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,

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

BRIEF OF INTERNATIONAL NON-PROFIT ORGANIZATIONS ADVOCATING FOR FAMILIES IMPACTED BY GENDER DYSPHORIA AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

RANDALL L. WENGER
Counsel of Record
LAUREN L. HACKETT
Independence Law Center
23 N. Front Street, First Floor
Harrisburg, PA 17101
(717) 657-4990
rwenger@indlawcenter.org

Counsel for Amici Curiae

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INTEREST OF AMICI CURIAE[1]

Pursuant to Supreme Court Rule 37, Amici are 17 non-profit associations from 14 different countries dedicated to supporting children with gender dysphoria and their families: Asociación AMANDA (Asociación de Madres de Adolescentes y Niñas con Disforia Acelerada) (Spain); Ypomoni (France); Parents of ROGD Kids (Rapid-Onset Gender Dysphoria) (Germany, Austria, Switzerland); Associazione GenerAzioneD (Italy); Cry for Recognition (Belgium); Association pour une Approche Mesurée des Questionnements de Genre chez les Jeunes (AMQG) (Switzerland); MANADA Argentina (Madres de Niñas y Adolescentes con Disforia de Género Acelerada); Agrupación Kariós Chile; Our Duty (Australia); Genspect Australia; Parents of Adolescents with Gender Distress-Victoria (PAGD) (Australia); RESEAU-ESI (Réseau éducation, sexe et identité) (Canada); No Corpo Certo (Brazil); MATRIA-Mulheres Associadas, Mães e Trabalhadoras do Brasil (Brazil); Aotearoa Support (New Zealand); Parents with Inconvenient Truths about Trans (PITT) (global); and Parents of Desisters (global). Amici, non-partisan and non-religiously affiliated associations that represent families across Europe, the American continent, and Oceania, respectfully submit this brief in support of the Respondent, State of Tennessee.

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

United by the shared goal of protecting children from radical interventions that can impact a child and their families for a lifetime, Amici seek to assist the Court in understanding how recent scientific and medical developments in the international community have shaped and changed national healthcare policy for minors identifying as transgender in countries beyond the United States.

SUMMARY OF THE ARGUMENT

The last decade has seen a marked international shift away from medicalized "transition"—i.e. the use of puberty blockers, cross-sex hormones, and surgical procedures—for minors with gender dysphoria or gender incongruence in those countries that once followed this method of treatment. This shift has been prompted by rigorous assessment of the existing scientific literature on the efficacy of medicalized "transition," which has revealed that the quality of the existing evidence (and by extension, the likelihood of benefit to patients) is very low. Significant knowledge gaps concerning the safety of these interventions have also been identified, particularly surrounding the long-term outcomes. Moreover, there is increasingly clear evidence of the harms and irreversibility of these interventions. Finally, the unexplained skyrocketing in the number of minors being referred to gender clinics, as well as the noticeable change in patient demographics, only compounds the uncertainties and the harms.

As these concerns have mounted, countries have moved to protect the well-being of vulnerable

minors—even countries that had previously facilitated liberal access to puberty blockers and cross-sex hormones for youths struggling with the acceptance of their sex.

In countries that have conducted systematic reviews of the available evidence (the United Kingdom, Sweden, and Finland), the resulting national policy shift has been to emphasize comprehensive psychological evaluations, provide non-invasive psychological care as the primary intervention, and in the case of the United Kingdom, to make medicalized "transition" interventions unavailable or heavily restricted. Furthermore, other countries are responding to the growing body of evidence that undermines the case for medicalized "transition" with national policy recommendations and legislative action, as outlined in this brief.

ARGUMENT

I. Countries that have conducted systematic reviews of the efficacy and safety of puberty blockers and cross-sex hormones administered to disrupt the healthy development of the bodies of minors have moved to restrict or prohibit such uses.

The United Kingdom, Sweden, and Finland have recently undertaken thorough systematic reviews of the available clinical evidence concerning the safety and efficacy of puberty blockers and cross-sex hormones—radical and disruptive hormonal interventions in the natural maturation of the bodies and brains of still-developing minors. Based on the

results of those reviews, each of these countries has moved to prohibit or severely limit these interventions, instead recognizing non-invasive psychological treatments as the better response to minors identifying as transgender.

A. United Kingdom

Hormonal interventions (including puberty blockers and cross-sex hormones) were routinely administered to young people identifying as transgender in the United Kingdom under the National Health Service ("NHS"). But after the NHS commissioned a comprehensive review of the evidence base underpinning those hormonal disruptions of natural bodily development (the Cass Review[2]), the NHS and the British government responded by prohibiting the administration of puberty blockers to minors, with limited exceptions for patients already receiving those blockers and under a formal clinical trial (that as of now does not exist). NHS Scotland, which operates separately from NHS England, followed suit and ceased new prescriptions of puberty blockers and cross-sex hormones to minors on April 18, 2024.[3]

This stark about-turn in policy can be traced back to a 2019 legal challenge against the Tavistock and Portman NHS Foundation Trust concerning its

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[2] The Cass Review, *The Cass Review: Final Report* (2024), https://cass.independent-review.uk/home/publications/final-report/.

[3] Mary McCool, *Scotland's under-18s gender clinic pauses puberty blockers*, BBC Scotland (Apr. 18, 2024), https://www.bbc.com/news/uk-scotland-68844119.

Gender Identity Development Service ("GIDS"). The lead plaintiff in the challenge was Keira Bell—a former patient of GIDS who had been prescribed puberty blockers and testosterone as a teenager, then underwent a double mastectomy at age twenty before she regretted those interventions and detransitioned.[4]

The legal challenge considered whether minors could provide informed consent (under the English *Gillick* legal standard) to receive puberty blockers.[5] When the English high court delivered its judgment on December 1, 2020, it expressed concern about the "lifelong and life-changing" nature of puberty blockers that might have "potentially irreversible long-term physical, and psychological consequences" on young people. In light of the "very limited evidence" on their efficacy, the court found it appropriate to refer to their use as "experimental."[6]

The high court went on to conclude that it would be "highly unlikely" that a child aged 13 or under would be competent to give consent to the administration of puberty blockers, "doubtful" that a child aged 14 or 15 "could understand and weigh the long-term risks and consequences of the administration of puberty blockers," and that court

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[4] Keira Bell, *My Story*, Persuasion (Oct. 3, 2023), https://www.persuasion.community/p/keira-bell-my-story.

[5] *Bell & Anor* v. *Tavistock & Portman NHS Foundation Trust*, [2020] EWHC (Admin) 3274, [2020] 12 WLUK 432, ¶¶ 5–7 (Eng.).

[6] *Id.* at ¶¶ 5-7.

authorization should be sought prior to commencing puberty blockers for children ages 16 and over.[7]

While an appeal court later held that the high court had exceeded its powers in laying out specific guidance on puberty blockers,[8] the NHS had already commissioned an independent review into gender identity services provided for children and young people in September 2020.[9] The NHS asked Dr. Hilary Cass, a former president of the Royal College of Paediatrics and Child Health, to chair the independent review, which became known as the Cass Review, and present recommendations to the NHS about the services provided to minors who were questioning their identity or experiencing gender incongruence.[10]

Even before the independent review had commenced, the NHS had changed the language on its website describing puberty blockers and cross-sex hormones. At some time around June 2020, the NHS removed language that said the effects of treatment with puberty blockers were "considered to be fully reversible" and replaced it with the following:

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[7] *Id.* at ¶¶ 151-52.

[8] *Bell & Anor* v. *Tavistock & Portman NHS Foundation Trust*, [2021] EWCA (Civ) 1363 (Eng.).

[9] Haroon Siddique, *NHS to Hold Review into Gender Identity Services for Children and Young People*, The Guardian (Sept. 22, 2020), https://www.theguardian.com/society/2020/sep/22/nhs-to-hold-review-into-gender-identity-services-for-children-and-young-people.

[10] Terms of Reference, The Cass Review, https://cass.independent-review.uk/about-the-review/terms-of-reference/ (last visited Oct. 9, 2024).

> Little is known about the long-term side effects of hormone or puberty blockers in children with gender dysphoria. . . . [I]t is not known what the psychological effects may be. It's also not known whether hormone blockers affect the development of the teenage brain or children's bones.[11]

To assist the Cass Review, the National Institute for Health and Care Excellence ("NICE") was commissioned to systematically review all published evidence assessing, *inter alia,* the clinical effectiveness, safety, and cost-effectiveness of puberty blockers[12] and cross-sex hormones.[13] NICE is a public body that provides evidence-based guidance on the safety and effectiveness of healthcare treatments. These systematic reviews conducted a careful analysis of the published literature using the established Grading of Recommendations, Assessment, Development and Evaluations ("GRADE") procedures for assessing clinical research evidence. For both puberty blockers and cross-sex hormones, the systematic reviews reported that quality of evidence for the identified outcomes was

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[11] James Kurkup, *The NHS has quietly changed its trans guidance to reflect reality*, The Spectator (June 4, 2020), https://www.spectator.co.uk/article/the-nhs-has-quietly-changed-its-trans-guidance-to-reflect-reality/.

[12] Nat'l Inst. for Health & Care Excellence, *Evidence Review: Gonadotrophin Releasing Hormone Analogues for Children and Adolescents with Gender Dysphoria* (2020a) [NICE 2020a].

[13] Nat'l Inst. for Health & Care Excellence, *Evidence Review: Gender-Affirming Hormones for Children and Adolescents with Gender Dysphoria* (2020b) [NICE 2020b].

assessed as "very low."[14] That means one cannot draw reliable conclusions about the safety or efficacy of the interventions and that future research may well change the estimate of their effect.

Following these assessments, the Independent Review led by Dr. Cass issued an interim report in February 2022[15] that noted the poor quality of long-term data available for assessing outcomes related to cross-sex hormones,[16] expressed concern over the presence of serious but understudied risks related to puberty blockers, including impacts on brain development and bone density,[17] and emphasized the importance of providing psychological support to patients in all situations.[18]

Dr. Cass also issued an advice letter to NHS England in July 2022,[19] which noted that the "most significant knowledge gaps" concerned the use of puberty blockers and their possible effect on brain development, such that she recommended the "rapid

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[14] NICE 2020a, note 12, at 4; NICE 2020b, note 13, at 4.
[15] The Cass Review, *Cass Review: Interim Report* (2022), https://cass.independent-review.uk/wp-content/uploads/2022/03/Cass-Review-Interim-Report-Final-Web-Accessible.pdf.
[16] *Id.* at 36.
[17] *Id.* at 38.
[18] *Id.* at 69.
[19] The Cass Review, *Letter to NHS England* (July 19, 2022), https://cass.independent-review.uk/wp-content/uploads/2022/07/Cass-Review-Letter-to-NHSE_19-July-2022.pdf.

establishment" of research infrastructure to assess these "critically important unanswered questions."[20]

On March 12, 2024, the NHS published a clinical policy clarifying that puberty blockers would not be a "routine commissioning treatment option" for children and young people with gender incongruence or gender dysphoria.[21] It restated that surgical interventions were not available to minors.[22]

The final report of the Cass Review was issued on April 10, 2024.[23] It was accompanied by a series of independent, peer-reviewed, systematic evidence reviews from the University of York to inform its recommendations—the final report noted "that there continues to be a lack of high-quality evidence in this area."[24]

In the systematic review on puberty blockers, the University of York team wrote:

> There are no high-quality studies using an appropriate study design that assess outcomes of puberty suppression in adolescents experiencing gender dysphoria/ incongruence. No conclusions can be drawn about the effect on gender-

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[20] *Id.* at 5-6.
[21] NHS England, *Clinical Policy: Puberty Suppressing Hormones (PSH) for Children and Young People Who Have Gender Incongruence/Gender Dysphoria* [1927] (Mar. 2024), https://www.england.nhs.uk/publication/clinical-policy-puberty-suppressing-hormones/.
[22] *Ibid.*
[23] *The Cass Review: Final Report*, note 2.
[24] *Id.* at 20.

> related outcomes, psychological and psychosocial health, cognitive development or fertility. Bone health and height may be compromised during treatment.[25]

On cross-sex hormones, the team similarly found: "[n]o conclusions can be drawn about the effect on gender-related outcomes, body satisfaction, psychosocial health, cognitive development or fertility," while further noting that: "[u]ncertainty remains about the outcomes for height/growth, cardiometabolic and bone health."[26]

On puberty blockers, the final Cass Review report reiterated that because of the potential risks to neurocognitive development, psychosexual development and longer-term bone health, they should only be offered under a research protocol.[27] On cross-sex hormones, the report recommended that NHS England should review its policy on their use, and noted that while the option to provide them from age 16 was available, "extreme caution" should be exercised.[28] Recognizing the potentially lifelong impact of these medical interventions on minors, one

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[25] Jo Taylor, *et al.*, *Interventions to Suppress Puberty in Adolescents Experiencing Gender Dysphoria or Incongruence: A Systematic Review*, ARCHIVES OF DISEASE IN CHILDHOOD (2024) at 13.

[26] Jo Taylor, *et al.*, *Masculinising and Feminising Hormone Interventions for Adolescents Experiencing Gender Dysphoria or Incongruence: A Systematic Review*, ARCHIVES OF DISEASE IN CHILDHOOD (2024) at 13.

[27] *The Cass Review: Final Report*, note 2, at 196.

[28] *Id.* at 35.

of the specific recommendations of the Cass Review was that "all children should be offered fertility counselling and preservation prior to going onto a medical pathway."[29]

The justification for these interventions has rested on the assumption that such care was necessary to avoid the risks of suicide. However, the report stated that the evidence "did not support" the suggested contention that the prescription of hormones reduces the elevated risk of death by suicide in this population.[30] It further urged health professionals to use a "holistic assessment" for every child, which would include a psychological assessment and autism diagnostics.[31]

After receiving the Cass Review Final Report, on May 29, 2024, the Department of Health and Social Care announced an "emergency ban" on new prescriptions of puberty blockers to minors in England, Wales and Scotland, whether by the National Health Service or by private providers,[32] a ban later extended to the entire United Kingdom.[33] The incoming Labor government announced its

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[29] *Id.* at 197.
[30] *Id.* at 33.
[31] *Id.* at 148.
[32] The Health and Care Act 2022 (Amendment) Regulations 2024, SI 2024/727, https://www.legislation.gov.uk/uksi/2024/727/made; New Restrictions on Puberty Blockers, GOV.UK (May 29, 2023), https://www.gov.uk/government/news/new-restrictions-on-puberty-blockers.
[33] The Gender Recognition (Disclosure of Information) (Amendment) Regulations 2024, SI 2024/868, https://www.legislation.gov.uk/uksi/2024/868/pdfs/uksi_20240868_en.pdf.

intention to make that temporary emergency ban permanent.[34]

B. Sweden

Sweden, the first country in the world to introduce a legal option for "gender reassignment" recognition in 1972,[35] has likewise moved to a restrictive position on medicalized interventions for minors in recent years after conducting systematic reviews of the available evidence.

In 2019, the Swedish Agency for Health, Technology Assessment and Assessment of Social Services ("SBU") undertook a scoping review of the available literature on gender dysphoria in children and adolescents, which concluded that evidence on "management and long-term effects in children and adolescents is sparse" and there was no explanation behind the marked recent increase in numbers of minors presenting with gender dysphoria.[36]

Subsequently, in 2021, the Karolinska Institute (which includes the leading pediatric gender clinic in Sweden) issued a policy statement that noted the SBU's concerns and clarified that puberty blockers

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[34] Michael Searles, *Labour moves to ban puberty blockers permanently*, The Telegraph (July 12, 2024), https://www.telegraph.co.uk/news/2024/07/12/labour-ban-puberty-blockers-permanently-trans-stance/

[35] Chronological Overview of LGBT Persons' Rights in Sweden, Government Offices of Sweden (July 12, 2018), https://www.government.se/articles/2018/07/chronological-overview-of-lgbt-persons-rights-in-sweden/.

[36] SBU, *Assessment of Methods in Health Care and Social Services* (December 20, 2019), https://www.sbu.se/307e.

and cross-sex hormones would not be administered to patients under 16, and only as part of formal clinical trials for patients between 16 and 18.[37]

Following a full systematic review undertaken by the SBU in 2022,[38] the Swedish National Board of Health and Welfare issued an update to its national healthcare service guidelines for children and youth under 18 with gender dysphoria or gender incongruence, which changed the previous "strong, positive" recommendations concerning puberty-suppressing and "gender-affirming" treatment to "weak, negative" recommendations.[39] A summary document issued by the Board noted that, for the group of patients as a whole, "the risks of puberty blockers and gender-affirming treatment are likely to outweigh the expected benefits of these treatments."[40] In particular, the report noted concerns about the

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[37] Swedish National Board of Health and Welfare, *Support and Treatment for Children and Adolescents with Gender Dysphoria* at 5 (2023), https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/kunskapsstod/2023-1-8330.pdf; Karolinska University Hospital, *Policy Change K2021-3343: Gender-Affirming Care for Children and Adolescents* at 3 (Mar. 2021), https://segm.org/sites/default/files/Karolinska%20Policy%20Change%20K2021-3343%20March%202021%20%28English%2C%20unofficial%20translation%29.pdf.

[38] SBU, *Assessment of Methods in Health Care and Social Services – Gender Dysphoria in Children and Adolescents* (Feb. 22, 2022), https://www.sbu.se/342.

[39] Swedish National Board of Health and Welfare, *Knowledge Support for Care of Children and Adolescents with Gender Dysphoria* at 26 (2022), https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/kunskapsstod/2022-12-8302.pdf.

[40] *Support and Treatment for Children and Adolescents with Gender Dysphoria* at 3.

dearth of evidence on the safety and efficacy of such interventions, the poorly understood but marked change in demographics, and the growing visibility of detransition and regret in the affected population.[41]

Consequently, the Board recommended that puberty blockers and cross-sex hormones should not be used except in "exceptional cases."[42] The Board's report further recommended that puberty blockers and cross-sex hormones be provided only in a research context[43] and emphasized that psychological and psychiatric care should be the primary response for those struggling with aspects of their identity.[44]

C. Finland

Finland's Council for Choices in Health Care ("COHERE")—a national body focused on reviewing service choices for the Finnish Health Ministry—has also moved away from medicalized "transition" after commissioning a systemic review into its effectiveness and safety.[45] Following the 2019 review, COHERE issued recommendations in 2020 that psychosocial support should be provided as the first-

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[41] *Ibid.*
[42] *Ibid.*
[43] *Ibid.*
[44] *Id.* at 5.
[45] Iris Pasternack, *et al.*, Palveluvalikoima, *Valmistelumuistion Liite 1: Kirjallisuuskatsaus* (May 15, 2019) [Iris Pasternack, et al., Service Selection, *Appendix 1 of the Preparation Memorandum: Literature Review* (May 15, 2019)], https://palveluvalikoima.fi/documents/1237350/22895008/Valmistelumuistion+Liite+1.+Kirjallisuuskatsaus.pdf/5ad0f362-8735-35cd-3e53-3d17a010f2b6/Valmistelumuistion+Liite+1.+Kirjallisuuskatsaus.pdf?t=1592317703000.

line of treatment for minors struggling with aspects of their identity.[46] COHERE also recommended that the use of puberty blockers and cross-sex hormones for minors should be determined on a "case-by-case basis" with assessments to be conducted in the two centralized gender research clinics and limited to circumstances where there was an early-childhood onset of gender dysphoria and no co-occurring mental health conditions.[47]

The COHERE recommendations warn that the evidence base on hormonal interventions for this population is limited and note concerns around minor patients being able to fully understand the irreversible nature of the interventions.[48] Moreover, COHERE clarified that surgical interventions were not offered to minors.[49]

Dr. Riittakerttu Kaltiala, chief psychiatrist in the department of adolescent psychiatry at Finland's Tampere University Hospital, led her country's pediatric gender program. Writing in the Free Press, Dr. Kaltiala described how COHERE's evidence review was prompted by a clear recognition among her Finnish colleagues that patients receiving hormonal interventions were doing worse, not

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[46] Palveluvalikoima [Service Selection], *Summary of the Recommendation for the Treatment of Minors with Gender Dysphoria* (June 16, 2020), https://palveluvalikoima.fi/documents/1237350/22895008/Summary_minors_en+(1).pdf/fa2054c5-8c35-8492-59d6-b3de1c00de49/Summary_minors_en+(1).pdf?t=1631773838474.

[47] *Ibid.*

[48] *Ibid.*

[49] *Ibid.*

better.[50] She decried the application of the "Dutch protocol" in Finland, noting "serious problems" with the data and describing the protocol's foundation as "crumbling." She explained that "[w]hen medical professionals start saying they have one answer that applies everywhere, or that they have a cure for all of life's pains, that should be a warning to us all that something has gone very wrong."[51]

II. Other countries have recognized that medicalized "transition" of minors is neither safe nor effective and have moved towards prohibiting or restricting these interventions.

Policy changes have extended well beyond those countries that have conducted *de novo* systematic reviews of the clinical evidence. The Final Report from the Cass Review commissioned by the English NHS, together with the underlying systematic reviews performed as part of that Review and published along with that Report, have contributed to a growing global recognition of the lack of supporting evidence for the efficacy of medicalized transition in still-developing minors and the potentially grave but largely unstudied risk. As a result, multiple developed countries with respected scientific communities and health services have moved over the last several years towards prohibiting or restricting these interventions.

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[50] Riittakerttu Kaltiala, *'Gender-Affirming Care Is Dangerous. I Know Because I Helped Pioneer It.'*, The Free Press For Free People (Oct. 30, 2023), https://www.thefp.com/p/gender-affirming-care-dangerous-finland-doctor.

[51] *Ibid.*

A. Norway

In March 2023, the Norwegian Healthcare Investigation Board ("UKOM") announced that the Norwegian national guidelines on the treatment of gender dysphoric and gender incongruent people were inadequate and should be revised to protect patient safety.[52] A UKOM review had been prompted by concern from patients' family members, clinicians, and others concerned about patient outcomes.[53]

In a report titled "Patient Safety for Children and Adolescents with Gender Incongruence,"[54] published on March 9, 2023, UKOM recommended that the Ministry of Health and Care Services instruct the Directorate of Health to revise the national guidelines on gender incongruence. The report found that the knowledge base on medicalized "transition" was insufficient because little is known about the long-

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[52] Jennifer Block, *Norway's guidance on paediatric gender treatment is unsafe, says review,* The BMJ (March 23, 2023), https://doi.org/10.1136/bmj.p697.

[53] Foreningen Fri, *Complaint and Commentary Regarding The Norwegian Healthcare Investigation Board (NHIB) Report "Patient Safety for Children and Youth with Gender Incongruence"* ["Pasientsikkerhet for barn og unge med Kjønnsinkongruens"] (English summary), https://www.foreningenfri.no/wp-content/uploads/Complaint-and-critique-Ukom-report-Translated-Summary.pdf (last visited Oct. 14, 2024).

[54] Ukom, *Pasientsikkerhet for barn og unge med Kjønnsinkongruens: Sammendrag* [Ukom, *Patient Safety for Children and Youth with Gender Incongruence: Summary*], https://ukom.no/rapporter/pasientsikkerhet-for-barn-og-unge-med-kjonnsinkongruens/sammendrag (last updated March 9, 2023).

term effects.[55] It also recommended that the updated guidelines restrict the use of puberty blockers, cross-sex hormones, and transition-related surgery to clinical research settings, defining these procedures as "experimental treatment."[56]

B. Chile

On June 14, 2024, after the publication of the Cass Review, the Health Ministry of Chile issued a note to all health services calling for a suspension of puberty-blocking and cross-sex hormone interventions on minors until new national guidelines based on up-to-date evidence were put in place.[57] In a special inquiry commission of the House of Deputies, the Ministry of Health said that it would not include the administration of puberty blockers and cross-sex hormones to minors in its health care specification.[58] Additionally, the largest privately operated hospital

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[55] *Ibid.*

[56] *Ibid.*

[57] Ministerio de Salud, Subsecretaría de Salud Pública, *Circular n° 7: Recomendaciones para el abordaje de la terapia hormonal género afirmativa en adolescentes*, (June 14, 2024) [Ministry of Health, *Undersecretary of Public Health, Circular No. 7: Recommendations for the Approach to Gender-Affirming Hormone Therapy in Adolescents*, (June 14, 2024)], https://diprece.minsal.cl/wp-content/uploads/2024/06/CIRCULAR-N-7-Recomendaciones-para-el-abordaje-de-la-Terapia-hormonal-Generoafirmativa-en-adolescentes.pdf.

[58] Cámara de Diputados y Diputadas de Chile, Ministra de Salud: *"De ninguna manera se están entregando hormonas a niños de tres años,"* (August 12, 2024) [Chamber of Deputies and Deputies of Chile, Minister of Health: *"In no way are hormones being given to three-year-old children,"* (August 12, 2024)], https://www.camara.cl/cms/ministra-de-salud-de-ninguna-manera-se-estan-entregando-hormonas-a-ninos-de-tres-anos/.

system (and leader in the treatment of persons with a gender dysphoria diagnosis in the country) also announced that it was halting its practices and protocols for the treatment of minors—including hormone therapy—on account of the findings of the Cass report.[59]

C. The Netherlands

The "Dutch Protocol" for "gender-affirming" care was developed in the late 1990s and early 2000s and was one of the earliest frameworks supporting the provision of puberty blockers and cross-sex hormones to minors.[60]

A number of motions have been filed this year by members of the Dutch Parliament variously seeking advice from the Health Council on the Dutch Protocol[61] and ordering an investigation into the physical and mental health outcomes of children who were prescribed puberty blockers.[62] The Committee

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[59] Red de salud Christus, *Declaración sobre la atención de personas transgénero,* (June 19, 2024) [Christus Health Network, *Statement on the Care of Transgendered People*, (June 19, 2024)]. https://revistalatderechoyreligion.uc.cl/index.php/bjur/article/view/81258/61780.

[60] Annelou L. C. de Vries, *et al.*, *Clinical Management of Gender Dysphoria in Adolescents: A Protocol on Psychological and Pediatric Endocrinology Aspects*, 9 J. GAY & LESBIAN SOC. SERVS. 83 (1999), https://www.tandfonline.com/doi/abs/10.1300/J485v09n03_04.

[61] Tweede Kamer der Staten-Generaal, *Motion No. 2024D02691* (2024), https://www.tweedekamer.nl/kamerstukken/moties/detail?id=2024D02691&did=2024D02691.

[62] Tweede Kamer der Staten-Generaal, *Motion No. 2024Z02611* (2024), https://www.tweedekamer.nl/kamerstukken/moties/detail?id=2024Z02611&did=2024D05867.

for Public Health, Welfare and Sport has asked for written input[63] on the Response to the Final Report of the Cass Review and its significance for healthcare for minors,[64] with an additional hearing scheduled for November 13, 2024.

On June 4, 2024, the outgoing Minister of Health drafted a letter indicating that Dutch gender clinics were implementing the Cass Review's recommendations[65] as a departure from their previous practice.[66] Furthermore, the Minister acknowledged that the 2018 guidelines (Quality Standard for Transgender Care Somatic[67]), including the sections on child and adolescent treatment, hormones, surgery, fertility preservation, and

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[63] Tweede Kamer der Staten-Generaal, *Committee Meeting on Cass Independent Review and its significance for gender care for minors in the Netherlands* (Jul. 4, 2024), https://www.tweedekamer.nl/debat_en_vergadering/commissievergaderingen/details?id=2024A04801.

[64] Tweede Kamer der Staten-Generaal, *Committee Meeting on the Subject of Cass Independent Review and its significance for gender care for minors in the Netherlands* (Oct. 8, 2024), https://www.tweedekamer.nl/debat_en_vergadering/commissievergaderingen/details?id=2024A04801.

[65] Tweede Kamer der Staten-Generaal, *Letter from the Government No. 2024D22965* (Oct. 4, 2024), https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2024D22965&did=2024D22965.

[66] *Ibid.*

[67] Kwaliteitsstandaard Transgenderzorg Somatisch, *Richtlijnendatabase* [Transgender Care Somatic, *Guidelines Database*], https://richtlijnendatabase.nl/richtlijn/kwaliteitsstandaard_transgenderzorg/startpagina_-_transgenderzorg.html (last reviewed Nov. 22, 2019).

pregnancy, must be revised. The deadline for this update is September 30, 2025.[68]

D. Denmark

On July 3, 2023, the widest study on health services for children and young people with gender discomfort in Denmark was published in the most reputed medical journal of the country.[69] It acknowledged the lack of evidence on hormone therapy's overall outcomes and a change to a more cautious clinical approach. The study states:

> Several countries, including Denmark, have initiated a more cautious approach to hormone therapy until there is more evidence of its beneficial effect. In particular, there is a lack of knowledge about the increasing proportion of young people with onset of sexual discomfort after puberty and about the presumably increasing proportion with mental disorders, as new studies indicate that the positive effects are not found in this group.[70]

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[68] Zorginzicht, *Transgenderzorg Somatisch* [*Transgender Care Somatic*], https://www.zorginzicht.nl/kwaliteitsinstrumenten/transgenderzorg-somatisch (last visited Oct. 14, 2024).

[69] Mette Vinther Hansen, *et al.*, *Danish Healthcare Offer for Children and Adolescents with Gender Dysphoria*, 185 UGESKRIFT FOR LÆGER (JOURNAL OF THE DANISH MEDICAL ASSOCIATION) V11220740 (2023), https://ugeskriftet.dk/videnskab/sundhedsfaglige-tilbud-til-born-og-unge-med-konsubehag.

[70] *Id.* at 6.

On September 6, 2023, a nationwide register-based cohort study of "gender-affirming" treatments was published.[71] It documented the higher prevalence of mental health disorders within the population identifying as transgender.

Currently, Danish youth referred to the gender units in the health system receive first and foremost psychological support and counseling, rather than hormones.[72]

E. France

The National Academy of Medicine provides expert opinions and recommendations on health policy to the French government. In its press release of February 25, 2022,[73] the Academy noted the increasing demand for care in the context of "trans identity" in children and adolescents and made several recommendations. It highlighted the use of psychological support as long as possible and—consistent with the Cass Report—pointed out the harmful effect of social media on the development of a growing sense of "gender incongruence."

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[71] Dorte Glintborg, *et al.*, *Gender-Affirming Treatment and Mental Health Diagnoses in Danish Transgender Persons: A Nationwide Register-Based Cohort Study*, 189 EUR. J. ENDOCRINOL. 336 (2023), https://doi.org/10.1093/ejendo/lvad119.

[72] Hansen, *Danish Healthcare Offer*, at 5.

[73] Académie Nationale de Médecine, *La Médecine Face à la Transidentité de Genre Chez les Enfants et les Adolescents* (Feb. 25, 2022) [National Academy of Medicine, *Medicine Facing 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.

The Academy stressed that the greatest caution is required in the use of hormonal interventions, given their side effects which the Academy stated include "impact on growth, bone fragility, risk of sterility, emotional and intellectual consequences and, for girls, symptoms reminiscent of menopause."

Art. 16-3 of the French Civil Code[74] only allows interventions affecting bodily integrity with the informed consent of the interested person when a *medical need* exists. There is significant concern that these conditions are not met in the case of puberty blockers and cross-sex hormones for minors with doctors, psychiatrists, and other professionals[75] speaking out and where the availability of watchful waiting and other non-irreversible alternatives exist.[76]

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[74] Code Civil [C. Civ.], art. 9 (France), https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006419297.

[75] More than fifty psychiatrists, doctors and intellectuals denounce an "ideological hold on children's bodies" in the name of the emancipation of the "transgender child." Céline Masson, *et al.*, *Changement de sexe chez les enfants: "Nous ne pouvons plus nous taire face à une grave dérive,"* L'EXPRESS (Sept. 20, 2021) [Céline Masson, *et al.*, *Sex change in children: "We can no longer be silent in the face of a serious drift,"* L'EXPRESS (Sept. 20, 2021)], https://www.lexpress.fr/idees-et-debats/changement-de-sexe-chez-les-enfants-nous-ne-pouvons-plus-nous-taire-face-a-une-grave-derive_2158725.html; Dora Moutot & Marguerite Stern, *Transmania. Enquête sur les Dérives de l'Idéologie Transgenre* 176–90 (Magnus 2024) (Paris) [Dora Moutot & Marguerite Stern, *Transmania. Investigation into the Drifts of Transgender Ideology* 176–90 (Magnus 2024) (Paris)].

[76] Audre Mirkovic & Claire de Gatellier, *Questionnement de Genre Chez les Enfants et les Adolescents* 130–40 (Artège 2022)

Most notably, on March 18, 2024, an extensive report on the "transidentification" of minors[77] was presented by the largest party in the Senate, Les Républicains, calling for a more explicit ban on puberty blockers and cross-sex hormones.[78] On May 28, 2024, a legislative proposal followed, banning cross-sex hormones and puberty blockers. This was passed by an absolute majority in the Senate[79] and is now pending before the National Assembly.[80]

(Paris) [Audre Mirkovic & Claire de Gatellier, *Gender Questioning in Children and Adolescents* 130-40 (Artège 2022)].

[77] Sénat, *Rapport sûr la transidentification des mineurs*, (Mar. 18, 2024) [Senate, *Report on the Transidentification of Minors*, (Mar. 18, 2024)], https://lesrepublicains-senat.fr/wp-content/uploads/2024/03/RAPPORT-SUR-LA-TRANSIDENTIFICATION-DES-MINEURS-18.03.2024-avec-compression.pdf.

[78] *Id.* at 367-368.

[79] Proposition de loi visant à encadrer les pratiques médicales mises en œuvre dans la prise en charge des mineurs en questionnement de genre [Bill Proposal Aiming to Regulate Medical Practices Implemented in the Care of Minors Questioning Their Gender], Senate of France, https://www.senat.fr/dossier-legislatif/ppl23-435.html.

[80] Proposition de loi, n° 147, 17e législature, Proposition de loi, adoptée par le Sénat, visant à encadrer les pratiques médicales mises en œuvre dans la prise en charge des mineurs en questionnement de genre, n° 147, déposée le mardi 23 juillet 2024 [Bill Proposal, No. 147, 17th Legislature, Bill Proposal, Adopted by the Senate, Aiming to Regulate Medical Practices Implemented in the Care of Minors Questioning Their Gender, No. 147, Submitted on Tuesday, July 23, 2024], National Assembly of France, https://www.assemblee-nationale.fr/dyn/17/textes/l17b0147_proposition-loi.

F. Colombia

The Colombian legislature is currently reviewing a bill banning all hormonal therapies and sex-reassignment surgeries for minors,[81] instead prioritizing psychological counseling, and psychiatric support for the affected children and their families. The bill was introduced in the Congress in 2023 and is, as of October 4, 2024, in the Senate.

G. Spain

With regard to puberty blockers and cross-sex hormones, the 2023 Spanish "trans law" promotes comprehensive healthcare for transgender-identifying individuals;[82] however, the hormonal

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[81] Proyecto de Ley No. 183/2023, Senado de la República de Columbia, "por medio de la cual se dictan lineamientos en la prestación del servicio de salud en la disforia de género y su prevención; se prohíben los tratamientos de reasignación de género, su difusión y orientación en los menores de 18 años y se dictan otras disposiciones" [Bill Proposal No. 183/2023, Senate of the Republic of Colombia, "by which guidelines are established for the provision of health services in gender dysphoria and its prevention; gender reassignment treatments, their dissemination, and orientation in minors under 18 years of age are prohibited, and other provisions are enacted"], https://leyes.senado.gov.co/proyectos/images/documentos/Textos%20Radicados/proyectos%20de%20ley/2023%20-%202024/PL%20183-23%20Disforia%20de%20Genero.pdf.

[82] Arts. 56 & 59.3 Ley 4/2023, de 28 de febrero, de España, para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI [Arts. 56 & 59.3 of Law 4/2023, of February 28, of Spain, for the Real and Effective Equality of Trans People and for the Guarantee of the Rights of LGBTI People], https://www.boe.es/eli/es/l/2023/02/28/4/con.

preparations[83] dispensed to minors have not been authorized for such purposes by the Spanish public health agency, Agency for Medicines and Health Products ("AEMPS"). Consequently, the doctors responsible for the treatment of minors presenting with gender dysphoria are not authorized to prescribe unapproved hormones, and pharmacists cannot dispense them. Doing so constitutes an administrative offense.[84] Even if the minor has reached 16 years of age, and, therefore, has the capacity to give consent under Spanish law,[85] that does not change the approval status[86] of these

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[83] Masculinizing (Decapeptyl, Reandron 1000 mg/ 4ml, Testex, Testogel 50mg, gel, Itnogen 2% gel), feminizing (Androcur 50 mg, Estraderm matrix, Lenzetto 1,53 mg/, Activelle 1mg/0,5 mg, Perifem tablets).

[84] Arts. 111-112 Real Decreto Legislativo 1/2015, de 24 de julio, de España, por el que se aprueba el texto refundido de la Ley de garantías y uso racional de los medicamentos y productos sanitarios [Arts. 111-112 of Royal Legislative Decree 1/2015, of July 24, of Spain, approving the consolidated text of the Law on the guarantees and rational use of medicines and health products].

[85] Art. 9 Ley 41/2002, de 14 de noviembre, de España, básica reguladora de la autonomía del paciente y de derechos y obligaciones en materia de información y documentación clínica [Art. 9 of Law 41/2002, of November 14, of Spain, the basic law regulating patient autonomy and rights and obligations regarding information and clinical documentation].

[86] Art. 15(c) RD 1015/2009, de 19 de junio, de España, por el que se regula la disponibilidad de medicamentos en situaciones especiales. [Art. 15(c) of RD 1015/2009, of June 19, of Spain, regulating the availability of medications in special situations.] (Practitioners must respect the restrictions that have been established linked to the prescription and/or dispensation).

substances which lack the necessary authorization from AEMPS.[87]

Surgical procedures for gender "transition" are prohibited for minors and could constitute a crime of bodily injury under art. 156 of the Penal Code.[88]

As in many other jurisdictions, detransitioners like Susana Domínguez are suing the public health system precisely because of the transgression of these legal safeguards and the irreversible harm (including bodily harm, removal of reproductive organs, and untreated psychiatric conditions) suffered as a consequence.[89]

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[87] Sentencia del Tribunal Constitucional [Spanish Constitutional Court's Judgment] (STC) 144/2017, (Dec. 14, 2017), FJ 3, citing STC 211/2014, FJ 3; STC 6/2015, FJ 2; STC 33/2017, FJ 5; and STC 98/2004, FJ 5 (holding that in cases of collision between regional legislation and state regulations on pharmaceutical products, the Constitutional Court has pointed out that state regulation on pharmaceutical products prevails over regional legislation due to the exclusive competence of the State under art. 149.1.16 of the Spanish Constitution, and noting that legislation on pharmaceutical products is aimed at "the regulation of medicines as 'substances' whose manufacture and marketing is subject—through the corresponding activities of evaluation, registration, authorization, inspection and surveillance—to control by the public authorities, in order to guarantee the rights of patients and users who consume them").

[88] Cf. Vázquez Iruzubieta, C. (2016). De las lesiones, en *Código Penal Comentado* (pp. 367–386). Atelier, Barcelona, p. 384.

[89] Alsedo, Quico, Susana, la primera 'trans' arrepentida que reclama a la Sanidad pública por haberla operado: "me arruinaron la vida," EL MUNDO, Feb. 23, 2023 [Alsedo, Quico, *Susana, the First "Trans" Person Regretting Her Transition Who Is Suing Public Health for Operating on Her: "They Ruined My Life,"* EL MUNDO (Feb. 23, 2023)],

CONCLUSION

There is a rising global consensus among industrialized nations that once allowed minors liberal access to medical transitioning procedures to now suspend those efforts in favor of non-invasive psychological treatments. Systematic reviews over the past several years have consistently demonstrated that medical transitioning treatments are dangerous and irreversible, with largely unknown long-term consequences. The State has a compelling interest in safeguarding the physical and psychological well-being of minors, and protecting minors from unsafe medical procedures is a part of that interest.[90] Therefore, the Court should affirm the judgment of the court of appeals.

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https://www.elmundo.es/papel/historias/2023/02/22/63f64bbcfc6c83e24a8b4586.html.

[90] *New York* v. *Ferber*, 458 U.S. 747, 756-57 (1982) ("a State's interest in 'safeguarding the physical and psychological well-being of a minor' is 'compelling.'").

Respectfully submitted,

RANDALL L. WENGER
Counsel of Record
LAUREN L. HACKETT
Independence Law Center
23 N. Front Street, First Floor
Harrisburg, PA 17101
(717) 657-4990
rwenger@indlawcenter.org

Counsel for Amici Curiae

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