No. 23-477

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,
v.
JONATHAN THOMAS SKRMETTI, ATTORNEY GENERAL AND REPORTER FOR TENNESSEE, *et al.*,
Respondents,
and
L.W., BY AND THROUGH HER PARENTS AND NEXT FRIENDS, SAMANTHA WILLIAMS AND BRIAN WILLIAMS, *et al.*,
Respondents in Support of Petitioner.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF DR. ERICA E. ANDERSON, PhD, AND DR. LAURA EDWARDS-LEEPER, PhD, AS *AMICI CURIAE* IN SUPPORT OF PETITIONER AND RESPONDENTS SUPPORTING PETITIONER

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INTERESTS OF AMICI CURIAE[1]

Dr. Erica E. Anderson and Dr. Laura Edwards-Leeper (together, Amici) are two recognized experts in clinical psychology who specialize in providing care to gender-distressed children, adolescents, and adults. Jointly and independently, Amici have spoken and published on the topic of treating children and adolescents with gender dysphoria. Some of Amici's prior statements and publications have been invoked in this litigation in ways that improperly suggest they support state legislative bans on medical care, such as the one at issue here—Tennessee Senate Bill 1, Tenn. Code Ann. §§ 68-33-101 *et seq*. (SB1). That is not true.

As practitioners and advocates for conscientious, individualized, evidence-based care for minors experiencing gender incongruence, Amici have a keen interest in setting the record straight: Their experience and expertise in the field lead them to support access to appropriate gender-affirming medical care for youth with gender dysphoria and to oppose legislation, such as SB1, banning care.

Amici seek to ensure that this Court is provided with accurate information about the dire consequences of SB1 and other bans. And Amici—with

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[1] No party's counsel authored this brief in part or in whole, and no person other than the Amici Curiae or their counsel made any monetary contribution to fund the preparation or submission of this brief.

their depth and breadth of experience and well-established commitment to a thoughtful and balanced approach to providing affirmative, scientifically-driven care—are optimally positioned to do so.

Erica E. Anderson, PhD, is a licensed clinical psychologist with over forty years of experience. Her practice focuses on children and adolescents experiencing gender dysphoria and gender-identity-related issues. Dr. Anderson previously served as a board member for the World Professional Association for Transgender Health (WPATH) and as President of the United States affiliate of WPATH (USPATH), as well as President of the Northern California Group Psychotherapy Society. In addition to her ongoing private practice, Dr. Anderson previously held academic appointments and a medical staff position at the University of California, San Francisco's Benioff Children's Hospital and its Child and Adolescent Gender Clinic.

Laura Edwards-Leeper, PhD, is a licensed clinical psychologist who has specialized in working with gender-diverse children, adolescents, and adults for her entire career. She was the founding psychologist for the Gender Management Service (GeMS) at Boston Children's Hospital/Harvard Medical School, the first hospital-based pediatric gender program in the United States to offer puberty suppressing medications to appropriately screened gender dysphoric adolescents. She has also worked at Seattle Children's Hospital and helped start the pediatric gender clinic at Randall Children's Hospital in Portland, Oregon. Dr. Edwards-Leeper is Professor

Emerita in the School of Graduate Psychology at Pacific University in Hillsboro, Oregon, where she trained graduate students on the comprehensive, individualized assessment process recommended for gender dysphoric minors to help determine developmentally informed, individualized treatment plans. She served as the only youth-focused member of the task force that developed the American Psychological Association's (APA) *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People* (2015). Dr. Edwards-Leeper was Chair of the Child and Adolescent Committee for the WPATH and was selected as a member of the committee that revised the child and adolescent chapters of the WPATH's *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*. She has recently been named an APA Division 54 (Society of Pediatric Psychology) Fellow for her work in this field.

SUMMARY OF ARGUMENT

Tennessee's SB1 imposes a categorical ban on medical treatments for gender dysphoria in adolescents. Such legislation is unreasonable and, indeed, dangerous. Under any standard of legal review, it should be rejected.

The categorial approach mandated by SB1 is anathema to the provision of appropriate medical care. As the Standards of Care developed and published by the World Professional Association for Transgender Health (WPATH) emphasize, delivering appropriate care—especially for youth—calls for an individualized approach, informed by comprehensive clinical assessments.

The WPATH's Standards of Care recognizes that, while medical interventions are not appropriate for all patients, they are extremely beneficial for some patients. Thorough and proper individualized assessments play an essential role—ensuring that only young people who will most likely benefit from medical interventions will be treated with them.

SB1, however, requires health professionals to disregard these established standards by barring them from providing critical treatments even when properly determined to be clinically indicated. Such a state-imposed prohibition on medical care is untenable. For patients denied access to critical care, serious adverse health consequences may result.

The Sixth Circuit majority erred in multiple respects in upholding SB1—including failing to give due consideration to the harms wrought by a categorial ban. Amici urge this Court to reverse, or at least to vacate and remand for the application of heightened scrutiny. Amici submit this brief to address the panel majority's faulty notion that SB1's ban on care represents the exercise of "fair-minded caution" and a rational legislative response to "ongoing debate." Pet. App. 48a. As prominent practitioners in this field, Amici have been vocal participants in the medical and mental health community's dialogue regarding optimizing care for youth experiencing gender incongruence. Critically, nothing in that ongoing dialogue or debate supports an outright ban on care.

Amici's own prior public statements and publications have been invoked in this case (both in the record before the lower courts and before this Court) so as to imply support for SB1 and other state bans on care. *See, e.g.*, Br. of Ala. as Amicus Curiae Supporting Respondents' Br. in Opp. 19-20. But Amici's body of work—including prior statements and publications—does *not* provide support for banning care. To the contrary, it demonstrates that a nuanced approach is essential; Amici's commitment to promoting adherence to evidence-based standards of care must not be confused with support for a reckless prohibition on care.

ARGUMENT

Contrary to Suggestions by Supporters of SB1, Amici Strongly Oppose Bans on Gender-Affirming Healthcare.

A. Legislative Bans, Such as SB1, Unreasonably Block the Delivery of Appropriate Individualized Medical Care.

As the Petitioner and Respondents Supporting the Petitioner explain, the panel majority erred in applying rational-basis review to SB1. But under any standard, the panel majority got it wrong: Their conclusion that a ban on gender-affirming medical care for those under the age of eighteen is a reasonable approach that reflects "fair-minded caution" is not supported. Pet. App. 48a-49a.

The majority's assessment relied on the assertion that there is "ongoing debate" concerning the "nature of treatments in this area." Pet. App. 48a. But the majority's premise was faulty because it ignored the limited scope of that debate. While there is certainly ongoing research and dialogue about how to optimize meeting the physiological and mental health needs of adolescents with gender dysphoria, there is no "ongoing debate" in the medical and mental health communities as to the reasonableness of banning care.

Instead, there is a broad consensus that access to gender-affirming medical care is important and appropriate for some youths, and conversely that state

legislation categorically banning such care is unwarranted and dangerous. *See, e.g.*, Statement of Clinicians and Researchers Regarding Laws Restricting Gender Affirming Medical Care (Mar. 27, 2023) (558 signatories as of June 8, 2023), https://www.gamcstatement.org/; American Psychological Ass'n, *Policy Statement on Affirming Evidence-Based Inclusive Care for Transgender, Gender Diverse, and Nonbinary Individuals, Addressing Misinformation, and the Role of Psychological Practice and Science* 2 (Feb. 24, 2024), https://www.apa.org/about/policy/transgender-nonbinary-inclusive-care.pdf?os=os&ref=app.

The leading professional groups for treating transgender persons and those experiencing gender dysphoria—the WPATH and the Endocrine Society—have published practice guidelines for the treatment of minors with gender dysphoria. *See* Eli Coleman, *et al.*, *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8* ("*WPATH SOC-8*"), 23 Int'l J. of Transgender Health S1, S43-S79 (2022), https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644; 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), https://core.ac.uk/reader/153399329?utm_source=linkout.

These guidelines reflect the consensus that medical interventions may be necessary and appropriate for certain adolescents, where specific criteria are satisfied—including, *inter alia*, that

comprehensive individualized evaluations are completed and reveal marked and sustained gender incongruence. *See, e.g.*, *WPATH SOC-8*, S48, S256-S257; *see also, e.g.*, Pet. App. 252a-261a.

Contrary to the panel majority's conclusion, there is nothing reasonable about the approach Tennessee has taken—purporting to enact legislation to protect the health of minors, while disregarding the agreement among relevant bodies of healthcare experts that *banning* gender-affirming medical care has the opposite effect.

B. Amici Vehemently Oppose SB1 Because Banning Care Does Not Advance a Legitimate Interest and Threatens to Harm Minors.

Against the backdrop of broad consensus that categorically banning access to gender-affirming medical care is harmful, supporters of SB1 invoke Amici's past statements and publications and seek to imply their support for SB1. But this misconstrues Amici's past statements as a spurious means to an end: to manufacture debate about the reasonableness of banning care.

Amici do *not* support legislation that prohibits gender-affirming care. Their outspoken advocacy calling for health care providers to adhere conscientiously to the WPATH Standards of Care by providing "mental health support and comprehensive assessment for all dysphoric youth before starting medical interventions" does not suggest otherwise. *See*

Laura Edwards-Leeper & Erica Anderson, *The Mental Health Establishment Is Failing Trans Kids*, Wash. Post (Nov. 24, 2021), https://www.washingtonpost.com/outlook/2021/11/24/trans-kids-therapy-psychologist; *see also* Helen Santoro, *Advocating for Transgender and Nonbinary Youths*, Am. Psychological Ass'n (July 1, 2022), https://www.apa.org/monitor/2022/07/advocating-transgender-nonbinary-youths.

Without question, Amici are strong proponents of requiring a "nuanced, individualized and developmentally appropriate assessment process." *The Mental Health Establishment Is Failing Trans Kids*, *supra*. This is the approach Amici employ in their own practices—where their experience confirms that, consistent with the WPATH Standards of Care, medical interventions can be highly beneficial when appropriate. And they have long stressed that banning care unreasonably precludes this beneficial process. *See id.*[2]

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[2] Other researchers whose works examine the delivery of care and consider how to improve care for gender-distressed minors similarly recognize that "a medical pathway is clinically indicated" in some cases—rendering a ban on such care inappropriate. Hilary Cass, Independent Review of Gender Identity Services for Children and Young People 30 (Apr. 2024), https://cass.independent-review.uk/home/publications/.

Notwithstanding Amici's emphatic opposition to bans on gender-affirming medical care, the State's experts and amici have sought to invoke their work in support of SB1. For example, in the district court, Tennessee submitted an expert declaration by Stephen B. Levine, M.D., in support of its brief in opposition to a preliminary injunction of SB1, in which Dr. Levine cited to Amici's work in at least eight different paragraphs without ever disclosing that Amici categorically oppose bans on gender-affirming medical care like SB1. *See* Defs.' Opp'n to Pls.' Mot. for a Prelim. Injunction, Ex. 5 (ECF 113-5), ¶¶ 29, 59, 69, 78, 91, 115, 200, & 208.

In a petition-stage amicus filing in this Court, Alabama misleadingly cited Amici's Washington Post op-ed—selectively quoting snippets to suggest that Amici disagree with WPATH's stance on the importance of gender-affirming medical care for minors. *See* Br. of Ala. as Amicus Curiae Supporting Respondents' Br. in Opp. at 19-20. But Alabama distorts Amici's message and ignores their clear statement in the op-ed that they "enthusiastically support the appropriate gender-affirming medical care for trans youth" and "are disgusted by the legislation trying to ban it." *The Mental Health Establishment is Failing Trans Kids*, *supra*.

Given Amici's experience as researchers and practitioners, it is clear that bans—such as SB1—will cause harm. Without access to appropriate gender-affirming medical care, some gender-distressed minors will suffer worsening mental health symptoms and related adverse health consequences.

Importantly, where appropriate gender-affirming care is not banned, these risks may be mitigated. *See, e.g.,* Laura Edwards-Leeper, *et al.*, *Affirmative Practice with Transgender and Gender Nonconforming Youth: Expanding the Model*, Psychology of Sexual Orientation & Gender Diversity, Vol. 3, No. 2 at 165, 168-69 (2016) (recognizing the potentially "life saving" role of affirmative medical treatments for some adolescents experiencing gender dysphoria and at risk for serious harm); Annelou L.C. de Vries, *et al.*, *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, Pediatrics, Vol. 134, No. 4 at 696 (2014) (long-term longitudinal study finding medical interventions alleviated gender dysphoria and improved psychological functioning for carefully screened gender dysphoric youth with sustained gender dysphoria).

CONCLUSION

The opinion of the Sixth Circuit panel majority allows an irrational and dangerous law to take effect. Consistent with the views of the broader medical and mental health community, Amici oppose SB1 and urge this Court to reverse or, alternatively vacate and remand, the Sixth Circuit's ruling.

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