

IN THE IOWA SUPREME COURT

No. 21-1977

AIDEN VASQUEZ and MIKA COVINGTON,

Petitioners-Appellees/Cross-Appellants,

vs.

IOWA DEPARTMENT OF HUMAN SERVICES,

Respondent-Appellant/Cross-Appellee.

APPEAL FROM THE DISTRICT COURT
OF POLK COUNTY
HON. WILLIAM P. KELLY

BRIEF OF
ONE IOWA, INDIVIDUAL TRANSGENDER IOWANS, AND ALLIES,
AS *AMICI CURIAE* IN SUPPORT OF
PETITIONERS-APPELLEES/CROSS-APPELLANTS

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STATEMENT OF INTERESTS OF AMICI CURIAE
AND DISCLOSURE STATEMENT

Amici include One Iowa, the largest statewide organization for lesbian, gay, bisexual, transgender, and queer/questioning (“LGBTQ”) Iowans and their allies. Its mission is to preserve and advance equality for LGBTQ Iowans through organizing, training, and advocating. Through its work with transgender Iowans, One Iowa has witnessed the life-changing difference that gender-affirming surgery has made for so many gender-dysphoric people. Through this Brief, One Iowa advocates for the equal treatment of all transgender Iowans by amplifying their voices and those of their allies.

Amici also include individual transgender Iowans whose short- and long-term health is directly and adversely affected when Medicaid coverage is denied for surgical procedures deemed medically necessary by their physicians. Through this Brief, the Court will hear of *Amici’s* challenges in navigating, often futilely, the discriminatory administration of Iowa’s Medicaid program to obtain the care prescribed to them.

Finally, *Amici* include Iowa health care providers, allies of transgender Iowans, and transgender Iowans who were fortunate enough to receive insurance coverage for medically necessary surgical procedures prescribed by their physicians. Some of these *Amici* have cared for

transgender patients, family members, and friends; others have received that care firsthand. Through this Brief, some *Amici* will share their professional knowledge concerning the complexities of gender dysphoria or their personal observations of those navigating the gender transition process while others will share their stories of successful treatment and transition.

Amici's personal experiences and connections to the transgender community combine to form a unique interest in the Court's interpretation of the Equal Protection Clause of the Iowa Constitution vis-à-vis Iowa Code Section 216.7(3), and the ensuing enforceability of Iowa Administrative Code Rule 441-78.1(4). Every day, *Amici* experience and bear witness to the predictable harms associated with the State's discriminatory and blanket denial of Medicaid coverage for gender-affirming surgery. *Amici* will assist the Court in assessing the potential ramifications of this case, thus satisfying the criteria set forth in Iowa Rule of Appellate Procedure 6.906(5)(a)(3), by sharing their voices and arguments in support of the District Court's correct conclusions.

As required by Iowa Rule of Appellate Procedure 6.906(4)(d), counsel for *Amici* have authored this Brief in its entirety; no party's counsel authored this Brief in whole or in part. Neither the parties nor their counsel

contributed any money to fund the preparation or submission of this Brief,
nor did any other person or entity.

ARGUMENT

Transgender Iowans are entitled to equal protection under the law. Despite this well-recognized constitutional tenet, the State of Iowa has placed significant barriers between trans Iowans receiving Medicaid benefits and the gender affirming medical treatment they require. Individuals must wade through a complex, multi-year bureaucratic process fraught with discrimination that delays and often prevents them from receiving medically necessary services. Trans Iowans are seeing their access to healthcare functionally denied, as their right to equal protection under the law is itself being unconstitutionally infringed.

To secure the health and well-being of all Iowans, transgender Iowans enrolled in Medicaid must be afforded the same access to medically necessary surgical procedures that is afforded to Medicaid enrollees who are not transgender. Keeping Iowa's constitutional promise of equal protection under the law will result in safe, beneficial health outcomes for transgender Iowans. It will also extend transgender Iowans' dignity in all aspects of their lives. The parties, as well as other *Amici*, will address the complex legal arguments supporting this position. This brief seeks to amplify the voices of transgender Iowans and their allies so that the justices of the Iowa Supreme Court may know the people most affected by these decisions. Gender-

affirming healthcare decisions are the most private of issues, but these Iowans invite you to take a seat on their couch. They hope that opening their lives to you will provide human context to sometimes abstract issues of statutory interpretation.

I. The Record And Historical Context Of This Case Demonstrate The Need For Direct Constitutional Scrutiny.

The real-world effect of this discrimination is devastating: transgender Iowans do not receive the life-affirming care they desperately need. The Iowa Supreme Court was right to state that Iowa has a long tradition of progress “toward fulfillment of our constitution’s ideals and reaffirm[ing] the ‘absolute equality of all’ persons before the law as ‘the very foundation principle of our government.’” Varnum v. Brien, 763 N.W.2d 862, 877 (Iowa 2009) (citing Coger v. North West. Union Packet Co., 37 Iowa 145 (1873)) (footnote omitted). The Iowa Supreme Court has repeatedly recognized that bans on medically necessary gender affirming surgery are discriminatory. See Good v. Iowa Dep’t of Human Servs., 924 N.W.2d 853, 862 (Iowa 2018) (quoting Iowa Admin. Code r. 441-78.1(4)); Vroegh v. Iowa Dep’t of Corr., __ N.W.2d __, 2022 WL 981824 at *10 (Iowa 2022) (internal citation omitted).

In Varnum, the Court listed four criteria for heightened constitutional scrutiny of legislation or regulation:

(1) the history of invidious discrimination against the class burdened by the legislation; (2) whether the characteristics that distinguish the class indicate a typical class member’s ability to contribute to society; (3) whether the distinguishing characteristic is “immutable” or beyond the class members’ control; and (4) the political power of the subject class.

Varnum, 763 N.W.2d at 887–88 (collecting cases) (footnotes omitted).

The Iowa Supreme Court’s analysis of the law with respect to gender-affirming treatment has significant effects for transgender Iowans, their families, and their advocates. The voices shared in this brief illustrate the human reason that the Iowa Supreme Court’s tradition of progress must be continued. They are also the human reason this Court should apply heightened constitutional scrutiny of the legislation and regulation at issue here. Varnum’s legal standards weigh overwhelmingly in their favor. The State concedes the first two factors are present. The remaining two factors also strongly support application of heightened scrutiny in the present case.

Gender identity is an immutable characteristic because “the person with the trait has no ability to change it[.]” Varnum, 763 N.W.3d at 892–893 (collecting cases and secondary sources). Joby Holcomb, LMHC and CADC, founded Synergy Clinical Services, an outpatient mental health and psychiatric clinic that specializes in working with the LGBTQ community. Holcomb explains: “The gender conflict that exists for transgender

individuals is the cognitive dissonance between what a person sees and who they truly are. Physical characteristics are immutable which is why we see so many transgender youth and adults who experience dysphoria to the point where medical interventions are necessary. These interventions are medically necessary and lifesaving for some trans individuals.”

As to the question of political power, the Court need look no further than the legal history of this case. The legislature has already demonstrated its willingness to amend a civil rights law—written specifically to prohibit discrimination—to allow discrimination. *Amici* can think of no clearer indication that transgender Iowans lack the political power to effect favorable, equitable legislation in Iowa. Transgender Iowans, and transgender Americans generally, have been subject to discrimination throughout history and yet their gender identity has no relationship to their capacity to contribute to society. They lack the ability to control their gender identity and they lack the political power to defeat laws designed to discriminate against them. The factors identified in Varnum therefore all point toward the need for this Court to apply at least intermediate scrutiny¹ to laws that classify based on gender identity. 763 N.W.2d at 887–88, 896.

¹ *Amici* argue that strict scrutiny should be applied but, in the event the Iowa Supreme Court does not so apply, urges this Court to apply intermediate scrutiny.

For all of these reasons, *Amici* call for the Court to apply heightened constitutional scrutiny to its interpretation of the Equal Protection Clause of the Iowa Constitution vis-à-vis Iowa Code Section 216.7(3), and the ensuing enforceability of Iowa Administrative Code Rule 441-78.1(4). In support of that position, *Amici* would like to introduce the Court to four Iowans whose lives will be directly impacted by this Court's ruling.

II. Meet Skylar and Elliott, Transgender Iowans and Medicaid Beneficiaries.

There are numerous surgical procedures that treat the body dysphoria from which transgender individuals suffer. Jennifer Christiason, mother of a transgender Iowan, explains, “These life-affirming procedures can include top surgery, a type of mastectomy [or breast augmentation] or bottom surgeries, which can include a hysterectomy” or other procedures to modify the genital tissue one was born with to match gender identity. Skylar Thomas, a 61-year-old Medicaid beneficiary, attempted to get preauthorization for her surgeries for several years. These procedures are medically necessary for Skylar to live with dignity and equality in all aspects of her life.

She encountered a morass of bureaucratic nightmares when trying to work with her Iowa-contracted Medicaid managed-care organization (“MCO”) to obtain treatment. More than once, Skylar drove 177 miles only

to arrive at medical appointments that were canceled or not covered by Medicaid. Skylar has been told at “the check in time . . . that I was denied, or it was canceled by the state. It’s to the point that I just gave up on the state of Iowa,” she said.

When she attempted to work with her MCO or the Iowa Department of Human Services (“DHS”), she encountered tactics that can only be described as obstructionist. Skylar’s physician has provided a letter stating that gender-affirming surgery is necessary to treat her gender dysphoria. Yet, she almost always received non-committal or “I don’t know” answers from Iowa DHS and her MCO. These organizations were unwilling to put communications about her requests in writing, which has made it difficult to track what Skylar has been told and makes filing an appeal hard if not impossible.

Skylar has “been at this since 2009, and [I’m] still on square 1,” she said. She has been unable to receive any surgery to address her pressing and significant medical needs and believes she will never receive the necessary surgery. “It would mean the world to me to have the surgery,” she said. As time as passed, Skylar explains that her other medical conditions and disabilities, including Stage 3 COPD that requires oxygen and four inhalers, have worsened over time, making her a less viable candidate for surgery

now than when she began seeking surgery. For Skylar, the delays to her access to gender-affirming surgery has equivocally denied her access to said surgery.

Amid her constant struggle to advocate for her medical needs, Skylar has had to fight for mental health care as well. “I can find a few [therapists] within 100 miles. They are all giddy to help me [until] I mention Medicaid, then all of a sudden they are booked for the next five years,” she said. Skylar has volunteered with Mason City Pride and mentored young transgender Iowans through their transitions. As she told this court through a 2018 Amicus brief, “I hear lots of very similar stories of individuals being denied. The process has a lot of red tape and the odds are that you still won’t get approved. . . . This isn’t just an important topic, it’s a matter of life and death.” The total stagnation of Skylar’s access to care between 2018 and now demonstrates the discrimination transgender Iowans still face because Iowa Medicaid and Iowa DHS enable the MCOs to “get away with” discrimination. That knowledge is used to stymie transgender Iowans’ legitimate efforts to obtain necessary medical care.

Elliott Bowers, a 24-year-old trans man, began transitioning when he turned 18 and soon sought gender-affirming surgery. Elliott’s physician provided a letter explaining that surgery is medically necessary, but Elliott’s

MCO did not allow him to submit a request for pre-authorization. He attempted, valiantly, to comply with the shifting and incognizable requirements by submitting at least two appeals. Each time he was told the appeal was denied because no pre-authorization was ever submitted while simultaneously being told his doctor's office could not submit such an application. More than four years later, Elliott still believes the MCO "gave him the runaround" because it knows Iowa law enables discrimination against transgender Iowans.

Elliott describes his stress being a trans Medicaid recipient as two-fold. There is the constant, intense stress of living in a body not aligned with one's gender. And then there is the stress of fighting an administrative nightmare against massive corporations and Iowa's DHS as a normal, "everyday" Iowan with few resources. Both types of stress decrease Elliott's quality of life overall, not just in terms of his access to healthcare. Elliott eventually married, gained access to private insurance through his husband, and received "top" surgery (a double mastectomy). The surgery, while arduous, has changed his life for the better. As soon as Elliott woke up from surgery, he felt less conflict with his body despite the pain from surgery. "It wasn't an easy recovery. I had a lot of complications. I had a huge hematoma," he said. "But it was worth everything. My mental health and

depression are so much better.” Elliott reports less daily stress and an ease of going about day-to-day life that wasn’t present before his top surgery.

However, Elliott says that he and his husband are now tens of thousands of dollars in debt because the private insurance also denied at least part of Elliott’s care because, to his understanding, Iowa Medicaid would not have covered the surgery. While the surgery has improved his mental health, the weight of the medical debt is considerable.

III. Allies and Advocates For The Transgender Community Meet Critical Needs.

Jennifer Christason is the mother of 24-year-old Ben Christason, an Iowan transgender man. While the Christasons were not Medicaid recipients, Jennifer and Ben have experienced discrimination in healthcare based on Ben’s trans status. Medical treatment for transgender body dysphoria is “life affirming. It literally reduces suicidal ideation. [Treatment] can sustain a life,” said Jennifer.

Jennifer describes the reality of managing transition surgeries, even with a private insurer, as “a full-time job.” Ben “had the privilege of private health insurance through his parents, but not without MAJOR organizational work, detailed notes of exchanges with our insurance company personnel prior to top surgery and eventually his hysterectomy (which insurance considered bottom surgery),” she said. Early in the process, she quickly

learned to take detailed notes regarding each interaction with a medical professional or anyone from their insurance company. As she told this Court in a 2018 Amicus brief, “We were denied a couple of times initially, but we changed their minds after a few appeals letters. We then received some weird bills afterwards and had to resolve those with more appeals letters. I would write down the day, time and who I talked to for everything. This made writing appeals letters easier. I had to constantly prove that something was said.”

Ben, Skylar and Elliott are all trans Iowans, but Ben is the only one to have been able to access gender-affirming surgery without long-term negative consequences. Jennifer’s willingness to fight full-time for coverage is certainly a part of why Ben was able to access medical care, but the root of the discrimination lies within the Iowa laws at issue in this case. As Jennifer summarized: “Transgender individuals have letters of support from a physician AND a mental health therapist to have Top Surgery and TWO mental health letters (plus the physician letter) to have bottom surgery. These are HUGE steps for practitioners - licensed highly educated practitioners. How is this NOT enough for Medicaid when it is for private insurance? Discrimination. Plain & simple.”

Joby Holcomb has seen firsthand the effects of these barriers to medical care in his mental health practice. He has seen how a lack of equal access to medical care transforms every aspect of a trans person's life. He has had many patients go through major depressions, contemplate suicide, and go to any lengths to get the gender confirmation surgery they need. "The clients that I see who are questioning and exploring their gender are experiencing increasing levels and intensity of symptoms of gender dysphoria along with comorbid depression, anxiety, agoraphobia and body dysphoria," he said. Holcomb sees increasing numbers of young Iowans "exploring their gender," but those individuals "have to wait months, sometimes years, in order to receive the life-saving interventions that can help them to lead healthy lives." The global "pandemic had a devastating impact on our transgender community." While waiting for gender-affirming treatment, "Trans youth continue to experience bullying and discrimination at alarming rates, have higher rates of suicidal thinking and suicide attempts since the start of the pandemic."

The practical effect of Iowa's discriminatory laws is to increase Medicaid's spending on these comorbidities for transgender Iowans.²

² For additional information, please see Jody L. Herman, Costs and Benefits of Providing Transition-Related Health Care Coverage in Employee Health Benefits Plans (Williams Institute, Sept. 2013); Cal. Dep't of Ins., Economic Impact Assessment: Gender Nondiscrimination in Health Insurance (Apr. 13,

“Individuals who are denied experience a lot of significant health issues, which as a result, costs more and more money to correct some of these things.” He continued, “Their quality of life deteriorates and eventually Medicaid is having to pay for a lot more things.” Holcomb has also had patients state they will go to any lengths to get the surgeries they need. Some individuals state they will go to other countries to receive the surgery or attempt to do procedures themselves, such as self-castration, decisions that create significant health risks and require further medical care to be covered by Medicaid.

The hopelessness described by Skylar is something that Holcomb hears frequently from his clients. “Many individuals face unique barriers when trying to access transgender health care for their transitions to the point where people lose hope, faith and confidence that a transition is possible for them,” Holcomb explained. “Transgender individuals already face multiple barriers in receiving basic health care, including mental health care. In these situations, the focus of the individual can shift from preparing for transitioning to one of survival.”

Comparatively, Holcomb said that individuals who received the treatments they needed significantly reduce how often they see him or are

2012); Rand Corp., Assessing the Implications of Allowing Transgender Personnel to Serve Openly, 9 (2016) (collecting studies in assessment conducted at request of U.S. Secretary of Defense).

able to stop needing his help completely. Holcomb believes that covering gender-affirming surgeries will lower Iowa's suicide rate overall and help address the depression and anxiety found within the transgender community. Without the opportunity to receive the treatment their doctors have determined is medically necessary to treat their gender dysphoria, these individuals will continue to need more extensive care and coverage in some form from Iowa's Medicaid providers.

For all of these reasons, the Iowa Supreme Court should affirm the District Court's correct ruling.

CONCLUSION

Amici urge the Court to affirm the decision of the District Court in the above-captioned matter. Medically necessary treatment is being withheld from transgender Medicaid beneficiaries because Iowa Code Section 216.7(3) and Iowa Administrative Code Rule 441-78.1(4) outright deny this class of individuals coverage for gender-affirming surgeries. Gender-affirming surgery is a matter of life and death for some transgender Iowans. Without these surgical procedures, transgender Iowans who must rely on Medicaid will require treatment for other, increasingly expensive care, struggle to function within their communities, and face a life of despair.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 point and contains 2811 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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