No.17-1460

IN THE UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

DEE FULCHER, GIULIANO SILVA, and TRANSGENDER AMERICAN VETERANS ASSOCIATION, Petitioners,

v.

SECRETARY OF VETERANS AFFAIRS,
Respondent.

BRIEF OF THE AMICUS STATES OF WASHINGTON, CALIFORNIA, CONNECTICUT, HAWAII, ILLINOIS, MASSACHUSETTS, NEW YORK, OREGON, VERMONT, AND THE DISTRICT OF COLUMBIA IN SUPPORT OF PETTITIONERS AND GRANTING THE PETITION

ROBERT W. FERGUSON
Attorney General of Washington

MARSHA CHIEN, WSBA #47020
Assistant Attorney General
Washington State Attorney General
Civil Rights Unit
800 Fifth Ave, Suite 2000
Seattle, WA 98104
(206) 389-3886

(Additional Counsel Listed on Signature Page)

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INTRODUCTION

The stated mission of the U.S. Department of Veterans Affairs (the "Department" or the "VA") is to fulfill President Abraham Lincoln's simple promise: "[t]o care for him [or her] who shall have borne the battle[.]"[1] Under the Veterans Healthcare Eligibility Reform Act of 1996, all veterans are eligible to receive "needed" health care as long as the Department has the resources to provide or pay for such care.[2] Indeed, the vision of the Department's Veterans Health Administration ("VHA") is to "provid[e] exemplary [health] services that are both patient centered and evidence based."[3]

Yet, the regulation at issue here belies the VA's mission. First adopted in 1999, the Department's regulation excludes "gender alterations" from the "medical benefits package" provided to eligible veterans,[4] and the regulation's implementing directive states that "[s]ex reassignment surgery cannot be

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[1] U.S. Dep't of Veterans Affairs, Veterans Admin., https://www.va.gov/about_va/mission.asp (last visited June 15, 2017).

[2] 38 U.S.C. § 1710.

[3] U.S. Dep't of Veterans Affairs, Veterans Health Admin., https://www.va.gov/health/aboutVHA.asp (last visited June 15, 2017).

[4] 38 C.F.R. § 17.38(c)(4).

performed or funded by VA."[5] Taken together, the regulation and implementing directive render President Lincoln's promise an empty one for many transgender veterans.

The Department's categorical exclusion not only fails to be "patient centered," it threatens the welfare of amici States' residents. Transgender veterans with gender dysphoria are left without needed health care, and made vulnerable to physical suffering, depression, and suicidal ideation.[6] Further, the VA's approach stands in tension with the experience of the amici States—which have experienced first-hand that giving transgender people access to comprehensive health care, including medically necessary gender confirmation surgery—provides significant benefits at negligible costs.[7] Indeed, the amici States recognize that covering the same or substantially similar surgeries for cisgender and intersex veterans, such as mastectomies or hysterectomies to treat cancer, while refusing to cover similar procedures for transgender

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[5] U.S. Dep't of Veterans Affairs, Veterans Health Admin., VHA Directive 2013-003, *Providing Health Care for Transgender and Intersex Veterans* (revised Jan. 19, 2017) at 2, https://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=2863.

[6] *See infra* pp. 7−10. *See also Glenn v. Brumby*, 724 F. Supp. 2d 1284, 1289 (N.D. Ga. 2010) (accepting the World Professional Association for Transgender Health's triadic therapeutic protocol of hormone therapy, real-life experience as a member of the new gender, and sex reassignment surgeries as the standard for treating gender identity dysphoria in the medical community).

[7] *See infra* pp. 10−12.

veterans harms our transgender residents and public health systems. The VA's discriminatory and unreasonable regulation should be repealed or amended.

IDENTITY AND INTEREST OF AMICI CURIAE

The States of Washington, California, Connecticut, Hawaii, Illinois, Massachusetts, New York, Oregon, Vermont, and the District of Columbia submit this amicus brief pursuant to the Federal Rule of Appellate Procedure 29(a) and Federal Circuit Rule of Practice 29(a).

The amici States strongly support the rights of transgender veterans to live with dignity, be free from discrimination, and have equal access to employment, housing, public accommodations, and other necessities of life, including health care. Many of the amici States provide explicit civil rights protections for transgender people—including non-discriminatory coverage of "sex reassignment" or gender confirmation surgery—and our experience demonstrates that ensuring equal access to health care helps us all without imposing significant costs or meaningful financial burdens. In contrast, the VA's regulation and implementing directives can cause real, observed harms to the amici States' residents and service members. The amici States therefore have a strong interest in seeing the regulation amended or repealed.

ARGUMENT

Though the immediate lawsuit seeks a review of the Department's denial of a request for rulemaking, much more is at stake here. The Petitioners call upon the Court to determine whether one of the largest health providers in the country should remain free to deny needed medical care solely based on a person's gender identity. Such an outcome harms both the amici States' transgender residents, whose gender dysphoria would be left untreated, and the amici States themselves, by allowing a deprivation of civil rights in our nation's health care system that forces States to bear the resulting costs. The Court should reject this blanket deprivation of medically indicated care and order the VA to amend or repeal its regulation and implementing directive, and to honor its commitment to provide patient-centered and evidence-based care to our nation's veterans.

A. Discrimination Against Transgender Veterans Harms the Amici States and Their Residents.

1. Transgender veterans are an important part of the population of the amici States, yet face pervasive discrimination.

Transgender veterans are an essential part of the amici States' communities—more than 150,000 veterans, active service members, and

reserves identify as transgender nationwide.[8] Transgender people serve in the military at about twice the rate of adults in the general population.[9]

Rather than honor these veterans, transgender veterans are often repaid for their service with discrimination. In the 2015 National Transgender Discrimination Survey ("2015 NTDS"), the largest survey of transgender people to date, nearly one-quarter of military veterans and current service-member respondents said that leadership acted to discharge them when their commanding officers knew or thought they were transgender.[10] In fact, the U.S. Department of Defense barred transgender people from openly serving in the military until last year.[11]

This reflects the striking levels of discrimination, harassment, and sometimes violence, that transgender people, including veterans, endure even

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[8] Gary J. Gates & Jody L. Herman, *Transgender Military Service in the United States*, THE WILLIAMS INST. 1 (May 2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Transgender-Military-Service-May-2014.pdf (estimating 134,300 transgender veterans and 15,500 on active duty or in the National Guard or Reserve forces).

[9] *Id.*

[10] Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, NAT'L CTR. FOR TRANSGENDER EQUALITY 167 (2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf [hereinafter "2015 NTDS"].

[11] *See* Matthew Rosenberg, *Transgender People Will Be Allowed to Serve Openly in Military*, N.Y. TIMES (June 30, 2016), https://www.nytimes.com/2016/07/01/us/transgender-military.html?_r=0.

when it comes to the most basic elements of life, such as finding a job, having a place to live, and enjoying the support of family and community.[12] This is no less true when it comes to health care, where transgender people face significant barriers to receiving both routine and transition-related care, including lack of adequate insurance coverage, provider ignorance about the health needs of transgender people, and outright denial of service.[13] In the 2015 NTDS, nearly one-quarter of respondents (23%) reported that they avoided seeking health care they needed in the past year alone due to fear of being mistreated or harassed as a transgender person.[14]

Moreover, stigmatizing medical care for transgender veterans with blanket exclusions, where the same care is offered to similarly situated

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[12] 2015 NTDS, at 93; *see also* Sara Jean Green, *Police, FBI Investigating Brutal Attack on Transgender Activist on Capitol Hill*, THE SEATTLE TIMES (June 24, 2016), http://www.seattletimes.com/seattle-news/crime/police-fbi-investigating-brutal-attack-on-transgender-man-on-capitol-hill/ (reporting that a man used sexualized slurs while attacking a transgender activist as they left a fundraiser).

[13] 2015 NTDS, at 93; *see also* Jaime M. Grant et al., *National Transgender Discrimination Survey Report on Health & Health Care,* NAT'L CTR. FOR TRANSGENDER EQUAL. & NAT'L GAY & LESBIAN TASK FORCE, 5–6 (Oct. 2010), http://www.thetaskforce.org/static_html/downloads/resources_and_tools/ntds_report_on_health.pdf [hereinafter "2010 Health Care Survey"] (reporting that twenty-eight percent of transgender and gender non-conforming participants faced either verbal or physical harassment in medical settings, and nineteen percent were refused medical care altogether).

[14] 2015 NTDS, at 96.

cisgender and intersex veterans, contributes to an overall climate of discrimination against transgender people.

2. The VA's discriminatory regulation harms transgender veterans and the amici States.

The blanket denial of access to medically necessary care has serious consequences for transgender residents themselves and public health generally in the amici States.

Transgender people with gender dysphoria often suffer from severe emotional and psychological distress due to the stigma associated with their gender identity.[15] In the 2015 NTDS, for example, eighty percent of respondents reported having thought seriously about killing themselves, and forty percent of respondents reported having actually attempted suicide—a rate drastically higher than the rate of suicide attempts for the overall U.S.

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[15] *See* Am. Psychological Ass'n, *Answers to Your Questions About Transgender People, Gender Identity and Gender Expression: Is Being Transgender a Mental Disorder?*, http://www.apa.org/topics/lgbt/transgender.aspx (last visited June 17, 2017); Wynne Parry, *Gender Dysphoria: DSM-5 Reflects Shift in Perspective on Gender Identity*, Huffington Post (June 4, 2013, 2:11 p.m.), http://www.huffingtonpost.com/2013/06/04/gender-dysphoria-dsm-5_n_3385287.html ("[T]he distress that accompanies gender dysphoria arises as a result of a culture that stigmatizes people who do not conform to gender norms[.]").

population (4.6%) or even for lesbian, gay, and bisexual individuals (10-20%).[16]

And suicide is not the only health risk. If unaddressed, gender dysphoria can impact quality of life, cause fatigue, and trigger decreased social functioning.[17] One survey, for example, suggests that twenty-six percent of transgender or gender non-conforming people use or have used alcohol or drugs to cope with the impacts of discrimination.[18] Likewise, the Centers for Disease Control and Prevention found that social rejection, stigma, and

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[16] Ann P. Haas et al., *Suicide Attempts Among Transgender and Gender Non-Conforming Adults: Findings of the National Transgender Discrimination Survey*, AM. FOUND. FOR SUICIDE PREVENTION & THE WILLIAMS INST. 2 (Jan. 2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf; *see also* Luke Malone, *Transgender Suicide Attempt Rates are Staggering*, VOCATIV (Mar. 5, 2015), http://www.vocativ.com/culture/lgbt/transgender-suicide/; Laura Ungar, *Transgender people face alarmingly high risk of suicide*, USA Today (Aug. 16, 2015), https://www.usatoday.com/story/news/nation/2015/08/16/transgender-individuals-face-high-rates--suicide-attempts/31626633/.

[17] *See* Newfield E. et al., *Female-to-Male Transgender Quality of Life*, QUALITY OF LIFE RESEARCH (Nov. 15, 2006), https://www.ncbi.nlm.nih.gov/pubmed/16758113 (observing that transgender people who had received transition-related care at any time reported having a higher health-related quality of life than those who had not).

[18] 2010 Health Care Survey, at 14.

inadequate access to transgender-competent care all contribute to an increased risk of HIV and AIDS for transgender people.[19]

These negative health consequences also harm the amici States. If transgender veterans are unable to receive non-discriminatory, comprehensive health care from the VA, they may turn to other providers for their health care coverage.[20] Transgender and gender non-conforming individuals are less likely than the general population to have health insurance, and more likely to be covered by state-run programs such as Medicaid.[21] Specifically, twenty-three percent of transgender women and thirteen percent of transgender men report relying on public health insurance.[22] Even when transgender veterans are enrolled with the VA, those with serious problems may end up relying upon the emergency and front-line services of the state healthcare systems in times of crisis. It is therefore our state Medicaid programs that likely bear the burden of addressing the enormous attendant consequences of denying transgender

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[19] Ctrs. for Disease Control & Prevention, *HIV and Transgender Communities* 1 (Sept. 2016), https://www.cdc.gov/hiv/pdf/policies/cdc-hiv-transgender-brief.pdf.

[20] *See, e.g.,* Sidath Viranga Panangala, *Health Care for Veterans: Answers to Frequently Asked Questions*, Congressional Research Service 10 (Apr. 21, 2016), https://fas.org/sgp/crs/misc/R42747.pdf (noting veterans may cancel their health care enrollment with the VA at any time).

[21] 2010 Health Care Survey, at 8.

[22] 2010 Health Care Survey, at 8.

people medically necessary care.[23] In other words, it is often our state Medicaid programs that cover the doctor visits, emergency services, chronic disease management, mental health, and substance abuse disorder services that are required when gender dysphoria is ignored.[24]

In sum, the Department's regulation singles out an already-marginalized population, and it does so with respect to one of the most important health issues transgender veterans may face in their lifetimes. In refusing transgender veterans needed health care, the Department's discriminatory regulation likewise places avoidable stress on amici States' health care systems.

B. Amici States' Experience Shows that the VA Can Provide Health Care to Transgender Veterans, Including Sex Reassignment Surgery, Without Significant Costs.

1. Many of the amici States have experience covering transition-related care.

To prevent the tangible economic, emotional, and health consequences of excluding individuals from needed health care, many of the amici States

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[23] *See* Ctrs. for Disease Control & Prevention, *Cost of Injury Reports*, https://wisqars.cdc.gov:8443/costT/ (check either "Death," "Hospitalization," or "ED Treated and Released," then click "Go to Next Screen," check "Suicide" or "Self-harm," then click "Go to Next Screen" and then "Generate Report") (estimating the average medical costs of a single suicide completion or attempt is between $3,000 and $11,000).

[24] *See, e.g.,* Wash. Admin. Code § 182-501-0060; Cal. Code Regs. tit. 22 §§ 51301, *et seq.*; 18 N.Y.C.R.R. 505 (listing each program's benefit packages)

explicitly prohibit insurers from excluding transition-related care, like sex reassignment surgery, from coverage.[25] In Washington, for example, the Health Care Authority provides coverage of surgical and non-surgical transition-related services in both the state's Medicaid program (known as "Apple Health") and the public employees' insurance benefits program (known as "PEBB").[26] Similarly, the Office of the Insurance Commissioner ("Washington OIC") mandates that private insurers cover medically necessary services for transgender individuals "to the same extent that those services are covered for non-transgender individuals."[27] Indeed, as the Washington OIC states in an

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[25] *See* Ctr. on Health Ins. Reforms, *15 States and DC Now Prohibit Transgender Insurance Exclusions*, GEORGETOWN UNIVERSITY HEALTH POLICY INSTITUTE (Mar. 30, 2016), http://chirblog.org/15-states-and-dc-now-prohibit-transgender-insurance-exclusions/ (noting states prohibit transgender exclusions in varying ways, including through state laws on unfair trade practices, sex or gender identity discrimination, and mental health parity).

[26] *See* Wash. Admin. Code § 182.531.1675 (listing surgical and hormone therapy as available under Apple Health's "gender dysphoria treatment program"); Brad Shannon, *PEBB Votes to Add Transgender Services to Health Coverage Starting in January*, THE NEWS TRIBUNE (July 31, 2014).

[27] Letter from Mike Kreidler to Health Ins. Carriers in Wash. State, Office of the Ins. Commissioner of Wash. State (June 25, 2014), https://www.insurance.wa.gov/sites/default/files/documents/gender-identity-discrimination-letter.pdf.

accompanying guidance, an exclusion for sex reassignment surgery constitutes "an impermissible discriminatory exclusion."[28]

Other amici States are equally committed to ensuring transgender people are treated with dignity and respect when accessing health care. In California, the state's Medicaid program ("Medi-Cal") has prohibited transition-related exclusions from its coverage since 2001, and Medi-Cal covers sex reassignment surgery when medically necessary.[29] Moreover, California's public employees' insurance benefits program ("CalPERs") provides coverage for all medically necessary care for transgender members.[30] In 2012, the

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[28] Office of the Ins. Commissioner of Wash. State, *FAQ about coverage of transgender enrollees*, https://www.insurance.wa.gov/faq-about-coverage-transgender-enrollees (last visited June 19, 2017).

[29] *See* Cal. Dep't of Health Care Servs., *Ensuring Access to Medi-Cal Services for Transgender Beneficiaries* (Oct. 6, 2016), http://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2016/APL16-013.pdf (observing a 2001 state court decision prohibited Medi-Cal from categorically deny coverage for transgender people and reminding Medi-Cal managed care health plans that they must provide covered services to all Medi-Cal beneficiaries, including transgender beneficiaries, and including gender confirmation surgery, pursuant to Cal. Health & Safety Code §1365.5); *see also J.D. v Lackner*, 80 Cal. App. 3d 90, 95 (Cal. Ct. App. 1978) (recognizing that sex reassignment surgery may be medically necessary and ordering Medi-Cal to grant the treatment); Medi-Cal Update General Medicine, *Policy Clarification: Gender Identity Disorder* (March 2013), Bulletin 465, http://files.medi-cal.ca.gov/pubsdoco/bulletins/artfull/gm201303.asp#.

[30] *CalPERs, Nation's Largest Pension Fund, Covers Transgender Health Care,* TRANSGENDER LAW CENTER (June 20, 2013), https://transgenderlawcenter.org/archives/8437.

California Insurance Commissioner adopted regulations prohibiting private insurers from denying coverage for transition-related services if the same services are available when unrelated to gender transition, and from demanding or requiring a premium based on the insured's identity as a transgender person.[31] Other amici States provide similar protections.[32]

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[31] Cal. Code Regs. tit. 10 § 2561.2.

[32] *See, e.g.,* Conn. Gen. Stat. § 46a-71(a) ("All services of every state agency shall be performed without discrimination based upon . . . gender identity or expression"); Conn. Ins. Dep't, Bulletin IC-34 (Dec. 19, 2013) (prohibiting private insurers from discriminating against people based on gender identity); Haw. Rev. Stat. § 431:10A-118.3(a) (prohibiting gender identity discrimination in accident and health or sickness insurance contracts); Haw. Rev. Stat. § 432:1-607.3 (prohibiting gender identity discrimination in hospital and medical service policies); Haw. Rev. Stat. § 432D-26.3 (2016) (prohibiting gender identity discrimination in health maintenance organization policies); 775 Ill. Comp. 5/1-103(O-1) (prohibiting discrimination on the basis of sexual orientation, defined to include "gender-related identity, whether or not traditionally associated with the person's designated sex at birth"); 50 Ill. Adm. Code 2603.35 (prohibiting group health insurance plans from discriminating on the basis of gender identity); Mass. Division of Ins., Office of Consumer Affairs & Business Regulation, *Bulletin 2014-03* (June 20, 2014), http://www.mass.gov/ocabr/docs/doi/legal-hearings/bulletin-201403.pdf (prohibiting private insurers from denying coverage for medically necessary treatment based on an individual's gender identity); Mass. Dep't Health & Human Services, MassHealth, *Guidelines for Medical Necessity Determination for Gender Reassignment Surgery*, http://www.mass.gov/eohhs/docs/masshealth/guidelines/mg-genderreassignment.pdf (setting forth guidelines for covering gender reassignment surgery under Massachusetts's Medicaid program); 18 N.Y.C.R.R. 505.2(l) (covering medically necessary gender reassignment surgery under Medicaid); N.Y. Dep't of Financial Servs. Ins. Circular Letter No. 7 (Dec. 11, 2014), http://www.dfs.ny.gov/insurance/circltr/2014/cl2014_07.pdf (prohibiting private insurers from excluding coverage for the diagnosis and treatment of gender dysphoria); Vt. Dep't of Fin. Reg., Div. of Ins., Ins. Bulletin No. 174,

The amici States' laws, regulations, and health care bulletins prohibit many insurers from excluding sex reassignment surgeries in a discriminatory manner. Taken together, these protections reflect our core commitment to protecting the equality of all people, regardless of their gender identity.

2. Amici States have found that covering comprehensive health care for transgender people, including surgeries, furthers essential interests without imposing undue financial costs.

The VA may argue that covering sex reassignment surgery imposes a significant cost burden on its health system, which requires Congressional appropriation. However, in amici States, where equal access to medically necessary care is already the law, this prophesied fear has not materialized.

In several amici States, the removal of transgender exclusions has not led to heightened financial costs or increased premiums. In California, for example, the Insurance Commissioner conducted an extensive cost-benefit

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Guidance Regarding Prohibited Discrimination on the Basis of Gender Identity including Medically Necessary Gender Dysphoria Surgery and Related Health Care (Apr. 22, 2013) ("Insurance companies, health insurance companies, nonprofit hospital services corporations, nonprofit medical services corporations, non-ERISA employer group plans and managed care organizations shall not exclude coverage for medically necessary treatment including gender reassignment surgery for gender dysphoria and related health conditions."); Vt. Dep't of Health Access, Medical Policy re: Gender Reassignment Surgery (last updated Nov. 16, 2016), http://dvha.vermont.gov/for-providers/gender-reassignment-surgery-w-icd-10-coded-111616.pdf (covering gender reassignment surgery if certain criteria are met under Medicaid).

analysis and, based on the experience of several cities and businesses that long-extended coverage to transgender members for all medically necessary care, determined that ensuring equal access to health care regardless of gender identity would have an "insignificant and immaterial economic impact" on California businesses.[33] While providing medically necessary care is important regardless of the number of persons who need such care, the prediction of an immaterial economic impact makes sense because the transgender population in the United States is quite small relative to the total population[34]—and the transgender veteran population, even smaller. Insurers are rarely called upon to provide transition-related services.[35] In fact, with respect to surgeries, the "utilization rate," or degree at which insureds seek a covered service, is even

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[33] Cal. Dep't of Ins., *Economic Impact Assessment of Gender Nondiscrimination in Health Insurance* 1–2, Reg. File No. REG-2011-00023 (Apr. 13, 2012), http://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf [hereinafter "California Assessment"].

[34] *Compare* Andrew R. Flores, et al., *How Many Adults Identify as Transgender in the United States?* THE WILLIAMS INST. 3–4 (June 2016) (estimating 1.5 million people identify as transgender), *with* U.S. Census Bureau, *Annual Population Estimates* (July 2016), https://www.census.gov/popclock/ (estimating 325 million people in the United States).

[35] *See, e.g.,* California Assessment, at 4–5 (summarizing data from employers offering comprehensive transition-related services and observing, at one employer, less than 27 employees sought treatments in over five years despite the employer plan covering 95,000 employees).

lower than the percentage of transgender people in the population, since many transgender people rely on counseling and hormone therapy alone and never seek surgery.[36] The City of San Francisco, for example, initially charged employees a $1.70 premium to cover the cost of extending coverage to transgender people only to wholly eliminate that charge three years later because of low utilization rates.[37] Similarly, the City of Seattle easily absorbed the predicted increase of $200,000 for extending coverage because the amount represented just two-tenths of one percent of Seattle's total $105 million health care budget.[38]

Most importantly, in the amici States' experience, the tangible benefits to public health and to the individuals greatly outweigh the cost of extending coverage. This is because the mental health of transgender people markedly improves when they are provided non-discriminatory health care. Several studies suggest surgical treatments improve the overall mental health of

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[36] California Assessment, at 8 (noting not all transgender people have a diagnosis of gender dysphoria and thus have no medical need for surgery). *See also* 2015 NTDS, at 99-101 (only 25 percent of survey participants reported having had some form of transition-related surgery). *But see* Health Care Survey, at 10 (observing the high costs of surgery may render it inaccessible for transgender people).

[37] California Assessment, at 6.

[38] California Assessment, at 6.

transgender insureds and decrease substance abuse rates.[39] Suicidal ideation, for example, significantly decreases after sex reassignment surgery.[40] Most importantly, coverage saves lives. One physician providing transition-related care in San Francisco stated, "trans people who have mental health problems, who have depression, anxiety, they're suicidal—from a mental health perspective, their world has just kind of collapsed onto them," but as a result of the expansion, "they get hormones, they get surgery, they get access to treatment, and it's like you've flipped a light switch on."[41] Providing coverage also in turn creates cost savings for insurers.[42] For example, after the Medicaid expansion as part of the Affordable Care Act, Medi-Cal in California was better able to contract with surgeons that could perform sex reassignment

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[39] *See* William V. Padula, et. al., *Societal Implications of Health Ins. Coverage for Medically Necessary Svcs. in the U.S. Transgender Population: A Cost-Effectiveness Analysis*, J. GEN. INTERN. MED. (Apr. 16, 2016), https://www.ncbi.nlm.nih.gov/pubmed/26481647 (estimating the decreased risk of HIV, depression, suicidality, and drug abuse means comprehensive coverage of transition-related care is cost-effective 85% of the time); Mohamed Murad, et. al., *Hormonal Therapy and Sex Reassignment: A Systematic Review and Meta-analysis of Quality of Life and Psychosocial Outcomes*, Clinical Endocrinology (2010).

[40] California Assessment, at 10.

[41] Angela Hart, *Medi-Cal Expansion Opens Doors to Care for Transgender Patients*, KQED NEWS (Feb. 5, 2014), https://ww2.kqed.org/stateofhealth/2014/02/05/medi-cal-expansion-opens-doors-to-care-for-transgender-patients/.

[42] California Assessment, at 10.

surgeries at Medi-Cal reimbursement rates. Not only are such outcomes good for a State's transgender residents, they are good for the public health and fiscal outcomes of the States themselves.

In sum, the public health benefits of providing comprehensive health care to transgender people overwhelmingly offset the negligible costs in covering sex reassignment surgery. Any argument the Department puts forth to suggest otherwise is contrary to the amici States' experience.

CONCLUSION

The Department's categorical exclusion of coverage for "gender alteration" from its medical benefits package for veterans directly harms amici States and their residents. As amici States' experience shows, providing such care leads to significant benefits without serious costs, and supports a decision to amend or repeal the VA's regulation.

RESPECTFULLY SUBMITTED this 28th day of June, 2017.

ROBERT W. FERGUSON
Attorney General of Washington
/s/Marsha Chien
MARSHA CHIEN, WSBA # 47020
Assistant Attorney General
Washington State Attorney General - Civil Rights Unit
800 Fifth Ave, Suite 2000
Seattle, WA 98104
(206) 389-3886

(*Counsel listing continues on next page)*

XAVIER BECERRA
Attorney General of California
1300 I Street
Sacramento, CA 95814

GEORGE JEPSEN
Attorney General of Connecticut
55 Elm Street
Hartford, CT 06106

LISA MADIGAN
Attorney General of Illinois
100 W. Randolph St., 12th Fl.
Chicago, IL 60601

DOUGLAS S. CHIN
Attorney General of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

KARL A. RACINE
Attorney General of the
District of Columbia
One Judiciary Square
441 4th St., N.W.
Washington, DC 20001

MAURA HEALEY
Attorney General of Massachusetts
One Ashburton Place
Boston, MA 02108

ERIC T. SCHNEIDERMAN
Attorney General of New York
120 Broadway, 25th Fl.
New York, NY 10271

ELLEN F. ROSENBLUM
Attorney General of Oregon
1162 Court Street N.E.
Salem, OR 97301

THOMAS J. DONOVAN, JR.
Attorney General of Vermont
109 State Street
Montpelier, Vermont 05609

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify the following:

This brief complies with the word limitations of Fed. R. App. P. 29(a)(5) because it contains 3,775 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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 2010 in Times New Roman 14-point font.

/s/ Marsha Chien
MARSHA CHIEN, WSBA # 47020
Assistant Attorney General
Civil Rights Unit
Washington State Attorney General
800 Fifth Ave., Suite 2000
Seattle, WA 98104
206-389-3886
marshac@atg.wa.gov

DECLARATION OF SERVICE

I hereby certify that on June 28, 2017, the forgoing document was filed with the Clerk of the United States Court of Appeals for the Federal Circuit via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

Dated this 28th day of June, 2017.

ROBERT W. FERGUSON
Attorney General of Washington

/s/Marsha Chien
MARSHA CHIEN, WSBA # 47020
Assistant Attorney General
Office of the Attorney General
Civil Rights Unit
800 Fifth Ave, Suite 2000
Seattle, WA 98104
(206) 389-3886
Email: marshac@atg.wa.gov