

INCENTIVIZING HARM: JUDICIAL TREATMENT OF
GENDER CONFIRMATION SURGERY

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*In states with restrictive Medicaid statutes, many transgender people seeking gender-affirming care look to the courts for injunctive relief to receive gender-affirming surgery. The standard to obtain injunctive relief necessitates, in part, a finding that the plaintiff would be irreparably harmed without the relief—in this case, without being able to access surgery. This Comment outlines dangerous implications embedded in the Ninth Circuit’s subtle line-drawing between cases in which a transgender person’s pleas for relief are granted and those in which they are denied. Juxtaposing the kind of harm that is taken seriously in *Edmo v. Corizon* with the harm that was deemed legally insufficient to require relief in *Doe v. Snyder*, this Comment warns that implicit messaging will incentivize transgender people seeking judicial solutions to severely harm themselves to meet the court’s high bar for irreparable harm.*

INTRODUCTION

Parents scold their children to distinguish between a *want* and a *need*. Underlying this command is the implicit message: They will acquiesce to what you need but not to what you want. It is understandable to draw these lines and to condescend to children about the difference between wanting ice cream and needing dinner. It is not understandable that this same condescension permeates the judicial system’s treatment of gender confirmation surgery.

Courts, to varying degrees, have shown progress when it comes to legitimizing transgender rights and identities.¹ Judges have acknowledged

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1. See Jon W. Davidson, How the Impact of *Bostock v. Clayton County* on LGBTQ Rights Continues to Expand, ACLU (June 15, 2022), <https://www.aclu.org/news/civil-liberties/how-the-impact-of-bostock-v-clayton-county-on-lgbtq-rights-continues-to-expand> [<https://perma.cc/JE53-QMCH>] (explaining that the ruling in *Bostock* opened the doors to other judicial decisions to protect LGBTQ rights); Know Your Rights, Nat’l Ctr. for Transgender Equal., <https://transequality.org/know-your-rights> [<https://perma.cc/V2W6-5KRL>] (last visited Sept. 25, 2023) (listing resources for various legal protections for transgender people’s rights). See generally Judson Adams, Halle Edwards, Rachel Guy, Maya Springhawk Robnett, Rachel Scholz-Bright & Breanna Weber, Transgender Rights and

the medical realities of transgender people and the experience of gender dysphoria as a sufficient basis for judicial relief before, but never easily.²

The Ninth Circuit's 2020 holding in *Doe v. Snyder* told transgender people that the court would decide between want and need when it came to their expressed medical needs to combat gender dysphoria.³ The plaintiffs in *Snyder* sought male reconstruction surgery, a form of gender confirmation surgery that removes the breasts and makes the torso area more masculine.⁴ They could not afford the surgery without insurance, but Arizona's Medicaid option did not cover the surgery.⁵ The plaintiffs looked to the court for salvation—they sought injunctive relief in order to receive the surgery that they, and their doctors, felt was necessary.⁶ But the court's opinion held that the plaintiffs had not shown that surgery was so necessary as to force the court to grant a mandatory injunction.⁷ In other words, the court decided that the plaintiffs' request for gender confirmation surgery was a want, not a need.

In *Edmo v. Corizon Inc.*, by contrast, the Ninth Circuit granted an injunction allowing a transgender woman to receive gender confirmation surgery while incarcerated, but only after she continually self-harmed to the brink of suicide.⁸ In *Edmo*, the plaintiff mutilated herself through attempted autocastration.⁹ Her doctors worried that, without the surgery, she would continue escalating her self-harming behavior to the point of suicide.¹⁰

This Comment argues that the delineation between these cases, with one framing gender confirmation surgery as a want and one as a need, creates an implicit and dangerous standard that to receive a medical procedure, a plaintiff must endure harm. As part of the test for injunctive

Issues, 21 *Geo. J. Gender & L.* 479 (2021) (outlining the various frontiers of changing transgender rights, including healthcare and employment).

2. See, e.g., *Flack v. Wis. Dep't of Health Servs.*, 395 F. Supp. 3d 1001, 1010–12 (W.D. Wis. 2019) (listing instances in which transgender individuals sought care and systems made it difficult for them to receive that care).

3. See 28 F.4th 103, 112 (9th Cir. 2022) (noting that the plaintiffs failed to provide a declaration from a medical doctor attesting to the need for gender confirmation surgery in addition to their hormone therapy to prevent irreparable harm).

4. *Id.* at 106; Plaintiffs D.H. and John Doe's Notice of Motion and Motion for Preliminary Injunction at 2–3, *Hennessy-Waller v. Snyder*, 529 F. Supp. 3d 1031 (D. Ariz. 2021) (No. 4:20-cv-335-SHR), 2020 WL 13528268 [hereinafter *Snyder* Plaintiffs' Preliminary Injunction Motion] (explaining that plaintiffs sought male reconstruction surgery to alleviate the dysphoria caused by their breasts).

5. See Plaintiff-Appellants' Opening Brief at 2, *Snyder*, 28 F.4th 103 (No. 21-15668), 2021 WL 2073514.

6. See *Snyder* Plaintiffs' Preliminary Injunction Motion, *supra* note 4, at 1–2.

7. See *Snyder*, 28 F.4th at 112–13.

8. See 935 F.3d 757, 797–98 (9th Cir. 2019) (concluding that Edmo's continued experience of mental distress and self-harm constituted irreparable harm).

9. *Id.* at 774.

10. *Id.* at 777.

relief, the plaintiff must show that irreparable harm will occur if not for the relief,¹¹ but this Comment argues that judges are raising the bar by creating situations in which plaintiffs must show current harm to receive the injunction.¹² The goal of injunctive relief is to prevent future wrongs in situations in which damages would be insufficient and court-mandated action is deemed more appropriate.¹³ Injunctive relief's irreparable harm standard necessitates more than a possibility of harm, but it does not mandate that the harm must occur before relief is granted.¹⁴ The analyses in *Edmo* and *Snyder* seemed to look for a continuation of past harm to establish the necessary degree of urgency. *Edmo* held that denying the plaintiff gender confirmation surgery would lead to future irreparable harms.¹⁵ The court cited testimony of Edmo's doctors, who stated she would continue self-harming with increasing severity to address her dysphoric distress.¹⁶ This conclusion stemmed from past self-harm attempts.¹⁷ The Ninth Circuit distinguished *Snyder* from *Edmo* by contrasting the district courts' records and analyses: The factual record and a forty-five-page analysis in *Edmo* met the threshold for necessary gender confirmation surgery, but the twenty-page analysis in *Snyder* did not.¹⁸ The court found a lack of urgency in the *Snyder* plaintiffs' pleas, despite evidence of suicide attempts, anxiety, and depression.¹⁹ The difference is that the *Snyder* plaintiffs never self-harmed to the degree that Edmo did.²⁰ For transgender individuals seeking injunctive relief, the different outcomes in *Edmo* and *Snyder* could lead to dangerous inferences

11. See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.”).

12. See *infra* Part II.

13. See Injunctive Relief, Cornell L. Sch. Legal Info. Inst., https://www.law.cornell.edu/wex/injunctive_relief [<https://perma.cc/FKZ2-6CLL>] (last visited Sept. 25, 2023) (“The purpose of this form of relief is to prevent future wrong.”).

14. See *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1045 (7th Cir. 2017) (“[Granting a preliminary injunction] does not . . . require that the harm actually occur before injunctive relief is warranted.”).

15. *Edmo*, 935 F.3d at 797–98.

16. *Id.* at 774, 777, 797–98.

17. *Id.*

18. *Doe v. Snyder*, 28 F.4th 103, 113 (9th Cir. 2022). There are other differences between the cases. Edmo was incarcerated as an adult, see *Edmo*, 935 F.3d at 772, while the *Snyder* plaintiffs were minors suing under Medicaid statutes, see *Snyder*, 28 F.4th at 106. This Comment focuses on comparing each case's judicial analysis rather than the cases as a whole.

19. *Snyder*, 28 F.4th at 112–13.

20. Edmo attempted autocastration of her testicles. *Edmo*, 935 F.3d at 773. The plaintiffs in *Snyder* self-harmed, contemplated suicide, and were admitted to psychiatric hospital stays, but they had not gone as far as Edmo. See Reply Brief in Support of Plaintiffs D.H. and John Doe's Motion for Preliminary Injunction at 9–10, *Hennessy-Waller v. Snyder*, 529 F. Supp. 3d 1031 (D. Ariz. 2021) (No. 4:20-cv-335-SHR), 2020 WL 13282345.

about what it takes to receive an *Edmo* injunction rather than a *Snyder* denial.

Part I argues that the court's treatment of gender confirmation surgery incentivizes dangerous and self-harming behavior. This incentive exists because, when conducting the irreparable harm analysis, courts have set a precedent of taking seriously only high-risk scenarios involving severe self-harm, medical issues, and suicide attempts.²¹ Judges continue treating gender confirmation surgery as a want rather than a need until the person is in such danger that no one can deny the need. This high bar endangers transgender people, already a vulnerable population,²² and invalidates gender dysphoria as a legitimate medical condition without a showing of physical manifestation of harm.

Part I starts with background showing that gender dysphoria is a legitimate medical condition and that gender confirmation surgery is a legitimate medical treatment. It also articulates transgender individuals' already vulnerable position within American society. Part II contrasts the holdings in *Edmo* and *Snyder*, showing how judges often look for physical harms, beyond mental health concerns, to substantiate the need for gender-affirming care. Part III reaffirms that the standard to show sufficient harm to receive injunctive relief is too high. Part III also offers a solution: Take one interpretation of the Eighth Amendment—that the Amendment's standards are not meant to test the limits of human beings to bear hardship—and apply it to injunctive relief's irreparable harm analysis, thus lowering the bar for showing a need for gender confirmation surgery.

I. A PROBLEM WITH A SOLUTION: GENDER CONFIRMATION SURGERY FOR GENDER DYSPHORIA

Medical experts provide context and expertise to lawyers, juries, and judges alike in both criminal and civil cases.²³ Still, transgender legal discourse and progress trails behind that of medical discourse.²⁴ The

21. See *infra* Part II.

22. See Indep. Expert on Sexual Orientation & Gender Identity, *The Struggle of Trans and Gender-Diverse Persons*, UN Hum. Rts. Off. High Comm'r, <https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/struggle-trans-and-gender-diverse-persons> [<https://perma.cc/25ZJ-SQ67>] (last visited Sept. 25, 2023) (“Gender-diverse and trans people around the world are subjected to levels of violence and discrimination that offend the human conscience . . .”).

23. See Yasmyne Ronquillo, Kenneth J. Robinson & Patricia P. Nouhan, *Expert Witness*, StatPearls, <https://www.ncbi.nlm.nih.gov/books/NBK436001/> [<https://perma.cc/V4V5-YUU2>] (last updated June 26, 2023) (“Evidence-based and experience-based opinions from medical professionals in legal cases have become increasingly important and common.”).

24. See Liza Khan, Note, *Transgender Health at the Crossroads: Legal Norms, Insurance Markets, and the Threat of Healthcare Reform*, 11 *Yale J. Health Pol’y L. & Ethics*

medical field no longer classifies transgender identity as a disease;²⁵ instead, doctors validate the unique physical and mental needs of transgender patients.²⁶ The following section briefly outlines the experience of gender dysphoria and situates its treatments as legitimate within the medical field. This Part continues by discussing why the denial of legitimate medical care constitutes irreparable harm. The Part ends by providing background on the systemic discrimination faced by transgender individuals.

A. *A Legitimate Medical Condition*

Gender identity is the way a person experiences their gender.²⁷ This can be different from sex assigned at birth.²⁸ When this difference occurs, the person can experience distress, anxiety, and depression that their body's sex does not align with their gender.²⁹ The medical term for this experience is gender dysphoria.³⁰ Gender dysphoria is recognized by medical and psychological professionals as a legitimate medical condition.³¹ Medical schools across the country are starting to incorporate gender dysphoria and other transgender health concerns into the medical school curriculum.³² The American Psychiatric Association has included

375, 378 (2011) (“Developments in transgender law also tend to lag far behind developments in transgender health, suggesting that the gap between medicine and law may be just as concerning as the overlap.”).

25. See Eric Yarbrough, Jeremy Kidd & Ranna Parekh, Gender Dysphoria Diagnosis, Am. Psychiatric Ass’n (Nov. 2017), <https://www.psychiatry.org/psychiatrists/diversity/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis> [<https://perma.cc/KQC9-F565>] (“The *DSM-5* articulates explicitly that ‘gender non-conformity is not in itself a mental disorder.’”).

26. See Patient-Centered Care for Transgender People: Recommended Practices for Health Care Settings, CDC, <https://www.cdc.gov/hiv/clinicians/transforming-health/health-care-providers/affirmative-care.html> [<https://perma.cc/B82J-TECJ>] (last updated Feb. 18, 2022) (addressing a medical practitioner audience on specific medical and interpersonal strategies to use with transgender patients).

27. See *Edmo v. Corizon, Inc.*, 935 F.3d 757, 768 (9th Cir. 2019) (explaining that gender identity is “a deeply felt, inherent sense” of gender (internal quotation marks omitted) (quoting Am. Psych. Ass’n, Guidelines for Psychological Practice With Transgender and Gender Nonconforming People, 70 Am. Psych. 832, 834 (2015))); see also Jennifer Levi & Kevin M. Barry, Transgender Rights & the Eighth Amendment, 95 S. Cal. L. Rev. 109, 118 (2021) (explaining that gender identity “is a well-established concept in medicine, referring to one’s internal sense of their own gender”).

28. See Levi & Barry, *supra* note 27, at 118–19.

29. *Id.* at 120 (“[I]ndividuals with gender dysphoria experience a range of debilitating psychological symptoms such as anxiety, depression, suicidality, and other attendant mental health issues.”).

30. *Id.* at 119.

31. *Edmo*, 935 F.3d at 768–69 (reflecting the consensus of the World Professional Association for Transgender Health (WPATH) and other authorities about gender dysphoria).

32. See Aaron Marshall, Sarah Pickle & Shauna Lawlis, Transgender Medicine Curriculum: Integration Into an Organ System–Based Preclinical Program, 13 *MedEd*

gender dysphoria in the fifth edition of its *Diagnostic and Statistical Manual of Mental Disorders*.³³

Gender dysphoria can have severe effects on an individual's health.³⁴ It can cause "distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicidality and death."³⁵ Luckily, the burden of gender dysphoria can be alleviated by transitioning toward living life as one's true gender.³⁶ The affirmation of one's gender varies by person.³⁷ For some, it means using a bathroom that aligns with their gender, wearing different clothes, or going by a new name.³⁸ For others, it requires a medical transition.³⁹

Medical transition can include hormone therapy, which entails taking hormone supplements of the sort that your body does not naturally produce.⁴⁰ For example, a trans man might take testosterone in order to lower their voice and grow facial hair.⁴¹ Medical transition is not a one-size-

Portal, no. 10536, 2017, at 1, 4–5, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6342291/pdf/mep-13-10536.pdf> [<https://perma.cc/CPD9-LFZG>] (explaining that implementing a transgender-focused curriculum equipped new doctors to better treat and interact with transgender patients); see also Sven Eriksson, A Curriculum Content Change Increased Medical Students' Knowledge and Comfort With Transgender Medicine 17 (2015) (M.S. thesis, Boston University School of Medicine), <https://hdl.handle.net/2144/16119> [<https://perma.cc/ETS9-BMT7>] (noting how incorporating transgender identity into the medical school curriculum provided more comfort to medical students in providing care to trans patients).

33. See Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 451–59 (5th ed. 2013). It is important to clarify that being transgender is not a mental diagnosis, nor is it a condition within itself. Some transgender individuals do not experience gender dysphoria. Gender dysphoria describes the negative consequences of living in a body that does not align with one's gender identity. The distress is the dysphoria, not the identity. See Moni Basu, *Being Transgender No Longer a Mental 'Disorder' in Diagnostic Manual*, CNN (Dec. 27, 2012), <https://www.cnn.com/2012/12/27/us/being-transgender-no-longer-a-mental-disorder-in-diagnostic-manual/index.html> [<https://perma.cc/TY2Q-S9PN>].

34. See, e.g., *Edmo*, 935 F.3d at 772–75 (describing how Edmo's dysphoria led to negative health effects).

35. See FAQ: Equal Access to Health Care, Lambda Legal, <https://www.lambdalegal.org/know-your-rights/article/trans-related-care-faq> [<https://perma.cc/MA78-7T4B>] (last visited Sept. 25, 2023) (internal quotation marks omitted) (quoting AMA House of Delegates, Resolution: 122, at 1 (2008), https://www.tgender.net/taw/ama_resolutions.pdf [<https://perma.cc/HZ9F-DVU8>]).

36. See *id.* (explaining medical interventions that are available to relieve dysphoria).

37. See *Edmo*, 935 F.3d at 769–70 (citing World Pro. Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 1–2, 5 (7th ed. 2011)).

38. See E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People*, Version 8, 23 Int'l J. Transgender Health S1, S76 (2022) (explaining the different avenues for social transition).

39. See *id.* at S39–40.

40. *Id.* at S110–23.

41. See Madeline B. Deutsch, *Information on Testosterone Hormone Therapy*, UCSF Transgender Care (July 2020), <https://transcare.ucsf.edu/article/information-testosterone>

fits-all experience. Each person experiences gender dysphoria in personal and unique ways.⁴² Some may find that hormone therapy feels insufficient to fully express their true gender identity and combat their gender dysphoria.⁴³ In these cases, psychiatrists might recommend gender confirmation surgery.⁴⁴

Gender confirmation surgery is a procedure that transforms someone's external features to match their internal gender identity.⁴⁵ It can involve altering the facial features, jaw, torso, hips, and genitals.⁴⁶ The surgery is not purely cosmetic or elective.⁴⁷ The surgery can help alleviate gender dysphoria and improve one's overall mental health.⁴⁸

The medical community's understanding of gender dysphoria as a legitimate medical condition is widespread.⁴⁹ Yet, bias against transgender people persists, and healthcare plans often deny coverage for gender-affirming care.⁵⁰

hormone-therapy [<https://perma.cc/SS3B-RNQZ>] (explaining that testosterone is given to transgender men).

42. See Coleman et al., *supra* note 38, at S76 (explaining that WPATH uses generalized recommendations showing a spectrum of experiences of gender identities and treatments for gender dysphoria).

43. See *Edmo v. Corizon, Inc.*, 935 F.3d 757, 772 (9th Cir. 2019) (explaining that Edmo's hormone treatment did not eradicate her gender dysphoria).

44. See *id.* (noting that medical experts recommended gender confirmation surgery for Edmo).

45. See Madeline B. Deutsch, Overview of Gender-Affirming Treatments and Procedures, UCSF Transgender Care (June 17, 2016), <https://transcare.ucsf.edu/guidelines/overview> [<https://perma.cc/KE8Q-4NRK>] [hereinafter Deutsch, Gender-Affirming Treatments] (describing surgery that can change features to match gender identity).

46. *Id.*

47. See Coleman et al., *supra* note 38, at S18 (discussing how gender confirmation surgery often goes beyond cosmetic differences).

48. See Study Finds Long-Term Mental Health Benefits of Gender-Affirming Surgery for Transgender Individuals, Am. Psychiatric Ass'n (Oct. 14, 2019), <https://www.psychiatry.org/news-room/news-releases/study-finds-long-term-mental-health-benefits-of-ga> [<https://perma.cc/4LGA-LRSP>] (last updated Aug. 1, 2020) (reporting findings that, for transgender individuals, undergoing gender confirmation surgery significantly correlated with decreased mental health treatment over time).

49. See Medical Association Statements in Support of Health Care for Transgender People and Youth, GLAAD (June 21, 2023), <https://glaad.org/medical-association-statements-supporting-trans-youth-healthcare-and-against-discriminatory/> [<https://perma.cc/8A78-D5ZV>] (highlighting the broad support in the medical community for transgender healthcare).

50. See Daphna Stroumsa, The State of Transgender Health Care: Policy, Law, and Medical Frameworks, *Am. J. Pub. Health*, Mar. 2014, at e31, e31, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953767/pdf/AJPH.2013.301789.pdf> [<https://perma.cc/T6UD-5WPR>]; Kareen M. Matouk & Melina Wald, Gender-Affirming Care Saves Lives, *Colum. Psychiatry* (June 2021), <https://www.columbiapsychiatry.org/news/gender-affirming-care-saves-lives> [<https://perma.cc/A25V-XXGM>] (last updated Mar. 30, 2022) (discussing recent legislative barriers to transgender healthcare).

B. *Denying Treatment for a Legitimate Medical Condition Constitutes Irreparable Harm*

Americans increasingly support recognizing a right to adequate healthcare.⁵¹ Adequate healthcare allows someone to fully show up in their life, in their family, in their job, and in their body.⁵² The plaintiffs' brief in *Snyder* cited the Ninth Circuit's own holdings that denial of someone's necessary medical treatment constitutes an irreparable harm.⁵³ The court's interest is in preserving the well-being of the plaintiff without harming the defendant or the public generally.⁵⁴ In conducting the balancing test for injunctive relief, the Ninth Circuit affirmed that cost-saving is not a sufficiently strong public interest to deny treatment to a vulnerable population.⁵⁵ Delayed access to necessary medical care constitutes irreparable harm, so the tension in cases such as *Edmo* and *Snyder* is whether gender confirmation surgery is necessary.⁵⁶

In *Snyder*, the plaintiffs were prescribed a medical gender transition as a means to treat their gender dysphoria.⁵⁷ During the trial, both sides presented expert witnesses who gave conflicting views on the need for gender confirmation surgery to treat gender dysphoria, especially in adolescents.⁵⁸ But the leading experts on transgender healthcare promote gender confirmation surgery as an effective means to combat gender dysphoria.⁵⁹ Thus, presenting this consensus as an open debate overrepresents the current prevalence of the medical field's historical anti-trans bias

51. See Michael Karpman & Sharon K. Long, Most Americans Agree: No One Should Be Denied Medical Care Because They Can't Afford It, *Urb. Inst.* (Dec. 6, 2017), <https://www.urban.org/urban-wire/most-americans-agree-no-one-should-be-denied-medical-care-because-they-cant-afford-it> (on file with the *Columbia Law Review*) (examining the growing consensus among Americans that everyone should have access to adequate healthcare regardless of their ability to pay).

52. See, e.g., Council of Econ. Advisors, *Economic Report of the President 99* (2008), <https://www.govinfo.gov/content/pkg/ERP-2008/pdf/ERP-2008-chapter4.pdf> [<https://perma.cc/9KC4-K695>] (stating the importance of healthcare to job productivity).

53. See Plaintiff-Appellants' Opening Brief, *supra* note 5, at 26 (citing *M.R. v. Dreyfus*, 697 F.3d 706, 733 (9th Cir. 2012) (holding that loss of services related to a person's health is irreparable harm); *Rodde v. Bonta*, 357 F.3d 988, 999 (9th Cir. 2004) (holding that irreparable harm includes denial or delay of necessary treatment as well as increased pain and medical complications); *Beltran v. Myers*, 677 F.2d 1317, 1322 (9th Cir. 1982) (holding that plaintiffs showed irreparable injury when they were denied medical care)).

54. See *id.* at 27–28 (summarizing the court's standard for injunctive relief in medical care cases).

55. *Id.* at 23.

56. See *Snyder* Plaintiffs' Preliminary Injunction Motion, *supra* note 4, at 14–15.

57. See Plaintiff-Appellants' Opening Brief, *supra* note 5, at 4 (reiterating that plaintiffs' doctors prescribed top surgery to alleviate their gender dysphoria).

58. See *Doe v. Snyder*, 28 F.4th 103, 112 (9th Cir. 2022).

59. See *Coleman et al.*, *supra* note 38, at S39.

and discrimination.⁶⁰ The back-and-forth places the judge in the role of deciding for someone else what is necessary for their body. Again, this leads to a situation in which people are told their need is a want.

C. *The Compounding Circumstances for Transgender Individuals*

Transgender individuals face discrimination in every facet of their lives.⁶¹ Anti-trans bigotry rears its head in state legislatures, in housing, in employment, and in healthcare.⁶² Transgender people not only bear the burden of their internal struggles but must also grapple with external forces placed on them through discrimination. This creates a greater vulnerability for transgender Americans.⁶³ Yet, instead of increasing protections, governments at every level have created new barriers for transgender rights.⁶⁴ This reality of discrimination and vulnerability combined with harmful government action creates a cyclical problem. Take medical care as an example: Gender confirmation surgery is expensive.⁶⁵ Transgender individuals often struggle with access to capital and health insurance because of a history of employment discrimination.⁶⁶ This means that many transgender individuals are on Medicaid and therefore receive gender confirmation surgery at the whim of the

60. See Stroumsa, *supra* note 50, at e31 (“Health care for this population has historically been, and continues to be, overlooked by governmental, health care, and academic establishments.”).

61. Understanding the Transgender Community, Hum. Rts. Campaign, <https://www.hrc.org/resources/understanding-the-transgender-community> [https://perma.cc/DY77-RKMU] (last visited Sept. 25, 2023) (articulating many of the ways in which transgender people face discrimination).

62. *Id.*

63. See Caroline Medina, Thee Santos, Lindsay Mahowald & Sharita Gruberg, Ctr. for Am. Progress, Protecting and Advancing Health Care for Transgender Adult Communities 1 (2021), <https://www.americanprogress.org/wp-content/uploads/sites/2/2021/08/Advancing-Health-Care-For-Transgender-Adults.pdf> [https://perma.cc/R7X7-UHTQ] (“In addition to poorer health outcomes, transgender people also encounter unique challenges and inequalities in their ability to access health insurance and adequate care.”).

64. See, e.g., Legislation Affecting LGBTQ Rights Across the Country 2021, ACLU (Feb. 24, 2020), <https://www.aclu.org/legislation-affecting-lgbtq-rights-across-country-2021> [https://perma.cc/E8X9-LL9W] (last updated Dec. 17, 2021) (tracking state legislative measures targeting transgender individuals).

65. See Ronni Sandroff, Does Insurance Cover Gender-Affirming Care?, Investopedia, <https://www.investopedia.com/paying-for-transgender-surgeries-5184794> [https://perma.cc/2Y46-ZQ4T] (last updated June 26, 2023) (showing that gender confirmation surgery can cost “tens of thousands of dollars”).

66. See Shanna K. Kattari, Darren L. Whitfield, N. Eugene Walls, Lisa Langenderfer-Magruder & Daniel Ramos, Policing Gender Through Housing and Employment Discrimination: Comparison of Discrimination Experiences of Transgender and Cisgender LGBTQ Individuals, 7 J. Soc’y for Soc. Work & Rsch. 427, 430–32 (2016) (explaining the outsized impact of workplace discrimination on transgender people).

government's determination about their medical necessities.⁶⁷ In turn, this structure compounds the vulnerability of transgender individuals like those in *Snyder* and forces them to seek injunctive relief to get the surgery they need.⁶⁸

Waiting for a cast for a broken leg delays the healing process and causes irreversible damage.⁶⁹ Waiting for a double mastectomy for breast cancer can allow the tumors to grow and cause death.⁷⁰ When a transgender person is prescribed gender confirmation surgery to treat their gender dysphoria, they need the surgery sooner rather than later before the mental anguish associated with gender dysphoria becomes worse and upends their life.⁷¹ This urgency is why the plaintiffs in the previously mentioned cases sought injunctive relief to get their medical treatment immediately.⁷² Gender dysphoria is a legitimate medical condition and gender confirmation surgery is a legitimate medical solution.⁷³ Because denying necessary medical treatment constitutes irreparable harm, whether transgender plaintiffs can get injunctive relief depends on a judge's willingness to agree that gender confirmation surgery is, in fact, necessary.⁷⁴

67. See Christy Mallory & Will Tentindo, UCLA Sch. L. Williams Inst., Medicaid Coverage for Gender-Affirming Care 5–6 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Medicaid-Gender-Care-Dec-2022.pdf> [<https://perma.cc/JH94-HA8B>] (outlining estimates of the number of transgender adults enrolled in Medicaid by state and whether that state covers gender-affirming care).

68. See *Snyder* Plaintiffs' Preliminary Injunction Motion, *supra* note 4, at 14–17.

69. See Dangers of Bone Fractures if Left Untreated, Mid Atl. Orthopedic Assocs. (Nov. 1, 2018), <https://www.midatlanticorthonj.com/dangers-of-bone-fractures-if-left-untreated/> [<https://perma.cc/ZFX2-N6S5>] (explaining that leaving a broken bone untreated leads to long-term negative outcomes).

70. Peh Joo Ho, Alex R. Cook, Nur Khaliesah Binte Mohamed Ri, Jenny Liu, Jingmei Li & Mikael Hartman, Impact of Delayed Treatment in Women Diagnosed With Breast Cancer: A Population-Based Study, 9 *Cancer Med.* 2435, 2443 (2020) (noting treatment delays resulted in worse survival rates for some breast cancer patients).

71. See *Snyder* Plaintiffs' Preliminary Injunction Motion, *supra* note 4, at 14–17 (“Delayed access to medically necessary healthcare services is sufficient to establish irreparable harm.”).

72. *Id.*; *Edmo v. Corizon*, 935 F.3d 757, 772–75 (9th Cir. 2019) (describing how Edmo's dysphoria led to negative health effects).

73. Brief for Pediatric Endocrine Society, World Professional Association for Transgender Health, United States Professional Association for Transgender Health, as Amici Curiae in Support of Plaintiffs-Appellants and Reversal at 5–15, *Doe v. Snyder*, 28 F.4th 103 (9th Cir. 2022) (No. 21-15668), 2021 WL 2189163.

74. See Plaintiff-Appellants' Opening Brief, *supra* note 5, at 20–30 (framing gender-affirming care as a medical necessity for the judge's determination on injunctive relief); *supra* note 53 and accompanying text.

II. COURT INCONSISTENCY AND HARM IRREPARABILITY

Gender dysphoria causes severe mental health issues.⁷⁵ A 2022 study found that eighty-two percent of transgender individuals have considered suicide.⁷⁶ Forty percent have attempted suicide.⁷⁷ Transgender mental health is a public health concern and, as indicated in the sections above, there is a medical solution here. A recent study found that gender-affirming care lowered the study cohort's suicidality by seventy-three percent.⁷⁸

It is hard to craft an argument that something that leads to suicidality does not cause irreparable harm. This Part proceeds by comparing the analyses in *Edmo* and *Snyder*, showing that court's bar for "harm" is too backward looking, resulting in dangerous, self-harming behavior.

A. *Edmo's High Bar*

Depressed. Embarrassed. Disgusted. These are the words that Adree Edmo used to describe her relationship with her body.⁷⁹ She became aware of her gender identity at a young age and struggled with gender dysphoria throughout her life.⁸⁰ While incarcerated, she started taking female hormones prescribed to treat her gender dysphoria.⁸¹ But Edmo's gender dysphoria continued despite the hormones and the accompanying bodily changes they brought.⁸² Her self-hate evolved into self-harm.⁸³ She was denied access to gender confirmation surgery,⁸⁴ so she took matters into her own hands.⁸⁵ She used a razor blade to attempt autocastration.⁸⁶ She preferred to take this risk, to endure this pain, rather than to spend more

75. Amicus Brief for Pediatric Endocrine Society et al., *supra* note 73, at 4–7 (summarizing the conclusions and beliefs of the medical community that gender dysphoria can lead to anxiety, depression, and other mental health issues).

76. Ashley Austin, Shelley L. Craig, Sandra D'Souza & Lauren B. McInroy, *Suicidality Among Transgender Youth: Elucidating the Role of Interpersonal Risk Factors*, 37 *J. Interpersonal Violence* NP2696, NP2697 (2022) (offering data from a national survey that found eighty-two percent of trans people in the United States had considered suicide).

77. *Id.*

78. See Diana M. Tordoff, Jonathon W. Wanta, Arin Collin, Cesalie Stepney, David J. Inwards-Breland & Kym Ahrens, *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, *JAMA Network Open*, art. e220978, Feb. 2022, at 1, 7.

79. See *Edmo v. Corizon, Inc.*, 935 F.3d 757, 772 (9th Cir. 2019) (noting that Edmo feels "depressed, embarrassed, [and] disgusted" by parts of her body (alteration in original) (internal quotation marks omitted) (quoting Edmo's testimony)).

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 773.

84. *Id.*

85. *Id.* at 774.

86. *Id.*

time in a body that was not hers.⁸⁷ She needed gender confirmation surgery to be her full self, to combat the gender dysphoria she experienced around her genitals.⁸⁸ Her doctors confirmed that her self-harming behavior would only continue without gender confirmation surgery.⁸⁹

The Ninth Circuit affirmed her injunctive relief: “It is no leap to conclude that Edmo’s severe, ongoing psychological distress and the high risk of self-castration and suicide she faces absent surgery constitute irreparable harm.”⁹⁰ Injunctive relief is not a right, nor is it the presumed remedy even when harm is demonstrated.⁹¹ But the court’s opinion in *Edmo* implies that only when someone is denied necessary medical treatment and subsequently engages in harmful behavior, like suicide or self-mutilation, has that person met the bar for irreparable harm.⁹² The attempted autocastration in *Edmo* is an incredibly high bar for plaintiffs to reach.

B. Snyder: *So Close, But So, So Far*

The Ninth Circuit, having decided that the plaintiff’s plea in *Edmo* warranted injunctive relief, found the plaintiffs’ claim in *Snyder* insufficient to show irreparable harm.⁹³ In *Snyder*, two teenage boys sought a double mastectomy, also known as top surgery, for gender confirmation purposes.⁹⁴ One of the plaintiffs indicated he had known his gender identity at an early age, just as in *Edmo*.⁹⁵ He tried living as a boy for several years, including by wearing a binder.⁹⁶ The plaintiffs experienced intense mental health symptoms related to their gender dysphoria, just as in *Edmo*.⁹⁷ They were prescribed hormones that proved insufficient in quelling their gender dysphoria, just as in *Edmo*.⁹⁸ The plaintiffs’

87. See Plaintiff’s Notice of Motion and Motion for Preliminary Injunction and Memorandum of Points and Authorities in Support Thereof at 7–8, *Edmo v. Idaho Dep’t of Corr.*, 358 F. Supp. 3d 1103 (D. Idaho 2018) (No. 1:17-cv-00151-BLW), 2018 WL 11299149.

88. *Id.*

89. *Id.*; see also *Edmo*, 935 F.3d at 777.

90. *Edmo*, 935 F.3d at 797–98.

91. See *Doe v. Snyder*, 28 F.4th 103, 111 (9th Cir. 2020) (discussing the high bar for a mandatory injunction).

92. *Edmo*, 935 F.3d at 780–81.

93. *Snyder*, 28 F.4th at 113.

94. *Id.* at 106.

95. Compare *Snyder* Plaintiffs’ Preliminary Injunction Motion, *supra* note 4, at 3 (noting that one of the plaintiffs began to express that he identified as male at age four), with *Edmo*, 935 F.3d at 772 (discussing how the plaintiff identified as female at five or six).

96. Chest binding is the flattening of breasts with cloth, spandex, or other materials. See *Snyder* Plaintiffs’ Preliminary Injunction Motion, *supra* note 4, at 3.

97. Compare *id.* at 3–6, with *Edmo*, 935 F.3d at 772.

98. Compare *Snyder* Plaintiffs’ Preliminary Injunction Motion, *supra* note 4, at 4–5, with *Edmo*, 935 F.3d at 772.

psychiatrist recommended top surgery, which is typical for adolescent transgender males.⁹⁹

The court found a less compelling case for irreparable harm in *Snyder* than it had in *Edmo*. The *Snyder* opinion observes that the district court in the *Edmo* case contained a forty-five-page analysis compared to *Snyder*'s twenty pages.¹⁰⁰ It is hard to escape the fact that, in *Edmo*, the plaintiff's actions were shocking in their degree of self-mutilation. It was clear that Edmo would not continue living as she was.¹⁰¹ She would not, as much as could not, live with her male genitalia.¹⁰² The undercurrent of the *Edmo* decision seems to be that without the surgery, the court would be signing her death warrant. In *Snyder*, the plaintiffs were depressed.¹⁰³ They were anxious.¹⁰⁴ Their gender dysphoria impacted all aspects of their life.¹⁰⁵ So, what makes *Snyder* different from *Edmo*? What makes Edmo's request for gender confirmation surgery a need and the boys' request in *Snyder* a want? The court is seemingly looking to the harm that had already occurred in order to predict the harm to come. In *Edmo*, the plaintiff had already attempted the drastic measure of autocastration.¹⁰⁶ In *Snyder*, the plaintiffs had not yet gone that far.¹⁰⁷ This distinction between the plaintiffs sends a subtle message: To prove irreparable harm and win injunctive relief, you must have harmed yourself to an alarming degree. The court's dismissal of gender confirmation surgery as a want and not a need incentivizes people already in distress and already experiencing mental health issues to harm themselves further in order to get the surgery they are desperately demanding.

99. See *Snyder* Plaintiffs' Preliminary Injunction Motion, supra note 4, at 2, 7; Coleman et al., supra note 38, at S43; see also Deutsch, Gender-Affirming Treatments, supra note 45.

100. *Doe v. Snyder*, 28 F.4th 103, 113 (9th Cir. 2020).

101. See *Edmo*, 935 F.3d at 771–75 (outlining Edmo's struggles with and treatment of her gender dysphoria).

102. *Id.*

103. See *Snyder* Plaintiffs' Preliminary Injunction Motion, supra note 4, at 2, 5, 10 (articulating the feelings and outward expression of the plaintiffs' depression).

104. *Id.* at 12, 15 (describing the plaintiffs' anxiety).

105. *Id.* at 4–6.

106. See *Edmo*, 935 F.3d at 773 (articulating the actions Edmo took to remove her testicles).

107. See *Doe v. Snyder*, 28 F.4th 103, 113 (9th Cir. 2020); *Snyder* Plaintiffs' Preliminary Injunction Motion, supra note 4, at 6–8 (explaining that one of the plaintiffs had already been hospitalized several times and that both plaintiffs wore their binders with such frequency that it threatened their physical health).

III. MENTAL HEALTH IS HEALTH, AND HARM IS HARM

It is hard to imagine a judge willingly incentivizing self-harm, but that is the implicit result of the Ninth Circuit's harm analysis when it comes to gender dysphoria. The plaintiff's success in *Edmo* hinged on the court's reliance on past instances of harm to determine the likelihood and severity of future harm and to prevent future harm from occurring.¹⁰⁸ This backward-looking analysis is an ineffective approach to harm-prevention, especially given the suicide epidemic in the transgender community.¹⁰⁹ Some people complete suicide on the first attempt.¹¹⁰ In seeking to prevent these first-try suicides from occurring, there would be no past attempts to cite. Still, the court found the instances of self-harm in *Snyder*, which fell short of prior suicide attempts, less persuasive.¹¹¹ Instead of looking for alarming signs of past harm, the court should look to doctors' recommendations, plaintiffs' experiences of anxiety and depression, and other precursors to more serious forms of self-harm rather than waiting for and incentivizing the extremes as in *Edmo*. This Part explores how to lower the irreparable harm bar by applying the logic advocated for incarcerated transgender people's Eighth Amendment rights.

A. *Applying the Eighth Amendment's "Ability to Bear Pain" Analysis to Injunctive Relief*

The Eighth Amendment bans cruel and unusual punishment.¹¹² In *Brock v. Wright*, the Second Circuit held that the Eighth Amendment's standard does not test the ability of an individual to bear pain.¹¹³ It is not meant to test the limits of human capacity to endure anguish.¹¹⁴ In other

108. *Edmo*, 935 F.3d at 786–87, 797–98 (connecting *Edmo*'s gender dysphoria and autocastration to the medical necessity of gender confirmation surgery and therefore the harm of not receiving necessary medical treatment).

109. See Austin et al., *supra* note 76, at NP2707–10; *supra* note 76 and accompanying text.

110. See Erkki T. Isometsä & Jouko K. Lönnqvist, Suicide Attempts Preceding Completed Suicide, 173 *Brit. J. Psychiatry* 531, 533 (1998) (“We found that the majority of all suicide completers (56%) had died at their first suicide attempt . . .”).

111. *Snyder*, 28 F.4th at 108 (stating that plaintiffs failed to meet the burden of showing irreparable harm despite showing experiences of depression, self-harm, and suicidal ideation).

112. U.S. Const. amend. VIII.

113. See 315 F.3d 158, 163 (2d Cir. 2003) (“We do not, therefore, require an inmate to demonstrate that he or she experiences pain that is at the limit of human ability to bear, nor do we require a showing that his or her condition will degenerate into a life-threatening one.”).

114. Esinam Agbemenu, Note, Medical Transgressions in America's Prisons: Defending Transgender Prisoners' Access to Transition-Related Care, 30 *Colum. J. Gender & L.* 1, 17 (2015) (“[P]hysical health concerns do not have to be life threatening or test the limits of the human ability to bear pain to qualify for treatment under the Eighth Amendment.” (citing *Brock*, 315 F.3d at 163)).

words, it does not test when someone will break and only permit calling the state's action cruel and unusual punishment after they break.

In recent years, advocates have used the Eighth Amendment to fight for gender-affirming care for incarcerated transgender people.¹¹⁵ In these cases, including a section of *Edmo*, some courts agreed that denial of necessary medical treatment for incarcerated people is cruel and unusual punishment and that gender confirmation surgery is necessary medical treatment. Therefore, denial of gender confirmation surgery violates these individuals' Eighth Amendment rights.¹¹⁶

Courts have also seemingly accepted that mental health is crucial to one's overall well-being and that mental anguish, on its own, can constitute an Eighth Amendment violation.¹¹⁷ Yet even in Eighth Amendment cases, incarcerated transgender people with greater physical harm stemming from their gender dysphoria are more successful in proving their harm and, thus, their claim to access gender confirmation surgery.¹¹⁸ "[I]t is suicidal ideation, depression, and attempts of self-mutilation that become their most effective factual tool in receiving the health care they deserve."¹¹⁹ Courts' greater willingness to grant relief to those with more severe physical harm is illustrated by the circumstances in *Edmo* and *Snyder* articulated above, in which courts lent greater weight to cases with facts of severe self-harm. To analyze mental health concerns, such as mental distress caused by gender dysphoria, courts look to physical manifestations of the health concern in order to determine whether it qualifies as a serious medical need.¹²⁰ *Edmo*'s case demonstrates this. The opinion frequently invokes the attempted autocastration and future risk of continued castration attempts or suicide, seemingly implying extreme physical self-harm is the most worrisome component.¹²¹

115. E.g., Samantha Braver, Note, Circuit Court Dysphoria: The Status of Gender Confirmation Surgery Requests by Incarcerated Transgender Individuals, 120 Colum. L. Rev. 2235 (2020) (exemplifying scholarship that grapples with cases concerning incarcerated transgender people's rights).

116. See *Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976); Braver, *supra* note 115, at 2248–49, 2253–67 (emphasizing that indifference to the serious medical problems of incarcerated individuals constitutes cruel and unusual punishment under the Eighth Amendment and describing how federal circuit courts have applied this test when prison administrators have denied gender confirming surgery to incarcerated transgender people).

117. See *Edmo v. Corizon, Inc.*, 935 F.3d 757, 785 (9th Cir. 2019) (explaining that the denial of medical treatment, given the mental health impacts of *Edmo*'s gender dysphoria, was sufficient to violate the Eighth Amendment); see also *Kosilek v. Spencer*, 774 F.3d 63, 86 (1st Cir. 2014) (treating gender dysphoria as a serious medical need requiring treatment within the context of the Eighth Amendment).

118. See *Agbemenu*, *supra* note 114, at 28–29 (stating that gender dysphoria claims are addressed in relation to their "most severe consequences").

119. *Id.*

120. See *id.* at 16–17.

121. See *Edmo*, 935 F.3d at 775–78 (excerpting the testimony of expert witnesses that focused on the plaintiff's autocastration and the potential risk of suicide).

By using drastic physical self-harm as a proxy for mental anguish to define what we consider cruel and unusual punishment, the courts penalize individuals whose anguish presents without physical injury.¹²² It creates a reward system for those who act drastically and dangerously in response to their pain.¹²³ But receipt of necessary medical treatment should not be conditioned on extreme physical harm; as *Brock* indicates, the Eighth Amendment does not require that the incarcerated person “experiences pain that is at the limit of human ability to bear.”¹²⁴

The refusal to assess suffering based only on the suffering individual’s outward conduct, as discussed in scholarship on the Eighth Amendment for incarcerated transgender people,¹²⁵ should apply to the irreparable harm standard for injunctive relief. Courts should consider plaintiffs’ mental anguish as its own indicia of harm. Without this protection, the court sends an implicit message: Those who self-harm, those who consider or attempt suicide, and those who physically manifest their gender-dysphoria-related depression and anxiety are more likely to meet the standard for injunctive relief than those who suffer internally.

This creates a bizarre incentive structure. It asks plaintiffs to harm themselves in order to show that they truly need gender confirmation surgery. It asks plaintiffs to show future irreparable harm by offering past instances of material physical harm. The scholarship advocating for gender-affirming surgery for incarcerated people on Eighth Amendment grounds reflects how absurd such a perverse incentive structure is.¹²⁶ This absurdity extends to the logic of injunctive relief and the irreparable harm standard, as highlighted above in the distinction between *Snyder* and *Edmo*.¹²⁷

Undoubtedly, courts will argue that some line-drawing is necessary, lest they write a blank check for anyone seeking gender-affirmation surgery. This Comment does not extend itself to declare a singular solution but posits that a line can be drawn in a number of ways that lean on medical rather than judicial judgments. This Comment does not presume to know every way to draw the line. Still, a court’s determination should hinge on the diagnosis and treatment options available rather than the severity of past harm or self-inflicted behaviors. Courts’ current means of analysis dangerously suggest that such harmful behaviors are the only path to injunctive salvation.

122. Agbemenu, *supra* note 114, at 17.

123. *Id.* (showing that a court’s reliance on physical harm creates a potential legal barrier for transgender incarcerated individuals who may be inclined to resort to such extremes).

124. See *Brock v. Wright*, 315 F.3d 158, 163 (2d Cir. 2003).

125. See Agbemenu, *supra* note 114, at 41–43.

126. *Id.* at 24–29.

127. See *supra* Part II.

CONCLUSION

Suicidality rates in the transgender community are staggering.¹²⁸ Gender-affirming care can be life-changing.¹²⁹ The debate over whether to extend Medicaid coverage to all gender confirmation surgery plays out in state legislatures.¹³⁰ A few states have already changed their laws to provide access under state plans.¹³¹ Yet, in states like Arizona, transgender people remain without coverage for their life-saving treatments.¹³² Until all states provide this coverage, one of the only hopes for individuals like the plaintiffs in *Snyder* is injunctive relief. As long as the bar for injunctive relief remains so high that it incentivizes self-harm, however, transgender individuals in these states are endangered and encouraged to endure the level of harm that the court legitimizes. Therefore, judicial evaluations of harm for gender confirmation surgery should not focus on the severity of past and current patterns of self-harm but rather on medical advice and the surrounding circumstances. Judges need to be aware of the implicit messaging their rulings send to vulnerable individuals who are desperate for help. The implicit message made clear by *Edmo* and *Snyder* is that drastic measures of self-harm prevail to provide access to deserved treatment. This is an irreparably harmful message.

128. Austin et al., *supra* note 76, at NP2707 (“More than half of transgender young people in our study reported a previous suicide attempt (56%) and they had alarmingly high reported rates of past 6-month suicidality (86%) . . .”); *supra* text accompanying note 76.

129. See New Study Shows Transgender People Who Receive Gender-Affirming Surgery Are Significantly Less Likely to Experience Psychological Distress or Suicidal Ideation, Fenway Health (Apr. 28, 2021), <https://fenwayhealth.org/new-study-shows-transgender-people-who-receive-gender-affirming-surgery-are-significantly-less-likely-to-experience-psychological-distress-or-suicidal-ideation/> [<https://perma.cc/44JL-VV6L>] (describing a new study showing the positive health outcomes for transgender people who receive gender-affirming care (citing Anthony N. Almazan & Alex S. Keuroghlian, Association Between Gender-Affirming Surgeries and Mental Health Outcomes, 156 J. Am. Med. Ass’n Surgery 611, 615–16 (2021))).

130. See Samuel Rosh, Note, Beyond Categorical Exclusions: Access to Transgender Healthcare in State Medicaid Programs, 51 Colum. J.L. & Soc. Probs. 1, 11–13 (2017) (explaining that eighteen states have categorical bans on Medicaid coverage for gender-affirming surgery and that only a few others have partial coverage).

131. See Ivette Gomez, Usha Ranji, Alina Salganicoff, Lindsey Dawson, Carrie Rosenzweig, Rebecca Kellenberg & Kathy Gifford, Update on Medicaid Coverage of Gender Affirming Health Services, KFF (Oct. 11, 2022), <https://www.kff.org/womens-health-policy/issue-brief/update-on-medicare-coverage-of-gender-affirming-health-services/> [<https://perma.cc/9GBJ-KMTX>] (articulating the variations between states in the degree of coverage, with Maine and Illinois having the broadest coverage).

132. See, e.g., Medicaid Regulations and Guidance, Arizona, Transgender Legal Def. & Educ. Fund, <https://transhealthproject.org/resources/medicaid-regulations-and-guidance/arizona/explicit-exclusion/> [<https://perma.cc/KE7X-E3P8>] (last updated June 10, 2021) (“The following services are excluded from . . . coverage: a . . . gender reassignment surgeries[.]” (internal quotation marks omitted) (quoting Ariz. Admin. Code § R9-22-205.B(4) (2021))); *supra* notes 45–48 and accompanying text.