

No. 19-5245

Supreme Court of the United States

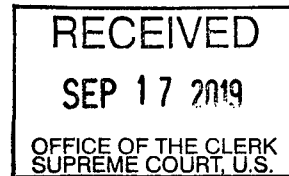
MICHELLE RENEE LAMB,
Petitioner, Pro se,

V.

JOHNNIE GODDARD, KANSAS SECRETARY OF CORRECTIONS, KANSAS
DEPARTMENT OF CORRECTIONS, CORIZON HEALTH SERVICES, INC.,
PAUL CORBIER, M.D.,
Respondents et al.,

On petition For Writ of Certiorari
To The United States Court of Appeals For The Tenth Circuit

PETITIONERS RESPONSE TO:
RESPONDENT PAUL CORBIER, M.D.'s BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI



Michelle Renee Lamb
Michelle Renee Lamb #17636
EDCF U-94
Box 311
El Dorado, Kansas 67042

QUESTIONS PRESENTED

1. Petitioners Petition For Writ Of Certiorari was not filed out of time, and this Honorable Court has full Authority and Jurisdiction to hear the case.
2. Petitioner has clearly established an unsettled question of federal law, and a serious conflict among the Circuits that requires a resolution by this Honorable Court, and the standards governing Eighth Amendment Claims for deliberate indifference to a transgenders serious medical needs have not been established by prior decisions by this Court.
3. The relief Petitioner requested in the District Court could have been granted, and has been done so by many Courts in the past.

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STATEMENT OF THE CASE

This a medical case addressing the dismal medical treatment being provided to transgender inmate in the care and custody of the Respondents.

This case has nothing to do with Petitioners crime, and yet on the first page, and first line, of the Brief the Respondents they brought my crime to the Courts attention. Since that information has no bearing on this case the only possible reason for introducing it is a malic "unlawful act of causing harm without legal justification" attempt to prejudice this Court against me. I believe the Respondents owe me and this Honorable Court an apology.

Petitioner also strenuously objects to the format used by the Respondents in their Brief. The Respondents The Brief used "Id" without any context as to what brief it related to, or what Page or paragraph. Petitioner has no was to reformat her brief to line numbers, and the line numbers don't match what the respondents claim. For example, on page 1 of their brief they claim that. "Petitioner even concedes that the treatment provided are valid treatment for gender dysphoria. Id at 16."

Petitioner totally denies making any such admissions, and in Petitioners "Petition For Writ Of Certiorari" it states: "However, my hormone therapy has been so medically unprofessional that it has stunted my secondary sex characteristics; my transitional therapy does not even come close to meeting the WPATH "standards of Care"; I have not received any hair removal or voice therapy; I have been refused housing in the female facility, and I have not received a single consultation for my gender affirming surgery." Id at page 2, paragraph 3..

Petitioner respectfully request this Honorable Court deny Respondent's Brief, and order them to reformat to page and paragraph so that there "Id" matches Petitioners Brief to the Court.

Respondents "Factual Background" is nothing but "Factual Lies and False Statements".

The Respondents claim:

a). "Petitioner concedes that the Respondents have provided outside consults, hormone suppression and Replacement therapies, and mental health counseling, all in the furtherance of treating Petitioner's Gender Dysphoria. Id at 29-30." Id at Page 1, paragraph 2.

What Petitioner said about her "outside medical consults",

a)1). "The Defendant-Appellees were 'deliberately indifferent to all of Michelle Renee Lamb's Transgender medical needs. I have not only been diagnosed with Gender Identity Disorder, but Severe Gender Dysphoria by three Medical & Mental Health Professionals - outside of corizon - whom have all recommended full transgender therapy, and sex reassignment surgery. All three of these professionals work with transgenders, work within the mainstream guidelines set by WPATH the American Medical Association, and every mental health association in the world. Not one of these associations support Corizons snake oil treatment I have been receieving from them for the past several years." My 10th Cir. Brief, Id at page 3.

What Petitioner actually said about her "hormone suppression and replacement therapy",

a)2). Already answered this brief. Id at Page 2, Paragraph 1, and in a grievance filed by petitioner the Respondents admit my hormone therapy is not for the treatment of my gender Dysphoria: only as a "Mood stability". See, Exhibit 1, Pagargaph 1.

What in their own words is the purpose of my mental health therapy,

a)3). "anticipate providing supportive psychotherapy along with these interventions and are hopeful that, over time, this combination will be sufficient to mitigate your discomfort with your gender." See, Exhibit 1, Paragraph 3.

The Respondents admit they are not treating my Gender Dysphoria, but only my discomfort with my gender, and every mental health counselor involved in my so called therapy has admitted that their main job was to monitor me for the risk of suicide and/or autocastration: not gender therapy as the respondents claim.

The Respondents also make a totally false claim that is unsubstantiated by any medical or mental health association in the World that,

"In addition, Dr. Corbier explained that the risk associated with such radical surgical procedures were Unwarranted in a patient of Petitioner's age and condition, therefore a referral for the procedure was unjustified and unnecessary." Id at page 2, paragraph 2.

First, what "condition" do I suffer from that would make me so unwarranted for this surgery? I have no idea since I'm not being treated for any such condition. As for my "age" this has already been addressed in Plaintiffs Response Brief of November 17, 2017 stating,

"The only risk that can be found in any current medical references is to the extreme risk of not performing the Surgery and there is NO EVIDENCE that performing the surgery on a 75-year old increases that risk, in fact the evidence is to the Contrary." Id at page 2, paragraph 2, and on the same page, actual evidence, "see,, 20. Gender dysphoria intensifies with age." and supporting medical studies, and see "19." et al same page for more evidence.

PETITIONERS RESPONSE TO:

"ARGUMENT AND AUTHORITY IN SUPPORT OF RESPONDENTS
OPPOSITION TO ISSUANCE OF WRIT"

ISSUE I. Petitioners Petition For Writ Of Certiorari was not filed out of time, and this Honorable Court has full Authority and Jurisdiction to hear the case.

Respondents argument is False and without merit.

Rule 14.5 gives the Clerk of the Court the authority to grant Petitioner 60 days to correct a Petition that does not comply with Rule 33.

My Petition was returned to me with a letter indicating the deficiency and the end date for my 60 days.

When I timely returned my brief the clerk determined it was still deficient, and granted me another 60 days to fix this deficiency.

When I returned my brief it was determined that my deficiency could not be corrected \$under Rule 39.3) so under that Rule it states, Rulle 33.2 (unless such preparation is impossible). The Clerk determined such preparation was impossible, and since my response was timely filed.

Rule 13.2 "The Clerk will not file any petition for a Writ of Certiorari that is jurisdictionally out of time."

The Clerks records clearly show that in all cases Petitioner's Writ was timely filed, and was so Certified by the Clerk of the Court. Respondents Issue 1, must be dismissed.

Issue II. Petitioner has clearly established an unsettled question of federal law, and a serious conflict among the Circuits that requires a resolution by this Honorable Court, and the standards governing Eighth Amendment Claims for deliberate indifference to a transgenders serious medical needs have not been established by prior dicisions issued by this Court.

The below case again showes how confounded, and unfair, the treatment of transgenders is in state and federal facilities in the United States.

In Gibson V. Collier, 920 F.3d (5th Cir 2019) the Fifth Circuit held transgender prisoners not entitled to sex reassignment surgery or an evaluation for said surgery.

"Writing for the majority, Circuit Judge James C. Ho noted that whether sex reassignment surgery was necessary for or successful in the treatment of gender dysphoria was 'fiercely question[ed]' among medical experts, many of whom believe non-invasive hormone therapy is a better approach. Ho garnered those facts not from the sparse and undeveloped record in Gibson's case but rather from the First Circuit's en banc opinion in *Kosilevich v. Spencer*, 774 F.3d 63 (1st Cir 2014), cert denied, which reversed a district court's judgment ordering Massachusetts prison officials to provide sex reassignment surgery to a transgender prisoner. [See: PLN, Dec. 2014, p.18]." *Id.* at PLN, July 2019, p. 32. And, "The lack of a near-universal consensus by medical experts doomed Gibson's claim." *Id.*

Where is the lack of a near universal consensus by medical experts when every *Diagnostic and Statistical Manual of Mental Health* supports the WPATH Standards of Care (see, PFWOC 'Petition For Writ of Certiorari' *Id.* at p.3-4), and every medical and mental health association and societies in the world's support for the "Standards of Care" and sex reassignment surgery.

"For a short but powerful list see, PFWOC, *Id.* at p.7 and p.9. In fact, no one has brought to Court in the past 10 years the name of a medical or mental health association that did not support the surgery. " See, *O'Donnabhain v. Comm'r.*, 124 T.C. (2010) et al..

The only lack of consenses was with this ruling.

"one of the ³ appellate judges filed a strongly worded 27 page dissenting opinion that challenged the use of the findings in Kosilek and criticized the majority for ignoring the procedural errors in the case. See, Gibson V. Collier 920 F.3d F.3d 212 (5th Cir. 2019).

The Respondents tried to hide their deliberate indifference to my extremely serious medical needs by citing Estelle V. Gamble, 429 U.S. 106 (1976), but in doing so help make my case. It states in part,

"..."In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to seriour medical needs." Id at p.5.

Petitioners briefs are full of examples of the Respondents real "acts or omissions sufficiently harmful to evidence delibert indifference to serious medical needs".

The proper quote from "Estelle" is,

"A plainfiff demonstrates a 'serious medical need' when she establishes that failüre to treat her condition could result in further significant injury or the unnecessary and wantom infliction of pain." See, Estelle, 429 U.S. at 104; Jett 439 F.3d at 1096 Id at p.4, and supporting medical evidence on p. 5-7.

"This is exactly why I'm fighting so hard for my surgery, because the severity of my GID is so bad that whitout the surgery I will kill myself or auto castrate, and I have made that fact clear to the defendants and the court in every filing in this case. Id at p.5, and See, Petition

For Writ of Certiorari (PFWOC) p.4, paragraph 2-5, and p.10, #4 and "15" stating a 41% rate of suicide attempt among untreated transgenders."

Petitioner hereby totally denies all the claims made against Petitioner in Respondents Issue II, finding them all to be both false and misleading.

Petitioner filed her petition in April 2016.

"During fiscal years 2016 and 2017, state officials slapped Corizon with \$3.4 million in penalties for failure to maintain its contracted staffing levels. The company was penalized another \$2.8 million for the same problem in 2018, along with an additional \$534,880 find for not meeting other performance standards." Id at UKMC annual report.

The Respondents have claimed over and over again to me and the Court that I'm receiving "adequate medical care". However, the more than \$6.7 million in penalties that Kansas has imposed on Corizon over the past several years belies that claim, Id at University of Kansas Medical Center (UKMC) annual performance audit.

Issue III. The relief Petitioner requested in the District Court could have been granted, and has been done so by many Courts in the past.

Respondents made the ludicrous claim,

"Notably, Petitioner did not submit any evidence suggesting that a surgeon had actually agreed to perform these procedures on a person over the age of 75, nor did Petitioner submit evidence supporting a medical risk-benefit analysis that takes into account Petitioner's medical history and clinical condition." Id at p.7-8.

This question was already answered this brief.
Id at p.4-5.

The Respondents claim,

"This Court has never held that a district court would be entitled to issue a mandatory injunction commanding a medical provider to administer a specific form of treatment that the defending provider had previously concluded was medically inappropriate, and it is not hard to foresee the likely disasters that would result from the practice of medicine by judicial decree."
Id at p.8

What about all the cancer treatments and organ transplants ordered by the courts to save inmates lives? How is transgender treatment any different? When people like the respondents trade profit and greed over care and treatment it is the COURT's DUTY as this Honorable Court has often done, to step in and correct the injustice: the only likely disaster would result from the Court not stepping in.

Petitioner hereby denies all claims made against Petitioner in Respondents Issue III, finding them all to be false and misleading. Respondent Paul Corbier's brief in opposition to petition for Writ of Certiorari should be denied.

CONCLUSION

1. The Respondents and the 10th, Cir., both dismissed The United States T.C. in O'Donnabhain as irrelevant, but I would suggest to this Honorable Court that outside this Courts aurohrity it is the most relevant decision in the history of Transgender law.

Using real medical and scientific facts the Court established "That just being transgender puts the patient at risk of autocastration, autopenctomy, and suicide." Id at p.13.


I pray this Honorable Court will restore the dignity of the Tax Court's decision by making it relivant again.

2. I respectfully request this Honorable Court to search all the respondents brief's for just one reference to a medical or mental health association's factual information supporting their medical and/or treatment claims. The fact is, all you are going to find is "smoking mirrors", and "snake oil salesmanship". Not a single fact of supporting data, and absolutely no way to tell what their "adequate medical care" claim actually means with regard to my treatment. In other words, What treatment?

3. Now, what I just asked you to do in #2, I'm now asking you to do with my briefs. Search my brief, please, because every medical statement I have made is supported by medical and mental health research clearly establishing my extreme need for the treatment I'm requesting including the sex reassignment surgery.

I pray this Honorable Court will Grant my Petition For Writ of Certiorari. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Michelle Renee Lamb". The signature is written in a cursive, flowing style.

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El Dorado, Kansas 67042

Florida Fleeces Prisoners with High Canteen Prices

by Kevin W. Bliss

THE FLORIDA DEPARTMENT OF CORRECTIONS (FDOC) has expanded the use of private contractors in the state's prison system. With an annual budget of about \$2.4 billion, the FDOC is increasingly shifting the burden of those costs to prisoners and their families through privatization.

Revenue from canteen (commissary) sales alone increased \$4 million after the FDOC switched to a new vendor, Trinity Services Group. Net revenue payable to the state has reached \$35 million a year due to the monopoly nature of the FDOC's canteen services. Trinity has one of the largest revenue-generating contracts in the state's prison system.

Critics have claimed on several occasions that the FDOC was guilty of price-gouging. Jackie Azis, a staff attorney for the ACLU, said, "That's not surprising at all to hear, and that's something I've heard throughout my career."

For example, a case of 54 Tampax at Walmart costs \$5.86, while the same number of Tampax at the Lowell CI women's prison costs \$21.71. At the same Walmart, 12 ramen soups cost \$1.94. In FDOC canteens, at \$.65 per ramen soup packet, 12 would cost \$7.80.

Even within the prison system there are price disparities between the same items sold to prisoners and guards. *The Times-Union* reported on price comparisons at six facilities between the prisoner and visiting park canteens and the staff canteen. The newspaper reported only about a dozen of the items were comparably priced, mainly snack foods. Otherwise, items like bottled water cost \$0.43 at staff canteens and \$1.02 for prisoners. Chips were \$0.57 for staff and \$1.03 in prisoner canteens, while honey-buns cost \$.89 each for staff and \$1.62 for prisoners.

"Staff canteen allows officers and staff to purchase affordable items while working their shifts," stated FDOC communications director Michelle Gladly.

Notably, staff canteens are not operated by a private contractor – which may help explain the pricing differences. They also offer prison employees various services provided by prisoners at low prices, such as \$10 car washes and waxes, \$3 haircuts and \$1 shoe shines.

A portion of the prison canteen revenue generated by Trinity Services Group goes to the FDOC's general fund, and Wendy Sawyer, a researcher for the Prison Policy Initiative, said it was offensive that prison staff pay less while prisoners and their families – those who can least afford

it – are charged more. Florida prisoners receive no pay for their prison job assignments, which makes the inflated canteen prices even more egregious. ■

Sources: *jacksonville.com*, *tampabay.com*, *dc.state.fl.us*

Kansas Slaps Corizon Health with Millions in Fines for Contract Violations

by Chad Marks

"THEY DON'T CARE WHO DIES, HOW they die or what they do to you."

That's what former Kansas prisoner Sarah Loretta Cook said about Corizon Health, the state's prison medical care provider. With expected increases in the Kansas prison population over the next five years, Corizon's contract with the state's Department of Corrections (DOC) is projected to balloon from \$70 million to \$83 million annually. But the company's track record in Kansas has not been stellar.

One prisoner developed a brain fungus resulting in the 27-year-old's death. As for Cook, she had to have much of her colon removed after she did not receive her prescribed medication for months. She has now filed a lawsuit – one of more than 48 naming Corizon and the Kansas DOC involving medical care.

During fiscal years 2016 and 2017, state officials slapped Corizon with \$3.4 million in penalties for failure to maintain its contracted staffing levels. The company was penalized another \$2.8 million for the same problem in 2018, along with an additional \$534,880 fine for not meeting other performance standards.

Since it was first awarded the DOC contract in 2014, Corizon's performance has been audited annually by the University of Kansas Medical Center (UKMC), which tracks metrics for a dozen standards such as intake health assessments, sick calls and group therapy. When the company drops below 90 percent compliance for any of the standards, the DOC assesses \$100 to \$300 per incident. If Corizon fails to correct the problem within six months, the penalty begins to increase and continues rising until

compliance is achieved.

David Tatarsky, the DOC's Director of Health Services, said the audits are guided by complaints received from prisoners and their families, which are often directed to UKMC. State law gives prison wardens 10 days to address a medical issue upon receiving a written grievance, after which it can then be appealed directly to DOC Secretary Roger Werholtz.

"We look for trends. We try to get the most bang for our buck," Tatarsky said. "We try and focus where we think the need is greatest."

Of the nine performance standards audited in 2018, Corizon was found fully compliant with just one: specialty services, such as X-rays, dermatology, chemotherapy, and obstetric and gynecological services, all of which are penalized at a higher rate. Compliance with other standards fell well short of 90 percent, totaling 70 percent for health groups – including group therapy and workshops on anger management or addiction – and less than 10 percent for sick calls, intake assessments and care for prisoners with chronic conditions such as diabetes and HIV.

Even with signing bonuses of up to \$7,000 for registered nurses and \$10,000 for psychologists – which together account for half its unfilled positions – Corizon is having trouble maintaining required staffing levels, according to DOC finance director Keith Bradshaw. He blamed "low unemployment rates throughout the state as well as competition in the highly competitive health care industry."

Corizon pays its registered nurses in Kansas \$25 an hour, below the state average

of \$28. It pays dental assistants \$15 an hour, below the average of \$16.86. However, the company's behavioral health professionals earn \$24 an hour, at the top of the statewide average range of \$16 to \$24 per hour.

Bradshaw also noted that medical referrals to private providers outside the prison system involve additional costs in vehicle expense and overtime for guards who must accompany the prisoners. Due to "the small staff that we have and the size of this contract and the services being provided," he noted "it's not realistic to expect every facility and every outcome to be looked at every month."

For example, Corizon was noncompliant from June 2017 to December 2017 when the DOC was transferring prisoners between facilities, so it did not penalize the firm for problems during that time. Nevertheless, in February 2019 Bradshaw reported to state lawmakers that unless Corizon improves its services to the state's prison system, its contract will be renewed for only a one-year term rather than two years.

"If things continue to improve, we'll go ahead and pick up that second year," Bradshaw said. "If we continue to have issues, then we'll look at doing a rebid."

Corizon spokeswoman Eve Hutcherson said the company treats "all requirements very seriously in our mission to provide exceptional care to the patients we serve as the DOC's partner."

However, the more than \$6.7 million in penalties that Kansas has imposed on Corizon over the past several years belies that claim. ■

Sources: *kake.com*, *kansas.com*, *kansascity.com*, *usnews.com*, *kcour.org*, *wibw.com*

Judge Initially Plays Pass-the-Buck with Proposal to Hire Suicide Prevention Expert

EIGHT PRISONERS HAVE COMMITTED suicide at Pennsylvania's Allegheny County Jail (ACJ) since 2016. In response, prisoner advocate Marion Damick asked the county's nine-member Jail Oversight Board (JOB) to hire a nationally known expert on suicide prevention.

"It's ... just to see if something can be done, to help the warden and help the jail reduce that number [of suicides] that we have had in the past," Damick said.

The estimated cost of hiring prisoner mental health expert Lindsay Hayes to conduct an assessment was over \$18,000. Damick suggested that cost could be covered by the jail's prisoner welfare fund, which has a balance of \$2.7 million, according to County Controller and JOB member Chelsa Wagner.

However, Judge David Cashman with the Allegheny County Common Pleas Court, who serves as chairman of the JOB, said he first wanted input from the county council. "I can't go out and just purchase things willy-nilly," he remarked. "I'm not so sure you have to spend \$18,000 to reinvent your own wheel." Cashman added, incorrectly, that the jail's current suicide prevention policy was developed by Hayes eight years ago. He later said he had been misinformed.

Wagner responded, "Frankly, if we are just putting this over to county council, I would really say there's no reason for this board to be here." She added the county council already had a representative on the JOB. Terry Klein, a former JOB member, said the oversight board was the proper agency to take up the proposal. "I think if the board doesn't vote on this proposal, we are abro-

gating our responsibility to the welfare of inmates at [ACJ]."

In addition to Cashman, Wagner and Klein, the JOB includes Common Pleas Judge Dwayne Woodruff, Sheriff Bill Mullen, County Executive Rich Fitzgerald, County Council President John DeFazio, Abass Kamara and Gayle Moss. The members are all appointed and not paid; the judges are appointed by the Allegheny County President Judge.

The prisoners who took their own lives while incarcerated at ACJ since 2016 include: John Orlando, 40 (2016); Jeffrey Heil, 45 (2016); Jamie Gettings, 33 (2017); Joel Velasquez-Reyes, 39 (2017); Ross Frye, 62 (2017); Alison Taglianetti, 57 (2018); and Dana Abraham, 64 (2018). Most recently, jail detainee Timothy Pauley, 34, who was facing homicide charges, committed suicide by hanging himself in his cell in April 2019. Pauley, an Army veteran, had twice been deployed to Afghanistan.

One ACJ guard, Veronica Brown, was fired for failing to conduct cell checks and falsifying log records when Gettings committed suicide during her shift. Brown has contested her termination and is seeking reinstatement, filing a petition in the Allegheny County Court of Common Pleas on September 27, 2018.

County officials announced in February 2019 that they will issue a request for proposals to hire a suicide prevention consultant to assess the jail's policies and procedures. ■

Sources: *post-gazette.com*, *pennrecord.com*

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Thank you for your grievance.

As you know, the purpose for providing you with spironolactone and estrogen at physiological levels is to help you with mood stability. Often gender dysphoric patients find that dosing at this level is quite helpful and suffices. It is not clinically appropriate to increase hormone dosage simply because a patient fears that depression might develop unless the dosage is increased.

As you also know, we are monitoring your mood in an ongoing manner, providing you with continuing contact with facility mental health personnel. Additionally your mental health status has been reviewed by the CCS Regional Psychiatrist. Most recently you participated in psychological testing so that the subjective impressions of our mental health professional staff could be further validated. This testing provided us with additional information regarding your fears and mood. Your endorsement of certain statements suggests that additional interventions regarding your gender discomfort would be appropriate. This is consistent with the treatment plan that we previously developed.

We believe that actual body modification is something to be approached carefully; if less intrusive interventions can successfully provide you with a sense of comfort, then interventions should be limited. At this time we are recommending to the Department of Corrections that certain changes should be made in the way that your situation is managed. We anticipate providing supportive psychotherapy along with these interventions and are hopeful that, over time, this combination will be sufficient to mitigate your discomfort with your gender. If it does not, additional interventions may then be appropriate.

Management of gender dysphoria is primarily a behavioral health responsibility. Dr. Harrod is a member of the treatment team, but his responsibilities are currently limited to managing the somatic aspects of hormone therapy. The entire treatment team will be involved in any decision regarding whether or not to proceed to feminizing doses of estrogen.

Your 9/16/13 affidavit and 10/13/13 comments contain a mixture of accurate and inaccurate reporting together with some out of context distortions. Rather than address each of these individually, I am concluding by assuring you again that we (CCS) are working to respond to your dysphoria.

Treatment within a correctional setting does differ from that in the community. In the community your treatment, so long as it is medically acceptable, is based upon what you desire and can afford. In the correctional setting, your treatment is based upon what you need in order reasonably to treat your serious medical condition(s).