No. 16-1989

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOAQUÍN CARCAÑO, *et al.*,

Plaintiffs-Appellants,

v.

PATRICK McCRORY, in his official capacity as Governor of North Carolina,

Defendant-Appellee,

and

PHIL BERGER, in his official capacity as President *pro tempore* of the North Carolina Senate, and **TIM MOORE**, in his official capacity as Speaker of the North Carolina House of Representatives,

Intervenors/Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of North Carolina

BRIEF OF *AMICUS CURIAE* THE WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH IN SUPPORT OF APPELLANTS

Counsel for Amicus Curiae listed on following page.

J. Anthony Downs
Alexis L. Shapiro
Christopher Somma
Todd Marabella
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
Tel.: 617.570.1000

Jenny J. Zhang*
GOODWIN PROCTER LLP
901 New York Avenue NW
Washington, DC 20001
Tel.: 202.346.4000

*Admitted only in New York and Massachusetts; practice supervised by Alida Barletta.

Counsel for Amicus Curiae

STATEMENT REGARDING CONSENT TO FILE, AUTHORSHIP, AND MONETARY CONTRIBUTIONS

All parties have consented to the filing of this brief. Pursuant to Rule 29(c) of the Federal Rules of Appellate Procedure, Amicus Curiae states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae or its counsel made a monetary contribution to its preparation or submission.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

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No. 16-1989 Caption: Joaquin Carcano v. Patrick McCrory

Pursuant to FRAP 26.1 and Local Rule 26.1,

World Professional Association for Transgender Health (WPATH)
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Alexis L. Shapiro Date: October 25, 2016

Counsel for: Amicus Curiae

CERTIFICATE OF SERVICE

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I certify that on October 25, 2016 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Alexis L. Shapiro
(signature)

October 25, 2016
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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae the World Professional Association for Transgender Health ("WPATH"), formerly known as the Harry Benjamin International Gender Dysphoria Association, is an international professional association with membership consisting of more than 900 physicians, psychologists, social scientists, and legal professionals committed to developing the best practices and supportive policies to promote health, research, education, respect, dignity, and equality for transgender people in all settings. WPATH develops and publishes the Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People ("Standards of Care"), recognized in the medical community as the authoritative standards for the provision of transgender healthcare. The Standards of Care are informed by medical evidence and the current consensus in medical research and clinical practice to provide treatment protocols specific to the nature and severity of an individual's condition. For over thirty years, the Standards of Care have emphasized the importance of social integration in an individual's gender role.

The Amicus Curiae has a substantial interest in this case as an organization consisting of professionals dedicated to the health and wellbeing of transgender individuals. Accordingly, *amicus curiae* offers the following analysis, which complements the appellants' brief, to assist the Court in determining the

appropriateness of H.B.2, as informed by the *amicus's* expertise on the treatment of gender dysphoria and knowledge of the deleterious effect of forcing transgender individuals to use public facilities that are inconsistent with their gender identity. The principles set forth in this brief are well-established in the medical community and reaffirm that it is critical to the well-being of all individuals, including transgender individuals, that they live a life consistent with their gender identity. Most importantly for this case, this must include the ability to use a restroom or other public facility consistent with their gender identity.

ARGUMENT

This case involves the rights of three named transgender plaintiffs ("Plaintiffs") and impacts the lives of more than 44,000 transgender individuals, each of whom North Carolina's House Bill 2 ("H.B. 2") excludes from safe access to essential public facilities.

Joaquin Carcaño ("Mr. Carcaño") is a 27-year-old man who is a Project Coordinator for the University of North Carolina at Chapel Hill's Institute for Global Health and Infectious Disease. JA125. His work involves providing medical education and services to the Latino/a population. *Id.* As part of his regular work day, he uses the public restroom facilities at his workplace, UNC, as well as at the offices of the North Carolina Department of Health and Human Services, which he visits as part of his job. JA128-29. Payton Grey McGarry

("Mr. McGarry") is a 20-year-old man who is a full-time student at the University of North Carolina at Greensboro where he is a double major in Business Administration and Accounting. JA162. He also is an avid musician who plays four instruments and is a member of a music fraternity. JA163-64. Because he attends school at UNC, Mr. McGarry regularly uses the restrooms and locker rooms there, in addition to using other state-owned facilities in North Carolina. JA165-66; JA167. H.S. is a 17-year-old girl who is a senior at the University of North Carolina School of the Arts High School, studying art and visual studies, which are her passions. JA156-57. Because H.S. lives and attends school on UNC property, she regularly uses the restrooms on campus, in addition to using other state-owned facilities in North Carolina. JA159-61. These three individuals are Plaintiffs in this case and each is transgender.

For Plaintiffs and the other approximately 44,000 transgender individuals in North Carolina, H.B.2 forces them into a uniquely stigmatized class. It is only transgender individuals such as Mr. Carcaño, Mr. McGarry and H.S. who are excluded from public single-sex facilities that match their gender identity. By excluding them in this manner, the state of North Carolina endangers the health and safety of transgender individuals by disrupting essential components of their daily lives, as well as the medically appropriate standard of care for managing their emotional and physical health. This disruption has real consequences, both

immediate and long-term. It forces transgender people to choose among avoiding public facilities that are part of their regular lives all together, risking legal sanction for violating H.B.2 by using facilities that match their gender identity, or deviating from their established treatment protocol and activities of daily living while facing social stigma and risking harassment and physical violence by being forced into facilities that are inconsistent with their gender identity. By doing so, H.B.2 prevents transgender individuals from leading healthy, productive lives and stigmatizes them as different from and unequal to everyone else.

This case offers the Court the chance to remove a harmful and discriminatory barrier that makes it impossible for Plaintiffs and other transgender North Carolinians to thrive and to be treated as equal, respected, and participating members of society.

I. The Ability To Live In Accordance With Gender Identity Is Essential to The Health, Safety, and Well-Being Of All People, Including Transgender People

A. As With All People, Transgender People Must Live A Life Consistent With Their Gender Identity In Order To Thrive.

The term "gender identity" is a well-established concept in medicine, referring to one's sense of oneself as belonging to a particular gender. JA109; JA133.[1] Gender identity is not unique to transgender individuals—everyone has a

[1] *See also* Pub. Health Agency of Can., Gender Identity in Schools: Questions and Answers 1 (2011), *available at*

gender identity; it is a fundamental part of being human. Pub. Health Agency of Can., *Gender Identity in Schools: Questions and Answers* 1 (2011), *available at* http://publications.gc.ca/collections/collection_2012/aspc-phac/HP5-97-2-2011-eng.pdf ("Gender is so fundamental to our identity, that without being aware of it, many aspects of human life are structured by and reveal our gender.").[2] JA107; JA133. Evidence strongly suggests that gender identity is innate or fixed at a young age and that gender identity has a strong biological basis. JA109; JA133. There is evidence that even toddlers generally have a strongly developed sense of their gender. JA109.

Although every individual is assigned a sex at birth, this default assignment does not give any consideration to the individual's gender identity, which is not readily ascertainable at birth. For the majority of the population, a person's gender identity conforms with their assigned birth sex. But it is a mistake to assume—as many people have—that sex assigned at birth and gender identity are always the

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http://publications.gc.ca/collections/collection_2012/aspc-phac/HP5-97-2-2011-eng.pdf (recognizing gender as fundamental to one's identity); Caitlin Ryan, *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual, & Transgender Children* 17 (2009), *available at* http://familyproject.sfsu.edu/sites/sites7.sfsu.edu.familyproject/files/FAP_English%20Booklet_pst.pdf.

[2] *See* Am. Psychiatric Ass'n., *Diagnostic and Statistical Manual of Mental Disorders* 451 (5th ed. 2013); Am. Psychological Ass'n., *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* 1 (2014), *available at* http://www.apa.org/topics/lgbt/transgender.pdf.

same. They are not.[3] A transgender individual is a person whose gender identity differs from the sex they were assigned at birth. JA108; JA133. Evidence has shown that this divergence is, again, likely innate. JA109-10. Indeed, analyses of the brains of transgender individuals show that transgender individuals have brain structure, connectivity, and function that do not match their assigned birth sex. JA109-10.

By the beginning of the twentieth century, researchers had already established that external genitalia alone—a critical criterion for assigning sex at birth—is not determinative of one's sex.[4] Instead, as research has come to show, the medically appropriate criteria for assigning an individual's sex, when such assignment is necessary, is gender identity. JA110. Other sex characteristics such as internal reproductive organs, external genitalia, chromosomes, hormones, and secondary sex characteristics can only serve as proxies for determining sex, and can lead to the wrong sex assignment for certain individuals. *Id.*; *see also* Norman P. Spack, *An Endocrine Perspective on the Care of Transgender* Adolescents, 13 J. of Gay & Lesbian Mental Health 309, 312-13 (2009) ("In other words, how can [a

[3] P.T. Cohen-Kettenis & L.J.G. Gooren, *Transsexualism: A Review of Etiology, Diagnosis and Treatment*, 46 J. of Psychosomatic Res. 315, 318 (1999); Norman P. Spack, *An Endocrine Perspective on the Care of Transgender Adolescents*, 13 J. of Gay & Lesbian Mental Health 309, 312-13 (2009).

[4] Cohen-Kettenis & Gooren, *supra* note 3, at 318.

transgender girl] be a male to female if you really always were a female in your brain?").[5]

B. Ignoring A Person's Gender Identity Results In Significant Health Consequences.

For individuals whose gender identity and assigned birth sex do not align, being seen and treated by others in accordance with the sex assigned at birth causes tremendous pain and harm. Because most people's sex assigned at birth *does* align with their gender identity, they generally do not experience the pain caused by treatment inconsistent with their gender identity. Ignoring transgender individuals' gender identity results in social treatment that is profoundly different than people whose sex assigned at birth aligns with their gender identity (*i.e*, all non-transgender individuals).

The incongruity between an individual's gender identity and their assigned sex can result in clinically significant and disabling distress called "gender dysphoria." Am. Psychiatric Ass'n., Diagnostic and Statistical Manual of Mental Disorders 451 (5th ed. 2013).[6] The condition of gender dysphoria is marked by a

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[5] *See also* Cohen-Kettenis & Gooren, *supra* note 3, at 318; Spack, *supra* note 2, at 312-13.

[6] Contrary to popular misconception, the fact of being transgender is not itself a mental disorder. It is only when the lack of alignment between one's gender identity and sex assigned at birth causes manifest distress that gender dysphoria occurs. Am. Psychiatric Ass'n., Diagnostic and Statistical Manual of Mental Disorders 451 (5th ed. 2013) at 451-53.

strong sense of being "wrongly embodied" that can lead to distress and impairment in social, occupational or other important areas of functioning. JA133-34. For example, as H.S. entered puberty she began experiencing severe anxiety around this disconnect between her body and identity. JA158. Likewise, both Mr. Carcaño and Mr. McGarry indicated that they experienced distress due to this same disconnect between the sex they were assigned at birth and their male identity. JA127; JA164. Left untreated, gender dysphoria can result in debilitating depression and/or suicidality. JA133-34. Gender dysphoria is associated with a high rate of mortality, as suicide rates in transgender individuals with the disorder can exceed 40%—a rate much higher than that of the general population. JA112; JA138. Indeed, the Fourth Circuit Court of Appeals has recognized that gender dysphoria can cause "constant mental anguish" and that treatment for gender dysphoria is therefore a "serious medical need." *De'Lonta v. Johnson*, 708 F.3d 520, 522, 525 (4th Cir. 2013).

The distress and impairment associated with untreated gender dysphoria are exacerbated by external influences, such as discrimination, social stigma, and rejection, particularly when a person's transgender status is disclosed under circumstances outside of the person's control. JA139-40. Transgender individuals have historically suffered significant discrimination, rejection, and harassment based on their transgender status. For example, in a North Carolina survey, 50% of

the respondents reported being verbally harassed or disrespected in a place of public accommodation or service, including hotels, restaurants, buses, airports and government agencies. Grant, Jaime M., et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force (2011) – North Carolina Results. The statistic for workplace discrimination in North Carolina was even higher, with 77% of the respondents indicating harassment or mistreatment at their place of employment. *Id.* In a Virginia survey, 50% of survey participants reported that they had experienced discrimination in healthcare, employment, or housing, and many individuals had experienced discrimination in more than one area. *Id.* at 1825. Judith Bradford et al., *Experiences of Transgender-Related Discrimination and Implications for Health: Results from the Virginia Transgender Health Initiative Study*, 103 Am. J. of Pub. Health 1820, 1825 (2013).

Moreover, research demonstrates that transgender people suffer from stigma and shame. JA139. This stigma results in stress, both from external forces, *i.e.*, actual experiences of rejection and discrimination, and internal forces, *i.e.*, perceived rejection and the expectation of being rejected or discriminated against. *Id.*. A 2012 study of transgender adults found fear of discrimination increased a person's risk of developing hypertension by 100%, owing to the intersectionality

of shame and cardiovascular reactivity. Ettner et al., *Secrecy and the pathophysiology of hypertension*, Int. Jnl. of Family Med. (2012). A 2011 Institute of Medicine (IOM) report concurs: "the marginalization of transgender people from society is having a devastating effect on their physical and mental health." Institute of Medicine Committee on Lesbian, Gay, Bisexual, and Transgender Issues and Research Gaps and Opportunities, The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding (2011). A more recent article published in the American Journal of Public Health reported that more than half of transgender women struggle with depression from the stigma, shame and isolation caused by how others treat them. JA139-40; Bockting et al., *Stigma, Mental Health, and Resilience in an Online Sample of the US Transgender Population*, 103 Am. J. Public Health 943 (2013).

Until recently, it was not fully understood that these experiences of shame and discrimination have serious and enduring consequences. JA139. But it is now known that stigmatization and victimization are some of the most powerful predictors of current and future mental health problems, including the development of psychiatric disorders. *Id.* For example, a recent study of 245 gender-nonconforming adults, including transgender adults, found that stress and victimization at school were associated with a greater risk for post-traumatic stress disorder, depression, life dissatisfaction, anxiety, and suicidality in adulthood. *See*

id.; Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 Developmental Psychol. 1580, 1581 (2010). Moreover, repetitive instances of stress and discrimination erode a person's resilience and coping mechanisms. JA140; JA112. This in turn will exacerbate symptoms of gender dysphoria in a way that non-transgender individuals will never have to endure.

C. Social And Medical Support Are Essential For Many Transgender People.

Fortunately, the distress caused by gender dysphoria can be alleviated through appropriate medical treatment. In the past, mental health and medical practitioners treated gender dysphoria by attempting to change the individual's gender identity. JA113. This treatment caused individuals extraordinary harm and anguish, exacerbating the negative impacts of gender dysphoria. *Id.*; *see also* Substance Abuse & Mental Health Servs. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 1 (2015), *available at* http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf ("[C]onversion therapy—efforts to change an individual's sexual orientation, gender identity or gender expression—is a practice that is not supported by credible evidence and has been disavowed by behavioral health experts and associations.").

Today, medical science has recognized that, given the fixed nature of gender identity, the appropriate treatment for gender dysphoria focuses on supporting the individual's ability to live consistently with their core gender identity—to be seen and accepted by others as who they know themselves to be—and, where medically necessary for particular individuals, bringing the body into alignment with an individual's gender identity. The approach recognizes that gender identity is a fundamental aspect of a person's identity and works to alleviate distress by supporting that core identity, rather than attempting to change it. JA110-11. According to the established medical consensus, the only effective treatment for the disabling experience of gender dysphoria is the provision of medical care and social support for gender transition, the process by which a person begins to live consistently with their core gender in all aspects of their lives, and which may also include treatments to alter the person's body to better align with that core identity. JA134-35. This has become the evidence-based standard of care for transgender people world-wide. *Id.* The protocol for gender transition is well-established and highly effective,[7] and is codified in the Standards of Care developed by the World

[7] Substance Abuse & Mental Health Servs. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 48-49 (2015), *available at* http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf; Cohen-Kettenis et al., *supra* note 3, at 1893; Laura Edwards-Leeper & Norman Spack, *Psychological Evaluation and Medical Treatment of Transgender Youth in an Interdisciplinary "Gender Management Service" (GeMS) in a Major Pediatric Center*, 59 J. of Homosexuality 321, 321-22, 327 (2012).

Professional Association for Transgender Health (WPATH). The Standards of Care are broadly recognized as the acceptable and appropriate treatment for gender dysphoria.[8] *See also De'Lonta*, 708 F.3d at 522-23 (Fourth Circuit recognition that "[t]he Standards of Care, published by the World Professional Association for Transgender Health, are the generally accepted protocols for the treatment of GID [gender dysphoria]").

[8] Am. Med. Ass'n., House of Delegates, Resolution 122 (A-08) *Removing Financial Barriers to Care for Transgender Patients* 1 (2008) ("The World Professional Association for Transgender Health, Inc. ("WPATH") is the leading international, interdisciplinary professional organization devoted to the understanding and treatment of gender identity disorders, and has established internationally accepted Standards of Care for providing medical treatment for people with GID [gender dysphoria] [that] are recognized within the medical community to be the standard of care for treating people with GID."); Am. Psychological Ass'n., Task Force on Gen. Identity & Gen. Variance, *Report of the APA Task Force on Gender Identity and Gender Variance* 32 (2008), *available at* https://www.apa.org/pi/lgbt/resources/policy/gender-identity-report.pdf ("The *Standards of Care* reflects the consensus in expert opinion among professionals in this field on the basis of their collective clinical experience as well as a large body of outcome research . . . ."); Wylie C. Hembree et al., *Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline*, 94 J. of Clinical Endocrinology Metabolism 3132 (2009), *available at* http://press.endocrine.org/doi/full/10.1210/jc.2009-0345 (identifying the Standards of Care as "carefully prepared documents [that] have provided mental health and medical professionals with general guidelines for the evaluation and treatment of transsexual persons"); *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 231 (D. Mass. 2012) ("The course of treatment for Gender Identity Disorder generally followed in the community is governed by the 'Standards of Care' promulgated by the World Professional Association for Transgender Health ('WPATH')."); *Fields v. Smith*, 712 F. Supp. 2d 830, 838 n.2 (E.D. Wis. 2010) (accepting WPATH's Standards of Care as "the worldwide acceptable protocol for treating GID [gender dysphoria]"), *aff'd* 653 F.3d 550 (7th Cir. 2011).

The components of the Standard of Care for gender dysphoria include an individualized protocol that can include psychotherapy support and counseling, support for social role transition, hormone therapy (including hormone blockers), and a range of confirming surgeries, as determined to be appropriate for each individual. World Prof'l Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, 13 Int'l J. Transgenderism 165 (2012);[9] JA135. Treatment does not make a patient more or less of a man or a woman but instead brings an individual patient's body and presentation in line with who they already are at their core. JA137. Many transgender individuals never undergo surgery. JA136-37. For many, surgery is not medically necessary because the distress associated with dysphoria may be alleviated through social role transition and hormone therapy alone. *Id.* When transgender individuals are supported and affirmed in their gender identity in the manner contemplated by the Standards of Care, they thrive psychologically and socially.[10] JA137.

Thus, it is critical that transgender people be able to access this medically necessary care, including living their lives as the men and women they know themselves to be. Consistent with the Standards of Care, this must include all

[9] *See also APA Answers to Your Questions, supra* note 2, at 55.

[10] Ryan, *supra*, at note 1.

aspects of their lives including their use of restrooms and other spaces and activities typically separated by sex. *Id*. Being excluded from such facilities and forced to use either a separate facility or a facility consistent with their assigned sex at birth would be disruptive to that medically necessary care and cause serious, lasting harms.

The support that Mr. Carcaño, Mr. McGarry and H.S. have received to date, as prescribed by their medical providers, is entirely consistent with the Standards of Care and allows them to lead healthy lives. *E.g.*, JA127-28; JA158; JA164. Their friends and family have supported their core identity and their need to live consistent with that identity. *Id.* Mr. Carcaño and Mr. McGarry are men who live their lives fully, consistently, and completely as men. JA127; JA164. For example, Mr. McGarry is a member of a male music fraternity; his fraternity brothers know he is transgender and have no concerns with him using the men's restroom or locker room. JA164. H.S. is a young woman who lives her life fully, consistently, and completely as a woman. H.S. lives in the girls' dormitory at the University of North Carolina, and uses the female restroom there. JA159. She knows of no complaints about her doing so. *Id.*. Mr. Carcaño's friends, family and co-workers recognize him as a man, and he knew of no complaints regarding his use of the men's restroom. JA129.

As contemplated by the Standards of Care, each of the Plaintiffs began hormone therapy to align their body with their gender identity. In the case of Messrs. Carcaño and McGarry, the therapy deepened their voices, increased their facial hair, and gave them an overall traditionally masculine appearance consistent with their male identities. JA127; JA164. Similarly, H.S. began taking hormone blockers prior to the onset of puberty, followed by hormone therapy, which enabled her to have the outward appearance of a female, as is consistent with her gender identity. JA158-59. Because H.S. never went through puberty as a boy, she never developed characteristics typical of adult males. *Id.*; *see also* Brief of Plaintiff-Appellants, Dkt. 46, at 1, 5 (current photographs of Plaintiffs).

In other words, medically, psychologically, and socially, Messrs. Carcaño and McGarry are men, and H.S. is a woman. When the state government treats them differently than other men or women, it denies this reality by stigmatizing them and inflicting real harm. Plaintiffs do not require special treatment; they simply need to be recognized as the gender that they are, and treated by the state like any other person.

II. The Disparate Treatment of Transgender People Under H.B.2 Endangers Their Health, Safety, and Well-Being.

As discussed above, gender transition, including social role transition, is essential to the mental and physical well-being of transgender people. For gender dysphoric persons undergoing social-role transition, H.B.2. presents repeated, intrusive, and pervasive attacks on their gender identity that are disruptive to well-established medical protocols and detrimental to their health and well-being. JA137. Moreover, a law that effectively requires transgender people undergoing gender transition to disclose their transgender status to strangers under circumstances outside their control creates additional dangers of discrimination, rejection, harassment, and violence that exacerbate the distress already associated with gender dysphoria. JA139-40.

A. H.B.2 Disrupts Standard Protocols Of Care Received By Transgender Men and Women That Allow Them To Live Healthy and Productive Lives.

H.B.2 provides that all public agencies shall "require" that every "multiple occupancy bathroom or changing facility" be "designated for and only used by persons based on their biological sex," which the law defines to be the sex "stated on a person's birth certificate." H.B.2. §§1.2-1.3; JA299-300. Thus the law requires that people be limited to the restroom or changing facility consistent with the assigned sex listed on a particular state-issued document, regardless of their gender identity. This birth certificate standard is an arbitrary rule that allows

transgender people to access only the restroom that the state in which the person was born recognizes as the person's sex. It results in inconsistency and disrupts the daily lives and medical care of many transgender North Carolinians.

For transgender people born in certain states like North Carolina, the only way to update their birth certificate to match their gender identity is to undergo genital surgery, a requirement for gender identity recognition that is opposed by the medical community and that may be cost-prohibitive, medically unnecessary, or contra-indicated for many people. N.C. Gen. Stat. § 130A-118(b)(4); JA136-37. *See also* Am. Med. Ass'n., Bd. of Tr., Conforming Birth Certificate Policies to Current Medical Standards for Transgender Patients (Resolution 5-A-13) B of T Report 26-A-14 (2014), *available at* http://www.glad.org/uploads/docs/news/06-2014-ama--transgender-patients-birth-certificate-policies.pdf (advocating that the AMA "support elimination of any requirement that individuals undergo gender affirmation surgery in order to change their sex designation on birth certificates"). For other transgender people living or traveling in North Carolina, but born in certain other states or countries, the sex designation on a birth certificate can never be updated. *See* Mem. in Support of Pls.' Mot. for Prelim. Injunction 33, May 16, 2016, Dkt. 22. Accordingly, the result of H.B.2, for many transgender individuals, is that they are prohibited from using the restrooms and other public facilities designated for people of their own gender.

Access to the same restrooms and other facilities available to others of the same gender is an undeniable necessity for the medical care and social lives of transgender individuals. JA137-38. Restrooms and locker rooms, unlike other settings (*e.g.*, the library or kitchen), categorize people according to sex. *Id.* In these sex-specific settings, there are generally two, and only two, such categories designated: male and female. *Id*; *see also* Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives*, 19 J. Pub. Mgmt. & Soc. Pol. 65 (2013). The ability to use a sex-specific facility designated for one's gender as part of one's daily activities is an essential part of a transgender person's medically indicated social role transition. JA137. H.B.2 excludes transgender individuals from legally using these essential facilities that correspond with their gender identity.

For transgender people undergoing care for gender dysphoria, this exclusion has practical and medical consequences that are both immediate and long-lasting. For example, when a woman is repeatedly forced to choose between breaking the law or entering a men's room solely because she is transgender, the use of the restroom becomes a persistent source of anxiety and fear. JA138; *see also* JA166 ("[f]orcing me to use the women's restroom would create significant emotional and mental distress for me, and I am afraid it could lead to violence and harassment against me"); JA129 (same). Anticipatory anxiety makes it difficult to concentrate

at school or in the workplace, or to participate in social activities and everyday tasks. JA138. To avoid the anxiety of using the restroom, a person may also be forced to avoid fluid intake or delay using the restroom when necessary, further harming the person's health and sense of well-being. JA256-57. For example, Mr. Carcaño indicated that in the initial period after passage of H.B.2, he was relegated to using a gender-neutral restroom in another building on campus, which was approximately a 20-30 minute roundtrip walk from his office. JA128-29. Accordingly, he was not able to simply make a quick trip to the restroom before the start of a meeting, and instead was forced to structure restroom visits into his day, or limit his fluid intake in a manner no other man is forced to do. *Id*. Similarly, Mr. McGarry has indicated that in many of the UNC buildings in which he has class there are no single-user, gender neutral restrooms, thus leaving him searching for one outside of those buildings, and disrupting his ability to attend class. JA165-66.

Moreover, to deny a transgender individual access to a facility consistent with that person's gender identity labels that person as an undifferentiated "other"—someone who is not a "real" man or woman. JA137-38; *see also* JA160. H.S. indicated that being forced to use different restrooms from her other friends, peers and classmates "makes me feel different and as if the government is sending a message to me and others that I am inferior to other girls at my school or not a

'real' girl." *Id*. Such stigmatization of the individual as the "other" interferes with the person's ability to consolidate his or her identity and undermines the medically appropriate social-transition process for transgender people suffering from gender dysphoria. JA137-38.

Sponsorship of such stigmatization by the state is especially harmful to individuals. A 2012 research study of discrimination and implications for health concluded: "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. of Pub. Health 1820, 1826-27 (2013).

B. H.B.2 Creates Additional Harms and Dangers for Transgender People By Forcing Them To Disclose Their Transgender Status Under Circumstances Beyond Their Control.

Transgender people who use public facilities in accordance with H.B.2 are forced to reveal their transgender status, leaving them especially vulnerable to violence and harassment. JA139. For transgender persons, the use of a restroom that corresponds with their lived and expressed gender identity ordinarily allows them to maintain privacy over their transgender status amongst strangers. The ability to maintain privacy over one's gender dysphoria, like privacy over other significant medical and personal information, enables people to live normal lives

and have experiences that promote healthy personal growth and interpersonal relationships. JA139; 140. Control over the circumstances in which a person may choose to disclose being transgender is fundamental to the development of individuality and autonomy for transgender people and their ability to live safe and comfortable lives. *Id*; Am. Psychiatric Ass'n,, *Guidelines for Psychological Practice With Transgender and Gender Nonconforming People,* Am. Psychologist (Dec. 2015), *available at* http://www.apa.org/practice/guidelines/transgender.pdf. (discussing stress related to transgender individuals' "forced release of sensitive and private information about their bodies and their lives.").

When the privacy of transgender persons over their transgender status is violated, they are forced into traumatic situations over which they have no control. Plaintiffs here each indicated that they feared that revealing their transgender status (which otherwise would have been kept private) could lead to violence and harassment. JA129; JA160; JA166. Harassment and violence are not uncommon against transgender people in restrooms that are contrary to their gender identity. In a 2013 survey of 93 transgender people, sixty-eight percent of respondents reported experiencing at least one instance of verbal harassment, and nine percent reported at least one instance of physical assault in gender-segregated bathrooms. Herman, *supra* at 19, at 73. Such violence, and the repeated threat of such

violence, exacerbate the fear and anxiety that compromise the ability of transgender people to live healthy and productive lives.

CONCLUSION

For all of the above reasons, H.B.2 endangers the health, safety, and well-being of transgender individuals in a way not experienced by any other class of individuals. Accordingly, the *amicus curiae* respectfully requests that this Court reverse the district court's denial of relief on Plaintiffs' equal protection claim and direct entry of a preliminary injunction enjoining Part I of H.B.2.

Dated: October 25, 2016

Respectfully submitted,

Amicus Curiae The World Professional Association for Transgender Health

By its attorneys,

/s/ Alexis L. Shapiro
Alexis L. Shapiro
J. Anthony Downs
Christopher Somma
Todd Marabella
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
Tel.: 617.570.1000

Jenny J. Zhang
GOODWIN PROCTER LLP
901 New York Avenue NW
Washington, DC 20001
Tel.: 202.346.4000

AMICUS CURIAE'S CERTIFICATE OF COMPLIANCE

The undersigned counsel for the *Amicus Curiae* hereby certifies pursuant to Fed. R. App. P. 32(a)(7)(C) that the Brief of the Amicus Curiae complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B). According to the word count of Microsoft Word 2010, the word-processing system used to prepare the brief, the brief contains 5,114 words.

I further certify that the foregoing brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman font, a proportionally spaced typeface.

Dated: October 25, 2016

Respectfully submitted,

/s/ Alexis L. Shapiro
Alexis L. Shapiro

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2016, I electronically filed the foregoing document with the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Alexis L. Shapiro
Alexis L. Shapiro