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.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF *AMICI CURIAE* AMERICA'S FRONTLINE DOCTORS AND DR. SIMONE GOLD, M.D., J.D. IN SUPPORT OF RESPONDENTS FOR AFFIRMANCE

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A MATTER OF THE GREATEST PUBLIC IMPORTANCE AND RULE 37.6 DISCLOSURE

The Free Speech Foundation, d/b/a America's Frontline Doctors, and Dr. Simone Gold, M.D., J.D., the founder and physician member ("*Amici Curiae*" or "AFLDS") respectfully file this *amici curiae* brief in support of the Respondents for affirmance in *United States of America v. Skrmetti, Attorney General and Reporter for Tennessee, et al.*, 23-477, (U.S. 2024).[1]

The United States Supreme Court recently accepted the AFLDS filing of an *amici curiae* brief in the significant First Amendment case of *Murthy, et al. v Missouri, et al,* 23-411 (U.S. 2023), and in the case of *Johnson et al. v Kotek, et al.*, No. 22-35624, (CA9), 24-173 (U.S. 2024) as well.

The United States Supreme Court also accepted an *amicus curiae* brief from AFLDS in *Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S.___, 142 S. Ct. 661 (2022), and our position prevailed in that case.

This *amici curiae* brief offers an important medical perspective from thousands of doctors on the frontlines to this Court of great public importance, by conclusively demonstrating that the Respondent Tennessee Attorney General and the State of Tennessee are engaged in the lawful protection of Tennessee minors by regulating dangerous surgeries known as "gender transition

1. No counsel for any party authored this brief in whole or in part and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

surgeries" to which these minors may be subjected. This exercise of state police power is similar to longstanding state regulation of female genital mutilations (FGM), psychosurgery, shock treatments, lobotomies, child sterilizations, assisted suicides, euthanasia, and even tattoos. Such state regulation is completely lawful and appropriate, particularly where the regulated surgeries cause permanent and irreversible damage to these Tennessee minors, and in any other context could only be characterized as violent criminal assault.

INTERESTS OF *AMICI CURIAE*

Amici Curiae are the Free Speech Foundation, d/b/a America's Frontline Doctors ("AFLDS"), a nonpartisan, nonprofit organization of thousands of member physicians from across the country, representing a range of medical disciplines and practical experience on the front lines of medicine, and its founder and expert physician and attorney member, Dr. Simone Gold, M.D., J.D..

AFLDS' programs focus on a number of critical issues including:

- Providing Americans with science-based facts for staying healthy;
- Protecting physician independence from government overreach;
- Combating illnesses with evidence-based approaches without compromising constitutional freedoms;

- Fighting medical cancel culture and media censorship;
- Advancing healthcare policies that protect the physician-patient relationship;
- Expanding healthy treatment options for all Americans who need them, and;
- Strengthening the voices of frontline doctors in the national healthcare conversation.

Each of AFLDS' member physicians is deeply committed to the guiding principle of medicine: "FIRST, DO NO HARM." They take their ethical obligations to their patients very seriously. It is axiomatic that a physician's duty is to his or her patient. AFLDS holds sacrosanct the relationship between doctor and patient where informed decisions are to be made, taking into consideration all of the factors relating to the patients' health, risks, comorbidities and circumstances.

For AFLDS member physicians, the practice of medicine is not simply a job or a mere career. Rather, it is a sacred trust. It is a higher calling that requires a decade or more of highly focused sacrificial dedication to achieve.

America's Frontline Doctors is committed to preserving the voluntary and fully informed doctor-patient relationship, opposes any sort of illegal interference with the doctor-patient relationship, and opposes illegal government overreach by the censorship of medical and other information, or by the "mandating" of incorrect or dangerous medical information or treatments.

Indeed, AFLDS and Dr. Simone Gold, M.D., J.D. were targeted by the governmental Defendants in *Murthy v Missouri* (U.S. 2023) as being among the so-called [distinguished] "Disinformation Dozen" for promoting *accurate medical information*, such as the benefits of HCQ and Ivermectin, and for opposing vaccine passports. AFLDS's medical information proved to be completely correct. The censors were shown to be the ones advancing inaccurate information, even though incorrect information is also protected free speech.

Dr. Gold and AFLDS also publicly supported the position as early as October, 2021 that experimental mRNA injections are not "vaccines", because they do not prevent infection or transmission, and they are neither "safe", nor "effective".[2] They are personal medical treatments only. This view is now also known to be correct as both a scientific and legal matter. In June 2024, the Ninth Circuit refused to find these shots legally "vaccines" for this very reason.

"Informed consent" cannot exist if it is not fully *informed*. Voluntary informed consent can never be coerced, subjected to undue influence, nor distorted by censored and incomplete information.

SUMMARY OF ARGUMENT

The Respondent Tennessee Attorney General and the State of Tennessee through the passage of Tennessee

2. https://aflds.org/about-us/press-releases/americas-frontline-doctors-supports-the-filing-of-a-petition-for-preliminary-injunction-to-prevent-kaiser-permanente-from-enforcing-their-vaccine-mandate

Senate Bill 1 (SB1) are engaged in the lawful protection of Tennessee minors by regulating dangerous "gender transition" surgeries to which these minors may be subjected. *Amici Curiae* strongly protest using the phrase "gender transition surgery" as using this phrase is an intentional distraction from what is actually happening, which is a permanent Frankenstein-esque mutilation of a minor child's healthy body. This Court must never lose sight of what is really at stake: permanent and irreversible loss of a minor child's ability to ever create/produce sperm or egg; permanent and irreversible loss of a minor child's ability to breast-feed, get pregnant, birth or father a baby; and permanent and irreversible facial, body, and voice structures. The female can end up with a "micro-penis" which typically cannot achieve penetrative intercourse and the male child ends up with a lifelong chronic wound requiring multiple painful dilatations per day. The majority of both sexes can have lifelong anorgasmia. *Amici Curiae* note that because these surgeries are medical mutilation of a healthy human body, state regulation is not only appropriate, it is mandatory. *Amici Curiae* do not use the phrase "gender-affirming surgery" because that phrase is inaccurate. The phrase "medical mutilation surgery" accurately describes the surgical offerings which destroy healthy tissue.[3] *Amici Curiae* affirmatively state

3. AFLDS White Paper, The Civil Liberties and Human Rights Implications of Offering Children Medical Mutilation Procedures, Legal & Medical Issues in the Treatment of Gender-Dysphoric Youth Medical Mutilation Procedures Violate Children's Civil Liberties, Lead Author Simone Gold, MD, JD, Dr. Melanie Crites-Bachert, DO, FACOS, FACS, Dr. Bryan Atkinson, MD, David Heller, pg. 12, July 2024, https://res.cloudinary.com/aflds/image/upload/v1720808982/Medical_Mutilation_White_Paper_1804e8ca1a.pdf

that true "gender reassignment" surgery is a medical fiction, due to the unalterability of the "XX" and the "XY" chromosomes. Every single cell in every single organ in the human body is either XX or XY. Testosterone on an XX female and estrogen on an XY male can never change that.

This exercise of state police power is similar to the longstanding state regulation of female genital mutilations (FGM), psychosurgery, shock treatments, lobotomies, child sterilizations, assisted suicides, euthanasia, and even tattoos. Such state regulation is lawful and appropriate, and absolutely necessary where the regulated surgeries cause permanent and irreversible damage to these Tennessee minors, and may violate criminal laws in some cases.

Further, SB1 makes absolutely no sex-based categorizations, and therefore SB1 does not discriminate on the basis of sex. This simple and indisputable fact refutes the Petitioner's equal protection argument in and of itself.

Finally, and alarmingly, these Tennessee minors lack the capacity to understand the substantial risks of these "gender reassignment" surgeries. By definition a minor cannot understand irrevocable infertility and anorgasmia.

These Tennessee minors are unable due to their age to give informed consent to a procedure that may lead to their sterilization for life, to irreversible termination of their normal growth during puberty, to numerous serious and ongoing medical complications, and to a lifetime of medications, medical treatments, and a very

high likelihood of regret. No third party including their parents can supply such consent for them. There is, of course, no common law precedent for any third party to be able to grant permission to mutilate any other person's body. No parent nor government actor nor physician has ever had such a right.

ARGUMENT

I. As a Threshold Matter, Tennessee Senate Bill 1 (SB1) Obviously Does Not Discriminate on the Basis of Sex. Therefore, No Protected Category Is Impacted.

The government's tortured equal protection argument wholly depends on the government's contention that SB1 discriminates on the basis of sex, and therefore SB1 violates the Equal Protection clause of the Fourteenth Amendment. However, a simple reading of the statute reveals that this is incorrect. No sex-based classification is made by SB1.

This is succinctly summarized by three dispositive paragraphs in the Brief For Respondents, which *Amici Curiae* adopt:

> "**II.** SB1 contains no sex classification that warrants heightened review. It creates two groups: minors seeking drugs for gender transition and minors seeking drugs for other medical purposes. Each of these groups "includes members of both sexes," so no facial sex classification exists. *Geduldig v. Aiello*, 417 U.S. 484, 496 n.20 (1974). Not every law that mentions sex *classifies* based on sex. . . .

Facial sex classification occurs when a law "distinguish[es] between individuals" based on sex. *Shaw*, 509 U.S. at 642. A university excludes "women." *United States v. Virginia*, 518 U.S. 515, 520 (1996). A State imposes different rules for "males" versus "females." *Craig v. Boren*, 429 U.S. 190, 192 (1976). A law provides that "males must be preferred to females" for the handling of property. *Reed v. Reed*, 404 U.S. 71, 73 (1971). *These* are "classic sex classification[s]." L.W. Br. 18. Tennessee's law draws no similar "sex-based line[]." U.S. Br. 19. SB1 does not "prefer one sex over the other," "include one sex and exclude the other," "bestow benefits or burdens based on sex," or "apply one rule for males and another for females." Pet. App. Pg. 23: 32a. It does not "draw any distinctions between persons" based on sex. *Vacco*, 521 U.S. at 800. . . .

Assessing the lines drawn by SB1 reveals the absence of any sex classification. The law creates two groups: (1) minors seeking to use puberty blockers and cross-sex hormones for gender transition, and (2) minors seeking to use puberty blockers and cross-sex hormones for other medical purposes. The first group "includes members of both sexes"—neither boys nor girls can use these drugs for gender transition. *Geduldig*, 417 U.S. at 496 n.20. The second group also "includes members of both sexes"—both boys and girls can use these drugs for other medical purposes. *Id.* Under *Geduldig*, this "lack of identity" between sex and the

> "groups" created by SB1's line drawing means that no facial "sex" classification exists. *Id.*

Brief For Respondents, October 8th, 2024, pgs. 15, 22-23.

The fact that SB1 impacts no sex-based classification proves that there is no equal protection violation, which effectively defeats the government's equal protection argument. This disposition is also consistent with the recent case of *Eknes-Tucker v. Governor, of the Alabama*, No. 2211707, 80 F. 4th 1205 (11th Cir. 2023), 114 F. 4th 1241 (11th Cir. Aug. 28, 2024), an important case which strongly supports the position of the Respondents for affirmance. Also see *Gibson v. Collier*, 920 F.3d 212, 221 (5th Cir. 2019), and *Kosilek v. Spencer*, 774 F.3d 63 (1st Cir. 2014), two more Circuit court cases which support affirmance of the Sixth Circuit's decision in *L. W. v. Skrmetti*, 73 F.4th 408 (6th Cir. 2023).

Affirmance is warranted where there is no impact on a recognized protected class such as race or sex. Further, creation of any new "gender dysphoria quasi-suspect class", particularly one fraught with numerous differing "gender identity" ambiguities, would open up the floodgates to endless litigation seeking to determine the many permutations of "transgender ideology", as applied to the differing treatment approaches to gender dysphoria. The unprecedented recognition of individual conditions and disorders as "quasi-suspect classes" (diabetes, cancer patients, vertigo, etc.) would open a new Pandora's box of unending litigation into individual medical patient treatment plans.

For excellent, evenhanded analyses of these myriad "gender identity" issues and of the actual science involved, please see the *Expert Declaration of Paul W. Hruz, M.D., Ph. D.*, Joint Appendix, Vol. 2, pg. 474, 502-517, and the AFLDS White Paper.[4]

II. Medical Mutilation of a Child's Healthy Human Body Violates Informed Consent, Causes Grave Lifetime Harmful Side Effects, Violates the Hippocratic Oath, and Is Criminal Child Abuse and Medical Battery. WPATH "Standards of Care" Are Unreliable and Are Not Entitled to Deference.

Amici curiae physicians are very concerned that foundational medical principles such as the absolute requirement for informed consent in all cases, the Hippocratic Oath's "Do No Harm" mandate, and the strict observance of all applicable civil and criminal laws, were trampled upon in recent years by the sudden onslaught of an aggressive "transgender ideology" activism.

A heretofore rare disorder defined gender confusion as "gender identity disorder" in the American Psychiatric Association (APA)'s 1980 Third Diagnostic and Statistical Manual (DSM-3). However, the 2013 DSM-5 replaced "gender identity disorder" with "gender dysphoria".[5]

4. AFLDS White Paper, The Civil Liberties and Human Rights Implications of Offering Children Medical Mutilation Procedures, Lead Author Simone Gold, MD, JD, Dr. Melanie Crites-Bachert, DO, FACOS, FACS, Dr. Bryan Atkinson, MD, David Heller, pg. 8-20, July 2024, https://res.cloudinary.com/aflds/image/upload/v1720808982/Medical_Mutilation_White_Paper_1804e8ca1a.pdf

5. American Psychiatric Association, Gender Dysphoria, 2013, https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM5GenderDysphoria.pdf

The term “gender” itself, traditionally reserved for grammatical purposes, began to be used to describe characteristics of biological sex. The correctness or incorrectness of the various new usages of the term “gender” is controversial.[6]

Terminology such as the “sex assigned at birth”, and concepts such as “being born into the wrong body”, came into use.

In past traditional medical practice, years of physical and psychological screening were required before any rare adult patient was approved for gender reassignment surgery. There were no cases involving minor children.

Until very recently, all medical professionals agreed that under NO circumstances could a child consent to these treatments. That fact alone requires this Court to pause. This has been a rapid change by gender activists, not by dispassionate research. All over the world countries have halted their “gender” programs due to utter lack of benefit. The United Kingdom, Sweden, Norway and Finland have recently drastically limited access as has Denmark. France, Germany and Holland are voicing extreme alarm. It is only the United States, Australia and Canada (where physician euthanasia is now the sixth leading cause of death) which has not stopped the grotesque mutilation of children.

After the 2013 DSM-5 change, suddenly, gender confusion was no longer a “disorder”, but was instead a

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6. *Expert Declaration of Paul W. Hruz, M.D., Ph. D.*, Joint Appendix, Vol. 2, pg. 474, 484-485.

"condition", a "dysphoria" that could be supported. Indeed, for activists, it became a condition that could be promoted.

Now, instead of strict requirements like being an adult, dressing and living as the opposite sex for several years, changing one's legal documents to reflect the opposite sex, and extensive psychological and psychiatric screening, it is now possible for a man who made no attempt to look like a woman, and who expresses no real desire to become a woman, after only a 20 minute telemedicine interview with a nurse practitioner and a $150 payment, can easily obtain an approval letter for a radical male to female genital mutilation, including cutting off his penis (penectory) and castration (orchiectomy, removal of his testicles.) This exposé by journalist Matt Walsh is shown, and the standards of care, the shift in medical treatments by acivist-doctors, and the many surgical complications of so-called "gender-affirming care", are discussed by Dr. Gold in "The Gold Report: Medical Mutilation: Part 1 of 5 'The Reality of Gender Affirming Care'", and well documented in "*Lost in TransNation*" by gender dysphoria expert Dr. Miriam Grossman.[7] [8]

This ideological shift in bias based upon little to no evidence of positive clinical findings can be seen quite

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7. The Gold Report: Medical Mutilation: Part 1 of 5 'The Reality of Gender Affirming Care' with Dr. Melanie Crites-Bachert, https://www.aflds.org/videos/post/the-gold-report-medical-mutilation-part-1-of-5-the-reality-of-gender-affirming-care-with-dr-melanie-crites-bachert

8. Miriam Grossman, "Rosa," in *Lost In Trans Nation*, (New York, NY: Skyhorse Publishing, 2023).

clearly in the government Petitioner's Brief, Section A: "Medical Standards for Gender-Affirming Care", pgs. 3-6. This section is full of statements of alleged medical facts regarding the standards of care for the gender dysphoric, which standards are all described as "accepted" and well settled, but which are actually hotly contested and sharply disputed in the wider medical community. Indeed, the government holds out two organizations that the government says set "the accepted standard of care" for treating gender dysphoria, namely, the World Professional Association of Transgender Health (WPATH), and the Endocrine Society. Petitioner's Brief, pg. 3. However, these organizations and their "standards of care" have been discredited and rejected by the overwhelming number of physicians and medical associations. See the WPATH Files[9] wherein this activist (non-physician) organization is revealed to purposefully refuse to provide informed consent to patients.[10] WPATH has been revealed to be essentially a scam, and in one year, 2023, its membership declined more than 60%, and there are now only about 1000 members in the USA. It would be reckless in the extreme for this Court to consider WPATH to be determinative on this subject. See the Doctors Protecting Children Declaration.[11] See Do No Harm Medicine.[12]

The *amicus curiae* brief of the State of Alabama does an excellent job of exposing the fallacies and

9. https://www.public.news/p/thewpathfiles

10. https://environmentalprogress.org/bignews/wpathfiles

11. Doctors Protecting Children Declaration, https://doctorsprotectingchildren.org/

12. https://donoharmmedicine.org

misstatements of fact in this monolithic government narrative, which government narrative only speaks of the "well-settled standards of care" for gender dysphoria emanating from WPATH and the Endocrine Society:

> "This and other testimony has led both the First and Fifth Circuits—and, until recently, the U.S. Department of Health and Human Services—to find that "*the WPATH Standards of Care reflect not consensus, but merely one side in a sharply contested medical debate*." *Gibson v. Collier*, 920 F.3d 212, 221 (5th Cir. 2019); *see Kosilek*, 774 F.3d at 90; Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed.Reg. 37160, 37198 (June 19, 2020) (warning of "rel[ying] excessively on the conclusions of an advocacy group (WPATH) rather than on independent scientific fact-finding"). *[Emphasis added]*
>
> Brief of Alabama as *Amicus Curiae* Supporting Respondents, February 2nd, 2024, pg. 14.

Indeed, the numerous medical organizations listed below all vigorously oppose WPATH and the medical mutilation of minors in the name of biased transgender ideology. Over 75,000 physicians and healthcare professionals in over sixty countries are publicly supporting these state minor medical mutilation bans and have signed the "Doctors Protecting Children Declaration".[13] The Doctors Protecting Children Declaration states:

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13. Doctors Protecting Children Declaration, https://doctorsprotectingchildren.org

> "*Therefore, given the recent research and the revelations of the harmful approach advocated by WPATH and its followers in the United States, we, the undersigned, call upon the medical professional organizations of the United States, including the American Academy of Pediatrics, the Endocrine Society, the Pediatric Endocrine Society, American Medical Association, the American Psychological Association, and the American Academy of Child and Adolescent Psychiatry to follow the science and their European professional colleagues and immediately stop the promotion of social affirmation, puberty blockers, crosssex hormones and surgeries for children and adolescents who experience distress over their biological sex.* Instead, these organizations should recommend comprehensive evaluations and therapies aimed at identifying and addressing underlying psychological comorbidities and neurodiversity that often predispose to and accompany gender dysphoria. We also encourage the physicians who are members of these professional organizations to contact their leadership and urge them to adhere to the evidence-based research now available." *[Emphasis added]*

Here is a list of the cosigners and supporters of this Declaration:

Medical and Health Policy Organizations*

Alliance for Hippocratic Medicine (AHM)

American Academy of Medical Ethics

American Association of Christian Counselors (AACC)

American College of Family Medicine (ACFM)

American College of Pediatricians (ACPeds)

America's Frontline Doctors and Dr. Simone Gold, M.D., J.D.

Association of American Physicians and Surgeons (AAPS)

Catholic Health Care Leadership Alliance (CHCLA)

Catholic Medical Association (CMA)

Christian Medical & Dental Associations (CMDA)

Coalition of Jewish Values

Colorado Principled Physicians

Do No Harm Medicine

Genspect

Honey Lake Clinic

International Foundation for Therapeutic and Counselling Choice (IFTCC)

National Association of Catholic Nurses, USA

National Catholic Bioethics Center (NCBC)

North Carolina Physicians for Freedom (NCPFF)

South Carolina Physicians for Freedom (SCPFF)

*These organizations represent over 75,000 physicians and healthcare professionals.

This Declaration exposes the misstatements of fact, and the widely disputed nature of Petitioner's claims. The rosy depiction in the Petitioner's merits brief of the WPATH and the Endocrine Society's guidelines "as reflecting the consensus of the medical communities on the appropriate treatment for gender dysphoria" can now be seen to be very inaccurate, and very inconsistent with reality.[14]

This activist promotion of "transgender ideology" on the part of Petitioner, as opposed to the objective, dispassionate, and ethical practice of medicine, discredits Petitioners' case. This ideological bias is also well illustrated by the important discovery of psychologist and noted researcher Dr. Ken Zucker, and WPATH's reaction to Dr. Zucker's discovery, as recounted by this paragraph in the *amicus curiae* brief from the State of Alabama:

> "Dr. Ken Zucker was one such professional "greeted with antipathy" by the activists at WPATH for his alternative views. Zucker is "a psychologist and prominent researcher who directed a gender clinic in Toronto" and headed

14. Petition for a Writ of *Certiorari*, pg. 4.

> the committee that developed the American Psychiatric Association's criteria for "gender dysphoria" in the DSM-V.41 The 2012 WPATH Standards of Care cite his work 15 times. fn42 *In his nearly forty years of research, Zucker discovered "that most young children who came to his clinic stopped identifying as another gender as they got older." fn43 Zucker thus became concerned that transitioning children could entrench gender dysphoria that would otherwise resolve. [Emphasis added]*

That position was not popular at WPATH."

> Brief of Alabama as *Amicus Curiae* Supporting Respondents, February 2nd, 2024, pg. 14.

Indeed, WPATH went on the warpath against Dr. Zucker after his significant, but not new, discovery. They could not tolerate the "watchful waiting"approach espoused by Drs. Zucker, Hruz, Grossman, and others, even if such an approach had successful clinical outcomes.

WPATH members instead proceeded to shout Dr. Zucker down at conferences, publicly condemn him, and implied that he was both a racist, and not sufficiently "gender transgressive" enough. They also unsuccessfully attempted to get Dr. Zucker fired from his job, but they did manage to get one of his articles retracted.[15]

15. Brief of Alabama as *Amicus Curiae* Supporting Respondents, February 2nd, 2024, pgs. 15-18.

That WPATH rejects these beneficial clinical findings is highly alarming from a medical standpoint and again illustrates their bias. Yet, the clinical success in treating gender dysphoria with "Watchful Waiting and Exploratory Therapy" is undeniable. This is explained by Dr. Hruz, M.D., Ph. D. in his Expert Declaration, at Joint Appendix, Vol. 2, pg. 504, and is reflected by the positive statistics:

> **"II. Treatments**
>
> **A. Watchful Waiting and Exploratory Therapy**
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> 60. The first approach, sometimes called "watchful waiting," motivated by an understanding of the natural history of transgender identification in children, is to neither encourage nor discourage transgender identification, recognizing that existing evidence (discussed next) shows that the vast majority of affected children are likely to eventually realign their reports of gender identification with their sex. This realignment of expressed gender identity to be concordant with sex is sometimes called "desistance."
>
> 61. The "watchful waiting" approach does not advocate doing nothing. Rather, it focuses on affirming the inherent dignity of affected people and supporting them in other aspects of their lives, including the diagnosis and treatment of any comorbidities, as individuals proceed through the various stages of physical and psychological development. . . .

62. Despite differences in country, culture, decade, followup length, and method, multiple studies have come to a remarkably similar conclusion: Very few gender dysphoric children still want to transition by the time they reach adulthood. Many turn out to have been struggling with sexual orientation issues rather than gender discordant "transgender" identity. The exact number of children who experience realignment of gender identity with biological sex by early adult life varies by study. Estimates within the peer-reviewed published literature range from 50-98%, with most reporting desistance in approximately 85% of children before the widespread adoption of the "affirming" model discussed below. (fn58) In 2018, for instance, studies found that 67% of children meeting the diagnostic criteria for gender dysphoria no longer had the diagnosis as adults, with an even higher rate (93%) of natural resolution of gender-related distress for the less significantly impacted cases.59 A March 2021 study, with one of the largest samples in the relevant literature, suggests that most young gender dysphoric children grow out of the condition without medical interventions. 60 Thus, desistance (i.e., the child accepting their natal, biological sex identity and declining "transitioning" treatments) is the outcome for the vast majority of affected children who are not actively encouraged to proceed with sex discordant gender affirmation."

Expert Declaration of Paul W. Hruz, M.D., Ph. D., Joint Appendix, Vol. 2, pg. 474, 504-506.

Dr. Hruz goes on to explain in detail exactly how and why "affirming" gender dysphoria treatments such as puberty-blockers, cross-sex hormones, and surgical interventions can be very harmful and cause lifetime permanent damage.[16] Dr. Miriam Grossman, M.D., an international expert on gender dysphoria, an adult and child psychiatrist, researcher, and author of the book "*Lost in Trans Nation*", discusses successful and unsuccessful gender dysphoria treatment options, the medical experimentation on our children, and the lack of data showing beneficial effects of puberty-blockers, cross-sex hormones, and surgical interventions. Dr. Grossman also recounts the history of her heart-wrenching regretful patient who could only say "If I just would have waited". Dr. Grossman recommends gender dysphoria treatment which includes supportive psychological care, treating other comorbid conditions such as depression, anxiety, autism (found in more than 70%), family counseling and affirmation of biological reality. Dr. Grossman's talk can be viewed here.[17] See also Section B. below.

WPATH, however, is hostile to these successful non-invasive gender dysphoria treatments because they do not fit into WPATH's "transgender ideology" bias, which favors "gender transition" surgeries, despite the substantial risks of negative outcomes. WPATH appears to be agenda-driven.

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16. *Expert Declaration of Paul W. Hruz, M.D., Ph. D.*, Joint Appendix, Vol. 2, pg. 474, 507-523.

17. Miriam Grossman | Gender Ideology and the Medical Experiment on our Children | NatCon 3 Miami, https://www.youtube.com/watch?v=wIh8tvRLqck

However, the ethical practice of medicine, consistent with the Hippocratic Oath and with the principle of "Do No Harm", is ***not*** agenda-driven.

Amici Curiae have been examining in depth these many issues swirling around treatments for gender dysphoria for years. On October 6th, 2024, *Amici Curiae* through their affiliate Frontline Films released a full length film called "What Is A Doctor?", which explores questions surrounding the efficacy of alternative treatments of gender dysphoria, with opinions from Dr. Simone Gold, Dr. Miriam Grossman, Dr. Melanie Crites-Bachert, Dr. Eithan Haim and Dr. Scott Jensen, all independent, expert frontline physicians who take their oaths to "Do No Harm" very seriously. The trailer to "What Is A Doctor?" can be viewed here.[18]

Further, *Amici Curiae* have examined many case histories of such treatment approaches. The choice of the correct treatment approach can make the difference between a happy outcome and a tragic outcome.

One Colorado mother willingly shared with Dr. Gold her family's fight to achieve a happy outcome for her young daughter. Her illustrative case history can be viewed here.[19]

Amici Curiae affirmatively state that changing one's sex, which is what "gender reassignment surgery"

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18. *What Is A Doctor?*, trailer: https://americasfrontlinedoctors.org/whatisadoctor?

19. The Gold Report: Ep. 32 'Gender Ideology Is A Cult' with Erin Lee, https://www.aflds.org/videos/post/thegoldreportep32genderideologyisacultwitherinlee

purports to do, is a medical impossibility, for several reasons including the unalterability of the "XX" and the "XY" chromosomes. Surgical and hormonal interventions can only offer a physiological solution to a psychological problem. This physiological "solution" causes permanent damage to the human body, including irreversible sterility, chronic wounds and lifetime medical treatment.

Texas Attorney General Ken Paxton opined in TX A.G. Op. No. KP-0401 that much of this so-called 'gender reassignment" surgery also violates Texas criminal laws prohibiting child abuse and child sterilizations. Further, Attorney General Paxton found that children lacked the capacity to consent to any such surgeries, and that the right to procreate has long been recognized as a fundamental constitutional right as far back as in the case of *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

Laws prohibiting child abuse, child sexual abuse, child sterilizations, protecting the fundamental procreation rights of minors, and severely limiting or eliminating entirely the ability of minors to give informed consent to such procedures, are of course not just limited to Texas. These state laws are common throughout the nation. See Section III for examples.

As another example, 18 U.S.C. 116 is a federal statute which criminalizes female genital mutilation (FGM). This federal criminal law arguably applies to Petitioner's "accepted standards of care" as well. Criminal law violations would preclude the acceptability of Petitioner's allegedly accepted standards. Petitioners cannot succeed when they advocate for behaviors which violate numerous

well-established state and federal criminal laws. See Section III below.

A. Minors Generally Lack Capacity To Consent to Anything, Much Less Life-Altering and Dangerous Elective Surgery. No Third Party Can Supply Consent to Their Medical Mutilation For Them.

Most state laws severely restrict or eliminate the ability of minors to consent to anything, with limited exceptions, because they lack the capacity at a young age to understand the long term and even the short term consequences of their actions. They cannot sign binding contracts, buy alcohol, or get tattoos. This obviously includes their inability to give truly informed consent to life altering puberty blockers, cross-sex hormones, or surgical destruction (not reconstruction) of the normal functioning of their bodies.

TX A.G. Op. KP-0401[20] is worth reviewing in its entirety, and holds that minors do not have the capacity to consent to radical "gender reassignment" surgery, surgery which could result in their permanent sterilization:

> "Generally, the age of majority is eighteen in Texas. TEX. CIV. PRAC. & REM. CODE § 129.001. With respect to consent to sterilization procedures, Medicaid sets the age threshold even higher, at twentyone years old. Children and adolescents are promised relief and asked

20. TX A.G. Op. KP-0401: https://www.texasattorneygeneral.gov/sites/default/files/opinionfiles/opinion/2022/kp0401.pdf

to "consent" to life-altering, irreversible treatment and to do so in the midst of reported psychological distress, when they cannot weigh long-term risks the way adults do, and when they are considered by the State in most regards to be without legal capacity to consent, contract, vote, or otherwise. Legal and ethics scholars have suggested that it is particularly unethical to radically intervene in the normal physical development of a child to "affirm" a "gender identity" that is at odds with bodily sex. fn9"

. . . The State's power is arguably at its zenith when it comes to protecting children. In the Supreme Court's words, that is due to "the peculiar vulnerability of children." Bellotti v. Baird, 443 U.S. 622, 634 (1979); see also Ginsberg v. New York, 390 U.S. 629, 640 (1968) ("The State also has an independent interest in the wellbeing of its youth."). The Supreme Court has explained that children's "inability to make critical decisions in an informed, mature manner" makes legislation to protect them particularly appropriate. Bellotti, 443 U.S. at 634. The procedures that you ask about impose significant and irreversible effects on children, and we therefore address them with extreme caution, mindful of the State's duty to protect its children. See generally T.L. v. Cook Children's Med. Ctr., 607 S.W.3d 9, 42 (Tex. App.—Fort Worth 2020), cert. denied, 141 S. Ct. 1069 (2021) ("Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of

> their parents, and if parental control falters, the State must play its part as *parens patriae*. In this respect, the [child]'s liberty interest may, in appropriate circumstances, be subordinated to the State's parens patriae interest in preserving and promoting the welfare of the child.") (citation omitted).

Texas Attorney General Opinion No. KP-0104, February 18th, 2022, pgs 4-5

This logic is inescapable. Minors lack the capacity to give informed consent to lifetime alterations of their normal bodily functioning and of their very lives. The Opinion goes on to point out that because procreation is a fundamental constitutional right, *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), minors cannot give consent to their own sterilizations. These procedures can and do cause sterilizations:

> "III. To the extent that these procedures and treatments could result in sterilization, they would deprive the child of the fundamental right to procreate, which supports a finding of child abuse under the Family Code. A. The procedures you describe can and do cause sterilization. The surgical and chemical procedures you ask about can and do cause sterilization.(fn12)[21]

21. 12See Philip J. Cheng, Fertility Concerns of the Transgender Patient, TRANS L AND ROL UROL. 2019;9(3):209218 (explaining that hysterectomy, oophorectomy, and orchiectomy "results in permanent sterility"), https://www ncbi nlm nih.gov/pmc/articles/PMC6626312/.

Texas Attorney General Opinion No. KP-0104, February 18th, 2022, pg 5.

No third party including parents or the government acting "*in loco parentis*" can consent to such medical mutilation of minors, which can result in permanent sterilization, which can be considered criminal child abuse, and which could also run afoul of 18 U.S.C. 116, which defines female genital mutilation (FGM) as criminal behavior.

B. The Long Term Effects of Medical Mutilation Surgery for Minors are Horrific, Tragic, and Require Regulation.

Much data has been collected and is of record regarding the drastic, life altering, and lifetime adverse effects which are caused by such treatments as puberty blockers, cross-sex hormones, and "gender reassignment" surgeries. These often-horrific long term adverse effects justify state regulation in and of themselves.

For example, Dr. Hruz goes into great detail about the clinically-observed serious adverse effects, including the irreversibility of puberty blockers, and the effects on long term height, brain development, and other developmental issues in his Expert Declaration, pgs 507-531.[22]

Dr. Grossman enumerates problems with bone density (osteoporosis), heart attacks, strokes, blood clots, early menopause, sexual dysfunction, and effects on brain

22. *Expert Declaration of Paul W. Hruz, M.D., Ph. D.*, Joint Appendix, Vol. 2, pg. 474, 502-517.

development, from the hormones alone.[23] Additionally, Chapter Twelve, a "Surgeon's Dangerous Idea", from Dr. Grossman's book "*Lost In Trans Nation*", pg. 175 presents a detailed analysis of the negative effects of these surgical interventions.

Many surgical complications of so-called "gender-affirming care" are also discussed by Dr. Gold and Dr. Melanie Crites-Bachert in "The Gold Report: Medical Mutilation series: Parts 2 and 3 of 5, 'The Reality of Gender Affirming Care'", regarding complications from female to male surgery (Part 2), and male to female surgery (Part 3). These episodes can be viewed here.[24]

Many of these adverse effects are discussed by the five frontline physician experts in America's Frontline Doctors "What Is A Doctor?" film, discussed above.

A critical report from the U.K. called the CASS Review, which meticulously reviewed the treatment of transgender youth for four years, found "gaps in the evidence base" for the treatment of minors. Following

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23. Miriam Grossman | Gender Ideology and the Medical Experiment on our Children | NatCon 3 Miami, https://www.youtube.com/watch?v=wIh8tvRLqck

24. The Gold Report: Medical Mutilation: Part 2 of 5 'Female to Male' with Dr. Melanie Crites-Bachert, https://www.aflds.org/videos/post/the-gold-report-medical-mutilation-part-2-of-5-female-to-male-with-dr-melanie-crites-bachert

The Gold Report: Medical Mutilation: Part 3 of 5 'Male to Female' with Dr. Melanie Crites-Bachert, https://www.aflds.org/videos/post/the-gold-report-medical-mutilation-part-3-of-5-male-to-female-with-dr-melanie-crites-bachert

the CASS Review, the NHS ordered the closure of the Tavistock clinic, the only dedicated gender identity clinic in the U.K.[25] The importance of this clinic closure must not be missed by the Court. Tavistock was the world's largest pediatric gender clinic and it was *closed in March 2024 due to risk of harm to children.*

Also see the all-too-often tragic detransitioner stories and videos on the PITT (Parents For Inconvenient Truth About Trans) substack.[26]

III. Dangerous Surgeries Require State Regulation. Abortions, Female Genital Mutilations, Psychosurgery, Shock Treatments, Lobotomies, Child Sterilizations, Assisted Suicides, Euthanasia, and Even Tattoos Are All Properly Subject to Both Civil and Criminal Law Regulation by the States. The Analogy to SB1 Is Clear.

Finally, it is obvious that states and the federal government have lawfully protected children from abuse and have lawfully regulated medical procedures for centuries. The exercise of state police power is properly applied to abortions, female genital mutilations (FGM), psychosurgery, shock treatments, lobotomies, child sterilizations, assisted suicides, euthanasia, and tattoos. Such state laws and regulations are completely appropriate.

The Texas A.G. Op. KP-0401 explains how much of "gender reassignment" surgeries and treatments can

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25. Joint Appendix, Vol. 2, pgs 550, 590.

26. Parents with Inconvenient Truths about Trans (PITT), https://www.pittparents.com/

violate criminal statutes prohibiting child abuse and child endangerment. All states have similar laws protecting children. As a few examples only, Kentucky passed § 530.060, "Endangering welfare of minor." Maryland Criminal Code § 3-8A-30 broadly prohibits causing a minor to require supervision or contribute to the child's delinquency. Colorado broadly prohibits child abuse by Colorado Criminal Code § 18-6-401. Arkansas prohibits physician-assisted suicide, § 5-10-106. Texas prohibits the tattooing of minors. § 146.012. North Dakota passed 12.1-36-01, prohibiting the surgical alteration of the genitals of female minors. Arizona passed § 13-1214, prohibiting unlawful mutilation. The State of Washington passed 9A.36.170, prohibiting female genital mutilation of minors. The federal government prohibits female genial mutilation (FGM). 18 U.S.C. 116. The list goes on and on.

Tennessee's lawful exercise of its police power in SB1 should be upheld and vigorously defended.

CONCLUSION

It is clear that SB1 is a proper exercise of the police power of the State of Tennessee to regulate dangerous and problematic medical mutilation surgeries and treatments of Tennessee minors, to protect them from the tragic consequences of irreversible surgical interventions upon children incapable of giving informed consent to their own mutilations, sterilizations, or worse.

This exercise of state police power is similar to the longstanding and accepted state regulation of abortions, female genital mutilations (FGM), psychosurgery, shock treatments, lobotomies, child sterilizations, assisted suicides, euthanasia, and even tattoos.

Nor does any parent or third party guardian possess the legal ability to consent to the mutilation of their child for them. It is reasonable to require that the age of majority be attained before any lifelong medical or surgical destruction of any person's healthy tissue, cells, or organs is attempted. There is no common law precedent for any third party to be able to grant permission to mutilate, destroy, or alter any other person's body. Attaining the age of majority is already required for much less drastic decisions such as whether or not to smoke, to drink alcohol, to get a tattoo, or to vote.

The decision of the Sixth Circuit below should be strongly affirmed in order to protect our children from harms, which is consistent with the three prior Circuit Court decisions on this issue, *Eknes-Tucker v. Governor, of the Alabama*, No. 22-11707, 80 F. 4th 1205 (11th Cir. 2023), 114 F. 4th 1241 (11th Cir. Aug. 28, 2024), *Gibson v. Collier*, 920 F.3d 212, 221 (5th Cir. 2019), and *Kosilek v. Spencer*, 774 F.3d 63 (1st Cir. 2014).

Respectfully Submitted,

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