

# Scholars in Social Work, Gerontology, and Social Science

September 1, 2021

The Honorable Tani Gorre Cantil-Sakauye, Chief Justice  
The Honorable Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

**Re: Letter of Amicus Curiae of Scholars in Social Work, Gerontology, and Social Science (SSWGSS) in Support of Petition for Review**

***Taking Offense v. State of California*, No. S270535  
Appeal from Judgment of Third App. District, No. C088485  
Sacramento County Superior Court, Case No. 34-2017-80002749-CU-WM-GDS**

Dear Chief Justice Cantil-Sakauye and Honorable Associate Justices of the Court:

Pursuant to Rule 8.500(g) of the California Rules of Court, Amici Curiae, Scholars in Social Work, Gerontology, and Social Science (SSWGSS), respectfully submit this letter in support of the Petition for Review filed by the Attorney General of California, the Department of Social Services, and the Department of Public Health in the above-captioned case, *Taking Offense v. State of California*. In accordance with California Rule of Court 8.500(g)(1), a copy of this letter was served on all parties to the case.

SSWGSS urges this Court to grant the Petition for Review to ensure that transgender residents in long-term care facilities receive culturally responsive services. Section 1439.51, subdivision (a)(5), of the Health and Safety Code, enacted in 2017 as part of the Lesbian, Gay, Bisexual, and Transgender Long-Term Care Facility Residents' Bill of Rights, is an important tool that promotes safe, healthy, and high-quality care for transgender residents in long-term care facilities by prohibiting staff from "willfully and repeatedly fail[ing] to use [the] resident's preferred name or pronouns after being clearly informed of the preferred name or pronouns."

## **I. Interest of Amici Curiae**

Amici represent some of the nation's and state's leading scholars in social work, gerontology, and social sciences on issues relating to lesbian, gay, bisexual, and transgender (LGBTQ+) aging, long-term care, and health equity in aging. The scholars represented in this letter have collectively published dozens of scholarly, peer-reviewed articles on LGBTQ+ aging and long-term care and hundreds of scholarly, peer-reviewed articles on health equity and aging,

and presented at statewide and national conferences as experts on these topics. This letter provides a comprehensive and balanced review of the scientific and professional literature pertinent to the issues before the Court.

## **II. Transgender Older Adults Experience Significant Health Disparities.**

Transgender older adults are a growing but vastly underserved population in the United States. While research remains sparse and systematic data is not well documented for this population, researchers estimate that there are between 1.2 million and 2.8 million transgender and gender nonconforming adults 65 and older in the United States.<sup>1</sup> Existing research underscores significant health disparities for this community. Transgender older adults have higher rates of mental health issues than cisgender older adults, including depression, anxiety, and loneliness and internalized stigma.<sup>2</sup> Transgender older adults are more likely to consider and attempt suicide than cisgender older adults,<sup>3</sup> with the highest rate of suicide attempts occurring among First Nations transgender adults.<sup>4</sup> Transgender older adults are also more likely than

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<sup>1</sup> Porter, K. E., Brennan-Ing, M., Chang, S. C., Dickey, L. M., Singh, A. A., Bower, K. L., & Witten, T. M. (2016). Providing competent and affirming services for transgender and gender nonconforming older adults. *Clinical Gerontologist*, 39(5), 366–388; Witten, T.M. (2015). When my past returns: Loss of self and personhood – dementia and the trans-person. In S. Westwood, & E. Price (Eds.), *Lesbian, gay, bisexual and trans\* individuals living with dementia: Theoretical, practical and rights-based perspectives*. New York: Routledge Press.

<sup>2</sup> Fredriksen-Goldsen, K. I., Kim, H-J, Emler, C. A., Muraco, A., Erosheva, E. A., Hoy-Ellis, C. P., Goldsen, J., & Petry, H. (2011). *The Aging and Health Report: Disparities and Resilience among Lesbian, Gay, Bisexual, and Transgender Older Adults*. Seattle: Institute for Multigenerational Health; Fredriksen-Goldsen K. I., Cook-Daniels L., Kim H-J., Erosheva E. A., Emler C. A., Hoy-Ellis C. P., Muraco A. (2014). The physical and mental health of transgender older adults: An at-risk and underserved population. *The Gerontologist*, 54, 488–500; Hoy-Ellis, C. P. & Fredriksen-Goldsen, K. I. (2017). Depression among transgender older adults: General and minority stress. *American Journal of Community Psychology*, 59(3-4), 295–305.

<sup>3</sup> Progovac, A. M., Mullin, B. O., Dunham, E., Reisner, S. L., McDowell, A., Sanchez Roman, M. J., Dunn, M., Telingator, C. J., Lu, F. Q., Breslow, A. S., Forstein, M., Cook, B. L. (2020). Disparities in suicidality by gender identity among Medicare beneficiaries. *American Journal of Preventive Medicine*, 58(6), 789–798.

<sup>4</sup> Adams, N. J., & Vincent, B. (2019). Suicidal thoughts and behaviors among transgender adults in relation to education, ethnicity, and income: A systematic review. *Transgender Health*, 4(1), 226–246.

cisgender older adults to report disability, poor physical health, and poor general health.<sup>5</sup> Likewise, when compared to lesbian, gay, and bisexual older adults, transgender older adults are more likely to report vision, hearing, and dental impairments.<sup>6</sup>

Transgender older adults also face significant structural challenges that can negatively impact their health. In a survey of 2,560 lesbian, gay, bisexual, and transgender (LGBT) older adults in the United States between 50 and 95-years-old, nearly half of transgender older adults were living at or below 200% of the federal poverty line.<sup>7</sup> In the 2015 Transgender Survey, 33% of transgender respondents in California were living in poverty.<sup>8</sup> Transgender older adults also experience barriers to accessing care,<sup>9</sup> and, in California, 25% of respondents experienced barriers in the past year with insurance related to being transgender.<sup>10</sup> Nationally, transgender older adults report high rates of denied health care (40%)<sup>11</sup> and discrimination by health care providers.<sup>12</sup> In California, 22% of transgender respondents failed to see a doctor despite medical need due to fear of being mistreated as a transgender person, and 33% of respondents who saw a healthcare provider reported at least one negative experience related to being transgender in the past year.<sup>13</sup>

As illustrated above, transgender older adults experience significant discrimination in a variety of spaces. Years of discrimination and stigma can produce cumulative health consequences that negatively impact transgender older adults.<sup>14</sup> Transgender adults who

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<sup>5</sup> Fredriksen-Goldsen (2014), *supra*.

<sup>6</sup> Fredriksen-Goldsen (2011), *supra*.

<sup>7</sup> Fredriksen-Goldsen (2014), *supra*.

<sup>8</sup> 2015 U.S. Transgender Survey: California State Report (2017). Washington, D.C.: National Center for Transgender Equality.

<sup>9</sup> Kirkland, A., Talesh, S., & Perone, A. K. (2021). Transition coverage and clarity in self-insured corporate health insurance benefit plans. *Transgender Health*, 6(4), 207–216.

<sup>10</sup> 2015 U.S. Transgender Survey: California State Report (2017), *supra*.

<sup>11</sup> Fredriksen-Goldsen et al. (2011), *supra*.

<sup>12</sup> Snow, A., Cerel, J., Loeffler, D. N., Flaherty, C. (2019). Barriers to mental health care for transgender and gender-nonconforming adults: A systematic literature review. *Health & Social Work*, 44(3), 149–155.

<sup>13</sup> 2015 U.S. Transgender Survey: California State Report (2017), *supra*.

<sup>14</sup> Fabbre, V. D., & Gaveras, E. (2020). The manifestation of multilevel stigma in the lived experiences of transgender and gender nonconforming older adults. *American Journal of Orthopsychiatry*, 90(3), 350–360; Fredriksen-Goldsen, K. I., Jen, S., & Muraco, A. (2019). Iridescent life course: LGBTQ aging research and blueprint for the future: A systematic review.

experience discrimination have increased odds of depressive distress<sup>15</sup> and higher rates of suicide—and these rates increase with higher exposures to discrimination.<sup>16</sup>

### **III. Discrimination and Health Disparities May Contribute to Higher Numbers of LGBTQ+ Older Adults in Long-Term Care Facilities.**

While the number of individuals residing in long-term care facilities in the United States is declining,<sup>17</sup> lesbian, gay, and bisexual (LGB) older adults have a higher likelihood of moving to a long-term care facility compared to heterosexual older adults.<sup>18</sup> Because questions about gender identity rarely appear in large representative surveys, Singleton’s study is limited to the experiences of LGB individuals. However, given heightened health, economic, and social disparities for transgender older adults, it is possible that transgender older adults have an equal or even higher need for long-term care compared to cisgender, heterosexual older adults.

This disparity in needing long-term care may be explained by negative health consequences of cumulative discrimination and internalized stigma among LGBTQ+ older adults<sup>19</sup> and the smaller likelihood of having living children who could help compared to

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Gerontology, 65, 253–274; Hoy-Ellis & Fredriksen-Goldsen (2017), *supra*.

<sup>15</sup> White Hughto, J. M., Reisner, S. L. (2018). Social context of depressive distress in aging transgender adults. *Journal of Applied Gerontology*, 37(12), 1517–1539.

<sup>16</sup> Vigny-Pau, M., Pang, N., Alkhenaini, H., & Abramovich, A. (2021). Suicidality and non-suicidal self-injury among transgender populations: A systematic review. *Journal of Gay & Lesbian Mental Health*, doi: 10.1080/19359705.2021.1955195; Zeluf, G., Dhejne, C., Orre, C., Mannheimer, L. N., Deogan, C., Höijer, J., Winzer, R., & Thorson, A. E. (2018). Targeted victimization and suicidality among trans people: A web-based survey. *LGBT Health*, 5(3), 180–190.

<sup>17</sup> Centers for Medicare & Medicaid Services (CMS). (2015). *Nursing Home Data Compendium, 2015*, available at [https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/nursinghomedatacompendium\\_508-2015.pdf](https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/nursinghomedatacompendium_508-2015.pdf).

<sup>18</sup> Singleton, M., Gassoumis, Z. D. Enguidanos, S. (2021). Anticipated need for future nursing home placement by sexual orientation: Early findings from the Health and Retirement study. *Sexuality Research and Social Policy*, <https://doi.org/10.1007/s13178-021-00581-y>.

<sup>19</sup> Emlet, C. A., Fredriksen-Goldsen, K. I., Kim, H-J., & Hoy-Ellis, C. (2017). The relationship between sexual minority stigma and sexual health risk behaviors among HIV-positive older gay and bisexual men. *Journal of Applied Gerontology*, 36(8), 931–952; Fredriksen-Goldsen, K. I., Kim, H-J., Muraco, A., Mincer, S. (2009). Chronically ill midlife and older lesbians, gay men,

heterosexual adults.<sup>20</sup> One study found that LGBTQ+ older adults are four times less likely to have children as their non-LGBTQ+ peers,<sup>21</sup> whereas a more recent study found the number closer to two times less likely to have children.<sup>22</sup> Given decades of structural discrimination in family creation and rejection from biological families (families of origin), many LGBTQ+ older adults have created social networks based on families of choice (non-biological friends, partners, ex-partners, neighbors, and co-workers) that act as surrogate families.<sup>23</sup> While families of choice offer important social support, they can present challenges because they often comprise peers of the same age.<sup>24</sup> This social, historical, and economic context creates unique challenges and needs among LGBTQ+ residents, particularly for transgender older adults, that could thus increase the need for long-term care.

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and bisexuals and their informal caregivers: The impact of social context. *Sexuality Research and Social Policy Journal of NSRC*, 6(4), 52–64; Hoy-Ellis & Fredriksen-Goldsen (2017), *supra*; Lyons, A., Alba, B., Waling, A., Minichiello, V., Hughes, M., Barrett, C., Fredriksen-Goldsen, K., Edmonds, S., & Blanchard, M. (2019). Recent versus lifetime experiences of discrimination and the mental and physical health of older lesbian women and gay men. *Ageing & Society*, 41(5) 1072-1093.

<sup>20</sup> Singleton, Gassoumis, & Enguidanos (2021), *supra*.

<sup>21</sup> Espinoza, R. (2011). The Diverse Elders Coalition and LGBT aging: Connecting communities, issues, and resources in a historic moment. *Public Policy & Aging Report*, 21(3), 8–12.

<sup>22</sup> Singleton, Gassoumis, & Enguidanos (2021), *supra*.

<sup>23</sup> Kim, H-J, Fredriksen Goldsen, Bryan, A. E. B., & Muraco, A. (2017). Social network types and mental health among LGBT older adults. *The Gerontologist*, 57(S1), S84–S94; Lowers, J. (2017). End-of-life care planning for lesbian, gay, bisexual, and transgender individuals. *Journal of Hospice & Palliative Nursing*, 19(6), 526–533; MetLife Mature Market Institute (2010). *Still out, still aging: The MetLife study on lesbian, gay, bisexual, and transgender Baby Boomers*. New York: MetLife Mature Market Institute; Orel, N. A., & Coon, D. W. (2016). The challenges of change: How can we meet the care needs of the ever-evolving LGBT family? *Generations*, 40(2), 41–45.

<sup>24</sup> Butler, S. S. (2019). Social networks and social isolation among LGBT older adults. In L. W. Kaye & C.M. Singer (Eds.), *Social isolation of older adults: Strategies to bolster health and well-being* (pp. 181–96). New York: Springer Publishing; Perone, A. K., Watkins-Dukhie, K., & Lewis, J. (2020). LGBTQ+ aging during COVID-19. *QED: A Journal in GLBTQ Worldmaking*, 7(3), 117–124.

**IV. Transgender Older Adults Report Fears of Discrimination and Actual Experiences of Discrimination in Long-Term Care Facilities.**

As reported in the legislative findings, 81% of survey respondents believed that other residents would discriminate against an LGBTQ+ older adult in a long-term care facility, and 89% of respondents believed that staff would discriminate against an LGBTQ+ older adult in a long-term care facility.<sup>25</sup> In a subsequent qualitative study, transgender and gender non-conforming adults 50 and older with HIV reported concerns about accessing long-term care due to experiences of marginalization and exploitation.<sup>26</sup> In another qualitative study about transgender and nonbinary older adults' fears, hopes, and plans for long-term care, transgender and nonbinary older adults reported that they feared mistreatment and loss of authentic gender expression and recognition that promoted considerations of suicide.<sup>27</sup> These findings are consistent with other research findings that transgender and nonbinary older adults fear bias and mistreatment in long-term care facilities.<sup>28</sup> Transgender older adults have repeatedly emphasized the importance of long-term care staff using their affirmed (chosen / preferred) name and

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<sup>25</sup> Justice in Aging (2015 [2010]). *LGBT older adults in long-term care facilities: Stories from the field*. Available at <https://www.justiceinaging.org/wp-content/uploads/2015/06/Stories-from-the-Field.pdf>.

<sup>26</sup> Ing, M. G., Erenrich, R., Seidel, L., & Karpiak, S. E. (2018). Long-term care concerns among transgender and gender non-conforming older adults with HIV. *Innovation in Aging*, 2(Suppl. 1), 343.

<sup>27</sup> Knochel, K. A., & Flunker, D. (2021). Long-term care expectations and plans of transgender and nonbinary older adults. *Journal of Applied Gerontology*, 1–9, doi: 10.1177/0733464821992919.

<sup>28</sup> Kortés-Miller, K., Boule, J., Wilson, K., & Stinchcombe, A. (2018). Dying in long-term care: Perspectives from sexual and gender minority older adults about their hopes for end of life. *Journal of Social Work in End-of-Life & Palliative Care*, 14(2–3), 209–224; Pang, C., Gutman, G., & de Vries, B. (2019). Later life care planning and concerns of transgender older adults in Canada. *The International Journal of Aging and Human Development*, 89(1), 39–56; Putney, J. M., Keary, S., Hebert, N., Krinsky, L., & Halmo, R. (2018). “Fear runs deep”: The anticipated needs of LGBT older adults in long-term care. *Journal of Gerontological Social Work*, 61(8), 887–907; Siverskog, A. (2015). Ageing bodies that matter: Age, gender and embodiment in older transgender people's life stories. *NORA: Nordic Journal of Women's Studies*, 23(1), 4–19; Witten, T. M. (2014). End of life, chronic illness, and trans-identities. *Journal of Social Work in End-of-life & Palliative Care*, 10(1), 34–58.

pronouns for helping them feel understood, acknowledged, and authentic.<sup>29</sup>

Unfortunately, research about transgender residents in long-term care confirms that many transgender residents experience precisely what they fear. In a survey of 769 LGBT older adults, family, friends, and service providers in long-term care, over 10% reported that they, a loved one, or a client experienced staff refusal to refer to a resident by his or her chosen name and/or pronoun.<sup>30</sup> LGBTQ+ older adults, including transgender older adults, continue to report discrimination and disregard or dismissal of their LGBTQ+ identity in long-term care facilities.<sup>31</sup>

Discrimination and fear of discrimination are associated with negative health outcomes,<sup>32</sup> avoidance, delayed, or reluctance to seek medical care,<sup>33</sup> and suicidality.<sup>34</sup> These fears and actual experiences of discrimination in long-term care harm transgender residents' health.

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<sup>29</sup> Jihanian, L. J. (2013). Specifying long-term care provider responsiveness to LGBT older adults. *Journal of Gay and Lesbian Social Services*, 25(2), 210–231; Putney et al. (2018), *supra*; Witten (2014), *supra*.

<sup>30</sup> Justice in Aging (2015), *supra*.

<sup>31</sup> Fasullo, K., McIntosh, E., Buchholz, S. W., Ruppert, T., & Ailey, S. (2021). LGBTQ older adults in long-term care settings: An integrative review to inform best practices. *Clinical Gerontologist*, 8, 1-16, doi: 10.1080/07317115.2021.1947428; Nussbaum, M. C. (2020). Harassment and capabilities: Discrimination and liability in *Wetzel v. Glen St. Andrew Living Community, LLC*. *University of Chicago Law Review*, 87(Special Issue), 2437–2452; Willis, P., Maegusuku-Hewett, T., Raithby, M., & Miles, P. (2016). Swimming upstream: The provision of inclusive care to older lesbian, gay and bisexual (LGB) adults in residential and nursing environments in Wales. *Ageing & Society*, 36(2), 282–306.

<sup>32</sup> Fredriksen-Goldsen et al (2014), *supra*; White Hughto, et al. (2018), *supra*.

<sup>33</sup> Bradford, J., Reisner, S. L., Honnold, J. A., Xavier, J. (2013). Experiences of transgender-related discrimination and implications for health: Results from the Virginia transgender health initiative study. *American Journal of Public Health*, 103(10), 1820–1829; Fredriksen-Goldsen et al. (2014), *supra*; James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., Anafi, M. (2016). The report of the 2015 U.S. transgender survey. National Center for Transgender Equality. Available at <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

<sup>34</sup> Seelman, K. L., Colon-Diaz, M. J. P., LeCroix, R. H., Xavier-Brier, M., Kattari, L. (2017). Transgender noninclusive healthcare and delaying care because of fear: Connections to general health and mental health among transgender adults. *Transgender Health*, 2(1), 17–28; Witten (2014), *supra*.

**V. Repeated and Willful Misgendering Harms Transgender Residents.**

Using one’s affirmed pronouns or name impacts mental health. Research has found that using the affirmed name and pronoun of transgender persons produces fewer depressive symptoms and less suicide ideation and suicidal behavior and psychological distress.<sup>35</sup> In contrast, discrimination, including discrimination in gender affirmation, is associated with higher odds of suicidal ideation, psychological distress, and substance abuse.<sup>36</sup>

The negative health consequences of misgendering may be exacerbated for transgender residents because of the nature of long-term care facilities. Long-term care facilities present a unique space for discrimination because they serve as homes for the residents they serve. Common areas (*e.g.*, hallways, social activity spaces, dining areas) comprise part of a resident’s home, and residents often spend much of their time outside of their assigned room. One’s home represents a space where one expects to feel safe, be treated with dignity, and have autonomy in their lives. Transgender individuals have repeatedly underscored the importance of these principles for their health and wellbeing.<sup>37</sup> Misgendering by staff in long-term care facilities denies transgender people dignity, respect, and autonomy.

Dignity and autonomy are particularly important to residents in long-term care facilities<sup>38</sup>

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<sup>35</sup> Lelutiu-Weinberger, C, English, D., & Sandanapitchai, P. (2020). The roles of gender affirmation and discrimination in the resilience of transgender individuals in the U.S. *Behavioral Medicine*, 46(3-4), 175–188; Russell, S. T., Pollitt, A. M., Li, G., & Grossman, A. H. (2018). Chosen name use is linked to reduced depressive symptoms, suicidal ideation, and suicidal behavior among transgender youth. *Journal of Adolescent Health*, 63, 503–505.

<sup>36</sup> Lelutiu-Weinberger, English, & Sandanapitchai (2020), *supra*; Russell et al. (2018), *supra*.

<sup>37</sup> Adan, M., Scribani, M., Tallman, N., Wolf-Gould, C., Campo-Engelstein, L., & Gadowski, A. (2021). Worry and wisdom: A qualitative study of transgender elders’ perspectives on aging. *Transgender Health*, doi: 10.1089/trgh.2020.0098; Carlstrom, R., Ek, S., & Gabrielsson, S. (2021). “Treat me with respect:” Transgender persons’ experiences of encounters with healthcare staff. *Scandinavian Journal of Caring Sciences*, 35, 600–607.

<sup>38</sup> Gleibs I.H., Sonnenberg S.J., & Haslam C. (2014). “We get to decide”: The role of collective engagement in counteracting feelings of confinement and lack of autonomy in residential care. *Activities, Adaptation & Aging*, 38, 259–280; Hall S., Dodd R.H., & Higginson I.J. (2014). Maintaining dignity for residents of care homes: a qualitative study of the views of care home staff, community nurses, residents and their families. *Geriatric Nursing*, 35, 55 –60; Kusmaul, N., Bern-Klug, M., & Bonifas, R. (2017). Ethical issues in long-term care: A human rights perspective. *Journal of Human Rights and Social Work*, 2, 86–97; Paque, K., Goossens, K.,



who often have multiple health issues that require reliance on staff for many of their basic needs. Research confirms that resident autonomy plays a key role in promoting positive quality of life for long-term care residents, including physical, psychological, and social aspects of life.<sup>39</sup> Research has also found that psychological humiliations, feelings of not belonging, and deprivation of confirmations hinder dignity and autonomy.<sup>40</sup> In Nåden and colleagues' study, psychological humiliation often involved verbal interactions with staff, whereas confirmation deprivations included interactions with staff that left residents feeling as if they did not exist.<sup>41</sup> Transgender older adults, particularly those who transition later in life, have expressed concerns about the limited time they have to live in their authentic gender.<sup>42</sup> Willfully and repeatedly misgendering residents could psychologically humiliate transgender residents, increase feelings of not belonging, and deprive confirmations in ways that hinder dignity and autonomy.

Staff that willfully and repeatedly misgender transgender residents can also negatively impact transgender residents (and other transgender staff or visitors at the facility) – even if a transgender resident is unaware of the misgendering – by creating a broader hostile environment or atmosphere and culture of discrimination<sup>43</sup> that contradicts best practices. Misgendering transgender residents around other residents can exacerbate an already challenging and hostile living environment for transgender residents. Miller and colleagues<sup>44</sup> found that older adults are more likely than other age groups to hold bias against transgender and nonbinary people. Misgendering transgender residents conveys to other residents that misgendering is acceptable and presents more opportunities for transgender residents to experience this discrimination.

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Elseviers, M., Van Bogaert, P., & Dilles, T. (2017). Autonomy and social functioning of recently admitted nursing home residents. *Aging & Mental Health*, 21(9), 910–916.

<sup>39</sup> McCabe, M., Byers, J., Busija, L., Mellor, D., Bennett, M., & Beattie, E. (2021). How important are choice, autonomy and relationships in predicting the quality of life of nursing home residents. *Journal of Applied Gerontology*, 1–8, doi: 10.1177/0733464820983972.

<sup>40</sup> Nåden D., Rehnsfeldt A., Råholm M-B., Lindwall L., Caspari S., Aasgaard T., Slettebø Å., Sæteren B., Høy B., Lillestø B., Heggestad A.K.T., & Lohne V. (2013). Aspects of indignity in nursing home residences as experienced by family caregivers. *Nursing Ethics*, 20(7), 748–761.

<sup>41</sup> Nåden et al. (2013), *supra*.

<sup>42</sup> Fabbre et al. (2020), *supra*.

<sup>43</sup> Binsfeld, A. (2020). Transgender rights: Shifting strategies in a changing nation. *Hastings Race and Poverty Law Journal*, 17(1), 177–204.

<sup>44</sup> Miller, P. R., Flores, A. R., Haider-Markel, D. P., Lewis, D. C., Tadlock, B., & Taylor, J. K. (2020). The politics of being “Cait”: Caitlyn Jenner, transphobia, and parasocial contact effects on transgender-related political attitudes. *American Politics Research*, 48(5), 622–634.

Research<sup>45</sup> and practitioner guidelines in medicine,<sup>46</sup> nursing,<sup>47</sup> public health,<sup>48</sup> social work,<sup>49</sup> psychology,<sup>50</sup> and gerontology<sup>51</sup> overwhelmingly suggest that clinicians, practitioners,

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<sup>45</sup> Goldbach, J. (2019). Using gender pronouns to be a better LGBTQ+ ally. University of Southern California Suzanne Dworak-Peck School of Social Work. Available at <https://dworakpeck.usc.edu/news/using-gender-pronouns-to-be-better-lgbtq-ally-0>; Fasullo, K. et al. (2021), *supra*. *Clinical Gerontologist*, doi: 10.1080/07317115.2021.1947428; Knochel, K. A., & Seelman, K. L. (2020). Understanding and working with transgender / nonbinary adults. In S. K. Kattari, M. K. Kinney, L. Kattari, & N. E. Walls (Eds.) *Social work and health care practice with transgender and nonbinary individuals and communities* (pp. 120–133). New York: Routledge; Ogden, S. N., Scheffey, K. L., Bloshnich, J. R., Dichter, M. E. (2020). “Do I feel safe revealing this information to you?: Patient perspectives in disclosing sexual orientation and gender identity in healthcare. *Journal of American College Health*, 68(6), 617–623; Shires, D. (2019). Best practices for caring for transgender patients: A qualitative study of healthcare providers. Society for Social Work and Research Annual Conference.

<sup>46</sup> American Medical Association. n.d. Advocating for the LGBTQ community. Available at <https://www.ama-assn.org/delivering-care/population-care/advocating-lgbtq-community>; The Joint Commission (2010). *Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care: A Roadmap for Hospitals*. Oakbrook Terrace, IL: The Joint Commission.

<sup>47</sup> American Nurses Association Ethics Advisory Board (2019). ANA Position Statement: Nursing advocacy for LGBTQ+ populations. *OJIN: The Online Journal of Issues in Nursing*, 24(1), 1–6.

<sup>48</sup> American Public Health Association. (2017). Promoting transgender and gender minority health through inclusive policies and practices. Policy No. 20169. Available at <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2017/01/26/promoting-transgender-and-gender-minority-health-through-inclusive-policies-and-practices>.

<sup>49</sup> The Council on Social Work Education Council on Sexual Orientation and Gender Identity and Expression, Austin, A., Craig, S. L., Alessi, E. J., Wagaman, M. A., Pacey, M. S., Dziengel, L., & Balestrery, J. E. (2016). Guidelines for transgender and gender nonconforming (TGNC) affirmative education: Enhancing the climate for TGNC students, staff and faculty in social work education. Alexandria, VA: Council on Social Work Education; National Association of Social Workers (NASW), *Policy Statement: Transgender and Gender Nonconforming People*, in *Social Work Speaks*, 323, 327 (11th ed. 2018).

<sup>50</sup> American Psychological Association. (2015). Guidelines for psychological practice with transgender and gender nonconforming people. *American Psychologist*, 70(9), 832–864.

<sup>51</sup> University of California, San Francisco (UCSF) Optimizing Aging Collaborative (2018). *Best*

and social service providers should use the affirmed gender pronouns and names of transgender older adults. Transgender older adults and nonprofits serving transgender older adults have also produced reports with recommendations for improving the lives of transgender older adults that include using an older adult's affirmed gender pronoun and name.<sup>52</sup> Using affirmed gender pronouns and names of transgender older adults has become a universally accepted best practice among practitioners in these fields, in part, because the research overwhelmingly supports this practice.

**VI. Conclusion**

The research is clear: Discrimination and harassment produce negative health consequences for transgender individuals. Willfully and repeatedly misgendering a transgender resident builds upon a lifetime of victimization and discrimination that exacerbates these negative health consequences. Given the research on suicide among transgender people, these consequences can be deadly. SSWGSS respectfully urges this Court to grant the Petition for Review to ensure that transgender residents in long-term care facilities receive safe and medically responsive services.

Respectfully Submitted,

**Scholars in Social Work, Gerontology, and Social  
Science (SSWGSS)**  
(signatories below)



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*Counsel to Amicus Curiae*

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*Practices for Serving LGBTQ Older Adult Clients*. Available at <https://www.apa.org/practice/guidelines/transgender.pdf>.

<sup>52</sup> Services and Advocacy for GLBT Elders (SAGE) and National Center for Transgender Equality (NCTE). (2012). *Improving the Lives of Transgender Older Adults: Recommendations for Policy and Practice*. Available at <https://transequality.org/sites/default/files/docs/resources/TransAgingPolicyReportFull.pdf>.

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### **SSWGSS Signatories**

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The Honorable Associate Justices  
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**CERTIFICATE OF SERVICE**

***Taking Offense v. State of California***  
**Supreme Court of California, Case No. S270535**

I, the undersigned, declare that I am employed with Lief Cabraser Heimann & Bernstein, LLP, whose address is 275 Battery Street, 29th Floor, San Francisco, CA 94111. I am not a party to this case. I am over the age of 18 years. I further declare that, on this date, I served a copy of the foregoing **LETTER OF AMICUS CURIAE** using TrueFiling to the following parties:

*Attorney for Plaintiff and Appellant Taking Offense*

David L. Llewellyn  
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Office of the Clerk  
California Court of Appeal  
Third Appellate District  
914 Capitol Mall, 4th Floor  
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The superior court below has been served with this **LETTER OF AMICUS CURIAE** by First Class Mail sent to the following address:

Clerk of the Court, Department 5  
Sacramento County Superior Court  
Gordon D. Schaber Downtown Courthouse  
720 Ninth Street  
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 1, 2021, in Oakland, California.

s/ Miriam E. Marks  
Miriam E. Marks  
LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP

Document received by the CA Supreme Court.