No. 24-99

In the Supreme Court of the United States

DALE FOLWELL, in his official capacity as State Treasurer of North Carolina, et al.,
Petitioners,

v.

MAXWELL KADEL, et al.,
Respondents.

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

BRIEF OF AMICUS CURIAE ETHICS AND PUBLIC POLICY CENTER IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

The Ethics and Public Policy Center ("EPPC") is a nonprofit research institution that applies the Judeo-Christian moral tradition to critical issues of public policy, law, culture, and politics. In pursuit of its mission, EPPC equips Americans to address today's ethical, political, and cultural questions with firm commitment to human dignity, natural law, and our constitutional freedoms.

With stunning speed, gender ideology has permeated American culture, influencing medicine, business, media, government, and education. The results are far-reaching, threatening religious liberty and parental rights, stifling free speech, and driving an unprecedented rise in "transgender" identification among youth. Demands for irreversible body modifications raise crucial questions of medical ethics, informed consent, patient safety, the appropriate regulation of healthcare, and taxpayer funding.

These developments create an urgent need for clear analysis and policy guidance. EPPC Fellows write and advocate on issues related to gender ideology. EPPC Senior Fellow Mary Rice Hasson launched EPPC's Person and Identity Project[2] to equip parents and faith-based institutions to promote the truth of the human person and to meet the challenges of gender

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[1] Counsel of record received timely notice of EPPC's intent to file this amicus brief under Supreme Court Rule 37.2. No counsel for any party authored this brief in whole or in part, nor did any such counsel or party make any monetary contribution intended to fund the preparation or submission of this brief.

[2] EPPC Person & Identity Project, https://personandidetity.com/.

ideology. Amicus files this brief because the issues relate to EPPC's mission and require clear resolution.

SUMMARY OF ARGUMENT

The Fourth Circuit below held that the state's refusal to fund specific treatments for gender dysphoria violates the Equal Protection Clause. Its opinion relies, in part, on the belief that a medical consensus exists regarding treatment for gender dysphoria—and that this consensus is reflected in WPATH and Endocrine Society guidelines. See *Kadel* v. *Folwell*, 100 F.4th 122, 139, 157 n.28 (4th Cir. 2024). Indeed, the Fourth Circuit's conclusion that these exclusions are "obviously discriminatory" cannot be understood apart from its reliance on the WPATH's "Standards of Care" and its rejection of Appellants' evidence that the excluded "[t]reatments * * * in connections with sex changes or modifications" are "ineffective" in treating gender-dysphoria. Id. at 135, 139, 152, 156-57 (4th Cir. 2024).

This brief demonstrates that no medical consensus exists regarding the medical or surgical interventions for gender dysphoria. Compelling evidence exposes the WPATH and Endocrine Society guidelines as inadequate: they are neither evidence-based nor reliable, reflecting instead a politicized agenda. The façade of consensus is not benign: unproven interventions cause irreversible harm to vulnerable patients. States properly exclude harmful interventions for gender dysphoria from taxpayer-funded healthcare coverage.

Part I demonstrates that there is not, and has never been, a national or international medical consensus regarding treatment for gender dysphoria. The 2024 Cass Review, a groundbreaking, four-year

study commissioned by the U.K.'s National Health Service, exposes the "remarkably weak" evidence base underlying gender transition procedures and highlights "serious questions about the reliability of current guidelines," notably WPATH and Endocrine Society guidelines.[3] Poorly developed, unreliable clinical guidelines, coupled with a weak evidence base, cannot demonstrate a medical consensus regarding treatments for gender dysphoria.

Respondents' claims of medical consensus also cannot be reconciled with marked swings in medical practice over the past decade in Sweden, Finland, Denmark, Norway, England, and Scotland, or with the growing debate over gender dysphoria treatments among medical authorities in Australia, New Zealand, France, Germany, and the Netherlands. The tumultuous state of gender medicine internationally reflects mounting evidence and well-grounded concerns that gender transition interventions cause significant harm and do not constitute evidence-based medicine.

Part II highlights recent studies showing that unproven gender transition interventions *cause serious harm*. Surgeries to amputate primary and secondary sex organs cause sterility, sexual dysfunction, numerous complications, and are correlated with suicidality.

Finally, Part III underscores significant, recent developments that expose WPATH as an ideological

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[3] Hilary Cass, Independent Review of Gender Identity Services for Children and Young People: Final Report (April 2024). https://cass.independent-review.uk/ (hereinafter "Cass Review").

organization with no claim to represent medical consensus. *The WPATH Files* disclose admissions by WPATH leaders of scientific and ethical breaches, poor outcomes, deficiencies in informed consent, and inadequate treatment of pre-existing psychological conditions before gender transition. Damning expert reports from a lawsuit challenging Alabama's ban on gender transition procedures expose WPATH's ideological, unscientific agenda.

For these reasons, *Amicus* urges this Court to grant the petition and reverse the court below.

ARGUMENT

I. There is not, and never has been, medical consensus regarding treatment for gender dysphoria.

A. The medical profession lacks consensus around treatment for gender dysphoria.

The medical profession has never reached a consensus regarding medical and surgical interventions as treatments for gender dysphoria. Serious voices have pushed back consistently on using medical and surgical interventions to treat a mental health condition—gender dysphoria (previously "gender identity disorder").[4]

Debates over gender transition interventions have escalated in recent years, as critics raise ethical concerns, publish scholarly critiques, and expose flawed studies that purported to justify medical interventions.[5] Heightened concern surrounds treatments for minors. Until recently, "clinicians actively worked with children and their parents to lessen gender dysphoria or adopted a neutral strategy

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[4] For one historical account of opposition to adults and, subsequently, minors receiving gender transitioning interventions, see generally, Alex Bakker, *The Dutch Approach: Fifty Years of Transgender Health Care at the VU Amsterdam Gender Clinic* 120 (2021).

[5] Stephen B. Levine and E. Abbruzzese, *Current Concerns About Gender-Affirming Therapy in Adolescents*, 15 Current Sexual Health Reps. 113 (2023); Alison Clayton, *The Gender Affirmative Treatment Model for Youth with Gender Dysphoria: A Medical Advance or Dangerous Medicine?*, 51 Archives Sexual Behav. 691 (2022).

of 'watchful waiting.'"[6] This approach resolved most cases (61%–98%) of early onset gender distress by puberty, "if not earlier."[7]

In the late 1980s and early 1990s, the Netherlands began using medical interventions to treat identity-distressed minors, despite increasing opposition.[8] A "wave of negative publicity" threatened the fledgling program as Dutch gender clinicians were castigated as "Nazis experimenting with children" and the youth gender program was denounced as "reckless" and an "abuse of medicine."[9]

Dutch gender clinicians persisted despite skepticism, peer "disapproval," and feared opposition from "correctional medical boards, or litigation."[10] Eager to disprove the critics, Dutch psychiatrist Annelou de Vries initiated follow-up research on her puberty-suppressed patients. The Dutch studies, published in 2011 and 2014, claimed success,[11] and

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[6] Devita Singh et al., *A Follow-Up Study of Boys with Gender Identity Disorder*, Frontiers Psych., Mar. 2021, 12-13, https://doi.org/10.3389/fpsyt.2021.632784.

[7] Sarah C.J. Jorgensen, *Transition Regret and Detransition: Meanings and Uncertainties*, 52 Archives Sexual Behav. 2173, 2176 (2023), https://doi.org/10.1007/s10508-023-02626-2.

[8] Bakker, *The Dutch Approach*, 120.

[9] *Id*. at 116.

[10] Peggy Cohen-Kettenis et al., *The Treatment of Adolescent Transsexuals: Changing Insights*, 5 J. Sexual Med. 1892, 1893 (2008), https://doi.org/10.1111/j.1743-6109.2008.00870.x.

[11] *Id*. at 160. See also Annelou L.C. de Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 Pediatrics 696, 702 (2014), https://pubmed.ncbi.nlm.nih.gov/25201798/.

"launched the experimental practice of pediatric gender transition into mainstream medical practices."[12] For the next decade, advocates of "gender-affirming" interventions cited the Dutch studies as proof that medical gender transitions were safe and beneficial.

Dr. Norman Spack opened the first U.S. pediatric gender clinic at Boston Children's Hospital in 2007. With scant research for guidance, Spack soon accelerated the Dutch approach and initiated puberty blockers with children as young as nine.[13] Physicians are typically cautious about new protocols, notes Dr. Hilary Cass, but "[q]uite the reverse happened in the field of gender care for children."[14] Medical and surgical interventions for gender-dysphoric minors spread rapidly, despite minimal supporting evidence.

However, the Dutch methods, and ethics, are under fire.[15] For example, a 2021 U.K. study designed to replicate the rosy outcomes of the seminal Dutch study came up empty, reporting "no changes in psychological

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[12] Stephen B. Levine and E. Abbruzzese, *Current Concerns About Gender-Affirming Therapy in Adolescents*, 15 Current Sexual Health Reps. 113, 118 (2023), https://doi.org/10.1007/s11930-023-00358-x.

[13] Beth Schwartzapfel, *How Norman Spack transformed the way we treat transgender children*, *Bos. Phoenix*, Aug. 10, 2012, https://thephoenix.com/boston/life/142583-how-norman-spack-transformed-the-way-we-treat-tran/.

[14] Cass Review, 13.

[15] Michael Biggs, *The Dutch Protocol for Juvenile Transsexuals: Origins and Evidence*, 49 J. Sexual Marital Therapy 348, 362 (2023), https://doi.org/10.1080/0092623X.2022.2121238 ("Evidence for the benefits of puberty suppression must be acknowledged as slender[.]").

function."[16] A 2023 granular re-analysis of the UK data found that while most study participants reported "no reliable change in distress across all time points," a substantial portion (15-34%) saw their mental health "deteriorate," starkly contradicting the Dutch reports.[17]

The contradictory results suggest a troubling pattern, according to several veteran researchers:

> [The gender industry] has a penchant for exaggerating what is known about the benefits of [youth medical gender transition], while downplaying the serious health risks and uncertainties * * * As a result, a false narrative has taken root. It is that "gender-affirming" medical and surgical interventions for youth are as benign as aspirin, as well-studied as penicillin and statins, and as essential to survival as insulin for childhood diabetes—and that the vigorous scientific debate currently underway is merely "science denialism"

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[16] Polly Carmichael et al., *Short-term outcomes of pubertal suppression in a selected cohort of 12 to 15 year old young people with persistent gender dysphoria in the UK*, PLoS One (Feb. 2021), https://doi.org/10.1371/journal.pone.0243894 (failing to replicate Dutch study).

[17] Compared to the 15-34% who deteriorated, between 9-29% reliably improved. Susan McPherson & David E. P. Freedman, *Psychological Outcomes of 12–15-Year-Olds with Gender Dysphoria Receiving Pubertal Suppression in the UK: Assessing Reliable and Clinically Significant Change*, J. Sexual Marital Therapy (2023), https://doi.org/10.1080/0092623X.2023.2281986.

motivated by ignorance, religious zeal, and transphobia.[18]

The façade of medical consensus surrounding gender transition interventions, however, is fast collapsing.

B. Scant evidence and poor clinical guidelines belie claims of consensus.

Gender specialists quietly acknowledge that "[t]ransgender medicine presents a particular challenge for the development of evidence-based guidelines" because of "limited" data, "lower-quality evidence," retrospective or cross-sectional study design, "lack of uniform data collection," and limited research funding.[19] Nevertheless, clinical practice guidelines have burgeoned, creating an "apparent" (though not actual) "consensus on key areas of practice despite the evidence being poor."[20]

An explosive report (the "Cass Review"), commissioned by the UK's National Health Service

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[18] E. Abbruzzese, Stephen B. Levine & Julia W. Mason, *The Myth of "Reliable Research" in Pediatric Gender Medicine: A critical evaluation of the Dutch Studies—and research that has followed*, 49 J. Sexual Marital Therapy 673, 673-74 (2023), https://doi.org/10.1080 /0092623X.2022.2150346 (internal citations omitted).

[19] Madeline B. Deutsch et al., *What's in a Guideline? Developing Collaborative and Sound Research Designs that Substantiate Best Practice Recommendations for Transgender Health Care*, 18 AMA J. Ethics 1098, 1099 (2016), https://journalofethics.ama-assn.org /article/whats-guideline-developing-collaborative-and-sound-research-designs-substantiate-best-practice/2016-11.

[20] Cass Review, 130.

and released in April 2024, debunks claims that gender transition interventions are supported by reliable evidence and medical consensus. The culmination of a four-year study led by Dr. Hilary Cass, the Cass Review produced eight substantive evidence reviews, including two reviews of international clinical guidelines, and a 388-page report. The Cass Review's assessment of international clinical guidelines is particularly relevant here.

The Cass researchers rigorously analyzed 23 recent clinical guidelines addressing gender dysphoria treatments for children and young people. They concluded that their "appraisal raises serious questions about the reliability of current guidelines," including WPATH and the Endocrine Society guidelines.[21] All but two international guidelines failed to comply with "international standards for guideline development."[22]

The Cass Review also discovered that while "[m]ost of the guidelines described insufficient evidence about the risks and benefits of medical treatment in adolescents, particularly in relation to long-term outcomes," guideline drafters simply disregarded the poor evidence base, and recommended invasive medical interventions anyway.[23]

Gender researchers acknowledge that gender transition procedures, which often begin with puberty

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[21] Cass Review, 130.

[22] *Id*. at 27. Only Sweden's and Finland's guidelines met international standards for guidelines development.

[23] *Id*. at 130.

blockers and then progress to cross-sex hormones and surgery, rest on little evidence. Consider these examples:

- In 2021, Dutch gender clinician Dr. Thomas Steensma conceded, "Little research has been done so far on treatment with puberty blockers and hormones in young people. That is why it is also seen as experimental. * * * This makes it so difficult, almost all research comes from ourselves."[24]

- Lawrence Tabak, the acting director of the National Institutes of Health, told a U.S. Senate Committee in 2022 that "no long-term studies are available evaluating the effects of puberty blockers when used for gender dysphoria."[25]

- Diane Chen, a leading psychologist with Lurie Children's Hospital gender clinic, admits that "a lot of the questions around long-term medical health outcomes we won't be able to answer until the youth who started hormones at 13, 14, 15, are in their 50s, 60s, 70s."[26]

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[24] Grace Williams, *Dutch puberty-blocker pioneer: Stop "blindly adopting our research," 4thWaveNow*, March 16, 2021, https://4thwavenow.com/2021/03/16/dutch-puberty-blocker-pioneer-stop-blindly-adopting-our-research/.

[25] Fla. Agency for Health Care Admin., *Fla. Medicaid: Gen. Accepted Pro. Med. Standards Determination on the Treatment of Gender Dysphoria*, at 14 (June 2022), https://ahca.myflorida.com/letkidsbekids/docs/AHCA_GAPMS_June_2022_Report.pdf.

[26] Frieda Klotz, *The Fractious Evolution of Pediatric Transgender Medicine*, *Undark*, Apr. 6, 2022,

- A 2023 grant to Boston Children's Hospital, the first U.S. youth gender clinic, notes that "[l]ittle is known about how pubertal blockade, the first step in the medical management of a young transgender adolescent, affects bone health and psychological well-being."[27]

- In 2024, researcher Sallie Baxendale warned that "there is no evidence to date to support the oft cited assertion that the effects of puberty blockers are fully reversible."[28] Baxendale notes that despite "explicit calls in the literature for this to be studied that date back three decades, there have been no human studies to date that have systematically explored the impact of these treatments on neuropsychological function with an adequate baseline and follow-up."[29]

- In 2019, Dr. Johanna Olson-Kennedy initiated the Trans Youth Research Network, a multi-million-dollar research project involving four major gender clinics, to address the "*consensus gap* about the best approach to the care of youth with gender dysphoria," and the "*lack of consensus*

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https://undark.org/2022/04/06/the-evolution-of-pediatric-transgender-medicine/.

[27] NIH RePORTER, *Skeletal Health and Bone Marrow Composition Among Youth*, NIH Project No. 5R01HD101421-04 (2023), https://reporter.nih.gov/search/XpRRv6FfvUGhJqpvQKxCZQ/project-details/10611431.

[28] Sallie Baxendale, *The impact of suppressing puberty on neuropsychological function: A review*, Acta Paediatrica 9 (Jan. 2024), https://doi.org/10.1111/apa.17150.

[29] *Ibid.*

> among professionals around timing of initiation of medical interventions" (emphasis added).[30] Five years and nearly $8 million later, Dr. Olson-Kennedy's latest grant renewal application still laments the "scant evidence-base currently guiding the clinical care of [gender-dysphoric] youth."[31]

Undaunted by the scale of possible harm, gender clinicians persist in promoting gender transition procedures, despite little supporting evidence and no medical consensus.

C. WPATH and Endocrine Society guidelines do not represent medical consensus or the standard of care.

The court below concluded that "nothing" in the critiques by Petitioners' experts "undermines the consensus around WPATH's recommendations that gender dysphoria treatments may include surgery and hormone therapy." *Kadel*, 100 F.4th at 136 n.6. The court was ill-informed: the WPATH and Endocrine Society guidelines are unsupported by sound evidence

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[30] Johanna Olson-Kennedy et al., *Creating the Trans Youth Research Network: A Collaborative Research Endeavor*, 4 Transgender Health 304, 305 (2019), https://liebertpub.com/doi/full/10.1089/trgh.2019.0024.

[31] NIH RePORTER, *The Impact of Early Medical Treatment in Transgender Youth*, NIH Project No. 5R01HD082554-08 (2023 renewal), https://reporter.nih.gov/search/XpRRv6FfvUGhJqpvQKxCZQ/project-details/10615754 (multi-year, four-center study led by Dr. Johanna Olson-Kennedy received $8,711,908 to date).

and fail to reflect a medical consensus regarding treatments for gender dysphoria.

The Cass Review, mentioned above, concluded that WPATH guidelines "lack developmental rigour," and declined to recommend either WPATH or the Endocrine Society guidelines for use in clinical practice.[32] As an Eleventh Circuit judge noted, "Cass also provided multiple reasons to question the reliability of WPATH and concluded that the most recent iteration of the Standards of Care 'overstates the strength of the evidence' supporting its recommendations." *Eknes-Tucker* v. *Alabama*, No. 22-11707, slip op. at 45 (11th Cir. Aug. 28, 2024) (Lagoa, J., concurring den. reh'g en banc) (quoting Cass Review at 132).

The Cass researchers discovered that the WPATH and Endocrine Society guidelines were "closely interlinked, with WPATH adopting Endocrine Society recommendations, and acting as a co-sponsor and providing input to drafts of the Endocrine Society guideline."[33] Further, the Cass reviewers cited a disturbing pattern of "circularity" among the international guidelines: they repeatedly cite one other for authority. The WPATH and Endocrine Society guidelines "influenced nearly all the other guidelines," creating the misleading appearance of a medical "consensus," notwithstanding the "poor" evidence.[34]

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[32] Cass Review, 130.

[33] *Ibid.*

[34] *Ibid.*

The Cass Review was not the first time that WPATH and similar clinical guidelines failed to pass muster. A 2021 first-of-its-kind systematic analysis[35] of international clinical practice guidelines for "gender minority/trans health," published in the British Medical Journal (BMJ), found that *none* of the twelve international guidelines they assessed met the rigorous standard for clinical practice guidelines (or standards of care). The researchers strongly criticized WPATH guidelines, citing their "incoherence."[36]

Despite public dissembling, WPATH knows its guidelines are inadequate. Aside from the title (Standards of Care 8, or "SOC 8"), the WPATH guidelines never claim to represent a legal, ethical, or professional standard of care, emphasizing instead their "flexible" and "adaptable" nature.[37] The Centers for Medicare & Medicaid Services (CMS) cited the "flexibility" of WPATH SOC 7 as one reason for

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[35] Sara Dahlen et al., *International clinical practice guidelines for gender minority/trans people: systematic review and quality assessment*, 11 BMJ Open 1 (2021), https://doi.org/10.1136/bmjopen-2021-048943 ("This is the first systematic review using a validated quality appraisal instrument of international CPGs addressing gender minority/trans health.").

[36] *Ibid*. (referencing the "incoherence" of WPATH SOCv7).

[37] E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 Int'l J. Transgender Health S1, S3 (2022), https://doi.org/10.1080/26895269.2022.2100644.

refusing to endorse WPATH guidelines for Medicare coverage determinations.[38]

Like the WPATH "standards," the Endocrine Society guidelines rely on "low" and "very low" quality evidence and include a disclaimer stating that its "guidelines cannot guarantee any specific outcome, *nor do they establish a standard of care*."[39] They too fail to reflect a medical consensus for gender dysphoria interventions.

Leading clinicians acknowledge the lack of medical consensus on treatments for gender dysphoria. A 2015 meeting of medical "proponents and opponents of early treatment (pediatric endocrinologists, psychologists, psychiatrists, ethicists) of 17 treatment teams worldwide"[40] identified seven areas of major debate regarding treatment of gender dysphoric minors. They concluded that "as long as debate remains on these seven themes and only limited long-term data are available, there will be *no consensus* on treatment" (emphasis added).[41]

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[38] CMS, Decision Memo, *Gender Dysphoria and Gender Reassignment Surgery*, CAG–00446N, Aug. 30, 2016, https://www.cms.gov/medicare-coverage-database/view/ncacal-decision-memo.aspx?proposed=N&NCAId=282.

[39] Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clinical Endocrin. Metab. 3869, 3895 (2017), https://doi.org/10.1210/jc.2017-01658.

[40] Lieke Josephina Jeanne Johanna Vrouenraets et al., *Early Medical Treatment of Children and Adolescents with Gender Dysphoria: An Empirical Ethical Study*, 57 J. Adol. Health 367 (2015), https://doi.org/10.1016/j.jadohealth.2015.04.004.

[41] *Ibid*.

Federal circuit courts also have recognized that WPATH guidelines "reflect not consensus, but merely one side in a sharply contested medical debate over sex reassignment surgery." *Eknes-Tucker*, No. 22-11707, slip op. at 31 (Lagoa, J., concurring den. reh'g en banc) (quoting *Gibson* v. *Collier*, 920 F.3d 212, 223 (5th Cir. 2019)); *Doe* v. *Snyder*, 28 F.4th 103, 112 (9th Cir. 2022) ("WPATH's Standards of Care are not universally endorsed"); *Kosilek* v. *Spencer*, 774 F.3d 63, 88 (1st Cir. 2014) (en banc) ("[p]rudent medical professionals * * * do reasonably differ in their opinions regarding [WPATH's] requirements"); *cf. Keohane* v. *Florida Dep't of Corr. Sec'y*, 952 F.3d 1257, 1296 (11th Cir. 2020) (criticizing district court for finding WPATH standards "authoritative for treating gender dysphoria in prison" without considering arguments over the merits of WPATH standards); *Edmo* v. *Corizon, Inc.*, 935 F.3d 757, 787, 788 & n.16 (9th Cir. 2019) (per curiam) (holding WPATH standards are the "established standards" for evaluating the necessity of transitioning surgery and the "undisputed starting point in determining the appropriate treatment for gender dysphoric individuals"), *reh'g en banc denied*, 949 F.3d 489, 497 (9th Cir. 2020) (O'Scannlain, J., joined by seven judges, respecting the denial of rehearing en banc) (rejecting panel's characterization because "WPATH Standards are merely criteria promulgated by a controversial private organization with a declared point of view").

D. Dramatic international shifts in policy demonstrate the lack of medical consensus.

Claims of medical consensus cannot be reconciled with the seismic shifts in treatment approaches for gender dysphoria occurring in **Sweden**, **Finland**, **Denmark**, **Norway**, **England,** and **Scotland,** or with the growing debate among medical authorities in **Australia**, **New Zealand**, **France, Germany**, and the **Netherlands**. The tumultuous state of gender medicine internationally reflects mounting evidence and well-grounded concerns that gender transition interventions cause more harm than good.

Sweden's National Board of Health and Welfare concluded in 2022 "that the risks of anti-puberty and sex-confirming hormone treatment for those under 18 currently outweigh the possible benefits."[42] The **Finnish** Health Authority's new guidelines prioritize psychotherapy as the first-line treatment for gender-dysphoric minors.[43] **Denmark** recently followed suit, prioritizing psychotherapeutic treatments over

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[42] Socialstyrelsen, *Support, Investigation and Hormone Treatment for Gender Incongruence in Children and Adolescents* (2022); see also Lisa Nainggolan, *Hormonal Tx of Youth with Gender Dysphoria*, *Medscape*, May 12, 2021, https://www.medscape.com /viewarticle/950964.

[43] PALKO/COHERE Finland, *Recommendation of the Council for Choices in Health Care in Finland: Medical Treatment Methods for Dysphoria Related to Gender Variance in Minors* (2020), https://segm.org/sites/default/files/Finnish_Guidelines_2020_Minors_Unofficial%20Translation.pdf. COHERE works in conjunction with the Ministry of Social Affairs and Health.

medical interventions for identity-distressed youth.[44] A 2023 evidence review in **Norway** concluded that hormonal interventions for gender-dysphoric minors are based on "insufficient" evidence, and deemed them "experimental."[45]

The **United Kingdom's** Cass Review (described earlier) rejected the on-demand ethos of gender affirmation, triggering an NHS ban on puberty blockers (a decision duplicated in **Scotland**)[46] and new focus on "psychosocial and psychological support."[47] Previous evidence reviews by the UK's National Institute for Health and Care Excellence (NICE) concluded that medicalized transition

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[44] Soc'y for Evidence-Based Gender Med., *Denmark Joins the List of Countries That Have Sharply Restricted Youth Gender Transitions* (Aug. 17, 2023), https://segm.org/Denmark-sharply-restricts-youth-gender-transitions.

[45] Ukom, *Patient safety for children and adolescents with gender incongruence* (Mar. 9, 2023), https://ukom.no/rapporter/pasientsikkerhet-for-barn-og-unge-med-kjonnsinkongruens/sammendrag.

[46] Sandyford, NHS Greater Glasgow and Clyde, *Important service update – Young Person's Gender Service*, https://www.sandyford.scot/sexual-health-services/gender-service-at-sandyford/gender-young-people-service/.

[47] NHS England, *Clinical Policy: Puberty suppressing hormones (PSH) for children and young people who have gender incongruence / gender dysphori*a (March 12, 2024), https://www.england.nhs.uk/wp-content/uploads/2024/03/clinical-commissioning-policy-gender-affirming-hormones-v2.pdf.

treatments in minors showed little evidence of benefit and substantial risk of harm.[48]

Psychotherapists in **Australia** and **New Zealand** increasingly recommend mental health treatment for gender-dysphoric minors instead of "gender affirmation," noting the "paucity of quality evidence on the outcomes."[49]

France's National Academy of Medicine has urged "great medical caution [with] children and adolescents" experiencing gender dysphoria, noting their "vulnerability, particularly psychological" and "the many undesirable effects, and even serious complications, that some of the available therapies can cause."[50]

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[48] NICE, *Evidence review: Gonadotrophin releasing hormone analogues for children and adolescents with gender dysphoria* (2021), https://cass.independent-review.uk/wp-content/uploads/2022/09 /20220726_Evidence-review_GnRH-analogues_For-upload_Final.pdf); NICE, *Evidence review: Gender-affirming hormones for children and adolescents with gender dysphoria* (2021), (https://cass.independent-review.uk/wp-content/uploads/2022/09 /20220726_Evidence-review_Gender-affirming-hormones_For-upload_Final.pdf).

[49] Becky McCall, *Psychiatrists Shift Stance on Gender Dysphoria, Recommend Therapy*, *Medscape*, Oct. 7, 2021, (summarizing new position statement from the Royal Australian and New Zealand College of Psychiatrists"), https://www.medscape.com/viewarticle/960390.

[50] Press Release, Fr. Nat'l Acad. of Med., *Medicine and Gender Transidentity in Children and Adolescents* (Feb. 25, 2022), https://www.academie-medecine.fr/la-medecine-face-a-la-transidentite-de-genre-chez-les-enfants-et-les-adolescents/?lang=en.

In early 2024, **Germany** clinicians updated the UK's 2021 NICE substantive evidence reviews, concluding that "[t]he currently available studies on the use of PB [puberty blockers] and CSH [cross-sex hormones] in minors with GD [gender dysphoria] have significant conceptual and methodological flaws."[51] The researchers recommend psychotherapy first.[52]

In March 2024, the **Dutch** Parliament ordered the Dutch health ministry to commission new research assessing the outcomes of young people treated under the "Dutch Protocol," a sign of wavering confidence in medicalized transition.[53]

II. Gender-transitioning interventions cause serious harms.

Medical professionals increasingly recognize the significant harms resulting from gender transition interventions.[54] Long-term outcomes for individuals who undergo gender-transitioning treatments are not promising. One study found that adults who

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[51] Florian Zeph et al., *Beyond NICE: Updated Systematic Review on the Current Evidence of Using Puberty Blocking Pharmacological Agents and Cross-Sex-Hormones in Minors with Gender Dysphoria*, J. Child & Adol. Psychia. & Psychol., Feb. 2024, https://doi.org /10.1024/1422-4917/a000972 (translation of abstract available at https://pubmed.ncbi.nlm.nih.gov/38410090/).

[52] *Ibid*.

[53] Gordon Rayner, *How the Dutch experiment with puberty blockers turned toxic*, *Telegraph*, March 4, 2024, https://www.telegraph.co.uk /news/2024/03/04/dutch-puberty-blockers-nhs-gender-hormone-treatment/

[54] Bill Analysis, SB 14, Tex. House Rsch. Org., at 3-4 (May 12, 2023), https://hro.house.texas.gov/pdf/ba88r/sb0014.pdf.

underwent genital surgery for transition purposes were nineteen times more likely than the general population to die by suicide.[55] Other studies show that transitioning treatments fail to reduce suicide risks and mental health issues in the long-term.[56]

A 2024 study found that "Individuals who underwent gender-affirming surgery had a 12.12-fold higher suicide attempt risk than those who did not."[57]

Under the "gender-affirming" approach, people experiencing gender dysphoria tend to persist in seeking medical transition interventions, which irreversibly modify their bodies and lead to regret.[58]

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[55] Cecilia Dhejne et al., *Long-term follow-up of transsexual persons undergoing sex reassignment surgery: cohort study in Sweden*, 6 PLoS One e16885 (2011), https://pubmed.ncbi.nlm.nih.gov/21364939/.

[56] Roberto D'Angelo et al., *One Size Does Not Fit All: In Support of Psychotherapy for Gender Dysphoria*, 50 Archives Sexual Behav. 7 (2020), https://doi.org/10.1007/s10508-020-01844-2; Chantel M. Wiepjes et al., *Trends in suicide death risk in transgender people: results from the Amsterdam Cohort of Gender Dysphoria study (1972-2017)*, 141 Acta Psychiatrica Scandinavia 486 (2020), https://doi.org/10.1111/acps.13164; *Correction to Bränström and Pachankis*, 177 Am. J. Psych. 734 (2020), https://ajp.psychiatryonline.org/doi/epdf/10.1176/appi.ajp.2020.1778correction (correcting Richard Bränström et al.*, Reduction in Mental Health Treatment Utilization Among Transgender Individuals After Gender-Affirming Surgeries: A Total Population Study*, 177 Am. J. Psych. 727 (2020)).

[57] John J. Straub et al., *Risk of Suicide and Self-Harm Following Gender-Affirmation Surgery*, 16 Cureus e57472 (2024), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC11063965/.

[58] Carmichael et al., 12 (98% of adolescents who underwent puberty suppression continued on to cross-sex hormones); see

This is true of puberty blockers and cross-sex hormones, as well as "gender affirming" surgeries. As courts have previously recognized, these gender transition procedures carry "significant health risks," including "sterility, sexual dysfunction, lower bone density, high blood pressure, breast cancer, liver disease, cardiovascular disease, and weight gain." *Eknes-Tucker*, No. 22-11707, slip op. at 29 n.15 (Lagoa, J., concurring den. reh'g en banc).

Clinical concerns over gender-transition interventions have escalated.[59] Puberty blockers, originally praised as safe and fully reversible, are known to have negative effects on bone density, social and emotional maturation, and other aspects of neuro-development.[60] They generally fail to lessen the child's gender dysphoria and deliver mixed results for mental health.[61] A recent study of testicular tissue from puberty-suppressed boys found "noted gland atrophy"

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also Lisa Littman, *Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners*, 50 Archives Sexual Behav. 3353 (2021), https://doi.org/10.1007/s10508-021-02163-w.

[59] William Malone et al., *Puberty blockers for gender dysphoria: the science is far from settled*, 5 Lancet Child & Adolescent Health 33 (2021), https://doi.org/10.1016/s2352-4642(21)00235-2.

[60] NICE Evidence Review, 6-8.

[61] Carmichael et al., 12-17.

and cellular "abnormalities," potentially impairing fertility.[62] Long term effects remain unknown.[63]

Nearly all children who begin puberty blockers go on to receive cross-sex hormones, with life-altering consequences.[64] Cross-sex hormones cause irreversible changes in adolescents' bodies, including genital or vaginal atrophy, hair loss (or gain), and voice changes.[65] They increase cardiovascular risks and cause liver and metabolic changes.[66] The flood of opposite sex hormones has variable emotional and psychological effects as well. Females taking testosterone experience an increase in gender dysphoria, which heightens the likelihood they will undergo double mastectomies—as young as thirteen.[67]

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[62] Varshini Murugesh et al., *Puberty Blocker and Aging Impact on Testicular Cell States and Function*, bioRxiv (March 3, 2024), https://doi.org/10.1101/2024.03.23.586441.

[63] Diane Chen et al., *Consensus Parameter: Research Methodologies to Evaluate Neurodevelopmental Effects of Pubertal Suppression in Transgender Youth*, 5 Transgender Health 246 (2020).

[64] Chen et al.

[65] Int'l Plan. Parenthood Fed., Int'l Med. Advisory Panel, *IMAP Statement on Hormone Therapy for Transgender and Gender Diverse Persons* 9-11 (June 2023), https://web.archive.org/web/20230706105450/https://www.ippf.org/file/14216/download?token=aj1QbfEG.

[66] *Gender-affirming hormone in children and adolescents*, BJM Evidence-Based Medicine Spotlight (Feb. 25, 2019), https://blogs.bmj.com/bmjebmspotlight /2019/02/25/gender-affirming-hormone-in-children-and-adolescents-evidence-review/.

[67] Johanna Olson-Kennedy et al., *Chest Reconstruction and Chest Dysphoria in Transmasculine Minors and Young Adults: Comparisons of Nonsurgical and Postsurgical Cohorts*, 172

Cross-sex hormones can also render a child permanently sterile.[68] These losses cannot be fully comprehended by a child, making informed consent impossible.

Surgeries to amputate primary and secondary sex organs—performed on children as young as twelve—are irreversible, often with lifelong complications.[69]

Far from an evidence-based standard of care, gender-transitioning treatments for gender dysphoria amount to unethical human experimentation—on *children*. One Swedish teen who underwent medical transition, suffered serious bodily harm, and then de-transitioned has described her experience in stark terms: "They're experimenting on young people * * * we're guinea pigs."[70] Or, as psychotherapist Alison Clayton warns, this is "dangerous medicine."[71]

Recent rulemaking from the U.S. Department of Health and Human Services ("HHS") underlines the

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JAMA Pediatric 431 (2018), https://doi.org/10.1001/jamapediatrics.2017.5440 (see Figure: Age at Chest Surgery in the Post-surgical Cohort).

[68] Stephen B. Levine, *Ethical Concerns About Emerging Treatment Paradigms for Gender Dysphoria*, 44 J. Sexual Marital Therapy 29 (2018), https://doi.org/10.1080/0092623x.2017.1309482.

[69] Leor Sapir, *A Consensus No Longer, The Manhattan Institute*, Aug. 12, 2024, https://www.city-journal.org/article/a-consensus-no-longer.

[70] *Mission: Investigate: Trans Children* ("Trans Train 4"), (Sveriges Television documentary Nov. 26, 2021) (last available Mar. 26, 2023), https://www.svtplay.se/video/33358590/uppdrag-granskning/mission-investigate-trans-children-avsnitt-1.

[71] Clayton, n.5, *supra*.

debilitating nature of these "gender affirming" surgeries. On May 9, 2024, HHS published a final rule updating and amending its regulations under Section 504 of the Rehabilitation Act. HHS, *Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 40,066 (May 9, 2024). One part of the final rule asserts that gender dysphoria may count as a disability under federal law, despite 42 U.S.C. § 12211, where Congress explicitly excluded "gender identity disorders not resulting from physical impairments" from the definition of "disability" under the ADA. *Id*. at 40,068–69.

Another part of the rule, however, defines "disability" to include a physical or mental impairment that substantially limits an individual's major life activities, including his or her reproductive system. 89 Fed. Reg. at 40,180 (45 C.F.R. 84.4(c)(1)(ii)). It also states that "anatomical loss affecting one or more body's systems" renders one disabled. *Id.* at 40,068 (45 C.F.R. 84.4(b)(1)(i)).

One of the sobering aspects of this rulemaking is that even while HHS claims that "gender affirming" surgery is "medically necessary" for people with gender dysphoria, this "treatment" *also* renders patients disabled under the Section 504 and the ADA. EPPC noted this concern in its public comment on HHS's proposed rule and asked HHS to comment on the public policy implications of mandating a controversial treatment that "cures" patients by

rendering them permanently disabled.[72] HHS did not address this anomaly in its final rule.

III. Recent disclosures reveal WPATH is an ideological organization with no claim to represent medical consensus.

A. WPATH Files

On March 4, 2024, a U.S. based think tank released the "WPATH Files," a 241-page PDF that discloses and analyzes leaked internal discussions, including emails and videos, between doctors, nurses, and other WPATH members.[73] The Executive Summary describes the WPATH "approach to medicine" as "consumer-driven and pseudoscientific" and observes that WPATH "members appear to be engaged in political activism, not science."[74]

The WPATH Files show that:

> sex-trait modification procedures on minors and people with mental health disorders, known as "gender-affirming care," are unethical medical experiments. This experiment causes harm without justification, and its victims are some of society's most vulnerable people. Their injuries

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[72] EPPC Scholar's Comment Regarding "Discrimination on the Basis of Disability in Health and Human Service Programs or Activities," RIN 0945-AA15 (Nov. 13, 2023) at 14-16, https://eppc.org/news/eppc-scholar-and-others-comment-on-hhs-proposed-rule-on-disability-rights/.

[73] Mia Hughes, *The WPATH Files*, *Environmental Progress*, Mar. 4, 2024, https://environmentalprogress.org/big-news/wpath-files.

[74] *Id*. at 3.

> are painful and life-altering. WPATH-affiliated healthcare providers advocate for the destruction of healthy reproductive systems, the amputation of healthy breasts, and the surgical removal of healthy genitals as the first and only line of treatment for minors and mentally ill people with gender dysphoria, eschewing any attempt to reconcile the patient with his or her birth sex.[75]

Members admit in these pages "that children and adolescents cannot comprehend the lifelong consequences of sex-trait modification interventions, and in some cases, due to poor health literacy, neither can their parents."[76] "[G]ender-affirming healthcare providers are knowingly permitting young patients to compromise their sexual function when they do not have the maturity or experience to comprehend the implications of such a decision in the context of a long-term relationship."[77]

The WPATH Files concludes with this sobering assessment:

> Currently, lawmakers, judges, insurance companies, and public health providers are duped into trusting WPATH's guidelines as a result of the broken chain of trust. These stakeholders are not aware that the political activists within WPATH are promoting a reckless, consumer-driven transition-on-

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[75] *The WPATH Files*, 3.

[76] *The WPATH Files*, 3.

[77] *Id*. at 23.

> demand approach to extreme body modification, even for minors and the severely mentally ill. It is for this reason that we believe the medical world must reject WPATH's guidelines.
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> Gender dysphoria is a complex psychiatric condition, and there is no easy answer as to the best way to ease the pain of those afflicted. It * * * is possible to state with unequivocal certainty that [WPATH] does not advocate for the best possible care for this vulnerable patient cohort, and the detrimental impact of WPATH's actions over the past two decades has rendered the organization irredeemable. It is now imperative to usher in a new era in gender medicine, one that prioritizes the health and well-being of patients as its foremost objective.[78]

B. Alabama Litigation Disclosures

An expert report, with accompanying documentation, released pursuant to federal litigation challenging an Alabama law restricting gender transition interventions in minors, exposes the ideological agenda behind WPATH's 2022 Standards.

An expert in the Alabama case, Dr. James Cantor, analyzed communications among WPATH members and leaders. Cantor reports that, "Members of the WPATH Guideline Development Group repeatedly and explicitly lobbied to tailor language of the guidelines for the purposes of influencing courts and legislatures, and to strengthen their own testimony as

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[78] *The WPATH Files*, 71.

expert witnesses." Appx. A, Suppl. Expert Report of James Cantor, PhD, Ex. 24 ¶ 133, *Boe* v. *Marshall*, No. 22-184 (N.D. Ala. June 24, 2024).

Among the damning disclosure in the Cantor report, was a series of email exchanges between Biden Administration officials and WPATH leaders. The emails reveal that the Biden Administration pressured WPATH to remove the recommended minimum ages for minors seeking puberty blockers, cross-sex hormones, double mastectomies, or genital surgery for gender transition purposes. A staffer for HHS Assistant Secretary Rachel Levine emailed WPATH leadership expressing Levine's concern that "these specific listings of ages, under 18, will result in devastating legislation for trans care. She wonders if the specific ages can be taken out."[79] WPATH, driven by political considerations, discarded its guideline development process and capitulated to the Administration's request. Cantor's analysis indicates that, in finalizing its revised "Standards of Care 8," WPATH made "decisions based on politics, not science."[80]

Another disclosure emerging from the same litigation shows that, in 2018, WPATH commissioned a series of substantive evidence reviews to be conducted by the Johns Hopkins University Evidence-Based Practice Centre but suppressed the findings of

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[79] *Ibid*.

[80] Azeen Ghorayshi, *Biden Officials Pushed to Remove Age Limits for Trans Surgery, Documents Show*, *N.Y. Times*, June 25, 2024, https://www.nytimes.com/2024/06/25/health/transgender-minors-surgeries.html.

multiple studies, presumably because they were unfavorable.[81] WPATH's motivations are clear. WPATH's President, Walter Bouman, insisted to fellow WPATH members that all studies must be "thoroughly scrutinised and reviewed to ensure that publication does not negatively affect the provision of transgender health care in the broadest sense."[82]

These disclosures, and the evidence detailed earlier, reveal WPATH is an activist organization advocating for one side in a controversial medical debate. As an Eleventh Circuit judge put it simply: "recent revelations indicate that WPATH's lodestar is ideology, not science." *Eknes-Tucker*, No. 22-11707, slip op. at 31 (Lagoa, J., concurring den. reh'g en banc).

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[81] The Economist, *Research into trans medicine has been manipulated*, June 29, 2024, reprinted by the Society for Evidence Based Gender Medicine, https://www.segm.org/The-Economist-WPATH-Research-Trans-Medicine-Manipulated.

[82] *Ibid*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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