Appeal No. 2018AP2205

STATE OF WISCONSIN
IN SUPREME COURT

IN THE INTEREST OF C. G., a person under the age of 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

C. G.,

Respondent-Appellant-Petitioner.

On Petition Seeking Review of the January 20, 2021 Unpublished Decision by the Court of Appeals, District III

NON-PARTY BRIEF OF *AMICI CURIAE* JUVENILE LAW CENTER, NATIONAL CENTER FOR LESBIAN RIGHTS, AND TRANS LAW HELP WISCONSIN IN SUPPORT OF PETITIONER C. G.

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INTEREST OF AMICI CURIAE

Juvenile Law Center, National Center for Lesbian Rights (NCLR), and Trans Law Help Wisconsin join as *amici* because of their collective understanding of the harm that sex offender registration causes transgender youth. Each is committed to advancing the rights of children in the legal system. As national nonprofit legal organizations, Juvenile Law Center and NCLR work on a wide range of issues affecting youth in the juvenile justice system. They have extensive experience advocating for youth in state and federal courts across the country. Trans Law Help Wisconsin, a state-based organization, provides individual legal services for transgender and nonbinary individuals across Wisconsin. Collectively, these organizations. urge this court to accept Respondent-Appellant-Petitioner's petition and confirm the unconstitutionality of sex offender registration as applied to a transgender teen. *See* accompanying Motion for Leave to File Non-party Brief for individual statements of interest.

ARGUMENT

The United States Supreme Court has repeatedly held that children are different from adults and must be afforded special constitutional protections. *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v North Carolina*, 564 U.S. 261 (2011); *Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718, 733-34 (2016). In these cases, the Court explained that youths' brains undergo transformative maturation through adolescence and into early adulthood. *See Miller*, 567 U.S. 460, 472 n.5. Compared to

adults, youth who commit crimes are less culpable as children's criminal conduct—including sexual offenses—is almost universally the product of a lack of maturity, influence of peers and circumstances, underdeveloped decision-making skills, impaired understanding of consequences, and inadequate impulse control. *See id*. These differences between children and adults render the harsh effects of sex offender registration more punitive when applied to youth. In denying Ella's constitutional claims, the Court of Appeals failed to recognize these differences and consider the harm to youth caused by registration, and the unique harm to transgender youth. This Court should grant review to confirm that the punitive practice of placing youth on sex offender registries has devastating direct consequences as well as numerous life-long collateral consequences especially when applied to transgender youth.

I. CHILDREN SUFFER IRREPARABLE HARM AS A RESULT OF REGISTRATION

The Court of Appeals failed to reach Ella's Eighth Amendment claim citing *State v. Bollig*, which found sex offender registration for adults to be non-punitive. (*In re C.G.*, No. 2018AP2205, Jan. 20, 2021 slip op., ¶47.) Indeed, the question before this Court is not a reconsideration of *Bollig*, but rather consideration of the punitive nature of registration as applied to Ella, a transgender teen. Central to a determination that registration is punitive as applied to youth is an analysis of the restraints imposed on, and harms suffered by young people required to register. *See Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963) (requiring factors to

determine punitive nature, including consideration of whether statute imposes affirmative restraints on the individual); *see also Smith v. Doe*, 538 U.S. 84, 97 (2003) (applying the *Mendoza-Martinez* factors to sex offender registration).

Registration, when applied to children, cannot be couched in the legal fiction of remedial or administrative aims. The physical and socio-emotional consequences, the risk of harm, and the accompanying loss of jobs, housing, schooling, and reputation all lead to the singular conclusion that the law is punitive.

A. Registration Impedes Youth Participation In The Workplace, Schools, And Other Daily Activities

Children required to register encounter numerous obstacles to participating in the most routine aspects of daily life. *See generally* Jill Levenson & Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 AM. J. CRIM. JUST. 54, 54-58 (2009). Youth classified as sex offenders suffer severe education disruptions; over 50% of 296 youth registrants surveyed reported that they had been denied access to or experienced severe interruptions in their education due to registration. HUMAN RIGHTS WATCH, RAISED ON THE REGISTRY: THE IRREPARABLE HARM OF PLACING CHILDREN ON SEX OFFENDER REGISTRIES IN THE US 72 (2013), https://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf.

Registered sex offenders are categorically barred from working in certain professions, or risk losing their jobs when their employers learn of their sex offender status. *Id*. at 73-74. By placing obstacles between youth and the most routine aspects

of daily life, youth registration impedes successful rehabilitation and reintegration into society.

If youth travel outside of Wisconsin, they are forced to navigate the inconsistent and ever-changing requirements of the federal government and each of the 50 states; this task is daunting for attorneys, and nearly impossible for registrants. *See generally* Catherine L. Carpenter & Amy Beverlin, *The Evolution of Unconstitutionality in Sex Offender Registration Laws*, 63 HASTINGS L.J. 1071, 1076-1100 (2012) (discussing the various schemes and parameters of state sex offender laws). This difficulty unreasonably burdens a young person's constitutionally protected freedom of movement, and the right to intrastate and interstate travel.[1]

B. Sex Offender Registration Imposes Long-Lasting Stigma And Disrupts A Young Person's Healthy Development

There is little dispute about what the term "sex offender" means; "sex offenders [are viewed] as irredeemable monsters" in modern society. David Van Biema, *Burn Thy Neighbor: Where Can a Child Molester Go After Serving Time? Not Home*, TIME (July 26, 1993), http://content.time.com/time/subscriber/article/0,33009,978924-1,00.html. The term carries demonstrably false connotations, and irreparably damages the

[1] The U.S. Supreme Court has upheld a fundamental right to travel, stating that "[t]he nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969), *overruled on other grounds by Edelman v. Jordan*, 415 U.S. 651 (1974).

reputations of those so labeled. This label also establishes societal presumptions that the young person is untrustworthy or possesses other negative character traits, merits punishment, or is likely to commit crimes in the future. PRESTON ELROD & R. SCOTT RYDER, JUVENILE JUSTICE: A SOCIAL, HISTORICAL, AND LEGAL PERSPECTIVE 167 (4th ed. 2013). "[T]he common view of registered sexual offenders is that they are particularly dangerous and more likely to reoffend than other criminals." *In re J.B.*, 107 A.3d 1, 16 (Pa. 2014).[2] As such, labeling a youth as a "sex offender" is likely to interrupt the natural process of developing a positive, healthy self-identity and undermine the goals of rehabilitation. *See* Elizabeth J. Letourneau & Michael H. Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 SEXUAL ABUSE 293, 307 (2005).

Research shows that calling a child a "sex offender" can have severely damaging psychological and practical consequences. *See* ASS'N FOR THE TREATMENT OF SEXUAL ABUSERS, REPORT OF THE TASK FORCE ON CHILDREN WITH SEXUAL BEHAVIOR PROBLEMS 24 (2006), https://www.atsa.com/pdfs/Report-TFCSBP.pdf (labeling children as sex offenders or destined to persist in sexual harm creates a risk of self-fulfilling prophecy and social burdens). Such labeling can alter

[2] Sexual recidivism rates among youth who sexually offend are exceptionally low. Studies supporting this conclusion are remarkably consistent across time and populations. *See* Michael Caldwell, *Study Characteristics & Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 197, 198 (2010), http://commissiononsexoffenderrecidivism.com/wp-content/uploads/2014/09/Caldwell-Michael-2010-Study-Characteristics-and-recidivism-base-rates-in-juvenile-sex-offender-recidivism.pdf (citing to recidivism studies dating back to 1994).

a youth's self-image as well as societal views of their personal traits. ELROD & RYDER, *supra*, at 167.

Youth who are placed on sex offender registries face social isolation and ostracism by peers, which deprives them of sources of psychological support. Judith V. Becker, *What We Know About the Characteristics and Treatment of Adolescents Who Have Committed Sexual Offenses*, 3 CHILD MALTREATMENT 317 (1998). Children who must register as sex offenders are often unable to develop and maintain friendships, are excluded from extracurricular activities, or are physically threatened by classmates after their peers learn of their record. *See* Maggie Jones, *How Can You Distinguish a Budding Pedophile From a Kid with Real Boundary Problems?*, N.Y. TIMES (July 22, 2007), https://www.nytimes.com/2007/07/22/magazine/22juvenile-t.html; *see also* Sarah Stillman, *The List: When Juveniles Are Found Guilty of Sexual Misconduct, the Sex-offender Registry Can Be a Life Sentence*, NEW YORKER (March 14, 2016), http://www.newyorker.com/magazine/2016/03/14/when-kids-are-accused-of-sex-crimes; RAISED ON THE REGISTRY, *supra*, at 50-58.

C. Youth Who Are Required To Register As Sex Offenders Are At Risk Of Violence And Victimization

The stigma caused by registration causes real harm to children putting the safety of these youth at risk. Children on sex offender registries are four times more likely to report a recent suicide attempt than non-registered children who have engaged in harmful or illegal sexual behavior. Elizabeth J. Letourneau et al., *Effects*

of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination, 24 PSYCHOL. PUB. POL'Y & L. 105, 114 (Corrected 2018). One young person stated, "I live in a general sense of hopelessness, and combat suicidal thoughts almost daily due to the life sentence [registration] and punishment of being a registrant." RAISED ON THE REGISTRY, *supra*, at 51 (alteration in original). Another former registrant took his own life after several years living on the registry because he knew the stigma associated with being labeled a sex offender would continue to jeopardize him in adulthood. *Id*. at 53.

Registered youth also face the danger of vigilante justice: more than fifty percent of registered youth report experiencing violence or threats of violence against them or their family members that they directly attribute to their registration. RAISED ON THE REGISTRY, *supra*, at 56. A 2017 study reveals that registered children are nearly twice as likely to have experienced an unwanted sexual assault in the past year, when compared to nonregistered children who had also engaged in harmful sexual behaviors. Letourneau et al., *supra*, at 114. They are also five times more likely to report having been approached by an adult for sex in the past year. *Id.*

Additionally, in direct contrast to the stated aims of registration—to assist law enforcement and promote public safety—registration impedes public safety. Registration sets up obstacles between a child and a normal, productive life, *increasing* the likelihood that a registered youth will commit a non-sexual offense in the future. Molly J. Walker Wilson, *The Expansion of Criminal Registries and*

the Illusion of Control, 73 LA. L. REV. 509, 519-24 (2013) (collecting studies finding that collateral consequences of registration "exacerbate existing 'risk factors leading to recidivism'").

II. TRANSGENDER YOUTH ARE MORE SEVERELY HARMED BY SEX OFFENDER REGISTRATION

The Court of Appeals wrongly determined that addressing Ella's Eighth Amendment claim would require "reweighing whether the protection of the public and assistance to law enforcement are not as important as a transgender individual's right to expression." (*In re C.G.*, slip op., ¶46.) The court failed to recognize that the punitive effects of registering Ella, a transgender teen, as a sex offender go beyond her right to expression. Registration and prohibiting a legal name change are punitive because they exacerbate potential obstacles Ella faces as a young transgender woman, including difficulty obtaining safe housing and employment, greater risk of serious emotional distress, and threats to her physical safety. Each of these obstacles is compounded by the stigma transgender women experience. Research shows strong negative attitudes toward, and fear of, transgender people in the United States; in 2017, almost a third of surveyed adults strongly or somewhat agreed that transgender people have a mental illness.[3] WINSTON LUHUR ET AL.,

[3] This attitude exists despite the replacement of the "gender identity disorder" diagnosis with "gender dysphoria" in the DSM-5. *See* Eric Yarbrough et al., *Gender Dysphoria Diagnosis*, AM. PSYCHIATRIC ASS'N (Nov. 2017), https://www.psychiatry.org/psychiatrists/cultural-competency/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis ("The *DSM-5* articulates explicitly that "gender non-conformity is not in itself a mental disorder." (quoting AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013))).

PUBLIC OPINION OF TRANSGENDER RIGHTS IN THE UNITED STATES 6 (2019), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Public-Opinion-Trans-US-Aug-2019.pdf. Further, over 40 percent of surveyed individuals expressed concern over exposing children to transgender individuals. *Id.* at 8. When transgender individuals are registered as sex offenders, it furthers the baseless narrative that they are sexual predators, but there is no evidence that transgender people pose a public safety threat, sexual or otherwise. *See* Jennifer L. Levi & Kevin M. Barry, *Transgender Tropes & Constitutional Review*, 37 YALE L. & POL'Y REV. 589, 593, 614-15 (2019).[4]

A. Registration Exacerbates Obstacles Ella Faces As A Transgender Individual

The collateral consequences of registration described above are likely to be even more pronounced for Ella as a transgender person. Transgender people often struggle to meet their basic needs. Almost a third of transgender women report experiencing of homelessness at some point. *See* SANDY E. JAMES ET AL., NATIONAL CENTER FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 178 (2016), https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf. Transgender people are eight times more likely than nontransgender people to report experiencing homelessness in the preceding year. *See* BIANCA D.M. WILSON ET AL., HOMELESSNESS AMONG LGBT ADULTS IN THE US 3 (2020),

[4] This narrative often appears in "bathroom bill" debates. *See* Levi & Barry, *supra*, at 609-12.

https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Homelessness-May-2020.pdf. Once homeless, many transgender people struggle to access shelters or housing because of discrimination, harassment, and violence. *See* JAMES ET AL., *supra*, at 178-82.

Transgender people also face barriers to employment. Almost one in five transgender women who have been employed report losing a job because of their gender identity. *Id.* at 150. Even when transgender individuals successfully obtain employment, nearly a quarter report mistreatment at work in the previous year because of their gender identity. *Id.* at 154. Because of the likelihood of mistreatment, the majority of transgender employees hide their gender identity, don't object when their employer uses incorrect[5] gender pronouns, and delay gender transition[6] to avoid anti-transgender workplace discrimination. *Id.*

B. The Combined Effects Of Discrimination And Registration Put Ella At A Higher Risk for Serious Emotional Distress

Thirty to fifty percent of transgender adolescents report attempting suicide. Russell B. Toomy et al., *Transgender Adolescent Suicide Behavior*, 142 PEDIATRICS 1, 5-6 (2018), https://pediatrics.aappublications.org/content/pediatrics/142/4/e20174218.full.pdf.

[5] In this brief, the terms "correct gender pronouns" and "correct name" refer to the pronouns and names individuals use that align with their gender identities, not the name and gender assigned at birth.

[6] "Transition can include some or all of the following personal, medical, and legal steps: telling one's family, friends, and co-workers; using a different name and new pronouns; dressing differently; changing one's name and/or sex on legal documents; hormone therapy; and possibly (though not always) one or more types of surgery." *GLAAD Media Reference Guide – Transgender*, GLAAD, https://www.glaad.org/reference/transgender (last visited Mar. 3, 2021).

Over 40 percent of transgender adults report attempting suicide at least once. JODY L. HERMAN ET AL., SUICIDE THOUGHTS AND ATTEMPTS AMONG TRANSGENDER ADULTS: FINDINGS FROM THE 2015 U.S. TRANSGENDER SURVEY 1 (2019), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Suicidality-Transgender-Sep-2019.pdf. Transgender individuals ages 18 to 25 are around seven times more likely to report thoughts of suicide and six times more likely to report a suicide attempt than similarly aged nontransgender individuals. *Id.* at 30.

Transgender people are more likely to experience several risk factors for suicide that are already heightened for individuals required to register as sex offenders. Over 59 percent of transgender people who have experienced homelessness report attempting suicide. *Id.* at 13. Experiences of employment discrimination or trying to avoid discrimination also led to a greater likelihood of suicidal thoughts and attempts. *Id.* at 23. Individuals who state that others could tell they are transgender report higher rates of suicidal thoughts and attempts compared to transgender people who cannot be identified as transgender based on their appearance. *Id.* at 14. Relatedly, transgender individuals whose name and gender are not correct on their IDs are almost twice as likely to report thinking of suicide or attempting suiciding in the preceding year compared to individuals with the correct name and gender on their IDs. *Id.* at 29. However, individuals whose identity documents match their identities report lower levels of serious emotional distress. (Hawkins Decl., *D.T. v. Christ*, No. 4:20-cv-484-JAS (D. Ariz. Nov. 4, 2020), ECF No. 3-1 at 11-14 (attached hereto as App. A.))

C. Registered Transgender Youth Are At Greater Risk Of Experiencing Violence

Transgender people commonly experience physical violence which can also exacerbate emotional distress. *See* HERMAN ET AL., *supra*, at 20. Over half of transgender adults reported experiencing unequal treatment, verbal harassment, and/or a physical attack in 2014 and 10 percent reported suffering a sexual assault that year. JAMES ET AL., *supra*, at 198, 206. Additionally, transgender women are four-times more likely to be murdered than nontransgender women. HUMAN RIGHTS CAMPAIGN & TRANS PEOPLE OF COLOR COAL., ADDRESSING ANTI-TRANSGENDER VIOLENCE 28 (2015), http://assets2.hrc.org/files/assets/resources/HRC-AntiTransgenderViolence-0519.pdf.

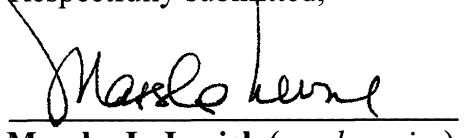
Transgender people report higher levels of violence and discrimination when others perceive them as transgender. JAMES ET AL., *supra*, at 199. A third of individuals whose name or gender on their ID did not match their presentation reported being denied services or being attacked upon showing the ID. *See id.* at 90. Ella's ability to access a legal name change and have her correct name and gender displayed on her ID, are not just matters of expression, but significant matters of physical, financial, and emotional safety.

CONCLUSION

Given the well-documented harm to youth placed on registries and absence of a public safety benefit, numerous state supreme courts have held that sex offender registration laws are punitive. *See In re T.B.*, 2019 COA 89, *aff'd*, No. 19SC690,

2020 WL 529206 (Colo. Feb. 3, 2020); *In re C.K.*, 182 A.3d 917 (N.J. 2018); *Starkey v. Okla. Dep't of Corr.*, 305 P.3d 1004 (Okla. 2013); *Doe v. Dep't of Pub. Safety & Corr. Servs.*, 62 A.3d 123 (Md. 2013); *In re C.P.*, 967 N.E.2d 729 (Ohio 2012); *State v. Williams*, 952 N.E.2d 1108 (Ohio 2011); *State v. Letalien*, 985 A.2d 4 (Me. 2009); *Gonzalez v. State*, 980 N.E.2d 312 (Ind. 2013); *Hevner v. State*, 919 N.E.2d 109 (Ind. 2010); *Wallace v. State*, 905 N.E.2d 371 (Ind. 2009); *Doe v. State*, 189 P.3d 999 (Alaska 2008). As described above, the harm to transgender adolescents is even more severe. For these reasons, *Amici* urge this Court to grant the pending petition for review.

Respectfully submitted,



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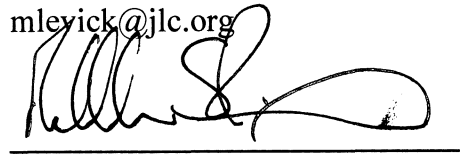

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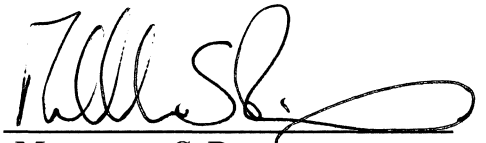
Dated: March 5, 2021

CERTIFICATE OF SERVICE AND COMPLIANCE

I certify that this brief conforms to the rules contained in Section 809.19(8)(b) and (c) for a brief produced using a proportional serif font. The length of this brief is 2,996 words.

I further certify that I have submitted an electronic copy of this brief, excluding any appendix, which complies with the requirements of Section 809.19(12). I certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all parties to this matter.

Dated this 5th day of March, 2021.



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APPENDIX A

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

D.T., a minor, by and through his parent and next friend Lizette Trujillo; Jane Doe, a minor, by and through her parent and next friend Susan Doe; and Helen Roe, a minor, by and through her parent and next friend Megan Roe,

Plaintiffs,

v.

Dr. Cara M. Christ, in her official capacity as State Registrar of Vital Records and Director of the State of Arizona's Department of Health Services; Thomas Salow, in his official capacity as Branch Chief of the State of Arizona's Division of Public Health Licensing Services at the Department of Health Services; and Krystal Colburn, in her official capacity as Bureau Chief and Assistant State Registrar of the State of Arizona's Bureau of Vital Records,

Defendants.

Case No. _____

EXPERT DECLARATION OF DR. LINDA HAWKINS, PH.D., IN SUPPORT OF JANE DOE'S MOTION FOR PRELIMINARY INJUNCTION AND JANE DOE AND HELEN ROE'S MOTION TO PROCEED UNDER A PSEUDONYM

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Attorneys for Plaintiffs

I, Linda A. Hawkins, declare as follows:

1. I submit this expert declaration based upon my personal knowledge.

2. If called to testify in this matter, I would testify truthfully based on my expert opinion.

Qualifications and Experience

3. I am a Licensed Professional Counselor with a MSEd in Psychological Services from the University of Pennsylvania and a PhD in Human Development and Human Sexuality specializing in working with children and adolescents experiencing gender dysphoria and their families. My doctoral training at Widener University focused on transgender children, youth and their families concluding in my doctoral dissertation *Gender Identity Development among Gender Variant Adolescents: A Qualitative Analysis* for which I received the Linda Lehnert Memorial Award for Excellence in Academics & Research, and a Distinguished Dissertation nomination. I am also an educator and program director. A true and correct copy of my Curriculum Vitae is attached hereto as **Exhibit A**.

4. I have over two decades of experience in supporting LGBTQ children and their families, both in private practice and through my work with hospitals and clinics. During that time, I have individually worked with more than 4,000 families of LGBTQ children from around the world.

5. In January 2014, I founded the Gender & Sexuality Development Program at The Children's Hospital of Philadelphia, which now operates from two clinics: Philadelphia, Pennsylvania and Voorhees, New Jersey. I have served as Director of the program since its inception.

6. In my role as Director of the Gender & Sexuality Development Program, I oversee the care of nearly 1,650 families and field between ten and fifteen referrals a week. I also lead and participate in research for developing best care practices for LGBTQ children and their families, train state and regional health care and mental health providers on best care practices, establish gender-affirming hospital policies, and advise local, regional, and national organizations as they create and update guidelines for the care of transgender and

gender-expansive children, youth, and their families. This includes direct trainings and policy review with schools, churches, social service agencies, mental health centers, and juvenile correction centers and insurance companies.

7. I also serve as the Advisor of LGBTQ Patient and Family Services at The Children's Hospital of Philadelphia, a position that I have held since January 2014. In this role, I oversee all of the LGBTQ competencies in care, policy and practice for LGBTQ patients, families and staff throughout the hospital network, which includes two hospitals, one rehabilitation center, 36 primary and specialty care sites, and an extensive network of research entities. For example, I review the best practice information in research and literature from around the world to assure that we are staying current with all best practice standards. With this information, I conduct annual trainings, seminars, and lectures to increase LGBTQ cultural competency and patient care. Additionally, I have established guidelines for care in a pediatric hospital setting including the needed care for patients, families, guests and staff.

8. I also serve as a consultant to other pediatric hospitals throughout the nation through grand rounds, consultation and mentoring, as well as in-depth, in-person program development—most recently to help reorganize and rebuild the clinic at Rady Children's Hospital in San Diego, California and currently assisting program expansion at Johns Hopkins All Children's Hospital in St. Petersburg, Florida.

9. Prior to developing the Gender & Sexuality Development Program at The Children's Hospital of Philadelphia, I provided individual and family therapy for LGBTQ+ children and youth, and their families through my private practice, Hawkins LifeWorks LLC. In this role, I offered direct counseling support to children, youth and their families including advocacy for LGBTQ+ children and youth in their schools, churches, and communities. In this capacity, I also provided supervision to therapists who were building their professional skills and/or provided consultation to seasoned clinicians in need of additional support with specific LGBTQ+ child, youth and family counseling skills.

10. In January 2018, I helped found the Advanced Training Program in Affirmative Therapy for Transgender Communities, which is a year-long national professional training course for therapists to train them in supporting transgender clients across their client's lifespans that now has sites based in Seattle, Washington and Philadelphia, Pennsylvania. This training program was developed to fill a critical gap in professional training and clinical education regarding caring for transgender and non-binary individuals. I have served as the Founder and Director since the program's inception, which includes both teaching duties and supervising the six employees who implement the training and supervise the program on a daily basis. The American Psychological Association, U.S. Professional Association of Transgender Health, American Counseling Association, and American Association of Sexuality Educators, Counselors and Therapists are currently considering endorsing the program.

11. I taught as an Associate Professor at Widener University in the Center for Human Sexuality Studies, with a focus on teaching counseling skills in working with LGBTQ children, youth and families, from 2008 to 2017. I taught courses including "Sexual Minorities," "Behavioral Foundations of Human Sexuality," and "Trauma, Advocacy & Social Justice."

12. My recent publications include *Sexual and Gender Minority Adolescents: Meeting the Needs of Our LGBTQ Patients and Their Families*, Clinical Pediatric Emergency Medicine, 20(1), 9–16 (2019); *Sexual Orientation/Gender Identity Cultural Competence: A Simulation Pilot Study*, Clinical Simulation in Nursing, 16, 2–5 (2018); *Effective Treatment of Depressive Disorders in Medical Clinics for Adolescents and Young Adults living with HIV: A Controlled Trial*, Journal of Acquired Immune Deficiency Syndrome, 71(1), 38–46 (2017); *Policy Perspective: Ensuring Comprehensive Care and Support for Gender Nonconforming Children and Adolescents*, Transgender Health, 1(1), 75–86 (2016); and *Creating Welcoming Spaces for Lesbian, Gay, Bisexual and Transgender (LGBT) Patients: An Evaluation of Health Care Environment*, Journal of Homosexuality, 63(3), 387–93 (2016). I have also authored chapters of textbooks,

including "Sexual Disorders and Transgender Health" in *Fundamentals in Consultation Psychiatry: Principles and Practice*, Eds Lavakumar, M., Rosenthal, L., & Rabinowitz, T. Nova Medicine & Health: New York, NY (2019). A listing of my publications is included in my Curriculum Vitae in **Exhibit A**.

13. In the course of my career, I have been invited to speak at numerous hospitals, clinics, and conferences on topics related to clinical care and standards for treating transgender children and youth. For example, in February 2020, I spoke at the Department of Social Work at Johns Hopkins All Children's Hospital in St. Petersburg, Florida, on the topic of "Supporting Transgender, Gender Non-Conforming and Gender Expansive Children & Youth." I have also lectured at the national conferences for the United States Professional Association for Transgender Health and internationally at the Canadian Professional Association for Transgender Health, as well as the annual Trans Wellness Conference, and the Gender Spectrum Conference, among others. A listing of my lectures is included in my Curriculum Vitae in **Exhibit A**.

14. I belong to a number of professional organizations and associations relating to (i) the overall mental health and well-being of all children, youth and their families; (ii) the health and well-being of children and adolescents, including those who are transgender; and (iii) to appropriate medical treatments for transgender individuals. For example, since 2005, I have been a member of the World Professional Association for Transgender Health ("WPATH"), an international multidisciplinary professional association to promote evidence-based care, education, research, advocacy, public policy and respect in transgender health. I was also elected as a Fellow of the College of Physicians of Philadelphia, invited to join based on my local, regional, national and international contributions to the medical and mental health and wellness of transgender and gender non-binary children and youth, as well as my contributions to the education of medical professionals as part of this care. A complete list of my involvement in various professional associations is located in my Curriculum Vitae in **Exhibit A**.

15. My opinions contained in this declaration are based on: (i) my years of experience as a licensed counselor and PhD treating transgender patients, including adolescents and young adults; (ii) my knowledge of the peer-reviewed research, including my own, regarding the treatment of LGBTQ patients and those suffering from gender dysphoria; and (iii) my review of the various declarations submitted in support of the motions. I generally rely on these types of materials when I provide expert testimony, and they include the documents specifically cited as supportive examples in particular sections of this declaration. The materials I have relied on in preparing this declaration are the same type of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

16. I was provided with and reviewed the following case-specific materials: (i) the declarations of Jane Doe, Susan Doe, and Megan Roe; (ii) a medical note written by Jane Doe's treating provider, Patrick Goodman; and (iii) the expert declaration of Dr. Daniel Shumer, MD, MPH.

17. I have not met or spoken with the Plaintiffs or their parents for purposes of this declaration. My opinions are based solely on the information that I have been provided by Plaintiffs' attorneys as well as my extensive experience studying gender dysphoria and treating transgender patients.

18. I am being compensated at an hourly rate for the actual time that I devote to this case, at the rate of $300 per hour for any review of records, preparation of reports or declarations, and deposition and trial testimony. My compensation does not depend on the outcome of this litigation, the opinions that I express, or the testimony that I provide.

Gender Identity Development and Gender Dysphoria

19. Because a person's gender identity is unknowable at birth, doctors assign sex based on the appearance of a newborn's external genitalia. For most people, that assignment also turns out to be an accurate reflection of their gender identity. However, for transgender people, their assigned sex does not match their gender identity.

20. Gender identity is a person's inner sense of belonging to a particular gender, such as male or female.

21. Medical, mental health and human development research has repeatedly shown that gender identity is hard wired and a core component of human identity. Every person has a gender identity. Dr. Shumer's declaration provides a comprehensive overview of the research demonstrating that gender identity has strong biological ties. (Declaration of Dr. Daniel Shumer ("Shumer Decl.") at ¶¶ 19–28; 41–44.)

22. A person's gender identity is not a personal decision, preference, or belief. Like non-transgender people, transgender people do not simply have a "preference" to live consistent with their gender identity; trying to live as a gender they are not feels viscerally wrong.

23. A key milestone of child development is a child becoming aware their gender identity. My declaration will focus on that process and the psychological distress young people experience when their assigned sex and gender identity do not match.

24. Children typically become aware of their gender identity between the ages of three and five years old. During these young years, individuals will often gravitate toward toys, clothing, activities, and peer relationships that most typically align with their gender identity. At the same time, those children are also surrounded by gender rules, regulations and expectations in their families, the media, and community. Children assigned male at birth are typically rewarded for following the male-based expectations set out for them and the children assigned female at birth are equally rewarded for following the female-based expectations set out for them, regardless of the child's gender identity.

25. Transgender individuals who become aware in childhood that those expectations do not match with who they are often begin to express their cross-gender identity to their family members and caregivers. The statements and actions transgender children use to communicate their cross-gender identity differ significantly from age-appropriate imaginative play and identity exploration. Transgender children are insistent, persistent, and consistent over time in their cross-gender identification that diagnostically

separates natural gender exploration—tomboys and feminine boys—with transgender identity. They may also show signs of psychological distress as a result of the mismatch between their assigned sex and their gender identity.

26. Still a significant proportion of transgender children do not have the ability to clearly state or share the distress they are experiencing. Those children can experience a wide range of psychological distress from difficulty sleeping to anxiety at school or severe depression. Over time, their inability to express themselves further exacerbates their psychological distress.

27. Yet another significant proportion of transgender young people may have had an underlying feeling of not fully aligning with the sex they were assigned at birth, but felt "good enough" being supported and perceived as a tomboy or a gay male. However, as puberty starts to emerge and body changes occur specifically around secondary-sex characteristics (*e.g.* breast development, menstruation, testicular and penile expansion, erections, and deepening of voice) there is a strong awareness and onset of distress that is far beyond the typical youth being upset about puberty that also insistent, persistent and consistent. These youth will then share a strong and real awareness of their gender identity not as a tomboy, but as male, and not as a feminine gay male, but a female.

28. Gender Dysphoria is the diagnosis for the severe and unremitting emotional pain resulting from the incongruity between a person's assigned sex and their gender identity. It is a serious condition and is listed in the *Diagnostic and Statistical Manual of Mental Disorders* ("DSM-5") of the American Psychiatric Association. Because gender dysphoria also has significant implications for a transgender young person's physical health that require medical care, there is also a companion diagnosis in the World Health Organization's International Classification of Diseases.

Standards of Care for Working with Transgender Children

29. When loved, supported, and affirmed by their parents and caretakers and by their social environment, transgender children—like all children—can thrive, grow into healthy adults and have the same capacity for happiness, achievement, and contribution to

society as others. For transgender children and youth, that means supporting their need to live in a manner consistent with their gender identity.

30. Getting treatment for gender dysphoria and ensuring that a transgender child is in an environment that does not undermine that treatment are critical to a transgender child's healthy development and well-being. For young transgender children, the treatment of gender dysphoria consists of social transition, which involves changes that bring the child's outer appearance and lived experience into alignment with the child's gender identity. Changes often associated with a social transition include changes in clothing, name, pronouns, hairstyle, and updating government-issued identity documents to reflect the child's new name and correct the sex listed on those documents.

31. Research and clinical experience have shown that social transition for a child with gender dysphoria improves that child's mental health and greatly reduces the risk that the child will experience anxiety, depression and possibly engage in self-harming behaviors. *See* Kristina Olson, *et al., Mental Health of Transgender Children who are Supported in Their Identities*, 137 Pediatrics 1 (2016). In fact, longitudinal studies demonstrate that undergoing a social transition before puberty often provides tremendous and immediate relief because there are few, if any, observable physical differences between boys and girls at that age.

32. A social transition is often eventually coupled with other treatments for gender dysphoria once a young person enters adolescence and early adulthood, specifically medications and surgeries that bring a person's body into closer alignment with their gender identity. The availability and effects of those treatments are discussed in detail in Dr. Shumer's declaration. (Shumer Decl. ¶¶ 35–40.) As with social transition, however, those treatments occur within a context of treatment and assessment by qualified professionals, often in a multidisciplinary setting. Further, each of those additional components of transition support the ongoing effectiveness of a transgender person's social transition.

Ensuring the Success of Social Transition for Transgender Children

33. Providing appropriate support for a transgender child during and after their social transition includes ensuring that parents/caregivers, family members, teachers, friends, peers, and other people affirm the transgender child's gender identity. That can include, for example, using the transgender child's chosen name and correct pronouns, participating in sex-separated recreational activities based on their gender identity, and otherwise treating the child in a manner consistent with their gender identity for all purposes. In the early stages of a transgender young person's transition, the people most responsible for this shift in language, acknowledgement, and support are the adults around this child—parents, extended family, teachers, school staff, church members, physicians, and community members. When that adult support is consistent, children and peers often adapt quickly and easily in support of their friend's and classmate's need to feel safe and included. Failing to recognize and support a transgender child's gender identity sends a message—both to the transgender child and to others—that the child is different from their peers, causing the transgender child to experience shame.

34. Transgender children experience significant psychological distress when other people repeatedly fail to acknowledge the child's gender identity. Transgender children who are treated in this way experience that mistreatment as a profound rejection of their core self and identity, which has serious negative consequences for their development and their long-term health and well-being. Rejecting behaviors significantly increase the risk that the child will develop long-term mental health conditions, among other serious negative health consequences such as low self-esteem, anxiety, depression, substance use issues, self-harming behaviors, and suicidal ideation.

35. The negative mental health effects of rejection can also cause a transgender child to develop co-occurring mental health conditions, such as major depression, anxiety or obsessive-compulsive disorders, eating disorders, self-harm, and thoughts of suicide. These negative symptoms associated with those mental health challenges resulting from

feeling different in their family, school and/or community typically alleviate significantly once a transgender child's gender identity is affirmed and supported.

36. Indeed, transgender individuals who are affirmed within their household and at school have mental health profiles similar to their nontransgender peers. Being treating consistent with their gender identity in school has been shown to have a tremendous positive effect on the health and well-being of transgender young people, significantly reducing symptoms of depression and suicidal ideation. However, if the child remains in an environment where the child's gender identity is not recognized and supported, that mistreatment can exacerbate any co-occurring conditions, resulting in lasting mental and even physical harm.

37. The psychological distress and harm caused by an unsupportive school environment can also result in significant academic harms. Transgender students in that situation often engage in behaviors that undermine their ability to learn, such as cutting class and overuse on the nurse's office to miss class time to acting out in class resulting in disciplinary action. In either circumstance, these common responses to psychological distress prevent transgender young people from focusing in school and obtaining the full benefit of their education. The resulting drop in grades or disciplinary record also have long-term implications for educational attainment and life trajectory.

38. Studies also show that when a child or youth is living with an intersection of minority identities—like D.T. and Helen Roe, who are transgender youth of color—there is an exponential compounding of stress and anxiety based on the layered ways in which peers and adults can stigmatize identified differences in race, ethnicity and gender identity. Multiply marginalized children and youth face vastly higher levels of anxiety and depression that are more likely to lead to self-harm and even suicide. In the last few years, as individuals in these marginalized communities are coming under direct and indirect attack from political and religious groups, these children are becoming gravely aware that they are not safe in their own neighborhoods and are constantly exposed to negative

messages that they do not matter, are not important parts of our community, and otherwise do not belong.

Accurate Identity Documents Are Critical to Social Transition

39. Identity documents that consistently identify a transgender child by their new name and correct gender identity are crucial to ensuring that child is supported and affirmed throughout their daily lives. An incorrect sex marker, especially on a document as central as a birth certificate, is a regular reminder that those in positions of authority do not see that transgender child for who they are, which can cause feelings of shame and self-hatred.

40. On a practical level, an inaccurate identity document significantly increases the likelihood that a transgender child will be identified by the wrong name, pronouns, or sorted into a group based on their assigned sex as opposed to their gender identity. Because birth certificates are the most commonly used, and often required, identity document to prove a child's age and identity, an inaccurate birth certificate will have an outsized negative affect on a transgender child.

41. Birth certificates are used to register for school, extracurricular activities, recreational/school-sponsored sports, library cards, overnight trips, and more. The identifying information from the birth certificate is then entered onto numerous records that are seen and used by many people. For example, after enrolling in school, the child's name and sex listed on their birth certificate will appear on attendance sheets, student ID cards, report cards, and lunch cards, among others. Educators will then use that information to determine which pronouns to use when referring to student or to sort children into activities or groups based on their sex. In fact, school administrators, teachers, and others may insist that they are required to refer to transgender young people based on the information contained on the birth certificate, despite being unable to identify any support for such a requirement.

42. When that occurs, it causes a second and equivalent harm: it discloses that child's transgender status—intimate and private information—to those around them, which exposes that child to further discrimination and mistreatment. Although some transgender

young people are comfortable with being public about their transgender status, many transgender young people do not want share that aspect of their identity. Not honoring this can also cause significant distress and negative physical and mental health outcomes.

43. The uncertainty of when and where their transgender status will appear or be disclosed on a given school day, causes transgender students significant anxiety and sometimes other forms of psychological distress as well. Having the incorrect information in school records also undermines any efforts by transgender students and their parents to take pre-emptive measures to reduce the likelihood that school personnel will use the incorrect information, such as talking with teachers prior to the beginning of the school year. Even if a transgender student's teacher agrees to use the correct name and pronouns, there is always the chance for inadvertent slip-ups when that teacher is reading from those records, or when a substitute teacher covers the class and knows no better. Transgender students whose transgender status is disclosed at school often find their attention shift away from school and to anticipating and responding to the ripple effects of that disclosure from a loss of privacy, unwanted questions about their body, to daily peer harassment.

44. Studies have also found that legal changes, including correcting the sex, on state identity documents and passports are associated with lower reports of mental illness among transgender individuals. *See* Arjee Restar et al., *Legal Gender Marker and Name Change is Associated with Lower Negative Emotional Response to Gender-Based Mistreatment and Improve Mental Health Outcomes Among Trans Populations*, SSM—Population Health, 11 (2020). In one study, respondents with identity documents that used their correct name and sex reported significantly fewer rates of suicidal ideation, suicide planning, or suicide attempts in the past year than individuals with inaccurate identity documents. Respondents with some congruent and some incongruent documents had a small reduction in suicidal ideation, while those who held only congruent identity documents had the largest decrease in suicidal ideation. Ayden Scheim et al., *Gender-Concordant Identity Documents and Mental Health Among Transgender Adults in the USA: A Cross-Sectional Study*, Lancet Public Health, 5, e196-203 (2020). Studies have also

found that transgender individuals with incongruent identity documents receive negative treatment. One study found that approximately one-third of individuals who presented identity documents with a gender that did not match their presentation reported that they were harassed, denied services, and/or attacked. Sandy E. James et al, *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016).

45. The mental health effects of referring to transgender young people by the correct name and pronouns are profound. The more consistently that occurs across different contexts (*i.e.* home, school, work, and with friends), the greater the benefit to a transgender young person's psychological health and well-being. Transgender young people who are able to use their correct name and pronouns across all aspects of their lives experienced 71% fewer symptoms of severe depression, a 34% decrease in reported thoughts of suicide, and a 65% decrease in suicidal attempts. Stephen Russell et al., *Chosen Name Use is Linked to Reduced Depressive Symptoms, Suicidal Ideation and Behavior among Transgender Youth*, 63 J Adolescent Health 503 (2018). The results of this study are consistent with my clinical experience.

46. Chronic exposure to stress, such as transgender person being referred by the wrong name and pronouns, results in persistent surges of cortisol in the brain for children and youth. This leads to a wide array of short and long-term detrimental consequences, all of which can permanently affect development, emotional and mental health, and quality of life. The effects of chronic exposure to cortisol play a direct role in the children's behavioral development. Research has shown that it leads to increased difficulty in differentiating between threatening and safe situations, impaired short-term and long-term memory, struggles with decision-making and attention, and issues with mood control, even in adulthood. Studies have also shown that chronic stress in childhood and adolescence results in a higher likelihood of developing a myriad of physical health issues, including diabetes, heart disease, and cancer.

47. Removing the conditions that trigger stress in these children is the first crucial step toward restoring their sense of safety and preventing further damage. Correcting the

sex listed on a transgender young person's government-issued identification alleviates the stress, anxiety, and overall psychological pressure that they experience when knowing their records do not reflect who they are and anticipating their transgender status might be disclosed to others at any time or become a renewed topic of discussion among peers. The psychological relief transgender young people experience after correcting their identity documents not only alleviates their gender dysphoria but can also help address the psychological distress caused by this worry, including anxiety, depression and thoughts of self-harm or suicide.

48. As noted above, school is just one of the many contexts where birth certificates are critical for participation. The uncertainty and anxiety that follows transgender young people in schools also clouds their experiences in each of those other contexts too. This keeps transgender young people from fully engaging in activities associated with healthy childhood development, such as recreational sports, gender-based clubs (*i.e.* Girl Scouts and Boy Scouts), and overnight field trips. To avoid that psychological distress, some transgender young people will exclude themselves from activities in which they would otherwise participate. In either scenario, transgender young people are being denied the critical benefits of participating in activities that are formative experiences of childhood. Transgender young people who are excluded from such activities also then do not get the many associated benefits of those activities, such as social development and peer bonding.

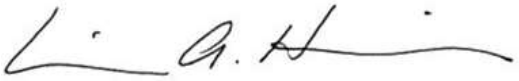
Conclusion

49. I am aware from the case materials I have reviewed that, despite undergoing a social transition, Jane Doe is not able to correct the sex listed on her birth certificate unless she undergoes gender-confirmation surgery. This requirement is not consistent with the well-established standards of care, nor is it developmentally or medically appropriate. Due to the effectiveness of early treatment of gender dysphoria, Jane Doe may never be able to meet that standard, which effectively denies her, and many other transgender young people,

the critical psychological and developmental benefits of a birth certificate that accurately reflects her gender identity.

This declaration was executed this 2nd day of November, 2020, in Philadelphia County, Pennsylvania.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

By: 
Dr. Linda A. Hawkins, PhD, MSEd, LPC