**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF WISCONSIN**

| | |
|---|---|
| CODY FLACK and<br>SARA ANN MAKENZIE,<br><br>Plaintiffs,<br><br>v.<br><br>WISCONSIN DEPARTMENT OF HEALTH SERVICES and<br>LINDA SEEMEYER, in her official capacity as Secretary of the Wisconsin Department of Health Services,<br><br>Defendants. | Case No. 3:18-cv-00309-wmc<br>Judge William Conley |

**PLAINTIFFS' STATEMENT OF PROPOSED FACTS**
**IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to this Court's local procedures for motions for injunctive relief, Plaintiffs Cody Flack and Sara Ann Makenzie respectfully submit the following statement of proposed facts in support of their Motion for Preliminary Injunction (the "Motion") in the above-captioned matter. The proposed facts cite, where appropriate, declarations and their attached exhibits filed concurrently with the Motion.

***Jurisdiction and Venue***

1. The Court has jurisdiction over the claims asserted herein under 28 U.S.C. §§ 1331 and 1343(a)(3)-(4).

2. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983, and Rules 57 and 65 of the Federal Rules of Civil Procedure.

3. Under 28 U.S.C. § 1391, venue is proper in the Western District of Wisconsin because Defendants reside and are subject to personal jurisdiction in the District, a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the District, and Plaintiff Sara Ann Makenzie resides in the District. *See generally* Decl. of Cody Flack; Decl. of Sara Ann Makenzie.

***Parties***

4. Plaintiff Cody Flack is an adult male resident of Green Bay, Brown County, Wisconsin. Flack Decl. ¶ 2.

5. Plaintiff Sara Ann Makenzie is an adult female resident of Baraboo, Sauk County, Wisconsin. Makenzie Decl. ¶ 2.

6. Defendant Wisconsin Department of Health Services ("DHS") is the Wisconsin state agency charged with the administration of Wisconsin Medicaid. DHS is a recipient of federal funds, including Medicaid funding for Wisconsin Medicaid. Wis. Stat. § 49.45.

7. Defendant Linda Seemeyer, sued in her official capacity, is the Secretary of DHS. As Secretary, she is responsible for implementing the Medicaid Act consistent with federal Medicaid requirements. Wis. Stat. § 46.014.

***Gender Identity and Gender Dysphoria***

8. Gender identity is an innate, internal sense of one's sex—*i.e.*, being male or female—and is a basic part of every person's core identity. Decl. of Daniel Shumer, MD, MPH ¶ 12; Decl. of Stephanie L. Budge, PhD, LP ¶ 16.

9. Everyone has a gender identity. Budge Decl. ¶ 16.

10. Most people's gender identity is consistent with the sex they were assigned at birth. Budge Decl. ¶ 17.

11. Transgender people, however, have a gender identity that is different from their assigned sex. *Id.* ¶ 17. A transgender man is a man who was assigned female at birth but has a male gender identity. *Id.* ¶ 19. A transgender woman is a woman who was assigned male at birth but has a female gender identity. *Id.*

12. Gender dysphoria is a serious medical condition experienced by transgender people whose gender identity conflicts with the sex they were assigned at birth. *See* Am. Psychiatric Ass'n, Diagnostic & Statistical Manual, 5th ed. 451-59 (2013) ("DSM-5"); [Decl. of Orly May, Ex. 1];[1] Budge Decl. ¶ 24.

13. Gender dysphoria is the "clinically significant distress or impairment in social, occupational, or other areas of function" associated with the incongruence between a transgender person's gender identity and assigned sex. DSM-5 at 451-53.

14. When a transgender person's gender dysphoria is left untreated, or is inadequately addressed, the consequences can be dire—ranging from serious mental distress to self-harm and suicide. Budge Decl. ¶ 24, 36; Decl. of Jaclyn White Hughto, PhD, MPH ¶ 50.

15. A transgender person's gender dysphoria can be alleviated when the person is able to live, and be treated by others, consistently with the person's gender identity. Budge Decl. ¶¶ 34-35, 37.

16. Symptoms of gender dysphoria can be mitigated, and often prevented altogether, for transgender people with access to appropriate individualized medical care as part of their gender transitions. *Id.* ¶ 28.

[1] This Court may take judicial notice of the DSM-5. *See Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1040 n.4 (7th Cir. 2017).

17. Under the World Professional Association of Transgender Health's *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, 7th Version* (2011) ("WPATH Standards of Care")—the internationally-accepted standards of care for gender dysphoria—treatment options for gender dysphoria include psychotherapy, hormone therapy to feminize or masculinize the body, and various surgical procedures that align one's physical characteristics with one's gender identity (collectively referred to in this brief as gender-confirming or transition-related surgeries). Decl. of Loren S. Schechter, MD ¶¶ 23-32; Shumer Decl. ¶¶ 29-30; Hughto Decl. ¶ 21.

18. The medical community recognizes gender confirming surgeries as safe and effective treatments for gender dysphoria. *Id.*; Schechter Decl. ¶¶ 23-28; Shumer Decl. ¶ 17; Budge Decl. ¶ 30; Exs. 2-9 to May Decl. (position statements of various major medical organizations).

19. Not all transgender people need surgery to alleviate their gender dysphoria; however, for many transgender people, surgery is the only medically effective treatment to alleviate symptoms of the condition. Schechter Decl. ¶¶ 28-39; Shumer Decl. ¶ 40; Budge Decl. ¶¶ 34-37.

20. Gender-confirming medical treatments can also reduce the discrimination, mistreatment, and harassment that transgender people suffer for being visibly gender nonconforming. Hughto Decl. ¶¶ 28-46.

21. Transgender people who are visibly gender nonconforming experience more discrimination and worse health outcomes than those whose appearance matches their gender identity. *Id*. ¶ 30.

22. Transgender individuals who are unable to access or afford gender confirming procedures, which would increase gender conformity, are at greater risk of discrimination and other harms. Hughto Decl. ¶¶ 30, 45.

***The Transgender Population***

23. Transgender people have historically been subjected to discrimination in virtually every facet of life—including in the health care context—and continue to face pervasive discrimination today. Hughto Decl. ¶¶ 28-46.

24. Transgender people suffer discrimination and harassment in employment, education, housing, health care, and their own families and communities. *See generally,* Nat'l Ctr. for Transgender Equality, *Exec. Summ. of Report of 2015 U.S. Transgender Survey* (2017) ("USTS Exec. Summ.") [May Decl. Ex. 23].

25. In Wisconsin, more than a quarter of transgender adults live in poverty, more than twice the overall national poverty rate. Nat'l Ctr. for Transgender Equality, *2015 U.S. Transgender Survey: Wisconsin State Report* 1 & n.3 (2017) [May Decl. Ex. 24].

26. One in five transgender residents in Wisconsin is unemployed. *Id.* at 1.

27. Nearly 60 percent of transgender people in Wisconsin have recently experienced mistreatment by law enforcement officers who perceived or knew them to be transgender. *Id.* at 2.

28. In the health care context, 30 percent of transgender adults in Wisconsin had been denied insurance coverage for being transgender; a third had at least one recent negative experience with a health provider for being transgender; and a quarter had opted not to see a doctor when needed out of fear of mistreatment. *Id.* at 3.

***Federal Medicaid Program***

29. Established in 1965 under Title XIX of the Social Security Act, Medicaid is a joint federal-state program that provides medical assistance to eligible low-income individuals. *See* 42 U.S.C. § 1396-1396w-5 (the "Medicaid Act").

30. Medicaid enables states to furnish medical services to persons whose incomes and resources are insufficient to meet the cost of necessary medical services by reimbursing participating states for a substantial portion of the costs in providing medical assistance. 42 U.S.C. §§ 1396-1; 1396b.

31. Participating states must cover certain health care services when medically necessary, including inpatient and outpatient hospital services and physician services. 42 U.S.C. §§ 1396a(a)(10)(A), 1396d.

32. The Medicaid Act specifically provides that "the medical assistance made available to any individual . . . shall not be less in amount, duration or scope than the medical assistance made available to any other such individual." 42 U.S.C. § 1396a(a)(10)(B)(i).

33. A state "Medicaid agency may not arbitrarily deny or reduce the amount or scope of a required service . . . to an otherwise eligible recipient solely because of the diagnosis, type of illness, or condition." 42 C.F.R. § 440.230(c).

***Wisconsin Medicaid Program***

34. Wisconsin, like every other state, participates in Medicaid. Defendant DHS is the Wisconsin state agency charged with the administration of Wisconsin Medicaid consistent with state and federal requirements. Wis. Stat. § 49.45.

35. DHS receives federal funding from the U.S. Department of Health and Human Services, including reimbursement of over half of the State's Medicaid expenditures. *See* 42

U.S.C. § 1396b; Wis. Legis. Fiscal Bureau, *Medical Assistance Cost-to-Continue (Health Services – Medicaid Services)* (Paper #320, May 25, 2017) [May Decl. Ex. 10] ("LFB Report").

36. Wisconsin's medical assistance statute, Wis. Stat. §§ 49.43-.65, and its implementing regulations, Wis. Admin. Code § DHS 101.01-.36, govern Wisconsin Medicaid.

37. Under the regulations, DHS "shall reimburse providers for medically necessary and appropriate health care services" listed in the statute, including inpatient and outpatient hospital services and physician services. Wis. Adm. Code § DHS 107.01(1).

38. The State's medical assistance statute does not explicitly address, let alone exclude, coverage for transgender individuals seeking care for the treatment of gender dysphoria. Wis. Stat. §§ 49.43—.65.

39. Currently, Wisconsin Medicaid has approximately 1.2 million enrollees. DHS, Current Month Health Care Enrollment At A Glance (April 2018) [May Decl. Ex. 11].

40. An estimated 5,000 transgender adults are enrolled in Wisconsin Medicaid. Hughto Decl. ¶ 49.

***The Challenged Exclusion***

41. Wis. Adm. Code § DHS 107.03(23)-(24) (the "Challenged Exclusion"), a provision of Wisconsin's Medicaid regulations, categorically excludes coverage for transition-related medical care, including "[t]ranssexual surgery" or "[d]rugs, including hormone therapy, associated with transsexual surgery or medically unnecessary alteration of sexual anatomy or characteristics." Wis. Adm. Code § DHS 107.03(23)-(24).

42. The policy was adopted as an amendment to the Medicaid regulations in 1996, and went into effect on February 1, 1997. *See* Wis. Dep't of Health & Fam. Servs. (DHFS), Clearinghouse Rule 96-154, 1 (Dec. 11, 1996) ("CR 96-154") [May Decl. Ex. 12].

43. At the time the policy was promulgated, it was based on the premise that "transsexual surgery" and related "[d]rugs, including hormone therapy," were medically unnecessary. *See id.*; DHFS, *Summary of Amendments to Medicaid Rules that Discontinue Coverage of Medically Unnecessary Services* at 1 (Jan. 6, 1995) ("DHFS Amendments Summary") [May Decl. Ex. 13].

44. The 1996 Amendments also excluded "tattoo removal," "ear lobe repair," "services related to surrogate parenting," and "non-medical food" from Medicaid coverage. CR 96-154, at 1.

45. The exclusions in the 1996 Amendments were not motivated by cost savings. *Id.*; DHFS, Fiscal Estimate: Medical Assistance: Medically Unnecessary Services 1 (Sept. 27, 1996) ("DHS Fiscal Est.") [May Decl. Ex. 14].

46. Defendants enforce the Challenged Exclusion through the present day to deny Medicaid coverage for transition-related medical treatments and publicize the Challenged Exclusion on the DHS website. *See* DHS, LGBT Health – Transgender Persons, www.dhs.wisconsin.gov/lgbthealth/transgender.htm (last accessed May 21, 2018) [May Decl. Ex. 15].

47. Wisconsin Medicaid covers the same services when medically necessary to treat conditions other than gender dysphoria. *See, e.g.*, DHS, ForwardHealth, Online Handbook, Covered and Non-Covered Services (sections on breast reconstruction, reduction mammoplasty) ("DHS Online Handbook") [May Decl. Ex. 16]; *see also* Schechter Decl. ¶¶ 38-39.

***Plaintiff Cody Flack***

48. Cody Flack is a 30-year-old transgender man. Flack Decl. ¶¶ 2, 4.

49. Because of his disabilities, including cerebral palsy, Mr. Flack is unable to work. *Id.* ¶ 3.

50. Mr. Flack relies on Supplemental Security Income (SSI) for his living expenses and Wisconsin Medicaid for his health care. *Id.*

51. Mr. Flack has been diagnosed with gender dysphoria. *Id.* ¶ 5; Decl. of Daniel Bergman, MS, LPC, NCC, ¶ 5; Budge Decl. ¶ 58.

52. Mr. Flack's gender identity is male. Flack Decl. ¶ 4.

53. While he was assigned female at birth and was raised as a girl, he became aware of his male gender identity around the age of four or five. *Id.*

54. At age 18, Mr. Flack took steps to begin his gender transition. *Id.* ¶ 7. He began seeing a gender therapist, adopted a traditionally male name, and took other steps to outwardly present as the male he is. *Id.*

55. Due to a lack of support and resources, and fears that coming out as transgender might isolate him from his family and others, Mr. Flack felt unable to undergo a full transition for several more years—despite experiencing significant gender dysphoria. *Id.*

56. In 2012, after moving to Wisconsin and feeling more supported in his gender identity, Mr. Flack resumed his gender transition. *Id.* ¶ 8. He took steps to socially transition to living and presenting as a man in all aspects of his life, including, exclusively using a traditionally male name, Cody, wearing traditionally men's clothing, and cutting his hair. *Id.*

57. Mr. Flack legally changed his name and obtained a corrected Wisconsin state identification card listing his male sex. *Id.* ¶ 9.

58. To treat his gender dysphoria and further his gender transition, Mr. Flack has obtained ongoing therapy and medical care for the last several years. *Id.* ¶ 10.

59. Since 2015, Mr. Flack has seen a psychotherapist, Daniel Bergman, who has treated him for gender dysphoria and other mental health conditions. *Id.*; Bergman Decl. ¶¶ 4-5.

60. Since August 2016, Mr. Flack has been receiving hormone therapy (testosterone) under the supervision of Dr. Amy DeGueme, an endocrinologist. Decl. of Amy DeGueme, MD ¶ 4; Flack Decl. ¶ 11. As a result of the testosterone, he has developed facial and body hair, a deeper voice, and a more masculine appearance. DeGueme Decl. ¶ 7; Flack Decl. ¶ 11.

61. In October 2016, Mr. Flack had a hysterectomy with bilateral salpingo-oophorectomy—the total removal of his uterus, cervix, fallopian tubes, and ovaries. Flack Decl. ¶ 13; DeGueme Decl. ¶ 8. These surgeries were primarily to treat two serious medical conditions: dysmenorrhea, a condition characterized by pelvic or lower abdominal pain during menstruation, and premenstrual dysphoric disorder ("PMDD"), a severe form of premenstrual syndrome. Flack Decl. ¶ 13; DeGueme Decl. ¶ 8.

62. As Mr. Flack's hysterectomy with bilateral salpingo-oophorectomy was necessary to treat to treat his PMDD and dysmenorrhea, Wisconsin Medicaid covered the procedure. Flack Decl. ¶ 13. However, in addition to treating these conditions, the surgery also helped significantly reduce his gender dysphoria by better aligning his body with his male identity. Flack Decl. ¶ 13; DeGueme Decl. ¶ 8.

63. While his surgery and the hormone therapy have been effective, Mr. Flack still experiences severe gender dysphoria related to the presence of female-appearing breasts on his body. Flack Decl. ¶¶ 14-17; Budge Decl. ¶¶ 61-65. Bergman Decl. ¶ 9.

64. Because of his breasts, Mr. Flack is regularly mistaken as female and mistreated as a result. Flack Decl. ¶¶ 14-17.

65. As his breasts cause people to mistake him as female, Mr. Flack avoids social situations whenever possible. *Id.* ¶ 29.

66. When in public, Mr. Flack is ashamed of his breasts. *Id.*

67. Despite his efforts to present as the man he is, he considers the breasts an undesired visible marker of something he is not—female—and a source of significant distress. *Id.* ¶¶ 16-17

68. In an effort to conceal his breasts from public view, Mr. Flack has engaged in a technique called "binding," which flattens or reduces the appearance of breasts. *Id.* ¶ 17. Ctr. of Excellence for Transgender Health, *Guidelines for the Primary & Gender-Affirming Care of Transgender & Gender Nonbinary People*, "Binding, packing, and tucking" 155 (M. Deutsch, ed,. 2d ed. 2016) [May Decl. Ex. 17] ("CoE Guidelines").

69. Mr. Flack finds binding extremely painful and, because of his disabilities, difficult to do himself. Flack Decl. ¶ 17. He has suffered respiratory distress, skin irritation, and sores as a result. *Id.*; DeGueme Decl. ¶ 9.

70. Since early 2017, with the support of his psychotherapist and medical providers, Mr. Flack sought to obtain chest reconstruction surgery; specifically, a double mastectomy and male chest reconstruction. Flack Decl. ¶ 18; Bergman Decl. ¶ 10; DeGueme Decl.¶¶ 9-14; Decl. of Clifford King, MD, PhD ¶ 3.

71. A double mastectomy and male chest reconstruction are widely accepted and effective treatments for gender dysphoria in transgender men. Schechter Decl. ¶ 30; Shumer Decl. ¶ 39.

72. Mr. Flack consulted with Dr. Clifford King, a plastic surgeon in Madison who specializes in providing transition-related surgeries for transgender people. Flack Decl. ¶ 19; King Decl. ¶ 1.

73. Mr. Flack provided Dr. King with letters of support from four medical providers—his primary care doctor, therapist, endocrinologist, the physician who performed his hysterectomy and oopherectomy, and his primary care doctor. Flack Decl. ¶ 20; King Decl. ¶ 4. Each of the four providers confirmed that Mr. Flack has gender dysphoria and met the criteria for surgery. Flack Decl. ¶ 20; King Decl. ¶ 4.

74. Dr. King determined that Mr. Flack was eligible for male chest reconstruction under the WPATH Standards of Care. King Decl. ¶ 5.

75. On July 18, 2017, Dr. King submitted a request for prior authorization to DHS for Wisconsin Medicaid coverage of the chest reconstruction surgeries. King Decl. ¶ 6.

76. On August 2, 2017, DHS denied the request, noting simply that "[p]er WI administrative code DHS 107.03(24) transsexual surgery is a non-covered service." King Decl. ¶ 6; Flack Decl. ¶ 22; Ltr. from DHS to Dean Health Sys. (Aug. 2, 2017) [May Decl. Ex. 18].

77. Mr. Flack administratively appealed that decision without success. Flack Decl. ¶¶ 23-26; Decision by Administrative Law Judge B. Schneider, at 1 (Nov. 21, 2017) [May Decl. Ex. 20] ("ALJ Decision"); Order by Administrative Law Judge B. Schneider (Dec. 11, 2017) [May Decl. Ex. 21].

78. During Mr. Flack's administrative appeal, DHS conceded that its denial was based solely on the Challenged Exclusion and that it did not consider the medical necessity of the requested surgery. Flack Decl. ¶ 24; Ltr. from J. Sager to Dep't of Admin., Div. of Hearings & Appeals, *et al.* (Sep. 25, 2017) [May Decl. Ex. 22] ("Sager Letter").

79. During Mr. Flack's administrative appeal, DHS further conceded that "gender dysphoria . . . is an accepted medical indication for the surgical treatment requested [by Mr. Flack]." Sager Letter.

80. In November 2017, an administrative law judge concluded that while "the proposed surgery presumably would favorably address [Mr. Flack's] gender dysphoria," he was bound by the Challenged Exclusion to rule against Mr. Flack. Flack Decl. ¶ 25; ALJ Dec. at 2.

81. Since initially being denied coverage for surgery last summer, Mr. Flack's gender dysphoria has worsened considerably. Flack Decl. ¶¶ 27-28; Bergman Decl. ¶ 11; Budge Decl. ¶¶ 66-67.

82. Without the means to pay for surgery, Mr. Flack feels hopeless and has experienced profound depression and distress because of the denial and his inability to complete his gender transition. Flack Decl. ¶¶ 27-31.

83. Mr. Flack has recently contemplated suicide and the possibility of performing chest surgery himself, but has not acted on those thoughts. Flack Decl. ¶ 28; Budge Decl. ¶ 66.

84. Mr. Flack experiences ongoing, extreme distress because of the dysphoria from his chest. Flack Decl. ¶ 28; Budge Decl. ¶ 66; Bergman Decl. ¶¶ 11.

85. Without chest reconstruction surgery, Mr. Flack is at substantial risk of short- and long-term harm to his health and well-being. Budge Decl. ¶¶ 71-73; Bergman Decl. ¶¶ 13-14.

86. If Mr. Flack is not able to obtain chest reconstruction surgery, his emotional health will continue to deteriorate, and his depression, anxiety, suicidal ideation, and thoughts of self-harm (including thoughts of removing his breasts himself) will likely worsen. Bergman Decl. ¶ 13; DeGueme Decl. ¶ 13; Budge Decl. ¶ 73.

***Plaintiff Sara Ann Makenzie***

87. Plaintiff Sara Ann Makenzie is a 42-year-old transgender woman. Decl. of Sara Ann Makenzie ¶¶ 2-3.

88. Ms. Makenzie is unable to work due to her disabilities. *Id.* ¶ 4.

89. Ms. Makenzie relies on SSI for her income and Wisconsin Medicaid for health care. *Id.*

90. Ms. Makenzie is a lifelong Wisconsin resident and has been enrolled in Wisconsin Medicaid for many years. *Id.* ¶¶ 2, 4.

91. Ms. Makenzie's gender identity is female. *Id.* ¶¶ 3, 5; Decl. of Trisha Schimek, MD ¶ 4; Budge Decl. ¶ 41.

92. While she was assigned male at birth and raised as a boy, she is female. Makenzie Decl. ¶¶ 3, 5.

93. Ms. Makenzie has been diagnosed with gender dysphoria. *Id.* ¶ 11; Schimek Decl. ¶ 4; Budge Decl. ¶ 45.

94. Ms. Makenzie has understood herself to be female since childhood and has experienced gender dysphoria for most of her life. Makenzie Decl. ¶¶ 5-7.

95. Ms. Makenzie has lived consistently as a woman since at least 2012. Makenzie Decl. ¶¶ 3, 8.

96. Ms. Mackenzie legally changed her name to a traditionally female name, Sara Ann, uses feminine pronouns to refer to herself, wears traditionally women's clothing, and has corrected her birth certificate, driver's license, and U.S. Passport to reflect her name-change and her female sex. Makenzie Decl. ¶ 12.

97. To further treat her gender dysphoria and continue her transition, Ms. Mackenzie has sought therapy and medical care since approximately 2012. Makenzie Decl. ¶¶ 11, 13-17; Schimek Decl. ¶ 5.

98. Since 2013, Ms. Makenzie has been on hormonal therapy, which has helped diminish her symptoms of gender dysphoria. Makenzie Decl. ¶¶ 13-16; Schimek Decl. ¶ 5; Decl. of Beth E. Potter, MD ¶ 6.

99. In 2017, Ms. Makenzie also sought to obtain chest reconstruction surgery, in the form of breast augmentation because her lack of a developed chest was exposing her to frequent misgendering. Makenzie Decl. ¶ 18.

100. When Ms. Makenzie contacted DHS to inquire whether Wisconsin Medicaid would cover the chest reconstruction, DHS advised her that the procedure was not a covered benefit because of the Challenged Exclusion. *Id.* ¶ 19.

101. After learning that chest reconstruction would not be covered by Wisconsin Medicaid, Ms. Makenzie obtained a personal loan from her bank of approximately $5,000 to pay out-of-pocket for the procedure. *Id.* ¶ 20.

102. Dr. Venkat Rao, a plastic surgeon at UW Health in Madison, performed the surgery in August 2016. *Id.* ¶ 21.

103. The chest reconstruction procedure has been an effective treatment for Ms. Makenzie's gender dysphoria, and she has experienced fewer instances of being mistaken as male or of being mistreated for having masculine features. *Id.* ¶ 22; Budge Decl. ¶ 43.

104. While the hormone therapy and chest reconstruction have been effective treatments in mitigating her gender dysphoria, Ms. Makenzie experiences profound distress at

the sight of her male-appearing genitalia, which negatively impacts her social life, sexuality, and occupational functioning. Makenzie Decl. ¶¶ 23-24; Budge Decl. ¶ 44.

105. Ms. Makenzie's medical providers have recommended that she obtain genital reconstruction in the form of a bilateral orchiectomy and vaginoplasty, which would create female-appearing external genitalia. *Id.* ¶¶ 29-30; Schimek Decl. ¶¶ 9-10.

106. The applicable standards of care recognize a bilateral orchiectomy and vaginoplasty as effective procedures in treating gender dysphoria in transgender women. Schechter Decl. ¶ 29; Shumer Decl. ¶ 39.

107. In 2014, Ms. Makenzie consulted with her primary care physician, Dr. Trisha Schimek, about obtaining genital reconstruction surgery. Makenzie Decl. ¶¶ 25-26; Schimek Decl. ¶¶ 7-8. However, Dr. Schimek told her that Wisconsin Medicaid would not cover the surgery. Makenzie Decl. ¶¶ 25-26; Schimek Decl. ¶¶ 7.

108. In February 2018, on the referral of her primary care doctor, Dr. Beth Potter, Ms. Makenzie consulted with Dr. Katherine Gast, a plastic surgeon at UW Health in Madison, whose practice focuses on the treatment of transgender people. Makenzie Decl. ¶ 30; Decl. of Katherine M. Gast, MD, MS ¶¶ 1-2; Potter Decl. ¶ 7.

109. During the February 2018 consultation, Dr. Gast advised Ms. Makenzie that once she submitted letters of support from two mental health providers, which she was prepared to do, she would be eligible for genital reconstruction under the applicable standards of care. Makenzie Decl. ¶ 30; Gast Decl. ¶ 3.

110. Dr. Gast informed her, however, that Wisconsin Medicaid would not cover this procedure. Gast Decl. ¶ 32.

111. Learning that Wisconsin Medicaid would not cover her procedure caused Ms. Makenzie extreme distress, including thoughts of suicide and removing her genitals herself. *Id.* ¶ 33.

112. Without coverage from Wisconsin Medicaid, Ms. Makenzie lacks the means to pay for genital reconstruction surgery. *Id.* ¶ 33.

113. Ms. Makenzie's inability to obtain this necessary care has exacerbated her gender dysphoria and caused significant emotional distress, particularly related to her genitalia. *Id.* ¶¶ 23, 33-34; Budge Decl. ¶¶ 71-72.

114. Ms. Makenzie is constantly afraid that someone will be able to see her genitals through her clothing. Makenzie Decl. ¶ 23.

115. To minimize the chance that someone will notice her genitals through her clothing, Ms. Makenzie wears multiple pairs of underwear and engages in a practice called "tucking" to hide her genitals. *Id.* CoE Guidelines at 155. However, she finds tucking very painful and uncomfortable. Makenzie Decl. ¶ 23.

116. Though Ms. Makenzie tries to conceal her genitals, she is constantly worried that someone may notice them—and then mistreat or attack her once they realize she is transgender. *Id.* ¶ 24.

117. Ms. Makenzie avoids sex with her fiancée, but that only compounds her anxiety and depression. *Id.* ¶ 34; Budge Decl. ¶ 44.

118. For Ms. Makenzie, even showering or seeing herself in the mirror is painful. Budge Decl. ¶ 44.

119. Because she cannot complete her gender transition, Ms. Makenzie experiences suicidal thoughts and has engaged in self-harm, including cutting in her genital area. Makenzie Decl. ¶ 34.

120. Because of her continuing inability to obtain genital reconstruction surgery as a treatment for gender dysphoria, Ms. Makenzie is at substantial risk of short- and long-term harm to her health and well-being. Budge Decl. ¶¶ 71-72.

Dated: May 23, 2018

Respectfully submitted,

/s/ Joseph J. Wardenski
Joseph J. Wardenski
Jennifer I. Klar
Orly May
RELMAN, DANE & COLFAX PLLC
1223 19th Street, NW, Suite 600
Washington, DC 20036
Telephone: (202) 728-1888
Facsimile: (202) 728-0848
jwardenski@relmanlaw.com
jklar@relmanlaw.com
omay@relmanlaw.com

Robert Theine Pledl
Mark A. Peterson
Daniel A. Peterson
MCNALLY PETERSON, S.C.
1233 North Mayfair Road, Suite 200
Milwaukee, WI 53226-3255
Telephone: (414) 257-3399
Facsimile: (414) 257-3223
rpledl@mcpetelaw.com
mpeterson@mcpetelaw.com
dpeterson@mcpetelaw.com

Abigail Coursolle
Catherine McKee
NATIONAL HEALTH LAW PROGRAM
200 N. Greensboro Street, Suite D-13
Carrboro, NC 27510
Telephone: (919) 968-6308
Facsimile: (919) 968-8855
coursolle@healthlaw.org
mckee@healthlaw.org

*Attorneys for Plaintiffs*