

No. 23-477

IN THE
Supreme Court of the United States

UNITED STATES,

Petitioner,

v.

JONATHAN 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 FOREIGN NON-PROFIT
ORGANIZATIONS ADVOCATING FOR
THE RIGHTS OF TRANSGENDER PEOPLE
AS AMICI CURIAE IN SUPPORT OF PETITIONER
AND RESPONDENTS IN SUPPORT OF PETITIONER**

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<i>Re J (An Infant): B & B v. Director-General of Social Welfare</i> , [1996] 2 NZLR 134 (N.Z.)	19
<i>Secretary, Department of Health & Community Services v. JWB & SMB (“Marion’s Case”)</i> , [1992] 175 CLR 218 (Austl.).....	15
<i>Transactual CIC & YY v. Secretary of State for Health and Social Care & Minister of Health for Northern Ireland</i> , [2024] EWHC 1936 (Admin)	12, 13

STATUTORY PROVISIONS

Care of Children Act 2004, Public Act 2004 No. 90 (N.Z.), https://legislation.govt.nz/act/public/2004/0090/latest/DLM317233.html	18
Sveriges Riksdag, Health and Medical Services Act (2017), SFS No. 2017:30, https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/halso--och-sjukvardslag-201730_sfs-2017-30	5
Tenn. Code Ann. § 68-33-101	1

TABLE OF AUTHORITIES—Continued

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OTHER AUTHORITIES	
<p>AusPATH, <i>Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents</i> (Nov. 2020), https://www.rch.org.au/uploadedFiles/Main/Content/adolescent-medicine/230242%20RCH%20Gender%20Standards%20Booklet%201.4_Nov%202023_WEB.pdf....</p>	14, 15
<p><i>B 62 Proposal for a Parliamentary Resolution on a Ban on Surgical or Medical Gender Reassignment Treatment for Children Under the Age of 18</i>, https://www.ft.dk/samling/2022/beslutningsforslag/B62/BEH1-57/forhandling.htm (visited Sept. 3, 2024).....</p>	16
<p>The Cass Review, <i>Independent Review of Gender Identity Services for Children and Young People: Final Report</i>, NHS England (Apr. 2024), https://cass.independent-review.uk/home/publications/final-report/.....</p>	8, 10, 11
<p>The Cass Review, <i>The Independent Review of Gender Identity Services for Young People: Interim Report</i>, NHS (Feb. 2022), https://cass.independent-review.uk/publications/interim-report</p>	7
<p>The Cass Review, <i>Terms of Reference</i>, https://cass.independent-review.uk/about-the-review/terms-of-reference/ (visited Sept. 3, 2024)</p>	7

TABLE OF AUTHORITIES—Continued

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Government of Mexico, Secretary of Health, Protocolo para el Acceso sin Discriminación a la Prestación de Servicios de Atención Médica de las Personas Lésbico, Gay, Bisexual, Transexual, Travesti, Transgénero e Intersexual y Guías de Atención Específicas (2020), https://www.gob.mx/cms/uploads/attachment/file/558167/Versi_n_15_DE_JUNIO_2020_Protocolo_Comunidad_LGBTTI_DT_Versi_n_V_20.pdf	18
Government Offices of Sweden, Ministry of Health & Social Affairs, <i>Every Child in Sweden Has the Right to a Safe, Secure and Bright Future</i> (July 25, 2023), https://government.se/articles/2023/07/every-child-in-sweden-has-the-right-to-a-safe-secure-and-bright-future	5
Helsedirektoratet, <i>Gender Incongruence</i> , https://www.helsedirektoratet.no/retningslinjer/kjonnssinkongruens (visited Sept. 3, 2024).....	13
Hill, Bailee, <i>Former Prime Minister Praises England’s Ban on Puberty Blockers for Kids: ‘Massive Step Forward,’</i> Fox News (Mar. 13, 2024), https://www.foxnews.com/media/former-prime-minister-praises-england-ban-puberty-blockers-kids-massive-step-forward	7

TABLE OF AUTHORITIES—Continued

	Page
Mahfouda, Simone, et al., <i>Puberty Suppression in Transgender Children and Adolescents</i> , 5 <i>Lancet Diabetes & Endocrinology</i> 816 (2017), https://www.sciencedirect.com/science/article/pii/S2213858717300992	15
Medicines (Gonadotrophin-Releasing Hormone Analogues) (Emergency Prohibition) (England, Wales and Scotland) Order 2024, https://www.legislation.gov.uk/ukxi/2024/727/made	12
Medicines (Gonadotrophin-Releasing Hormone Analogues) (Emergency Prohibition) (Extension) Order 2024, https://www.legislation.gov.uk/ukxi/2024/868/article/1/made	12
New Zealand Ministry of Health, <i>Puberty Blockers Evidence Brief Update</i> (Dec. 15, 2023), https://www.health.govt.nz/news-media/news-items/puberty-blockers-evidence-brief-update	20
New Zealand Ministry of Health, <i>Response to Your Request for Official Information</i> (Apr. 27, 2023), https://www.health.govt.nz/system/files/documents/information-release/h2023022566_response_letter.pdf	19, 20
New Zealand Ministry of Health, <i>Response to Your Request for Official Information</i> (June 1, 2023), https://www.health.govt.nz/system/files/documents/information-release/h2023024782_response_-_proactive_release.pdf	20

TABLE OF AUTHORITIES—Continued

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NHS, <i>Clinical Policy: Puberty Suppressing Hormones (PSH) for Children and Young People Who Have Gender Incongruence/ Gender Dysphoria</i> (Mar. 12, 2024), https://www.england.nhs.uk/publication/clinical-policy-puberty-suppressing-hormones/	8
NHS England, <i>Children and Young People’s Gender Services: Implementing the Cass Review Recommendations</i> (Aug. 2024), https://www.england.nhs.uk/wp-content/uploads/2024/08/PRN01451-implementing-the-cass-review-recommendations.pdf	10
NHS England, <i>Consultation Report for the Clinical Policy on Puberty Suppressing Hormones for Children and Adolescents Who Have Gender Incongruence / Gender Dysphoria</i> (Mar. 11, 2024), https://www.england.nhs.uk/wp-content/uploads/2024/03/psh-consultation-report-11-march-2024.docx	9
NHS England, <i>Gender Dysphoria—Treatment</i> , https://www.nhs.uk/conditions/gender-dysphoria/treatment/ (visited Sept. 3, 2024)	11
NHS England, <i>Prescribing of Gender Affirming Hormones (Masculinising or Feminising Hormones) as Part of the Children and Young People’s Gender Service</i> (Mar. 21, 2024), https://www.england.nhs.uk/wp-content/uploads/2024/03/clinical-commissioning-policy-prescribing-of-gender-affirming-hormones.pdf	11

TABLE OF AUTHORITIES—Continued

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Oliphant, Jeannie, et al., <i>Guidelines for Gender Affirming Healthcare for Gender Diverse and Transgender Children, Young People and Adults in Aotearoa New Zealand</i> , Transgender Health Research Lab, University of Waikato (Oct. 2018), https://researchcommons.waikato.ac.nz/bitstream/handle/10289/12160/Guidelines%20for%20Gender%20Affirming%20Health%20low%20res.pdf	19
Oslo kommune, <i>Health Center for Gender and Sexuality</i> , https://www.oslo.kommune.no/helse-og-omsorg/helsetjenester/helsestasjon-og-vaksine/helsestasjon-for-ungdomhfu/helsestasjon-for-kjonn-og-seksualitet-hks/#gref (visited Sept. 3, 2024)	14
Oslo universitetssykehus, <i>Gender Incongruence</i> , https://oslo-universitetssykehus.no/behandlinger/kjonnsinkongruens-utredning-og-behandling-av-barn-og-unge-under-18-ar (visited Sept. 3, 2024)	13
Press Release, <i>German Ethics Council Publishes Ad Hoc Recommendation on Trans Identity in Children and Adolescents</i> (Feb. 20, 2020), https://www.ethikrat.org/en/press-releases/press-releases/2020/ethics-council-publishes-ad-hoc-recommendation-on-transgender-identity-in-children-and-adolescents/?cookieLevel=not-set	17

TABLE OF AUTHORITIES—Continued

	Page
Retsinformation, <i>Guidance on Healthcare Help for Gender Identity Issues</i> (Aug. 16, 2018), https://www.retsinformation.dk/eli/retsinfo/2019/9060	16
Retsinformation, <i>Proposal for a Parliamentary Resolution</i> (submitted Mar. 14, 2023), https://www.retsinformation.dk/eli/ft/2022BB00062	16
Roush, Ty, <i>England Bans Puberty Blockers For Minors</i> , <i>Forbes</i> (Mar. 12, 2024), https://www.forbes.com/sites/tylerroush/2024/03/12/uk-bans-puberty-blockers-for-minors/?sh=62ec7a702a3b	9
Siddique, Haroon, <i>Puberty Blockers Ban Imposed by Tory Government Is Lawful, High Court Rules</i> , <i>The Guardian</i> (July 29, 2024), https://www.theguardian.com/society/article/2024/jul/29/puberty-blockers-ban-tory-government-lawful-high-court-rules	7
Socialstyrelsen, <i>Care of Children and Adolescents with Gender Dysphoria</i> (Dec. 2022), https://www.socialstyrelsen.se/global/assets/sharepoint-dokument/artikelkatalog/kunskapsstod/2023-1-8330.pdf	5, 6
Socialstyrelsen, <i>God vård av barn och ungdomar med könsdysfori (Good care of children with gender dysphoria)</i> (Apr. 2015), https://etik.barnlakarforeningen.se/wp-content/uploads/sites/16/2022/03/1.-SoS-God-va%CC%8Ard-av-barn-....pdf	6

TABLE OF AUTHORITIES—Continued

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UK Department of Health and Social Care, <i>Temporary Ban on Prescription and Supply of Puberty Blockers Extended</i> (Aug. 22, 2024), https://www.gov.uk/government/ news/puberty-blockers-temporary-ban-ext ended	12

INTEREST OF AMICI CURIAE¹

Amici curiae (1) Stonewall Equality Limited; (2) the Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights (“RFSL”); (3) RFSL Ungdom; (4) Transammans; (5) the Norwegian Organization for Sexual and Gender Diversity; (6) the Australian Professional Association for Trans Health; (7) LGBT+ Denmark; (8) Bundesverband Trans* e.V.; (9) the Fundación Colectivo Hombres XX, AC; and (10) the Professional Association for Transgender Health Aotearoa New Zealand (collectively, the “Amici Organizations”) are non-profit organizations dedicated in whole or in part to securing and protecting the rights of transgender people. The Amici Organizations respectfully submit this brief to assist the Court in understanding the availability of gender-affirming healthcare for adolescents in each of the Amici Organizations’ respective home countries, and to urge the Court reverse the Sixth Circuit’s decision.

A more detailed statement of interest for each of the Amici Organizations is included in the Appendix.

INTRODUCTION AND SUMMARY OF ARGUMENT

Tennessee has prohibited gender-affirming healthcare for adolescents (the “State Healthcare Ban”). *See* Tenn. Code Ann. § 68-33-101. A federal district court preliminarily enjoined portions of the State Healthcare Ban from taking effect, finding a likelihood

¹ No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici curiae, their members, and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

of success on the merits on the plaintiffs' constitutional challenges and a risk of irreparable harm to transgender adolescents with gender dysphoria if this medical care is denied. By reversing that preliminary injunction, the Sixth Circuit permitted enforcement of Tennessee's likely unconstitutional statute and revived that imminent risk of acute harm.

In defense of the State Healthcare Ban, Tennessee—as well as some of its amici—claimed in the lower courts that the legislation finds support in recent actions taken in a few European countries regarding the treatment of transgender adolescents seeking medical care. Specifically, they have pointed to some assessments of existing research conducted by a few European countries' governmental and nongovernmental bodies, and to changes in practices adopted regarding the provision of care.

These select countries' reports and practices, however, neither amount to nor support a wholesale ban on gender-affirming treatment for transgender adolescents. And the assertions by Tennessee and its amici about the approach that other developed countries are taking to the provision of gender-affirming healthcare to transgender adolescents are not correct—or, at a minimum, are exaggerated and misleading, and presented without vitally important context. In truth, the State Healthcare Ban is an outlier when viewed against a global backdrop. In each of the countries that Tennessee and its amici have referenced, gender-affirming medical care is available to adolescents who need it, and policymakers and clinicians are working together to ensure that appropriate gender-affirming medical care continues to be available. The State Healthcare Ban, and the many similar laws recently enacted across the United

States, are thus inconsistent with international practices.

The Amici Organizations submit this brief to ensure that the Court has the benefit of accurate information about the gender-affirming healthcare that is available to adolescents in countries that Tennessee and its amici have referenced: Sweden, the United Kingdom, and Norway. This brief also provides information about the availability of gender-affirming healthcare to transgender adolescents in several other developed countries: Australia, Denmark, Germany, Mexico, and New Zealand.²

In all the countries surveyed below, there is no meaningful analogue to Tennessee's unprecedented intrusion into the healthcare decision-making process between adolescent patients, their physicians, and their families. To the extent the Court accepts the invitation to look abroad at the global landscape in considering this case, it should do so only to observe Tennessee's outlier status.

The Court should reverse the Sixth Circuit's judgment.

² *Seta ry / Seta rf / Seta Lgbtiq Rights*, in Finland, and *The Federación Estatal de Lesbianas, Gais, Trans, Bisexuales, Intersexuales y más*, in Spain, joined the November 17, 2023 brief submitted at the certiorari stage of this case, but have not been available to participate in this brief. The November 17, 2023 amicus brief sets forth the status of gender-affirming medical care in those two jurisdictions as of the date that brief was filed.

ARGUMENT

I. TRANSGENDER ADOLESCENTS HAVE ACCESS TO APPROPRIATE GENDER-AFFIRMING HEALTHCARE IN SWEDEN, THE UNITED KINGDOM, AND NORWAY

In the courts below, Tennessee, and certain other states appearing as amici curiae cited materials referencing Sweden, the United Kingdom, and Norway in support of the State Healthcare Ban. *See* Tennessee Br. 3-4, 15 (No. 23-5600, Doc. 64); Brief of Alabama, Arkansas, and 19 Other States as Amici Curiae Supporting Appellants and Reversal 20-24 (No. 23-5600, Doc. 63). The court of appeals then alluded to these materials and assertions when it invoked the “diverse ... practices of other nations.” Pet. App. 30a.

Although some assessments of the existing research performed in these select European countries have recommended certain changes to how medical care is delivered to transgender adolescents, the governments in those countries—unlike Tennessee’s—have not categorically prohibited all gender-affirming medical care. Instead, in all three of those countries—and in many other developed nations around the world, *see infra* Part II—transgender adolescents have access (when needed) to gender-affirming healthcare that the State Healthcare Ban prohibits.

A. Sweden

Gender-affirming healthcare is available to adolescents on an individual basis in Sweden, and the Swedish government has not inserted itself into its citizens’ medical decision-making—as Tennessee does through the State Healthcare Ban’s prohibition on physicians’ ability to provide medical treatment that they consider

medically necessary.³ While Sweden and its national health agency have updated the agency’s non-binding medical recommendations, Sweden continues to permit individual patients to receive appropriate gender-affirming healthcare when a physician considers that course of treatment medically appropriate for that individual patient.

In Sweden, access to healthcare is governed by the Health and Medical Services Act.⁴ Under the framework of that law, medical treatment is valid so long as it comprises treatment that can relieve or alleviate pain or illness. Gender-affirming healthcare, like all medical practice in Sweden, needs to be performed within the framework of the law, based on medical evidence and well-known practice. Sweden also adheres to the United Nations Convention on the Rights of the Child, which recognizes a child’s right to have a say in their medical treatment, and that this right increases with age.⁵

For over twenty years, adolescent patients in Sweden have had access to gender-affirming healthcare. The Swedish National Board of Health and Welfare

³ See Socialstyrelsen, *Care of Children and Adolescents with Gender Dysphoria* 4-5 (Dec. 2022), <https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/kunskapsstod/2023-1-8330.pdf>.

⁴ Sveriges Riksdag, Health and Medical Services Act (2017), SFS No. 2017:30 (Swed.), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/halso--och-sjukvardslag-201730_sfs-2017-30 (select “English” translation).

⁵ Government Offices of Sweden, Ministry of Health & Social Affairs, *Every Child in Sweden Has the Right to a Safe, Secure and Bright Future* (July 25, 2023), <https://government.se/articles/2023/07/every-child-in-sweden-has-the-right-to-a-safe-secure-and-bright-future>.

promulgates national guidelines to support clinicians in making decisions concerning the healthcare needs of their patients.⁶ Since 2015, the guidelines have addressed hormone treatment for gender dysphoria. And although those guidelines were updated in 2022 to advise that hormone treatment should be “administered in exceptional cases” rather than at “a group level”—the guidelines still permit the use of puberty blockers and gender-affirming hormones on a case-by-case basis, and they emphasize the importance of young people with gender dysphoria continuing to receive care within the healthcare system.⁷

B. United Kingdom

Tennessee and its amici presented the court of appeals with an incorrect and incomplete picture of transgender adolescents’ access to gender-affirming healthcare in the United Kingdom. This brief provides the Court accurate information about developments in the United Kingdom since Amici filed their earlier brief in this case in November 2023. Those developments, which are limited to puberty blockers and have no impact on other gender-affirming medical care, have been widely misreported in the press as a wholesale “ban on

⁶ Socialstyrelsen, *God vård av barn och ungdomar med könsdysfori (Good care of children with gender dysphoria)* (Apr. 2015), <https://etik.barnlakarforeningen.se/wp-content/uploads/sites/16/2022/03/1.-SoS-God-va%CC%8Ard-av-barn-....pdf>.

⁷ Socialstyrelsen, *Care of Children and Adolescents with Gender Dysphoria*, *supra* note 3, at 3.

puberty blockers for kids”⁸ or a “puberty blockers ban[.]”⁹

Care Within the National Health Service. The United Kingdom’s publicly funded National Health Services (the “NHS”) continues to examine how best to deliver gender-affirming medical care, including puberty blockers, to young people.

In late 2020, the NHS commissioned the Cass Review to conduct an independent review to develop recommendations concerning the provision of gender-affirming healthcare to children and young people.¹⁰ The Cass Review’s February 2022 Interim Report¹¹ and its

⁸ Hill, *Former Prime Minister Praises England’s Ban on Puberty Blockers for Kids: ‘Massive Step Forward,’* Fox News (Mar. 13, 2024), <https://www.foxnews.com/media/former-prime-minister-praises-england-ban-puberty-blockers-kids-massive-step-forward>.

⁹ Siddique, *Puberty Blockers Ban Imposed by Tory Government Is Lawful, High Court Rules,* The Guardian (July 29, 2024), <https://www.theguardian.com/society/article/2024/jul/29/puberty-blockers-ban-tory-government-lawful-high-court-rules>.

¹⁰ “The Independent Review of Gender Identity Services for Children and Young People,” also known as The Cass Review, “was commissioned by NHS England and NHS Improvement in Autumn 2020 to make recommendations about the services provided by the NHS to children and young people who are questioning their gender identity or experiencing gender incongruence.” The Cass Review, *Terms of Reference*, <https://cass.independent-review.uk/about-the-review/terms-of-reference/> (visited Sept. 3, 2024).

¹¹ *See generally Independent Review of Gender Identity Services for Children and Young People: Interim Report* (Feb. 2022), <https://cass.independent-review.uk/home/publications/interim-report/>.

April 2024 Final Report¹² emphasize the expansion of care and the focus on collaboration between the patient, the patient’s family, and the patient’s clinical care team.¹³ Neither Report recommends a ban on gender-affirming medical care.

To the contrary, the Interim Cass Report called for the immediate expansion and regionalization of services, so that patients under eighteen have access to a better quality of care closer to home, and with reduced waiting time.¹⁴ Since the Interim Report was published, NHS has established “two new services led by specialist children’s hospitals” as “the first step in commissioning a network of regional services across the country[,]” alongside an “increased number of providers,” to “reduc[e] waiting times for specialist care.”¹⁵

On March 12, 2024, NHS published a Clinical Policy stating that “Puberty suppressing hormones (PSH) are not available as a routine commissioning treatment option for treatment of children and young people who have gender incongruence / gender dysphoria.”¹⁶

¹² See generally *Independent Review of Gender Identity Services for Children and Young People: Final Report* (Apr. 2024), <https://cass.independent-review.uk/home/publications/final-report/>.

¹³ *E.g.*, Interim Report 68 (acknowledging that “treatment decisions must be made in partnership between the clinicians and the children, young people and their families and carers, based on our current understanding about outcomes”); Final Report 220-221 (“Figure 42: [Recommended] Referral pathway” showing “Patient and family” along with “Primary Care,” “Secondary Care,” and regional treatment provider networks for specialty care).

¹⁴ Interim Report 69-72.

¹⁵ Final Report 36.

¹⁶ NHS, *Clinical Policy: Puberty Suppressing Hormones (PSH) for Children and Young People Who Have Gender*

Despite careless news headlines, this was and is not a ban on the use of puberty blockers, but instead imposed a forward-looking bar on their “routine” use.¹⁷ An NHS Consultation Report published alongside the Clinical Policy confirmed that the Clinical Policy will not affect young people who have already been prescribed puberty blockers.¹⁸

And there is no perpetual ban on new prescriptions either: NHS has confirmed that, subject to the necessary approvals, a clinical study of young people taking gender-affirming medication contemplated by the Cass Review will begin recruiting eligible individuals in late 2024.¹⁹

The April 2024 Cass Final Report urges caution regarding medical interventions for transgender youth, but acknowledges, too, that medical interventions will be appropriate for some youth, and the Report advocates

Incongruence/Gender Dysphoria (Mar. 12, 2024), <https://www.england.nhs.uk/publication/clinical-policy-puberty-suppressing-hormones/> (select “Clinical Policy: Puberty suppressing hormones (PSH) for children and young people who have gender incongruence / gender dysphoria [1927]”).

¹⁷ Roush, *England Bans Puberty Blockers For Minors*, Forbes (Mar. 12, 2024), <https://www.forbes.com/sites/tylerroush/2024/03/12/uk-bans-puberty-blockers-for-minors/?sh=62ec7a702a3b>; Hill, *Former Prime Minister Praises England’s Ban on Puberty Blockers for Kids: ‘Massive Step Forward,’* Fox News (Mar. 13, 2024), <https://www.foxnews.com/media/former-prime-minister-praises-england-ban-puberty-blockers-kids-massive-step-forward>.

¹⁸ NHS England, *Consultation Report for the Clinical Policy on Puberty Suppressing Hormones for Children and Adolescents Who Have Gender Incongruence/Gender Dysphoria 7* (Mar. 11, 2024), <https://www.england.nhs.uk/wp-content/uploads/2024/03/ps-consultation-report-11-march-2024.docx>.

¹⁹ *Id.*

expanding – not limiting – the NHS’s capacity to provide holistic gender affirming medical care:

The first step for the NHS is to expand capacity, offer wider interventions, upskill the broader workforce, take an individualised, personal approach to care, and put in place the mechanisms to collect the data needed for quality improvement and research. Expanding capacity at all levels of the system will not only allow for more timely care and space to explore, but also free-up the specialist services for those who need them most.

Final Report 15. In discussing “Pathways to Service,” the Final Report additionally states: “Importantly some children within this group who remain gender incongruent into puberty may benefit from puberty blockers and will be able to enter the specialist component of the service and access the puberty blocker trial in a timely way, if already under the supervision of the regional network.”²⁰

The NHS’s Cass Implementation Plan, published in August 2024 to guide to the provision of “Children and Young People’s Gender Services,” also emphasizes the importance of access to care: it states regarding “medical interventions” that if a youth’s “clinical team think that this may be the right pathway for an individual, they *will have access to those treatments* as part of a carefully constructed research programme.”²¹ That

²⁰ Final Report 223.

²¹ NHS England, *Children and Young People’s Gender Services: Implementing the Cass Review Recommendations 4* (Aug. 2024), <https://www.england.nhs.uk/wp-content/uploads/2024/08/PR>

cautious, evidence-based, scientific approach to one aspect of gender-affirming healthcare bears no resemblance to Tennessee’s wholesale ban.

With respect to hormone treatments, in March 2024, NHS published a Clinical Policy permitting “Gender Affirming Hormones” for patients over 16 who have met certain conditions (*e.g.*, the individual does not smoke, and for that individual, “difficulties such as a psychotic episode, drug addiction, or self harming are not escalating”).²² The Cass Final Report urges “an extremely cautious clinical approach and a strong clinical rationale for providing hormones before the age of 18,” but hormone treatment continues to be available through NHS to youth age 16 and over.²³

Care Outside the National Health Service. On May 29, 2024, the Secretary of State for Health and Social Care and the Minister for Health issued a temporary order preventing individuals under eighteen from obtaining new prescriptions for puberty blockers outside the NHS. The temporary order became effective on June 3, 2024, was renewed on August 22, 2024, and, unless

N01451-implementing-the-cass-review-recommendations.pdf (emphasis added).

²² NHS England, *Prescribing of Gender Affirming Hormones (Masculinising or Feminising Hormones) as Part of the Children and Young People’s Gender Service* 1, 2, 4 (Mar. 21, 2024), <https://www.england.nhs.uk/wp-content/uploads/2024/03/clinical-commissioning-policy-prescribing-of-gender-affirming-hormones.pdf>.

²³ Final Report 34; *see* NHS England, *Gender Dysphoria—Treatment*, <https://www.nhs.uk/conditions/gender-dysphoria/treatment/> (visited Sept. 3, 2024) (“From around the age of 16, young people with a diagnosis of gender incongruence or gender dysphoria who meet various clinical criteria may be given gender-affirming hormones alongside psychosocial and psychological support.”).

further extended, will expire on November 26, 2024.²⁴ In July 2024, the High Court of England and Wales, which is a trial-level court, upheld the temporary order against a procedural challenge that it was adopted without adequate consultation.²⁵ In August 2024, the British Government launched a consultation with representative groups on making the temporary order permanent.

The temporary order does not prohibit NHS prescriptions for puberty blockers.²⁶ And it authorizes private puberty-blocker prescriptions for patients under eighteen who started a course of treatment with puberty blockers before June 3, 2024, when the temporary order first became effective.²⁷

As the High Court noted, the British Government “supports implementation of the Cass Review.”²⁸ The practical effect of the temporary order is to prevent those under eighteen from accessing the private

²⁴ Medicines (Gonadotrophin-Releasing Hormone Analogues) (Emergency Prohibition) (Extension) Order 2024 (“Temporary Order”) ¶ 1, <https://www.legislation.gov.uk/uksi/2024/868/article/1/made>; Medicines (Gonadotrophin-Releasing Hormone Analogues) (Emergency Prohibition) (England, Wales and Scotland) Order 2024 ¶ 1, <https://www.legislation.gov.uk/uksi/2024/727/made>; UK Department of Health and Social Care, *Temporary Ban on Prescription and Supply of Puberty Blockers Extended* (Aug. 22, 2024), <https://www.gov.uk/government/news/puberty-blockers-temporary-ban-extended>.

²⁵ *Transactual CIC & YY v. Secretary of State for Health and Social Care & Minister of Health for Northern Ireland*, [2024] EWHC 1936 (Admin) (“*Transactual*”).

²⁶ Temporary Order, *supra*, ¶ 4.

²⁷ *Id.* ¶ 5.

²⁸ *Transactual*, *supra*, ¶ 16.

healthcare market to circumvent the process that, consistent with the Cass Review’s recommendations, the NHS has put in place to assess future puberty-blocker prescriptions to those under eighteen.²⁹

C. Norway

In Norway—both before and after the publication of the Ukom report cited in the record, *see* 3-ER-735-736—puberty blockers and hormone therapy have been available to adolescent patients. Surgical treatment is generally not available before the age of majority. Access to gender-affirming healthcare for adolescent patients, including hormone therapy and mental health support, is defined in the National Guidelines on the Treatment of Gender Incongruence, promulgated by the Norwegian Directorate of Health.³⁰ Puberty blockers are administered to patients based on their pubertal development stage. Any patient over the age of sixteen may access puberty blockers and hormone therapy upon prescription by a clinician; parental consent is not required.

For adolescents under sixteen, puberty blockers are available with parental consent on a case-by-case basis after an evaluation by medical experts, either through the clinician specialist team at Oslo University Hospital or via a health service organized under the Municipality of Oslo which specializes in services for gender nonconforming and LGBTQI youth.³¹

²⁹ *Id.* ¶ 11.

³⁰ *See* Helsedirektoratet, *Gender Incongruence*, <https://www.helsedirektoratet.no/retningslinjer/kjonnsinkongruens> (select “English” translation) (visited Sept. 3, 2024).

³¹ *See* Oslo universitetssykehus, *Gender Incongruence*, <https://oslo-universitetssykehus.no/behandlinger/kjonnsinkongruens-utredning-og-behandling-av-barn-og-unge-under-18-ar> (select “English”

II. GENDER-AFFIRMING HEALTHCARE IS AVAILABLE TO ADOLESCENTS IN OTHER DEVELOPED COUNTRIES

A review of the status of transgender adolescents' access to gender-affirming medical care in other countries reveals a common thread. With appropriate consultation and diagnoses and properly informed consent, transgender adolescents can access various forms of gender-affirming care, including treatment that the State Healthcare Ban prohibits.

A. Australia

The Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents (the "ASOCT Guidelines"), developed with available evidence and supported by AusPATH, recommend that, following a DSM-V diagnosis of gender dysphoria and comprehensive, developmentally appropriate medical and psychosocial assessment, clinicians prescribe puberty blockers, hormone treatment, and psychological support as appropriate where the patient agrees that hormone therapy or puberty blockers is in their best interest.³² The ASOCT Guidelines rely on empirical evidence and clinical consensus and were developed in consultation with professionals working with

translation) (visited Sept. 3, 2024); Oslo kommune, *Health Center for Gender and Sexuality*, <https://www.oslo.kommune.no/helse-og-omsorg/helsetjenester/helsestasjon-og-vaksine/helsestasjon-for-ungdom-hfu/helsestasjon-for-kjonn-og-seksualitet-hks/#gref> (select "English" translation) (visited Sept. 3, 2024).

³² See AusPATH, *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents 23-24* (Nov. 2020), https://www.rch.org.au/uploadedFiles/Main/Content/adolescent-medicine/230242%20RCH%20Gender%20Standards%20Booklet%201.4_Nov%202023_WEB.pdf.

transgender and gender diverse communities across Australia and New Zealand.³³

In Australia, a parent generally has power to consent to medical treatment, but the parental power to consent diminishes as the patient's capacities and maturities grow. See *Secretary, Dep't of Health & Cmty. Servs. v. JWB & SMB* ("Marion's case"), [1992] 175 CLR 218 (Austl.). The Australian High Court has adopted the English *Gillick* competence framework, which holds that a minor is capable of giving informed consent, and a parent is no longer capable of consenting on the minor's behalf, when the minor achieves *Gillick* competence—that is, a sufficient understanding and intelligence to enable them to understand fully what treatment is proposed. See *id.* at 237 (Mason CJ, Dawson, Toohey and Gaudron JJ) (citing *Gillick v. West Norfolk & Wisbech Health Auth.*, [1986] 1 AC 112 (HL)).

Legal access to gender-affirming healthcare for patients under eighteen was addressed in *Re Imogen* (No. 6), [2020] FamCA 761 (Austl.), in which the Australian Family Court held that adolescent patients can legally receive hormone treatment if there is no dispute between parents (or those with parental responsibility), the medical practitioner, and the patient with regard to *Gillick* competence, the diagnosis of gender dysphoria,

³³ See *id.* at 2. Australia is also home to clinical research affirming the medical benefit of puberty blockers for transgender youth. For example, one published Australian study found that the available evidence, although limited, points to the safety of puberty blockers and the psychological benefits of suppressing puberty before the possible future commencement of hormone therapy. See Mahfouda et al., *Puberty Suppression in Transgender Children and Adolescents*, 5 *Lancet Diabetes & Endocrinology* 816, 819-820 (2017), <https://www.sciencedirect.com/science/article/pii/S2213858717300992>.

or the proposed treatment for alleviating the suffering caused by the gender dysphoria. *See id.* ¶ 35. Any such dispute requires an application to the Family Court. *Id.* ¶¶ 35, 38. But where the adolescent, their parents, and their clinician are all in agreement, care is available, and there are no governmental barriers.

B. Denmark

In Denmark, hormone therapy for adolescents continues to be available through the Danish public healthcare system, after consultation with a multidisciplinary team of doctors including pediatric, psychiatric, and endocrinology specialists.³⁴ In fact, last year the Danish Parliament considered, and rejected, a proposal that would have banned gender-affirming medical care for youth under age 18.³⁵ During the debate over this proposal, the Minister for the Interior and Health, Sophie Løhde, stated that the Danish health authorities were “in the process of revising the existing guidelines” relating to gender-affirming medical care, while emphasizing the need to make such care available to “children and adolescents who, after a thorough investigation, are assessed to need help in the form of medical treatment.”³⁶

³⁴ *See* Retsinformation, *Guidance on Healthcare Help for Gender Identity Issues* § 9 (Aug. 16, 2018), <https://www.retsinformation.dk/eli/retsinfo/2019/9060> (select “English” translation).

³⁵ *See* Retsinformation, *Proposal for a Parliamentary Resolution* (submitted Mar. 14, 2023), <https://www.retsinformation.dk/eli/ft/20222BB00062> (showing proposal progress as “Forkastet,” or rejected).

³⁶ *See B 62 Proposal for a Parliamentary Resolution on a Ban on Surgical or Medical Gender Reassignment Treatment for Children Under the Age of 18*, <https://www.ft.dk/samling/20222/beslut>

C. Germany

Gender-affirming healthcare for transgender adolescents under the age of eighteen is available in various forms throughout Germany. German medical associations are developing guidelines for gender-affirming healthcare relating to teenage transgender patients.

In February 2020, the German Ethics Council addressed healthcare for transgender teenagers.³⁷ The Council acknowledged the tension created by the potentially irreversible consequences of either administering treatment or withholding treatment, but its statement declared that it is not an option to limit access to gender-affirming healthcare for adolescents who understand the consequences of their decision to undergo treatment.³⁸ The Council noted that where “the child is sufficiently capable of insight and judgement to understand the scope and significance of the planned treatment, to form his own judgement and to decide accordingly, his will must be decisively taken into account.”³⁹

D. Mexico

Transgender healthcare in Mexico is guided by the Protocol for Access without Discrimination to Health

ningsforslag/B62/BEH1-57/forhandling.htm (select “English” translation) (visited Sept. 3, 2024).

³⁷ Press Release, *German Ethics Council Publishes Ad Hoc Recommendation on Trans Identity in Children and Adolescents* (Feb. 20, 2020), <https://www.ethikrat.org/en/press-releases/press-releases/2020/ethics-council-publishes-ad-hoc-recommendation-on-transgender-identity-in-children-and-adolescents/?cookieLevel=not-set>.

³⁸ *Id.*

³⁹ *Id.*

Care Services for Lesbian, Gay, Bisexual, Transsexual, Transvestite, Transgender, and Intersex Persons and Specific Care Guidelines.⁴⁰ The Protocol is observed in healthcare facilities administered by the Mexican federal government. The Protocol acknowledges that the process of defining one's sexual orientation, gender identify and/or expression may occur at early stages.⁴¹ The Protocol therefore advises that medical facilities start from a presumption of providing medical care where needed, and it recommends that clinicians consider the use of puberty blockers and hormone treatment when appropriate.⁴² In addition to the Protocol, various Mexican states have reformed their civil codes to recognize the right to gender-affirming healthcare for transgender patients under eighteen.

E. New Zealand

In New Zealand, the Care of Children Act 2004 empowers adolescents aged sixteen and older to consent to medical care.⁴³ With respect to medical care generally, including gender-affirming care for transgender patients, adolescents under sixteen may consent to

⁴⁰ Government of Mexico, Secretary of Health, Protocolo para el Acceso sin Discriminación a la Prestación de Servicios de Atención Médica de las Personas Lésbico, Gay, Bisexual, Transexual, Travesti, Transgénero e Intersexual y Guías de Atención Específicas (2020), https://www.gob.mx/cms/uploads/attachment/file/558167/Versi_n_15_DE_JUNIO_2020_Protocolo_Comunidad_LGBTTI_DT_Versi_n_V_20.pdf.

⁴¹ *Id.* at 35.

⁴² *Id.* at 36.

⁴³ Care of Children Act 2004, Public Act 2004 No. 90 (N.Z.), <https://legislation.govt.nz/act/public/2004/0090/latest/DLM317233.html>.

treatment if they meet the *Gillick* standard, *see supra* p. 15, which the New Zealand Court of Appeal has cited with approval, *see Re J (An Infant): B & B v. Director-General of Social Welfare*, [1996] 2 NZLR 134 (N.Z.). Family support is, however, considered an important aspect of gender-affirming care for all adolescents in New Zealand, with families involved in care wherever possible.

New Zealand has provided gender-affirming healthcare to adolescents for over sixteen years. Clinicians in New Zealand also utilize the ASOCT Guidelines—developed, as noted above, with the help of New Zealand adolescent-health clinicians. *See supra* pp. 14-15. New Zealand’s current national guidelines for gender-affirming healthcare for gender diverse and transgender patients were published in 2018; they allow for puberty blockers to be prescribed depending on the stage of puberty, and also allow for hormone treatment.⁴⁴

In September 2022, New Zealand’s Ministry of Health altered certain language on its website relating to puberty blockers.⁴⁵ The update “recognised that overseas jurisdictions, including [the United Kingdom], Norway and Sweden, were reviewing the use of puberty

⁴⁴ Oliphant et al., *Guidelines for Gender Affirming Healthcare for Gender Diverse and Transgender Children, Young People and Adults in Aotearoa New Zealand* 29-31, Transgender Health Research Lab, University of Waikato (Oct. 2018), <https://researchcommons.waikato.ac.nz/bitstream/handle/10289/12160/Guidelines%20for%20Gender%20Affirming%20Health%20low%20res.pdf>.

⁴⁵ *See* New Zealand Ministry of Health, *Response to Your Request for Official Information* (Apr. 27, 2023), https://www.health.govt.nz/system/files/documents/information-release/h2023022566_response_letter.pdf.

blockers in their health systems particularly in younger people,” and that “any medical intervention carries a balance of benefit and risk that needs to be considered in context by the person in partnership with their health professional.”⁴⁶ The Ministry of Health is preparing its own “evidence brief examining the use of [p]uberty [b]lockers to manage gender dysphoria,” which is “intended to support the development of evidence-based clinical guidelines for those who treat young people who experience gender dysphoria.”⁴⁷ During that process, the Ministry of Health has emphasized publicly that “[p]uberty blockers continue to be available through prescribing clinicians for those who need them” and that “[d]ecisions on the use of puberty blockers are best made by patients and their families in consultation with appropriate clinicians.”⁴⁸

⁴⁶ *Id.*

⁴⁷ New Zealand Ministry of Health, *Puberty Blockers Evidence Brief Update* (Dec. 15, 2023), <https://www.health.govt.nz/news-media/news-items/puberty-blockers-evidence-brief-update>.

⁴⁸ *Id.*; see also New Zealand Ministry of Health, *Response to Your Request for Official Information* (June 1, 2023), https://www.health.govt.nz/system/files/documents/information-release/h2023024782_response_-_proactive_release.pdf (noting that Ministry of Health “has not advised any change to access to services for young people” in New Zealand).

CONCLUSION

The Court should reverse the Sixth Circuit's judgment.

Respectfully submitted.

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APPENDIX

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Stonewall Equality Limited (“Stonewall”) has fought since 1989 to create transformative change in the lives of LGBTQ+ people across communities in the United Kingdom and around the world. Stonewall seeks to drive positive change in public attitudes and public policy, and to ensure that LGBTQ+ people can thrive throughout their lives by building deep, sustained change programs with the institutions that have the biggest impact on them. Stonewall’s work includes supporting legal efforts to ensure that trans young people have access to gender-affirming medical treatment.

The Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights (“RFSL”) is a non-profit community organization that has been advocating for the rights of LGBTQIA persons in Sweden and internationally since its founding in 1950. RFSL engages support and educational services, political advocacy, lobbying initiatives, and community space in furtherance of its mission supporting LGBTQIA persons. Since 2001, RFSL has formally included transgender people within the communities it serves. RFSL’s key initiatives today include transgender rights advocacy, asylum rights, and family law.

RFSL Ungdom is a children’s and youth organization affiliated with RFSL. The organization works to ensure that all young people in Sweden, regardless of sexual orientation, gender identity, gender expression or gender characteristics, have their human rights, as described in the U.N. Declaration of Human Rights and in the European Convention on Human Rights, fulfilled.

Transammans, a Swedish non-profit organization for trans people and relatives, works across all of Sweden to influence, support and educate. Transammans is

a strong voice in the public debate and an important driving force for creating better living conditions for trans people of all ages and people with thoughts about their gender identity.

The Norwegian Organization for Sexual and Gender Diversity (“FRI”) is a membership-based nongovernmental organization with local chapters throughout Norway. FRI’s vision is a society free from harassment and discrimination based on sexual orientation, gender identity, and/or gender expression. FRI’s key activities include national-level advocacy for the rights of LGBTI people, building competency of government institutions and employees within different sectors (education, health, social welfare, justice) to include LGBTI people in a non-discriminatory way, and engaging in international solidarity by partnering with LGBTI organizations in Europe, Asia and Africa. As a membership and community-based organization, FRI has firsthand experience of the impact that gender-affirming healthcare—or the lack thereof—has on transgender people, and has deep concern that the State Healthcare Ban, by restricting access to gender-affirming care, will be detrimental to the lives of transgender people in Tennessee.

The Australian Professional Association for Trans Health (“AusPATH”) is Australia’s principal body representing, supporting, and connecting those working to strengthen the health, rights, and wellbeing of all transgender people—binary and non-binary. The AusPATH membership comprises over 350 experienced professionals working across Australia. AusPATH firmly believes that all young people who desire puberty suppression should be able to access such care in a timely manner under appropriate supervision and assessment by a multidisciplinary team. AusPATH advocates for

access to timely, culturally safe, and person-centered gender-affirming healthcare as critical to protect transgender children, adolescents, and adults from negative health and well-being implications.

LGBT+ Denmark is Denmark’s largest and oldest political organization for LGBT+ people in Denmark. LGBT+ Denmark fights for everyone to be able to live their life in full compliance with their own identity through rights, safe communities, and social change—locally, nationally and globally.

Bundesverband Trans* e.V. (“BVT*”) is the largest transgender association in Germany. The association’s common endeavor is the commitment to gender diversity and self-determination. BVT* is committed to human rights and to the respect, recognition, equality, social participation and health of transgender and non-binary people.

Fundación Colectivo Hombres XX, AC (the “Fundación”) is a non-profit community LGBTI organization with a particular focus on men in Mexico who were assigned a female gender at birth. The Fundación has operated since 2012 as a collective and since 2018 as a Civil Association and has extensive lobbying experience. The Fundación participated in the drafting of the Protocol for Access without Discrimination to Health Care Services for Lesbian, Gay, Bisexual, Transsexual, Transvestite, Transgender and Intersex Persons and Specific Care Guidelines, which provides guidance for the administration of healthcare to transgender individuals in Mexico.

The Professional Association for Transgender Health Aotearoa New Zealand (“PATHA NZ”) is an incorporated society established in May 2019 to be an interdisciplinary professional organization working to

promote the health, wellbeing, and rights of transgender people. PATHA NZ comprises over 200 members who work professionally for transgender health in clinical, academic, community, legal, and other settings. As a society committed to supporting gender-affirming care, PATHA NZ's role includes advocacy both within New Zealand and internationally. PATHA NZ views gender-affirming care for children and adolescents as an essential part of healthcare and views the denial of access to care until the age of eighteen in any country or state as a violation of human rights.