IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 21-1977

AIDEN VASQUEZ and MIKA COVINGTON,
Petitioners-Appellees,
v.
IOWA DEPARTMENT OF HUMAN SERVICES,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE WILLIAM P. KELLY

AMENDED BRIEF OF AMICI CURIAE THE AMERICAN MEDICAL ASSOCIATION, THE IOWA MEDICAL SOCIETY, THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, THE AMERICAN COLLEGE OF PHYSICIANS, THE AMERICAN PSYCHIATRIC ASSOCIATION, THE ENDOCRINE SOCIETY, GLMA: HEALTH PROFESSIONALS ADVANCING LGBTQ EQUALITY, MENTAL HEALTH AMERICA, NORTH AMERICAN SOCIETY FOR PEDIATRIC AND ADOLECENT GYNEGOLOGY, AND SOCIETY OF OB/GYN HOSPITALISTS

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STATEMENT OF INTERESTS OF *AMICI CURIAE* REQUIRED BY IOWA R. APP. P. 6.906(4)(c)

Amici Curiae represent the interests of leading medical and mental-health professionals dedicated to providing the proper healthcare and treatment for all individuals in need—across Iowa and all of the United States. *Amici* represent well-recognized organizations that promulgate the leading standards of care and clinical guidelines in their fields. *Amici* share a commitment to improving the physical and mental health of all Iowans and all Americans—regardless of gender identity—and to informing and educating lawmakers, the judiciary, and the public regarding the public-health impacts of laws and policies. *Amici* submit this brief to inform the Court of the 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 individuals who are denied access to necessary medical treatments. *Amici* offer to explain that the exclusion of medically necessary transition-related surgeries from Iowa's Medicaid coverage impinges upon medical and mental-health professionals' ability to provide medically necessary care to each Iowan patient with gender dysphoria.

Amicus 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, including Iowa.

Amicus the Iowa Medical Society ("IMS") is the statewide professional association for Iowa physicians, residents, and medical students. IMS helps professionals develop their skills and further their careers by providing access to unique and relevant content and exclusive member services. IMS also works to protect the health of Iowans through a variety of projects and activities at the state and national levels. Today, IMS exists to assure the highest quality healthcare in Iowa through its role as physician and patient advocate.

The AMA and IMS join this brief on their own behalves and as representatives of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among

the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

Amicus the American College of Obstetricians and Gynecologists (ACOG) is a national organization of more than 60,000 women's health care physicians and medical professionals. ACOG's membership represents more than 90 percent of all board-certified obstetrician-gynecologists (ob-gyns) in the United States. As the premiere national medical specialty organization of women's health care physicians, ACOG supports the goals of expanding access to continuous and meaningful health insurance coverage and rejecting discriminatory practices that jeopardize patient care. ACOG is committed to improving the physical and mental health of all Americans and to informing and educating lawmakers, the judiciary, and the public through science regarding the public health impacts of laws and policies.

Amicus the American College of Physicians ("ACP") is the largest medical specialty organization in the United States with members in more than 145 countries worldwide. ACP membership includes 154,000 internal medicine physicians (internists), related subspecialties, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

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

Amicus 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, focusing on diabetes, obesity, osteoporosis, infertility, rare cancers, and thyroid conditions.

Amicus GLMA: Health Professionals Advancing LGBTQ Equality ("GLMA") is the largest and oldest association of LGBTQ healthcare professionals. GLMA's mission is to ensure equality in healthcare for LGBTQ individuals and healthcare professionals, using the medical and health expertise of GLMA members in public policy and advocacy, professional education, patient education and referrals, and the promotion of research. GLMA (formerly known as the Gay & Lesbian Medical Association) was founded in 1981 in part as a response to the call to advocate for policy and

services to address the growing health crisis that would become the HIV/AIDS epidemic. Since then, GLMA's mission has broadened to address the full range of health issues affecting LGBTQ people, and GLMA has become a leader in public policy advocacy related to LGBTQ health. To advance its mission, GLMA provides cultural competency courses for medical providers, including in transgender health.

Amicus Mental Health America ("MHA") is the nation's leading community-based nonprofit dedicated to addressing the needs of those living with mental illness and promoting the overall mental health of all. MHA is committed to the principle that people with mental health and substance use conditions are entitled to those healthcare and other services and legal protections which will enable them to maximize their abilities and be fully integrated into all aspects of life. More specifically, this includes the preservation of liberty and personal autonomy, presumption of competency, freedom from seclusion and restraints, protection of privacy, as well as specific consumer needs for employment, housing, benefits, consumer-driven mental health systems, self-help and peer support services, and ending discrimination. This also includes adherence to the Americans with Disabilities Act, the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Services Act, the Fair Housing Act, and other legislation that

protects the rights of people with mental health and substance use conditions. MHA supports the enactment and enforcement of laws and policies designed to protect the rights of persons with mental health and substance abuse. MHA is committed to equal justice and protection of legal rights for all persons affected by mental health and substance use conditions, including children, adolescents and their families, and older adults.

Amicus the North American Society for Pediatric and Adolescent Gynecology ("NASPAG") is a voluntary, non-profit organization devoted to conducting, encouraging, and supporting programs of medical education and professional training in the field of pediatric and adolescent gynecology. We provide leadership while serving as a forum for research and promoting communication and collaboration among health care professionals on issues related to pediatric and adolescent gynecology. NASPAG members reside in all 50 states and in countries abroad. NASPAG is dedicated to providing multidisciplinary leadership in education, research and gynecologic care to improve the reproductive health of youth. Its focus is to serve and be recognized as the lead provider in PAG education, research and clinical care, conduct and encourage multidisciplinary and inter-professional programs of medical education and research in the field of PAG, and advocate for the

reproductive well-being of children and adolescents and the provision of unrestricted, unbiased, and evidence-based practice of PAG.

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

SUMMARY OF ARGUMENT

Amici feel a responsibility to inform this Court about the medical community's consensus regarding best practices when treating transgender individuals for gender dysphoria and providing gender-affirming care. *Amici*, as leading healthcare providers both within the State of Iowa and beyond, are in a unique position to inform the Court about the proper treatments for people experiencing gender dysphoria, the negative health outcomes when gender dysphoria is left untreated, and other health concerns that could arise from

lack of coverage by Medicaid plans for the medically appropriate and evidence-based treatments for gender dysphoria. *Amici* believe that this information will assist the Court by presenting a complete and accurate description of the medical conditions and treatments at issue in the pending case.

Transgender individuals have a gender identity that is incongruent with the sex they were assigned at birth. The healthcare community's understanding of what it means to be transgender has advanced greatly over the past century. It is now understood that being transgender implies no impairment in a person's judgment, stability, or general social or vocational capabilities.

According to a 2016 report, approximately 1.4 million adults identify as transgender in the United States and 7,400 in Iowa. Andrew R. Flores *et al.*, The Williams Institute, How Many Adults Identify as Transgender in the United States? 3 (June 2016), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Adults-US-Aug-2016.pdf.

Many transgender individuals experience a condition called gender dysphoria, which is characterized by clinically significant psychological and physiological distress resulting from the incongruence between one's gender identity and the sex assigned to the individual at birth. The international

consensus among healthcare 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. Treatment may include any or all of the following: counseling, social transition (such as use of a new name and pronouns, new clothes and grooming consonant with social expectations and norms associated with his or her identity), hormone therapy, and/or gender-affirming surgeries. Such treatment for gender dysphoria, tailored to the individual's own circumstances, is highly effective in reducing or eliminating the incongruence and associated distress between a person's gender identity and assigned sex at birth.

Barring coverage of gender-affirming care for individuals in Iowa who rely on Medicaid would effectively place such care out of reach for these Iowans. Lack of treatment, in turn, increases the rate of negative mental health outcomes, substance abuse, and suicide. Beyond exacerbating gender dysphoria and interfering with treatment, discrimination—including discrimination in health coverage—reinforces the stigma associated with being transgender. Such stigma, in turn, leads to psychological distress and attendant mental-health consequences.

ARGUMENT

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

All people have a "gender identity"—a "deeply felt, inherent sense" of their gender. Am. Psychol. 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. Psychol. Ass'n *Guidelines*"]; *see also* David A. Levine & Comm. on Adolescence, Am. Acad. Of Pediatrics, *Technical Report: Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth*, 132 Pediatrics e297, e298 (July 2013), https://publications.aap.org/pediatrics/article/132/1/e297/31402/Office-Based-Care-for-Lesbian-Gay-Bisexual [hereinafter "AAP Technical Report"]. Transgender individuals have a gender identity that is not aligned with the sex assigned to them at birth.[1] Transgender people differ from cisgender (*i.e.*, non-transgender) individuals, whose gender identity aligns with the sex they were assigned at birth. Am. Psychol. Ass'n *Guidelines*, *supra*, at 861. A transgender man is someone who is assigned the sex of female at birth, but has a male

[1] 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*, *supra*, at 834.

gender identity. A transgender woman is an individual who is assigned the sex of male at birth but has a female gender identity. A transgender man is a man. A transgender woman is a woman. Gender identity is distinct from and does not predict sexual orientation. Transgender people, like cisgender people, may identify as heterosexual, gay, lesbian, bisexual, or asexual. Am. Psychol. Ass'n *Guidelines*, *supra*, at 835-36; Sandy E. James *et al.*, Nat'l Ctr. for Transgender Equality, The Report of the 2015 U.S. Transgender Survey 246 (Dec. 2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf.

The medical and psychological professions' understanding of gender has advanced considerably over the past fifty years. Throughout much of the twentieth century, individuals who were not gender conforming were often viewed as "perverse or deviant." 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*"]. Our professions now recognize that being transgender "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities"—and that stigmatizing transgender people also causes significant harm. Jack Drescher

et al., Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* 1 (2018), https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf.

A. Definitions of "Gender Identity" and "Gender Expression"

"[G]ender identity" refers to a "person's internal sense" of being male, female, or another gender. Am. Psychol. Ass'n, Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression 1 (2014), http://www.apa.org/topics/lgbt/transgender.pdf [hereinafter "Am. Psychol. Ass'n *Answers*"]. Every person has a gender identity. Caitlin Ryan, Family Acceptance Project, San Francisco State University, 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. A person's gender identity cannot be altered by external intervention. Colt Meier & Julie Harris, Am. Psychol. Ass'n, Fact Sheet: Gender Diversity and Transgender Identity in Children 1, http://www.apadivisions.org/division-44/resources/advocacy/transgender-children.pdf; *see also* Jason Rafferty, Am. Acad. Of Pediatrics, *Gender Identity Development in Children*, HealthyChildren.org (Sept. 18,

2018), https://healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Identity-and-Gender-Confusion-In-Children.aspx. Further, gender identity cannot be ascertained immediately after birth. Am. Psychol. Ass'n *Guidelines*, *supra*, at 862. Many children develop stability in their gender identity between ages three and four.[2] *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. Psychol. 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. Ethan C. Cicero & Linda M. Wesp, *Supporting the Health and Well-Being of Transgender Students*, 33 J. Sch. Nursing 2 (2017). Indeed, most people who express their gender in a non-stereotypical or non-conforming manner are or become comfortable with the sex they were assigned at birth. World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People 5 (7th Version 2011), https://www.wpath.org/media/cms/Documents/SOC%20v7/Standards%

[2] "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. Psychol. Ass'n *Guidelines, supra,* at 836.

20of%20Care%20V7%20-%202011%20WPATH.pdf [hereinafter "WPATH *Standards of Care*"]. In contrast, a transgender person "consistently, persistently, and insistently" identifies as a gender different from the sex they were assigned at birth. *See* Meier & Harris, *supra*, at 1; *see also* Cicero & Wesp, *supra*, at 5-6.

While psychologists, psychiatrists, and neuroscientists have not pinpointed why some people are transgender, research suggests there may be biological influences, including, for example, in utero hormone exposure. *See* Jason Rafferty, Am. Acad. Of Pediatrics, *Gender Diverse & Transgender Children*, HealthyChildren.org (June 7, 2021), 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); Arianne B. Dessens *et al.*, *Gender Dysphoria and Gender Change in Chromosomal Females with Congenital Adrenal Hyperplasia*, 34 Arch. Sexual Behav. 389, 395 (2005). 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*, *supra*, at 1. However, many transgender individuals are diagnosed with gender dysphoria, a condition that is characterized by clinically significant psychological and physiological 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*"]; *see also* Am. Psychiatric Ass'n, *What is Gender Dysphoria?*, https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria (last visited Apr. 11, 2022). As discussed in detail below, the recognized treatment for someone with gender dysphoria is medical support that allows the individual to transition from his or her birth assigned sex to the sex associated with his or her gender identity. WPATH *Standards of Care*, *supra*, at 9-10. These treatments are "effective in alleviating gender dysphoria and are medically necessary for many people." *Id.* at 5.

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.

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.*, *id.*, 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, healthcare), 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.: Research & Practice 460 (2012); Jessica Xavier *et al.*, Va. Dep't of Health, The Health, Health-Related Needs, and Lifecourse Experiences of Transgender Virginians (Jan. 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, access to gender-affirming medical and mental health support and treatment for transgender people suffering from gender dysphoria has become more widespread. Am. Psychol. Ass'n *Guidelines*, *supra*, at 835; WPATH *Standards of Care*, *supra*, at 8-9. For fifty years, the

generally accepted treatment protocols for gender dysphoria[3] 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 Transsexual, Transgender, and Gender Nonconforming People (Version 7)* developed by the World Professional Association for Transgender Health ("WPATH"). WPATH *Standards of Care*, *supra*. The major medical groups in the United States recognize that the WPATH Standards of Care represent the consensus of the medical and mental health community regarding the appropriate treatment for gender dysphoria. *See* Am. Med. Ass'n, *Health Insurance Coverage for Gender-Affirming Care of Transgender Patients* (2019), https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf; AAP Technical Report, *supra*, at e307-08.

[3] Earlier versions of the *DSM* used different terminology, *e.g.*, "gender identity disorder." Am. Psychol. Ass'n *Guidelines*, *supra*, at 861. The precise clinical definition of this condition has also evolved over time. Am. Psychiatric Ass'n, *Gender Dysphoria Diagnosis: History*, https://www.psychiatry.org/psychiatrists/cultural-competency/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis (last visited Apr. 27, 2022); *see also* Jack Drescher *et al.*, *Minding the Body: Situating Gender Identity Diagnosis in the ICD-11*, 24 Int'l Rev. Psychiatry 568 (2012) (reviewing controversies in gender identity diagnoses in both the DSM and the World Health Organization's ICD classification system).

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.[4] Am. Psychol. Ass'n *Task Force Report*, *supra*, at 32-39; William Byne *et al.*, Am. Psychiatric Ass'n Workgroup on Treatment of Gender Dysphoria, *Assessment and Treatment of Gender Dysphoria and Gender Variant Patients: A Primer for Psychiatrists*, 175 Am. J. Psychiatry 1046 (2018); AAP Technical Report, *supra*, at e307-09. However, each patient

[4] 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, considering it ineffective, harmful to patients, and contrary to medical ethics. *See* Am. Med. Ass'n, Issue Brief: LGBTQ Change Efforts (2019), https://www.ama-assn.org/system/files/2019-12/conversion-therapy-issue-brief.pdf; Am. Med. Ass'n, Policy Number H-160.991, Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations (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 (2016), https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-LGBTQ-Youth; Hilary Daniel *et al.*, *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper from the American College of Physicians*, 163 Annals Internal Med. 135, 136 (2015); AAP Technical Report, *supra*, at e307-08; Am. Psychoanalytic Ass'n, *Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), http://www.apsa.org/content/2012-position-statement-attempts-change-sexual-orientation-gender-identity-or-gender.

requires an individualized treatment plan to account for their specific needs. Am. Psychol. Ass'n *Task Force Report*, *supra*, at 32. The task of deciding on an individualized treatment plan should be left to the patient and their medical professionals—not an outside organization such as an insurance provider.

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 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 the body is appropriate. *Id.* at 3880; Am. Psychol. Ass'n *Guidelines*, *supra*, at 842; WPATH *Standards of Care*, *supra*, at 18-20.

For some transgender people, hormone treatment which helps develop secondary sex characteristics consistent with their gender identity may be medically necessary to treat their gender dysphoria. *See* Am. Med. Ass'n, Policy H-185.950, *supra*; Am. Psychol. Ass'n *Guidelines*, *supra*, at 861, 862; Ctr. of Excellence for Transgender Health, University of California, San

Francisco, Guidelines for the Primary and Gender-Affirming Care of Transgender and Gender Nonbinary People 23 (Madeline B. Deutsch ed., 2d ed. June 17, 2016), https://transcare.ucsf.edu/sites/transcare.ucsf.edu/files/Transgender-PGACG-6-17-16.pdf; WPATH *Standards of Care*, *supra*, at 33-34, 54. The Endocrine Society, the oldest and largest global professional membership organization representing the field of endocrinology (the study of hormones), considers hormone therapy to be an important component of treatment for gender dysphoria. 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 (2016). A transgender woman undergoing hormone therapy, for example, will often have hormone levels within the same range as cisgender women; and just as they do in any other woman, these hormones will affect most of her major body systems. Hembree *et al.*, *supra*, at 3885-88; *see also* Brill & Pepper, *supra*, at 217. Hormone therapy physically impacts the patient's secondary sex characteristics. For instance, women will generally experience breast growth, altered distribution of body fat, softening of the skin, and decreased muscle mass; while men generally develop increased muscle mass, increased body and facial hair, male-pattern baldness (for some), and a deepening of the

voice. Hembree *et al.*, *supra*, at 3886-89. Hormones have been clinically proven to be an effective treatment with a low rate of complications. *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 Van Kesteren *et al.*, *Mortality and Morbidity in Transsexual Subjects Treated with Cross-Sex Hormones*, 47 Clinical Endocrinology 337 (1997).

Surgical interventions may also be an appropriate and medically necessary treatment for some patients. WPATH *Standards of Care*, *supra*, at 54-56. The recommended treatment for transgender people with gender dysphoria begins with an assessment and counseling. From there, depending on the individual's need, it can include a social transition, hormone therapy, and surgical procedures to align an individual's body with their gender identity. Am. Psychol. Ass'n *Task Force Report*, *supra*, at 32-39. Healthcare providers widely recognize that for some individuals, especially those with severe gender dysphoria, it is impossible to manage their distress with psychotherapy and/or hormone therapy alone. *See* David Seil, *The Diagnosis and Treatment of Transgendered Patients*, 8 J. Gay & Lesbian Psychotherapy 99, 114-16 (2004); Walter O. Bockting & Eli Coleman, *A Comprehensive Approach to the Treatment of Gender Dysphoria*, 5 J.

Psychol. & Human Sexuality 131, 150 (1993). The established protocols for assessing and treating gender dysphoria specifically recognize the medical necessity and therapeutic importance of surgery for certain individuals: "While many transsexual, transgender, and gender-nonconforming individuals find comfort with their gender identity, role, and expression without surgery, for many others surgery is essential and medically necessary to alleviate their gender dysphoria." WPATH *Standards of Care*, *supra*, at 54.[5] However, surgery is not recommended for many transgender people and needs to be determined on a case-by-case basis, and the guidelines do not prescribe surgery for children or adolescents.

Surgical procedures might include chest reconstruction surgery for transgender men, breast augmentation for transgender women, or genital surgeries, including removal of the testicles, the primary source of testosterone production, in women who are transgender. Hembree *et al.*, *supra*, at 3893-95; *see also* WPATH *Standards of Care*, *supra*, at 57-58.

[5] The legal issue of whether gender affirming surgery can be medically necessary is not at issue in the present case. This Court has already recognized that gender affirming surgery can be medically necessary for at least some people experiencing gender dysphoria. *See Good v. Iowa Dept. of Human Servs.*, 924 N.W.2d 853, 862 (Iowa 2019) (holding that "the rule expressly excludes Iowa Medicaid for gender-affirming surgery specifically because this surgery treats gender dysphoria for transgender individuals," not because the surgery is not medically necessary).

Decades of clinical evidence show these surgical procedures are effective in reducing gender dysphoria and improving mental health. *See, e.g.*, Annelou L.C. de Vries *et al.*, *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 Pediatrics 696 (2014); William Byne *et al.*, *Report of the American Psychiatric Association Task Force on Treatment of Gender Identity Disorder*, 41 Arch. Sexual Behav. 759, 778-79 (2012); Mohammad Hassan Murad *et al.*, *Hormonal Therapy and Sex Reassignment: A Systematic Review and Meta-Analysis of Quality of Life and Psychosocial Outcomes*, 72 Clinical Endocrinology 214 (2010); Luk Gijs & Anne Brewaeys, *Surgical Treatment of Gender Dysphoria in Adults and Adolescents: Recent Developments, Effectiveness, and Challenges*, 18 Ann. Rev. Sex Rsch. 178 (2007); Jan Eldh *et al.*, *Long-Term Follow Up After Sex Reassignment Surgery*, 31 Scand. J. Plastic Reconstructive Surgery & Hand Surgery 39 (1997). Empirical studies reflect the importance of the interplay among treatments, finding hormone therapy in conjunction with psychotherapy and, for some, surgery, to be necessary elements of treating severe levels of gender dysphoria. *See* Gianna E. Israel & Donald E. Tarver II, *Transgender Care: Recommended Guidelines, Practical Information & Personal Accounts* 56-73 (1997).

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. Living Without Gender Affirming Care Can Be Irreversibly Detrimental to Patient Health.

The treatments described above, when prescribed by a medical professional, are not elective treatments. For transgender patients with gender dysphoria these treatments are medically necessary and may be urgent. *See* WPATH *Standards of Care*, *supra*, at 8 (relying on the multiple sources to conclude that "hormone therapy and surgery have been found to be medically necessary to alleviate gender dysphoria in many people"). The biggest barrier to both safe hormonal therapy and to appropriate treatment for transgender patients is the lack of access to care. Daphna Stroumsa, *The State of Transgender Health Care: Policy, Law, and Medical Frameworks*, 104 Am. J. Pub. Health e31 (March 2014), https://www.ncbi.nlm.nih.gov/pmc/

articles/PMC3953767/. By delaying care because of lack of access or denial of coverage, transgender individuals face not just the potential aggravation of their gender dysphoria, but an onset of other dangerous health conditions. According to a 2015 study by the UCLA School of Law's Williams Institute, failing to receive surgical care where it was needed led to a 16.6% increase in prevalence of suicidal thoughts and a 3.4% higher rate of actual suicide attempts in the preceding year. Jody L. Herman *et al.*, The Williams Institute, Suicide Thoughts and Attempts Among Transgender Adults Findings From the 2015 U.S. Transgender Study 16-17 (Sept. 2019). The study also showed that failure to receive hormones similarly increased the prevalence of suicidal thoughts by 15% and increased suicide attempts by 2.4%. *Id.* Overall, where a transgender individual "wanted, and subsequently received[] hormone therapy and/or surgical care[, they] had substantially lower prevalence of … suicide [sic] thoughts and attempts than those who wanted hormone therapy and surgical care but had not received them [in the past year]." *Id.* One study in particular found that "a review of quality of life after hormone therapy and transition indicated that the majority (80%) showed improvement, including more stable relationships, better psychosocial adjustment, overall happiness and contentment. Perceived financial, professional, and employment status also improved." Walter Bockting *et al.*, *Adult Development and Quality of*

Life of Transgender and Gender Nonconforming People, 23 Current Op. in Endocrinology, Diabetes & Obesity 188, 192 (2016). Other recent studies have also shown "lower depressive symptoms in gender dysphoria individuals receiving hormonal treatment. … [and] report[ed] higher levels of self-esteem due to the hormonal treatment intervention." Rosalia Costa & Marco Colizzi, *The Effect of Cross-Sex Hormonal Treatment on Gender Dysphoria Individuals' Mental Health: A Systematic Review*, 12 Neuropsychiatric Disease & Treatment 1953, 1962 (2016). Hormone therapy leads to lower rates of anxiety, higher quality of life, fewer problems with socialization, and fewer functional impairments. *Id.* at 1964-65.

It is highly cost effective for state plans or insurance providers to cover gender affirming surgery. One study led by Johns Hopkins researchers found that coverage of hormone therapy and gender affirming surgery offsets what would otherwise be greater costs expended for depression and substance abuse treatment, and it amounts to only a $0.016 budget impact per member per month. *See* William V. Padula *et al., Societal Implications of Health Insurance Coverage for Medically Necessary Services in the U.S. Transgender Population: A Cost-Effectiveness Analysis*, 31 J. Gen. Internal Med. 394 (2016). Without insurance coverage, these treatments are often unaffordable for the individual. While there may still be issues with

affordability even with insurance, including issues of what the insurer deems "medically necessary," policies like the Iowa Medicaid plan at issue, which create blanket bans, *ensure* that medical treatment remains outside the reach of many who need it. To be eligible for Iowa Medicaid, an individual Iowan's annual income must not exceed $18,075—or $24,353 for a household of two. Benefits.gov, *Iowa Medicaid Program*, https://www.benefits.gov/benefit/1388 (last visited Apr. 21, 2022). The policy in place would therefore force those Iowans who can least afford it to pay out of pocket for medically necessary care, or else seek private insurance coverage that is not accessible to those using Medicaid. But as a practical matter, the result for these Iowans will be an inability to access medically necessary interventions, likely leading to worse healthcare outcomes. *See generally*, ACOG Committee Opinion: Health Care for Transgender and Gender Diverse Individuals, https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/03/health-care-for-transgender-and-gender-diverse-individuals.

CONCLUSION

For the foregoing reasons, amici respectfully urge this Court affirm the district court's ruling.

Respectfully submitted, this the 15th day of August, 2022.

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains 5,399 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

DATE: August 15, 2022 By: /s/ *Paige Fiedler*