

Case No. 21-10486

**In the United States Court of Appeals
for the Eleventh Circuit**

DARCY CORBITT, et al.,
Plaintiffs-Appellees,

v.

HON. HAL TAYLOR, in his official capacity as
Secretary of the Alabama Law Enforcement Agency, et al.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Middle District of Alabama
Case No. 2:18-cv-00091-MHT-SMD

**BRIEF OF GLBTQ LEGAL ADVOCATES & DEFENDERS, LAMBDA
LEGAL DEFENSE AND EDUCATION FUND, INC., AND 19 OTHER
LGBTQ ADVOCACY GROUPS AS AMICI CURIAE
IN SUPPORT OF PLAINTIFFS-APPELLEES SEEKING AFFIRMANCE**

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Dated: July 30, 2021

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, 26.1-2, and 26.1-3, the counsel for *Amici Curiae* represent that the *Amici Curiae* do not issue stock and do not have parent companies. Counsel further certifies that, to the best of their knowledge, the following listed persons and entities may have an interest in the outcome of this case:

1. Alabama Attorney General's Office;
2. Alabama Center for Law and Liberty;
3. Alabama Law Enforcement Agency;
4. Alabama Policy Institute;
5. American Civil Liberties Union Foundation;
6. American Civil Liberties Union Foundation of Alabama;
7. American Civil Liberties Union of Alabama;
8. Archer, Jon;
9. Arkles, Gabriel;
10. Barnes, Meridith H.;
11. Barnes, Noel S.;
12. Bonta, Rob;
13. Boone, Brock;

14. Borden, Hon. Gray M.;
15. Brown, David;
16. Butts, Talmadge;
17. California Attorney General's Office;
18. Cisneros, Lisa J.;
19. Charles, Carl S.;
20. Chynoweth, Brad A.;
21. Clark, Destiny;
22. Clark, Matthew J.;
23. Cooper, Leslie J.;
24. Corbitt, Darcy;
25. Crozier, Patience;
26. Davis, James W.;
27. Doe, Jane (see doc. 41);
28. Doe, John (see doc. 10);
29. Doyle, Hon. Stephen M.;
30. Eastman, Jeannie;
31. Eidsmoe, John A.;
32. Equality Federation;
33. Equality Florida;

34. Equality Maine;
35. Equality Ohio Education Fund;
36. Equality South Dakota;
37. Equality Texas;
38. Esseks, James D.;
39. Fairness Campaign;
40. Family Equality;
41. Faulks, LaTisha Gottell;
42. FreeState Justice, Maryland's LGBTQ Advocates;
43. Foundation for Moral Law;
44. GLBTQ Legal Advocates & Defenders;
45. Garden State Equality;
46. Georgia Equality;
47. Gonzalez-Pagan, Omar;
48. LaCour Jr., Edmund G.;
49. Lambda Legal Defense and Education Fund, Inc.;
50. Lombardi, Anthony T.;
51. MassEquality;
52. Mass. Trans Political Coalition;
53. Marshall, Randall C.;

54. Marshall, Hon. Steve;
55. Messick, Misty S. Fairbanks;
56. Moore, Roy S.;
57. National Center for Lesbian Rights;
58. Newman, Michael L.;
59. One Colorado;
60. Palma-Solana, Vilma;
61. Pregno, Deena;
62. PROMO;
63. Robinson, Michael W.;
64. Saxe, Rose;
65. Sinclair, Winfield J.;
66. Southern Legal Counsel, Inc.;
67. Taylor, Hon. Hal;
68. Thompson, Hon. Myron H.;
69. Transgender Legal Defense and Education Fund;
70. TransOhio;
71. Ward, Charles;
72. Welborn, Kaitlin;
73. Wilson, Thomas A.; and

74. Wyoming Equality.

Counsel for the Amici Curiae further certify that, to the best of their knowledge, no additional publicly traded company or corporation has an interest in the outcome of this case or appeal.

Respectfully submitted this 30th day of July 2021.

/s Patience Crozier
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IDENTITY AND INTEREST OF AMICI CURIAE¹

Amici curiae are LGBTQ advocacy organizations dedicated to securing legal equality for transgender people on the bedrock promise that we all come before our government as equals. *Amici* work in the courts, in legislative and agency policy arenas, and/or among our communities to empower transgender people and to support their ability to equally participate in all areas of life and society with safety and security.

Amici curiae include the following state, regional, and national organizations: Equality Federation; Equality Florida; Equality Maine; Equality Ohio Education Fund; Equality South Dakota; Equality Texas; Family Equality; Fairness Campaign; FreeState Justice, Maryland's LGBTQ Advocates; Garden State Equality; Georgia Equality; GLBTQ Legal Advocates & Defenders; Lambda Legal Defense and Education Fund, Inc.; MassEquality; Mass. Trans Political Coalition; National Center for Lesbian Rights; One Colorado; PROMO; Southern Legal Counsel, Inc.; TransOhio; and Wyoming Equality.

¹ No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. Only Amici contributed money that was intended to fund preparing or submitting this brief. Fed. R. App. P. (29)(a)(4)(E). All parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT



Benedict is a transgender man.² His sex assigned at birth was female, and his gender identity is male. With the guidance of his medical providers, he has undergone medical treatment for gender dysphoria including hormone therapy and chest reconstruction. Benedict has not had genital surgery. Under Alabama’s driver’s license policy, Benedict must carry a license with a female sex identification. This inaccurate identification subjects Benedict to discrimination, harassment, and allegations of fraud on a routine basis in numerous transactions of everyday life, minor and significant.

² Photograph courtesy of the Gender Spectrum Collection.

The *Amici Curiae* write to highlight the arbitrary and irrational nature of Alabama’s policy to require transgender people to undergo genital surgery to obtain an accurate driver’s license. Requiring surgery contradicts the medical consensus and standards of care and presents an insurmountable barrier for many transgender people to obtain state-issued identification that reflects who they are. This policy inflicts concrete harms on transgender people and undermines social stability by impeding their ability to engage in a wide range of important activities, from voting to obtaining housing and employment. A majority of states and the federal government, understanding the need to track contemporary medical standards and adopt policies that promote economic and social stability and positive health outcomes, have aligned their policies to enable transgender people to obtain identification that matches who they are. In contrast, Alabama’s policy denies transgender people equal protection and serves no legitimate government interests.

ARGUMENT

I. ALABAMA’S GENITAL SURGERY REQUIREMENT FOR SECURING AN ACCURATE DRIVER’S LICENSE IS BURDENSOME AND IRRATIONAL.

A. Requiring Genital Surgery to Obtain an Accurate Driver’s License Conflicts with Contemporary Medical Science and Practice and Presents an Unreasonable Barrier to Transgender People.

Gender identity is a well-established concept in medicine that refers to a person’s internal sense of self as a particular gender. *See* Am. Psych. Ass’n,

Guidelines for Psychological Practice with Transgender and Gender Nonconforming People, 70 Am. Psych. 834 (2015). For transgender people, their gender identity does not align with the sex they were assigned at birth. For those who are prevented from living consistently with their gender identity, this incongruence can result in gender dysphoria, which is a serious medical condition characterized by a clinically significant and persistent discomfort or distress with a person's assigned sex at birth. World Pro. Ass'n Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 5 (7th ed., 2011) ("WPATH SOC"). Without proper treatment, people with gender dysphoria experience a range of debilitating symptoms, including anxiety, depression, and suicidality.

Gender dysphoria, however, is highly treatable. With treatment, transgender people can and do lead stable, productive lives that enable them to participate in and contribute to society. The standards of care for treatment are set forth in the WPATH SOC. *Id.* These are the internationally recognized guidelines for medical treatment of transgender people around the world. The American Medical Association, the Endocrine Society, the American Psychological Association, the American Psychiatric Association, the World Health Organization, the American Academy of Family Physicians, the American Public Health Association, the National Association of Social Workers, the American College of Obstetrics and Gynecology

and the American Society of Plastic Surgeons, among others, all endorse protocols in accordance with the WPATH SOC. *See, e.g.*, Am. Med. Ass’n House of Delegates, Resolution 122 (A-08), *Removing Financial Barriers to Care for Transgender Patients* 1 (2008) (“AMA I”); Wylie C. Hembree et al., *Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline*, 94 J. Clinical Endocrinology & Metabolism 3134 (2009); Barry S. Anton, *Proceedings of the American Psychological Association for the Legislative Year 2008: Minutes of the Annual Meeting of the Council of Representatives*, 64 Am. Psych. 26 (2009).

As part of the WPATH SOC, many transgender individuals with gender dysphoria undergo a medically indicated and supervised gender transition to address the symptoms of gender dysphoria and to live life consistently with their gender identity. Treatment may include one or more of the following: changes in gender expression and role, psychotherapy, hormone therapy, and various surgeries, including genital surgeries. A key component of medical treatment for gender dysphoria includes steps to enable an individual to live, function in society, and be seen by others as who they are.³ Indeed, “[m]odern medical consensus establishes that ‘forc[ing] transgender people to live in accordance with the sex assigned to them

³ Notably, the WPATH SOC identify changes in gender markers on identity documents as part of treatment for gender dysphoria. *See* WPATH SOC, *supra*, at 10.

at birth’ is ineffective and ‘cause[s] significant harm.’” *Adams v. Sch. Bd.*, No. 18-13592, 2021 WL 2944396, at *12 (11th Cir. July 14, 2021). Genital surgery may be a treatment for some people who experience gender dysphoria based on an individualized assessment of medical need. It is not, however, required in all cases or a defining treatment for the condition. The SOC emphasize that treatment is *individualized*. WPATH SOC, *supra*, at 5, 9. Surgery is not a medically indicated path appropriate for or needed by all transgender people. *Id.* at 9-10.

One mother of a transgender young adult, who moved with her family from Washington state to Massachusetts, explained that she would never want her son to undergo unnecessary, major surgery solely to obtain an accurate state identification.⁴ She feels grateful that Massachusetts does not have a surgery requirement for driver’s licenses and state identity cards because her son, who has had chest reconstruction surgery, is still assessing, with the support of his medical providers, whether additional surgery is necessary for his treatment. She reflected: “[My child] is a perfect example of why [a surgery requirement] is a bad idea [W]e both feel it is wrong for the state to tell people they either have to live with an identity that isn’t truly them or they have to have very, very invasive surgery.” *Id.*

⁴ Telephone interview with Jane Doe I, mother of John Doe I (July 7, 2021) (transcript on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

Nor are all transgender people, even those who need it, able to obtain gender-affirming genital surgery. Genital surgery is expensive, and many insurance providers continue to exclude coverage or deny claims for these costs. *See* Alyssa Jackson, *The high cost of being transgender*, CNN (July 31, 2015), <https://www.cnn.com/2015/07/31/health/transgender-costs-irpt/index.html>.

According to the U.S. Transgender Survey, in the year prior to the survey, 55% of transgender people who sought health insurance coverage for gender-affirming surgery were denied coverage. Sandy E. James et al., Nat'l Ctr. Transgender Equal., *The Report of the 2015 U.S. Transgender Survey* 10 (2016) (“NCTE Survey”). Only 25% of survey respondents reported having some form of surgery, and those who were living in poverty or low income were even less likely to have had surgery. *Id.* at 100. Cost is a tremendous barrier to surgery for transgender people who need it.

Transgender people can also have trouble locating competent medical providers. One transgender man from Maine struggled to find medical care, including a surgeon. He had to travel to Rhode Island for medical care until he was able to locate a surgeon in his home state.⁵

Alabama's requirement of genital surgery effectively forces transgender people to undertake surgery that may be medically unnecessary or contraindicated,

⁵ Video conference interview with John Doe II (June 29, 2021) (transcript on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

expensive, and difficult or impossible to secure in order to obtain an accurate driver's license. This policy conflicts with contemporary medical science and practice. It presents an arbitrary and burdensome barrier and leaves many transgender people without accurate identification.

B. Inaccurate Driver's Licenses Inflict Concrete Harms and Exclude Transgender People "from an Almost Limitless Number of Transactions and Endeavors that Constitute Ordinary Civil Life in a Free Society."⁶

People rely on driver's licenses in myriad ways to function in society, including to engage in commerce and interact with institutions. *See* Nat'l Acads., Sci., Eng'g, & Med., *Understanding the Well-Being of LGBTQI+ Populations* 5-11 (2020) ("Nat'l Acads.") ("Proper identity documents are necessary for a broad range of life activities: access to important public goods, services, shelters or other facilities; acquiring benefits; travel; financial transactions; registering to vote; and securing employment."). Driver's licenses are, of course, required to drive a vehicle. Ala. Code § 32-6-1. Individuals also rely on driver's licenses to buy groceries, open bank accounts, enroll in school, register to and cast their vote, and travel. *See, e.g.*, Brandon J. Hill et al., *Exploring Transgender Legal Name Change as a Potential Structural Intervention for Mitigating Social Determinants of Health Among Transgender Women of Color*, 15 *Sexuality Rsch. & Soc. Pol'y* 2 (2019); Nat'l

⁶ *Romer v. Evans*, 517 U.S. 620, 631 (1996).

Acads., *supra*, at 100. Understood in a real-world context, driver’s licenses are an important means to meet basic life needs such as employment, housing, and health care. Perhaps due to their many functions, driver’s licenses are one of the principal forms of government-issued identification: nearly 87% of the driving age population, or 69% of all Americans—including 82% of all Alabamans—hold driver’s licenses, while only 43% of Americans hold valid United States Passports.⁷ A driver’s license is a key way to verify identity that enables people to meet essential needs and to engage in the ordinary transactions of daily life. Those with inaccurate licenses face increased and harmful barriers in many spheres.

Voting. Voting is a “fundamental matter in a free and democratic society . . . [and] is preservative of other basic civil and political rights.” *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 667 (1966) (quoting *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964)). In most states, including Alabama, identification is required to vote. *See* Ala. Code § 17-9-30 (requiring valid photo identification);

⁷ *See, e.g.*, U.S. Dep’t Transp. Fed. Highway Admin., *Licensed Drivers By Sex and Ratio To Population–2019* (Dec. 2020), <https://www.fhwa.dot.gov/policyinformation/statistics/2019/dl1c.cfm> (noting 228,679,719 estimated total drivers based on Census Bureau Population and 263,493,218 driving age individuals in 2019); U.S. Dep’t State Bureau Consular Affs., *Reports and Statistics*, <https://travel.state.gov/content/travel/en/about-us/reports-and-statistics.html> (last visited July 13, 2021) (noting 143,116,633 valid passports in circulation in 2020); U.S. Census Bureau, *QuickFacts*, <https://www.census.gov/quickfacts> (last visited July 13, 2021) (estimating population of 331,449,281 in 2020).

Kathryn O’Neill & Jody L. Herman, Williams Inst., *The Potential Impact of Voter Identification Laws on Transgender Voters in the 2020 General Election 2* (2020). For transgender voters, inaccurate identification presents a significant barrier to voting. See Nat’l Acads., *supra*, at 7-18. Inaccurate identification not only discourages transgender people from voting but puts them at risk for mistaken accusations of fraud. As a federal district court recognized, possessing identity documents discordant with their identity not only “exposes transgender individuals to a substantial risk of stigma, discrimination, intimidation, violence, and danger,” it also “chills speech and restrains engagement in the democratic process,” which “hurts society as a whole.” *Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 333 (D.P.R. 2018).

A transgender man in Puerto Rico could only obtain a voter identification card, a prerequisite for voting, with an inaccurate gender marker. *Id.* at 332. Fearing disclosure of his transgender status when he went to vote, he did not vote in the 2016 election. *Id.* In 2018, a transgender Vermonter was turned away from her polling place when a poll worker wrongly “accused her of having a fake ID and not being a woman.” Melissa Gira Grant, *The Quiet Suppression of Trans Voters*, New Republic (Oct. 30, 2020), <https://newrepublic.com/article/160007/quiet-suppression-trans-voters>. A transgender woman from Michigan was publicly embarrassed by a poll worker who disclosed her transgender status aloud after seeing her driver’s license

list her gender as male rather than female. *Love v. Johnson*, 146 F. Supp. 3d 848, 855 (E.D. Mich. 2015).

Health Care. Inaccurate driver's licenses undermine access to health care which, in turn, has a deleterious effect on transgender people's well-being by disrupting their ability to work, care for their families, and contribute to their communities. Transgender people encounter significant discrimination in health care settings. *See, e.g.*, NCTE Survey, *supra*, at 93; Shanna K. Kattari et al., *Correlations Between Healthcare Provider Interactions and Mental Health Among Transgender and Nonbinary Adults*, 10 SSM–Population Health 4 (2020). For those with inaccurate identification, the discrepancy reveals their transgender status which, in turn, can lead to outright refusal of medical care. A transgender patient in New York was denied care in the emergency room after staff saw her male gender marker on a document and decided that “she would make other patients uncomfortable.” Ez Cukor, *Gender Identity & Justice for Transgender People*, Huffington Post (Dec. 6, 2017), https://www.huffpost.com/entry/gender-identity--justice_b_8039082. Another transgender patient went to a local urgent care clinic and was denied treatment when the doctor realized that the gender marker on his documents did not match his gender expression. Transgender L. Ctr., *Trans and gender nonconforming people speak out: stories of discrimination*, <https://transgenderlawcenter.org/legal/discrimination-stories> (last visited July 26,

2021). The experience “terrified” the patient and left them reluctant “to reach out for emergency medical assistance Because they fear that they will be treated poorly again, they often miss appointments and necessary medical treatment.” *Id.* The experience and fear of denial, bias, and discrimination in health care settings undermines physical health, mental health, and well-being and undermines transgender peoples’ abilities to function as contributing members of their communities. See Am. Med. Ass’n, *Conforming Sex and Gender Designation on Government IDs and Other Documents H-65.967* (2019), <https://policysearch.ama-assn.org> (“AMA II”) (advocating for efforts to reduce barriers to care due to sex designations on government-issued documents); Kattari et al., *supra*, at 5 (“[I]t is likely that some of the negative mental health outcomes are due to experiencing providers who are disrespectful when knowing of one’s [transgender] identity, or the process of having to educate one’s provider.”).

Employment. Inaccurate identification presents a barrier to employment for transgender people. This is a pervasive problem that undermines the well-being and economic security of transgender people, their families, and their communities. Transgender people already have higher unemployment and poverty rates than the U.S. population as a whole. NCTE Survey, *supra*, at 141-42, 145. This is not because they are unqualified or unwilling to work, but because of pervasive discrimination. See Ilan H. Meyer et al., *Demographic Characteristics and Health*

Status of Transgender Adults in Select US Regions: Behavioral Risk Factor Surveillance System, 2014, 107 Am. J. Pub. Health 582 (2017). Discordant identification discloses transgender status, leaving transgender people even more vulnerable to employment discrimination.

For example, Jamie, a transgender woman, had a dream of working as a flight attendant and successfully passed a required four-day training for an airline job. Transgender L. Ctr., *supra*. In the final interview, however, the airline informed Jamie that she would not get the position because her gender markers on her identification did not match her outward presentation. *Id.* A transgender man from Florida was “turned away by countless jobs that I had previously been accepted for, changing their minds after seeing the mismatch in my presentation and legal documents.”⁸ In Louisiana, a transgender man was well-qualified for a manager trainee position at a loan company and was hired the same day as his interview. Complaint at 5, *Broussard v. First Tower Loan, LLC*, No. 2:15-CV-01161 (E.D.L.A. Apr. 13, 2015). He excelled in his first week of work, during which he had to complete new employee paperwork that required identification. *Id.* at 5. He provided his driver’s license, which listed his sex as female. The next week, the company fired him because of his transgender status. *Id.* at 7.

⁸ Written experience of John Doe III (July 27, 2021) (on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

Housing. Housing discrimination is another acute problem for the transgender community. *See* Nat'l Acads., *supra*, at 10-15. In one recent study, 61% of transgender people experienced discriminatory treatment when searching for housing when compared with non-transgender people. Jamie Langowski et al., *Transcending Prejudice: Gender Identity and Expression-Based Discrimination in the Metro Boston Rental Housing Market*, 29 *Yale J.L. & Feminism* 322 (2018). Another study found that almost one quarter (23%) of respondents experienced a form of housing discrimination in the past year and that nearly one third of respondents (30%) experienced homelessness at some point during their life due to being transgender. NCTE Survey, *supra*, at 176. Homelessness is a significant concern as it increases “risk of violence, victimization, exploitation, and poor health” with both individual and societal consequences. Adam P. Romer et al., Williams Inst., *LGBT People and Housing Affordability, Discrimination, and Homelessness* (Apr. 2020).

Disclosure of transgender identity, as occurs when identification is inaccurate, can lead to discrimination and difficulty accessing housing. For example, Oliver, a transgender man, faced denials from landlords despite being otherwise qualified. *See* Transgender L. Ctr., *supra*. Some potential landlords were explicit that they did not want to rent to a transgender person. *See id.* Z, a transgender woman in Florida, had to disclose her transgender status when applying for government subsidized

housing due to inaccurate identification.⁹ Z reports: “I know for a fact I would have gotten that apartment if they hadn’t found out I was trans. And that’s the same thing that happened with [a] job . . . they were ready to offer it until they saw the “M”. . . . Then everything changed.” *Id.*

Travel. Inaccurate identification can lead to accusations of fraud that discourage and, at worst, undermine the safety of transgender people traveling. This can be particularly true when interacting with law enforcement such as the police or the TSA. A comprehensive national survey about transgender people’s experiences found that transgender people who interacted with police and where officers were aware of their transgender status reported some form of mistreatment (58%), being repeatedly misgendered (49%), or physical or sexual assault (7%). NCTE Survey, *supra*, at 186, 187.

For example, Zach, a transgender man from Arkansas, recalls being pulled over for a broken headlight while driving. *See* Kate Sosin & Nico Lang, *Arkansas, Yes, Arkansas, Quietly Begins Issuing Gender-Neutral IDs to Non-Binary People*, INTO (Oct. 16, 2018), <https://www.intomore.com/impact/arkansas-yes-arkansas-quietly-begins-issuing-gender-neutral-ids-to-non-binary-people>. He had an inaccurate ID with a female gender marker. When he showed the officer his ID, a

⁹ Written experience of Z (July 26, 2021) (on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

second officer was brought into the situation. The officer accused Zach of having a fake ID. Zach disclosed his transgender status to assure the officers that his ID was not fake, but the officers became aggressive at his response. He was concerned for his safety. *Id.* A banker from North Carolina who traveled regularly for work experienced harassment when her driver's license didn't reflect who she was: "Because of [the mismatch], I experienced a number of situations going through TSA airport security where I was outed and embarrassed, including being patted down several times."¹⁰

Daily life and services. Daily life requires many interactions with people and institutions who need or seek to verify identity. Whether to get a library card, make a purchase at a store, or rent a car, a driver's license is a critical tool, just as it is for non-transgender people. Withholding that tool from transgender people for these daily interactions is not merely an inconvenience, but subjects them to discrimination, harassment and, worse, allegations of criminal activity such as fraud. "As a result of showing an ID with a name or gender that did not match their gender presentation, 25% of people were verbally harassed, 16% were denied services or benefits, 9% were asked to leave a location or establishment, and 2% were assaulted

¹⁰ Written experience of Jane Doe III (July 27, 2021) (on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

or attacked.” See NCTE Survey, *supra*, at 82. This disruption can undermine commercial activity and its concomitant economic benefits.

A transgender woman living in rural Rhode Island experienced a wrongful allegation of fraud and was refused service at a store because her driver’s license had a male gender marker.¹¹ The clerk told her that “this isn’t you. I can’t ring you up.” She left the store, and her stress and anxiety deepened – she noted if she was blocked from a common experience of making a purchase in a store, what was going to happen when she filled out an application for a job? *Id.*

Another transgender woman, from Florida, shared:

There was a period of time where I was living full time as myself, living and presenting as the woman that I am, but I still had a driver’s license that said I was somebody completely different – it said that I was a man. I am not a man. I had to pay cash everywhere I went because my debit card and driver’s license did not reflect who I was, and people assumed it was stolen on more than one occasion. I was terrified to use my credit card and be asked to show my ID, because the picture looked nothing like me. I lived in fear. Every day. Fear of regular, everyday interactions, interactions that should not cause fear, interactions that should not require an explanation of intimate details about who I am In all of these situations, safety would become my biggest concern and priority. It was all consuming and exhausting.¹²

A doctor in Tennessee recounted how her “patients have reported several negative downstream ramifications from incorrect documentation,” such as

¹¹ Video conference interview with Jane Doe II (July 2, 2021) (transcript on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

¹² Written experience of Jane Doe IV (July 26, 2021) (on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

“challenges they face at the pharmacy filling prescriptions, going to the DMV, or talking to their health insurance companies.” Expert Decl. of Dr. Shayne Sebold Taylor, *Gore v. Lee*, No. 3:19-CV-00328 (M.D. Tenn. Apr. 23, 2020).

C. Given the Profound Harms of Inaccurate Identification and the Multiple Beneficial Outcomes of Accurate Identification, it is Unsurprising that Policy and Best Practice Overwhelmingly Promote Ready Access to Accurate Gender Markers on Driver’s Licenses.

Similar to all people, transgender people desire and need identification that accurately reflects who they are to meet basic needs, to support themselves and their families, and to participate in everyday activities in their communities. One recent survey found that 78% of transgender respondents flagged accurate identification as among their top 3 legal needs. Trans*Formational Change, LLC, *Working for Lived Equity: 2019 Community Needs Assessment Report*, Mass. Transgender Pol. Coalition 21 (Apr. 2020). For transgender individuals who have been able to update their driver’s license or other state-issued identification, the impact is profoundly positive. A transgender person from Massachusetts expressed that having an accurate gender marker on their license had a “real world impact” in seeking jobs, securing housing, and accessing travel.¹³ A transgender man from Florida reflected that “being able to have a driver’s license that says ‘male’ and says my real name – it’s an unbelievable feeling, an unbelievable accomplishment, and provides a huge

¹³ Video conference interview with J. Doe I (July 1, 2021) (transcript on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

sense of relief and freedom.”¹⁴ A transgender woman in Rhode Island, a state whose driver’s license policy authorizes gender designation based on self-report,¹⁵ noted that having accurate identification “helped alleviate a lot of anxiety.”¹⁶

Economic Stability. Accurate identification is vital to accessing employment and, in turn, promoting economic stability for transgender individuals and their families, and for social stability. Identification documents that accurately reflect gender identity and name “enable transgender people to access employment, safe housing or shelter, public health benefits and health care services with less fear of discrimination and victimization.” Hill et al., *supra*, at 3. Research demonstrates that accurate documents can increase job market success for transgender women, thereby improving quality of life overall by promoting financial stability. In one study, transgender women who had documents with accurate names were more likely to be employed, reported higher monthly incomes, and held stable housing. *Id.* at 7-8. Indeed, *Amici* have witnessed firsthand through advocate and client

¹⁴ Written experience of John Doe IV (July 26, 2021) (on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

¹⁵ Self-report or self-attestation “is when an individual reports information on an application that does not need to be verified by any secondary source, like a doctor or physician.” Michaé Pulido and Arli Christian, Nat’l Ctr. for Transgender Equal., *Who’s the Expert on My Gender? The Importance of Self-Attestation*, medium.com (Mar. 16, 2018), <https://medium.com/transequalitynow/whos-the-expert-on-my-gender-the-importance-of-self-attestation-d03ab60a4a37>.

¹⁶ Video conference Interview with Jane Doe II (July 2, 2021), (transcript on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

experiences that gender-affirming documentation promotes—and, conversely, mismatching documentation impedes—economic well-being. One individual noted the discomfort in applying for jobs with multiple forms of ID that did not match their gender presentation and thus effectively disclosed their transgender status.¹⁷ One transgender woman from Kansas noted that having inaccurate identity documents during the job application process “has led directly to [her] being ‘outed’ as transgender, and subsequently treated suspiciously and disrespectfully by prospective employers.” Complaint at 83, *Foster v. Andersen*, No. 2:18-cv-02552 (D. Kan. Oct. 15, 2018). And yet another transgender woman from Tennessee attested that “[k]nowing I would have to present my inaccurate birth certificate has dissuaded me at times from applying for jobs.” Decl. of Kayla Gore, *Gore v. Lee*, No. 3:19-CV-00328, at 20 (M.D. Tenn. Apr. 23, 2019).

Positive Health Outcomes. Considering the importance of driver’s licenses in navigating daily life and connecting to employment, housing and other basic needs, it is unsurprising that having accurate driver’s licenses—that is, those that reflect who they are—provides enormous positive benefits to transgender people and plays a vital role in promoting health and well-being. One transgender woman and health care advocate from Rhode Island remarked that she has seen firsthand, as

¹⁷ Video conference interview with John Doe II (June 29, 2021) (transcript on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

someone working in healthcare, the positive power of a shift in state policy to promote access to accurate driver's licenses.¹⁸ More patients are able to secure accurate identification and, with accurate identification, her patients are more willing to seek health care. *Id.* She witnessed that accurate identification “corresponds to better mental health outcomes and satisfaction with medical care.” *Id.* A Florida physician has observed the “absolutely incredible” impact on patients of accurate identification: “So many experience decreases in depression and anxiety, increases enjoyment in life, willingness to participate in everyday activities they previously avoided, many of them just become different people, and it is amazing to witness.”¹⁹ A mother of a transgender adolescent from Massachusetts observed that, as her son was able to obtain accurate identification, his mental health improved.²⁰ A transgender woman from Kansas spoke about when she was able to access accurate identity documents, stating that it “makes me feel safer.” Trudy Ring, *Kansas to Allow Gender Marker Change on Birth Certificates*, *The Advocate* (June 24, 2019), <https://www.advocate.com/transgender/2019/6/24/kansas-allow-gender-marker-change-birth-certificates>. A transgender man from rural Maine reflected similarly

¹⁸ Video conference Interview with Jane Doe II (July 2, 2021), (transcript on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

¹⁹ Written experience of J. Doe II (July 26, 2021) (on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

²⁰ Telephone interview with Jane Doe I, mother of John Doe I (July 7, 2021) (transcript on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

that accurate gender markers are “a safety issue” that “permeate all aspects of your life.”²¹ Having accurate identification was “powerful” and something he would never take for granted. *Id.*

The positive impact of accurate government-issued identification documents on the health, stability, and well-being of transgender people is recognized by medical experts and documented in the scientific literature.²² The American Medical Association, the nation’s largest association of physicians, maintains that transgender people should have accurate identification with no requirement of genital surgery. *See* AMA II, *supra* at 1. Research demonstrates that identity documents that align with an individual’s gender identity promote health and well-being of transgender people, underscoring the crucial need for access to accurate gender markers. Jody L. Herman & Kathryn O’Neill, Williams Inst., *Gender Marker Changes on State ID Documents: State-Level Policy Impacts* 9 (June 2021),

²¹ Video conference interview with John Doe V (June 22, 2021) (transcript on file with *Amicus Curiae* GLBTQ Legal Advocates & Defenders).

²² *See generally* AMA II, *supra*; Jack Drescher & Ellen Haller, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals*, Am. Psych. Ass’n. (July 2018); World Pro. Ass’n Transgender Health, *WPATH Identity Recognition Statement* (Nov. 25, 2017); Anton, *supra*, at 25; Kathryn Conley Wehrmann, *NASW Remains an Advocate for LGBTQ Rights* (Dec. 2019), <https://www.socialworkers.org/News/Social-Work-Advocates/2019-December-2020-January/NASW-Remains-an-Advocate-for-LGBTQ-Rights>; Am. Acad. Child & Adolescent Psychiatry, *Sexual Orientation, Gender Identity, and Civil Rights Policy* (2009), https://www.aacap.org/AACAP/Policy_Statements/2009/Sexual_Orientation_Gender_Identity_and_Civil_Rights.aspx.

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gender-Markers-Jun-2021.pdf>. Individuals who are able to update their gender markers and names on IDs report lower rates of “depression, anxiety, somatization, psychiatric distress, and emotionally upsetting response due to gender-based mistreatment.” 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*, 11 *SSM-Population Health* 6-7 (2020). Similar research found that aligning gender markers with a transgender person’s gender identity was associated with a 32% reduction in psychological distress and a 22-25% reduction in suicidal ideation, in comparison to having no concordant IDs. See, e.g., Ayden I. Scheim, Amaya G. Perez-Brumer & Greta R. Bauer, *Gender-Concordant Identity Documents and Mental Health Among Transgender Adults in the USA: A Cross-Sectional Study*, 5 *Lancet Pub. Health* 196-203 (2020); Greta R. Bauer et al., *Intervenable Factors Associated with Suicide Risk in Transgender Persons: A Respondent Driven Sampling Study in Ontario, Canada*, 15 *BMC Pub. Health* 6 (2015) (“[H]aving one or more identity documents concordant with lived identity . . . [had] the potential to prevent 90 cases of ideation per 1,000 trans persons and 230 attempts per 1,000 with ideation.”). In one study involving transgender youth, the use of accurate names in multiple contexts provided significant affirmation and was found to lower mental health risks. Stephen T. Russell et al.,

Chosen Name is Linked to Reduced Depressive Symptoms, Suicidal Ideation and Behavior Among Transgender Youth, 63 J. Adolescent Health 503-05 (2018).

Providing access to accurate IDs that reflect a person’s gender identity yields life-saving improvements in health and well-being, which in turn allows transgender people to be stable, productive, and participating members of society.²³

Most states have updated their laws and policies to enable transgender people to update their driver’s licenses without proof of surgery, which aligns with contemporary medical science and practice, with the health and well-being of transgender people, and with the stability and welfare of society as a whole.

Currently, twenty-one states and the District of Columbia permit individuals to

²³ See generally, Richard A. Crosby, Laura F. Salazar, & Brandon J. Hill, *Gender Affirmation and Resiliency Among Black Transgender Women With and Without HIV Infection*, 1 Transgender Health 87 (2016) (“concordant identification documents are a critical step in gaining legal legitimacy, which may have downstream effects on transgender health—particularly among those for whom access to medical transition might be limited due to resources (e.g., low-income transwomen)”); Tiffany R. Glynn et al., *The Role of Gender Affirmation in Psychological Well-Being Among Transgender Women*, 3 Psych. Sexual Orientation & Gender Diversity 3 (2016) (“Access to gender affirmative types of support (i.e., medical, legal, and social gender affirmation) has been shown to offset the negative psychological effects of social oppression”); Jaclyn M. White Hughto et al., *Social and Medical Gender Affirmation Experience Are Inversely Associated with Mental Health Problems in a U.S. Non-Probability Sample of Transgender Adults*, 49 Archives Sexual Behav. 2635-47 (2020) (participants reported significantly lower suicidal thoughts and behaviors following gender affirmation process); Jaclyn M. White Hughto, Sari L. Reisner & John E. Pachankis, *Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions*, 147 Soc. Sci. & Med. 222-31 (2015) (finding that policies reducing stigma present the potential to improve the health of transgender individuals).

update gender on a license through applicant verification and without a medical provider affidavit. *See* Movement Advancement Project, *Identity Document Laws and Policies: Driver's License* (June 25, 2021). Seventeen states require some form of medical provider certification that an individual has had appropriate treatment to amend their gender marker, but do not require surgery. *Id.* Only eight states, excluding Alabama, require individuals to demonstrate proof of surgery, court order, or amended birth certificate (which oftentimes includes a proof of surgery requirement as well) to update a gender marker on a driver's license. *Id.* The clear trend in the states is to eliminate outdated surgical requirements that conflict with contemporary medical science and practice and impose arbitrary barriers that prevent transgender people from obtaining identification that matches who they are. *See* Am. Ass'n Motor Vehicle Adm'rs, *Resource Guide on Gender Designation on Driver's Licenses and Identification Cards* 3 (Sept. 2016) (noting a "modernization trend" to replace surgery requirements with less restrictive standards).

The federal government, likewise, enables transgender people to obtain accurate identification without a surgical requirement. Over a decade ago, the federal government eliminated surgery requirements to update gender markers on U.S. Passports, requiring certification from a medical provider about a change in

gender.²⁴ In recent months, the State Department further updated its policy by allowing applicants and holders of U.S. Passports to confirm gender through sworn documentation. U.S. Dep't State, *Proposing Changes to the Department's Policies on Gender on U.S. Passports and Consular Reports of Birth Abroad* (June 30, 2021), <https://www.state.gov/proposing-changes-to-the-departments-policies-on-gender-on-u-s-passports-and-consular-reports-of-birth-abroad>. In 2013, the Social Security Administration removed its surgery requirement to instead allow gender marker change with an updated passport, birth certificate, or medical certification that the individual has had appropriate clinical treatment.²⁵

The confluence of individual experience, medical consensus and research, governmental policies, and best practice underscore that obtaining accurate identification such as driver's licenses is essential for transgender people to live safe, stable, and productive lives.

CONCLUSION

Whether to secure employment, housing, access voting or travel, an accurate driver's license is vital to engaging in everyday life, meeting basic needs, and being productive members of society. Inaccurate identification discloses transgender

²⁴ See U.S. Dep't State, *New Policy on Gender Change in Passports Announced* (June 9, 2010), <https://2009-2017.state.gov/r/pa/prs/ps/2010/06/142922.htm>.

²⁵ See Soc. Sec. Admin., *Program Operations Manual System* (June 13, 2013), <https://secure.ssa.gov/poms.nsf/lnx/0110212200>.

status thereby subjecting transgender people to a litany of harms, including discrimination, harassment, and groundless accusations of criminal activity and fraud. The cumulative impact of these harms is associated with adverse effects on economic stability, health and mental health, and overall well-being. Recognizing this, many states and federal agencies have policies designed to facilitate access to accurate identification documents. In stark contrast, Alabama's genital surgery requirement is an outlier and presents unreasonable barriers to transgender people accessing accurate driver's licenses for no rational or important reason, singling them out for unfair treatment and denying them equal protection. For the foregoing reasons, this Court should affirm the judgment of the district court.

Date: July 30, 2021

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(a)(5) and 32(g)(1), I certify as follows:

1. This Brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because this brief contains 6,048 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f); and
2. This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

Dated: July 30, 2021

By: /s/ Patience Crozier
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CERTIFICATE OF SERVICE

I, Patience Crozier, certify that on this 30th day of July, 2021, I electronically filed the foregoing document with the United States Court of Appeals for the Eleventh Circuit using the Court's CM/ECF system. I further certify that this document was served this day on all counsel of record electronically via CM/ECF.

I further certify that seven paper copies of the brief with green covers and backing will be dispatched for delivery via Federal Express to:

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Dated: July 30, 2021

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