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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AIDEN STOCKMAN; NICOLAS TALBOTT; TAMASYN REEVES; JAQUICE TATE; JOHN DOES 1-2; JANE DOE; and EQUALITY CALIFORNIA,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 5:17-cv-01799-JGB-KK

BRIEF OF AMICI CURIAE MEDICAL, NURSING, MENTAL HEALTH, AND OTHER HEALTH CARE ORGANIZATIONS IN SUPPORT OF PLAINTIFFS

Hearing:
Date: November 20, 2017
Time: 9:00 a.m.
Place: Riverside, Courtroom 1
Judge: Hon. Jesus G. Bernal

CORPORATE DISCLOSURE STATEMENT

Each 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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INTEREST OF *AMICI CURIAE*[1]

Amici are 11 leading medical, nursing, mental health, and other health care organizations:

- American Academy of Family Physicians
- American Academy of Nursing
- American College of Physicians
- American Medical Women's Association
- American Nurses Association
- Association of Medical School Pediatric Department Chairs
- Endocrine Society
- GLMA: Health Professionals Advancing LGBT Equality
- National Association of Social Workers
- Pediatric Endocrine Society
- World Professional Association for Transgender Health

Collectively, *amici* represent hundreds of thousands of physicians and mental health professionals, including specialists in family medicine, internal medicine, and endocrinology, and millions of nurses. *Amici* share a commitment to improving the physical and mental health of all Americans—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public health impacts of laws and policies.

Amici submit this brief to inform the Court of the consensus among health care professionals regarding what it means to be transgender; the protocols for the treatment of gender dysphoria; and the absence of any legitimate medical reason to

[1] *Amici* hereby certify that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparation or submission of this brief, and no person other than *amici* and their counsel contributed money intended to fund preparation or submission of the brief. Plaintiffs have consented to the filing of this brief and Defendants have not responded to amici's request for consent.

exclude transgender individuals from military service or to deny service members access to medically necessary transition-related health care.

SUMMARY OF ARGUMENT

Transgender individuals have a gender identity that is incongruent with the sex they were assigned at birth. The health care community's understanding of what it means to be transgender has advanced greatly over the past century. It is now understood that being transgender implies no impairment in a person's judgment, stability, or general social or vocational capabilities. According to recent estimates, approximately 1.4 million transgender adults live in the United States—0.6 percent of the adult population. Somewhere between 1,300 and 6,600 transgender individuals are serving on active duty in the U.S. military.

Many transgender individuals 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. Gender dysphoria is highly treatable, and the recommended types of treatment are widely available and highly effective. When provided with appropriate health care, a transgender person with gender dysphoria can reduce or eliminate feelings of incongruence. The international consensus among health care professionals regarding treatment for gender dysphoria is to assist the patient to live in accordance with his or her gender identity, thus alleviating the distress. For some individuals, this will include physical and mental health care that allows the person to transition from their assigned sex to the sex consistent with their gender identity. Treatment may include any or all of the following: counseling, social transition (allowing the person to conform to social expectations and norms associated with their identity), and hormone therapy and gender confirming surgeries.

There is no legitimate medical reason why transgender individuals—including those undergoing treatment for gender dysphoria—should be excluded from the military or denied transition-related health care. Being transgender does

not diminish a person's ability to serve in the military. Nor does being transgender suggest that a person should not be able to access health care. Like other medical conditions experienced by active duty personnel, gender dysphoria can be resolved with appropriate treatment. All of those treatments—such as mental health services, hormone therapy, and surgery—are treatments the military already administers to other active duty personnel for other purposes. Excluding transgender individuals from military service exposes them to stigma and discrimination, and deprives the military of qualified personnel who are willing and able to serve their country.

ARGUMENT

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

Transgender individuals have a "gender identity"—a "deeply felt, inherent sense" of their gender—that is not aligned with the sex assigned to them at birth.[2] Transgender people differ from non-transgender individuals, whose gender identity aligns with the sex assigned at birth.[3] A transgender man is someone who is assigned the sex of female at birth, but transitions later in his life to being male. A transgender woman is an individual who is assigned the sex of male at birth, but transitions later in her life to being female. A transgender man is a man. A transgender woman is a woman.

Recent estimates suggest that approximately 1.4 million transgender adults live in the United States, or 0.6 percent of the adult population.[4] That said,

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[2] Am. Psychol. Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 834 (2015) **[hereinafter "Am. Psychol. Ass'n Guidelines"]**; *see also* David A. Levine & Comm. on Adolescence, Am. Acad. of Pediatrics Technical Report, *Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 Pediatrics e297, 298 (2013) **[hereinafter "AAP Technical Report"]**. Although most people have a gender identity that is male or female, some individuals have a gender identity that is "a blend of male or female[,] or an alternative gender." Am. Psychol. Ass'n Guidelines at 834.

[3] Am. Psychol. Ass'n Guidelines, *supra*, at 861.

[4] Andrew R. Flores et al., The Williams Inst., *How Many Adults Identify as Transgender in the United States?* 2 (2016),

"population estimates likely underreport the true number of [transgender] people."[5] People of all different races and ethnicities identify as transgender.[6] Transgender people live in every state, raise children, and serve in the military.[7] Recent estimates suggest that somewhere between 1,300 and 6,600 transgender people are active members of the United States Armed Forces (representing between 0.1% and 0.5% of the approximately 1.3 million active members).[8]

The medical profession's understanding of gender has advanced considerably over the past fifty years. The 1950s marked the "beginning of a new era" for the medical profession as individuals who were not gender conforming were no longer viewed as "perverse or deviant."[9] Medical research during that period revealed that attempts to "correct" perceived deviance by attempting to force transgender people

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http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf.

[5] Am. Psychol. Ass'n Guidelines, *supra*, 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., The Williams Inst., *Race and Ethnicity of Adults Who Identify as Transgender in the United States* 2 (2016), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf.

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

[8] Agnes Gereben Schaefer et al., RAND Corporation, *Assessing the Implications of Allowing Transgender Personnel to Serve Openly* 16 (2016), https://www.rand.org/pubs/research_reports/RR1530.html **[hereinafter "RAND Report"]**; *see also* Gary J. Gates & Jody L. Herman, *Transgender Military Service in the United States*, *supra*, at 4 (estimating that approximately 8,800 transgender troops serve on active duty).

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

to live in accordance with the sex assigned to them at birth were both ineffective and harmful.[10]

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

A. Gender Identity

"[G]ender identity" refers to a person's internal sense of being male, female, or another gender.[12] Every person has a gender identity,[13] which cannot be altered voluntarily[14] or necessarily ascertained immediately after birth.[15] Many people develop stability in their gender identity between ages three and four.[16]

"[G]ender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, or body characteristics."[17]

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

[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.

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

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

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

[15] Am. Psychol. Ass'n Guidelines, *supra*, at 862.

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

[17] Am. Psychol. Ass'n, *Answers to Your Questions About Transgender People,*

There are many individuals who depart from stereotypical male and female appearances and roles, but who are not transgender.[18] Indeed, most people who express their gender in a non-stereotypical or non-conforming manner are or become comfortable with the sex they were assigned at birth.[19]

Psychologists, psychiatrists, and neuroscientists are not certain why some people are transgender. Some research suggests there may be biological influences,[20] including, for example, exposure of natal females to elevated levels of testosterone in the womb.[21] Brain scans and neuroanatomical studies of transgender individuals may also support these biological explanations.[22]

B. Gender Dysphoria

As noted, being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[23] 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.[24] As

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supra, at 1.

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

[19] World Prof'l Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 5 (7th Version, 2011), http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=4655 **[hereinafter "WPATH Standards of Care"]**.

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

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

[22] *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/.

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

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

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

1. The Diagnostic Criteria And Seriousness Of Gender Dysphoria

The Diagnostic and Statistical Manual of Mental Disorders codifies the diagnostic criteria for gender dysphoria in adults as follows: "A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two" out of six criteria, and "clinically significant distress or impairment in social, occupational, or other important areas of functioning."[27] 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.[28] Similarly, the World Health Organization's International Classification of Diseases recognizes that

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[25] WPATH Standards of Care, *supra*, at 9-10.

[26] *Id.* at 5; *see also* Joycelyn Elders et al., Palm Center, *Report of the Transgender Military Service Commission* 10 (2014), http://archive.palmcenter.org/files/Transgender%20Military%20Service%20Report_2.pdf **[hereinafter "Elders Commission"]** ("While gender identity disorder was pathologized as an all-encompassing mental illness, gender dysphoria is understood as a condition that is amenable to treatment.").

[27] DSM-5, *supra*, at 451-53.

[28] *Id.* at 452.

gender dysphoria is "characterized by a persistent and intense distress about assigned sex, together with a desire to be (or insistence that one is) of the other sex."[29]

Gender dysphoria is highly treatable. But 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.[30] Transgender individuals also are frequently subjected to prejudice and discrimination in multiple areas of their lives, which makes access to appropriate medical care all the more important.[31]

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.[32] Those attempts were unsuccessful and harmed patients and their families by reinforcing damaging, internalized attitudes and increasing feelings of shame.[33] In the last few decades, however, the medical

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[29] World Health Organization ("WHO"), *International Classification of Diseases-10* F64.2 (2015 ed.), http://apps.who.int/classifications/icd10/browse/2015/en#/F64.2. For its upcoming International Statistical Classification of Diseases-11, the WHO has proposed using "gender incongruence" as the name for the gender identity–related diagnoses. 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, 3875 (2017). "Not all individuals with gender incongruence have gender dysphoria or seek treatment." *Id.*

[30] *See, e.g.*, DSM-5, *supra*, at 455, 458; George R. Brown, *Autocastration and Autopenectomy as Surgical Self-Treatment in Incarcerated Persons with Gender Identity Disorder*, 12 Int'l J. Transgenderism 31, 31-39 (2010).

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

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

[33] 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*

professions have come to understand that being transgender is not a disorder, and that trying to change transgender people's gender identity is futile and harmful. "[T]ransgender status alone does not constitute a medical condition. Instead, under the [modern] diagnostic guidelines, only transgender individuals who experience significant related distress are considered to have a medical condition."[34]

Gender dysphoria is completely treatable.[35] Today, transgender people and those experiencing gender dysphoria have widespread access to gender-affirming medical and mental health support and treatment.[36] For over 30 years, the accepted treatment protocols for gender dysphoria[37] have sought to alleviate the distress associated with the incongruence between gender identity and birth-assigned sex.[38] These protocols are laid out in the *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (Version 7)* developed by *amicus curiae*, the World Professional Association for Transgender Health ("WPATH").[39] Many of the major medical and mental health groups in the United States expressly recognize the WPATH Standards of Care as representing the consensus of the medical and mental health community regarding the appropriate treatment for gender dysphoria.[40]

The recommended treatment for transgender people with gender dysphoria includes assessment, counseling, and, as appropriate, social transition, hormone

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Gender-Nonconforming Children and Their Families: Toward a Theoretical Framework for Evaluating Clinical Interventions, 14 Int'l J. Transgenderism 113, 119-20 (2013).

[34] RAND Report, *supra*, at 6 (internal citation omitted).

[35] *Id.* at 7; Elders Commission, *supra*, at 10.

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

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

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

[39] WPATH Standards of Care, *supra*.

[40] Am. Med. Ass'n House of Delegates, Resolution 122 (A-08), *Removing Financial Barriers to Care for Transgender Patients* 1 (2008); Am. Psychol. Ass'n Task Force Report, *supra*, at 32; AAP Technical Report, *supra*, at 307-08.

therapy, and surgical interventions to bring the body into alignment with one's gender identity.[41] However, each patient requires an individualized treatment plan that accounts for the patient's specific needs.[42]

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.[43]

For some people, the course of treatment includes hormone therapy to bring the person's body into alignment with their gender identity.[44] *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.[45] A transgender man undergoing hormone therapy, for example, will have hormone levels within the same range as other men; and just as they do in any other man, these hormones will affect most of his major body systems.[46] Hormone therapy physically changes the patient's genitals and secondary sex characteristics such as increased muscle mass, increased

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[41] Am. Psychol. Ass'n Task Force Report, *supra*, at 32-39; Am. Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria, *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists* 16-18 (2016); AAP Technical Report, *supra*, at 307-09.

[42] Am. Psychol. Ass'n Task Force Report, *supra*, at 32.

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

[44] Am. Med. Ass'n House of Delegates, Resolution 122 (A-08), *Removing Financial Barriers to Care for Transgender Patients*, *supra*, at 1; Am. Psychol. Ass'n Guidelines, *supra*, at 861, 862; Madeline B. Deutsch, Center of Excellence for Transgender Health, University of California, San Francisco, *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People* 23 (2d ed. 2016); WPATH Standards of Care, *supra*, at 33, 54.

[45] Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, *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 (2016).

[46] Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, *supra*, at 3885-87.

body and facial hair, male pattern baldness (for some), and a deepening of the voice in men, and breast growth, female-associated fat distribution, softening of the skin, and decreased muscle mass in women.[47] Hormones have been clinically proven as an effective treatment for gender dysphoria with a low rate of complications.[48]

Medical and mental health professionals widely recognize that for some individuals, especially those with severe gender dysphoria, it is impossible to manage their distress with psychotherapy and/or hormone therapy alone.[49] For these patients, relief from gender dysphoria may require further physical changes to align their bodies with their gender identity.[50] Gender-affirming surgeries may be an appropriate and effective treatment for these patients. These procedures could include chest reconstruction surgery for transgender men, breast augmentation for transgender women, or genital surgeries.[51] Decades of clinical evidence show these surgical procedures are effective in reducing gender dysphoria and improving mental health.[52] Empirical studies reflect the importance of the interplay among treatments,

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[47] *Id.* at 3886-89.

[48] Marco Colizzi, Rosalia Costa & Orlando Todarello, *Transsexual Patients' Psychiatric Comorbidity and Positive Effect of Cross-Sex Hormonal Treatment on Mental Health: Results from Longitudinal Study*, 39 Psychoneuroendocrinology 65 (2014); Henk Asscheman at al., *A Long-Term Follow-Up Study of Mortality in Transsexuals Receiving Treatment with Cross-Sex Hormones*, 164 Eur. J. Endocrinology 635 (2011); Paul J.M. Van Kesteren et al., *Mortality and Morbidity in Transsexual Subjects Treated with Cross-Sex Hormones*, 47 Clinical Endocrinology 337 (1997).

[49] David Seil, *The Diagnosis and Treatment of Transgendered Patients*, 8 J. Gay & Lesbian Psychotherapy 99, 115-16 (2004); Yolanda L.S. Smith et al., *Adolescents With Gender Identity Disorder Who Were Accepted or Rejected for Sex Reassignment Surgery: A Prospective Follow-up Study*, 40 J. Am. Acad. Child Adolescent Psychiatry 472, 473 (2001).

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

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

[52] WPATH Standards of Care, *supra*; *see also* William Byne et al., *Report of the American Psychiatric Association Task Force on Treatment of Gender Identity Disorder*, 41 Arch. Sexual Behav. 759, 778-79 (2012); Mohammad Hassan Murad, et al., *Hormonal Therapy and Sex Reassignment: A Systematic Review and Meta-Analysis of Quality of Life and Psychosocial Outcomes*, 72 Clinical Endocrinology 214 (2010); Luk Gijs & Anne Brewaeys, *Surgical Treatment of Gender Dysphoria in Adults and Adolescents: Recent Developments, Effectiveness, and Challenges*, 18 Ann. Rev. Sex Res. 178 (2007); Jan Eldh, Agnes Berg & Maria Gustafsson, *Long-*

finding hormone therapy in conjunction with psychotherapy and, for some, surgery, to be necessary elements of treating severe levels of gender dysphoria.[53]

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.[54]

II. Excluding Transgender Individuals From Military Service And Denying Medically Appropriate Treatment To Active Duty Transgender Service Members Is Discriminatory And Conflicts With Contemporary Medical Knowledge And Practice

The President's ban on transgender people serving in the military has three components relevant here. First, it completely and indefinitely bars transgender people from enlisting in the military. *See* Declaration of Kevin M. Lamb in Support of Plaintiffs' Motion for a Preliminary Injunction, Ex. A §§ 2(a), 3. Second, it subjects transgender people currently serving in the military to separation from military service by March 23, 2018. *Id.* §§ 1(b), 3. Third, as of March 23, 2018, it "halts all use of [military] resources to fund sex reassignment surgical procedures for military personnel, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex." *Id.* §§ 2(b), 3.

Major medical organizations such as the American Medical Association, the American Psychological Association, and the American Psychiatric Association

Term Follow Up After Sex Reassignment Surgery, 31 Scand. J. Plastic & Reconstructive Surgery & Hand Surgery 39 (1997).

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

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

have spoken out against the President's decision to ban transgender individuals from the military, noting the complete lack of any medical justification for enacting a ban.[55] Not only does the ban lack any valid medical basis, it also poses immediate harms to transgender service members and the public by treating gender dysphoria differently than other medical conditions experienced by service members, by delaying or denying the military service of qualified service members and recruits, by perpetuating stigma and discrimination, and by delaying or denying medically-necessary transition-related health care.

A. The Ban Is Inconsistent With The Military's Treatment Of Other Medical Conditions

Banning transgender people from military service is inconsistent with how the military handles other, similarly treatable medical conditions experienced by service members. According to a recent report by military experts, [t]ransgender medical care should be managed in terms of the same standards that apply to all medical care, and there is no medical reason to presume transgender individuals are unfit for duty.

[55] *E.g.*, Am. Med. Ass'n, *AMA Statement on Transgender Americans in the Military* (July 26, 2017), https://www.ama-assn.org/ama-statement-transgender-americans-military ("There is no medically valid reason to exclude transgender individuals from military service."); Am. Psychol. Ass'n, *APA Questions Announcement to Bar Transgender People from US Military* (July 26, 2017), http://www.apa.org/news/press/releases/2017/07/transgender-military.aspx (observing "no scientific evidence that allowing transgender people to serve in the armed forces has had an adverse impact on our military readiness or unit cohesion"); Am. Psychiatric Ass'n, *APA Opposes Banning Transgender Service Members from Serving in Military* (July 27, 2017), https://www.psychiatry.org/newsroom/news-releases/apa-opposes-banning-transgender-service-members-from-serving-in-military ("Banning transgender service members from serving our country harms not just those transgender Americans who have dedicated themselves to service of others, but it unfairly casts a pall over all transgender Americans. Discrimination has a negative impact on the mental health of those targeted."); Letter from American Academy of Nursing President Bobbie Berkowitz to Secretary of Defense Jim Mattis (Aug. 8, 2017) (https://higherlogicdownload.s3.amazonaws.com/AANNET/c8a8da9e-918c-4dae-b0c6-6d630c46007f/UploadedImages/docs/Policy%20Resources/Cosigned%20Letters/2017_Ltr_DoD_Secy_Trans_8_8_17.pdf) ("The American Academy of Nursing supports existing U.S. Department of Defense (DoD) policy on transgender service members serving in the military developed following extensive study and consultation among military leadership, health experts and others.").

Their medical care is no more specialized or difficult than other sophisticated medical care the military system routinely provides.[56]

Many service members continue service despite having medical conditions requiring treatment, medication, or temporary leave from deployment including temporary injuries and pregnancy.[57] For example, "empirical data suggest that many non-transgender service members continue to serve despite psychological conditions that may not be as amenable to treatment as gender dysphoria."[58] The medical consensus is that gender dysphoria is completely treatable with a combination of psychotherapy, hormone therapy, or sex-reassignment surgery. There is no valid medical reason to exclude all transgender individuals—or even the subset of transgender individuals experiencing gender dysphoria—from military service when those individuals will be subject to the same medical screening and performance requirements as other service members.

Procedures and treatments comparable to those used to treat gender dysphoria are routinely offered to non-transgender service members for different clinical conditions. The military already "regularly provide[s]" psychotherapy and hormone therapy for a variety of medical conditions.[59] In addition, "the military consistently retains non-transgender men and women who have conditions that may require hormone replacement" including dysmenorrhea, endometriosis, menopausal syndrome, chronic pelvic pain, hysterectomy, oophorectomy, male hypogonadism, and pituitary dysfunction.[60]

"Surgical procedures quite similar to those used for gender transition are already performed within the [Military Health System] for other clinical

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[56] Elders Commission, *supra*, at 4.

[57] *Id.* at 17.

[58] *Id.* at 11.

[59] RAND Report, *supra*, at 8.

[60] Elders Commission, *supra*, at 13.

indications."[61] "Reconstructive breast/chest and genital surgeries are currently performed on patients who have had cancer, been in vehicular and other accidents, or been wounded in combat."[62] Like all surgeries, sex-reassignment surgeries are not risk-free. However, the risks "are no higher than risks associated with other genitourinary procedures, and they are lower than risks that accompany some elective non-transgender-related surgeries which the military allows and which, unlike genital surgeries for transgender individuals, are cosmetic and not medically necessary."[63] The Veterans Health Administration offers similar surgical benefits to non-transgender veterans with non-transgender-related medical needs.[64]

Nor is there any reason to believe that providing transition-related health care will be expensive, especially compared to other treatable conditions covered by the Military Health System. Few service members will require transition-related health

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[61] RAND Report, *supra*, at 8.

[62] *Id.*

[63] Elders Commission, *supra*, at 16.

[64] *See, e.g.*, Mimi Leong et al., *Effective Breast Reconstruction in Female Veterans*, 198 Am. J. Surg. 658 (2009) (addressing outcomes of breast reconstruction performed at VA hospitals); *Shimansky v. West*, 17 Vet. App. 90, 1999 WL 757054, at *1 (1999) (unpublished table decision) (patient received a penile prosthesis at the Wilmington, Delaware VA Medical Center); *Brewer v. Nicholson*, 21 Vet. App. 420, 2006 WL 3007323, at *1 (2006) (unpublished table decision) (patient received a penile prosthesis at the Jackson, Mississippi VA Medical Center); Board of Veteran's Appeals 9732876, Docket No. 96-07-121, 1997 WL 33752321, at *3 (Bd. Vet. App. Sept. 26, 1997) (stating patient received a "testicular prosthetic implantation" at a VA hospital); Carolyn Gardella et al., *Prevalence of Hysterectomy and Associated Factors in Women Veterans Affairs Patients*, 50 J. Reprod. Med. 166, 167-71 (2005) (estimating prevalence of hysterectomies provided by the VA Puget Sound Health Care System); Denise M. Hynes et al., *Breast Cancer Surgery Trends and Outcomes: Results from a National Department of Veterans Affairs Study*, 198 J. Am. Coll. Surgeons 707 (2004) (examining trends in breast cancer surgery performed at VA hospitals); *Norvell v. Peake*, 22 Vet. App. 194, 195 (2008) (noting that the patient underwent a bilateral orchiectomy at Lexington, Kentucky, VA Medical Center), *aff'd sub nom. Norvell v. Shinseki*, 333 F. App'x 571 (Fed. Cir. 2009); J.M. Corman et al., *Fournier's Gangrene in a Modern Surgical Setting: Improved Survival with Aggressive Management*, 84 BJU Int'l 85, 85-88 (1999) (noting that all patients covered in the survey had received scrotectomies for Fournier's Gangrene and that some of the patients had been treated at West Los Angeles Veterans Administration Hospital); Board of Veterans Appeals 0733550, Docket No. 05-31 519, 2007 WL 4643643 (Bd. Vet. App. Oct. 25, 2007) (noting that the patient had undergone a total penectomy at a VA hospital due to cancer).

care. Using a combination of models, the RAND Corporation expects between 30 and 129 active duty service members will use transition-related care annually.[65] This total is "overwhelmingly small compared with the number of [active military] personnel who access mental health treatment" and "annual gender transition-related health care [would] be an extremely small part of overall health care provided to the [active military] population."[66] By comparison, "approximately 278,517 [active military] service members accessed mental health care treatment in 2014."[67]

B. The Ban Excludes Willing And Capable Service Members And Recruits

Individuals who are transgender or gender dysphoric are just as capable of serving in the military as anyone else. According to a recent analysis, service members who have completed medical transition "could resume activity in an operational unit if otherwise qualified" and "[a]s in other cases in which a service member receives a significant medical treatment, [the Department of Defense] should review and ensure that any longer-term medical care or other accommodations relevant to the transgender service member's specific medical needs are addressed."[68] Significantly, "the total cost in lost days available for deployment [of transgender service members] is negligible and significantly smaller than the lack of availability [of service members generally] due to medical conditions."[69] A blanket policy of administratively discharging transgender service members "can involve costly administrative processes and result in the discharge of

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[65] RAND Report, *supra*, at 69.

[66] *Id.* at 31.

[67] *Id.* at 70.

[68] *Id.* at 43.

[69] *Id.* at 46. For example, in 2015, about fourteen percent of active duty Army personnel were "ineligible to deploy for legal, medical, or administrative reasons." *Id.*

personnel with valuable skills who are otherwise qualified."[70] Excluding qualified individuals from military service is contrary to the public interest.

C. The Ban Harms Transgender Service Members By Delaying And Denying Medically Necessary Treatment

Transgender service members who receive transition-related care or are scheduled to receive that care could be severely harmed by a delay in treatment. Because gender dysphoria is completely treatable with a combination of psychotherapy, hormone therapy, and sex reassignment surgeries, denying or delaying access to those treatments means individual service members will be exposed to ongoing, untreated symptoms of gender dysphoria.[71] The adverse impacts of denying transition-related health care to transgender military personnel could include, among other things, avoidance of other necessary health care, including important preventative services, reduced productivity, and "increased rates of mental and substance use disorders" and "suicide."[72]

Transgender individuals frequently do not access health care "due to discrimination and problematic interactions with health care providers," leading to increased costs.[73] Flatly denying access to care will cause additional harm and likely increase costs even more as transgender service members who fear separation from service decide not to notify their commanders of their status and as a result fail to have their essential health care needs met by the Military Health System. Ultimately,

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[70] *Id.* (citing U.S. Gov't Accountability Office, *Personnel and Cost Data Associated with Implementing DOD's Homosexual Conduct Policy* (2011)).

[71] *See supra* pp. 8-13 (discussing the generally accepted treatment protocols for gender dysphoria and the positive health outcomes associated with treatment).

[72] RAND Report, *supra*, at 9.

[73] *Id.* at 9-10 (quoting Cyndi Gale Roller, Carol Sedlak, and Claire Burke Draucker, *Navigating the System: How Transgender Individuals Engage in Health Care Services*, 47 J. Nursing Scholarship 417, 418 (2015)); *see also* Adam F. Yerke & Valory Mitchell, *Transgender People in the Military: Don't Ask? Don't Tell? Don't Enlist!*, 60 J. of Homosexuality 436 (2013); *The Health of Sexual Minorities: Public Health Perspectives on Lesbian, Gay, Bisexual and Transgender Populations* (Ilan H. Meyer & Mary E. Northridge, eds., 2007).

there is no compelling medical reason for the ban, [and] the ban itself is an expensive, damaging and unfair barrier to health care access for . . . transgender personnel who serve currently in the active, Guard and reserve components. Medical regulations requiring the discharge of transgender personnel are inconsistent with how the military regulates all other medical and psychological conditions, and transgender-related conditions appear to be the only gender-related conditions that require discharge irrespective of fitness for duty.[74]

The ban discriminates against transgender people by singling them out as categorically unfit to serve—a conclusion that is flatly contradicted by medical evidence and the consensus of the medical, mental health, and broader health care communities.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to grant Plaintiffs' application for a preliminary injunction.

[74] Elders Commission, *supra*, at 4 (endnote omitted).

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Respectfully submitted,

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