No. 22-2332

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

A.M., *by her mother and next friend,* E.M.,
Plaintiff-Appellee,

v.

INDIANAPOLIS PUBLIC SCHOOLS and
SUPERINTENDENT, INDIANAPOLIS PUBLIC SCHOOLS, *in her official capacity,*
Defendants-Appellants,

and
STATE OF INDIANA,
Intervening-Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Indiana, Indianapolis Division
Case No. 1:22-cv-01075-JMS-DLP
Hon. Jane Magnus-Stinson, District Court Judge

BRIEF OF *AMICI CURIAE* AMERICAN ACADEMY OF PEDIATRICS, AMERICAN MEDICAL ASSOCIATION, AMERICAN MEDICAL WOMEN'S ASSOCIATION, AND FOUR ADDITIONAL HEALTH CARE ORGANIZATIONS IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENTS

Appellate Court No: 22-2332

Short Caption: A.M. v. Indianapolis Public Schools et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

American Academy of Pediatrics, American Medical Association, American Medical Women's Association, Endocrine Society, GLMA: Health Professionals Advancing LGBTQ+ Equality, Indiana Chapter of the American Academy of Pediatrics, World Professional Association for Transgender Health

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i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

None

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

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Attorney's Printed Name: David M. Kroeger

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N/A

Attorney's Signature: /s/ Illyana A. Green Date: November 10, 2022

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N/A

Attorney's Signature: /s/ Matthew D. Cipolla Date: November 10, 2022
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Attorney's Printed Name: Benjamin T. Halbig

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Attorney's Signature: /s/ Chasel Lee Date: November 10, 2022
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IDENTITY AND INTEREST OF *AMICI CURIAE*

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

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

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

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici curiae* certify that this brief was authored entirely by counsel for *amici curiae* and not by counsel for any party, in whole or part; no party or counsel for any party contributed money to fund preparing or submitting this brief; and apart from *amici curiae* and their counsel, no other person contributed money to fund preparing or submitting this brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(2), all parties have consented to the filing of this brief.

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

The Endocrine Society is the oldest and largest global professional membership organization representing the field of endocrinology. The Endocrine Society's more than 18,000 members care for patients and are dedicated to advancing hormone research and excellence in the clinical practice of endocrinology, which focuses on hormone conditions such as diabetes, obesity, osteoporosis, infertility, rare cancers, thyroid conditions, and care of gender dysphoria/incongruence and transgender medicine. The Endocrine Society has published evidence-based clinical practice guidelines on gender dysphoria/incongruence, which are recognized around the world.

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

The Indiana Chapter of the American Academy of Pediatrics ("INAAP") is a statewide 501(c)(3) nonprofit organization focusing on issues related to the health and well-being of all Hoosier children. With over 900 primary care pediatricians, subspecialists, and trainees throughout

the state, INAAP strives to provide evidence-based solutions for questions related to children's health, as well as for issues related to the practice of pediatrics.

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

All *amici* share a commitment to improving the physical and mental health of everyone—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public-health consequences of laws and policies. *Amici* submit this brief to inform the Court of the medical consensus regarding what it means to be transgender; the protocols for the treatment of gender dysphoria, which include living in accordance with one's gender identity in all aspects of life; and the predictable harms to the health and well-being of transgender student athletes who are excluded from participating in school sports consistent with their gender identity.

SUMMARY OF ARGUMENT

Transgender individuals have a gender identity that is incongruent with the sex they were assigned at birth. The health care community's understanding of what it means to be transgender

has advanced greatly over the past century. It is now understood that being transgender implies no impairment in a person's judgment, stability, or general social or vocational capabilities.

Many transgender individuals experience a condition called gender dysphoria, which is characterized by clinically significant distress resulting from the incongruence between one's gender identity and the sex assigned to the individual at birth. According to a recent report, 121,882 American children ages six to seventeen were diagnosed with gender dysphoria between 2017 and 2021. Robin Respaut & Chad Terhune, *Putting Numbers on the Rise in Children Seeking Gender Care*, Reuters (Oct. 6, 2022), reuters.com/investigates/special-report/usa-transyouth-data/. About 42,000 of these children and teens were diagnosed with gender dysphoria in 2021 alone, "triple the number in 2017." *Id.* In Indiana, between 0.24% to 3.42%, or 1,097 to 15,534 youth between the ages of thirteen and seventeen identify as transgender. Jody L. Herman et al., The Williams Institute, *How Many Adults and Youth Identify as Transgender in the United States?* 20 tbl.A4 (June 2022), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf. Such "population estimates likely underreport the true number of [transgender] people, given difficulties in collecting comprehensive demographic information about this group." Am. Psych. Ass'n, *Guidelines for Psychological Practice With Transgender and Gender Nonconforming People*, 70 Am. Psychologist 832, 832 (2015), https://www.apa.org/practice/guidelines/transgender.pdf [hereinafter "Am. Psych. Ass'n *Guidelines*"]. Nevertheless, growing acceptance and destigmatization from parents, doctors, and peers are allowing young people with gender dysphoria to become increasingly comfortable with publicly disclosing their transgender status and transitioning. Nick Lehr, *What's Behind the Rising Profile of Transgender Kids? 3 Essential Reads*, The Conversation (June 21, 2021), https://theconversation.com/whats-behind-the-rising-profile-of-transgender-kids-3-essential-reads-161962.

The international consensus among health care professionals regarding treatment for gender dysphoria is to assist the patient to live in accordance with the patient's gender identity, thus alleviating the distress or impairment that not living in accordance with one's gender identity can cause. Treatment may include any or all of the following: counseling, social transition (through, *e.g.*, use of a new name and pronouns, new clothes and grooming in order to allow the person to conform to social expectations and norms associated with his or her identity), hormone therapy and/or gender-confirming surgeries. This treatment for gender dysphoria is highly effective in reducing or eliminating the incongruence and associated distress between a person's gender identity and assigned sex at birth.

Barring transgender student athletes from participating in school sports consistent with their gender identity frustrates the treatment of gender dysphoria by preventing these student athletes from living openly in accordance with their gender. Experiencing discrimination in this fundamental aspect of childhood, adolescence, and young adulthood—participation in school sports—makes it very difficult, if not impossible, for transgender students to live in full accordance with their gender identity. The fear of facing such discrimination alone may prompt transgender students to hide their gender identity, directly thwarting accepted treatment protocols. Lack of treatment, in turn, increases the rate of negative mental-health outcomes, substance use, and suicide. *See* Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 Pediatrics 2, 8 (2020) (finding a "significant inverse association between treatment with pubertal suppression during adolescence and lifetime suicidal ideation among transgender adults" who sought out this treatment). Beyond exacerbating gender dysphoria and interfering with treatment, discrimination reinforces the stigma associated with being transgender. Such stigma, in turn, leads to psychological distress and attendant mental-health consequences.

Moreover, a transgender student athlete who refuses to participate on a sports team incongruent with her gender identity as is required by Indiana Code § 20-33-13-4 may thereby be denied the numerous health and developmental benefits of participation in sports activities.

ARGUMENT

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

Most people have a "gender identity"—a "deeply felt, inherent sense" of their gender. Am. Psych. Ass'n *Guidelines*, *supra*, at 832, 834, 862; *see also* Jason Rafferty, Am. Acad. of Pediatrics, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 Pediatrics at 2 (2018), https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for [hereinafter "AAP Policy Statement"]. Transgender individuals have a gender identity that is not aligned with the sex assigned to them at birth.[2] Transgender people differ from cisgender (*i.e.*, non-transgender) individuals, whose gender identity aligns with the sex they were assigned at birth. Am. Psych. Ass'n *Guidelines*, *supra*, at 861, 863. A transgender man or boy is an individual who is assigned the sex of female at birth but is male and transitions to live in accordance with that male identity. *Id.* at 863. A transgender woman or girl is an individual who is assigned the sex of male at birth but is female and transitions to live in accordance with that female identity. *Id.* A transgender boy is a boy. A transgender girl is a girl.

Gender identity is distinct from and does not correlate with sexual orientation. Transgender people, like cisgender people, may identify as heterosexual, gay, lesbian, bisexual, or asexual. Am. Psych. Ass'n *Guidelines*, *supra*, at 835-36; *see* Sandy E. James et al., Nat'l Ctr. for Transgender

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

Equality, *The Report of the 2015 U.S. Transgender Survey* 246 (Dec. 2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf.

The medical profession's understanding of gender has advanced considerably over the past fifty years. Throughout much of the twentieth century, individuals who did not conform with their gender assigned at birth were often viewed as "perverse or deviant." Am. Psych. Ass'n, *Report of the APA Task Force on Gender Identity and Gender Variance* 26-27 (2008), https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf [hereinafter "Am. Psych. Ass'n *Task Force Report*"]. Practices during that time period tried to "correct" this perceived deviance by attempting to force gender non-conforming people, including transgender people, to live in accordance with the sex assigned to them at birth. These efforts failed and caused significant harm to the individuals subjected to them. *Id.;* Substance Abuse and Mental Health Servs. Admin. ("SAMHSA"), *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 13, 24-25 (2015), https://store.samhsa.gov/sites/default/files/d7/priv/sma15-4928.pdf. Much as our professions now recognize that homosexuality is a normal form of human sexuality—and that stigmatizing homosexual people causes significant harm—we now recognize that being transgender is a "normal variation[] of human identity and expression"—and that stigmatizing transgender people also causes significant harm. *See* Letter from James L. Madara, CEO/Exec. Vice President, Am. Med. Ass'n, to Bill McBride, Exec. Dir., Nat'l Governors Ass'n 1 (Apr. 26, 2021), https://searchlf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2021-4-26-Bill-McBride-opposing-anti-trans-bills Final.pdf.

A. Gender Identity

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

"[G]ender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body characteristics." Am. Psych. Ass'n *Answers*, *supra*, at 1. There are many individuals who depart from stereotypical male and female appearances and roles, but who are not transgender. *See* Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, 33 J. Sch. Nursing 2, 6 (2017). In contrast, a transgender boy or transgender girl "consistently, persistently, and insistently" identifies as a gender different from the sex they were assigned at birth. *See* Colt Meier & Julie Harris, Am. Psych. Ass'n, Fact Sheet: *Gender Diversity and Transgender Identity in Children* at 1, http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf; *see also* Cicero & Wesp, *supra*, at 5-6.

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

While psychologists, psychiatrists, and neuroscientists have not pinpointed why some people are transgender, research suggests there may be biological influences, including, for example, exposure of transgender men identified at birth as females to elevated levels of testosterone in the womb. *See* Jason Rafferty, Am. Acad. of Pediatrics, *Gender Diverse & Transgender Children*, HealthyChildren.org (updated June 8, 2022), 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). Brain scans and neuroanatomical studies of transgender individuals may also support these biological explanations. *See, e.g.*, Francine Russo, *Is There Something Unique About the Transgender Brain?*, Sci. Am. (Jan. 1, 2016), https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/.

B. Gender Dysphoria

As noted above, being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* 1 (2018), https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf. However, many transgender individuals are diagnosed with gender dysphoria, a condition that is characterized by clinically significant distress and anxiety resulting from the incongruence between an individual's gender identity and birth-assigned sex. Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 451-53 (5th ed. 2013) [hereinafter "*DSM-5*"]. As discussed in detail below, the recognized treatment for someone with gender dysphoria is support that addresses "their social, mental, and medical health needs and well-being

while respectfully affirming their gender identity." The World Professional Association for Transgender Health, *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, Sept. 2022, at S7, https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644 [hereinafter "WPATH *Standards of Care*"]. These treatments are effective in alleviating gender dysphoria and are medically necessary for many people. *Id*. at S16-S18.

1. The Diagnostic Criteria And Seriousness Of Gender Dysphoria

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition codifies the diagnostic criteria for gender dysphoria in adults as follows: "[a] marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two" out of six criteria, and "clinically significant distress or impairment in social, occupational, or other important areas of functioning." *DSM-5*, *supra*, at 452-53. The six criteria include (1) "[a] marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics"; (2) "[a] strong desire to be rid of one's primary and/or secondary sex characteristics"; (3) "[a] strong desire for the primary and/or secondary sex characteristics of the other gender"; (4) "[a] strong desire to be of the other gender (or some alternative gender . . .)"; (5) "[a] strong desire to be treated" as a gender different from one's assigned gender; and (6) "[a] strong conviction that one has the typical feelings and reactions" of a different gender. *Id.* at 452.

Transgender children often experience intensified gender dysphoria and worsening mental health as the hormonal and anatomical changes associated with puberty cause the body to develop in ways that diverge from the child's gender identity. *See* Am. Psych. Ass'n *Task Force Report*, *supra*, at 45-46; SAMHSA, *Ending Conversion Therapy*, *supra*, at 2-3. For instance, a deepening

voice for male-assigned individuals or the growth of breasts and the beginning of a menstrual cycle for female-assigned individuals can cause severe distress. For some, puberty manifests as "a sudden trauma that forces to consciousness the horror that they are living in a body that is totally at odds with the gender they know themselves to be but which has been kept securely underground." Diane Ehrensaft, *From Gender Identity Disorder to Gender Identity Creativity: True Gender Self Child Therapy*, 59 J. Homosexuality 337, 345 (2012).

If untreated, gender dysphoria can cause debilitating distress, depression, impairment of function, self-mutilation to alter one's genitals or secondary sex characteristics, other self-injurious behaviors, and suicide. *See, e.g.*, *DSM-5*, *supra*, at 455, 458; Stephanie A. Brill & Rachel Pepper, *The Transgender Child: A Handbook for Families and Professionals* 202 (2008) (discussing risk of self-mutilation). Like other minority groups, transgender individuals also are frequently subjected to prejudice and discrimination in multiple areas of their lives (*e.g.*, school, employment, housing, health care), which exacerbates these negative health outcomes and makes access to appropriate medical care all the more important. Michael L. Hendricks & Rylan J. Testa, *A Conceptual Framework for Clinical Work With Transgender and Gender Nonconforming Clients: An Adaptation of the Minority Stress Model*, 43 Pro. Psych.: Rsch. & Practice 460, 462 (2012); Jessica Xavier et al., Va. Dep't of Health, *The Health, Health-Related Needs, and Lifecourse Experiences of Transgender Virginians* (2007), https://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/THISFINALREPORTVol1.pdf.

2. The Accepted Treatment Protocols For Gender Dysphoria

In the last few decades, transgender people suffering from gender dysphoria have gained widespread access to gender-affirming medical and mental health support and treatment. Am. Psych. Ass'n *Guidelines*, *supra*, at 833, 835. For over thirty years, the generally accepted treatment

protocols for gender dysphoria[4] have aimed at alleviating the distress associated with the incongruence between gender identity and birth-assigned sex. Am. Med. Ass'n, Comm. on Human Sexuality, *Human Sexuality* 38 (1972). These protocols are laid out in the *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8* developed by the World Professional Association for Transgender Health ("WPATH"). WPATH *Standards of Care*, *supra*. The major medical and mental health groups in the United States recognize the WPATH *Standards of Care* as representing the consensus of the medical and mental health communities regarding the appropriate treatment for gender dysphoria. Am. Med. Ass'n, Policy H-185.950, *Removing Financial Barriers to Care for Transgender Patients* (last modified 2022), https://policysearch.ama-assn.org/policyfinder/detail/Removing%20Financial%20Barriers%20to%20Care%20for%20Transgender%20Patients%20H-185.950?uri=%2FAMADoc%2FHOD.xml-0-1128.xml; Am. Psych. Ass'n *Task Force Report*, *supra*, at 32; AAP Policy Statement, *supra*, at 6.

The recommended treatment for gender dysphoria includes assessment, counseling, and, as appropriate, social transition, hormone therapy, and surgical interventions to bring the body into alignment with one's gender identity.[5] Am. Psych. Ass'n *Task Force Report*, *supra*, at 32-39;

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

[5] Some clinicians still offer versions of "reparative" or "conversion" therapy based on the idea that being transgender is a mental disorder. However, all leading medical professional organizations that have considered the issue have explicitly rejected such treatments. *See* Am. Med. Ass'n, Policy H-160.991, *Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations* 1 (2018), https://policysearch.ama-assn.org/policyfinder/detail/Health%20Care%20Needs%20of%20Lesbian,%20Gay,%20Bisexual,%20Transgender%20and%20Queer%20Populations%20H-160.991?uri=%2FAMADoc%2FHOD.xml-0-805.xml; Am. Sch. Counselor Ass'n, *The School Counselor and LGBTQ+ Youth* (2022), https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-LGBTQ-Youth; Hilary Daniel et al., *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper From the American*

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

Social transition—*i.e.*, living one's life fully in accordance with one's gender identity—is often a critically important part of treatment. This typically includes publicly identifying oneself as that gender through all of the ways that people signal their gender to others such as through their name, pronoun usage, dress, manner and appearance, and social interactions. AAP Policy Statement, *supra*, at 6; Am. Psych. Ass'n *Guidelines*, *supra*, at 839-40. Transgender people of all ages benefit from social transition, including children. Socially transitioned transgender youth largely mirror the mental health of age-matched cisgender siblings and peers. WPATH *Standards of Care*, *supra*, at S77. They tend to report lower rates of anxiety and depression and a better sense of self-worth compared to transgender youth who have not socially transitioned to fit their gender identity. *See* Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 J. Am. Acad. Child. Adolesc. Psychiatry 116 (2017); *see also* WPATH *Standards of Care*, *supra*, at S77. In the realm of school sports, in order for transgender youth to live their lives fully in accordance with their gender identity, they should be able to publicly identify with and compete on teams that fit their gender identity.

College of Physicians, 163 Annals Internal Med. 135, 136 (2015); AAP Policy Statement, *supra*, at 4; *see* Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), https://apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender.

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

For children experiencing the onset of puberty, treatment may include medication to prevent further progression of puberty ("pubert[y] blockers"). Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clinical Endocrinology & Metabolism 3869, 3880-83 (2017), https://academic.oup.com/jcem/article/102/11/3869/4157558. This fully reversible treatment allows children with gender dysphoria to delay the development of secondary sex characteristics that do not match their gender identity, giving them additional time to decide whether hormone treatment to feminize or masculinize their body is appropriate. *Id*. at 3880; Am. Psych. Ass'n *Guidelines*, *supra*, at 842; WPATH *Standards of Care*, *supra*, at S112.

Other treatments may be medically beneficial for older transgender individuals. For example, for some adults and adolescents, hormone treatment which helps develop secondary sex characteristics that affirm an individual's gender identity may be medically necessary to treat their

gender dysphoria. *See* Am. Med. Ass'n, Policy H-185.950, *supra*; Am. Psych. Ass'n *Guidelines*, *supra*, at 861, 862; Center of Excellence for Transgender Health, Univ. of Cal., S.F., *Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People* 23 (Madeline B. Deutsch ed., 2d ed. 2016), https://transcare.ucsf.edu/sites/transcare.ucsf.edu/files/Transgender-PGACG-6-17-16.pdf; WPATH *Standards of Care*, *supra*, at S110. *Amicus curiae* the Endocrine Society, the oldest and largest global professional membership organization representing the field of endocrinology, considers these treatments to be the standard of care for gender dysphoria. Wylie C. Hembree et al., *supra*, at 3869-70; *see also* Alessandra D. Fisher et al., *Cross-Sex Hormone Treatment and Psychobiological Changes in Transsexual Persons: Two-Year Follow-Up Data*, 101 J. Clinical Endocrinology & Metabolism 4260, 4260-61 (2016). Hormones have been clinically proven as an effective treatment for gender dysphoria with a low rate of complications. Jack L. Turban et al., *supra*; *see* Henk Asscheman et al., *A Long-Term Follow-Up Study of Mortality in Transsexuals Receiving Treatment with Cross-Sex Hormones*, 164 Eur. J. Endocrinology 635 (2011), https://eje.bioscientifica.com/view/journals/eje/164/4/635.xml; Paul J. van Kesteren et al., *Mortality and Morbidity in Transsexual Subjects Treated with Cross-Sex Hormones*, 47 Clinical Endocrinology 337 (1997). Additionally, with regard to adults, surgical interventions may also be an appropriate and medically necessary treatment for some patients. WPATH *Standards of Care*, *supra*, at S128.

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 his or her relationships, school, job, and other life

activities. Walter Bockting & Eli Coleman, *Developmental Stages of the Transgender Coming-Out Process: Toward an Integrated Identity*, *in Principles of Transgender Medicine and Surgery* 185, 202-03 (Randi Ettner et al., eds., 2d ed. 2013).

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

The Indiana statute at issue in this case bans all transgender female students from participating in school sports consistent with their gender identity. Indiana Code § 20-33-13-4. Under the statute, transgender female students can either: (1) not participate in school sports at all, or (2) participate in those sports as cisgender males. *Id.* This ban may lead to severe adverse consequences for the health and well-being of transgender female students. Forcing a transgender female student to participate on a sports team identifying as a cisgender male is likely to exacerbate the harmful effects of gender dysphoria and goes against the medical consensus to treat gender dysphoria by supporting the transgender individual in living her life according to her gender identity. Alternatively, if they refuse to identify as a cisgender male, transgender female students may be forced to forgo student athletics entirely, depriving them of the myriad benefits—including social, physical, and mental-health benefits—that such sports can provide. Either way, the effect of the Indiana statute is deleterious to the health and well-being of transgender female students.

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

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

As discussed above, the appropriate protocol for treating gender dysphoria includes aligning the body and outward expression with one's gender identity. This is particularly important in school environments, which "play a significant role in the social and emotional development of children" and where "[e]very child has a right to feel safe and respected at school." AAP Policy Statement, *supra*, at 9. Bullying, harassment, and abuse experienced by transgender students may result in greater risk for post-traumatic stress disorder, depression, anxiety, and suicidality. Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 Developmental Psych. 1580, 1581-82 (2010), https://familyproject.sfsu.edu/sites/default/files/documents/FAP_School%20Victimization%20of%20Gender-nonconforming%20LGBT%20Youth.pdf. As noted above, social transition by transgender youth is a critical part of treating gender dysphoria, and this includes all types of school activities such as participating on school sports teams that align with their gender identity. WPATH *Standards of Care*, *supra*, at S76. Denying children the ability to fully express their gender identity in schools, as the Indiana law does, makes it difficult if not impossible for transgender children to live in accordance with their gender identity and thwarts the appropriate medical treatment for these children. Lack of appropriate treatment, in turn, increases the rate of negative health outcomes, substance use, and suicide for transgender children. *See* Turban et al., *supra*, at 8-9 (finding a significant inverse association between treatment with pubertal suppression during adolescence and lifetime suicidal ideation among transgender adults who sought out this treatment).

Exclusionary laws threaten to exacerbate the risk of "anxiety and depression, low self-esteem, engaging in self-injurious behaviors, suicide, substance use, homelessness, and eating disorders among other adverse outcomes" that many transgender individuals face. Am. Psych.

Ass'n & Nat'l Ass'n of School Psychs, *Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools* (2015), https://www.apa.org/about/policy/orientation-diversity [hereinafter "APA/NASP Resolution"]. Those risks are already all too serious. A 2019 report from the Centers for Disease Control and Prevention found that transgender high school students were more likely than cisgender high school students to report violence victimization, substance use, and suicide risk, with almost thirty-five percent of transgender high school students reporting attempting suicide compared to two percent of cisgender high school students. Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students —19 States and Large Urban School Districts, 2017,* 68 Morbidity and Mortality Weekly Report 67, 69 tbl.2 (2019), https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm.

In addition, exclusionary laws perpetuate the perceived stigma of being transgender by forcing transgender individuals to disclose their transgender status, by marking them as "others," and by conveying the state's judgment that they are different and deserve inferior treatment. Research increasingly shows that stigma and discrimination can have deleterious health consequences. *See generally* Am. Psych. Ass'n, *Stress in America: The Impact of Discrimination* (2016), https://www.apa.org/news/press/releases/stress/2015/impact-of-discrimination.pdf. These consequences have striking effects on the daily functioning and emotional and physical health of transgender people. *See, e.g.*, Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression*, *supra* ("[B]ias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health.").

One study concluded that "living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses." Judith Bradford et al., *Experiences of Transgender-Related Discrimination and Implications for Health: Results From the Virginia Transgender Health Initiative Study*, 103 Am. J. Pub. Health 1820, 1827 (2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780721/. As the American Psychological Association and the National Association of School Psychologists have concluded, "the notable burden of stigma and discrimination affects minority persons' health and well-being and generates health disparities." APA/NASP Resolution, *supra*; *see also* Inst. of Medicine, Comm. on LGBT Health Issues & Rsch. Gaps & Opportunities, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* 13 (2011), https://www.ncbi.nlm.nih.gov/books/NBK64806/ (noting that "prejudice, discrimination, and violence" underlie the "health disparities" between transgender and cisgender populations). There is thus every reason to anticipate that the Indiana statute excluding transgender girls and women from school sports consistent with their gender identity may negatively affect their health.

Finally, exclusionary policies have a particularly deleterious effect on the social and emotional development of children and adolescents. Discrimination against and harassment of children and adolescents in their formative years may have effects that linger long after they leave the school environment. Unsurprisingly, unwelcoming school environments produce particularly poor educational outcomes for transgender individuals. *See* APA/NASP Resolution, *supra*; Emily A. Greytak et al., Gay, Lesbian & Straight Education Network ("GLSEN"), *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* (2009), https://www.glsen.org/sites/default/files/2020-04/Harsh%20Realities.pdf. Poorer educational outcomes, standing alone, may lead to lower lifetime earnings and an increased likelihood of poorer health outcomes later in

life. *See, e.g.*, Emily B. Zimmerman et al., *Understanding the Relationship Between Education and Health: A Review of the Evidence and an Examination of Community Perspectives in Population Health: Behavioral and Social Science Insights* 347 (Robert M. Kaplan et al., eds. 2015), https://www.ahrq.gov/sites/default/files/publications/files/population-health.pdf. Moreover, and as already discussed, exclusionary policies may produce and compound the stigma and discrimination that transgender children and adolescents face in the school environment. Such stigma and discrimination, in turn, are associated with an increased risk of post-traumatic stress disorder, depression, anxiety, and suicidality in subsequent years. Toomey et al., *supra*, at 1581-82; *see also* APA/NASP Resolution, *supra*.

B. Preventing Transgender Female Students From Participating In Organized Sports Denies Them Many Potential Benefits To Their Health And Well-Being.

Participating in organized sports can greatly benefit the health and well-being of all students, including transgender female students. A 2019 Clinical Report from *amicus curiae* the American Academy of Pediatrics concludes that "[o]rganized sports participation can be an important part of overall childhood and adolescent physical, emotional, social, and psychological health." Kelsey Logan et al., *Organized Sports for Children, Preadolescents, and Adolescents*, 143 Pediatrics at 13 (2019), https://publications.aap.org/pediatrics/article/143/6/e20190997/37135/Organized-Sports-for-Children-Preadolescents-and. Participating in organized sports can promote: (1) the acquisition of critical physical, academic, and life skills, (2) psychosocial development and formation of social identity, (3) improvements in mental health, and (4) higher levels of physical fitness and weight management. *Id.* at 4-8. Excluding transgender female students from participating in organized sports deprives them of these myriad potential benefits, which may result in adverse outcomes for their health and well-being.

Skill acquisition: Participating in organized sports can promote "[f]undamental motor skills," such as "running, leaping, throwing, catching, and kicking," which "are essential for everyday functioning and are important building blocks for higher-level sports skills." *Id.* at 4. In addition, participating in organized sports can increase academic achievement, high school graduation rates, and the likelihood of going to college.[6] *Id.* at 5. This is especially relevant with regard to transgender students, who reported significantly higher drop-out rates as compared to their cisgender counterparts. *See* GLSEN, *Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline Among LGBTQ Youth* 27 (2016) (finding 7.6% of transgender students said they may drop out of high school, as opposed to 6% of genderqueer students, 2.3% of cisgender female students, and 2.1% of cisgender male students). With regard to life skills—the "skills that are required to deal with the demands and challenges of everyday life"—involvement in organized sports can help to instill self-awareness, emotional control, discipline, personal responsibility, "taking initiative, goal setting, applying effort, respect, teamwork, and leadership." Logan et al., *supra*, at 5.

Social: Organized sports can also provide numerous social benefits, including the development of a positive social self-concept and the opportunity to interact with peers and learn social skills such as "communication, conflict resolution, and empathy." *Id.* at 5-6. Participation in organized sports may also promote "citizenship, social success, positive peer relationships, and leadership skills." *Id.* at 6.

[6] These enhanced academic skills stem in part from the fact that athletes engage in "planning, self-monitoring, evaluation, reflection, and effort," and are "goal oriented and problem focused." These many attributes "carry over into the educational realm." Logan et al., *supra*, at 5.

Psychology: Involvement in organized sports can positively affect mental health in children and adolescents, who develop emotional control, self-esteem, confidence, and social integration, and are therefore less likely to experience emotional distress, depression, and suicidal behavior. These benefits may last well into adulthood. *Id.* at 6-7.

Physical fitness: Organized sports participation can also promote physical fitness in children and adolescents, including cardiovascular health, "endurance, speed, strength, and coordination," and a lower likelihood of being overweight. Additionally, engaging in organized sports during adolescence increases the likelihood of a physically active lifestyle later in life. *Id.* at 7.

In light of all these potential benefits, those who seek to participate in organized sports but are prevented from doing so on the basis of, for example, gender identity, may experience adverse health outcomes. They may be hindered in their acquisition of physical, academic, and life skills, and in their social development. They may also experience lower levels of mental and physical health.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully urge this Court to affirm the district court's order granting the preliminary injunction.

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Respectfully submitted,

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

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) and Seventh Circuit Rule 29 because this brief contains 5,966 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Circuit Rule 32 and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 in 12 point Times New Roman font for the main text and 11 point Times New Roman font for the footnotes.

Dated: November 10, 2022

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CERTIFICATE OF SERVICE

David M. Kroeger, an attorney, hereby certifies that on November 10, 2022, he caused the **Brief Of *Amici Curiae* American Academy Of Pediatrics, American Medical Association, American Medical Women's Association, And Four Additional Health Care Organizations In Support Of Plaintiff-Appellee And Affirmance** to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system and that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Pursuant to ECF Procedure (h)(2) and Circuit Rule 31(b), and upon notice of this Court's acceptance of the electronic brief for filing, I will cause fifteen copies of the above cited brief to be transmitted to the Court via UPS overnight delivery, postage prepaid, within five days of that notice date.

/s/ David M. Kroeger
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