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Medical Care vs. Medicalization: The Implications of the Fourth Circuit's Decision in *Williams v. Kincaid**

Receiving gender-affirming care in the carceral setting—or any setting—remains a controversial and litigious process. Plaintiffs have relied on the Eighth Amendment, Title VII of the Civil Rights Act, and disability protections, all of which have led to inconsistent or inadequate outcomes among lower courts. However, receiving appropriate care can be the difference between life and death for those in need of it. The Fourth Circuit's decision in Williams v. Kincaid provides a path forward for those seeking gender-affirming care by clarifying the provision in the Americans with Disabilities Act ("ADA") that states its inapplicability to "gender identity disorders not resulting from physical impairments" and discussing whether the law protects those with gender dysphoria. Ultimately, the Fourth Circuit held that the ADA protects individuals with gender dysphoria. However, as transformative as the decision may be, it revives concerns that have always existed about whether disability law adds to the stigma associated with the LGBT+ community, pathologizes aspects of people's identities, and gives credibility to those who seek to harm those communities by framing their identity as a diagnosis. While we should celebrate the increased access and protections that the ADA provides, we should be cautious of how it may further the marginalization that transgender and nonbinary persons experience. Furthermore, we should be cautious of overreliance on medical diagnosis when healthcare inequities are prevalent among the communities who stand to benefit the most from the ADA's protection. While relying on disability law to provide for the needs of transgender and nonbinary persons is one solution, we should think about other paths for expanding access to gender-affirming care. We should start by questioning the viability of the ADA's exclusion of "gender identity disorders not resulting from physical impairments," which has its roots in historic disapproval of LGBT+ communities. Though litigation is likely to continue on this issue in the years ahead, the hope is that the courts that have to decide whether or not to protect access to lifesaving care will provide a meaningful path forward to those whose lives depend on the recognition and affirmation of their identities and humanity.

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INTRODUCTION

One of the most mainstream media portrayals of a transgender (“trans”) person is that of Laverne Cox’s character, Sophia Burset, in the Netflix series *Orange Is the New Black*.¹ In the show, upon incarceration, Burset is denied the hormone replacement therapy (“HRT”) she had been receiving for years. This happens to incarcerated people often, either because of their inability to pay for HRT,² or because of prisons’ deliberate refusal to administer it.³ Burset’s story illuminates a reality many face in the carceral system: lack of access to medical care, which in turn results in anxiety, depression, serious psychological harm, abuse, and suicidality.⁴ Such was the case for Kesha Williams (“Williams”), a transgender woman who was denied access to HRT in a Virginia state prison because she was assigned male at birth.⁵

Receiving gender-affirming care in prison is often a litigious process, rarely resulting in victories.⁶ Prisons often refuse to treat transgender people consistently—or at all—despite health and medical experts’ opinion that the care is necessary.⁷ Plaintiffs commonly use an Eighth Amendment “cruel and unusual punishment” framework to argue that their rights are violated when they receive inadequate care. But such plaintiffs often fail to establish their claim because this approach requires them to show both that (1) they have a serious medical need and (2) the prison officials were aware of that need, were capable of addressing it, and failed to do so.⁸ Moreover, judges are put in the position to consider questions of medical necessity and can choose whether to defer to established medical authority.⁹ Additionally, circuit splits on the

1. Erik Piepenburg, *Broadening a Transgender Tale That Has Only Just Begun*, N.Y. TIMES (June 19, 2015), <https://www.nytimes.com/2015/06/21/movies/broadening-a-transgender-tale-that-has-only-just-begun.html> [https://perma.cc/6S6F-ZMWD (dark archive)]; see also *Is ‘Orange Is The New Black’ Inspiring Women to Transition?*, MCCLEAN CLINIC, <https://www.ftmtopsurgery.ca/blog/orange-new-black-inspiring-women-transition> [https://perma.cc/8NAZ-D6JV].

2. Erin Murphy Fete, *In Need of Transition: Transgender Inmate Access to Gender Affirming Healthcare in Prison*, 55 UIC L. REV. 773, 794–96 (2022).

3. Erin McCauley, Kristen Eckstrand, Bethlehem Desta, Ben Bouvier, Brad Brockmann & Lauren Brinkley-Rubinstein, *Exploring Healthcare Experiences for Incarcerated Individuals Who Identify as Transgender in a Southern Jail*, 3 TRANSGENDER HEALTH 34, 35 (2018).

4. See *id.*; see also Jaclyn Diaz, *Trans Inmates Need Access to Gender-Affirming Care. Often They Have To Sue To Get It*, NPR (Oct. 25, 2022, 5:00 AM), <https://www.npr.org/2022/10/25/1130146647/transgender-inmates-gender-affirming-health-care-lawsuits-prison> [https://perma.cc/YE9G-Y8NU].

5. See *Williams v. Kincaid*, 45 F.4th 759, 763–64 (4th Cir. 2022).

6. Diaz, *supra* note 4.

7. *Id.* Those who receive gender-affirming care have a 1 to 2 percent suicide rate compared to a 20 to 30 percent suicide rate if left untreated. See Fete, *supra* note 2, at 781.

8. John Ferraro, Comment, *The Eighth for Edmo: Access to Gender-Affirming Care in Prisons*, 62 B.C. L. REV. E. SUPP. at II.-344, II.-347 (2021).

9. See *id.* at II.-344–46, II.-361–63 (advocating for courts to adopt the Ninth Circuit’s approach of relying on established and accepted medical authority in applying Eighth Amendment precedent to determine whether adequate medical care is provided in prison).

application of Eighth Amendment precedents have led to inconsistent results.¹⁰ Plaintiffs have also asserted Title VII of the Civil Rights Act of 1964, which has generally limited protection to the employment context.¹¹ A successful claim under Title VII, which typically results in monetary or equitable remedies after the fact, may not do enough to promote inclusion and prevent discrimination in the first place.¹²

Against this backdrop of inconsistent care and unsuccessful Eighth Amendment challenges, disability protections have been used to protect trans people. However, this move has been both controversial and complicated,¹³ because a provision in the Americans with Disabilities Act makes it unclear whether that law provides a remedy for transgender people.¹⁴ In fact, it specifically excludes “gender identity disorders *not resulting from physical impairments*.”¹⁵ This was the central legal issue in Williams’s case—whether people who experience gender dysphoria fall under this exclusionary provision in the ADA.¹⁶

The Fourth Circuit, relying on the understanding of gender dysphoria as a condition associated with the clinical distress a person feels when their gender and sex assigned at birth do not match, ruled that the ADA protected Williams’s gender dysphoria.¹⁷

10. See *id.* at II.-361–64; Patricia O’Neill, Comment, *Dysphoria of Adequate Care: Health Care of Incarcerated Transgender Individuals in American Prisons and Courts*, 31 TUL. J.L. & SEXUALITY 121, 136–37 (2022).

11. See Ali Szemanski, *When Trans Rights Are Disability Rights*, 43 HARV. J.L. & GENDER 137, 143 (2020).

12. *Id.* at 144.

13. Jennifer L. Levi & Bennett H. Klein, *Pursuing Protection for Transgender People Through Disability Laws*, in TRANSGENDER RIGHTS 74, 74–77 (Paisley Currah, Richard M. Juang & Shannon Price Minter eds., 2006).

14. See *id.* Per the ADA: “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132 (2021).

15. 42 U.S.C. § 12211(b)(1) (emphasis added).

16. *Williams v. Kincaid*, 45 F.4th 759, 766 (4th Cir. 2022).

17. See *id.* Gender identity is one’s own internal sense of self and gender, and it may not be outwardly visible to others. Laurel Wamsley, *A Guide to Gender Identity Terms*, NPR (June 2, 2021, 6:01 AM), <https://www.npr.org/2021/06/02/996319297/gender-identity-pronouns-expression-guide-lgbtq> [<https://perma.cc/8FQ7-BJLB>]. It was argued that terms like “gender identity disorder” characterized transgender people as mentally ill, and the term “gender dysphoria” is more aligned with the symptoms transgender people experience. Camille Beredjick, *DSM-V To Rename Gender Identity Disorder ‘Gender Dysphoria,’* ADVOCATE (July 23, 2012, 8:00 PM), <https://www.advocate.com/politics/transgender/2012/07/23/dsm-replaces-gender-identity-disorder-gender-dysphoria> [<https://perma.cc/7R8Z-MZCX>].

Williams comes at a time of significant debate about the rights of trans people to redress discrimination.¹⁸ For instance, a recently repealed bill in North Carolina mandated North Carolinians use the public facility matching the gender on their birth certificate.¹⁹ During the Trump administration, Trump informed (via tweet) transgender active duty and aspiring military service members with gender dysphoria that they were no longer welcome in the military.²⁰ The impacts of discrimination spill over to healthcare as well—in a survey of trans people, nearly one in five people reported refusal of health care services due to being transgender or gender nonconforming.²¹ As of 2023, at least twenty-five states have proposed bans that include criminalizing hormonal or surgical transition treatment to people younger than twenty-six.²²

The Fourth Circuit's holding in *Williams*—that the ADA's protections do not exclude people with gender dysphoria—disrupts the longstanding history of discrimination faced by trans people.²³ This decision provides a powerful tool to challenge legislation and practices that restrict access to medical care and accommodations for transgender people beyond the carceral setting, such as

18. Extremist groups converged outside a planned drag event in Columbus, Ohio; Neo-Nazis protested an event in Lakeland, Florida; anti-LGBTQ protesters rallied in South Florida; and there was a fatal attack at an LGBTQ club in Colorado Springs. Maggie Astor, *Transgender Americans Feel Under Siege as Political Vitriol Rises*, N.Y. TIMES (Dec. 10, 2022), <https://www.nytimes.com/2022/12/10/us/politics/anti-transgender-lgbtq-threats-attacks.html> [https://perma.cc/5N7X-KG6D (staff-uploaded, dark archive)]. The Boston Children's Hospital received bomb threats for providing care for transgender children. *See id.* Twelve times as many anti-LGBTQ incidents have been documented in 2022 as in 2020. *See id.* Additionally, Florida prohibited instruction related to sexual orientation and gender identity in kindergarten through third grade and referred to the legislation as an “anti-grooming bill.” *See id.*

19. Richard L. Rainey, *Repeal of HB 2: What It Means for North Carolina Employers*, N.C. EMP. L. LETTER (Business & Legal Resources, Brentwood, Tenn.), Apr. 2017, at 1–2. The law inspired over 180 private businesses to protest: The National Basketball Association moved the 2017 All-Star Game from Charlotte to New Orleans, Bruce Springsteen and Pearl Jam pulled out of performances, and many businesses suspended operations and hiring in North Carolina as a result. *See* Marisa Taylor, *Inside Corporate America's Stand Against Transgender Discrimination*, GUARDIAN (Oct. 6, 2018, 6:17 PM), <https://www.theguardian.com/sustainable-business/2016/oct/01/north-carolina-hb2-law-transgender-issues-corporate-businesses-protest> [https://perma.cc/3BKW-XBZJ].

20. Kevin Barry & Jennifer L. Levi, *Embracing the ADA: Transgender People and Disability Rights*, HARV. L. REV. BLOG (Feb. 22, 2021), <https://blog.harvardlawreview.org/embracing-the-ada-transgender-people-and-disability-rights/> [https://perma.cc/5WAL-N2CN].

21. JAIME M. GRANT, LISA A. MOTTET, JUSTIN TANIS, JODY L. HERMAN, JACK HARRISON & MARA KEISLING, NAT'L CTR. FOR TRANSGENDER EQUAL. & NAT'L GAY & LESBIAN TASK FORCE, NATIONAL TRANSGENDER DISCRIMINATION SURVEY REPORT ON HEALTH AND HEALTH CARE 1 (2010), https://cancer-network.org/wp-content/uploads/2017/02/National_Transgender_Discrimination_Survey_Report_on_health_and_health_care.pdf [https://perma.cc/7XEC-SLQP].

22. Maggie Astor, *G.O.P. State Lawmakers Push a Growing Wave of Anti-Transgender Bills*, N.Y. TIMES, <https://www.nytimes.com/2023/01/25/us/politics/transgender-laws-republicans.html> [https://perma.cc/AFN5-DPP5 (dark archive)] (last updated Jan. 30, 2023).

23. *See Williams v. Kincaid*, 45 F.4th 759, 764 (4th Cir. 2022).

employment, housing, and eligibility for government benefits.²⁴ It also legitimizes gender dysphoria as a health condition in the face of political attacks against healthcare for transgender individuals.²⁵ By writing into law that trans people's medical needs are just as deserving of protection as anyone else's, the decision provides a new ground from which to fight for access to gender-affirming care.²⁶

The decision did not come without controversy. For example, an ideologically divided Fourth Circuit voted narrowly to deny rehearing the case en banc.²⁷ Nevertheless, the decision has been received positively by many organizations, like the GLBTQ Legal Advocates and Defenders ("GLAD").²⁸ These organizations believe that the ADA would work to prevent discrimination in institutional settings, to require those facilities to provide equal access, and to demand reasonable accommodations when facilities' policies and practices interfere with a person's access to medical care.²⁹

However, there is also concern among advocates for transgender rights that treating gender dysphoria under the lens of disability rights invites medicalization and stigma against the transgender community.³⁰ While a court can appreciate the distinction between gender dysphoria and transgender identity, others may not.³¹ Advocates for "conversion therapy" describe individuals with gender dysphoria as "diseased" and call being transgender a medical condition that needs to be "cure[d]."³² At the core of this medical and legal debate is the trans experience being pathologized and made subject to redefinitions.³³ Accordingly, even though bringing claims under the ADA may be strategic and socially necessary in the short term, it can still invite the same stigma and discrimination that the strategy aims to contest.³⁴

24. Denise Lavoie, *Gender Dysphoria Covered by Americans with Disabilities Act, Federal Court Rules*, PBS (Aug. 24, 2022, 6:50 PM), <https://www.pbs.org/newshour/politics/gender-dysphoria-covered-by-americans-with-disabilities-act-federal-court-rules> [<https://perma.cc/X4SP-26YH>].

25. *Id.*

26. *Id.*

27. Eight Democrat-appointed judges defeated seven Republican-appointed judges who voted in favor of reconsidering the case. Nate Raymond, *U.S. Appeals Court Won't Revisit Ruling Holding Gender Dysphoria Is Disability*, REUTERS (Oct. 7, 2022), <https://www.reuters.com/legal/litigation/us-appeals-court-wont-revisit-ruling-holding-gender-dysphoria-is-disability-2022-10-07> [<https://perma.cc/P8KS-LZTF>]. See generally *Williams v. Kincaid*, 50 F.4th 429 (4th Cir. 2022) (denying rehearing en banc).

28. *Williams v. Kincaid*, GLAD (Oct. 17, 2022), <https://www.glad.org/cases/williams-v-kincaid> [<https://perma.cc/B3SH-QUGZ>] [hereinafter *Williams v. Kincaid*, GLAD].

29. *Id.*

30. S.E. Smith, *Is Being Trans a Disability Rights Issue?*, BUSTLE (June 12, 2017), <https://www.bustle.com/p/is-being-trans-a-disability-rights-issue-60576> [<https://perma.cc/LFM3-YFL5>].

31. See *id.*

32. See *id.*

33. See *id.*

34. *Id.*

In response to the transformative decision in *Williams v. Kincaid*, this Recent Development proceeds in four parts. Part I provides the background of the *Williams* case. Part II examines the approach the lower courts have taken in addressing the ADA's applicability to individuals with gender dysphoria. Part III examines the implications that follow from this decision. Part IV analyzes what may lie ahead in this area of litigation.

I. THE BACKGROUND OF THE ADA AND *WILLIAMS V. KINCAID*

Prior to incarceration, Williams had lived her life as a woman in her home state of Maryland.³⁵ She received HRT in the form of daily prescription pills and biweekly injections for fifteen years.³⁶ At the outset of her incarceration, Williams was assigned to the women's side of the prison and received women's clothing.³⁷ But things changed after she met a prison nurse and disclosed her identity as a transgender person and that she had received HRT for gender dysphoria.³⁸ Williams had brought the HRT medicine she was taking with her to the prison, and she asked the nurse, Xin Wang ("Wang"), to retrieve the treatment for her.³⁹ But instead of returning Williams's medication to her, Wang instructed Williams to fill out a medical release form and indicated that prison healthcare staff would follow up with her soon.⁴⁰ Williams further explained that she had not undergone surgery to remove the genitalia with which she was born. This lead Wang to label Williams as "male" pursuant to prison policy, which provided that "[m]ale inmates shall be classified as such if they have male genitals" and "[f]emale inmates shall be classified as such if they have female genitals."⁴¹ Wang was also required to change Williams's housing assignment to the men's side of the prison.⁴² Even after Williams completed the release form, she still did not receive her hormone treatments for another two weeks, after which she requested a visit from a nurse, who directed her to fill out another release form.⁴³

While housed on the men's side of the prison, deputies repeatedly subjected Williams to harassment—they rejected her requests to be addressed

35. See *Williams v. Kincaid*, 45 F.4th 759, 764 (4th Cir. 2022).

36. *Id.*

37. See *id.*

38. See *id.* Gender dysphoria refers to "a marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics." *Gender Dysphoria Diagnosis*, AM. PSYCHIATRIC ASS'N, <https://www.psychiatry.org/psychiatrists/diversity/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis> [https://perma.cc/53NX-YY9V]. Typically, this is observed where one presents and experiences a strong desire to identify as a gender other than the sex they were assigned at birth. See *id.*

39. See *Williams*, 45 F.4th at 764.

40. See *id.*

41. *Id.*

42. *Id.*

43. *Id.*

as a woman and purposefully used masculine terms like “sir” to refer to her.⁴⁴ Williams’s requests for private showers and for female-led body searches were also denied.⁴⁵ On one occasion, a male deputy, who knew Williams identified as a woman, subjected her to an aggressive body search and bruised her breast, after which he mocked her.⁴⁶ Williams’s experience is not an outlier.⁴⁷ Trans people often face sexual assault and physical abuse, as well as retributive placement in solitary confinement if they report their experiences.⁴⁸ Thus, the policy of assigning prison placement according to sex assigned at birth leaves transgender people vulnerable with few avenues for recourse.⁴⁹

Eventually, Williams filed a claim under the ADA, which was initially dismissed in district court.⁵⁰ The lower court held that the ADA excluded “[gender] identity disorder[s] not resulting from physical impairments,” and that, as such, Williams’s gender dysphoria made her ineligible for ADA protection.⁵¹ Williams contended that gender dysphoria is not a gender identity disorder, and therefore the exclusionary language did not apply to her.⁵² Williams argued in the alternative that her gender dysphoria had an underlying physical basis, which would make the exclusion for “gender identity disorders not resulting from physical impairments” inapplicable.⁵³

On appeal, the Fourth Circuit first looked to legislative intent to interpret the ADA.⁵⁴ In 2008, the ADA did not define what a gender identity disorder is, nor did it mention gender dysphoria.⁵⁵ The *Williams* court noted that, in 1990, the medical community defined gender identity disorders as a class whose essential feature was “incongruence between assigned sex and gender identity,” but the medical community did not have an independent diagnosis for gender

44. *See id.*

45. *Id.*

46. *Id.* at 765.

47. A California study found that transgender people in prison were fifteen times more likely to be sexually assaulted than cisgender people. *See* VALERIE JENNESS, U.C. IRVINE CTR. FOR EVIDENCE-BASED CORR., *TRANSGENDER INMATES IN CALIFORNIA’S PRISONS: AN EMPIRICAL STUDY OF A VULNERABLE POPULATION* 29 (2009).

48. *See* Nora Neus, *Trans Women Are Still Incarcerated with Men and It’s Putting Their Lives at Risk*, CNN (June 23, 2021, 2:54 PM), <https://www.cnn.com/2021/06/23/us/trans-women-incarceration/index.html> [<https://perma.cc/JMX3-XGH7>]. A 2015 study revealed that one in five transgender inmates reported being sexually assaulted by staff or other inmates, as well as experiencing high rates of physical abuse. *See* SANDY E. JAMES, JODY L. HERMAN, SUSAN RANKIN, MARA KEISLING, LISA MOTTET & MA’AYAN ANAFI, *THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY* 15 (2016).

49. LAMBDA LEGAL, *TRANSGENDER RIGHTS TOOLKIT: A LEGAL GUIDE FOR TRANS PEOPLE AND THEIR ADVOCATES* 5 (2016), https://legacy.lambdalegal.org/sites/default/files/publications/downloads/2016_trans_toolkit_final.pdf [<https://perma.cc/Z6KD-NBY7>].

50. *Williams*, 45 F.4th at 763.

51. *Id.* at 765.

52. *See id.* at 766.

53. *Id.*

54. *Id.*

55. *See id.*; 42 U.S.C. § 12211(b) (2021).

dysphoria.⁵⁶ However, in 2013, the American Psychiatric Association (“APA”) removed “gender identity disorders” from the Diagnostic and Statistical Manual (“DSM”) and added the diagnosis of “gender dysphoria.”⁵⁷ The change aimed to avoid stigma, ensure clinical care, and communicate that gender nonconformity in itself was not a mental disorder.⁵⁸ Some transgender advocates saw this as a step toward removing stigma based on false stereotypes about gender identity and use of the word “disorder.”⁵⁹ The Fourth Circuit recognized the “dramatically” different definition of gender dysphoria and the meaningful shift in focus on the physical and “disabling” symptoms associated with gender dysphoria.⁶⁰

Furthermore, the court noted that being transgender is not a necessary condition for experiencing gender dysphoria.⁶¹ The shift in medical understanding explains that being transgender is an identity rather than a disability.⁶² Gender dysphoria, on the other hand, is defined by the *clinically significant* symptoms that some trans people may experience.⁶³ Indeed, research has shown that people with gender dysphoria have a brain structure more comparable to the gender with which they identify.⁶⁴ Individuals with gender dysphoria also suffer emotionally and psychologically, with suicide rates significantly above average.⁶⁵ Moreover, those with gender dysphoria may also have an anxiety predisposition, affecting self-perception and normal development of the brain in children.⁶⁶ Clearly, therefore, gender dysphoria differs from transgender identity. Given that gender dysphoria did not exist as a recognized diagnosis at the time the ADA was enacted, it could not fall under gender identity disorder.⁶⁷ Noting Congress’s intent for the ADA to be

56. *Williams*, 45 F.4th at 766.

57. *Gender Dysphoria Diagnosis*, *supra* note 38; AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 451–59 (5th ed. 2013); *see also Williams*, 45 F.4th at 767.

58. AM. PSYCHIATRIC ASS’N, GENDER DYSPHORIA 1 (2013), https://www.psychiatry.org/file%20library/psychiatrists/practice/dsm/apa_dsm-5-gender-dysphoria.pdf [<https://perma.cc/WR6N-97WR>].

59. Dani Heffernan, *The APA Removes “Gender Identity Disorder” from Updated Mental Health Guide*, GLAAD (Dec. 3, 2012), <https://www.glaad.org/blog/apa-removes-gender-identity-disorder-updated-mental-health-guide> [<https://perma.cc/6GBX-LLPT>].

60. *Williams*, 45 F.4th at 767–68.

61. If a transgender person does not experience “*clinically significant* distress,” they cannot be diagnosed with gender dysphoria under the DSM-5. *Id.*

62. *See id.*

63. *See id.* at 768.

64. *See* Ferdinand J.O. Boucher & Tudor I. Chinnah, *Gender Dysphoria: A Review Investigating the Relationship Between Genetic Influences and Brain Development*, 11 ADOLESCENT HEALTH, MED. & THERAPEUTICS 89, 90 (2020).

65. *See id.*

66. *See id.* at 97.

67. *See Williams*, 45 F.4th at 769.

construed broadly,⁶⁸ the court determined that holding the ADA applicable to gender dysphoria aligned with Congress’s intent to maximize protection for those with disabilities.⁶⁹

In addressing Williams’s alternative argument—that her gender dysphoria is the result of physical impairments—the court noted that the ADA itself does not define “physical impairments.”⁷⁰ Again, the court noted Congress’s instruction to construe “disability” broadly for the purposes of the ADA.⁷¹ The Equal Employment Opportunity Commission’s expansive interpretation defined physical impairments as any physiological disorder or condition that affects one or more body systems.⁷² The court considered this in addition to Williams having received long-term medical treatment, including hormone therapy, to manage and alleviate her gender dysphoria.⁷³ Without her treatment, Williams experienced “emotional, psychological, and *physical* distress.”⁷⁴ This was enough to render plausible the inference that her gender dysphoria “results from physical impairment[s].”⁷⁵

Through these broad statutory interpretations and references to modern medical understanding, the Fourth Circuit reversed the lower court’s dismissal of Williams’s ADA claim and remanded it for judgment in accordance with their broader interpretation of the ADA.⁷⁶ In short, this allowed Williams’s claim to survive dismissal for failure to state a claim.⁷⁷ In the long run, this means plaintiffs similar to Williams can bring claims under the ADA for relief. Analysis of litigation in the lower courts on this issue demonstrates the significance of this decision.

II. HOW OTHER JURISDICTIONS ANALYZE GENDER-DYSPHORIA ADA CLAIMS

Prior to 2017, no ADA discrimination claim based on transgender identity had succeeded.⁷⁸ This is because provisions in the ADA excluded

68. *Id.* at 766.

69. *Id.* at 769–70.

70. *Id.* at 770.

71. *Id.*

72. *See id.* (citing 28 C.F.R. § 35.108(b)(1)(i) (2023)).

73. *Id.* at 770–71.

74. *Id.*

75. *See id.* at 770–71; 42 U.S.C. § 12211(b)(1) (2021).

76. *Williams*, 45 F.4th at 779–80.

77. *Id.* at 774.

78. *See* Jeannette Cox, *Disability Law and Gender Identity Discrimination*, 81 U. PITT. L. REV. 315, 323 (2019).

“transsexualism,”⁷⁹ “transvestism,”⁸⁰ and “gender identity disorders not resulting from physical impairments.”⁸¹ At the time, Congress wanted to “legislate rules for the rest of society,” and thought that permitting disability discrimination law to apply to transgender people would eliminate the concept of “moral qualification[s]” for jobs or other positions.⁸² Congress evidently viewed trans people as lacking morals based on the text of the ADA exclusions, which placed being trans in the same category as gambling addictions, kleptomania, illegal drug use, and pedophilia.⁸³ Those who fell outside the ADA’s exclusion by having gender dysphoria resulting from physical impairments were often denied relief.⁸⁴

After 2017, there were three notable changes that shaped the landscape of trans litigation.⁸⁵ First, equal protection case law developed. Plaintiffs argued that the ADA’s exclusion of transgender people violated equal protection law. Courts avoided having to rule on these claims by reasoning that the ADA covered gender dysphoria.⁸⁶ Second, plaintiffs argued that their gender dysphoria resulted from physical impairments or had a physical cause.⁸⁷ Third, the change in the DSM—replacing “gender identity disorder” with “gender dysphoria”—removed much of the stigma disapproved of by transgender advocacy groups.⁸⁸ This change led transgender advocates to believe that, moving forward, disability claims based on gender dysphoria would not stigmatize the entire transgender community.⁸⁹

The ADA defines “disability” as “a physical or mental impairment that substantially limits one or more major life activities of [an] individual.”⁹⁰ “Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking,

79. According to the American Psychological Association, “transsexualism” refers to “a condition consisting of a persistent sense of discomfort and inappropriateness relating to one’s anatomical sex, with a persistent wish to be rid of one’s genitals and to live as a member of the other sex.” See AM. PSYCHOLOGICAL ASS’N, APA DICTIONARY OF PSYCHOLOGY 1103 (Gary R. VandenBos ed., 2d ed. 2015) (defining transsexualism).

80. “[T]he practice of adopting the dress, the manner, and sometimes the sexual role of the opposite sex.” *Transvestism*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/transvestism> [https://perma.cc/86MW-6UJ6].

81. 42 U.S.C. § 12211 (2021).

82. Cox, *supra* note 78, at 323–24.

83. See *id.* at 324.

84. See *id.* at 324–25.

85. See *id.* at 325–27.

86. See *id.* at 325–26.

87. *Id.*

88. See *id.* at 326.

89. See *id.* at 326–27.

90. 42 U.S.C. § 12102(1)(A) (2021).

communicating, and working.”⁹¹ The ADA also allows plaintiffs to argue that their gender identity disorder resulted from a physical impairment.⁹² Generally, this argument has been unsuccessful.⁹³ However, the courts that have addressed the issue have taken different approaches.⁹⁴ Some have considered the fact that gender dysphoria refers to the disabling distress individuals feel, reasoning that gender dysphoria would therefore not be excluded under the ADA.⁹⁵

A. *The Majority Approach—Denial of ADA Claims for Gender Dysphoria*

The majority approach that courts have used to deny claims brought under the ADA based on gender dysphoria is a strict, textualist approach based on Congress’s decision “to exclude from the ADA’s protection both disabling and nondisabling gender identity disorders that do not result from a physical impairment.”⁹⁶ The Southern District of New York has used this approach, as exemplified in *Barker v. Women in Need, Inc.*,⁹⁷ where a transgender woman’s discrimination claim was denied because the ADA specifically excludes “gender identity disorder” from classification as a disability.⁹⁸ The district-level courts in the Fifth, Eighth, Ninth, and Eleventh Circuits have also adhered strictly to the ADA’s exclusionary provisions.⁹⁹ For those courts, “gender dysphoria” was simply a replacement term for “gender identity disorder,” rather than a completely different diagnosis.¹⁰⁰

B. *Other Approaches—Accepting ADA Protections*

A second approach has been to hold that gender dysphoria falls outside of the ADA exclusion so long as the condition substantially limits the plaintiff’s

91. *Id.* § 12102(2)(A).

92. Jennifer Cobb & Myra McKenzie-Harris, “*And Justice for All*” . . . *Maybe: Transgender Employee Rights in America*, 34 ABA J. LAB. & EMP. L. 91, 98 (2019).

93. *See id.* at 99.

94. *See* London v. Evans, No. 19-559, 2019 WL 5726983, at *6 n.3 (D. Del. Nov. 5, 2019); Doe v. Pa. Dep’t of Corr., No. 20-cv-00023, 2021 WL 1583556, at *8–10 (W.D. Pa. Feb. 19, 2021).

95. *See* Cobb & McKenzie-Harris, *supra* note 92, at 99.

96. *Pa. Dep’t of Corr.*, 2021 WL 1583556, at *8.

97. No. 20-CV-2006, 2020 WL 1922633 (S.D.N.Y. Apr. 20, 2020).

98. *See id.* at *2.

99. *See* Manson v. Careington Int’l Corp., No. 42:0-CV-00916, 2021 WL 3912536, at *4 (E.D. Tex. Aug. 6, 2021); Duncan v. Jack Henry & Assocs., 617 F. Supp. 3d 1011, 1051–52 (W.D. Mo. 2022); Scutt v. Carbonaro CPAs n Mgmt. Grp., No. 20-00362, 2020 WL 5880715, at *5 (D. Haw. Oct. 2, 2020); Doe v. Northrop Grumman Sys. Corp., 418 F. Supp. 3d 921, 930 (N.D. Ala. 2019).

100. *Doe*, 418 F. Supp. 3d at 930 (“[T]his court concludes that a condition of “gender dysphoria” [formerly described as a “gender identity disorder”] that does not result from a physical impairment is expressly excluded from the definition of disabilities covered by the Americans with Disabilities Act.”).

major life activities.¹⁰¹ In *Doe v. Massachusetts Department of Correction*,¹⁰² the plaintiff claimed that her gender dysphoria was a disability because it impaired her ability to reproduce, making it a “physiological disorder or condition.”¹⁰³ She further contended that a person with gender dysphoria does not produce hormones consistent with their gender identity, leading to lifelong treatment through the administration of hormone therapy to feminize the body, which—for her—left her incapable of reproduction.¹⁰⁴ This line of reasoning aligned with the definition of “disability” because it affected a major bodily function.¹⁰⁵ The U.S. District Court for the District of Massachusetts concluded that the plaintiff had proven that her gender dysphoria may result from physical impairment.¹⁰⁶ However, the court did not take an affirmative stance on whether gender dysphoria generally has underlying physical causes.¹⁰⁷

A third approach recognizes that gender dysphoria itself may not fall under the exclusion for gender identity disorders “not resulting from physical impairments.”¹⁰⁸ In a leading case, *Blatt v. Cabela’s Retail, Inc.*,¹⁰⁹ the Eastern District of Pennsylvania recognized that “gender dysphoria” is not excluded by the ADA because it describes the clinically significant distress that some transgender people experience.¹¹⁰ *Blatt* enabled transgender people to pursue ADA civil rights protections if they have, have had, or are perceived as having gender dysphoria.¹¹¹

Other courts have acknowledged approaches similar to the approach in *Blatt*, but have not further analyzed the issue.¹¹² In *Doe v. Triangle Doughnuts, LLC*,¹¹³ the Eastern District of Pennsylvania acknowledged that there are disagreements as to whether gender dysphoria falls into the category of “gender identity disorders.”¹¹⁴ The *Triangle Doughnuts* court acknowledged the district

101. *Pa. Dep’t of Corr.*, 2021 WL 1583556, at *8; *see also Blatt v. Cabela’s Retail, Inc.*, No. 14-cv-04822, 2017 WL 2178123, at *4 (E.D. Pa. May 18, 2017); *Doe v. Triangle Doughnuts, LLC*, 472 F. Supp. 3d 115, 134–35 (E.D. Pa. 2020).

102. No. 17-12255, 2018 WL 2994403 (D. Mass. June 14, 2018).

103. *Id.* at *5.

104. *See id.*

105. *See id.*; 42 U.S.C. § 12102(2)(B) (2021).

106. *See Mass. Dep’t of Corr.*, 2018 WL 2994403, at *5.

107. *See id.* at *7.

108. *Id.* at *6; *see Doe v. Pa. Dep’t of Corr.*, No. 20-cv-00023, 2021 WL 1583556, at *9 (W.D. Pa. Feb. 19, 2021); *see also Tay v. Dennison*, No. 19-cv-00501, 2020 WL 2100761, at *3 (S.D. Ill. May 1, 2020).

109. No. 14-cv-04822, 2017 WL 2178123 (E.D. Pa. May 18, 2017).

110. *Id.* at *1; *see Gender Dysphoria Discrimination*, ADA PROJECT, <http://www.adalawproject.org/gender-dysphoria-discrimination> [<https://perma.cc/4W6W-MEYM>]. The U.S. Department of Justice under both the Obama and Trump administrations reached the same conclusion. *See id.*

111. *See id.* It should be noted that *Blatt* is a lower court decision, and therefore not binding.

112. *See Doe v. Triangle Doughnuts, LLC*, 472 F. Supp. 3d 115, 134 (E.D. Pa. 2020).

113. *Id.*

114. *See id.* at 134.

court's interpretation in *Doe v. Massachusetts Department of Correction* that gender dysphoria may have physical causes, such as hormonal and genetic drivers.¹¹⁵ While the court in *Triangle Doughnuts* did not take a firm stance on whether the plaintiff's condition qualified for protection under the ADA, it allowed the claim to survive a motion to dismiss.¹¹⁶

Similarly, the court in *Parker v. Strawser Construction, Inc.*¹¹⁷ noted that there is medical evidence that persons with gender dysphoria exhibit differences in brain structure and physiological responses.¹¹⁸ However, the court did not consider external evidence, nor was it convinced that a mere difference in brain structure or physiology by itself is necessarily a "physical impairment."¹¹⁹ The court pointed out that the language excluding gender identity disorders signaled the legislature's intent.¹²⁰

In contrast, the Southern District of Illinois, in *Venson v. Gregson*,¹²¹ held that the exclusion of gender dysphoria from the definition of disability under the ADA is "not nearly as straightforward."¹²² While the court did not analyze the issue further or define what would be considered a physical impairment, it did acknowledge there was a valid claim where the prison's failure to accommodate the plaintiff's gender dysphoria made her susceptible to sexual violence.¹²³

III. ANALYSIS AND CRITIQUE OF *WILLIAMS V. KINCAID*

The *Williams* decision has been applauded for protecting transgender people from discrimination under the ADA in all public institutions, including the carceral system.¹²⁴ It is also a step toward greater protection of individuals who do not identify within the gender binary.¹²⁵ The Fourth Circuit's approach is similar to the *Blatt* court's broader approach to interpreting the ADA, recognizing that gender dysphoria may not be excluded from the statute after all.¹²⁶ This approach follows an understanding of gender dysphoria as a clinical

115. *See id.*; *Doe v. Mass. Dep't of Corr.*, No. 17-12255, 2018 WL 2994403, at *6 (D. Mass. June 14, 2018).

116. *Triangle Doughnuts*, 472 F. Supp. 3d at 133.

117. 307 F. Supp. 3d 744 (S.D. Ohio 2018).

118. *Id.* at 754.

119. *See id.* at 755.

120. *See id.*

121. No. 18-CV-2185, 2021 WL 673371 (S.D. Ill. Feb. 22, 2021).

122. *Id.* at *2.

123. *See id.*

124. *Williams v. Kincaid*, GLAD, *supra* note 28.

125. *Id.*

126. *See Blatt v. Cabela's Retail, Inc.*, No. 14-cv-04822, 2017 WL 2178123, at *4 (E.D. Pa. May 18, 2017); *see also* ADA PROJECT, *supra* note 110.

condition separate from gender identity disorders.¹²⁷ Ultimately, the decision will enable more people in Williams's position to make a discrimination claim and receive the gender-affirming care they need.¹²⁸

The court also avoids relying solely on Williams's medical history to support the argument that her gender dysphoria results from a physical impairment, which would put her outside of the ADA's exclusion for gender dysphoria. Generally, "the treatment for gender dysphoria is gender transition—the process of living consistently with one's gender identity—which can include an individualized combination of hormone therapy, surgery, and/or psychotherapy."¹²⁹ Such reasoning would have left unclear whether the same remedy could be extended to those who lack access to healthcare, especially gender-affirming care for trans people, which is often limited.

But while the court's decision provides a way for transgender people to argue for protection from discrimination, it is still cause for concern about stigma. The recognition of gender dysphoria in the DSM invites likening trans identity with mental illness diagnoses.¹³⁰ In the past, including homosexuality in the DSM was used as justification for "[t]herapies to cure homosexuality, such as gay conversion therapy," which are now understood to be harmful and traumatic, especially when applied to minors.¹³¹ Accordingly, gay, lesbian, and bisexual persons have fought to be excluded from the DSM because they wanted to be removed from medical discourse that pathologizes an aspect of their identity.¹³² The removal of homosexuality from the DSM was celebrated as a major milestone of the gay civil rights movement.¹³³

In contrast, trans people may need to be included in medical contexts because they need access to hormones or other counseling and medical care that is inaccessible without the textual support for treatment that the DSM provides.¹³⁴ Fortunately, the Fourth Circuit acknowledged that the recent DSM-V's diagnosis of gender dysphoria provides that being transgender is not a disability and affirms that a transgender person's medical needs are just as

127. Lauren Zazzara, *Gender Dysphoria Recognized as an ADA Disability*, HEINONLINE BLOG (Oct. 5, 2022), <https://home.heinonline.org/blog/2022/10/gender-dysphoria-recognized-as-an-ada-disability> [<https://perma.cc/W624-ENMF>].

128. *Williams v. Kincaid*, GLAD, *supra* note 28.

129. *Id.*

130. Smith, *supra* note 30.

131. Lance Wahlert & Sabrina Gill, *Pathological, Disabled, Transgender: The Ethics, History, Laws, and Contradictions in Models that Best Serve Transgender Rights*, 27 KENNEDY INST. ETHICS J. 249, 260 (2017).

132. *Id.* at 259–60.

133. *Id.* at 260.

134. *See id.*

deserving of treatment and protection as anyone else's.¹³⁵ The term "gender dysphoria" was used intentionally to alleviate such stigma against transgender persons, and the APA even explicitly states in the DSM-V that "gender nonconformity is not in itself a mental disorder," and that "the critical element of gender dysphoria is the presence of clinically significant distress associated with the condition."¹³⁶ The shift in diagnostic terminology was designed to fight stigma surrounding trans identities by addressing symptoms of distress as the problem, rather than singling out trans identities themselves as the issue that needs to be fixed.¹³⁷

A critique of using disability law as a vehicle for vindicating transgender rights generally is that it pathologizes trans people.¹³⁸ Prior to the decision in *Williams v. Kincaid*, cases with similar facts in other circuits have required courts to view the plaintiff's identity as a "physical impairment."¹³⁹ This was problematic because people's only option to access legal protections was to classify their identity as a mental condition or disorder.¹⁴⁰ Litigating gender identity in court also meant that the people seeking protection would have to go through the personal, invasive, and often expensive process of navigating both the legal and medical systems.¹⁴¹ Moreover, being both trans and labeled as disabled can be further marginalizing, especially given that such diagnoses have historically not been due to legal strategy but were imposed on people against their will.¹⁴²

Feminist and queer theorists have also rejected the idea that there is a physical or biological etiology for gender dysphoria, because it would imply that biology is a determinative factor in "the making of the gendered body."¹⁴³ It reinforces a dichotomy between cisgender individuals and trans individuals, who are othered and perceived as if they need treatment due to a biological shortcoming.¹⁴⁴ To be diagnosed at all signals that one is abnormal, further leading trans individuals to be perceived as "other."¹⁴⁵

135. Robert Iafolla, *Transgender Workers' Rights Expanded by Gender Dysphoria Ruling*, BLOOMBERG L. (Aug. 18, 2022, 5:15 AM), <https://news.bloomberglaw.com/daily-labor-report/transgender-workers-rights-expanded-by-gender-dysphoria-ruling> [<https://perma.cc/Y2FG-W6VE> (dark archive)].

136. Wahlert & Gill, *supra* note 131, at 259.

137. Smith, *supra* note 30.

138. See Zach Strassburger, *Disability Law and the Disability Rights Movement for Transpeople*, 24 YALE J.L. & FEMINISM 337, 343 (2012).

139. See Cox, *supra* note 78, at 343.

140. See Strassburger, *supra* note 138, at 363–64.

141. See *id.*

142. See Szemanski, *supra* note 11, at 160.

143. See *id.*

144. See *id.* at 160.

145. See *id.*

Yet, ultimately, the resistance to using disability law as a vehicle for protection for trans persons may be harmful too.¹⁴⁶ It also disserves transgender people by ignoring the “powerful legal protections” that the ADA can provide, which cover the kinds of discrimination that transgender people face and that sex discrimination laws do not sufficiently cover.¹⁴⁷ For example, many sex discrimination statutes do not apply to a range of state and local government programs and services, including prisons, which are disproportionately populated by transgender people.¹⁴⁸ Federal disability rights laws can protect against discrimination in such settings.¹⁴⁹ Sex discrimination statutes also do not require “the kind of individualized, reasonable accommodations some transgender people seek to navigate a world in which sex-segregation policies and practices are commonplace.”¹⁵⁰ Ultimately, existing as a transgender person or having a gender-incongruent identity can lead to discrimination or prevent access to necessary services in areas where disability law is more protective, such as healthcare, housing, and employment.¹⁵¹ Thus, disability law may be a more effective and inclusive source of protection against discrimination and harassment for transgender and gender-nonconforming people.¹⁵²

Additionally, a central goal of the ADA is to legitimize and safeguard financial and legal protections for those who face discrimination because of stigma.¹⁵³ The histories of both trans rights and disability rights involve marginalization of trans and disabled people’s identities and lived experiences, as well as struggles for autonomy to resist that marginalization.¹⁵⁴ For both trans and disabled people, the struggle has often involved navigating an unfair system.¹⁵⁵ Some trans people have accepted medicalization in return for accessing treatment despite knowing that construing gender as a medical condition can be problematic.¹⁵⁶ Advocates for trans rights, like those for disability rights, have made do with what they have in order to survive in the short term.¹⁵⁷ But should making do—settling—be the path forward for protecting individuals’ civil rights?

146. Barry & Levi, *supra* note 20.

147. *See id.*

148. *See id.*

149. *See id.*

150. *Id.*

151. *See* Wahlert & Gill, *supra* note 131, at 258–59.

152. *See id.* at 251.

153. *See id.*

154. *See* Szemanski, *supra* note 11, at 164; *see also* Smith, *supra* note 30.

155. *See id.*

156. *See id.*

157. *See id.*

Disability law has been and can continue to be especially useful in the context of incarceration. For example, Angelina Resto was the first incarcerated trans person in the country to secure a transfer from a men's prison to a women's prison and did so by successfully arguing that the Massachusetts Department of Corrections failed to reasonably accommodate her, in violation of federal disability rights laws.¹⁵⁸ Resto had been diagnosed with gender dysphoria and underwent a transition forty years before her sentence but was placed in a male prison.¹⁵⁹ She was subject to assault and abuse during her time there, so she sued to be transferred to a women's prison.¹⁶⁰

In recent years, numerous incarcerated people have successfully stated claims that prison officials violated federal disability rights laws by housing them according to their sex assigned at birth and denying them medical care to support their gender transition.¹⁶¹ The promise of ADA protection can provide plaintiffs like Resto and Williams with the ability to not only receive the medical care they need but also the accommodations they need, such as placement in facilities that match their gender identity.¹⁶²

Finally, within the employment context, the ADA goes beyond just prohibiting bias to require that employers provide reasonable accommodations.¹⁶³ For workers with gender dysphoria, this could mean being granted leave for medical procedures or hormone therapy, as well as modifications to bathroom or dress-code policies.¹⁶⁴ If a person tells their employer that they are transitioning, disability law can help to ensure they are able to continue to do their job with appropriate accommodations.¹⁶⁵

IV. THE PATH FORWARD

The path forward in this area of law invites more questions. With gender dysphoria being held as a separate, clinical condition—even if the reliance is no longer on showing “physical impairment”—how does one prove they are gender dysphoric unless they have a documented medical history of experiencing symptoms, like Williams did? This question is important because the United

158. Barry & Levi, *supra* note 20.

159. Doe v. Massachusetts Department of Correction, GLAD, <https://www.glad.org/cases/doe-v-massachusetts-department-correction> [<https://perma.cc/SRN8-FMBX>] [hereinafter Doe v. Massachusetts Department of Correction, GLAD].

160. Barry & Levi, *supra* note 20.

161. *See id.*

162. *See* Doe v. Massachusetts Department of Correction, GLAD, *supra* note 159.

163. Iafolla, *supra* note 135.

164. *See id.*

165. *See id.*

States generally has inequities in access to health care, mental and physical health, and a variety of other health conditions.¹⁶⁶

Cost is a prime contributor to such inequities. A study using data from TransPop, the first national probability survey of trans people, found that despite equally high rates of health insurance coverage between transgender and cisgender participants, trans people often avoided care due to cost concerns.¹⁶⁷ Nonbinary individuals were even less likely than trans people to access transgender-related health care.¹⁶⁸ Nonbinary individuals were also more likely to live in poverty than cisgender participants.¹⁶⁹

Access is another issue. Of transgender participants, 63.9 percent had not been to a transgender-specific clinic or provider in the last five years.¹⁷⁰ Nonbinary persons were even less likely to have done so than trans people.¹⁷¹ However, more than 80 percent of participants said they would like to access a LGBT clinic or provider if it were available.¹⁷²

Ultimately, utilizing disability law for protection against discrimination is an “imperfect compromise” because one’s trans identity should not be considered a pathology.¹⁷³ Transgender patients who want to access services like hormones, surgery, counseling, and other transition-related treatment need a diagnosis of “gender dysphoria” to receive referrals and request insurance coverage.¹⁷⁴ Those who want to change their name or gender on legal documents may also need formal documentation from medical providers.¹⁷⁵ Some workplaces may require similar documentation from transgender employees in order to provide accommodations.¹⁷⁶ In other words, transgender people would have to go through the potentially humiliating medical process and pathologize themselves to receive ADA accommodations or protections.¹⁷⁷ Ultimately, they should not have to be pathologized at all. Receiving ADA protections should be about making the world accessible for everyone, not treating someone for a perceived shortcoming.

166. Jamie L. Feldman, Winston Ekaprasetia Luhur, Jody L. Herman, Tonia Poteat & Ilan H. Meyer, *Health and Health Care Access in the US Transgender Population Health (TransPop) Survey*, 9 *ANDROLOGY* 1707, 1708 (2021).

167. *See id.* at 1707.

168. *See id.*

169. *See id.* at 1710.

170. *Id.* at 1711.

171. *Id.*

172. *Id.*

173. Smith, *supra* note 30.

174. *See id.*

175. *Id.*

176. *See id.*

177. *See id.*

The consequences of relying on disability law for nondisabled marginalized communities have been seen before.¹⁷⁸ Advocates for “conversion therapy” have used the inclusion of gender dysphoria as a medical condition in the DSM to suggest that it’s possible to “cure” transgender youth.¹⁷⁹ Some use the language of disability to describe transgender people as “diseased and depraved.”¹⁸⁰ This language makes some people feel justified in arguing that trans people lack morals—we live in a society “where being sick is considered bad and sometimes treated as a moral failing.”¹⁸¹ This phenomenon parallels how LGBTQ¹⁸² communities were described when “homosexuality” was listed in the DSM.¹⁸³ The distinction that the Fourth Circuit makes between gender dysphoria and gender may be legally significant, but that does not necessarily guarantee that society will understand those differences in a way that avoids stigma.¹⁸⁴

CONCLUSION

The intersection of disability, gender identity, sexuality, and law is complex. The *Williams* court did its best given the frameworks that exist, but relying on disability law to protect trans rights is likely to have significant consequences that stand to further marginalize the transgender community. The court aimed to broaden the protections of the ADA, as opposed to advocating for amending the exclusionary provisions. However, merely acknowledging that there is a constitutional question¹⁸⁵ of whether the ADA exclusions should survive, without going further, leaves much unsettled. Considering that these legal categorizations affect people’s ability to not only be protected from discrimination but also to access medical care, the question is likely to continue to be litigated. Hopefully, when it is, courts will see an opportunity to provide a meaningful path forward for the many individuals, like *Williams*, whose lives depend on the recognition and appreciation of their identities and humanity.

178. *See id.*

179. *See id.*

180. *Id.*

181. *Id.*

182. This acronym stands for “lesbian, gay, bisexual, and queer.”

183. *See Smith, supra* note 30.

184. In *Blatt*, the original court carefully distinguished between the plaintiff’s “gender” (not a pathology) and “gender dysphoria” (a symptom experienced by some trans people), but its distinction does not guarantee a society-wide understanding of the subtle difference between the terms. *See id.* The court alluded to another legal consideration that it ultimately did not decide: whether the exceptions in the ADA violate the Equal Protection Clause of the 14th Amendment. *Iafolla, supra* note 135.

185. *See Williams v. Kincaid*, 45 F.4th 759, 772–74 (4th Cir. 2022) (discussing avoidance of constitutionality of a statute where a different construction allows for it).

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