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Submitted electronically via coulter.minix@ky.gov

Governor Andy Beshear
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Re: Letter from the Center for Constitutional Rights Regarding the Unconstitutionality of Senate Bill 2

Dear Governor Beshear,

The Center for Constitutional Rights is a national, not-for-profit legal, educational, and advocacy organization dedicated to protecting and advancing rights guaranteed by the United States Constitution, federal statutes, and local and international law. Since our founding in 1966, we have litigated landmark civil rights and human rights cases before the U.S. Supreme Court and other tribunals concerning government overreach and discriminatory state policies, including policies that disproportionately impact LGBTQIA+ communities.

As legal experts who advocate for the rights of transgender, gender nonconforming, intersex, and nonbinary individuals, we write to express our strong opposition to Senate Bill 2 (SB 2), which seek to deny essential, evidence-based medical care to transgender individuals with gender dysphoria in the custody of the Kentucky Department of Corrections (KDOC). In doing so, these bills directly contravene the Eighth Amendment to the U.S. Constitution, which prohibits cruel and unusual punishment and mandates that corrections officials provide adequate medical care to incarcerated people with serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103–06 (1976).

I. Blanket Treatment Bans on Gender Dysphoria Treatment Violate the U.S. Constitution and Federal Law

Gender dysphoria is a recognized medical condition that many transgender people experience.¹ Federal courts have consistently recognized that gender dysphoria is a serious medical condition requiring individualized, evidence-based medical care under the Eighth

¹ Gender dysphoria is the psychological distress that results from an incongruence between an individual's gender identity and their assigned sex at birth, and it can lead to significant anxiety, depression, suicide ideation and other disabling conditions when left untreated. See AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) (DSM-5); E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 INT'L J. OF TRANSGENDER HEALTH S252 (Sept. 15, 2022), <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644> (hereinafter WPATH Standards).

Amendment. *See, e.g., Keohane v. Fla. Dep't of Corr. Sec.*, 952 F.3d 1257, 1266 (11th Cir. 2020); *Kothmann v. Rosario*, 558 F. App'x 907, 910 n.4 (11th Cir. 2014); *Edmo v. Corizon, Inc.*, 935 F.3d 757, 785 (9th Cir. 2019), *cert. denied sub nom. Idaho Dep't of Corr. v. Edmo*, 141 S. Ct. 610 (Mem.) (2020); *De'lonta v. Angelone*, 330 F.3d 630, 635 (4th Cir. 2003); *White v. Farrier*, 849 F.2d 322, 325 (8th Cir. 1988); *Meriwether v. Faulkner*, 821 F.2d 408, 413 (7th Cir. 1987). In the context of gender dysphoria, such individualized, evidence-based care can include hormone therapy, gender-affirming surgery, and other procedures (hereinafter “gender-affirming care”).² The Sixth Circuit has made clear that “[f]ailure to provide medical care may rise to the level of a violation of the Cruel and Unusual Punishments Clause of the Eighth Amendment.” *Flanory v. Bonn*, 604 F.3d 249 (6th Cir. 2010); *see also Farmer v. Brennan*, 511 U.S. 825, 833 (1994); *Estelle v. Gamble*, 42 U.S. 97, 104 (1976).

If adopted, SB 2 would impose blanket bans on the provision of gender-affirming care to incarcerated people with gender dysphoria, regardless of need. Blanket bans such as these have repeatedly been found unconstitutional because they show deliberate indifference to incarcerated people’s serious medical needs. *See Kosilek v. Spencer*, 774 F.3d 63, 91 (1st Cir. 2014); *Fields v. Smith*, 653 F.3d 550, 559 (7th Cir. 2011); *Hicklin v. Precynthe*, No. 4:16-cv-01357-NCC, 2018 WL 806764, at *11 (E.D. Mo. Feb. 9, 2018); *Diamond v. Owens*, 131 F. Supp. 3d 1346, 1376 (M.D. Ga. 2015); *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 246–47 (D. Mass. 2012). Indeed, the Sixth Circuit has recognized that since trans people “often have a serious medical need for some sort of treatment, a complete refusal by prison officials to provide a trans [person] with any treatment at all would state an Eighth Amendment claim for deliberate indifference to medical needs.” *Murray v. U.S. Bureau of Prisons*, 106 F.3d 401 (table), 1997 WL 34677, at *3 (Jan. 28, 1997).

Beyond the Eighth Amendment, SB 2 violates the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 *et seq.*, and Section 1557 of the Affordable Care Act (ACA), 42 U.S.C. § 18116, because it purposefully denies healthcare based on sex and disability. *See, e.g., Williams v. Kincaid*, 45 F.4th 759, 766–74 (4th Cir. 2022) (affirming that gender dysphoria is a covered disability for purposes of the ADA), *cert. denied*, 143 S. Ct. 2414 (2023); DOJ Statement of Interest at 7–14, *Doe v. Ga. Dep't of Corr.*, No. 1:23-cv-5578-MLB (N.D. Ga. Jan. 8, 2024) (explaining that Gender Dysphoria is covered by the ADA).

II. The Consequences of Passing SB 2 Will be Dangerous and Costly

Adopting legislation like SB 2 that prohibits gender-affirming care regardless of medical necessity not only violates the Constitution and federal statutory protections, but it puts lives at risk. Studies have shown that transgender individuals who are denied appropriate medical treatment in custody, including treatment for gender dysphoria, face an increased risk of severe psychological distress and suicide.³

² WPATH Standards, *supra* note 1 (outlining the treatments that can constitute medically necessary gender dysphoria care depending on the individuals). The WPATH Standards are the accepted standards of care for treating patients with gender dysphoria, as recognized by the American Psychiatric Association and the American Medical Association, as well as the Fourth and Ninth Circuits. *See Edmo v. Corizon, Inc.*, 935 F.3d 757, 788 n.16 (9th Cir. 2019) (calling WPATH guidelines “the gold standard on this issue”); *accord De'Lonta v. Johnson*, 708 F.3d 520, 522–23 (4th Cir. 2013).

³ Mattia Marchi, *et al.*, *Mental health of transgender people in prison: a systematic review and meta-analysis*, 36.7 INT’L REV. OF PSYCHIATRY 714–728 (2024), <https://doi.org/10.1080/09540261.2023.2287680>; Marie Claire Van Hout *et al.*, *Contemporary transgender health experience and health situation in prisons: A*

History has shown the severe financial and legal consequences of such unconstitutional actions for corrections officials. Furthermore, legal challenges underscore the risks of adopting policies like those proposed in SB 2. Just this month in *Jones v. Bondi*, Case No. 1:25-cv-401-RCL (D.D.C. Mar. 3, 2025), a federal court enjoined the Federal Bureau of Prisons from denying gender dysphoria healthcare to transgender inmates under a Trump Executive Order, finding such actions unconstitutional under the Eighth Amendment.

Passing SB 2 will all but guarantee that Kentucky finds itself embroiled in similar legal challenges and costly and protracted litigation. The state's resources would be far better spent providing constitutionally adequate medical care than defending an indefensible and discriminatory policy in court.

Therefore, we urge you to reject SB 2 and stand against any legislation that endangers lives, violates constitutional and federal law, and exposes Kentucky and its taxpayers to unnecessary financial liability.

Sincerely,
The Center for Constitutional Rights

scoping review of extant published literature (2000–2019), 21.3 INT'L J. OF TRANSGENDER HEALTH 258 (2020), <https://doi.org/10.1080/26895269.2020.1772937>; Leah Drakeford, *Correctional Policy and Attempted Suicide Among Transgender Individuals*, 24.2 J. OF CORR. HEALTH CARE 171 (2018), <https://doi.org/10.1177/1078345818764110>.