No. 23-1769

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHRISTIAN HEALTHCARE CENTERS, INC.,

PLAINTIFF-APPELLANT,

V.

DANA NESSEL; JOHN E. JOHNSON, JR.; PORTIA L. ROBERSON; ZENNA FARAJ ELHASON; GLORIA E. LARA; REGINA GASCO-BENTLEY; ANUPAMA KOSARAJU; RICHARD CORRIVEAU; DAVID WORTHAMS, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE MICHIGAN CIVIL RIGHTS COMMISSION,

DEFENDANTS-APPELLEES.

On Appeal from the United States District Court
for the Western District of Michigan,
Case No. 1:22-cv-787

BRIEF OF *AMICUS CURIAE* ETHICS AND PUBLIC POLICY CENTER IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

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TABLE OF CONTENTS

Page

CORPORATE DISCLOSURE STATEMENT i

TABLE OF AUTHORITIES iv

STATEMENT OF INTEREST OF *AMICUS CURIAE* 1

INTRODUCTION AND SUMMARY OF ARGUMENT 3

ARGUMENT 5

I. There is no national or international medical consensus regarding an authoritative standard of care for gender dysphoria. 5

A. There is no consensus within the medical profession historically.. 5

B. There is a lack of evidence to support gender-transition interventions. 14

C. WPATH and Endocrine Society guidelines are not the standard of care. 18

D. The lack of medical consensus is reflected internationally. .. 24

E. The federal government has recognized the lack of medical consensus. 30

F. State action reflects the lack of medical consensus. 32

II. Gender-transition interventions can lead to serious harms. 33

III. The district court's standing analysis is at odds with other circuits and would undermine this Court's ability to protect fundamental rights... 37

CONCLUSION 40

CERTIFICATE OF COMPLIANCE... 41

CERTIFICATE OF SERVICE... 42

TABLE OF AUTHORITIES

Cases

Doe v. Snyder,
28 F.4th 103 (9th Cir. 2022) 23

Edmo v. Corizon, Inc.,
935 F.3d 757 (9th Cir. 2019) (per curiam) 24

Franciscan All., Inc. v. Becerra,
47 F.4th 368 (5th Cir. 2022) 39

Gibson v. Collier,
920 F.3d 212 (5th Cir. 2019)...23

Keohane v. Fla. Dep't of Corr. Sec'y,
952 F.3d 1257 (11th Cir. 2020)...24

Kosilek v. Spencer,
774 F.3d 63 (1st Cir. 2014) 23

L. W. by & through Williams v. Skrmetti, No. 23-5600,
2023 WL 6321688 (6th Cir. Sept. 28, 2023) 33

List v. Driehaus,
573 U.S. 149 (2014)..38

Religious Sisters of Mercy v. Becerra,
55 F.4th 583 (8th Cir. 2022). 39

Other Authorities

@segm_ebm, Twitter (Mar. 31, 2023, 7:54 PM),
https://twitter.com/segm_ebm/status/1641952056088096769............20

@segm_ebm, Twitter (Mar. 9, 2023, 8:24 PM),
https://twitter.com/segm_ebm/status/1634032333618819073............28

Abigail Shrier, *Top Trans Doctors Blow the Whistle on "Sloppy" Care*, Real Clear Politics, Oct. 5, 2021 .... 23, 36

Alison Clayton, *The Gender Affirmative Treatment Model for Youth with Gender Dysphoria: A Medical Advance or Dangerous Medicine?*, 51 Archives Sexual Behav. 691 (2022) 37

Amets Suess Schwend, *Trans Health Care from a Depathologization and Human Rights Perspective*, 41 Pub. Health Rev. 1, 4 (2020), ... 8

Annelou L.C. de Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 Pediatrics 696 (2014) 10

Becky McCall, *NHS Makes Child Gender Identity Service Changes After High Court Ruling*, Medscape, Dec. 4, 2020 26

Berendien Tetelepta, *More Research Is Urgently Needed into Transgender Care for Young People: "Where does the Large Increase of Children Come From?"*, Voorzij, Feb. 27, 2021 15

Bernard Lane, *Yes, it's an experiment: Norway joins the shift to caution on gender medicine*, Gender Clinic News, March 9, 2023 30

Cass Review, *Interim Report* (Feb. 2022) 27

Cecilia Dhejne et al., *Long-term Follow-up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 6 PLoS ONE e16885 (2011) 33

Center for Gender Surgery: Conditions & Procedures, Boston Children's Hospital 12

Chantel M. Wiepjes et al., *Trends in Suicide Death Risk in Transgender People: Results from the Amsterdam Cohort of Gender Dysphoria Study (1972-2017)*, 141 Acta Psychiatrica Scandinavica 486 (2020) 33

Christine & Dan Karasic, *Age Is Just a Number: WPATH-Affiliated Surgeons' Experiences and Attitudes Toward Vaginoplasty in Transgender Females Under 18 Years of Age in the United States*, 14 J. Sex Med. 624 (2017) 12

CMS, *Decision Memo for Gender Dysphoria and Gender Reassignment Surgery*, CAG–00446N, Aug. 30, 2016 .... 19, 31

Comprehensive Care Clinics, Human Rights Campaign Found., https://www.thehrcfoundation.org/professional-resources/comprehensive-care-clinics 13

David S. Hong et al., *Sex Hormone Effects on Neurodevelopment: Controlled Puberty in Transgender Adolescents*, NIH RePORTER (2020), ... 17

Dep't of Defense, *Report and Recommendations on Military Service by Transgender Persons* 5 (Feb. 22, 2018) 32

Devita Singh et al., *A Follow-Up Study of Boys with Gender Identity Disorder*, 12 Front. Psychiatry 632784 (2021) 8, 34

Diane Chen et al., *Consensus Parameter: Research Methodologies to Evaluate Neurodevelopmental Effects of Pubertal Suppression in Transgender Youth*, 5 Transgender Health 246 (2020) 35

E. Abbruzzese et al., *The Myth of "Reliable Research" in Pediatric Gender Medicine: A Critical Evaluation of the Dutch Studies—and Research that Has Followed*, J. Sex & Marital Therapy (2023) 18

E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Ver. 8*, 23 Int'l J. Transgender Health S1 (2022) 13

Edwards-Leeper et al., *Psychological Evaluation and Medical Treatment of Transgender Youth in an Interdisciplinary "Gender Management Service" (GeMS) in a Major Pediatric Center*, 59 J. Homosexuality 321 (2012) 9

Elizabeth R. Boskey et al., *Ethical Issues Considered when Establishing a Pediatric Gender Surgery Center*, 143 Pediatrics 1 (2019) 12

EPPC, *Amicus Briefs: "Gender Transition" Interventions*, https://eppc.org/amicus-briefs/#16-%E2%80%9Cgender-transition%E2%80%9D-interventions-. 3

Eric Nelson et al., *The Impact of Pubertal Suppression on Adolescent Neural and Mental Health Trajectories*, NIH RePORTER (2022) 17

Facts About Anti-Trans Youth Bills, Fenway Health (2022), https://fenwayhealth.org/the-fenway-institute/health-policy/transyouthmatter/ 18

Florida Agency for Health Care Admin., *Florida Medicaid: Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria* (June 2022) 15

Frieda Klotz, *The Fractious Evolution of Pediatric Transgender Medicine*, Undark.org (Apr. 6, 2022) 16

Gender Dysphoria Diagnosis, APA (2017) 5

Gender Multispecialty Clinic (GeMS): Your Visit, Boston Children's Hospital, https://www.childrenshospital.org/programs/gender-multispecialty-service/your-visit 22

Gender-Affirming Hormone in Children and Adolescents, BJM EBM Spotlight (Feb. 25, 2019) 36

Hilary Cass, *Review of Gender Identity Services for Children and Young People*, BMJ 376 (2022) 27

Hilary Cass, *The Cass Review: Independent review of gender identity services for children and young people: Interim report*, NHS England 2022 29

Institute of Medicine (US) Committee on Standards for Developing Trustworthy Clinical Practice Guidelines, *Clinical Practice Guidelines We Can Trust*, at 3 (Robin Graham et al. eds., 2011)....... 19

J. Block, *Gender Dysphoria in Young People Is Rising—And so Is Professional Disagreement*, 380 BMJ 382 (2023).................... 21, 22, 23

Jack Turbian, ed., *What Is Gender Dysphoria?*, APA (Aug. 2022)........... 6

James S. Morandini, et al. *Is Social Gender Transition Associated with Mental Health Status in Children and Adolescents with Gender Dysphoria*?. 52 Arch Sex Behav 1045 (2023).......................... 30

Johanna Olson-Kennedy et al., *Chest Reconstruction and Chest Dysphoria in Transmasculine Minors and Young Adults: Comparisons of Nonsurgical and Postsurgical Cohorts*, 172 JAMA Pediatrics 431 (2018).. 37

Johanna Olson-Kennedy et al., *Creating the Trans Youth Research Network: A Collaborative Research Endeavor*, 4 Transgender Health 304 (2019) 16

Juliana Bunim, *First U.S. Study of Transgender Youth Funded by NIH*, U.C.S.F., Aug. 17, 2015 32

Karl Gerritse et al., *Decision-Making Approaches in Transgender Healthcare: Conceptual Analysis and Ethical Implications*, 24 Med. Health Care Philos. 687 (2021) 6, 7

Kenneth J. Zucker, *Adolescents with Gender Dysphoria: Reflections on Some Contemporary Clinical and Research Issues*, 48 Archives Sexual Behav. 1983 (2019) 34

Laurel Duggan, *"We Were Wrong": Pioneer in Child Gender Swaps Makes Damning Admission*, WND News Servs., Mar. 12, 2023........ 18

Lauren Lewis, *NHS's Only Gender Service for Children Believes All Girls Who Don't Like 'Pink Ribbons and Dollies' Must Be Transgender, Whistleblower Claims*, Daily Mail, Nov. 22, 2021........ 25

Lauwke Vandendriessche Pano, *Fierce Debate About Puberty Inhibitors and Male/Female Hormones: What You are Doing Is an Experiment on Children*, VRT News, Mar. 29, 2023 20

Leor Sapir, *"Trust the Experts" Is not Enough: U.S. Medical Groups Get the Science Wrong on Pediatric "Gender Affirming Care"*, Manhattan Inst. (Oct. 17, 2022), https://www.manhattan-institute.org/how-to-respond-to-medical-authorities-claiming-gender-affirming-care-is-safe 14

Lisa Littman, *Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners*, 50 Archives Sexual Behav. 3353 (2021) 35

Lisa Nainggolan, *Hormonal Tx of Youth with Gender Dysphoria Stops in Sweden*, Medscape (2021) 25

Madeline B. Deutsch et al., *What's in a Guideline? Developing Collaborative and Sound Research Designs that Substantiate Best Practice Recommendations for Transgender Health Care*, 18 AMA J. Ethics 1098 (2016) 14, 19

Madeline B. Deutsch, *Overview of Gender-Affirming Procedures*, Univ. Cal. S.F. Transgender Care (June 17, 2016), https://transcare.ucsf.edu/guidelines/overview 18

Mary Rice Hasson, *Erasing Females in Language and Law*, 11 J. OF CHRISTIAN LEGAL THOUGHT 44 (Oct. 2011) 2

Max Lichtenstein et al., *The Mount Sinai Patient-Centered Preoperative Criteria Meant to Optimize Outcomes Are Less of a Barrier to Care than WPATH SOC 7 Criteria Before Transgender-Specific Surgery*, 5 Transgender Health 166 (2020), ... 22

Michael Biggs, *The Dutch Protocol for Juvenile Transsexuals: Origins and Evidence*, Journal of Sex & Marital Therapy (Sept. 19, 2022) 11

NICE, *Evidence Review: Gender-Affirming Hormones for Children and Adolescents with Gender Dysphoria* (2021) 26, 35

NICE, *Evidence Review: Gonadotrophin Releasing Hormone Analogues for Children and Adolescents with Gender Dysphoria* (2021) 26

NIH, *The Impact of Early Medical Treatment in Transgender Youth*, NIH Project No. 5R01HD082554-07, NIH RePORTER (2022) 16

Pagan Kennedy, *Q & A with Norman Spack*, Boston Globe, Mar. 30, 2008 9

PALKO/COHERE Finland, *Recommendation of the Council for Choices in Health Care in Finlan: Medical Treatment Methods for Dysphoria Related to Gender Variance in Minors* (2020) 25

Peggy Cohen-Kettenis et al., *The Treatment of Adolescent Transsexuals: Changing Insights*, 5 J. Sexual Med. 1892 (2008) 9

Polly Carmichael et al., *Short-Term Outcomes of Pubertal Suppression in a Selected Cohort of 12 to 15 Year Old Young People with Persistent Gender Dysphoria in the UK*, 16 PLoS ONE (2021) 11, 34, 35

Position Statement, The Royal Australian and New Zealand College of Psychiatrists, *Recognising and Addressing the Mental Health Needs of People Experiencing Gender Dysphoria/Gender Incongruence*, Aug. 2021 .... 27, 29

Press Release, French National Academy of Medicine, *Medicine and Gender Transidentity in Children and Adolescents* (Feb. 25, 2022) 28

Rachel Morrison, *Gender Identity Policy Under the Biden Administration*, 23 FED. SOC. REV. 85 (2022) 2

Recommendation of the Council for Choices in Health Care in Finland (PALKO / COHERE Finland): *Medical Treatment*

Methods for Dysphoria Related to Gender Variance in Minors (2020) 29

Roberto D'Angelo et al., *One Size Does Not Fit All: In Support of Psychotherapy for Gender Dysphoria*, 50 Archives Sexual Behav. 7 (2020) 33

Sara Dahlen et al., *International Clinical Practice Guidelines for Gender Minority/Trans People: Systematic Review and Quality Assessment*, 11 BMJ Open 1 (2021) 19

SEGM, *Denmark Joins the List of Countries That Have Sharply Restricted Youth Gender Transitions*, Aug. 17, 2023, https://segm.org/Denmark-sharply-restricts-youth-gender-transitions 30

Socialstyrelsen, *Support, Investigation and Hormone Treatment for Gender Incongruence in Children and Adolescents* (2022) 25, 29

Steensma, T., et al, *Factors Associated with Desistence and Persistence of Childhood Gender Dysphoria: A Quantitative Follow-Up Study*, J. of Am. Acad. of Child & Adolescent Psychiatry 52 (2013): 582-90 29

Stephen B. Levine et al., *Reconsidering Informed Consent for Trans-Identified Children, Adolescents, and Young Adults*, 48 J. Sex & Marital Therapy 706 (2022) 11

Stephen B. Levine, *Ethical Concerns About Emerging Treatment Paradigms for Gender Dysphoria*, 44 J. Sex & Marital Therapy 29 (2018) 36

The Evidence to Support Medicalized Gender Transitions in Adolescents Is Worryingly Weak, Economist, Apr. 5, 2023 12, 20, 22, 23

Theresa Farnan, *Our World Has Lost the Catholic Understanding of Human Anthropology*, Our Sunday Visitor, June 2, 2023 2

Video, Mission: Investigate: Trans Children ("Trans Train 4"), Nov. 26, 2021 37

William Malone, *Puberty Blockers for Gender Dysphoria: The Science is Far from Settled*, 5 Lancet Child & Adolescent Health 33 (2021) 35

WPATH Explained, Genspect (Oct. 1, 2022), https://genspect.org/wpath-explained/ 14

WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, Ver. 7 (2012) . 10, 18

Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clinical Endocrinology & Metabolism 3869 (2017) 11, 21

Wylie C. Hembree et al., *Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline*, 94 J. Clinical Endocrinology & Metabolism 3132 (2009)........ 10

STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

The Ethics and Public Policy Center ("EPPC") is a nonprofit research institution dedicated to applying the Judeo-Christian moral tradition to critical issues of public policy, law, culture, and politics. EPPC has a strong interest in promoting the Judeo-Christian vision of the human person, protecting religious liberty, and responding to the challenges of gender ideology.

Gender ideology has permeated culture with stunning speed, influencing medicine, business, media, entertainment, government, and education. Because gender ideology is sowing confusion and undermining personal well-being, its rise has created an urgent need for clarity, education, and compassionate guidance.

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[1] All parties received timely notice to the filing of this brief. Plaintiff-Appellant gave its consent; Defendant-Appellees did not. No party's counsel authored any part of this brief and no person other than amicus made a monetary contribution to fund its preparation or submission.

To meet this need, EPPC launched the Person & Identity Project, led by Director Mary Rice Hasson.[2] Many EPPC Fellows also write and advocate on issues related to gender ideology.[3]

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[2] EPPC, Person & Identity Project, https://personandidentity.com/.

[3] Relevant publications from EPPC Fellows include:

- Ryan T. Anderson, WHEN HARRY BECAME SALLY (Encounter Books 2018);
- Andrew T. Walker, GOD AND THE TRANSGENDER DEBATE (Good Book 2017);
- Carl R. Trueman, STRANGE NEW WORLD: HOW THINKERS AND ACTIVISTS REDEFINED IDENTITY AND SPARKED THE SEXUAL REVOLUTION (Crossway 2022);
- Mary Rice Hasson, *Erasing Females in Language and Law*, 11 J. OF CHRISTIAN LEGAL THOUGHT 44, 46 (Oct. 2011), available at https://eppc.org/publication/erasing-females-in-language-and-law/.
- Rachel N. Morrison, *Gender Identity Policy Under the Biden Administration*, 23 FED. SOC. REV. 85 (2022), *available at* SSRN: https://ssrn.com/abstract=4104566;
- Theresa Farnan, *Our World Has Lost the Catholic Understanding of Human Anthropology*, Our Sunday Visitor, June 2, 2023, https://www.oursundayvisitor.com/our-world-has-lost-the-catholic-understanding-of-human-anthropology;
- Amicus briefs on gender identity authored by EPPC fellows are available at EPPC, *Amicus Briefs: "Gender Transition" Interventions*, https://eppc.org/amicus-

INTRODUCTION AND SUMMARY OF ARGUMENT

Amicus submits a brief in this action because it cares about the rights of the Christian Healthcare Centers and the children it serves. The State of Michigan may earnestly believe that it is bigoted for a healthcare institution to decline to cooperate with a boy's efforts to approximate a girl, or a girl's efforts to approximate a boy, but a substantial and growing body of social science, as well as political movements in the United States and elsewhere, show otherwise.

Since the first gender clinic for minors opened in the U.S. in 2007, the number of minors seeking and receiving medical transitioning treatments (puberty blockers, cross-sex hormones, and surgeries) has skyrocketed. This unprecedented surge in transitioning treatments for minors carries a high cost. These treatments are unproven, life-altering, and can lead to significant and irreversible harms, including sterilization, loss of sexual function, and serious mental health problems. Despite the poor evidence base underlying these treatments and the lack of medical consensus supporting them, gender clinicians continue to

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briefs/#16-%E2%80%9Cgender-transition%E2%80%9D-interventions-.

provide transitioning treatments to minors and medical associations continue to endorse them.

The reality, as shown below, is that there is no national or international medical consensus regarding an authoritative standard of care for the treatment of gender dysphoria or the use of transitioning treatments. This lack of medical consensus has been recognized by the federal government, is reflected in state action, and continues to generate controversy in the medical profession.

Amicus offers this brief to demonstrate the reasonableness of the Plaintiff-Appellant's opposition to participating in so-called "gender transitions." Michigan is well-served by having healthcare professionals—religious or otherwise—that are willing to look at the available evidence, and not just political trends, before deciding how to treat children struggling with their gender identity.

Michigan's religious institutions, its healthcare institutions, and its children are worse off because of the district court's errant decision.

ARGUMENT

I. There is no national or international medical consensus regarding an authoritative standard of care for gender dysphoria.

There is no consensus within the medical profession regarding treatment for gender dysphoria, nor in support of gender-transition interventions. This lack of consensus is reflected historically, internationally, in actions by the federal government and states, and in ongoing debate among medical professionals.

A. There is no consensus within the medical profession historically.

Historically, there have been uneven and, at times, competing trajectories in how the psychological and medical communities have responded to an individual's experience of incongruence between perceived identity and the sexed body. Diagnostic labels, criteria, and interventions have evolved significantly over a relatively short time.[4]

[4] The American Psychiatric Association's (APA) Diagnostic and Statistical Manual (DSM) changed terminology and diagnostic criteria as follows: "transsexualism" (DSM-III), "gender identity disorder" (DSM-IV), and "gender dysphoria." *Gender Dysphoria Diagnosis*, APA (2017), https://www.psychiatry.org/psychiatrists/diversity/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis.

Until the late 20th century, "incongruence was taken to justify the need for psychiatric hospitalization and reparative psychotherapy."[5] More recently, the experience of incongruence has been variously classified as "a mental disorder" or "a condition related to sexual health."[6] (The American Psychiatric Association defines gender dysphoria as "clinically significant distress or impairment related to gender incongruence, which may include desire to change primary and/or secondary sex characteristics."[7])

The treatment of gender dysphoria, an "inherently subjective phenomenon," has been complicated by a "relatively slim (biomedical) evidence base" and a "unique" approach where "a mental health professional determines eligibility for medical treatment."[8] Not

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[5] Karl Gerritse et al., *Decision-Making Approaches in Transgender Healthcare: Conceptual Analysis and Ethical Implications*, 24 Med. Health Care Philos. 687, 687 (2021), https://doi.org/10.1007/s11019-021-10023-6.

[6] The APA classifies "gender dysphoria" under mental health disorders, while the WHO classifies "gender incongruence" under "sexual health." *Id.* at 688.

[7] Jack Turbian, ed., *What Is Gender Dysphoria?*, APA (Aug. 2022), https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria.

[8] Gerritse, *supra* note 5, at 687-88.

surprisingly, this "convoluted context" results in situations where "experts, clinicians and clients may disagree when it is appropriate to initiate medical treatment, how to organize decision-making and how to serve the client's best interests."[9]

In the past decade another conflict has emerged, between the "gatekeeping" approach—which relies on mental health professionals to diagnose, and physicians to treat, the patient—and the "informed consent" model, which prioritizes "consumer" autonomy to choose a full range of medical interventions "without [a] mental health evaluation" or "formal diagnosis."[10]

Activists now press for full "depathologization" of "transgender" identities, calling for "the removal of the diagnostic classification of gender transition processes as a mental disorder from the DSM and the [International Classification of Diseases], [a change] from a psychiatric assessment process towards an informed decision-making approach …

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[9] *Id.* at 688.

[10] *Id.*

[and] depathologization of gender diversity in childhood."[11] The continued conflicts over basic issues of diagnosis, appropriate interventions, and even the validity of mental health assessments in connection with gender-transition interventions reflects the ongoing lack of medical consensus.

The care for gender-dysphoric minors also lacks medical consensus. A decade ago, responding to a child's gender dysphoria with "watchful waiting" or family therapy was not controversial because, in most cases, the child's gender incongruence resolves by puberty.[12] In contrast, the use of gender-transition interventions for minors has been controversial since its inception.

The Dutch researchers who pioneered the use of puberty suppression for minors acknowledge persistent skepticism towards their work, including from providers concerned that gender dysphoria "can only be diagnosed with certainty in adulthood"; they feared "disapproval

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[11] Amets Suess Schwend, *Trans Health Care from a Depathologization and Human Rights Perspective*, 41 Pub. Health Rev. 1, 4 (2020), https://doi.org/10.1186/s40985-020-0118-y.

[12] Devita Singh et al., *A Follow-Up Study of Boys with Gender Identity Disorder*, 12 Front. Psychiatry 632784, 12-13 (2021), https://pubmed.ncbi.nlm.nih.gov/33854450/.

of the peer group, reactions of the correctional medical boards, or litigation."[13]

In 2007, Boston Children's Hospital opened the first U.S. pediatric gender clinic. With scant research available, its founder viewed "stopping puberty" as "a diagnostic test."[14] If it brought relief, the diagnosis was right.

No professional medical society recommended medically treating gender dysphoria in minors until 2009,[15] when the Endocrine Society released Clinical Practice Guidelines supporting puberty suppression

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[13] Peggy Cohen-Kettenis et al., *The Treatment of Adolescent Transsexuals: Changing Insights*, 5 J. Sexual Med. 1892, 1893 (2008), https://doi.org/10.1111/j.1743-6109.2008.00870.x.

[14] Pagan Kennedy, *Q & A with Norman Spack*, Boston Globe, Mar. 30, 2008, http://archive.boston.com/bostonglobe/ideas/articles/2008/03/30/qa_with_norman_spack/?page=full.

[15] Edwards-Leeper et al., *Psychological Evaluation and Medical Treatment of Transgender Youth in an Interdisciplinary "Gender Management Service" (GeMS) in a Major Pediatric Center*, 59 J. Homosexuality 321, 323 (2012), https://pubmed.ncbi.nlm.nih.gov/22455323/.

and cross-sex hormones for minors—despite lacking "rigorous evaluation of the effectiveness and safety of endocrine protocols."[16]

In 2012, the World Professional Association for Transgender Health (WPATH) noted that adoption of such interventions for minors "differs among countries and centers. Not all clinics offer puberty suppression.... The percentages of treated adolescents are likely influenced by the organization of health care, insurance aspects, cultural differences, opinions of health professionals, and diagnostic procedures offered in different settings."[17] In short, no consensus.

A 2014 Dutch study reported positive psychological functioning for fifty-five patients who received medical transitioning treatments as adolescents and surgery as adults,[18] but subsequent studies failed to

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[16] Wylie C. Hembree et al., *Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline*, 94 J. Clinical Endocrinology & Metabolism 3132, 3134 (2009), https://pubmed.ncbi.nlm.nih.gov/19509099/.

[17] WPATH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, Ver. 7, 13 (2012), [hereinafter "WPATH SOC7"], https://www.wpath.org/publications/soc.

[18] Annelou L.C. de Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 Pediatrics 696, 702 (2014), https://pubmed.ncbi.nlm.nih.gov/25201798/.

replicate those positive outcomes[19] and many have criticized the study's methodology.[20] The Endocrine Society's 2017 guidelines rely on the Dutch study but acknowledge the "very low" quality of supporting evidence generally[21] and note new concerns emerging since 2009, including "effects of prolonged delay of puberty in adolescents on bone health, gonadal function, and the brain."[22]

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[19] Polly Carmichael et al., *Short-Term Outcomes of Pubertal Suppression in a Selected Cohort of 12 to 15 Year Old Young People with Persistent Gender Dysphoria in the UK*, 16 PLoS ONE (2021), https://doi.org/10.1371/journal.pone.0243894.

[20] Stephen B. Levine et al., *Reconsidering Informed Consent for Trans-Identified Children, Adolescents, and Young Adults*, 48 J. Sex & Marital Therapy 706 (2022), https://www.tandfonline.com/doi/full/10.1080/0092623X.2022.2046221; Michael Biggs, *The Dutch Protocol for Juvenile Transsexuals: Origins and Evidence*, Journal of Sex & Marital Therapy (Sept. 19, 2022), https://www.tandfonline.com/doi/full/10.1080/0092623X.2022.2121238?scroll=top&needAccess=true.

[21] Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clinical Endocrinology & Metabolism 3869, 3880 (2017), https://doi.org/10.1210/jc.2017-01658.

[22] *Id.* at 3874.

In 2019, Boston Children's opened the first pediatric center for gender-transition surgery, performing double mastectomies on minors.[23] This movement to "treat" to younger and younger adolescents is not supported by a consensus in the medical community.[24]

In the sixteen years since U.S. gender clinicians began their controversial practice, the number of minors seeking and receiving gender-transition interventions has skyrocketed. Over 42,000 U.S. youth were diagnosed with gender dysphoria in 2021 alone.[25] The number of

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[23] *Center for Gender Surgery: Conditions & Procedures*, Boston Children's Hospital, https://www.childrenshospital.org/programs/center-gender-surgery-program/conditions-and-treatments.

[24] *See* Hembree et al., *supra* note 2121, at 3872; Christine & Dan Karasic, *Age Is Just a Number: WPATH-Affiliated Surgeons' Experiences and Attitudes Toward Vaginoplasty in Transgender Females Under 18 Years of Age in the United States*, 14 J. Sex Med. 624, 625 (2017), https://pubmed.ncbi.nlm.nih.gov/28325535/ (urging lowering of recommended age for surgeries); Elizabeth R. Boskey et al., *Ethical Issues Considered when Establishing a Pediatric Gender Surgery Center*, 143 Pediatrics 1, 2 (2019), https://pediatrics.aappublications.org/content/143/6/e20183053.figures-only.

[25] *The Evidence to Support Medicalized Gender Transitions in Adolescents Is Worryingly Weak*, Economist, Apr. 5, 2023, [hereinafter "*The Evidence*"], https://archive.ph/IaCvu#selection-1039.0-1039.88.

gender clinics for minors has grown from one in 2007 to over fifty today.[26] But market expansion does not mean medical consensus.

In 2022, WPATH's updated guidelines, "Standards of Care for the Health of Transgender and Gender Diverse People, Version 8," claimed that "[t]he SOC-8 is based on the best available science and expert professional consensus."[27] This supposed "expert professional consensus" was *limited by design* to clinicians who share WPATH's activist commitment to promoting "gender-affirming" interventions.[28] The guidelines *eliminated* the ethics chapter and acknowledged that particular recommendations were based on "expert consensus only and are evidentiarily weak."[29] After the initial release, the WPATH SOC-8 guidelines required major corrections and eliminated minimum ages for

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[26] *Comprehensive Care Clinics*, Human Rights Campaign Found., https://www.thehrcfoundation.org/professional-resources/comprehensive-care-clinics. Private sources report over 400 clinics and private clinicians providing medical transition treatments to minors. *See* The Gender Mapping Project, https://www.gendermapper.org/.

[27] E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Ver. 8*, 23 Int'l J. Transgender Health S1, at S3 (2022), https://doi.org/10.1080/26895269.2022.2100644.

[28] *Id*. at S247 (App. A: Methodology).

[29] *Id*. at S150 (Statement 15.6).

all gender-transition interventions.[30] WPATH is "an explicitly ideological organization" whose guidelines do not meet rigorous standards of review and do not reflect an international medical consensus.[31]

B. There is a lack of evidence to support gender-transition interventions.

Gender specialists admit that "[t]ransgender medicine presents a particular challenge for the development of evidence-based guidelines" because of "limited" data, "lower-quality evidence," retrospective study design, "lack of uniform data collection," and limited research funding.[32] Experts admit that gender-transition interventions rest on a "relatively slim (biomedical) evidence base."[33]

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[30] *WPATH Explained*, Genspect (Oct. 1, 2022), https://genspect.org/wpath-explained/.

[31] Leor Sapir, *"Trust the Experts" Is not Enough: U.S. Medical Groups Get the Science Wrong on Pediatric "Gender Affirming Care"*, Manhattan Inst. (Oct. 17, 2022), https://www.manhattan-institute.org/how-to-respond-to-medical-authorities-claiming-gender-affirming-care-is-safe.

[32] Madeline B. Deutsch et al., *What's in a Guideline? Developing Collaborative and Sound Research Designs that Substantiate Best Practice Recommendations for Transgender Health Care*, 18 AMA J. Ethics 1098, 1099 (2016), https://doi.org/10.1001/journalofethics.2016.18.11.stas1-1611.

[33] Gerritse et al., *supra* note 5, at 687.

In 2021, Dutch gender clinician Dr. Thomas Steensma acknowledged the need for "[m]ore research on sex changes in young people under the age of 18.... Doctors who provide transgender care ... say they know too little about the target group and the long-term effects."[34] Lawrence Tabak, acting director of the National Institutes of Health, told a U.S. Senate Committee in 2022 that "no long-term studies are available evaluating the effects of puberty blockers when used for gender dysphoria."[35] Diane Chen, a leading psychologist with Lurie Children's Hospital gender clinic, has admitted that "a lot of the questions around long-term medical health outcomes we won't be able to

[34] Berendien Tetelepta, *More Research Is Urgently Needed into Transgender Care for Young People: "Where does the Large Increase of Children Come From?"*, Voorzij, Feb. 27, 2021, https://www.voorzij.nl/more-research-is-urgently-needed-into-transgender-care-for-young-people-where-does-the-large-increase-of-children-come-from/ (translation of Dutch newspaper).

[35] Florida Agency for Health Care Admin., *Florida Medicaid: Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria*, at 14 (June 2022) [hereinafter Florida Medicaid Report], https://ahca.myflorida.com/letkidsbekids/docs/AHCA_GAPMS_June_2022_Report.pdf.

answer until the youth who started hormones at 13, 14, 15, are in their 50s, 60s, 70s."[36]

Dr. Johanna Olson-Kennedy leads The Trans Youth Research Network, a multi-million-dollar research project involving four major gender clinics. In 2019, Olson-Kennedy justified the project, explaining "there is a consensus gap about the best approach to the care of youth with gender dysphoria," and "lack of consensus among professionals around timing of initiation of medical interventions, as well as optimal dosing regimens."[37] After receiving over $7.7 million in federal grants, the project's renewal application in 2022 described a "scant evidence-base currently guiding the clinical care of [transgender/gender diverse] youth."[38] A 2022 funding request by other gender clinicians admits "[t]he

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[36] Frieda Klotz, *The Fractious Evolution of Pediatric Transgender Medicine*, Undark.org (Apr. 6, 2022), https://undark.org/2022/04/06/the-evolution-of-pediatric-transgender-medicine/.

[37] Johanna Olson-Kennedy et al., *Creating the Trans Youth Research Network: A Collaborative Research Endeavor*, 4 Transgender Health 304, 305 (2019), https://liebertpub.com/doi/full/10.1089/trgh.2019.0024.

[38] NIH, *The Impact of Early Medical Treatment in Transgender Youth*, NIH Project No. 5R01HD082554-07, RePORTER (2022), https://reporter.nih.gov/search/RiXZr_7vAECGmmm-c_pjIw/project-details/10401756#similar-Projects (multi-year, four-center study led by Dr. Johanna Olson-Kennedy received $7,748,467 to date).

overall impacts of [puberty suppression] have not been systematically studied."[39] A multi-year grant application from Stanford researchers sought to study the use of cross-sex hormones "in early pubertal adolescents," because clinicians need a "foundation for understanding the longitudinal impact of treatments that are *already being used* in clinical settings."[40]

The original Dutch studies that formed the empirical basis for the "gender-affirming" approach have undergone new scrutiny. Scholars have sharply criticized the Dutch studies for their "methodological biases," weak evidence base, and "profound limitations," and concluded the studies "should never have been used as justification for propelling these interventions into general medical practice."[41] Dr. Susan Bradley,

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[39] Eric Nelson et al., *The Impact of Pubertal Suppression on Adolescent Neural and Mental Health Trajectories*, NIH RePORTER (2022), https://reporter.nih.gov/search/Xr4WhUWe906AqRywwpsXVA/project-details/10442698.

[40] David S. Hong et al., *Sex Hormone Effects on Neurodevelopment: Controlled Puberty in Transgender Adolescents*, NIH RePORTER (2020), https://reporter.nih.gov/search/XPR7Y2lFAEC3glQp53hqPw/project-details/9940793 (emphasis added).

[41] E. Abbruzzese et al., *The Myth of "Reliable Research" in Pediatric Gender Medicine: A Critical of the Dutch Studies—and Research that*

a pioneering gender clinician in Canada, has expressed regret for adopting the Dutch model and using puberty suppression in minors: "We were wrong."[42] She realized that gender-transition interventions are "not as irreversible as we always thought, and they have longer term effects on kids' growth and development, including making them sterile and quite a number of things affecting their bone growth."[43]

C. WPATH and Endocrine Society guidelines are not the standard of care.

Activists claim WPATH guidelines represent the "professional consensus about the psychiatric, psychological, medical, and surgical management of gender dysphoria."[44] But WPATH itself only claims that it has issued "flexible" guidelines.[45] Indeed, HHS's Centers for Medicare

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Has Followed, J. Sex & Marital Therapy (2023), https://doi.org/10.1080/0092623X.2022.2150346.

[42] Laurel Duggan, *"We Were Wrong": Pioneer in Child Gender Swaps Makes Damning Admission*, WND News Servs., Mar. 12, 2023, https://www.wnd.com/2023/03/wrong-pioneer-child-gender-swaps-makes-damning-admission/.

[43] *Id.*

[44] *Facts About Anti-Trans Youth Bills*, Fenway Health 2022), https://fenwayhealth.org/the-fenway-institute/health-policy/transyouthmatter/; *see also* Madeline B. Deutsch, *Overview of Gender-Affirming Procedures*, Univ. Cal. S.F. Transgender Care (June 17, 2016), https://transcare.ucsf.edu/guidelines/overview.

[45] WPATH SOC 8, *supra* note 2717.

& Medicaid Services (CMS) cited the "flexibility" of WPATH's guidelines when it declined to endorse WPATH guidelines as the standard for Medicare coverage determinations.[46]

WPATH guidelines lack the rigor and evidence base necessary to qualify as authoritative standards of care or clinical practice guidelines (CPGs).[47] A 2021 first-of-its-kind systematic analysis of international CPGs for "gender minority/trans health,"[48] published in the British Medical Journal (BMJ), reviewed WPATH SOC 7 guidelines, singled them out for particularly strong criticism, and concluded they "*cannot* be considered 'gold standard.'"[49] Patrik Vankrunkelsven, the Director of the

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[46] CMS, *Decision Memo for Gender Dysphoria and Gender Reassignment Surgery*, CAG–00446N, Aug. 30, 2016 [hereinafter "CMS Decision Memo"], https://www.cms.gov/medicare-coverage-database/view/ncacal-decision-memo.aspx?proposed=N&NCAId=282.

[47] Deutsch et al., *supra* note 32.
IOM Committee on Standards for Developing Trustworthy Clinical Practice Guidelines, *Clinical Practice Guidelines We Can Trust*, at 3 (Robin Graham et al. eds., 2011), https://www.ncbi.nlm.nih.gov/books/NBK209546/ (cleaned up).

[48] Sara Dahlen et al., *International Clinical Practice Guidelines for Gender Minority/Trans People: Systematic Review and Quality Assessment*, 11 BMJ Open 1, 8 (2021), https://pubmed.ncbi.nlm.nih.gov/33926984/ (describing an overall "paucity" of "high quality" clinical guidance).

[49] *Id.* at 8 (emphasis added), referencing the "incoherence" of WPATH SOCv7).

Belgian Center for Evidence-Based Medicine (CEBAM), extended those criticisms to WPATH SOC 8 and called gender-transition interventions "a pure experiment on children, without any scientific evidence."[50] From a professional standpoint, Vankrunkelsven pointed out that "if we had to review [the WPATH guidelines] at CEBAM, we would actually toss them in the bin [trash]."[51]

Similarly, the Endocrine Society's guidelines are "fundamentally flawed" according to Gordon Guyatt, the co-developer of the GRADE "evidence-based" review protocol.[52] Before issuing its 2009 guidelines supporting gender-transition interventions for minors, the Endocrine Society conducted a review using GRADE methodology. However, the review had "serious problems," according to Guyatt, especially as it focused on two side effects (cardiovascular and bone health) while failing

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[50] Lauwke Vandendriessche Pano, *Fierce Debate About Puberty Inhibitors and Male/Female Hormones: What You are Doing Is an Experiment on Children*, VRT News, Mar. 29, 2023 (translated).

[51] *Id.*; *see also* @segm_ebm, Twitter (Mar. 31, 2023, 7:54 PM), https://twitter.com/segm_ebm/status/1641952056088096769.

[52] *The Evidence*, *supra* note 25.

to assess the main outcome desired (reducing gender dysphoria).[53] The Society also "paired strong recommendations—phrased as 'we recommend'—with weak evidence," in violation of GRADE protocols.[54]

Like WPATH's "standards," the Endocrine Society's recommendations rely on "very low" quality evidence and included a disclaimer that its "guidelines cannot guarantee any specific outcome, nor do they establish a standard of care."[55]

No current guidelines for treating gender dysphoria qualify as an authoritative and clinicians with diverse perspectives recognize that no medical consensus exists. A 2020 study from the Mount Sinai Center for Transgender Medicine and Surgery notes that WPATH guidelines "are often considered the standard of care for [transgender] people throughout the world," but characterizes them as a "barrier to care," "impractical," unclear, and detrimental to patient wellbeing.[56] Indeed, Mount Sinai

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[53] J. Block, *Gender Dysphoria in Young People Is Rising—And so Is Professional Disagreement*, 380 BMJ 382, at 2-3 (2023), https://www.bmj.com/content/380/bmj.p382.

[54] *Id.* at 3.

[55] Hembree et al., *supra* note 21, at 389521.

[56] Max Lichtenstein et al., *The Mount Sinai Patient-Centered Preoperative Criteria Meant to Optimize Outcomes Are Less of a Barrier*

eventually developed its own criteria for gender-transition interventions—criteria that diverged significantly from WPATH guidelines: less than ten percent of Mount Sinai patients meeting criteria for both WPATH and Mount Sinai assessments.[57]

Although gender clinicians tout the "substantial" mental health evaluations occurring before transition, the role of mental health providers varies widely by clinic.[58] Seattle Children's Gender Clinic offers "brief mental health support" but no ongoing mental health therapy.[59] Other clinics, such as Boston Children's, conduct "comprehensive psychological and medical assessments."[60] Two veteran gender clinicians, Dr. Erica Anderson and Dr. Laura Edwards-Leeper, have warned that some adolescents receive "sloppy care" from clinicians who

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to Care than WPATH SOC 7 Criteria Before Transgender-Specific Surgery, 5 Transgender Health 166, 170 (2020), https://doi.org/10.1089/trgh.2019.0066.

[57] *Id*. at 170.

[58] Block, *supra* note 53, at 4; *The Evidence*, *supra* note 25.

[59] *Services We Provide: Brief Mental Health Support*, Seattle Children's Gender Clinic, https://www.seattlechildrens.org/clinics/gender-clinic/.

[60] *Gender Multispecialty Clinic (GeMS): Your Visit*, Boston Children's Hospital, https://www.childrenshospital.org/programs/gender-multispecialty-service/your-visit.

start them on transitioning treatments with minimal psychological assessments.[61] Edwards-Leeper recently lamented that many "providers do not value the mental health component," which results in children being "pretty much fast tracked to medical intervention."[62] De-transitioners (formerly trans-identified people who regret and discontinue gender-transition interventions) report minimal or no mental health treatments before medicalized interventions.[63]

Several other circuit courts have recognized that WPATH guidelines do not reflect medical consensus. *See Gibson v. Collier*, 920 F.3d 212, 223 (5th Cir. 2019) ("WPATH Standards of Care do not reflect medical consensus"); *Doe v. Snyder*, 28 F.4th 103, 112 (9th Cir. 2022) ("WPATH's Standards of Care are not universally endorsed"); *Kosilek v. Spencer*, 774 F.3d 63, 88 (1st Cir. 2014) (en banc) ("[p]rudent medical professionals ... do reasonably differ in their opinions regarding

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[61] Abigail Shrier, *Top Trans Doctors Blow the Whistle on "Sloppy" Care*, Real Clear Politics, Oct. 5, 2021, https://www.realclearpolitics.com/2021/10/05/top_trans_doctors_blow_the_whistle_on_sloppy_care_553290.html.

[62] Block, *supra* note 53, at 4.

[63] *See, e.g.*, *The Evidence*, *supra* note 25 (testimony of Prisha Mosley, who reported receiving "one 15-minute [mental health] appointment before I was given testosterone").

[WPATH's] requirements"); *cf. Keohane v. Fla. Dep't of Corr. Sec'y*, 952 F.3d 1257, 1296 (11th Cir. 2020) (finding that district court found WPATH standards "authoritative for treating gender dysphoria in prison," without evaluating merits of WPATH standards); *Edmo v. Corizon, Inc.*, 935 F.3d 757, 787, 788 & n.16 (9th Cir. 2019) (per curiam) (holding WPATH standards are the "established standards" for evaluations of the necessity of transitioning surgery and the "undisputed starting point in determining the appropriate treatment for gender dysphoric individuals"), *reh'g en banc denied*, 949 F.3d 489, 497 (9th Cir. 2020) (O'Scannlain, J., joined by seven judges, respecting the denial of rehearing en banc) (rejecting panel's characterization because "WPATH Standards are merely criteria promulgated by a controversial private organization with a declared point of view").

D. The lack of medical consensus is reflected internationally.

Many countries that initially embraced gender-transition interventions have recently reversed course. For example, Sweden's National Board of Health and Welfare commissioned an extensive evidence review and concluded in 2022 "that the risks of anti-puberty and sex-confirming hormone treatment for those under 18 currently outweigh

the possible benefits."[64] Finland likewise revised its protocols: the Finnish Health Authority performed an extensive literature review then issued new guidelines prioritizing psychotherapy as the first-line treatment for gender-dysphoric minors.[65]

In the United Kingdom, whistleblower complaints exposed the inadequate psychological care for gender-dysphoric minors at the National Health Service's (NHS) gender clinic.[66] A landmark case against the NHS in 2020 by "de-transitioner" Keira Bell found that minors lacked capacity to consent to transitioning treatments that cause

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[64] Socialstyrelsen, Support, Investigation and Hormone Treatment for Gender Incongruence in Children and Adolescents (2022), https://web.archive.org/web/20221121222721/https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/kunskapsstod/2022-2-7774.pdf; *see also* Lisa Nainggolan, *Hormonal Tx of Youth with Gender Stops in Sweden*, Medscape (2021), https://www.medscape.com/viewarticle/950964.

[65] PALKO/COHERE Finland, *Recommendation of the Council for Choices in Health Care in Finlan: Medical Treatment Methods for Dysphoria Related to Gender Variance in Minors* (2020), *available at* https://segm.org/sites/default/files/Finnish_Guidelines_2020_Minors_Unofficial%20Translation.pdf. COHERE works in conjunction with the Ministry of Social Affairs and Health.

[66] Lauren Lewis, *NHS's Only Gender Service Children Believes All Girls Who Don't Like 'Pink Ribbons and Dollies' Must Be Transgender, Whistleblower Claims*, Daily Mail, Nov. 22, 2021, https://www.dailymail.co.uk/news/article-10231507/NHSs-gender-service-children-believes-girls-dont-like-pink-transgender.html.

sterility and impair sexual function. The NHS initially suspended the use of puberty blockers and instituted new procedures to ensure better psychological care.[67] (The decision was later reversed on procedural grounds.)

Two separate evidence reviews assessing the impact of puberty suppressing drugs and cross-sex hormones to treat gender dysphoria were published in 2021 by the UK's National Institute for Health and Care Excellence (NICE). NICE found little evidence of benefit and substantial risk of harm from "gender affirming" treatment in minors.[68] A 2022 independent review commissioned by NHS England (the "Cass Review"), found that "[a]t present the professional community does not

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[67] Becky McCall, *NHS Makes Child Gender Identity Service Changes After High Court Ruling*, Medscape, Dec. 4, 2020, https://www.medscape.com/viewarticle/941781.

[68] NICE, *Evidence Review: Gonadotrophin Releasing Hormone Analogues for Children and Adolescents with Gender Dysphoria* (2021) (https://cass.independent-review.uk/wp-content/uploads/2022/09/20220726_Evidence-review_GnRH-analogues_For-upload_Final.pdf); NICE, *Evidence Review: Gender-Affirming Hormones for Children and Adolescents with Gender Dysphoria* (2021) (https://cass.independent-review.uk/wp-content/uploads/2022/09/20220726_Evidence-review_Gender-affirming-hormones_For-upload_Final.pdf), [hereinafter, collectively, "NICE Evidence Review"].

have a shared understanding about the meaning of gender dysphoria in young people," its cause, or best treatment approaches.[69] The Review noted that "[m]uch of the research base is observational," with little "longer term follow up data," resulting in a "weak evidence base."[70] It concluded, "[t]here is lack of consensus and open discussion about the nature of gender dysphoria and therefore about the appropriate clinical response."[71]

In 2021, psychotherapists in Australia and New Zealand issued a statement emphasizing mental health treatment for gender-dysphoric minors, not "gender affirmation." They stressed the importance of assessing the "psychological state and context in which gender dysphoria has arisen" before treatment decisions are made.[72] In February 2022,

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[69] Hilary Cass, *Review of Gender Identity Services for Children and Young People*, BMJ 376 (2022), https://www.bmj.com/content/376/bmj.o629.

[70] *Id*.

[71] Cass Review, *Interim Report* (Feb. 2022), https://cass.independent-review.uk/publications/interim-report/.

[72] Position Statement, The Royal Australian and New Zealand College of Psychiatrists, *Recognising and Addressing the Mental Health Needs of People Experiencing Gender Dysphoria/Gender Incongruence*, Aug. 2021, https://www.ranzcp.org/news-policy/policy-and-advocacy/position-statements/gender-dysphoria. [Australia-New Zealand Stmt.]

France's National Academy of Medicine warned medical professionals that the increase in young people seeking transitioning treatments may be due to social contagion and urged "great medical caution."[73] In March 2023, the Norwegian Healthcare Investigation Board restricted the use of puberty blockers for gender affirmation, deeming their use "experimental" and lacking evidence-based support.[74]

Many studies confirm that socially transitioning a child has important psycho-social and psychological consequences. Early Dutch research found social transition can make it difficult for a child to reverse

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[73] Press Release, French National Academy of Medicine, Medicine and Gender Transidentity in Children and Adolescents (Feb. 25, 2022) https://www.academie-medecine.fr/la-medecine-face-a-la-transidentite-de-genre-chez-les-enfants-et-les-adolescents/?lang=en.

[74] A summary of the Norwegian report by the Society of Evidence-based Gender Medicine is available here: @segm_ebm, Twitter (Mar. 9, 2023, 8:24 PM), https://twitter.com/segm_ebm/status/1634032333618819073.

course.[75] More recently, studies in the United Kingdom,[76] Sweden,[77] Finland,[78] Australia and New Zealand,[79] France,[80] Norway,[81] and

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[75] Steensma, T., et al, *Factors Associated with Desistence and Persistence of Childhood Gender Dysphoria: A Quantitative Follow-Up Study*, J. of Am. Acad. of Child & Adolescent Psychiatry 52 (2013): 582-90 https://doi.org/10.1016/j.jaac.2013.03.016 ("[C]hildhood social transitions were important predictors of persistence, especially among natal boys.")

[76] Hilary Cass, *The Cass Review: Independent review of gender identity services for children and young people: Interim report*, NHS England 2022, https://cass.independent-review.uk/publications/interim-report/ (study found "a spectrum of opinion about the correct clinical approach").

[77] Socialstyrelsen, *Support, Investigation and Hormone Treatment for Gender Incongruence in Children and Adolescents* (2022), https://web.archive.org/web/20221121222721/https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/kunskapsstod/2022-2-7774.pdf; (study concludes "that the risks of anti-puberty and sex-confirming hormone treatment for those under 18 currently outweigh the possible benefits).

[78] Recommendation of the Council for Choices in Health Care in Finland (PALKO / COHERE Finland): *Medical Treatment Methods for Dysphoria Related to Gender Variance in Minors* (2020), *available at* https://segm.org/sites/default/files/Finnish_Guidelines_2020_Minors_Unofficial%20Translation.pdf.

[79] Australia-New Zealand Stmt., *supra* n. 73, (recommending mental health treatment for gender-dysphoric minors).

[80] Press Release, French National Academy of Medicine, *Medicine and Gender Transidentity in Children and Adolescents* (Feb. 25, 2022) https://www.academie-medecine.fr/la-medecine-face-a-la-transidentite-de-genre-chez-les-enfants-et-les-adolescents/?lang=en (urging medical professionals exercise "great medical caution" as increase in young

Denmark[82] have retracted their endorsement of the "gender affirmation" approach. These nations have realized that psychosocial transition is not a neutral course of treatment: socially transitioning makes it harder for the child to embrace his or her biological identity and predisposes the child to pursue irreversible medical transition. Furthermore, as a 2023 journal article concluded, there are "no significant effects of social transition or name change on mental health status."[83]

E. The federal government has recognized the lack of medical consensus.

Despite the efforts under the current administration to push gender-transition interventions, the federal government has never

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people seeking transitioning treatments may be due to social contagion).

[81] Bernard Lane, *Yes, it's an experiment: Norway joins the shift to caution on gender medicine*, Gender Clinic News, March 9, 2023, https://www.genderclinicnews.com/p/yes-its-an-experiment?nthPub=781.

[82] SEGM, *Denmark Joins the List of Countries That Have Sharply Restricted Youth Gender Transitions*, Aug. 17, 2023, https://segm.org/Denmark-sharply-restricts-youth-gender-transitions.

[83] James S. Moriandi, et al., *Is Social Gender Transition Associated with Mental Health Status in Children and Adolescents with Gender Dysphoria*? 52 Arch Sex Behav 1045, 1045 (2023). https://doi.org/10.1007/s10508-023-02588-5

formally determined that such treatments are the appropriate standard of care.

In June 2020, HHS acknowledged "there is no medical consensus to support one or another form of treatment for gender dysphoria."[84] HHS found its prior regulations had "relied excessively on the conclusions of an advocacy group (WPATH) rather than on independent scientific fact-finding."[85] After its factfinding, CMS declined to issue a National Coverage Determination on gender-transition surgeries for Medicare beneficiaries with gender dysphoria "because the clinical evidence is inconclusive."[86] CMS determined that "there is not enough high quality evidence to determine whether gender reassignment surgery improves health outcomes for Medicare beneficiaries with gender dysphoria and whether patients most likely to benefit from these types of surgical intervention can be identified prospectively."[87]

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[84] Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37,160, 37,198 (Aug. 4, 2022).

[85] *Id.*

[86] CMS Decision Memo, *supra* note 4646.

[87] *Id.*

Similarly, a 2018 Department of Defense report found that there is "considerable scientific uncertainty and overall lack of high quality scientific evidence demonstrating the extent to which transition-related treatments, such as cross-sex hormone therapy and sex reassignment surgery—interventions which are unique in psychiatry and medicine—remedy the multifaceted mental health problems associated with gender dysphoria."[88] Indeed, none of the drugs used to block puberty and induce cross-sex features are approved as safe or effective for such uses by the FDA; the NIH only began investigating the long-tern outcomes of transitioning treatments for youth in 2015.[89]

F. State action reflects the lack of medical consensus.

State actions reflect the lack of medical consensus for the appropriate standard of care for gender dysphoria and transitioning

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[88] Dep't of Defense, *Report and Recommendations on Military Service by Transgender Persons* 5 (Feb. 22, 2018), available at https://media.defense.gov/2018/Mar/23/2001894037/-1/-1/0/MILITARY-SERVICE-BY-TRANSGENDER-INDIVIDUALS.PDF.

[89] *See* Juliana Bunim, *First U.S. Study of Transgender Youth Funded by NIH*, U.C.S.F., Aug. 17, 2015, https://perma.cc/URA6-CERX.

interventions, especially for minors. At least twenty-one states have passed laws prohibiting gender-transition interventions on minors.[90]

II. Gender-transition interventions can lead to serious harms.

Gender-transition interventions can cause significant harms, including loss of fertility and sexual function. Long-term outcomes for individuals who undergo transitioning treatments are not promising. Those who have had genital surgery are nineteen times more likely than the general population to die by suicide,[91] and studies show that transitioning treatments fail to reduce suicide risks and mental health issues in the long-term.[92]

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[90] *See L. W. by & through Williams v. Skrmetti*, No. 23-5600, 2023 WL 6321688, at *6 (6th Cir. Sept. 28, 2023) (listing 19 states that have passed laws similar to the Tennessee and Kentucky restrictions at issue in that case).

[91] Cecilia Dhejne et al., *Long-term Follow-up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 6 PLoS ONE e16885 (2011), https://pubmed.ncbi.nlm.nih.gov/21364939/.

[92] Roberto D'Angelo et al., *One Size Does Not Fit All: In Support of Psychotherapy for Gender Dysphoria*, 50 Archives Sexual Behav. 7 (2020), https://doi.org/10.1007/s10508-020-01844-2; Chantel M. Wiepjes et al., *Trends in Suicide Death Risk in Transgender People: Results from the Amsterdam Cohort of Gender Dysphoria Study (1972-2017)*, 141 Acta Psychiatrica Scandinavica 486 (2020), https://doi.org/10.1111/acps.13164; *Correction to Bränström and Pachankis*, 177 Am. J. Psychiatry 734 (2020) (correcting Richard Bränström et al., *Reduction in Mental Health Treatment Utilization*

Equally troubling, the number of children diagnosed with gender dysphoria or identifying as "transgender" has risen dramatically over the past decade, becoming "an international phenomenon."[93] In the past, patients seeking treatment for gender dysphoria were usually either adult males or very young children, mostly male. Today, the typical patient is an adolescent, usually female.[94]

For years, gender dysphoria in children was addressed through "watchful waiting." Under this approach, about eighty-eight percent of the time, the child's gender dysphoria resolved naturally by puberty.[95] The "gender-affirming" approach changed that pattern dramatically: most children affirmed in their transgender beliefs persist in those beliefs and are likely to pursue transitioning treatments that irreversibly modify their bodies—and lead to regret.[96]

Among Transgender Individuals After Gender-Affirming Surgeries: A Total Population Study, 177 Am. J. Psychiatry 727 (2020)).

[93] Kenneth J. Zucker, *Adolescents with Gender Dysphoria: Reflections on Some Contemporary Clinical and Research Issues*, 48 Archives Sexual Behav. 1983 (2019), https://pubmed.ncbi.nlm.nih.gov/31321594/.

[94] *Id*.

[95] Singh et al., *supra* note 1212.

[96] Carmichael et al., *supra* note 1919 (98% of adolescents who underwent puberty suppression continued on to cross-sex hormones);

Clinical concerns over gender-transition interventions have escalated.[97] Puberty blockers, originally praised as safe and fully reversible, are known to have negative effects on bone density, social and emotional maturation, and other aspects of neuro-development.[98] They generally fail to lessen the child's gender dysphoria, and deliver mixed results for mental health.[99] Long term effects remain unknown.[100]

Nearly all children who begin puberty blockers go on to receive cross-sex hormones, with life-altering consequences.[101] Blocking a child's natural puberty prevents maturation of genitals and reproductive organs; subsequently introducing cross-sex hormones renders the child

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see also Lisa Littman, *Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners*, 50 Archives Sexual Behav. 3353 (2021), https://pubmed.ncbi.nlm.nih.gov/34665380/.

[97] William Malone, *Puberty Blockers for Gender Dysphoria: The Science is Far from Settled*, 5 Lancet Child & Adolescent Health 33 (2021), https://pubmed.ncbi.nlm.nih.gov/34418372/.

[98] NICE Evidence Review, *supra* note 69.

[99] Carmichael et al., *supra* note 19.

[100] Diane Chen et al., *Consensus Parameter: Research Methodologies to Evaluate Neurodevelopmental Effects of Pubertal Suppression in Transgender Youth*, 5 Transgender Health 246 (2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7759272/.

[101] *Id.*

permanently sterile.[102] Puberty suppression may also impair the child's later sexual functioning as an adult.[103] These losses cannot be fully comprehended by a child, making informed consent impossible.

Cross-sex hormones carry numerous health risks and cause significant irreversible changes in adolescents' bodies, including genital or vaginal atrophy, hair loss (or gain), voice changes, and impaired fertility.[104] They increase cardiovascular risks and cause liver and metabolic changes.[105] The flood of opposite sex hormones has variable emotional and psychological effects as well. Females taking testosterone experience an increase in gender dysphoria, which heightens the likelihood they will undergo double mastectomies—as young as thirteen.[106] Far from an evidence-based standard of care, transitioning

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[102] Stephen B. Levine, *Ethical Concerns About Emerging Treatment Paradigms for Gender Dysphoria*, 44 J. Sex & Marital Therapy 29 (2018), https://pubmed.ncbi.nlm.nih.gov/28332936/.

[103] Shrier, *supra* note 61.

[104] Levine et al., *supra* note 2020.

[105] *Gender-Affirming Hormone in Children and Adolescents*, BJM EBM Spotlight (Feb. 25, 2019), https://blogs.bmj.com/bmjebmspotlight/2019/02/25/gender-affirming-hormone-in-children-and-adolescents-evidence-review/.

[106] Johanna Olson-Kennedy et al., *Chest Reconstruction and Chest Dysphoria in Transmasculine Minors and Young Adults: Comparisons*

treatments for gender dysphoria amount to unethical human experimentation, including on *children*. One Swedish teen who underwent medical transitionand then de-transitioned has described her experience in stark terms: "They're experimenting on young people ... we're guinea pigs."[107] Or, as psychotherapist Alison Clayton warns, this is "dangerous medicine."[108]

III. The district court's standing analysis is at odds with other circuits and would undermine this Court's ability to protect fundamental rights.

Finally, the district court's standing analysis is out of step with well-established standing analysis in pre-enforcement challenges and, if left standing, would make it hard for citizens and organizations to vindicate their civil rights. It has long been black-letter law that an individual need not violate an unconstitutional law and be subjected to

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of Nonsurgical and Postsurgical Cohorts, 172 JAMA Pediatrics 431 (2018), https://pubmed.ncbi.nlm.nih.gov/29507933/ (Figure: Age at Chest Surgery in the Post-surgical Cohort).

[107] Video, Mission: Investigate: Trans Children ("Trans Train 4"), Nov. 26, 2021, https://www.svtplay.se/video/33358590/uppdrag-granskning/mission-investigate-trans-children-avsnitt-1.

[108] Alison Clayton, *The Gender Affirmative Treatment Model for Youth with Gender Dysphoria: A Medical Advance or Dangerous Medicine?*, 51 Archives Sexual Behav. 691 (2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8888500/.

prosecution before he can test the law's validity. Indeed, most constitutional litigation takes place on a pre-enforcement basis.

The district court invoked the correct standing test for a pre-enforcement challenge, slip op. at 16 (citing *SBA List v. Driehaus*, 573 U.S. 149, 159, 162 (2014)), but erred when it found that Plaintiff's conduct was not "arguably proscribed" by the ELCRA. First, it was unreasonable for the court to credit Michigan's citation to four cases where *only the courts—not the State's executive branch*—granted exceptions for religious entities. *See* Slip op. at 17-18. The State cites no examples where the executive branch has recognized RFRA or the First Amendment on its own accord. The fact that court actions have been required in the past to protect religious entities from the ELCRA counts in favor of CHC's standing, not against it.

Second, the court's standing analysis is contrary to how other circuits have ruled under almost identical circumstances. Over the past decade, religious organizations have brought numerous pre-enforcement challenges against HHS seeking judicial protection from the agency's efforts under Section 1557 of the Affordable Care Act to make them pay for or perform "gender transition" procedures. Like Michigan has argued

here, HHS has tried to defeat religious plaintiffs' standing by citing its promise to "comply with the Religious Freedom Restoration Act . . . and all other legal requirements." *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 377 (5th Cir. 2022) (quoting 86 Fed. Reg. 27984, 27985 (May 25, 2021)). But the Fifth Circuit held that HHS's "refus[al] to disavow enforcement" of its transgender mandate left the plaintiff "within the class whose conduct is arguably restricted." *Id.* "We have repeatedly held that plaintiffs have standing in the face of similar prosecutorial decision." *Id.*

In a parallel lawsuit, the Eighth Circuit likewise found HHS's representations inadequate. The court agreed with the Fifth Circuit that if the threat of "hypothetical future Section 1557 enforcement" was not enough to establish standing, "then plaintiffs could never obtain injunctive relief to prevent future violations of the Free Speech Clause, the Equal Protection Clause, or any other lawsuit where means/ends scrutiny is involved." *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 603 (8th Cir. 2022).

The Fifth and Eighth Circuit got the standing analysis in the pre-enforcement context right. This Court should likewise find that

Michigan's actions as set out in the Plaintiff-Appellant's brief, and its refusal to disavow enforcement is enough to give CHC standing.

CONCLUSION

Amicus urges the Court to reverse the decision below, find that Plaintiff-Appellant have standing, and grant it a preliminary injunction.

Respectfully submitted,

s/ Eric N. Kniffin

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Fed. R. App. P. 29(a)(5) because this brief contains 6,459 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f) and 6 Cir. R. 32(b).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in Microsoft Word Version 2309 using a proportionally spaced typeface, 14-point Century Schoolbook.

Dated: October 25, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.