No. 23-477

In the Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

JONATHAN SKRMETTI, ATTORNEY GENERAL AND REPORTER FOR TENNESSEE, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF STATE OF MISSOURI AS AMICUS CURIAE IN SUPPORT OF SKRMETTI RESPONDENTS

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Like the other 25 States that also restrict gender transition interventions for minors, the State of Missouri has a strong interest in this Court reaffirming the "wide discretion" of States to regulate "in areas where there is medical and scientific uncertainty." *Gonzales* v. *Carhart*, 550 U.S. 124, 163 (2007).

But Missouri has something unusual among these States: a whistleblower. That whistleblower provided testimony directly to the Office of the Attorney General of Missouri, who has since launched an investigation. In early 2023, a longtime employee of the largest transgender clinic in Missouri quit her job and went to the public with extraordinary testimony revealing the actual inner workings of these transgender centers. Those revelations were not pretty.

That testimony—memorialized in an affidavit to the Attorney General's Office as well as testimony in court—reveals a troubling story of clinicians deviating sharply from the WPATH guidelines they profess to follow, clinicians bullying parents into accepting these interventions (by falsely telling parents their children will kill themselves if they did not receive interventions), clinicians pressing interventions that even WPATH's loose standards concede are experimental, and clinicians providing outright and demonstrably false testimony to the legislature to cover it all up.

There is every reason to believe these problems affect more than just the largest transgender center in Missouri. The whistleblower testified she was aware of similar problems in other clinics; New York Times and other reporting have corroborated these problems occurring in other clinics; and similar problems led to the mass resignation of 35 people from the centralized transgender center in the United Kingdom. *E.g.*, Laura Donnelly, *Children's Transgender Clinic Hit by 35 Resignations in Three Years as Psychologists Warn of Gender Dysphoria 'Over-Diagnoses,'* The Telegraph (Dec. 12, 2019).[1]

In response to the whistleblower going public, the Missouri General Assembly conducted hearings and ultimately adopted a bipartisan compromise to pass a law prohibiting clinicians from giving puberty blockers, cross-sex hormones, or surgeries to minors for the experimental purpose of gender transition. Mo. Rev. Stat. § 191.1720.

Missouri then became the first State in the nation to prevail in trial court against a challenge to these kinds of laws.[2] No doubt, Missouri's success is due in substantial part to the compelling testimony of the whistleblower. Missouri thus files this amicus brief to provide the Court a summary of that testimony.

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[1] https://www.telegraph.co.uk/news/2019/12/12/childrens-transgender-clinic-hit-35-resignations-three-years/

[2] The court ruled for Missouri by rejecting the plaintiffs' preliminary injunction motion after a three-day hearing involving 14 witnesses. The court has not yet issued a final judgment.

ARGUMENT

The whistleblower in Missouri, Jamie Reed, has spent a lifetime advocating left-wing causes and transgender rights. Her politics are "[v]ery far left," and for years she worked at Planned Parenthood and then with transgender youth. Tr. 502–05 (August 2023 Hearing).[3] Married to a transgender individual,[4] Reed is herself a member of the LGBT community "and came close to medically transitioning." Tr. 501. As an expert with vast experience working with transgender youth, Reed was recruited to become a member of a multidisciplinary team at Washington University's transgender clinic for minors in St. Louis. Tr. 505. She spent nearly five years at the Center before she concluded that she had to leave because the Center was not receptive to the concerns she and others were raising. Tr. 500.

Through a public affidavit issued in February 2023 to the Attorney General of Missouri, and through public testimony later provided in court, Reed has revealed that the actual practice of gender transition interventions is starkly different from the sanitized fa-

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[3] Available at https://ago.mo.gov/wp-content/uploads/PI-transcript-Noe-v.-Parson-Clean.pdf.

[4] Nearly two years after Reed issued her public affidavit, Reed's spouse announced an intent to detransition, citing health concerns from the prolonged use of testosterone. Roxxanne "Tiger" Reed, *I Spent 13 Years Living as a Man. But After My Spouse's Exposé, I'm Detransitioning*, The Free Press (Sept. 29, 2024), https://www.thefp.com/p/tiger-jamie-reed-detransition-wash-u-transgender-affirming-care.

çade portrayed by the United States and amici supporting the United States. Many of these allegations have been corroborated, including by the New York Times. *See* Azeen Ghorayshi, *How a Small Gender Clinic Landed in a Political Storm*, N.Y. Times (Aug. 29, 2023).[5] And Reed's testimony has gone unrebutted in court.

I. Affidavit testimony from a Missouri whistleblower reveals that transgender centers have bullied parents into "consenting" and have lied to parents and the public about their activities.

Reed first went public with her concerns by issuing a sworn affidavit that included 86 paragraphs of concerning facts about the Washington University transgender center in St. Louis. The affidavit reveals the actual practice of gender transitions on minors in America.

1. Start first with the bullying tactics. The actual suicide rate among transgender youth is (fortunately) very low. An analysis of over 15,000 patient records at the world's largest gender clinic identified a maximum suicide rate of 0.03%, with an equal number of suicides occurring both before and *after* chemical or surgical interventions, suggesting that interventions had no effect on the suicide rate. Michael Biggs, *Suicide by Clinic-Referred Transgender Adolescents in the United Kingdom*, 51 Archives of Sexual Behavior

[5] https://www.nytimes.com/2023/08/23/health/transgender-youth-st-louis-jamie-reed.html

685, 687 (Jan. 18, 2022).[6] Even WPATH agrees that it cannot "draw conclusions about the effects of hormone therapy on death by suicide." Baker, et al., *Hormone Therapy, Mental Health, and Quality of Life Among Transgender People: A Systematic Review,* 5:4 J. of the Endocrine Soc., 1–16, 12 (2021);[7] *see also id.*, at 2 (noting that this study was "conducted for WPATH").

Despite this (fortunately) low rate of suicide, clinicians at the Center in St. Louis falsely told parents that their children were highly likely to die by suicide if the parents did not agree to these interventions. Worse, they told parents these false statements *in front of the children*. As Reed put it in her affidavit, "Doctors at the Center routinely pressured parents into 'consenting' by pushing those parents, threatening them, and bullying them. A common tactic was for doctors to tell the parent of a child assigned female at birth, 'You can either have a living son or a dead daughter.' … The clinicians would say this to parents in front of their children." Aff. ¶¶ 38–39.[8] This inappropriate behavior actually *encourages* threats of the very harm the Center clinicians say they are trying to prevent. *E.g.*, Biggs 688 ("It is irresponsible to

[6] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8888486/pdf/10508_2022_Article_2287.pdf

[7] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7894249/pdf/bvab011.pdf

[8] Affidavit available at https://ago.mo.gov/wp-content/uploads/2-07-2023-reed-affidavit-signed.pdf

exaggerate the prevalence of suicide. Aside from anything else, this trope might exacerbate the vulnerability of transgender adolescents.").

Reed's allegations have encouraged others to tell how they experienced strikingly similar bullying at other clinics. A recent New York Times article, for example, recounts stories across the United States about how parents are falsely but "routinely warned that to pursue any path outside of agreeing with a child's self-declared gender identity is to put a gender dysphoric youth at risk for suicide, which feels to many people like emotional blackmail." Pamela Paul, *As Kids, They Thought They Were Trans. They No Longer Do*., N.Y. Times (Feb. 2, 2024).[9] The article recounts scenarios exactly like the one Reed reported, almost word for word:

> The meeting was brief and began on a shocking note. "In front of my son, the therapist said, 'Do you want a dead son or a live daughter?'" Kathleen recounted.

Ibid.

Reed described bullying and pressure that went even beyond this highly inappropriate tactic. When parents sought more information about these interventions, or otherwise suggested they wanted mental health support instead of chemical or surgical interventions, Center providers would "speak down to the

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[9] https://www.nytimes.com/2024/02/02/opinion/transgender-children-gender-dysphoria.html

parents" and "treat[ ] those parents as if [they] were abusive, uneducated, and willing to harm their own children." Aff. ¶¶ 41–42. Some parents "consented" only under the belief that they had to because Center providers were "going to do this anyway." *Id.*, ¶ 45.

2. The Center took bullying so far that even after parents revoked consent, the Center refused to cease the interventions. The Center "continued prescribing medical transition even when a parent stated that they were revoking consent." *Id.*, ¶ 49. When an ethicist from outside the Center scheduled a consult with Center staff to discuss these and other policies, the ethicist expressed "shock and definite surprise" at the practices of the Center. Tr. 546.

3. Next, consider the Center's failure to ensure that children first receive mental health treatment before moving on to irreversible chemical and surgical interventions. Chemical and surgical interventions are based on the "Dutch Protocol"—a protocol created in the early 2000s in the Netherlands: children are given puberty blockers, followed by cross-sex hormones and surgeries. This "protocol excludes those with mental-health problems from receiving treatment." The Economist, *The Evidence to Support Medicalized Gender Transitions in Adolescents is Worryingly Weak* (Apr. 5, 2023).[10] Under that protocol as it was developed, children could not receive interventions if they had other mental health conditions.

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[10] https://www.economist.com/briefing/2023/04/05/the-evidence-to-support-medicalised-gender-transitions-in-adolescents-is-worryingly-weak

Despite that limitation on the protocol, "[n]early all children who came to the Center . . . presented with very serious mental health problems," yet "the Center would not treat these mental health issues." Instead, "children were automatically given puberty blockers or cross-sex hormones." Aff. ¶ 14. While the Center advertised to the public that minor patients received comprehensive mental health assessments before gender transition interventions, "the Center placed such strict limits on Psychiatry and Psychology that [Reed] was almost never allowed to schedule patients for those practices." *Id.*, ¶¶ 9–10, 78. Even when minor patients could see mental health professionals, those sessions were often limited to "1-2 hours" before gender transition interventions commenced. *Id.*, ¶ 36. The Center commenced gender interventions even for minors who had unmanaged "serious comorbidities including, autism, ADHD, depression, anxiety, PTSD, trauma histories, OCD, and serious eating disorders." *Id.*, ¶ 16.

These practices violated not only the Dutch Protocol, but also even the lenient standards of WPATH.[11] WPATH's Standards of Care 7, which was in place until late 2022, acknowledges that gender dysphoria can be "secondary to, or better accounted for, by other diagnoses," so it is necessary to give children a compre-

[11] To be clear, there are many reasons to be highly skeptical of WPATH, and that topic is briefed elsewhere, but it is notable that transgender centers sharply deviate from even those lenient standards.

hensive health assessment before ever giving them interventions. Standards of Care 7, at 23–24.[12] Indeed, Standards of Care 7 recognized that basic mental health care can *solve* gender dysphoria: it can "greatly facilitate the resolution of gender dysphoria" because through mental health therapy, many "individuals integrate their trans- or cross-gender feelings into the gender role they were assigned at birth and do not feel the need to feminize or masculinize their body." *Id.*, at 8, 25. The newer Standards of Care 8 likewise recognizes, "There are no studies of the long-term outcomes of gender-related medical treatments for youth who have not undergone a comprehensive assessment." Standards of Care 8, at S51 (2022).[13]

Unfortunately, the Washington University clinic is not alone in plowing ahead with chemicals and surgeries even though basic mental health care may solve the problems many of these children are facing. In an article written by one of the pioneers of these interventions, the Washington Post reports that a study of "pediatric gender clinics" discovered "that half do not require psychological assessment before initiating puberty blockers or hormones." Dr. Laura Edwards-Leeper and Dr. Erica Anderson, *The Mental Health Establishment Is Failing Trans Kids*, Washington Post (Nov. 24, 2021).[14]

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[12] https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf

[13] https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644

[14] https://www.washingtonpost.com/outlook/2021/11/24/trans-kids-therapy-psychologist/

4. The Center also publicly professed to comply with WPATH guidelines while in fact repeatedly "deviat[ing]" from these "lenient standard[s]" in many other ways. *Id.*, ¶¶ 30–31. For example, the Center used a prostate-cancer drug called "bicalutamide" to transition children. That drug can cause liver failure. *Id.* ¶ 74. The Center in St. Louis prescribed that drug—while telling parents it was complying with WPATH standards—even though "[t]here are no clinical studies for using this drug for gender transitions, and there are no established standards of care for using this drug." *Id.* Indeed, any parent who reads WPATH's current Standards of Care 8 could quickly see that even WPATH recognizes that bicalutamide is experimental and not recommended: "Data on the use of bicalutamide in trans feminine populations is very sparse and safety data is lacking." Standards of Care 8, at S124.

5. Deception also occurred by omission. "Before placing children on cross-sex hormones or puberty blockers, the Center did not inform parents or children of the very serious side effects." Aff. ¶ 50. This included a failure to inform "that cross-sex hormones (immediately after puberty blockers) make children permanently sterile." *Id.*, ¶ 51.

6. The Washington University Center was so committed to these interventions over other forms of treatment that its protocols deviated sharply from regular clinical care. For example, the Center intentionally avoided collecting custody agreements before seeing patients even though many patients came from

homes where parents were divorced. The reason given for not collecting custody agreements was this: "if we have the custody agreement, we have to follow it." *Id.*, ¶ 46. Because of this policy, children would present at the clinic with non-guardian adults after guardian adults refused consent. *Id.*, ¶ 47.

Similarly, the Center placed nearly all patients on a single treatment track despite "tell[ing] the public and parents that it makes individualized decisions." *Id.*, ¶ 57. The Center "always decide[d] to move forward with puberty blockers or cross-sex hormones" where a child met "four basic criteria—age or puberty stage, therapist letter, parental consent, and a one-hour visit with a doctor." *Id.*, ¶¶ 57, 63. Reed, who was in charge of managing cases, observed just "two" examples where the Center did not automatically prescribe hormones or puberty blockers. *Ibid.*

7. On top of all this, providers at the Center brazenly lied to the Missouri legislature to deflect attention from what they were doing. On April 21, 2022, two clinicians from the transgender Center testified in person before the Missouri House of Representatives and unequivocally denied that any minors had received gender transition surgeries. Dr. Sarah Garwood said, "I want to underscore that at no point are surgeries on the table for anyone under the age of 18." She continued, "Surgery for trans youth is not part of anything that is recommended." The testimony was

captured on video.[15] Similarly, Dr. Chris Lewis, speaking just after Garwood, said, "Again, surgeries are not an option for anyone below the age of 18 years of age."[16]

"This was a lie"—a brazen one. Aff. ¶ 25. Despite these doctors' public professions that no minors were receiving transition surgeries, "the Center regularly refer[red] minors for gender transition surgery" by providing "the names and contact information of surgeons to those under the age of 18." *Id.* After minors received those surgeries, Center providers "examined results of gender transition surgeries" and continued chemical intervention with those children. *Id.*, ¶ 26.

Indeed, Washington University has since publicly acknowledged that it was providing surgeries before Missouri's law went into effect. It acknowledged that it has provided transition surgeries for minors and that, even after the University adopted a policy against formally referring individuals for surgery, the Center continued providing informal referrals; they provided minors "with the names of surgeons (including Washington University physicians) who provided such surgeries" to minors. Summary of Conclusions,

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[15] https://sg001-harmony.sliq.net/00325/Harmony/en/PowerBrowser/PowerBrowserV2/20200831/-1/5401?mediaStartTime=20220421091518

[16] https://sg001-harmony.sliq.net/00325/Harmony/en/PowerBrowser/PowerBrowserV2/20200831/-1/5401?mediaStartTime=20220421091752

Washington University Transgender Center Internal Review 4 (April 21, 2023).[17]

8. While all these abuses occurred, the number of patients skyrocketed. "[F]rom 2020 to 2022, the Center initiated medical transition for more than 600 children," nearly 75% of whom were females seeking gender transition to male. Aff. ¶ 82. This was a dramatic increase from the "between 5 and 10 calls a month" the Center received in 2018. *Id.*, ¶ 20. Rather than investigate the causes of this sharp uptick, the dramatic skew toward females seeking interventions, and the concurrent steep rise in teen mental health issues, Center providers continued on the one-track path toward medicalization. Despite evidence of children appearing at the clinic in patterns mimicking social contagion, the Center dismissed claims of

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[17] https://source.washu.edu/app/uploads/2023/04/Washington-University-Summary-of-Conclusions.pdf

The University also corroborated other aspects of Reed's allegations, despite claiming those allegations were "unsubstantiated" and despite not even bothering to interview her as part of its internal investigation. To provide just one example, the University found it "warranted" to create "a more detailed and formalized approach to the Center's process for documenting parental consent and obtaining custody documents." *Id.*, at 2. This included "requiring a family to provide custody agreements before an initial visit." *Id.*, at 4. This change in policy is a recognition of the whistleblower's allegations that "[t]he Center was also intentionally blind about who had legal authority to consent," and would not collect custody agreements because "if we have the custody agreement, we have to follow it." Aff. ¶ 46.

social contagion, and instead "would uncritically accept the children's statements about gender identify" and begin gender transition interventions. *Id.*, ¶ 21.

9. Meanwhile, "the Center . . . billed the cost for [gender transition interventions] to state and federal publicly funded insurance programs." *Id.*, ¶ 82. Center providers dismissed staff concerns about fraudulent billing and characterized providing insurance coverage as a "priority." *Id.*, ¶ 83. This included "coding for precocious puberty for puberty blockers when the child does not in fact have that condition" and "billing private and public insurance for unnecessary procedures." *Id.*, ¶¶ 84–85.

10. The Center also made "no attempt or effort to track adverse outcomes of patients after they left the Center." *Id.*, ¶ 7. Instead, "the Center actively avoids trying to learn about these adverse events." *Id.*, ¶ 79. Relatedly, when the Center learned that Reed and a colleague were keeping a "red flag" list of patients that "were not good candidates for permanent, irreversible medical treatment," Center providers informed the whistleblower she "had to stop raising these concerns," and she "was not allowed to maintain the red flag list after that." *Id.*, ¶¶ 66–67.

II. Court testimony from a Missouri whistleblower confirms that transgender clinics have adopted a one-track path for chemical and surgical interventions.

In August 2023, the whistleblower testified during an extensive, multi-day hearing on a challenge to Missouri's SAFE Act. During that testimony, Reed presented additional details about the Center.

She explained that the Center was "woefully understaffed to actually provide" comprehensive mental health assessments. Tr. 513. While the Center first envisioned that it "would have roughly 50 patients in total" at any one time, the Center instead had thousands of patients at a time. Tr. 508. Initially, the Center offered "a pathway that was non-medicalized" but later abandoned that path to focus on chemical intervention. Tr. 509–10.

Reed added that, as the Center began to see more minor patients, they started seeing more and more patients who identified as "non-binary," "gender queer," "gender apathetic," "who were reporting that their gender was changing multiple times within a day," or who used "neo-pronouns." Tr. 513–14. The whistleblower explained that a patient using "neo-pronouns" would ask the Center to use "pronouns of inanimate objects," and gave examples of "rock," "tree," and "mushroom." Tr. 514–15.

Though the Center claimed to be providing a comprehensive mental health assessment, Reed testified that the typical patient received no such assessment. Tr. 515–21. Instead, the Center would rely on external counselors providers who were typically neither

psychologists nor psychiatrists to determine the readiness of patients and provide a letter of support. Tr. 518. Reed estimated that 90% of the Center's letters of support came from non-Ph.D.-level providers, and "as long as they weren't a single paragraph long," the Center would accept them and move forward with gender transition interventions. Tr. 519.

Worse yet, the Center provided those writers with a "fill-in-the-blank template" to write the letter of support. Tr. 520. Rather than send three templates (saying the patient was a good candidate, a bad candidate, or needed more therapy), the Center "only sent one" template with one outcome: "this person should get this medication." Tr. 521. Moreover, the Center only required that a letter establish a patient met with that provider on a single occasion. Tr. 519. Through communications with other clinics in Missouri, Reed learned that other providers in Missouri also were prescribing puberty blockers and cross-sex hormones without comprehensive mental health assessment or collecting letters of support. Tr. 567–68.

Reed also testified that, if a patient did not already have a therapist at the time of the first visit, the Center would provide the patient with a list of therapists who "were willing to write a letter of support." Tr. 520–21. Reed added that those therapists generally were not doctorate level psychologists; instead, they were marriage and family therapists, school counselors, or anyone who would fill out the Center's template to recommend medialization with hormones and puberty blockers. Tr. 518–19.

All that was offered was a one-way path to medicalization. Although puberty blockers are often described as a way to give a child time to deliberate, in practice, the opposite was true. Reed estimated that 99% of patients who were put on puberty blockers continued on to cross-sex hormones. Tr. 534. And while this progression would have "a serious impact on sexual function and future fertility," minor patients and parents were not informed of these risks. Tr. 535.

Reed testified that despite reported adverse physical, emotional, and psychological harms to patients stemming from gender transition interventions, she knew of no examples where a Center provider then discontinued the prescription of those treatments. Tr. 561. Worse yet, there was no protocol at the Center for tracking complications in the short or long term. Tr. 561.

CONCLUSION

Reed's observations are not anomalous. As reporting by the New York Times and other outlets has confirmed, these problems are taking place across the country. This Court should not disrupt the prerogative of States to address these problems legislatively. The Court should affirm the Sixth Circuit's decision.

Respectfully submitted,

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