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EVALUATING THE CLASSIFICATION OF GENDER CONFIRMATION SURGERY AS A MEDICAL NECESSITY FOR INMATES

*Alexis J. Watson*¹

In 2012, Mason Edmo pleaded guilty to the sexual abuse of a fifteen-year-old boy and was sentenced to ten years in prison. While in prison, Edmo announced that she identified as a female and changed her name to Adree. Edmo went on to request gender confirmation surgery (also known as “sex reassignment surgery”) while still in prison. Initially, Edmo was not granted the surgery by the Idaho Department of Corrections, and went on to self-harm and attempt self-castration twice. In 2017, Edmo filed suit against the Idaho State Department of Corrections (IDOC) and won. The IDOC disagreed with the decision, filing an appeal to the Ninth Circuit Court, but in August of 2019, the appeal was denied and Edmo was granted the surgery in *Edmo v. Corizon*.² This was the first time a circuit court had granted an inmate’s request for gender confirmation surgery.³

1 Alexis is a Sophomore studying Finance and English at Brigham Young University. She would like to recognize and thank Landon Hooley, a student at Brigham Young University studying Political Science, for his diligence and insight as an editor.

2 *Edmo v. Corizon, Inc.*, 935 F.3d 757 (9th Cir. 2019).

3 Santiago, Ellyn. *Adree Edmo: 5 Fast Facts You Need to Know*. (Aug. 25, 2019), HEAVY., <https://heavy.com/news/2019/08/adree-edmo/>.

Public response to the *Edmo v. Corizon* decision has been very polarized.⁴ Some people are pleased with the decision because they believe the surgery to be a medical necessity, and should be provided to avoid discrimination against transgender individuals. Others disagree, believing that gender confirmation surgery should not be granted to inmates while there are law-abiding citizens who desire the surgery but cannot afford it. Still, others are upset by the decision because they believe the surgery to be beyond the range of care that inmates ought to be provided with, regardless of circumstance.

The surgery was granted to Edmo under the Eighth Amendment, which states that cruel and unusual punishments shall not be inflicted upon prisoners.⁵ In the context of prison healthcare, this has been interpreted by the Supreme Court to mean that correctional facilities must provide prisoners with medically necessary healthcare to avoid administering cruel and unusual punishment.⁶ For example, if an inmate were to experience severe blood loss without being treated for it, the correctional facility would be in violation of the Eighth Amendment. Although this may seem like a straightforward interpretation of the law, opinions have differed regarding what exactly constitutes a medically necessary procedure. Was the Ninth Circuit Court correct in classifying gender confirmation surgery as a medically necessary procedure in *Edmo v. Corizon*? This question is important because correctly identifying which medical treatments are necessary is key to ensuring that our correctional institutions remain constitutional and free from cruel and unusual punishment.

This paper seeks to answer this question by first examining precedent set by the court regarding medical care for inmates, and second, examining state law that defines a “medically necessary” procedure. A solution will then be proposed as to how correctional

4 Lateshia Beachum, *Idaho must pay for an inmate’s gender confirmation surgery, a court says. The governor is fighting it*, WASHINGTON POST (Aug. 27, 2019, 4:14 PM), <https://www.washingtonpost.com/dc-md-va/2019/08/27/idaho-must-pay-an-inmates-gender-confirmation-surgery-court-says-governor-is-fighting-it/>.

5 U.S. CONST. amend. VIII, § 1.

6 *Estelle v. Gamble*, 429 U.S. 97 (1973).

institutions and courts might better accommodate transgender inmates while remaining within the bounds of medically necessary care as established by the Eighth Amendment.

I. BACKGROUND

To understand the problems with the Ninth Circuit's decision in *Edmo*, it is necessary to understand (a) the experience of inmates with gender dysphoria, (b) the history and current research surrounding gender confirmation surgery, and (c) inmates' use of the Eighth Amendment to request said surgery.

A. Gender Dysphoria

According to the American Psychological Association (APA), gender dysphoria manifests itself in a variety of ways, and is generally recognized through symptoms of intense discomfort with one's assigned birth sex and a strong preference for another gender identity.⁷ Gender dysphoria affects only a small portion of inmates (the exact number is unknown), as the total number of transgender inmates is estimated to be about 750,⁸ and the transgender population of the United States is estimated at only 1 million.⁹ However, the minority of inmates that do suffer from gender dysphoria often feel discriminated against by other inmates, prison officials, and medical officials.¹⁰ They may experience psychological turmoil so strong as

7 DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 302.6 (5TH ED 2013) (DSM-5).

8 George R. Brown, Everett McDuffie, *Health Care Policies Addressing Transgender Inmates in Prison Systems in the United States*, 15 J. OF CORRECTIONAL HEALTH CARE, 280, 280-291 (2009).

9 Esther L. Meerwijk & Jae M. Sevelius, *Transgender Population Size in the United States: A Meta-Regression of Population-Based Probability Samples*, 107 AM. J. OF PUB. HEALTH, e1, e5 (2017).

10 Erin McCauley et al. *Exploring Healthcare Experiences for Incarcerated Individuals Who Identify as Transgender in a Southern Jail*, 3 TRANSGENDER HEALTH, 34-41 (2018).

to lead to self-harm, which, in extreme cases, has included attempts at self-castration.¹¹

B. Gender Confirmation Surgery (GCS)

Gender confirmation surgery (abbreviated throughout the rest of this paper as GCS) is a cosmetic surgery by which a transgender person's physical appearance is altered to resemble that of the gender with which they identify. GCS usually requires a combination of *several* surgical procedures that differ in purpose depending on the desires of the patient and which gender the individual is transitioning to. The APA recognizes GCS as a treatment for gender dysphoria, although very little research exists that evaluates the effects of GCS, especially in the long-term.

Not all inmates who experience gender dysphoria request GCS. The APA recommends a variety of treatment options for gender dysphoria, including access to clothing of the preferred gender, counselling, and/or hormone therapy. Despite the variety of treatment options, some inmates still request GCS after having received these other treatments, believing that GCS is necessary to alleviate significant psychological stress.

C. Using the Eighth Amendment to Request GCS

In the past, inmates have requested GCS under the Eighth Amendment, arguing that GCS constitutes a medically necessary treatment, and that by not providing the surgery, prisons administer a form of cruel and unusual punishment. Two circuit court cases, *Gibson v. Collier*¹² and *Kosilek v. Spencer*¹³ ruled against obligating prisons to provide GCS. Until the *Edmo v. Idaho* decision, no inmate had

11 Edmo v. Corizon, Inc., 935 F.3d 757 (9th Cir. 2019); Lesley F. Roberts et al. *A Passion for Castration: Characterizing Men Who Are Fascinated with Castration, but Have Not Been Castrated*, 5 THE J. OF SEXUAL MED., 1669, 1670 (2008).

12 Gibson v. Collier, 920 F.3d 212 (5th Cir. 2019).

13 Kosilek v. Spencer, 774 F.3d 63 (1st Cir. 2014).

ever been granted GCS on the grounds that the surgery was not considered a medical necessity. In *Edmo v. Corizon*, the surgery was granted on the basis that the correctional facility’s healthcare team acted in deliberate indifference¹⁴ towards Adree Edmo’s suffering and that, for Edmo, GCS was a medically necessary procedure.¹⁵

This paper argues that a correctional facility’s refusal to grant gender confirmation surgery does not constitute a violation of the Eighth Amendment, and that the Ninth Circuit Court in *Edmo v. Idaho* misapplied the term “medically necessary.” By subjecting inmates to a procedure that is, at this time, not proven to provide long-term benefit, inmates are subject to a form of experimentation, which might be classified as a form of cruel and unusual punishment. However, this paper recognizes that there is an urgent need for reform in the way that the prison system treats individuals with gender dysphoria, consequently proposing that the best way in which to do this is to increase the amount of valid research pertaining to gender confirmation surgery and its long-term effects, so that the surgery might one day be classified as either medically necessary or not medically necessary.

II. WHY *EDMO* GOT IT WRONG

The landmark Supreme Court decision, *Estelle v. Gamble* states that “the Eighth Amendment “proscribes only medical care so unconscionable as to fall below society’s minimum standards of decency.”¹⁶ This means that medically necessary care is medical care which ought to be denied unless denying it is considered below society’s minimum standards of decency. Another Supreme Court decision, *U.S. v. DeCologero*, affirms that adequate medical care for prisoners consists of “services at a level reasonably commensurate with modern medical science and of a quality acceptable within prudent

14 Gutierrez v. Peters, 111 F.3d 1364, 1366 (7th Cir. Ill. 1997).

15 Edmo v. Corizon, Inc., 935 F.3d 757 (9th Cir. 2019).

16 Estelle v. Gamble, 429 U.S. 97 (1973).

professional standards.”¹⁷ Thus, medically necessary care is that which, if denied, goes against the standards of healthcare for society as a whole. It is also healthcare which is in accordance with modern medical science and acceptable within prudent professional standards. This precedent creates a high bar for any medical procedure, especially a controversial one such as gender confirmation surgery. According to this precedent, GCS ought to be denied unless denying the surgery is considered below society’s minimum standards of decency. In order to be granted to prisoners, GCS must also be considered modern medical science and acceptable within prudent professional standards. Due to the controversial nature of the procedure, both in public and professional circles, there are serious differences of opinion regarding the authority of the standards by which GCS is evaluated. Fortunately, Idaho State Law offers a definition of “medically necessary” that adheres to the precedent established by the Supreme Court while being somewhat less abstract.

Because Adree Edmo is under Idaho state jurisdiction, and because the prison in which she is being held is covered by an insurance plan, the definition of “medically necessary” as found in the Idaho State Code applies to her situation.¹⁸ In the context of correctional facilities, this law tells us that the definition of “medically necessary” provided in the insurance health benefit plan for the prison is the main source of authority when determining if a medical procedure is legal. The Idaho State Correctional Facility has a contract with the private insurance provider Corizon that covers healthcare costs for each inmate. Corizon does not consider GCS to be a medically necessary procedure and thus denied coverage to Edmo.¹⁹

Should the State of Idaho then be required to fund GCS because Corizon will not? Idaho State law answers this question by providing its own definition of the term “medically necessary” that applies should the insurance provider fail to provide a definition.²⁰ First, the

17 U.S. v. DeCologero, 821 F.2d 39, 43 (1st Cir. 1987).

18 Idaho Code Ann. § 41-5903 (West).

19 *Supra Edmo*, 935 F.3d 757 (9th Cir. 2019).

20 Idaho State Code (Ann. § 41-5903).

code requires that medical procedures be recommended by a physician or other health care provider *and* that the procedure meets the subsequent four requirements ((a) through (d)). So, even if a physician recommended GCS for an inmate, under Idaho State Law the procedure must also meet *all* of the other requirements.

The first of these other requirements (requirement (a)) is that the procedure be in accordance with generally accepted standards of medical practice. The problem comes in determining what exactly those generally accepted standards are and who must accept them. Court opinion on this matter differs throughout the nation. The Ninth Circuit Court of Appeals accepts WPATH's (World Professional Association for Transgender Health) Standards of Care published in 2011 as their standard of care in *Edmo v. Corizon*, as do some other courts in cases dealing with transgender healthcare.²¹ Under the WPATH standards, GCS would be considered medically necessary for Edmo. So, if the court was correct in considering the WPATH standards to be generally accepted standards of medical practice, then the decision in *Edmo v. Corizon* was correct under requirement (a) of Idaho State Code. But, can WPATH's standards of care be extended to be considered "generally accepted standards of medical care?" Some courts, like those that denied GCS to inmates, have said that they cannot.²² The Supreme Court has explained that professional judgement, "creates only a "presumption" of correctness; welcome or not, the final responsibility belongs to the courts."²³ By applying WPATH's standards of care alone to *Edmo v. Corizon* to determine whether GCS is a medically necessary procedure, the

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- 21 De'lonta v. Johnson, 708 F.3d 520, 522–23 (4th Cir. 2013); Keohane v. Jones, 328 F. Supp. 3d 1288, 1294 (N.D. Fla. 2018), appeal filed, (11th Cir. 2018); Norsworthy v. Beard, 87 F. Supp. 3d 1164, 1170 (N.D. Cal.), appeal dismissed & remanded, 802 F.3d 1090 (9th Cir. 2015); Soneeya v. Spencer, 851 F. Supp. 2d 228, 231–32 (D. Mass. 2012).
- 22 Gibson v. Collier, 920 F.3d 212, 221 (5th Cir. 2019) ("[T]he WPATH Standards of Care reflect not consensus, but merely one side in a sharply contested medical debate over [GCS]."); Kosilek v. Spencer, 774 F.3d at 76–79 (recounting testimony questioning the WPATH Standards of Care).
- 23 Cameron v Tomes referencing Youngberg, 457 U. S. Reports 323, 102 S.Ct. 2462.

Ninth Circuit Court erred, as the Supreme Court has determined that medical standards cannot be established by a single professional, group of professionals, or organization, like WPATH. Instead, medical standards must be considered more broadly by courts, “encompassing institutional concerns as well as individual welfare [for] nothing in the Constitution mechanically gives controlling weight to one set of professional judgments.”²⁴

WPATH classifies GCS as an “effective and medically necessary procedure,” yet it makes this conclusion based upon retrospective observational studies consisting of mostly self-reported patient data that cannot be used to determine cause and effect.²⁵ Additionally, the WPATH Standards reference several studies that show a decline in patient well-being and say regarding these studies: “These findings do emphasize the need to have good long-term psychological and psychiatric care available for this population. More studies are needed that focus on the outcomes of current assessment and treatment approaches for gender dysphoria.” WPATH acknowledges the need for a broader consideration of GCS than they provide by emphasizing the need for good long-term care for post-GCS patients and calling for more studies on the effects of GCS. By calling for more studies, WPATH highlights the uncertainty of their previous research and draws skepticism toward their claim that GCS is “undeniably beneficial.”²⁶

Requirement (b) of the Idaho State Code states that a medically necessary procedure must be “Clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for the covered person’s illness, injury or disease.” Once again, the question must be asked: by who must the procedure be deemed appropriate? As discussed previously, the standards by which a procedure is deemed appropriate cannot be determined by the WPATH

24 *Id.*

25 WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH, STANDARDS OF CARE FOR THE HEALTH OF TRANSEXUAL, TRANSGENDER, AND GENDER NON-CONFORMING PEOPLE 113 (7th ed., 2012).

26 *Id.* at 107.

alone. Thus, whether or not GCS meets requirement (b) depends on the standards referred to in requirement (a).

Requirement (c) of the Idaho State Code states that a medically necessary procedure must be, “Not primarily for the convenience of the covered person, physician or other health care provider.” Of all the requirements, this requirement is the one that GCS is most likely to meet in the case of severe gender dysphoria. As in the case of Adree Edmo, the effects of her severe gender dysphoria resulted in dangerous behavior such as attempted self-castration. Because of this, we know that some type of treatment is not only convenient, but potentially life-saving for people like Adree Edmo. However, the question remains as to whether or not that treatment should be GCS.

GCS also fails requirement (d) in the Idaho State Code. Requirement (d) states that a medically necessary procedure must not be “more costly than an alternative service or sequence of services or supply, and at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the covered person’s illness, injury or disease.”²⁷ The more common treatment for individuals with gender dysphoria is hormone therapy, which is much less costly than GCS. Hormone therapy alone costs anywhere from \$300 to \$2400 per year. The additional cost of GCS “can range from about \$15,000 for just reconstruction of the genitals to about \$25,000 for operations on the genitals and chest to \$50,000 or more for procedures that include operations to make facial features more masculine or feminine.”²⁸ And, this cost does not include the cost of the additional post-GCS medical care that will be required for the rest of the patient’s life in order to detect and prevent complications that often arise as a result of the surgery.²⁹

27 Idaho Code Ann. § 41-5903 (West).

28 *Sex Reassignment Surgery Cost*, COST HELPER HEALTH, [HTTPS://HEALTH.COSTHELPER.COM/SEX-REASSIGNMENT-SURGERY.HTML](https://health.costhelper.com/sex-reassignment-surgery.html).

29 S. Cristofari, et al., *Postoperative complications of male to female sex reassignment surgery: A 10-year French retrospective study*, 64 *ANNALES DE CHIRURGIE PLATIQUE ESTHETIQUE* 24-32 (2019).

Yet, according to the Idaho code, GCS could still be considered medically necessary even though it is more costly, as long as it has been proven to produce better therapeutic or diagnostic results.³⁰ However, GCS has *not* been proven to produce better results than hormone therapy alone. Although WPATH, as mentioned earlier, has claimed that GCS in conjunction with hormone therapy can be more effective at treating gender dysphoria for some individuals,³¹ this claim is itself weak because it is based mostly upon self-reported patient surveys.³² And, as established earlier in this paper, the standards of WPATH alone are not enough to determine whether GCS is a medically necessary procedure and ought to be proscribed under the Eighth Amendment. There is the possibility that GCS does indeed produce better results than hormone therapy alone, but there is also the possibility that GCS could be less beneficial in the long-run than hormone therapy alone. Because of the higher cost and this uncertainty regarding the long-term effects of GCS, the surgery fails to meet requirement (d) of the Idaho State Code.

As mentioned previously, WPATH's claim that GCS may be the most effective form of treatment for certain individuals is weak because this claim is based mostly upon self-reported patient surveys. Self-reported patient surveys have considerably less validity than concrete, empirical research due to inaccuracies that arise as a result of response bias,³³ which is the tendency for individuals to respond inaccurately or falsely to questions.³⁴ When responding to self-reported surveys, individuals tend to inflate well-being, which

30 Idaho Code Ann. § 41-5903 (West).

31 WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH, STANDARDS OF CARE FOR THE HEALTH OF TRANSEXUAL, TRANSGENDER, AND GENDER NON-CONFORMING PEOPLE 8 (7th ed., 2012).

32 *Id.* at 107.

33 Robert Rosenman, *Measuring bias in self-reported data*, 2 INT'L J. OF BEHAV. & HEALTHCARE RES. 320-322 (2011).

34 Paul J. Lavrakas, *Response Bias, Encyclopedia of Survey Research Methods*, 1 THOUSAND OAKS, CA: SAGE PUBLICATIONS, INC. (2008).

means that those who have received GCS are likely to self-report that they are doing better than they actually are.³⁵

Unfortunately, there remains a dearth of information on the subject of GCS. The most recent empirical study on the long-term effects of GCS took place in 2011 in Sweden.³⁶ This study concluded that “Persons with transsexualism, after sex reassignment, have considerably higher risks for mortality, suicidal behaviour, and psychiatric morbidity than the general population.” While this conclusion may seem to place GCS in an especially bad light, it compared people who received the surgery with the general population, which is not the most appropriate control group. What would have been preferable would have been a comparison to individuals who had in the past experienced severe gender dysphoria, but who had not received GCS and instead opted for another type of treatment or no treatment at all. This would help determine whether GCS causes increased mortality or whether mortality is increased for transsexuals regardless of the type of procedure or lack thereof. As this study does not do this, it can only be considered partially valid like the self-reported surveys used by WPATH, and thus GCS cannot be deemed *not* medically necessary according to this study.

Because the research surrounding the long-term effects of GCS is so unreliable and conflicting, it is not surprising that the medical community has had a difficult time coming to a consensus on whether GCS is the most effective form of treatment for certain individuals with gender dysphoria. The research that WPATH references supports GCS as being the most effective treatment, while other research, like the Swedish study, seems to support the opposite conclusion. As established earlier in the paper, this lack of consensus means that GCS cannot at present be considered a medically necessary procedure, and thus should not have been granted in *Edmo v. Idaho*.

35 S. P. Wojcik & P. H. Ditto, *Motivated Happiness: Self-Enhancement Inflates Self-Reported Subjective Well-Being*, 5 SOC. PSYCHOL. & PERSONALITY SCI. 825-834 (2014).

36 Cecilia Dhejne, et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 6, PLOS ONE, e16885 (2011).

This conclusion does not change the fact that there are transgender inmates who suffer from severe gender dysphoria and desperately need the most effective form of treatment available. Consequently, this paper proposes further study of the long-term effects of GCS, as an increased amount of reliable research will help establish consensus in the medical community by determining whether or not GCS can be classified as the most effective form of treatment for severe gender dysphoria. By doing this, courts will know what forms of treatment can be considered medically necessary and thus constitutional to grant to inmates.

III. CORRECTING *Edmo*: WORKING TOWARDS A MEDICAL CONSENSUS

How exactly might increasing the amount of valid research aid in deciding cases like *Edmo v. Corizon*? Suppose that, five years down the road, three studies were produced that objectively measured the long-term effects of GCS. And then, suppose that these studies indicated that GCS *was* a more effective treatment in the long-run for individuals with gender dysphoria than hormone therapy alone, or any other known treatment. In that case, the efficacy of GCS has been strengthened and *Edmo* has a stronger case for being granted the surgery. However, the increased amount of studies may not indicate that GCS is more beneficial in the long-term than other treatments. If they conclude the opposite, *Edmo* would not be granted the surgery because it could not be considered “medically necessary” under Idaho State Law or precedent. In this case, the increased research is especially beneficial because it would be preventing unnecessary suffering in the long-term on the part of inmates.

The greatest legal consequence of providing a *potentially* unnecessary surgery is a violation of the Eighth Amendment. In *Gibson v. Collier*, Judge Ho highlighted this when he said, “it cannot be cruel and unusual to deny treatment that no other prison has ever provided—to the contrary, it would only be unusual if a prison decided not to deny such treatment.”³⁷ By granting *Edmo* GCS, the Ninth

37 *Gibson v. Collier*, 920 F.3d 212 (5th Cir. 2019).

Circuit Court is not preventing cruel and unusual punishment, but is in fact providing it in the form of allowing an inmate to voluntarily subject themselves to an unproven treatment that might even be considered a form of experimentation.

Going forward, the questions to ask are (a) who will conduct the additional research? (b) How will the research be funded? And, (c) what should be done in the meantime to reduce the suffering of inmates experiencing gender dysphoria?

A. Who will conduct the research?

Due to the controversial nature of the matter, research will need to be conducted by an objective organization, or organizations, that have less bias in their research methods and purposes. Thus, medical centers that specialize in treatment for transgender individuals should not conduct the studies, as they would have economic incentive to produce studies that point to the conclusion that GCS is medically necessary. On the other hand, organizations that are traditionally against the surgery should also not oversee the research. For other unproven treatments, the best organization to conduct research may be the government, but due to the political nature of GCS, the government may or may not be objective in their research depending upon who is in power, and thus should not be charged with the research.

In the past, non-profit research organizations have been used by the government, corporations, and other private entities to provide non-biased research on important issues. Such non-profit organizations include “RAND Corporation,” “RTI International,” and the “Howard Hughes Medical Institute.” Because these organizations have no profit incentive, they would likely be able to provide research on the long-term effects of GCS that is objective.

B. How will the research be funded?

Funding for GCS is another area of controversy that must be addressed. A large portion of the public feels that it is a misuse of

tax dollars.³⁸ Although researching GCS is not equivalent to providing the surgery, providing funding for research through taxation is likely to be controversial due to differing religious, moral, and cultural beliefs throughout the nation.

Despite the controversy, allocating tax dollars away from another area may be the best way to fund additional research because, in the long run, it will reduce the cost of treating gender dysphoria by reducing costs associated with court proceedings. Additionally, tax dollars will not be spent on treatments that are more costly, but less effective, because the new research will have provided more knowledge and consensus on whether GCS is the most effective way to treat severe gender dysphoria.

C. What should be done in the meantime?

Because prisons house inmates based on their biological sex, a prisoner that is dressing and/or acting in opposition to their biological sex is likely to experience both physical and psychological abuse at the hands of other prisoners. This abuse may exacerbate a transgender prisoner's gender dysphoria, which is why it is so important to reach a consensus regarding the most effective way to treat gender dysphoria among inmates. However, research takes time, which means that consensus is not likely to be reached in the near future. Because of this, prisons should be doing what they can to prevent the abuse of transgender inmates in the interim.

In *Kosilek v. Spencer*, the court debates the merits of assigning the transgender inmate to either isolated housing or women's housing to avoid continued abuse, although there are drawbacks to both options. Isolated housing is not a good long-term solution

38 Chelsea Koerbler, *State Rep. wants to ban taxpayer dollars from being used for inmate's gender confirmation surgery, hormone therapy*, Fox 43 (October 8, 2019, 5:11 PM), <https://www.fox43.com/article/news/local/contests/state-rep-wants-to-ban-taxpayer-dollars-from-being-used-for-inmates-gender-confirmation-surgery-hormone-therapy/521-87cf11e6-7a3a-44d8-804d-6398c8b8de2d>; Lateshia Beachum, *Idaho must pay for an inmate's gender confirmation surgery, a court says. The governor is fighting it*, WASHINGTON POST (Aug. 27, 2019, 4:14 PM), <https://www.washingtonpost.com/dc-md-va/2019/08/27/idaho-must-pay-an-inmates-gender-confirmation-surgery-court-says-governor-is-fighting-it/>.

due to the psychological damage it may impose, and women's housing (or housing based on the gender with which the inmate identifies) is not ideal because it may cause safety concerns regarding other inmates.³⁹ Because of this, prisons ought to house transgender inmates on a case-by-case basis according to the characteristics of the individual and the unique dynamic within each facility. Some transgender inmates may pose too great of a risk to be housed with other inmates of the gender with which they identify. Or, the other inmates within the facility may be too hostile toward the transgender inmate. It follows that housing transgender inmates on a case-by-case basis will allow the prison to determine the best possible housing arrangement for the circumstances, so that the unnecessary suffering of these individuals might be minimized.

IV. CONCLUSION

Gender confirmation surgery should not currently be classified as a "medically necessary" procedure because it does not fulfill all requirements set forth by Idaho State code and precedent cases such as *Estelle v. Gamble* and *U.S. v. DeCologero*. GCS is (a) not generally accepted by society as the most effective method of treatment, and is (b) more costly than other methods of treatment proven to be equally effective. Because GCS cannot be classified as a medically necessary procedure, courts violate the Eighth Amendment by granting the surgery to an inmate.

The best way to reduce unnecessary suffering among inmates experiencing gender dysphoria is to determine whether GCS is or is not medically necessary. Currently, opinions on the matter differ greatly due to the lack of research. Thus, randomized controlled research on the long-term effects of GCS should be conducted so that the public and medical community may know more fully whether or not GCS is the most effect method of treatment for certain individuals suffering from gender dysphoria. The surgery can then be classified under Idaho State Law and Supreme Court precedent. Following appropriate classification, courts and correctional facilities will be

39 *Kosilek v. Spencer*, 774 F.3d 63 38, 6, 11 (1st Cir. 2014).

able to provide transgender inmates with the safest and most effective care while remaining constitutional under the Eighth Amendment. This will help to reduce unnecessary suffering caused by healthcare-related discrimination towards transgender inmates within correctional facilities. Simultaneously, this solution will reduce the burden on tax payers as resources will be used for only those procedures that have been *proven* to be medically necessary.