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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

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14
15 AIDEN STOCKMAN; NICOLAS
16 TALBOTT; TAMASYN REEVES;
17 JAQUICE TATE; JOHN DOES 1-2;
18 JANE DOE; and EQUALITY
19 CALIFORNIA,

18 Plaintiffs,

19 v.

20 DONALD J. TRUMP, et al.,

21 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

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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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22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

CASES

Board of Veteran’s Appeals 9732876, Docket No. 96-07-121, 1997
 WL 33752321 (Sept. 26, 1997) 15

Board of Veterans Appeals 0733550, Docket No. 05-31 519, 2007
 WL 4643643 (Oct. 25, 2007) 15

Brewer v. Nicholson,
 21 Vet. App. 420, 2006 WL 3007323 (2006) (unpublished table
 decision)..... 15

Norvell v. Peake,
 22 Vet. App. 194 (2008), *aff’d sub nom. Norvell v. Shinseki*, 333 F.
 App’x 571 (Fed. Cir. 2009) 15

Shimansky v. West,
 17 Vet. App. 90, 1999 WL 757054 (1999) (unpublished table
 decision)..... 15

OTHER AUTHORITIES

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](https://healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx) 5

American Academy of Pediatrics, *Gender Non-Conforming &
 Transgender Children* (2015),
[https://healthychildren.org/English/ages-
 stages/gradeschool/Pages/Gender-Non-Conforming-Transgender-
 Children.aspx](https://healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Non-Conforming-Transgender-Children.aspx) 6

American Medical Association, *AMA Statement on Transgender
 Americans in the Military* (July 26, 2017), [https://www.ama-
 assn.org/ama-statement-transgender-americans-military](https://www.ama-assn.org/ama-statement-transgender-americans-military) 13

American Medical Association, Committee on Human Sexuality,
Human Sexuality (1972) 9

1 American Medical Association House of Delegates, Resolution 122
 2 (A-08), *Removing Financial Barriers to Care for Transgender*
 3 *Patients* (2008) 9, 10

4 American Psychiatric Association, *APA Opposes Banning*
 5 *Transgender Service Members from Serving in Military* (July 27,
 6 2017), [https://www.psychiatry.org/newsroom/news-releases/apa-](https://www.psychiatry.org/newsroom/news-releases/apa-opposes-banning-transgender-service-members-from-serving-in-military)
 7 [opposes-banning-transgender-service-members-from-serving-in-](https://www.psychiatry.org/newsroom/news-releases/apa-opposes-banning-transgender-service-members-from-serving-in-military)
 8 [military](https://www.psychiatry.org/newsroom/news-releases/apa-opposes-banning-transgender-service-members-from-serving-in-military)..... 13

9 American Psychiatric Association, *Diagnostic and Statistical Manual*
 10 *of Mental Disorders* (5th ed. 2013) 6, 7, 8

11 American Psychiatric Association, *Position Statement on*
 12 *Discrimination Against Transgender and Gender Variant*
 13 *Individuals* (2012), [https://psychiatry.org/File%20Library/About-](https://psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2012-Transgender-Gender-Variant-Discrimination.pdf)
 14 [APA/Organization-Documents-Policies/Policies/Position-2012-](https://psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2012-Transgender-Gender-Variant-Discrimination.pdf)
 15 [Transgender-Gender-Variant-Discrimination.pdf](https://psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2012-Transgender-Gender-Variant-Discrimination.pdf)..... 5, 6

16 American Psychiatric Association Workgroup on Treatment of
 17 Gender Dysphoria, *Assessment and Treatment of Gender*
 18 *Dysphoria and Gender Variant Patients: A Primer for*
 19 *Psychiatrists* (2016)..... 10

20 American Psychological Association, *Answers to Your Questions*
 21 *About Transgender People, Gender Identity, and Gender*
 22 *Expression* (2014), <http://www.apa.org/topics/lgbt/transgender.pdf> 5

23 American Psychological Association, *APA Questions Announcement*
 24 *to Bar Transgender People from US Military* (July 26, 2017),
 25 [http://www.apa.org/news/press/releases/2017/07/transgender-](http://www.apa.org/news/press/releases/2017/07/transgender-military.aspx)
 26 [military.aspx](http://www.apa.org/news/press/releases/2017/07/transgender-military.aspx) 13

27 American Psychological Association, *Guidelines for Psychological*
 28 *Practice with Transgender and Gender Nonconforming People*, 70
Am. Psychologist 832 (2015)..... passim

American Psychological Association, *Report of the APA Task Force*
on Gender Identity and Gender Variance (2008),
[https://www.apa.org/pi/lgbt/resources/policy/gender-identity-](https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf)
[report.pdf](https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf) 4, 9, 10

1 Henk Asscheman et al., *A Long-Term Follow-Up Study of Mortality in*
 2 *Transsexuals Receiving Treatment with Cross-Sex Hormones*, 164
 3 Eur. J. Endocrinology 635 (2011) 11

4 Walter Bockting & Eli Coleman, *Developmental Stages of the*
 5 *Transgender Coming-Out Process: Toward an Integrated Identity,*
 6 *in Principles of Transgender Medicine and Surgery* 137 (Randi
 7 Ettner, Stan Monstrey & Eli Coleman eds., 2d ed. 2016)..... 12

8 George R. Brown, *Autocastration and Autopenectomy as Surgical*
 9 *Self-Treatment in Incarcerated Persons with Gender Identity*
 10 *Disorder*, 12 Int’l J. Transgenderism 31 (2010)..... 8

11 William Byne et al., *Report of the American Psychiatric Association*
 12 *Task Force on Treatment of Gender Identity Disorder*, 41 Arch.
 13 *Sexual Behav.* 759 (2012) 11

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

16 Peggy T. Cohen-Kettenis et al., *The Treatment of Adolescent*
 17 *Transsexuals: Changing Insights*, 5 J. Sexual Med. 1892 (2008) 6

18 Marco Colizzi, Rosalia Costa & Orlando Todarello, *Transsexual*
 19 *Patients’ Psychiatric Comorbidity and Positive Effect of Cross-Sex*
 20 *Hormonal Treatment on Mental Health: Results from Longitudinal*
 21 *Study*, 39 Psychoneuroendocrinology 65 (2014)..... 11

22 J.M. Corman et al., *Fournier’s Gangrene in a Modern Surgical*
 23 *Setting: Improved Survival with Aggressive Management*, 84 BJU
 24 Int’l 85, 85-88 (1999) 15

25 Halley P. Crissman et al., *Transgender Demographics: A Household*
 26 *Probability Sample of US Adults, 2014*, 107 Am. J. Pub. Health
 27 213 (2017)..... 4

28 Arianne B. Dessens et al., *Gender Dysphoria and Gender Change in*
Chromosomal Females with Congenital Adrenal Hyperplasia, 34
 Arch. Sexual Behav. 389 (2005) 6

1 Madeline B. Deutsch, Center of Excellence for Transgender Health,
 2 University of California, San Francisco, *Guidelines for the*
 3 *Primary and Gender-Affirming Care of Transgender and Gender*
 4 *Nonbinary People* (2d ed. 2016) 10

5 Jack Drescher, *Queer Diagnoses: Parallels and Contrasts in the*
 6 *History of Homosexuality, Gender Variance, and the Diagnostic*
 7 *and Statistical Manual*, 39 Arch. Sexual Behav. 427 (2010)..... 8

8 Joycelyn Elders et al., Palm Center, *Report of the Transgender*
 9 *Military Service Commission* 10 (2014),
 10 [http://archive.palmcenter.org/files/Transgender%20Military%20Se](http://archive.palmcenter.org/files/Transgender%20Military%20Service%20Report_2.pdf)
 11 [rvic%20Report_2.pdf](http://archive.palmcenter.org/files/Transgender%20Military%20Service%20Report_2.pdf) [hereinafter “Elders Commission”]passim

12 Jan Eldh, Agnes Berg & Maria Gustafsson, *Long-Term Follow Up*
 13 *After Sex Reassignment Surgery*, 31 Scand. J. Plastic &
 14 *Reconstructive Surgery & Hand Surgery* 39 (1997) 11

15 Alessandra D. Fisher et al., *Cross-Sex Hormone Treatment and*
 16 *Psychobiological Changes in Transsexual Persons: Two-Year*
 17 *Follow-Up Data*, 101 J. Clinical Endocrinology & Metabolism
 18 4260 (2016)..... 10

19 Andrew R. Flores et al., The Williams Institute, *How Many Adults*
 20 *Identify as Transgender in the United States?* (2016),
 21 [http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-](http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf)
 22 [Many-Adults-Identify-as-Transgender-in-the-United-States.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf) 3

23 Andrew R. Flores et al., The Williams Institute, *Race and Ethnicity of*
 24 *Adults Who Identify as Transgender in the United States* (2016),
 25 [https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-](https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf)
 26 [and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf](https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf)..... 4

27 Carolyn Gardella et al., *Prevalence of Hysterectomy and Associated*
 28 *Factors in Women Veterans Affairs Patients*, 50 J. Reprod. Med.
 166 (2005)..... 15

Gary J. Gates & Jody L. Herman, The Williams Institute, *Transgender*
Military Service in the United States (2014),
[http://williamsinstitute.law.ucla.edu/wp-](http://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf)
[content/uploads/Transgender-Military-Service-May-2014.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf) 4

1 Luk Gijs & Anne Brewaeys, *Surgical Treatment of Gender Dysphoria*
 2 *in Adults and Adolescents: Recent Developments, Effectiveness,*
 3 *and Challenges*, 18 Ann. Rev. Sex Res. 178 (2007)..... 11

4 *The Health of Sexual Minorities: Public Health Perspectives on*
 5 *Lesbian, Gay, Bisexual and Transgender Populations* (Ilan H.
 6 Meyer & Mary E. Northridge, eds., 2007) 17

7 Wylie C. Hembree et al., *Endocrine Treatment of Gender-*
 8 *Dysphoric/Gender-Incongruent Persons: An Endocrine Society*
 9 *Clinical Practice Guideline*, 102 J. Clinical Endocrinology &
 10 Metabolism 3869 (2017) 8, 10, 11

11 Michael L. Hendricks & Rylan J. Testa, *A Conceptual Framework for*
 12 *Clinical Work with Transgender and Gender Nonconforming*
 13 *Clients: An Adaptation of the Minority Stress Model*, 43 Prof'l
 14 Psychol.: Research & Practice 460 (2012)..... 8

15 Darryl B. Hill et al., *An Affirmative Intervention for Families with*
 16 *Gender Variant Children: Parental Ratings of Child Mental*
 17 *Health and Gender*, 36 J. Sex & Marital Therapy 6 (2010) 8

18 Denise M. Hynes et al., *Breast Cancer Surgery Trends and Outcomes:*
 19 *Results from a National Department of Veterans Affairs Study*, 198
 20 J. Am. College of Surgeons 707 (2004) 15

21 Gianna E. Israel & Donald E. Tarver II, *Transgender Care:*
 22 *Recommended Guidelines, Practical Information & Personal*
 23 *Accounts* (1997)..... 12

24 Sandy E. James et al., National Center for Transgender Equality, *The*
 25 *Report of the 2015 U.S. Transgender Survey* (2016),
 26 [http://www.transequality.org/sites/default/files/docs/usts/](http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf)
 27 [USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf](http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf)..... 4

28 Mimi Leong et al., *Effective Breast Reconstruction in Female*
Veterans, 198 Am. J. Surg. 658 (2009) 15

1 Letter from American Academy of Nursing President Bobbie
 2 Berkowitz to Secretary of Defense Jim Mattis (Aug. 8, 2017),
 3 [https://higherlogicdownload.s3.amazonaws.com/AANNET/c8a8da](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)
 4 [9e-918c-4dae-b0c6-](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)
 5 [6d630c46007f/UploadedImages/docs/Policy%20Resources/Cosign](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)
 6 [ed%20Letters/2017_Ltr_DoD_Secy_Trans_8_8_17.pdf](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)..... 13
 7
 8 David A. Levine & Committee on Adolescence, Am. Acad. of
 9 Pediatrics Technical Report, *Office-Based Care for Lesbian, Gay,*
 10 *Bisexual, Transgender, and Questioning Youth*, 132 Pediatrics
 11 e297 (2013)..... 3, 9, 10
 12
 13 Colt Meier & Julie Harris, American Psychological Association, *Fact*
 14 *Sheet: Gender Diversity and Transgender Identity in Children*,
 15 [http://www.apadivisions.org/division-](http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf)
 16 [44/resources/advocacy/transgender-children.pdf](http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf)..... 5
 17
 18 Mohammad Hassan Murad, et al., *Hormonal Therapy and Sex*
 19 *Reassignment: A Systematic Review and Meta-Analysis of Quality*
 20 *of Life and Psychosocial Outcomes*, 72 Clinical Endocrinology 214
 21 (2010)..... 11
 22
 23 Francine Russo, *Is There Something Unique About the Transgender*
 24 *Brain?*, Sci. Am. (Jan. 1, 2016),
 25 [https://www.scientificamerican.com/article/is-there-something-](https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/)
 26 [unique-about-the-transgender-brain/](https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/) 6
 27
 28 Caitlin Ryan, Family Acceptance Project, *Supportive Families,*
Healthy Children: Helping Families with Lesbian, Gay, Bisexual,
& Transgender Children (2009),
[http://familyproject.sfsu.edu/sites/default/files/FAP_English](http://familyproject.sfsu.edu/sites/default/files/FAP_English%20Booklet_pst.pdf)
[%20Booklet_pst.pdf](http://familyproject.sfsu.edu/sites/default/files/FAP_English%20Booklet_pst.pdf) 5
 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..... passim
 David Seil, *The Diagnosis and Treatment of Transgendered Patients*,
 8 J. Gay & Lesbian Psychotherapy 99 (2004)..... 11

1 Yolanda L.S. Smith et al., *Adolescents With Gender Identity Disorder*
 2 *Who Were Accepted or Rejected for Sex Reassignment Surgery: A*
 3 *Prospective Follow-up Study*, 40 *J. Am. Acad. Child Adolescent*
 4 *Psychiatry* 472 (2001)..... 11

5 Rebecca L. Stotzer et al., The Williams Institute, *Transgender*
 6 *Parenting: A Review of Existing Research* (2014),
 7 [http://williamsinstitute.law.ucla.edu/research/parenting/transgender-](http://williamsinstitute.law.ucla.edu/research/parenting/transgender-parenting-oct-2014)
 8 [parenting-oct-2014](http://williamsinstitute.law.ucla.edu/research/parenting/transgender-parenting-oct-2014) 4

9 Substance Abuse and Mental Health Services Administration, *Ending*
 10 *Conversion Therapy: Supporting and Affirming LGBTQ Youth*
 11 (2015), [http://store.samhsa.gov/shin/content/SMA15-](http://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf)
 12 [4928/SMA15-4928.pdf](http://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf)..... 5

13 Paul J.M. Van Kesteren et al., *Mortality and Morbidity in Transsexual*
 14 *Subjects Treated with Cross-Sex Hormones*, 47 *Clinical*
 15 *Endocrinology* 337 (1997)..... 11

16 Robert Wallace & Hershel Russell, *Attachment and Shame in Gender-*
 17 *Nonconforming Children and Their Families: Toward a*
 18 *Theoretical Framework for Evaluating Clinical Interventions*, 14
 19 *Int’l J. Transgenderism* 113 (2013) 8

20 World Health Organization (“WHO”), *International Classification of*
 21 *Diseases-10 F64.2* (2015 ed.),
 22 <http://apps.who.int/classifications/icd10/browse/2015/en#/F64.2> 7, 8

23 World Professional Association for Transgender Health, *Standards of*
 24 *Care for the Health of Transsexual, Transgender, and Gender-*
 25 *Nonconforming People* (7th Version, 2011),
 26 [http://www.wpath.org/site_page.cfm?pk_association_webpage_](http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=4655)
 27 [menu=1351&pk_association_webpage=4655](http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=4655) passim

28 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/THI](http://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/THI_SFFINALREPORTVol1.pdf)
[SFINALREPORTVol1.pdf](http://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/THI_SFFINALREPORTVol1.pdf) 8

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) 17

1 **INTEREST OF *AMICI CURIAE*¹**

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

- 4 • American Academy of Family Physicians
- 5 • American Academy of Nursing
- 6 • American College of Physicians
- 7 • American Medical Women’s Association
- 8 • American Nurses Association
- 9 • Association of Medical School Pediatric Department Chairs
- 10 • Endocrine Society
- 11 • GLMA: Health Professionals Advancing LGBT Equality
- 12 • National Association of Social Workers
- 13 • Pediatric Endocrine Society
- 14 • World Professional Association for Transgender Health

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

21 *Amici* submit this brief to inform the Court of the consensus among health
22 care professionals regarding what it means to be transgender; the protocols for the
23 treatment of gender dysphoria; and the absence of any legitimate medical reason to
24

25 ¹ *Amici* hereby certify that no party’s counsel authored this brief in whole or in part,
26 no party or party’s counsel contributed money intended to fund preparation or
27 submission of this brief, and no person other than *amici* and their counsel contributed
28 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.

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

3 **SUMMARY OF ARGUMENT**

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

12 Many transgender individuals have a condition called gender dysphoria,
13 which is characterized by clinically significant distress and impairment of function
14 resulting from the incongruence between one's gender identity and the sex assigned
15 at birth. Gender dysphoria is highly treatable, and the recommended types of
16 treatment are widely available and highly effective. When provided with appropriate
17 health care, a transgender person with gender dysphoria can reduce or eliminate
18 feelings of incongruence. The international consensus among health care
19 professionals regarding treatment for gender dysphoria is to assist the patient to live
20 in accordance with his or her gender identity, thus alleviating the distress. For some
21 individuals, this will include physical and mental health care that allows the person
22 to transition from their assigned sex to the sex consistent with their gender identity.
23 Treatment may include any or all of the following: counseling, social transition
24 (allowing the person to conform to social expectations and norms associated with
25 their identity), and hormone therapy and gender confirming surgeries.

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

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

9 ARGUMENT

10 I. What It Means To Be Transgender And To Experience Gender 11 Dysphoria

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

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

22 ² Am. Psychol. Ass’n, *Guidelines for Psychological Practice with Transgender and*
23 *Gender Nonconforming People*, 70 *Am. Psychologist* 832, 834 (2015) [**hereinafter**
24 **“Am. Psychol. Ass’n Guidelines”**]; see also David A. Levine & Comm. on
25 Adolescence, Am. Acad. of Pediatrics Technical Report, *Office-Based Care for*
26 *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.

27 ³ Am. Psychol. Ass’n Guidelines, *supra*, at 861.

28 ⁴ Andrew R. Flores et al., The Williams Inst., *How Many Adults Identify as*
Transgender in the United States? 2 (2016),
3

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

7 The medical profession’s understanding of gender has advanced considerably
8 over the past fifty years. The 1950s marked the “beginning of a new era” for the
9 medical profession as individuals who were not gender conforming were no longer
10 viewed as “perverse or deviant.”⁹ Medical research during that period revealed that
11 attempts to “correct” perceived deviance by attempting to force transgender people
12
13

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

15 ⁵ Am. Psychol. Ass’n Guidelines, *supra*, at 832.

16 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);
17 Andrew R. Flores et al., The Williams Inst., *Race and Ethnicity of Adults Who Identify as Transgender in the United States* 2 (2016),
18 <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Race-and-Ethnicity-of-Transgender-Identified-Adults-in-the-US.pdf>.

19 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>.

24 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).

27 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”**].

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

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

8 **A. Gender Identity**

9 “[G]ender identity” refers to a person’s internal sense of being male, female,
10 or another gender.¹² Every person has a gender identity,¹³ which cannot be altered
11 voluntarily¹⁴ or necessarily ascertained immediately after birth.¹⁵ Many people
12 develop stability in their gender identity between ages three and four.¹⁶

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

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

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

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

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

23 ¹⁴ Colt Meier & Julie Harris, Am. Psychol. Ass’n, *Fact Sheet: Gender Diversity and*
24 *Transgender Identity in Children* 1, [http://www.apadivisions.org/division-](http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf)
25 [44/resources/advocacy/transgender-children.pdf](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-](https://healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx)
[Identity-and-Gender-Confusion-In-Children.aspx](https://healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx).

26 ¹⁵ Am. Psychol. Ass’n Guidelines, *supra*, at 862.

27 ¹⁶ *Id.* at 841. “Although gender identity is usually established in childhood,
28 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,*

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

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

10 **B. Gender Dysphoria**

11 As noted, being transgender “implies no impairment in judgment, stability,
12 reliability, or general social or vocational capabilities.”²³ However, many
13 transgender individuals are diagnosed with gender dysphoria, a condition that is
14 characterized by clinically-significant distress and anxiety resulting from the
15 incongruence between an individual’s gender identity and birth-assigned sex.²⁴ As

16 *supra*, at 1.

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

18 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,
19 2011), [http://www.wpath.org/site_page.cfm?pk_association_webpage_](http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=4655)
20 [menu=1351&pk_association_webpage=4655](http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=4655) [**hereinafter “WPATH Standards of Care”**].

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

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

25 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-](https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/)
26 [something-unique-about-the-transgender-brain/](https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/).

27 ²³ Am. Psychiatric Ass’n, *Position Statement on Discrimination Against*
Transgender and Gender Variant Individuals, *supra*.

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

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

6 **1. The Diagnostic Criteria And Seriousness Of Gender Dysphoria**

7 The Diagnostic and Statistical Manual of Mental Disorders codifies the
8 diagnostic criteria for gender dysphoria in adults as follows: “A marked
9 incongruence between one’s experienced/expressed gender and assigned gender, of
10 at least 6 months’ duration, as manifested by at least two” out of six criteria, and
11 “clinically significant distress or impairment in social, occupational, or other
12 important areas of functioning.”²⁷ The six criteria include (1) “[a] marked
13 incongruence between one’s experienced/expressed gender and primary and/or
14 secondary sex characteristics”; (2) “[a] strong desire to be rid of one’s primary and/or
15 secondary sex characteristics”; (3) “[a] strong desire for the primary and/or
16 secondary sex characteristics of the other gender”; (4) “[a] strong desire to be of the
17 other gender (or some alternative gender . . .)”; (5) “[a] strong desire to be treated”
18 as a gender different from one’s assigned gender; and (6) “[a] strong conviction that
19 one has the typical feelings and reactions” of a different gender.²⁸ Similarly, the
20 World Health Organization’s International Classification of Diseases recognizes that
21
22

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

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

²⁷ DSM-5, *supra*, at 451-53.

²⁸ *Id.* at 452.

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

3 Gender dysphoria is highly treatable. But if untreated, gender dysphoria can
4 cause debilitating distress, depression, impairment of function, self-mutilation to
5 alter one’s genitals or secondary sex characteristics, other self-injurious behaviors,
6 and suicide.³⁰ Transgender individuals also are frequently subjected to prejudice
7 and discrimination in multiple areas of their lives, which makes access to appropriate
8 medical care all the more important.³¹

9 **2. The Accepted Treatment Protocols For Gender Dysphoria**

10 Until the middle of the twentieth century, most mental health practitioners
11 treated transgender people by attempting to make the patient’s gender identity
12 consistent with the sex assigned at birth.³² Those attempts were unsuccessful and
13 harmed patients and their families by reinforcing damaging, internalized attitudes
14 and increasing feelings of shame.³³ In the last few decades, however, the medical

15 _____
16 ²⁹ World Health Organization (“WHO”), *International Classification of Diseases-*
17 *10* F64.2 (2015 ed.), <http://apps.who.int/classifications/icd10/browse/2015/en#/F64.2>. For its upcoming
18 International Statistical Classification of Diseases-11, the WHO has proposed using
19 “gender incongruence” as the name for the gender identity–related diagnoses. Wylie
20 C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent*
21 *Persons: An Endocrine Society Clinical Practice Guideline*, 102 *J. Clinical*
22 *Endocrinology & Metabolism* 3869, 3875 (2017). “Not all individuals with gender
23 incongruence have gender dysphoria or seek treatment.” *Id.*

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

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

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

36 ³³ Darryl B. Hill et al., *An Affirmative Intervention for Families with Gender Variant*
37 *Children: Parental Ratings of Child Mental Health and Gender*, 36 *J. Sex & Marital*
38 *Therapy* 6, 10 (2010); Robert Wallace & Hershel Russell, *Attachment and Shame in*

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

6 Gender dysphoria is completely treatable.³⁵ Today, transgender people and
7 those experiencing gender dysphoria have widespread access to gender-affirming
8 medical and mental health support and treatment.³⁶ For over 30 years, the accepted
9 treatment protocols for gender dysphoria³⁷ have sought to alleviate the distress
10 associated with the incongruence between gender identity and birth-assigned sex.³⁸
11 These protocols are laid out in the *Standards of Care for the Health of Transsexual,*
12 *Transgender, and Gender Nonconforming People (Version 7)* developed by *amicus*
13 *curiae*, the World Professional Association for Transgender Health (“WPATH”).³⁹
14 Many of the major medical and mental health groups in the United States expressly
15 recognize the WPATH Standards of Care as representing the consensus of the
16 medical and mental health community regarding the appropriate treatment for
17 gender dysphoria.⁴⁰

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

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

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

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

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

25 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.

26 ³⁸ Am. Med. Ass’n, Comm. on Human Sexuality, *Human Sexuality* 38 (1972).

27 ³⁹ WPATH Standards of Care, *supra*.

28 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.

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

4 Social transition—*i.e.*, living one's life fully in accordance with one's gender
5 identity—is often a critically important part of treatment. This typically includes
6 publicly identifying oneself as that gender through all of the ways that people signal
7 their gender to others such as through their name, pronoun usage, dress, manner and
8 appearance, and social interactions.⁴³

9 For some people, the course of treatment includes hormone therapy to bring
10 the person's body into alignment with their gender identity.⁴⁴ *Amicus curiae* the
11 Endocrine Society, the oldest and largest global professional membership
12 organization representing the field of endocrinology, considers these treatments to
13 be the standard of care for gender dysphoria.⁴⁵ A transgender man undergoing
14 hormone therapy, for example, will have hormone levels within the same range as
15 other men; and just as they do in any other man, these hormones will affect most of
16 his major body systems.⁴⁶ Hormone therapy physically changes the patient's
17 genitals and secondary sex characteristics such as increased muscle mass, increased

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

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

22 ⁴³ AAP Technical Report, *supra*, at 308; Am. Psychol. Ass'n Guidelines, *supra*, at
23 840.

24 ⁴⁴ Am. Med. Ass'n House of Delegates, Resolution 122 (A-08), *Removing Financial*
25 *Barriers to Care for Transgender Patients*, *supra*, at 1; Am. Psychol. Ass'n
26 Guidelines, *supra*, at 861, 862; Madeline B. Deutsch, Center of Excellence for
27 Transgender Health, University of California, San Francisco, *Guidelines for the*
28 *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*
26 *Persons*, *supra*, at 3869-70; *see also* Alessandra D. Fisher et al., *Cross-Sex Hormone*
27 *Treatment and Psychobiological Changes in Transsexual Persons: Two-Year*
28 *Follow-Up Data*, 101 *J. Clinical Endocrinology & Metabolism* 4260 (2016).

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

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

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

15 ⁴⁷ *Id.* at 3886-89.

16 ⁴⁸ Marco Colizzi, Rosalia Costa & Orlando Todarello, *Transsexual Patients’*
17 *Psychiatric Comorbidity and Positive Effect of Cross-Sex Hormonal Treatment on*
18 *Mental Health: Results from Longitudinal Study*, 39 *Psychoneuroendocrinology* 65
19 (2014); Henk Asscheman et al., *A Long-Term Follow-Up Study of Mortality in*
20 *Transsexuals Receiving Treatment with Cross-Sex Hormones*, 164 *Eur. J.*
21 *Endocrinology* 635 (2011); Paul J.M. Van Kesteren et al., *Mortality and Morbidity*
22 *in Transsexual Subjects Treated with Cross-Sex Hormones*, 47 *Clinical*
23 *Endocrinology* 337 (1997).

24 ⁴⁹ David Seil, *The Diagnosis and Treatment of Transgendered Patients*, 8 *J. Gay &*
25 *Lesbian Psychotherapy* 99, 115-16 (2004); Yolanda L.S. Smith et al., *Adolescents*
26 *With Gender Identity Disorder Who Were Accepted or Rejected for Sex*
27 *Reassignment Surgery: A Prospective Follow-up Study*, 40 *J. Am. Acad. Child*
28 *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*
24 *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*
25 *American Psychiatric Association Task Force on Treatment of Gender Identity*
26 *Disorder*, 41 *Arch. Sexual Behav.* 759, 778-79 (2012); Mohammad Hassan Murad,
27 et al., *Hormonal Therapy and Sex Reassignment: A Systematic Review and Meta-*
28 *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-*

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

3 Ultimately—regardless of the particular treatments required for a specific
4 individual and when such treatment begins—the goal is for individuals with gender
5 dysphoria to experience “identity integration,” where “being transgender is no
6 longer the most important signifier of one’s identity” and the individual can refocus
7 on their relationships, school, jobs, and other life activities.⁵⁴

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

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

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

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

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

26 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.,
27 2d ed. 2016).
28

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

9 **A. The Ban Is Inconsistent With The Military’s Treatment Of Other**
10 **Medical Conditions**

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

16 ⁵⁵ *E.g.*, Am. Med. Ass’n, *AMA Statement on Transgender Americans in the Military*
17 (July 26, 2017), [https://www.ama-assn.org/ama-statement-transgender-americans-](https://www.ama-assn.org/ama-statement-transgender-americans-military)
18 *military* (“There is no medically valid reason to exclude transgender individuals
19 from military service.”); Am. Psychol. Ass’n, *APA Questions Announcement to Bar*
20 *Transgender People from US Military* (July 26, 2017),
21 <http://www.apa.org/news/press/releases/2017/07/transgender-military.aspx>
22 (observing “no scientific evidence that allowing transgender people to serve in the
23 armed forces has had an adverse impact on our military readiness or unit cohesion”);
24 Am. Psychiatric Ass’n, *APA Opposes Banning Transgender Service Members from*
25 *Serving in Military* (July 27, 2017), [https://www.psychiatry.org/newsroom/news-](https://www.psychiatry.org/newsroom/news-releases/apa-opposes-banning-transgender-service-members-from-serving-in-military)
26 *releases/apa-opposes-banning-transgender-service-members-from-serving-in-*
27 *military* (“Banning transgender service members from serving our country harms
28 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-](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)
[b0c6-6d630c46007f/UploadedImages/docs/Policy%20Resources/Cosigned%20Letters/2017_Ltr_DoD_Secy_Trans_8_8_17.pdf](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.”).

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

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

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

22 “Surgical procedures quite similar to those used for gender transition are
23 already performed within the [Military Health System] for other clinical
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25 ⁵⁶ Elders Commission, *supra*, at 4.

26 ⁵⁷ *Id.* at 17.

27 ⁵⁸ *Id.* at 11.

28 ⁵⁹ RAND Report, *supra*, at 8.

⁶⁰ Elders Commission, *supra*, at 13.

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

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

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14 ⁶¹ RAND Report, *supra*, at 8.

15 ⁶² *Id.*

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

17 ⁶⁴ See, e.g., Mimi Leong et al., *Effective Breast Reconstruction in Female Veterans*,
18 198 Am. J. Surg. 658 (2009) (addressing outcomes of breast reconstruction
19 performed at VA hospitals); *Shimansky v. West*, 17 Vet. App. 90, 1999 WL 757054,
20 at *1 (1999) (unpublished table decision) (patient received a penile prosthesis at the
21 Wilmington, Delaware VA Medical Center); *Brewer v. Nicholson*, 21 Vet. App. 420,
22 2006 WL 3007323, at *1 (2006) (unpublished table decision) (patient received a
23 penile prosthesis at the Jackson, Mississippi VA Medical Center); Board of
24 Veteran’s Appeals 9732876, Docket No. 96-07-121, 1997 WL 33752321, at *3 (Bd.
25 Vet. App. Sept. 26, 1997) (stating patient received a “testicular prosthetic
26 implantation” at a VA hospital); Carolyn Gardella et al., *Prevalence of Hysterectomy
27 and Associated Factors in Women Veterans Affairs Patients*, 50 J. Reprod. Med.
28 166, 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 scrotoectomies 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).

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

8 **B. The Ban Excludes Willing And Capable Service Members And**
9 **Recruits**

10 Individuals who are transgender or gender dysphoric are just as capable of
11 serving in the military as anyone else. According to a recent analysis, service
12 members who have completed medical transition “could resume activity in an
13 operational unit if otherwise qualified” and “[a]s in other cases in which a service
14 member receives a significant medical treatment, [the Department of Defense]
15 should review and ensure that any longer-term medical care or other
16 accommodations relevant to the transgender service member’s specific medical
17 needs are addressed.”⁶⁸ Significantly, “the total cost in lost days available for
18 deployment [of transgender service members] is negligible and significantly smaller
19 than the lack of availability [of service members generally] due to medical
20 conditions.”⁶⁹ A blanket policy of administratively discharging transgender service
21 members “can involve costly administrative processes and result in the discharge of
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24 ⁶⁵ RAND Report, *supra*, at 69.

25 ⁶⁶ *Id.* at 31.

26 ⁶⁷ *Id.* at 70.

27 ⁶⁸ *Id.* at 43.

28 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.*

1 personnel with valuable skills who are otherwise qualified.”⁷⁰ Excluding qualified
2 individuals from military service is contrary to the public interest.

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

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

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

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

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

24 ⁷² RAND Report, *supra*, at 9.

25 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 &
26 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*
27 *Health Perspectives on Lesbian, Gay, Bisexual and Transgender Populations* (Ilan
H. Meyer & Mary E. Northridge, eds., 2007).
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1 there is no compelling medical reason for the ban, [and] the ban itself is an
2 expensive, damaging and unfair barrier to health care access for . . . transgender
3 personnel who serve currently in the active, Guard and reserve components. Medical
4 regulations requiring the discharge of transgender personnel are inconsistent with
5 how the military regulates all other medical and psychological conditions, and
6 transgender-related conditions appear to be the only gender-related conditions that
7 require discharge irrespective of fitness for duty.⁷⁴

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

12 CONCLUSION

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

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

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