[51] The district court noted one such outcome of genital surgery: that it "results in permanent infertility in 'almost all cases[.]'"[52] Thus, for transgender individuals seeking to have biological children, such surgery would prevent them from doing so.

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.[53] While surgical intervention is an appropriate treatment for some individuals (including some individuals with gender incongruence that are not diagnosed with gender dysphoria), the WPATH Standards of Care indicate that not all transgender individuals can be candidates for surgery. In particular, surgery is not appropriate for anyone with

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[51] *Id.* at 55-57.

[52] Opinion at 7, *Corbitt v. Taylor*, No. 18-cv-00091 (M.D. Ala. Jan. 15, 2021), ECF No. 101.

[53] 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 et al. eds., 2d ed. 2016).

uncontrolled mental health or medical concerns, or who is under the age of legal majority.[54]

Moreover, surgical and other medical treatments are often cost-prohibitive for many patients. Many health insurance plans do not cover surgical interventions—the cost of which can reach over $100,000.[55] The National Center for Transgender Equality's 2015 Transgender Equality Survey found that "[m]ore than half (55%) of those who sought coverage for transition-related surgery in the past year were denied,"[56] (emphasis omitted), leaving many transgender individuals to pay out-of-pocket or to forego surgical treatment.[57]

Some transgender people can and often do eliminate gender dysphoria and experience social transition entirely without surgery. For some people, interventions such as counseling, social transition, puberty-blocking medications, and hormone

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[54] WPATH *Standards of Care*, *supra* note 34, at 59-60.

[55] *See, e.g.,* Press Release, Mount Sinai, "The Staggering Costs of Being Transgender in the US, Where Even Patients with Health Insurance Can Face Six-figure Bills"- Benji Jones (July 10, 2019), https://www.mountsinai.org/about/newsroom/2019/the-staggering-costs-of-being-transgender-in-the-us-where-even-patients-with-health-insurance-can-face-sixfigure-bills-benji-jones; Alyssa Jackson, *The high cost of being transgender*, CNN Health (July 31, 2015), https://www.cnn.com/2015/07/31/health/transgender-costs-irpt/index.html.

[56] James et al., *supra* note 7, at 8.

[57] *See* Jackson, *supra* note 55.

therapy can provide all of the treatment necessary for an individual to alleviate gender dysphoria.[58]

II. Policy Order 63 Endangers The Health, Safety, And Well-Being Of Transgender People In Alabama.

Transgender people should not have to undergo sterilizing surgery to obtain a driver's license with a sex that matches their gender identity. Policy Order 63 presents transgender people in Alabama who do not want—or who cannot afford—genital surgery with an impossible choice. The first option is to forgo the surgery and use a driver's license that is inconsistent with their gender identity. This option, as described more fully below, may result in transgender people experiencing negative health consequences from worsened gender dysphoria, stigma, and discrimination. Further, because not all transgender people are eligible candidates for surgical intervention, this requirement precludes them from ever being able to fully socially transition—impeding clinicians' ability to treat gender dysphoria. The second option is to undergo an irreversible, sterilizing surgery that they do not want.[59] This option is both inconsistent with best practices for treating gender dysphoria in many cases, and inconsistent with medical professionals' ethical

[58] WPATH *Standards of Care*, *supra* note 34, at 8 ("[W]hile many individuals need both hormone therapy and surgery to alleviate their gender dysphoria, others need only one of these treatment options and some need neither.") (citations omitted).
[59] *See, e.g.*, Clark Dep., *supra* note 22, at 42:16-21, 43:1-15; Corbitt Dep., *supra* note 22, at 60:19-21.

responsibilities to their patients. This option also exposes transgender patients to the severe physiological and psychological harms that accompany coerced sterilization. Neither option is compatible with the goals and the ethical responsibilities of the medical community.

A. Exclusionary Policies Exacerbate Gender Dysphoria And Perpetuate Stigma And Discrimination, Leading To Negative Health Outcomes.

Under Policy Order 63, transgender people who do not want or cannot afford surgery must use a driver's license that lists a sex that does not correspond with their gender identity. Thus, every time that transgender person has to show their license, they misgender themselves.[60] The incongruence can worsen gender dysphoria. This continual misgendering disrupts their social transition—a critical aspect of gender dysphoria treatment—and may lead to "vigilance, anxiety, and avoidance of social participation."[61] Conversely, a study of transgender people in states that eased restrictions on changing the sex listed in government documents "show[ed] that such legal changes . . . are associated with lower reports of depression, anxiety,

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[60] *See, e.g.*, Noah Grey Rosenzweig, *Every time I pull out my ID, I deadname myself. Transgender people can't live like this*, yahoo! news (Apr. 15, 2021), https://news.yahoo.com/every-time-pull-id-deadname-110250035.html (Describing "a choice many trans people are forced to contend with whenever they want to gain access to anything that requires ID — whether or not [to] deadname and misgender themselves, or risk someone else doing it and turning them away.").

[61] Ayden I. Scheim et al., *Gender-concordant identity documents and mental health among transgender adults in the USA: a cross-sectional study*, 5 Lancet Pub. Health e196, e202 (2020).

somatization, psychiatric distress, and emotionally upsetting response due to gender-based mistreatment."[62]

Incongruence between a transgender person's driver's license and their gender identity can also lead to discrimination. It is well documented that transgender individuals experience widespread prejudice and discrimination, and that this discrimination frequently takes the form of violence, harassment, or other abuse.[63] For example, in a Virginia survey of transgender individuals, 41% of participants reported that they had experienced transgender-related discrimination in healthcare, employment, or housing, and many had experienced discrimination in more than one area.[64]

Exclusionary policies perpetuate such stigma and discrimination, both by forcing transgender individuals to disclose their status, and by marking transgender individuals as "others." Policies like Policy Order 63 ensure that many transgender individuals are unable to obtain and use a driver's license with a gender marker that corresponds to their gender identity like everyone else. This forces them to disclose

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[62] *See* Restar et al., *supra* note 42, at 6.

[63] Jamie M. Grant et al., Nat'l Ctr. for Transgender Equal., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 2-8 (2011), http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf (hereinafter "*Injustice at Every Turn*").

[64] 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, 1825 (2013).

their status every time a State ID is required, further stigmatizing them as "others."

Compelled disclosure of one's transgender status is undeniably harmful. Control over the circumstances in which a person may choose to disclose being transgender is fundamental to the development of their individuality and autonomy.[65] Exclusionary policies rob transgender individuals of the personal choice regarding whether and when to reveal their transgender experience. Disclosure of one's status as transgender is often anxiety-inducing and fraught, especially disclosure to a stranger or someone who the person does not trust; it is critical to a person's sense of safety, privacy, and dignity to have control over when and how that information is shared.

Compelled disclosure also exposes transgender individuals to the risk of harassment or abuse. One survey of U.S. transgender people found that one in five had been harassed by police, and 6% had been physically assaulted by police.[66] Such violence against transgender people is tragically common and has only worsened in recent years.[67]

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[65] American Academy of Pediatrics, *AAP Opposes Legislation that Discriminates Against Transgender Children* (May 1, 2016), https://aapdc.org/american-academy-of-pediatrics-opposes-legislation-that-discriminates-against-transgender-children/.

[66] *Injustice at Every Turn*, *supra* note 63, at 160.

[67] *See, e.g.*, Human Rights Campaign, *An Epidemic of Violence: Fatal Violence Against Transgender and Gender Non-Conforming People in the U.S. in 2020* (2020), https://reports.hrc.org/an-epidemic-of-violence-fatal-violence-against-transgender-and-gender-non-confirming-people-in-the-united-states-in-

Compelled disclosure can therefore lead to negative health outcomes for transgender individuals. Research increasingly shows that stigma and discrimination can have deleterious health consequences,[68] including striking effects on the daily functioning and emotional and physical health of transgender persons.[69] A 2012 study of transgender adults found a rate of hypertension of twice that found in the general population, which it attributed to the known effects of emotions on cardiovascular health.[70] Another study concluded that "living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses."[71] As the American Psychological Association has concluded, "the notable burden of stigma and discrimination affects minority persons' health and well-being and generates health disparities."[72] Thus, medical professionals have

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2020?_ga=2.246024003.670318575.1625596039-696529882.1625596039#epidemic-numbers.

[68] *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.

[69] *See, e.g.*, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra* note 30 ("bias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health").

[70] *See* Randi Ettner et al., *Secrecy and the Pathogenesis of Hypertension*, Int'l J. Family Med. (2012).

[71] Bradford et al., *supra* note 64, at 1827.

[72] APA/NASP *Resolution*, *supra* note 39, at 3-4; *see also* 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*

good reason to anticipate that exclusionary policies will negatively affect the health of transgender individuals, even without the added dangers of targeted physical or mental abuse.

B. Performing Surgery That A Patient Does Not Want Is Inconsistent With Best Practices For Treating Gender Dysphoria, And With Medical Ethics.

Treating gender dysphoria involves psychiatric evaluation and may involve a combination of hormonal therapy or gender-affirming surgery.[73] For some patients, this surgery is a critical aspect of their treatment.[74] However, "[e]very physician should be aware that not all individuals suffering from [gender dysphoria] want or need all three elements of therapy."[75] Treatment ultimately depends on what the patient wants and what alleviates the patient's symptoms. Accordingly, the American College of Obstetricians and Gynecologists counsels: "Medication and surgery are not required parts of transition and should not be required for legally changing one's name or gender marker on official documents ([e.g.], . . . driver's license)."[76]

Understanding 13 (2011) (noting that "prejudice, discrimination, and violence" underlie the "health disparities" between transgender and cisgender populations).

[73] Marta R. Bizic et al., *Gender Dysphoria: Bioethical Aspects of Medical Treatment*, BioMed Rsch. Int'l 1-2 (June 2018).

[74] *Id.*

[75] *Id.* at 5.

[76] ACOG Comm. Opinion, *Health Care for Transgender and Gender Diverse Individuals*, 137 Am. Coll. of Obstetricians & Gynecologists e80 (2021),

Put simply, not all transgender people want or need to undergo surgery. In 2015, a comprehensive study of transgender individuals in the United States asked respondents about their surgical preferences. Among transgender people who were first identified as female on their birth certificates, one in ten say they do not want chest surgery, nearly one in five say they do not want a hysterectomy, and approximately half of all respondents say they do not want a metoidioplasty or phalloplasty—surgeries that create penises.[77] Among transgender people first identified as male on their birth certificates, nearly one in four say they do not want augmentation mammoplasty, and one in five say they do not want vaginoplasty or labiaplasty—surgeries that create vaginas.[78]

The reasons for these responses are numerous, but one major consideration is the ability to have children. The surgery Alabama requires to change the sex listed on one's driver's license would result in complete sterilization in almost all cases.[79] Many transgender people want to have biological children,[80] and surgery would

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https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2021/03/health-care-for-transgender-and-gender-diverse-individuals.pdf.

[77] James et al., *supra* note 7, at 101 tbl.7.4.

[78] *Id.* at 102 tbl.7.5.

[79] *See id.* (Noting that gender-affirming surgeries can render transgender patients sterile).

[80] Philip J. Cheng et al., *Fertility Concerns of the Transgender Patient*, 8 Translational Andrology & Urology 209, 210 (2019).

preclude their ability to grow their families, a grievous harm.

Disregard for patients' needs also has implications for *amici*'s ethical duties. Respect for patient autonomy is a crucial facet of a medical professional's ethical responsibilities.[81] Patient autonomy requires that patients be able to make the decisions that work best for them and are free from outside pressure or perverse incentives.[82] Thus, laws like Policy Order 63, which make surgery a prerequisite for patients to change their government documents, conflict with that critical responsibility.[83]

C. Policy Order 63 Coerces Transgender Individuals Into Forced Sterilization, Leading To Negative Health Outcomes.

Coerced sterilization "occurs when financial or other incentives, misinformation, or intimidation tactics are used to compel an individual to undergo the procedure."[84] By predicating an accurate driver's license on a sterilizing surgery,

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[81] World Health Org., *Eliminating Forced, Coercive and Otherwise Involuntary Sterilization: An Interagency Statement* 9-10 (2014).

[82] *Id.*

[83] Nino Mladenovic & Joanna Erdman, *Gender-Affirming Medical Treatment and Change of Sex on Identity Documents: A Case Study in Health and Human Rights*, Open Soc'y Founds. Pub. Health Program & Univ. Toronto 22-23 (2010), https://www.opensocietyfoundations.org/uploads/cfc0908c-6c63-4ff5-9257-53adcb3926cc/gender-affirming-medical-treatment-change-sex-identity-documents-20110701.pdf.

[84] Human Rights Watch, A Briefing Paper, *Sterilization of Women and Girls with Disabilities* (Nov. 10, 2011, 5:47 PM), https://www.hrw.org/news/2011/11/10/sterilization-women-and-girls-disabilities#.

Policy Order 63 coerces patients into seeking surgery to obtain the legal benefits of an accurate driver's license. Aside from the interference with gender dysphoria treatment, coerced sterilization creates health problems in and of itself.

Coerced sterilization unsurprisingly results in significant physiological and psychological harm, including "hormonal imbalances, depression, anxiety, feelings of inadequacy, social isolation, loss of identity and self-worth, distrust in the healthcare system, and fear of authority."[85] Many of these conditions are already disproportionately high among transgender people.[86] By predicating accurate state identification on sterilization, Policy Order 63 exacerbates these existing health disparities and intensifies feelings of inadequacy, isolation, and low self-worth. Policy Order 63 condones the choices of some transgender individuals while condemning others, creating a harmful hierarchy in how the State treats transgender people. This hierarchy will likely exacerbate these negative health outcomes among transgender people.

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[85] Chaneesa Ryan et al., *Forced or Coerced Sterilization in Canada: An Overview of Recommendations for Moving Forward*, 16 Int'l J. Indigenous Health 275, 278 (2021).

[86] Katherine Schreiber, *Why Transgender People Experience More Mental Health Issues*, Psych. Today (Dec. 6, 2016), https://www.psychologytoday.com/us/blog/the-truth-about-exercise-addiction/201612/why-transgender-people-experience-more-mental-health.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully urge this Court to affirm the district court's decision declaring Policy Order 63 unconstitutional.

August 2, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5) because it contains 6,493 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

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

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August 2, 2021

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I hereby certify that on this 2nd day of August, 2021, I caused the foregoing document to be electronically filed with the Clerk of the Court using CM/ECF, which will send notice to all counsel of record in this matter.

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