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

BRIEF *AMICUS CURIAE* OF THE WOMEN'S LIBERATION FRONT ON BEHALF OF THE RESPONDENTS

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IDENTITY AND INTEREST OF *AMICUS* BRIEF[1]

Amicus is the Women's Liberation Front ("WoLF"), a non-profit radical feminist organization dedicated to the liberation of women and girls by abolishing gender and sex discrimination.[2] As a radical feminist organization, WoLF rejects gender identity beliefs because they are founded on regressive sex stereotypes and undermine women's sex-based rights (including lesbian and bisexual women who comprise nearly 40% of WoLF's membership—and who make up the majority of women with diagnosed with gender dysphoria). WoLF's interest in this case stems from its interest in protecting those most affected by gender ideology, women and girls, from its harmful effects. These include interference into their bodily autonomy and their freedom of speech and beliefs (including the right to seek therapy that does not "affirm" that they are boys trapped in girls' bodies). WoLF's goals are thwarted when the state abandons its responsibility to uphold their free speech and fails to maintain the legal protection of women and girls based on sex.

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1. No counsel for any party authored any part of this brief, and no party, their counsel, or anyone other than WoLF, has made a monetary contribution intended to fund its preparation or submission, and counsel of record for all parties have consented to its filing.

2. Amicus uses "sex" throughout to mean "the fundamental distinction, found in most species of animals and plants, based on the type of gametes produced by the individual," and the resulting classification of human beings into those two reproductive classes: female (women and girls) or male (men and boys). *See Sex, Male, and Female*, Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health (7th ed. 2003), https://medical-dictionary.thefreedictionary.com.

SUMMARY OF ARGUMENT

No child is born in the wrong body. There is no suspect class of "transgender children," and no right under the Equal Protection Clause of the United States Constitution for such children to be subjected to medical interventions to modify their sex traits. Reviewed as it must be under the rational review standard, SB1 is a legitimate exercise of the state's power to protect vulnerable children from irreversible harm and to promote a child's acceptance of her sex. In fact, the "transgender child" is a construct created by activists to present a sympathetic face to their movement. This movement presents a grave threat to the safety, well-being, and rights of children, women, and other vulnerable groups.

ARGUMENT

I. There Is No Constitutional Right To Pediatric Sex Trait Modification.

Children are not considered a "suspect class" under the Equal Protection clause of the Fourteenth Amendment. Therefore, "[l]aws premised on classifications based on age or medical condition" receive "deferential review"—rather than heightened review urged by the Petitioner. *L.W. v. Skrmetti*, 83 F.4th 460, 479 (6th Cir. 2023); *see also City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 442–46 (1985). Petitioner tries to evade this settled matter of law by constructing a class around the "transgender child," a fiction invented to launder outcomes that privilege adult men at the expense of women, children, and other vulnerable groups. As the Sixth Circuit Court of Appeals noted, "state and federal governments have long played

a critical role in regulating health and welfare, which explains why their efforts receive 'a strong presumption of validity.'" *Skrmetti* at 473, *quoting Heller v. Doe*, 509 U.S. 312, 319 (1993). SB1, the Tennessee law challenged by Petitioner, falls well within the legitimate powers of the states to protect vulnerable minors.

A. Children Who Seek to Modify Sex Traits Are Not a Protected Class.

If children are not a suspect class, then the subset of children who seek or whose parents or guardians seek medical intervention for them for purposes of "gender affirming care"—the group of children petitioner refers to as "transgender children" or "transgender adolescents"—are also not a suspect class. Instead of defining a "discrete group," *Bowen*, 483 U.S. at 602, 107 S.Ct. 3008, "transgender" can describe "a huge variety of gender identities and expressions," Eli Coleman *et al.*, *Standards of Care for the Health of Transgender and Gender Diverse People*, Version 8, 23 Int'l J. Transgender Health (2022) (WPATH SOC 8) at S15; *Skrmetti*, 83 F.4th at 487.

1. There is no protected class of "transgender children."

The Sixth Circuit in *Skrmetti* thoroughly dissected the claim that so-called transgender children constitute a protected class for purposes of the Equal Protection clause, correctly reasoning that the group is not defined by immutable characteristics; the laws in question are not based on animus; the laws do not draw constitutionally irrational lines; and the group is not politically powerless. *See Skrmetti* at 486-487.

As the *Skrmetti* court recognized, there is an inherent contradiction in treating children whose identity is based on a supposed transition as a protected class with immutable traits. Perhaps recognizing this contradiction, Petitioner does not attempt to define "transgender," although the term appears in their brief seventy-six times. *See* Brief for the Petitioner, *United States v. Skrmetti*, No. 23-477 (August 2024). While, according to the Petitioner, "[t]ransgender people *can* suffer from gender dysphoria," *id.* at 3 (*emphasis added)*, there apparently is no medical criterion that distinguishes the "transgender child" from any other child. While Petitioner states that "transgender individuals . . . share[ ] 'obvious, immutable, or distinguishing characteristics that define them as a discrete group,'" the only such "characteristic" Petitioner identifies is that "their gender identities do not align with their respective sexes assigned at birth." *Id.* at 29. In other words, it appears that the distinguishing characteristic of the "transgender child" is the purely subjective feeling of being "trapped in the wrong body." *Id.* at 8. But feelings are too mutable to be the foundation of a classification for constitutional purposes.

The growing phenomenon of "detransition"—or rejecting the belief that it is possible to change sex and accepting the sex one is born into—attests to this mutability. *See*, *e.g.*, Daniela Valdes and Kinnon MacKinnon, *Take Detransitioners Seriously*, The Atlantic (January 18, 2023) (citing studies showing rates of detransition varying between 7 and 30%, but noting limitations to the studies.) Even according to its proponents, gender identity is fluid and may change over a lifetime; these proponents sometimes speak of a nonlinear "gender journey" that may entail transition, detransition,

and retransition, and so on. *See*, *e.g.*, Stonewall UK, *Dispelling myths around detransition* (October 7, 2019), https://www.stonewall.org.uk/about-us/news/dispelling-myths-around-detransition ("we can't treat detransition as the end of person's journey in exploring their gender identity, as many will choose to retransition at a later point when they are safe and supported."); *see also* Annie Pullen Sansfaçon et al., *A Retrospective Analysis of The Gender Trajectories of Youth Who Have Discontinued a Transition*, Int'l J. of Transgender Health (2024), 25:1, 74-89. A child's identification as transgender is therefore an unstable basis for life altering medical interventions on a child. Katz-Wise, *Gender Fluidity: What it Means and Why Support Matters*, Harvard Health Publishing (2020), *available at* https://www.health.harvard.edu/blog/gender-fluidity-what-it-means-and-why-support-matters-2020120321544.

In fact, no child should be expected to have the maturity to understand the consequences of "choosing" such interventions. This Court "has recognized in the criminal sentencing context that children have a '"lack of maturity and an underdeveloped sense of responsibility,"' which can lead to recklessness, impulsivity, and heedless risk-taking; that children "are more vulnerable . . . to negative influences and outside pressures," and a child's character is not as "well formed" as an adult's; his traits are "less fixed" and his actions less likely to be "evidence of irretrievabl[e] deprav[ity]." *Miller v. Alabama*, 567 U.S. 460, 471, (2012) *quoting Roper v. Simmons*, 543 U.S. 551, 569-570, (2005). *Compare Ginsberg v. State of N. Y.*, 390 U.S. 629 (1968) (limitations on availability of sex materials to minors is acceptable if legislature can rationally find that minors' exposure to such material might be harmful).

There is no reason to believe that children who identify as "transgender" are any more mature and developed than children in the criminal court system.

Furthermore, as the Sixth Circuit strongly argued, this is most certainly not a politically powerless group. The Sixth Circuit wrote in *Skrmetti:*

> The President of the United States and the Department of Justice support the [trans-identified] plaintiffs. A national anti-discrimination law, Title VII, protects transgender individuals in the employment setting. Fourteen States have passed laws specifically allowing some of the treatments sought here. Twenty States have joined an amicus brief in support of the plaintiffs. The major medical organizations support the plaintiffs. And the only large law firms to make an appearance in the case all entered the controversy in support of the plaintiffs. These are not the hallmarks of a skewed or unfair political process[.]

Skrmetti at 487. The vast amount of change in government, medical, workplace, and school policy, as discussed further in Section III of this brief, attests to the political power wielded by transgender activists. *See* Helen Joyce, *Trans Activism's Long March through Our Institutions*, National Review (August 8, 2021); HRC "Welcoming Schools," *at* https://welcomingschools.org/. The movement has successfully shut down debate on this issue by alleging that people (mostly women) who question the premises of the movement are "transphobic, resulting in

loss of jobs, cancellations, and deplatforming. *See* https://womensliberationfront.org/list-of-cancelled-women (list of women and men who have lost opportunities, jobs, speaking engagements, and use of other platforms for critiquing gender identity theory).

Far from being a civil rights movement to vindicate the rights of a supposed suspect class of trans-identified individuals, "trans rights" activism seeks to suppress the rights of women, children, as well as gay, lesbian, and bisexual people.

2. Sex Does Not Include Gender Identity.

Nor may Petitioner bootstrap an Equal Protection argument to the hard-won rights of women by claiming that SB1 constitutes a sex-based classification. *See* Brief for the Petitioner at 19. Sex does not include the concept of gender identity and "[r]ecognizing biological reality is 'not a stereotype.'" *Kadell v. Fowell*, 100 F.4th.122, 166 quoting *Nguyen v. INS*, 533 U.S. 53, 68, (2001). It follows that conformity to sex stereotypes is not covered under constitutional protections for sex. The National Institute of Health (NIH) describes sex as "a classification based on biological differences . . . between males and females rooted in their anatomy and physiology. *See* NIH, *Sex & Gender* at https://orwh.od.nih.gov/sex-gender. Sex exists in the material world apart from any attempts at conceptual re-categorization.

Moreover, privileging gender inevitably disadvantages sex. Originally used in the context of language and grammar, gender was introduced as a psychological concept in the 1960s by the sexologist John Money,

known for his disastrous experiments to prove his theory of "gender plasticity". *See*, *e.g.*, Janice Raymond, The Transsexual Empire: The Making of the She-Male at 43-53, Teachers College Press (1994) in the 1960s. He formulated, defined, and coined the term "gender role" and later expanded it to gender-identity/role. Holmes, Brooke (2012), "*Introduction*," Gender: Antiquity and its Legacy,Gender: Antiquity and its Legacy. pp. 3-4, Oxford University Press (2012). In the 1970s scholars used the term "gender" to differentiate between the "socially constructed" aspects of gender and the "biologically determined" aspects of sex. Germon, J., *Money and the Production of Gender*, Gender, pp. 23-62 (New York: Palgrave Macmillan (2009); Haig, David, *The Inexorable Rise of Gender and the Decline of Sex: Social Change in Academic Titles, 1945-2001*, Archives of Sexual Behavior, 33(2); 87-96 (2004). Today it is common to find that gender and sex are used interchangeably and imprecisely so that it is often impossible to maintain a common understanding of the conceptual stereotypes of gender and the biological, material reality of sex.

Certainly, this Court's decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020) does not support Petitioner's efforts to include protection for "gender identity" within protections created for sex. In *Bostock*, this Court held that discriminating against an individual based on their transgender status or gender expression violated the prohibition against discrimination in Title VII "because of sex." The majority reasoned that because a woman would not have been discriminated against for dressing and presenting as a (stereotypical) woman, a man who desired to present as a (stereotypical) woman could not be discriminated against either. "An employer who fires an

individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex." *Id.* at 652-653.

This Court was clear that *Bostock* was limited to Title VII. *Bostock*, at 681 (declining to "prejudge" other discrimination laws). While the Federal government, some state governments, and non-profit organizations have attempted to erase this limitation and extend the reasoning in *Bostock* to Title IX, these efforts are not supported by the language of *Bostock* itself and, in the case of the Department of Education's attempted rewrite of Title IX regulations to include gender identity within "sex," have been overwhelmingly rejected by the courts. Six Federal district courts and three Federal Courts of Appeal ruled against that effort before this Court unanimously agreed that the provision expanding sex to include "gender identity" under Title IX regulations should be preliminarily enjoined. *See* Mark Walsh, *The New Title IX Regulation and Legal Battles Over It, Explained*, Education Week (September 13, 2024); *Dept. of Education, et al. v. Louisiana, et al.*, 603 U.S. __, 144 S.Ct. 2507 (2024).

B. The state bans on pediatric sex trait modification are justified under rational basis review.

The states are entitled to regulate health care. Where no suspect class is implicated, review is limited to whether there is a "rational basis" for the law. Here, Petitioners urge the court to overrule the state's legitimate interest in the safety, health, and welfare of its children. But states have "wide discretion to pass legislation in areas where

there is medical and scientific uncertainty." *Gonzales v. Carhart*, 550 U.S. 124, 163, (2007) (*citing Kansas v. Hendricks*, 521 U.S. 346, 360 n.3 (1997)). That is the case here: contrary to the assertions of Petitioner, the medical interventions prevented by SB1 have not been supported by evidence, cause permanent physical impairments, are irreversible, and do not prevent suicide. Given the lack of credible scientific support and widespread and growing international dissension from the practice of pediatric sex trait modification, it cannot credibly be argued that Tennessee lacks a rational basis for restricting these procedures. The state has a legitimate interest in the health, safety, and welfare of its children. The Legislature made specific findings about the detrimental impact on children of puberty blockers, wrong-sex hormones, and medical procedures when it promulgated Chapter 33. Ensuring that childrens' bodies are not interfered with during an important developmental stage such as puberty is well within the state's legitimate interest. The Legislature's findings include that the minor can become irreversibly sterile, have an increased risk of disease and illness, and suffer from adverse and sometimes fatal psychological consequences. Tenn. Code Ann. § 68-33-101(b). The Legislature also found that not all harmful effects associated with these types of medical procedures are yet fully known because many of the procedures, when performed on a minor for such purposes, are experimental in nature and not supported by high-quality, long-term medical studies. *Id.*

Encouraging and supporting children to become comfortable with their bodies and accept their biology is a strong rational basis supporting Chapter 33. Many of the children who have received such medical procedures

have other co-morbid mental health conditions that are overlooked. And, as has been demonstrated, passing through a normal puberty tends to cure "gender dysphoria." *See* Kaltiala-Heino R, *et al.*, *Gender Dysphoria in Adolescence: Current Perspectives*, Adolesc. Health Med Ther. (2018) 2;9:31-41. The Legislature found that there were a host of benefits to allowing children to grow up without being medicalized and sentenced to a life-long dependence on medical care. The Legislature considered these to be legitimate, substantial, and compelling interests in protecting minors from physical and emotional harm, including protecting the ability of minors to develop into adults who can create children of their own; promoting the dignity of minors, and encouraging minors to appreciate their sex, particularly as they undergo puberty. Also compelling, the Legislature recognized a legitimate, "substantial, and compelling interest in protecting the integrity of the medical profession, including by prohibiting medical procedures that are harmful, unethical, immoral, experimental, or unsupported by high-quality or long-term studies, or that might encourage minors to become disdainful of their sex." Tenn. Code Ann. § 33-101.

II. The "Transgender Child" is an Invention of Activists.

In sum, SB1 plainly survives review under the rational review standard. Petitioner's use of the term "transgender child" or the similar terms "transgender girl," "transgender boy," or "transgender adolescent"– terms that appear a total of twenty-one times in Petitioner's brief–is thus an effort to evade the rational review standard by constructing a suspect class. *See*

Brief for Petitioner at 2, 4, 5, 6, 9, 10, 18, 31, 32, 34, 38, 42, 49. While the assumption of a coherent identity of "transgender child" is at the core of Petitioner's argument, Petitioner concedes only that such children "can" suffer from gender dysphoria (and thus implicitly may not) and defines the immutable characteristic of such children only by the nebulous trait of misalignment between "gender identity" and sex. Amici activist groups, on the other hand, describe the disconnect as between "sex" and "sex at birth," demonstrating the gulf in understanding what "transgender" means even among those who share the assumption that it describes a coherent class. *See* Brief of the Kentucky Plaintiffs, Glad, and Lgbtq+ Advocates as Amici Curiae in Support Of Petitioner, p. 5, *USA v. Skrmetti*, No. 23-477 (2024) ("LGBTQ+ Advocates Amici Brief") ("Transgender people are a small and discrete group defined by the immutable characteristic of having a sex that differs from their sex at birth").

Because the concept of the universally-experienced naturally-existing, ethereal gendered identity disassociated from one's sexed body—so at odds with the basic understanding of what it means to be male or female—can lead to such profound consequences as the lifelong medicalization of minors, it must be approached with skepticism. As the feminist philosopher Heather Brunskell-Evans wrote in 2019:

> [t]hirty years ago, when gender medicine for children and young people was in its infancy, "a transgender child" born in the wrong-sexed body would have made no sense to the general public, nor would it have made sense to young people. In the following decades,

> belief in the existential "transgender child" has become so universally accepted that it is now counterintuitive to suggest that the "transgender child" is an historically invented figure. The mere questioning of whether a boy or a girl can actually be born in the wrong body arouses immense passions in some people, particularly in those who see the practice of transgendering a child as emblematic of a more tolerant, open society. Nevertheless . . . the "transgender child" is not a naturally occurring figure external to current discourses and practices but is brought into being through gender medicine and transactivism.

Brunskell-Evans, Heather, *From Born in Your Own Body to Invention of the Transgender Child*, INVENTING TRANSGENDER CHILDREN AND YOUNG PEOPLE, Kindle Edition p. 20 (2020) ("Inventing Transgender Children").

This feminist critique makes clear that the difficulty with the assumption that the "transgender child" is a real identity goes beyond the legal difficulty of finding an immutable trait in a group defined by transition and beyond even the medical difficulty of asserting a right to medical care for a group not defined by any diagnosis. The difficulty is that there is no reason to believe such identity exists. No child is born in the wrong body, but to obscure this foundational problem, activists have engineered a definition of the "transgender child" that is as expansive as it is unfalsifiable. Because no one—not medical practitioners or researchers, not activists, not trans-identified people themselves—can say what distinguishes the so-called transgender child from other

vulnerable young people. This failure not only puts these vulnerable young people at great risk of irreversible, lifelong medicalization; by hiding radical activist goals behind the archetype of the distressed "transgender child", the failure turns what purports to be a civil rights movement for a small, oppressed minority group into a far-ranging effort to re-order society to the detriment of children, women, and LGB people.

Although notably not relied upon by Petitioner, there have been efforts to identify a biological basis for transgender identification (and thus validate the idea of the transgender child), yet such efforts have failed. One theory holds that hormonal exposure in the womb causes transgender identification. John Money was an early proponent of an "interactionist" version of this theory, hypothesizing that the absence of androgenizing hormones at the fetal or other critical stages of development at least partially explains the development of a transgender identity in males. *See* John Money and Anke Ehrhardt, Man & Woman, Boy & Girl: The Differentiation And Dimorphism Of Gender Identity From Conception To Maturity at 15-16, New American Library (1974); *see also* Janice Raymond, The Transsexual Empire: The Making of the She-Male at 44-45, Teachers College Press (1994) (describing Money's "interactionist" theory of psychosexual development, under which gender identity is influenced by both socialization and biology but "locked tight" by eighteen months of age). A related theory stems from cadaver and MRI studies examining the brain structures of transgender-identified men and women and purportedly finding similarities with the brain structures of women and men, respectively. While activists sometimes use these theories to support their claim of an immutable,

distinguishable transgender identity, biological theories of transgender identity remain contested, and the studies open to interpretation. *See*, *e.g.*, Antonio Guillamon et al., *A Review of the Status of Brain Structure Research in Transsexualism*, Arch Sex Behav (Oct. 2016), doi: 10.1007/s10508-016-0768-5. For some proponents of the idea of a transgender identity, the objection to theories of a biological basis is more political than scientific: such "bioessentialist" theories would, definitionally, exclude those whose only claim to transgender identification is the subjective sense of misalignment, shrinking the class of transgender people. *See* Nat Mulkey, *The Search for a 'Cause' of Transness Is Misguided*, Scientific American (March 23, 2021).

Notably, neither Petitioner nor *amici* activist groups advocate for using a biological test to identify their suspect class any more than they argue that the class should be defined in psychological terms as those with a diagnosis of gender dysphoria. *But see* LGBTQ+ Advocates Amici Brief, p. 18 (relying without further explanation on a court decision for the proposition that "medical experts overwhelmingly agree [that] transgender identity has a biological foundation"). But without an objective, testable trait to distinguish the class of transgender minors, proponents of "trans rights" default to self-identification: the subjective sense described in Petitioner's brief that one's gender identity and sex are misaligned. According to these proponents, children can know themselves to be transgender "at a very early age". *See id.* Yet, multiple studies have found that children and adolescents who identify as transgender desist at very high rates from identifying as such and often go on to live as gay men and lesbians. *See, e.g.*, *Early Social Gender Transition in*

Children is Associated with High Rates of Transgender Identity in Early Adolescence (May 6, 2022) *and studies cited therein*, https://SEGM.org. Others are not so fortunate and reject transgender identification only after years of sex-trait modifying drugs and multiple surgeries. As two female detransitioners who began identifying as transgender at 13 and 19 wrote (anonymously to avoid the vitriol transactivists directs at those who challenge any aspect of their ideology):

> [w]e do not believe there is any such thing as being "truly transgender." We have learned that trans-identification is a result of other issues, both individual and systemic, and that medical transitioning does not improve wellbeing.

Twitter.com/ftmdetransed and Twitter.com/radfemjourney, *Our Voices Ourselves—Amplifying the Voices of Detransitioned Women* in Inventing Trans Children at 194. The individual and systemic issues they name include gender nonconformity, being lesbian, a history of sexual abuse, and autism disorder, factors "connected to mistreatment of young girls in the patriarchal society we live in." *Id.* at 189-189. Men and women who as minors identified as transgender, medicalized, then "detransitioned" challenge the very idea of transgender as a stable identity.

Despite the living, breathing rebuttal to the existence of the "transgender child" provided by detransitioners, it is fair to say that the current upsurgence of activism hinges on the existence of the "transgender child." The most contentious and widely litigated issues involving "transgender" identities—pediatric access to sex trait

modification procedures and interpretations of Title IX to eliminate single sex spaces and sports in publicly funded education—exclusively or predominantly affect minors. Pronoun rituals, instructional materials that affirm the existence of such identities, and school policies that keep a child's "transgender" identification from the child's parents are now common in K through 12 classrooms. *See*, *e.g.*, Katie J.M. Baker, *When Students Change Gender Identity, and Parents Don't Know*, N.Y. Times (January 22, 2023). Critics of these sweeping changes to childhood are tarred as hateful, bigoted, or—in the case feminist critics—trans-exclusionary radical feminists or TERFs, a term used to demean feminist critics of the belief in transgender identities. *See* https://terfisaslur.com/ (website documenting the abuse, harassment and misogyny directed as feminists critical of gender ideology). The severity of this backlash hints at how important the "transgender child" is to activists.

That the transgender rights movement has made the "transgender child" the face of its activism is not surprising. A child or adolescent denied access to "gender affirming care" or to the girl's locker room to ease the child's sense of "misalignment" between his or her "gender identity" and sex is a more sympathetic figure than, for example, an adult male seeking access to female only spaces. But the former paves the way to the latter. Incarcerated men who seek placement in women's prison may claim a long-standing transgender identification from the time they were children or adolescents. One magistrate, in overruling the objections of the Bureau of Prisons to placing a male sex offender in the women's prison, uncritically accepted the claim of the offender that:

> [s]he [sic] started noticing that her [sic] gender identity did not match her [sic] gender assigned at birth at age 5, when she [sic] realized that it "wasn't right" for her[sic] to have a penis.

See Report and Recommendation, *JJS v. W.S. Pliler*, 19-CV-2020 *archived at* Perma | freebeacon.com. The offender was transferred to a women's prison, where he repeatedly harassed female prisoners by exposing himself. *See* Susannah Luthi, *Biden Judicial Nominee Sent Trans Male Rapist to Female Prison, Arguing Safety Concerns Were Overblown. Now, Sources Say He is Exposing Himself to Inmates*, The Free Beacon (July 10, 2024). Once the courts and other institutions recognize the "transgender child," the door is cracked open to adult demands for treatment according to the same unfalsifiable sense of misalignment.

III. The Ideology Behind the "Transgender Child" Harms Society and its Most Vulnerable Groups.

In this way, the "transgender child" acts as a Trojan horse for "gender ideology," the belief system that all people have an internal "gender identity" and that, when a person's gender identity does not align with that person's sex, gender identity dictates how law and society must treat that person. *See* Kathleen Stock, Material Girls: Why Reality Matters for Feminism, p. 11 Fleet (2022). This belief system has ushered in a host of changes to language, social institutions, law, and medicine to accommodate the idea of a gender identity that is supposedly innate and knowable to even young children, yet different from sex. Contrary to the claims of activists, these changes do not protect any vulnerable group, but actually target society's

most vulnerable for the greatest harm: children, women—especially lesbians—and all same-sex attracted people.

A. Society's Institutions are Being Transformed by Gender Ideology

The changes to the educational system described above illustrate one example of an institution that has been overtaken by gender ideology, but there are many others. In sports, the commitment to this ideology is so strong it has displaced the observable reality of sex differences in athletic abilities. For example, the International Olympic Committee's (IOC) guideline for non-discrimination based on gender identity and sex variations states that:

> No athlete should be precluded from competing or excluded from competition on the exclusive grounds of an unverified, alleged, or perceived unfair competitive advantage due to their sex variations, physical appearance, and/or transgender status.

See International Olympic Committee, *Principle 5: No Presumption of Advantage*, Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations, https://stillmed.olympics.com/media/Documents/Beyond-the-Games/Human-Rights/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf

The guideline requires "robust and peer-reviewed research" to establish that sex differences do not create unfair advantage. *Principle 6: Evidence-Based Approach, id.* In other words, a major sporting body

treats as discriminatory on its face the once commonplace observation that one sex (males) has physical advantages over the other sex (females) that are relevant to athletic competition.

In virtually all institutions that rely on an understanding of sex-based differences to set policy, gender ideology, the belief system for which the "transgender child" is the mascot, has taken hold. In many states, prison policy disregards known differences in physical strength and rates of violent offense to place males in women's prison based on no more than a male inmate's self-professed female gender identity. *See*, *e.g.*, THE TRANSGENDER RESPECT, AGENCY, AND DIGNITY ACT, Senate Bill 132 (2021), *codified at* CA Penal Code §§ 2605–2606. The American Medical Association has issued a draft guidance that includes language recommendations to obfuscate sex, including the recommendation that research findings be reported by sex *or* gender *or* both, as if sex and gender are equally important to understanding medical research outcomes. *See* Do No Harm, *American Medical Association Wants Researchers to Embrace Extremist Gender Ideology* (August 30, 2024), https://donoharmmedicine.org/2024/08/30/american-medical-association-guidance-gender-ideology/; *see also Trans Ideology is Distorting the Training of America's Doctors: Fear and Ignorance are Infecting Medical Education*, THE ECONOMIST (January 8, 2022). It is precisely this capture of medical institutions that led the Tennessee legislature to conclude that a legislative ban on pediatric sex trait modification was necessary because the medical profession could not be trusted to police itself. *See* Tenn. Code Ann. § 68-33-101.

Gender ideology has also insinuated itself into the courts, which often require their personnel and judges to be trained in gender ideology as a regular component of diversity or other sensitivity training. Inevitably, the ideology has infected judicial opinions, which sometimes refer to litigants by opposite sex pronouns, uncritically cite to anti-scientific concepts such as "sex assigned at birth," and use the term "cisgender" to distinguish women (or men) from people who identify as women (or men), as if both belong to the same overarching category. *See, e.g.*, *Kadel v Folwell* (4th Cir. 2024) (finding the Equal Protection Clause protects Medicaid beneficiaries access to sex trait modification procedures, the court used wrong sex pronouns to describe litigants); (*Grimm v. Gloucester*, 972 F.3d 586 (4th Cir. 2020) (finding "resoundingly" in favor of allowing students to use bathrooms of the opposite sex). Courts that use ideological language and uncritically accept concepts that prejudge the merits of activist arguments can no longer claim to be neutral arbiters of rights, leaving those harmed by gender ideology without legal recourse.

B. The most vulnerable groups face the greatest harm.

Petitioner makes clear who is harmed by the march of gender ideology through our institutions: vulnerable minors seeking a medical solution to psychological distress. Other vulnerable groups also suffer.

1. Children

It is not surprising that a movement that would use children to garner support would also put children on the

front lines of harm. The harm to children begins with deceiving them with the confusing and false beliefs that children can be born in the wrong body and that sex change is possible. From there, harms may escalate to the practice of "social transition," where educators affirm–and thereby may lock in–a child's identification with the wrong sex. *See. eg.*, Jane Martin, MD, *What is 'Social Transition' and Why is it important?* Clinical Advisory Network on Sex and Gender (can-sg.org) (2023) (*citations omitted*). Once a wrong-sex identity is cemented by social transition, there is evidence that children are likely to pursue irreversible hormonal and surgical interventions. See Ruth Hall *et al.*, *Impact of Social Transition in Relation to Gender for Children and Adolescents: A Systematic Review*, Archives Disease Childhood 1, 1 (2024). Hormonal interventions include the use of gonadotropin-releasing hormone (GnRH) agonists to block the normal course of puberty and the administration of cross-sex hormones to promote secondary sex traits associated with the opposite sex. The list of "gender affirming" surgical interventions is extensive and includes various types of genital removal and/or reconstruction, mastectomy, breast implants, hair removal, facial surgery, and body contouring. WPATH SOC 8 at S18.

Activists often minimize the prevalence of pediatric sex trait modification procedures and deny that such surgeries are performed on minors at all, but data from a recent analysis of insurance claims shows that in the United States between 2019 and 2023: 13,994 minors underwent sex trait modification treatments, 5,747 minors had sex trait modification surgeries; 8,579 minors received hormones and puberty blockers; and 62,682 sex change prescriptions were written for minors. *See* Do No Harm,

Stop the Harm Database *at* https://stoptheharmdatabase.com/about/. This database does not include data from Kaiser Permanente or the Department of Veterans Affairs. Other data has confirmed that thousands of girls ages 12 to 18 had their healthy breasts removed in recent years in the name of "gender affirmation" while hundreds of males and females in this age group have had genital surgeries. See Wright JD, *et al.*, *National Estimates of Gender-Affirming Surgery in the US*, JAMA Netw. Open, 2023; 6(8). In considering SB1, the legislature documented extensively the harm to children from the belief that it is possible to be born in the wrong body, harms Petitioner seeks to recast as a constitutional right. *See L. W. v. Skrmetti*, 73 F.4th at 413.

Jeannette Jennings, the mother of the American reality TV star Jazz Jennings who is the world's most famous "trans kid," medicalized her son after he was taunted for his gender nonconformity. He later underwent a disastrous genital surgery. *See* Malcolm Clark, *The Tragedy of Jazz Jennings*, Spiked-Online (Aug. 20, 2023), at https://www.spiked-online.com/2023/08/20/the-tragedy-of-jazz-jennings/.

2. Women and Girls

When Government decision makers ignore necessary and relevant sex distinctions between men and women, women and girls are disproportionately harmed by the resulting unworkable public policy. In contrast to sex, gender is a classification based on the social construction (and maintenance) of cultural distinctions between males and females." Institute of Medicine Committee on Assessing Interactions Among Social, Behavioral,

and Genetic Factors in Health, (Hernandez, LM and Blazer, DG, editors) *Genes, Behavior, and the Social Environment: Moving Beyond the Nature/Nurture Debate*, National Academies Press, 2006. The United States Department of Health and Human Services (DHHS) agrees, defining "gender" as "a social construct of identities, norms, behaviors, and roles that vary between societies and over time." DHHS, *Gender Identity Non-Discrimination and Inclusion Policy for Employees and Applicants* at 2 (2023).

Women and girls also suffer from the loss of single-sex spaces where, because sex change is impossible and when men mimicking women may enter also, women and girls lose their ability to police the space. This increases the risk to women and girls as they also become trained to ignore their instincts. Women and girls are vulnerable to male violence. Men are far more likely to commit violent offenses including homicide and rape than women, and rape is overwhelmingly committed by men against. *See* FBI Crime Data Explorer *at* https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend (official U.S. crime statistics over a five-year period). The deprivation of single sex spaces favors men who mimic female sex stereotypes over women, effectively establishing a preference by the government for conformity to sex stereotypes.

3. Lesbians, Gay Men, and Bisexual People.

Lesbians, gay men, and bisexual people are harmed as they are more likely to be given sex trait modifications as children. Lucy Bannerman, *It Feels Like Conversion Therapy for Gay Children*, The Times, August 4, 2019. Though billed as progressive, the "born in the wrong

body" narrative is homophobic and has been notably embraced by countries such as Pakistan and Iran (where homosexuality is punished by death, but "sex change" is government subsidized). *See*, *e.g.*, Ali Hamedani, *The Gay People Pushed to Change Their Gender*, BBC News (2014) *available at* https://www.bbc.com/news/magazine-29832690; Sofia Bloem, *Pathologizing Identities Paralyzing Bodies*, Justice for Iran, 2014. This attitude may be more common in the west than many realize—whistleblowers from a child "gender" clinic in the UK have stated that "gender-affirming" care is sometimes sought by families who prefer a "transgender" child over a gay child. *See* BBC Newsnight report on the Tavistock GIDS (2020), *available at* https://www.transgendertrend.com/bbc-newsnight-tavistock-gids/. This is true in the U.S. as well. Kimberly Shappley, Kai's mother, admits publicly to beating and abusing Kai as a toddler for demonstrating interest in "feminine" things. She stated in an interview, "I remember thinking even before Kai was 3, this kid might be gay. And, I thought, that cannot happen, would not happen. We started praying fervently. Prayers turned to googling conversion therapy, and how can we implement these techniques at home to make Kai not be like this." (quote from imgur post: https://imgur.com/a/kai-shappley-BqM7g1O). Kai's experience is heralded as a success story for "trans children." Madeleine Carlisle, *Kid of the Year Finalist Kai Shappley, 11, Takes on Lawmakers in Her Fight for Trans Rights*, TIME, January 12, 2022, https://time.com/6128490/kid-of-the-year-kai-shappley-trans-activist/. It is clear that "transitioning" children who are gender nonconforming is, in many cases, constructing a medicalized "heterosexuality"—and is the express aim of some children who choose this path or have it chosen for them.

These drugs and procedures serve no physical medical purpose, but rather are undertaken to try to resemble the opposite sex, ostensibly to treat clinically significant distress that a person experiences as a result of not appearing "masculine" or "feminine" enough. These drugs and procedures can lead to sterilization and adult sexual dysfunction; the children who "consent" to them are simply too young to meaningfully consent to permanent impairment of fertility or of adult sexual experiences that they cannot yet comprehend. Given the high rate of desistance from childhood gender dysphoria, as well as the very high number of dysphoric youth who are same-sex attracted, serious caution should be urged. Littman L., *Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners*, Archives of sexual behavior 50(8), 3353–3369; Wallien MS, Cohen-Kettenis PT, *Psychosexual outcome of gender-dysphoric children*, J Am Acad Child Adolesc Psychiatry, (Dec 2008) 47(12):1413-23.

New organizations have been created to preserve the rights that Lesbians, Gay Men, and Bisexuals have fought for, to stop the medical treatment of children for gender dysphoria, and to fight for sex-based rights. *See* The LGB Alliance USA, https://lgbausa.org/, and Gays Against Groomers, https://www.gaysagainstgroomers.com/ (organizations fighting the sexualization, indoctrination, and medicalization of children). Even people who identify as transgender have joined with lesbians, gay men, and bisexuals to reform gender medicine for children. *See* The LGBT Courage Coalition https://www.lgbtcourage.org/. These groups recognize that the children and young adults being medicalized for not conforming to sex-based

stereotypes are disproportionately same-sex attracted (LGB). *See*, *e.g.*, *See*, *e.g.*, *Lisa Littman, Rapid-Onset Gender Dysphoria in Adolescents and Young Adults: A Study of Parental Reports*, 13 PLoS ONE 1 (2018).

CONCLUSION

For the foregoing reasons, the Court should uphold the decision below.

Respectfully submitted,

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