No. 22-942

In The
Supreme Court of the United States

BRIAN TINGLEY,
Petitioner,
v.
ROBERT W. FERGUSON, in his official capacity as Attorney General for State of Washington; UMAIR A. SHAH, in his official capacity as Secretary of Health for State of Washington; and SASHA DE LEON, in her official capacity as Assistant Secretary of the Health Systems Quality Assurance Division of the Washington State Department of Health,
Respondents,
and
EQUAL RIGHTS WASHINGTON,
Respondent-Intervenor

On Petition for Writ of Certiorari
to the United States Courts of Appeals
for the Ninth Circuit

Brief of *Amicus Curiae* Christian Medical and Dental Association in Support of Petitioner

KRISTINE L. BROWN
Counsel of Record
8700 E. Jefferson Ave. #370953
Denver, CO 80237
(720) 285-9552
kristiburtonbrown@gmail.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Case

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae The Christian Medical and Dental Associations (CMDA) is a national nonprofit, professional organization whose members are Christian physicians and allied healthcare professionals. CMDA has approximately 13,000 members nationally. CMDA's mission is to educate, encourage, and equip Christian healthcare professionals to glorify God. CMDA believes that Christian healthcare professionals glorify God by following Christ, serving with excellence and compassion, caring for all people, and advancing Biblical principles of healthcare within the Church and throughout the world. CMDA members' practice of healthcare is founded on, compelled by, and central to, their Christian religious beliefs.

As the incidence of gender dysphoria among minors rises dramatically both in the U.S. and around the world, those responsible for treating these minors are ethically bound to provide the most scientifically sound treatment available. Unfortunately, the clinical evidence motivating the practice of youth medical gender transitions over the last decade plus is methodologically flawed and cannot justify the invasive, permanent, and experimental gender transition procedures being pushed by supporters of Washington's Speech

[1] Rule 37 Statement: No attorney for any party authored any part of this brief, and no one apart from *Amicus* and its counsel made any financial contribution toward the preparation or submission of this brief. Parties received timely notice.

Censorship Law at issue in this case.[2] What is more, as critical reviews of these flawed studies mount, waves of detransitioners, i.e., those who were "transitioned" as minors but have since recognized their gender conforms with their biological sex, are coming forward lamenting the irreversible consequences of these gender transition procedures.

Amicus believes doctors have a duty to discuss the best available evidence regarding gender transition procedures with their minor patients and parents. *Amicus* thus has a direct interest in the outcome of this case because it will determine whether they are permitted by law to fulfill their duties and obligations to their patients.

SUMMARY OF ARGUMENT

Gender transition procedures (GTPs) imperil already at-risk gender dysphoric youth with experimental and unproven hormonal and surgical gender procedures, which medicalize prematurely and permanently. Bans on comprehensive counseling regarding GTPs—such as the ban at issue in this case—contradict the spirit of science and the scientific enterprise and run squarely against evidence-based healthcare, client autonomy, free speech, and the counselor-client relationship.

---

[2] *See* E. Abbruzzese, et al., *The Myth of "Reliable Research" in Pediatric Gender Medicine: A critical evaluation of the Dutch Studies—and research that has followed*, Journal of Sex & Marital Therapy (Jan. 2023), (found at: https://www.tandfonline.com/doi/full/10.1080/0092623X.2022.2150346).

The mounting tide of evidence shows that the two Dutch studies[3] relied on by defenders of gender transition procedures are seriously flawed, and that advocates in the field routinely exaggerate known benefits and hide or downplay known risks and unknown consequences. *See* Abbruzzese *supra*. In fact, the science shows that the irreversible, invasive, and harmful consequences of these procedures are medically unnecessary, as gender dysphoria in minors will resolve in the vast majority of cases. In addition, these procedures often fail to deliver on their promise to resolve gender dysphoria, as the burgeoning community of detransitioners shows.

This growing evidence has led many governments and medical institutions around the world to push back against gender transition procedures, preferring instead psychological evaluation and support. U.S. counselors and physicians should be allowed to discuss this evidence, including the real risks and certain, irreversible changes effected by gender transition procedures.

The Petition should be granted.

---

[3] *See* Annelou L C de Vries, et al., *Puberty suppression in adolescents with gender identity disorder: A prospective follow-up study*, The Journal of Sexual Medicine (Aug. 2011), (found at: https://pubmed.ncbi.nlm.nih.gov/20646177/); Annelou L C de Vries, et al., *Young adult psychological outcome after puberty suppression and gender reassignment*, Pediatrics (Oct. 2014), (found at: https://pubmed.ncbi.nlm.nih.gov/25201798/).

ARGUMENT

I. *Amicus*, Counselors, and Other Doctors Should Be Allowed to Warn of the Dangers That Experimental and Unproven Medical Procedures Pose to Their Patients.

Gender dysphoria is a persistent state of distress that stems from the feeling that one's gender identity—one's personal sense of being a man or a woman—does not align with their physical, biological sex. *See* American Psychiatric Association: DSM-5 Task Force. (2013). *Diagnostic and statistical manual of mental disorders: DSM-5* (5th ed.), American Psychiatric Publishing, Inc. A person experiencing gender dysphoria desires to live and be accepted as a member of the opposite sex.[4]

Gender transition procedures (GTPs) attempt through psychosocial, hormonal, and surgical interventions to psychologically and physically alter in the patient the phenotypical appearance of secondary sex characteristics to become similar to the physical sex which aligns with the patient's personal gender identity (but not his biological sex) and thereby reduce gender dysphoria.[5] GTPs consist

---

[4] *See* Cecilia Dhejne, et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, PLOS ONE (Feb. 22, 2011), (found at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3043071/#pone.0016885-AmericanPsychiatricAssociation1).

[5] *See Feminizing Hormone Therapy*, Mayo Clinic, (found at: https://www.mayoclinic.org/tests-procedures/feminizing-hormone-therapy/about/pac-20385096).

of four main parts: (1) social transition; (2) blocking normal puberty or menstruation; (3) high dose opposite-sex hormones; and (4) surgical removal of body parts to make external sexual characteristics resemble those of the opposite sex (also known as "sex-reassignment" surgery). Many results from GTPs are irreversible.

Until recently, gender dysphoria has been a relatively rare condition in children and adolescents. Lately, however, there have been very significant increases in referrals for this condition noted around the globe. For example, in the United Kingdom, "The number of referrals to GIDS [Gender Identity Development Service] has increased very drastically in recent years. In 2009, ninety-seven children and young people were referred to GIDS. In 2018 that number was 2519." *Bell & Mrs. A v. The Tavistock and Portman NHS Foundation Trust*. Approved Judgment. [2020] EWHC 3274, (found at: https://www.judiciary.uk/wp-content/uploads/2020/12/Bell-v-Tavistock-Judgment.pdf). There is evidence that this increase may be due in part to social influences and fueled by social media and internet use.[6]

As the incidence of gender dysphoria has skyrocketed, so, too, has the number of detransitioners (individuals returning to their

---

[6] *See* Lisa Littman, *Rapid-onset gender dysphoria in adolescents and young adults: a study of parental reports*, PLOS ONE (Aug. 16, 2018), (found at: https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0202330).

biological sex).[7] The irreversible and experimental nature of many GTPs as well as the large numbers of detransitioners who were subjected to GTPs as minors but then changed their personal gender identity back to that of their biological sex, caution against the widespread acceptance of these procedures. At the least, *Amicus* and other healthcare professionals should not be banned from speaking to their patients about known risks and irreversible consequences of GTPs. At present, Washington's Counseling Censorship Law applies only to licensed counselors. However, the Ninth Circuit's reasoning on "medical speech" encourages the state to expand its censorship of speech to doctors as well. Both the current version of the law and any expansion are devastating.

A. Desistance is the Norm for the Overwhelming Majority of Children with Gender Dysphoria.

Over 80% of minors experiencing gender confusion desist—that is, they naturally align their

---

[7] *See* Lisa Littman, *Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners*, Archives of Sexual Behavior (October 19, 2021),(found at: https://link.springer.com/content/pdf/10.1007/s10508-021-02163-w.pdf); *see also* Kirsty Entwistle, *Reality Check – Detransitioner's testimonies require us to rethink gender dysphoria*, Child Adolesc. Ment. Health (May 14, 2020), (found at: https://acamh.onlinelibrary.wiley.com/doi/abs/10.1111/camh.12380).

minds with their bodies if left to themselves.[8] This means that, if allowed to work through any psychological, mental, or emotional issues—often caused by trauma—children, adolescents, and adults, will often re-identify with their biological sex, given time. Numerous studies have considered whether gender dysphoria persists throughout childhood. As stated above, on average, 80% of children chose not to continue into adulthood as transgender.[9] The largest sample to date of boys who were clinic-referred for gender dysphoria, published in 2021, confirms that gender dysphoria does not persist in most children past puberty if they are not pushed into GTPs by medical professionals: "Of the 139 participants, 17 (12.2%) were classified as persisters and the remaining 122 (87.8%) were classified as desisters." Devita Singh, et al., *A Follow-Up Study of Boys With Gender Identity Disorder*, Frontiers in Psychiatry (Mar. 29, 2021), (found at:

---

[8] *See APA Handbook on Sexuality and Psychology*, American Psychological Association, (2014), W. Bockting, Chapter 24: Transgender Identity Development at 744; *see also* James M. Cantor, *Do trans kids stay trans when they grow up?*, Sexology Today! (Jan. 11, 2016), (found at: http://www.sexologytoday.org/2016/01/do-trans-kids-stay-trans-when-they-grow_99.html).

[9] *See* Thomas D. Steensma, et al., *Factors Associated With Desistence and Persistence of Childhood Gender Dysphoria: A Quantitative Follow-Up Study*, Journal of the American Academy of Child & Adolescent Psychiatry (June 2013) (found at: https://www.transgendertrend.com/wp-content/uploads/2017/10/Steensma-2013_desistance-rates.pdf).

https://www.frontiersin.org/articles/10.3389/fpsyt.2021.632784/full).[10]

Because the rate of desistance is so high, gender GTPs will necessarily cause serious and irreversible harm to many children and adolescents who would naturally outgrow the condition if not "affirmed." Moreover, evidence suggests that minors who are pushed further into their gender confusion by trusted adults (such as parents and medical professionals) will continue down that path. For example, one study of adolescent males with gender dysphoria found that "98% elected to start cross-sex hormones" after six months on puberty blockers. 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. 2, 2021), (found at: https://www.medrxiv.org/content/10.1101/2020.12.01.20241653v1). Studies have consistently confirmed this detrimental result.[11] Therefore, GTPs may

---

[10] *See also* Kenneth J. Zucker, *The myth of persistence: Response to "A critical commentary on follow-up studies and 'desistance' theories about transgender and nonconforming children" by Temple Newhook, et al.*, International Journal of Transgenderism, Vol. 19, 231-245 (May 29, 2018), (found at: http://doi.org/10.1080/15532739.2018.1468293).

[11] *See* CM Wiepjes, et al., *The Amsterdam cohort of gender dysphoria study (1972-2015): trends in prevalence, treatment, and regrets*, J Sex Med. (April 2018); T. Brik, et al., *Trajectories of adolescents treated with gonadotropinreleasing hormone analogues for gender dysphoria* [published online ahead of print March 9, 2020], Arch. Sex Behav., doi:10.1007/s10508-020-01660-8; LE Kuper, et al., *Body dissatisfaction and mental health outcomes of youth on gender-affirming hormone therapy*,

irreparably box in thousands of children who are still in the process of discovering their true feelings and beliefs about their own identity and are nowhere near ready to make an irreversible decision about their physical bodies. Counselors and medical professionals alike should retain the right under the law to seek lasting and effective treatment for children and adolescents suffering from gender dysphoria instead of being forced to encourage them into a GTP-only regimen. It is not only unnecessary but also unethical to permanently medicalize a child for a condition that usually goes away.

B. Puberty Blockers and Cross-Sex Hormones Are Known to Cause Severe Adverse Medical Effects.

Several studies have shown the likely adverse health effects of hormonal interventions, effects which are not proven to be fully reversible. For example, research suggests that youth treated with puberty blockers and/or cross-sex hormones develop problems with bone density (bone mineral density compromise at its period of greatest growth, which can lead to osteopenia/-porosis), insulin resistance, blood pressure, elevated triglycerides, damaged liver function, and cardiovascular disease.[12] In addition,

---

Pediatrics (2020); and 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) (found at: https://app.dimensions.ai/details/publication/pub.1135074665) .

[12] *See* D. Klink, et al., *Bone mass in young adulthood following gonadotropin-releasing hormone analog treatment and cross-*

taking puberty blockers increases the risk of infertility by blocking the maturation of sperm and eggs.[13] Following puberty blockers with cross-sex hormones assures sterility.[14] Contrary to the narrative pushed by supporters of gender transition procedures, rates of self-harm do not improve while on puberty blockers, puberty blockers are not proven fully reversible, and long-term complications are known. [15]

---

sex hormone treatment in adolescents with gender dysphoria, The Journal of Clinical Endocrinology & Metabolism (2015), *100*(2), E270–E275. doi:10.1210/jc.2014-2439. *See also* N.J. Nokoff, et al., *Body composition and markers of cardiometabolic health in transgender youth on gonadotropin-releasing hormone agonists*, Transgender Health, (2021), 6(2), 111–119. doi:10.1089/trgh.2020.0029; J. Olson-Kennedy, et al., *Physiologic response to gender-affirming hormones among transgender youth*, Journal of Adolescent Health, (2018) 62(4), 397–401. doi:10.1016/j.jadohealth.2017.08.005; D.R. Jacobs, Jr., et al., *Childhood cardiovascular risk factors and adult cardiovascular events*, The New England Journal of Medicine, (2022), 386(20), 1877–1888 doi:10.1056/NEJMoa2109191. Bone mineral density compromise. 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), (found at: https://app.dimensions.ai/details/publication/pub.1135074665)

[13] *See* Michael K. Laidlaw, et al., Letter to the Editor: Endocrine Treatment of Gender-Dsyphoria/Gender-Incongruent Persons: An Endocrine Society* Clinical Practice Guideline, JCEM, (November 23, 2018).

[14] *See* Howard E. Kulin, et al., *The Onset of Sperm Production in Pubertal Boys. Relationship to Gonadotropin Excretion*, American Journal of Diseases in Children, (Feb. 1989), (found at: https://www.ncbi.nlm.nih.gov/pubmed/2492750).

[15] *See* 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 (Dec. 1, 2020), (found at:

Cross-sex hormones also bring a host of risks and adverse health effects. For example, when introduced into a healthy biological male, estrogen significantly increases the risks of blood clots, heart attacks, strokes, breast cancer, insulin resistance, and more—and these risks increase with length of use.[16] Similarly, testosterone use in females significantly increases the risks of heart attacks, strokes, breast and uterine cancer, hypertension, severe acne, and more. Moreover, a 2019 international panel of endocrinologists concluded that without exception, the only evidence-based indication for testosterone therapy in women is its short-term use for the treatment of hypoactive sexual desire disorder in postmenopausal women. The panel further noted that "[t]he safety of long-term testosterone therapy has not been established." Susan R. Davis, et al., *Global Consensus Position Statement on the Use of Testosterone Therapy for Women*, The Journal of Clinical Endocrinology & Metabolism, (October 2019), (found at: https://doi.org/10.1210/jc.2019-01603). Mental health issues increase significantly as well, and even the Lupron package insert warns that it can cause

---

https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0243894). *See also* Jenny Sadler Gallagher, et al., *Long-Term Effects of Gonadotropin-Releasing Hormone Agonist and Add-Back in Adolescent Endometriosis*, Journal of Pediatric and Adolescent Gynecology, Volume 31, Issue 2, 190, (2018).

[16] *See* Nash R. Getahun, et al., *Cross-sex Hormones and Acute Cardiovascular Events in Transgender Persons: A Cohort Study*, Ann. Intern. Med. (2018), 169(4): 205-13. doi: 10.7326/M17-2785.

mood swings, depression, suicidal ideation, and attempts.[17]

C. The Claim That Medical Transitions Reduce the Likelihood of Suicide is a Myth.

GTP advocates often claim that "gender affirming" care is required to prevent suicides. Parents of children and adolescents experiencing gender dysphoria are told that they have a choice between a "dead daughter" or a "living son" and therefore pressured to agree to transition. Jared Eckert and Makenna McCoy, *New Documentary Highlights the Harm of "Gender Affirming" Health Care Model on Children*, The Heritage Foundation (June 22, 2021), (found at: https://www.heritage.org/gender/commentary/new-documentary-highlights-the-harm-gender-affirming-health-care-model-children). There is "no persuasive evidence," however, that gender transition procedures reduce the likelihood of suicide for gender dysphoric children. J. Michael Bailey and Ray Blanchard, *Suicide or transition: The only options for gender dysphoric kids?"*, (Sept. 8, 2017), (found at: https://4thwavenow.com/2017/09/08/suicide-or-

---

[17] *See* 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), (found at: https://app.dimensions.ai/details/publication/pub.1135074665), and Michael Biggs, *The Tavistock's Experiment with Puberty Blockers*, (July 29, 2019), (found at: http://users.ox.ac.uk/~sfos0060/Biggs_ExperimentPubertyBlockers.pdf).

transition-the-only-options-for-gender-dysphoric-kids/). Indeed, among individuals who undergo full transition, the suicide rate significantly increases—not decreases. Cecilia Dhejne, et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, PLOS ONE (Feb. 22, 2011), (found at: https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0016885).

To be sure, children with gender dysphoria suffer from a high rate of suicidal ideation. Rather than minimizing this danger, transitioning and divorcing one's gender identity from one's biological sex actually *increases* the risk. For example, a 2011 Swedish long-term study of 324 sex-reassigned persons showed that ten years on, the sex-reassigned group had *nineteen times* the rate of completed suicides and nearly three times the rate of all-cause mortality and inpatient psychiatric care compared to the general population of Sweden. *Id.* And a 2020 Swedish study claiming to be the first total population study of 9.7 million Swedish residents, ultimately showed neither "gender-affirming hormone treatment" nor "gender-affirming surgery" improved the mental health benchmarks. Richard Bränström and John E. Pachankis, *Reduction in mental health treatment utilization among transgender individuals after gender-affirming surgeries: a total population study*, American Journal of Psychiatry (Oct. 4, 2019), (found at: https://doi.org/10.1176/appi.ajp.2019.19010080).

D. The Growing Number of Detransitioners Decry the Medical Profession for Not Disclosing the Risks and Irreversible Dangers Inherent in Medical Transitioning.

Thousands of individual transitioners regret their transition and are now attempting to de-transition. For example, in late 2017, the subreddit r/detrans (r/detrans, 2020) was revitalized, and in four years, has grown from 100 members to more than 46,000 members. Littman (2021) *supra.* Many of these men and women who transitioned as children are speaking out publicly about the irreversible harm GTPs caused them, demonstrating that some effects of GTPs are permanent.[18] Many claim they lacked information on transition procedures' known risks and available alternatives and that these procedures were pushed on them as the only realistic treatment for gender dysphoria.[19] There are studies claiming to show low rates of regret among transitioned persons.[20] But

---

[18] *See, e.g.*, *Masculinizing Surgery*, Mayo Clinic (accessed Nov. 4, 2022), https://www.mayoclinic.org/tests-procedures/masculinizing-surgery/about/pac-20385105.

[19] *See r/detrans | Detransition Subreddit*, reddit.com (created Nov. 14, 2017), (found at: https://www.reddit.com/r/detrans/).

[20] *See, e.g.*, T. C. van de Grift, et al., *Surgical satisfaction, quality of life, and their association after gender-affirming surgery: A follow-up study*, Journal of Sex and Marital Therapy

these studies consistently show high rates of participant loss to follow up (even ranging from 20–60%) and set unreasonably strict definitions for regret by, for example, failing to explore the relationship between regret and high rates of post-transition suicide.[21] By playing with the numbers, those in favor of medical transitions are stacking the deck in favor of their preferred ideology and, once again, refusing to address the hard evidence contradicting that ideology.

E. The Consensus Among Non-U.S. Medical Bodies is Watchful Waiting Rather Than Immediate Affirmation and Transition.

Consistent with the Petitioner's actual practice in Washington State, the governments, medical organizations, and academic institutions of the United Kingdom, Sweden, Finland, and Norway have rejected automatically prioritizing gender transition, and now emphasize extended mental health evaluation and support.[22] For example, the

---

(June 12, 2017), (found at: https://doi.org/10.1080/0092623x.2017.1326190).

[21] *See* Robert D'Angelo, et al., *One Size Does Not Fit All: In Support of Psychotherapy for Gender Dysphoria*, Archives of Sexual Behavior (Oct. 21, 2020), (found at: https://doi.org/10.1007/s10508-020-01844-2).

[22] *See, e.g.*, *Public Consultation: Interim service specification for specialist gender dysphoria services for children and young people*, NHS England (Oct. 20, 2022), (found at: https://www.engage.england.nhs.uk/specialised-commissioning/gender-dysphoria-services/user_uploads/b1937-ii-interim-service-specification-for-specialist-gender-dysphoria-services-for-children-and-

UK closed the world's largest pediatric gender clinic, NHS's Tavistock Gender Identity Development Service, per findings in the Cass Review. [23]

In contrast, many medical organizations in the U.S. have used their clout to protect and expand the (lucrative) practice of pediatric "gender affirmative" care.[24] In response to recent lawsuits and legal challenges, these groups stubbornly insist that the science is settled. *Id.* Support for the misguided censorship law in the case at hand only underscores why this is a political and not a scientific issue.

CONCLUSION

The known facts contraindicating medical transitions, combined with the growing number of

---

young-people-22.pdf). *See also Care of Children and Adolescents with Gender Dysphoria*, Socialsyrelsen: The National Board of Health and Welfare, (found at: https://www.socialstyrelsen.se/globalassets/sharepoint-dokument/artikelkatalog/kunskapsstod/2022-3-7799.pdf); *Medical treatment methods for dysphoria associated with variations in gender identity in minors – recommendation*, COHERE Finland (June 16, 2020), (found at: https://palveluvalikoima.fi/documents/1237350/22895008/Summary_minors_en.pdf/aaf9a6e7-b970-9de9-165c-abedfae46f2e/Summary_minors_en.pdf).

[23] *See* Jasmine Andersson & Andre Rhoden-Paul, *NHS to close Tavistock child gender identity clinic*, BBC News (July 28, 2022), (found at: https://www.bbc.com/news/uk-62335665).

[24] *See, e.g.*, *AMA reinforces opposition to restrictions on transgender medical care*, American Medical Association (June 15, 2021), (found at: https://www.ama-assn.org/press-center/press-releases/ama-reinforces-opposition-restrictions-transgender-medical-care).

detransitioners, counsels against the censorship at issue in this case.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

KRISTINE L. BROWN
Counsel of Record
8700 E. JEFFERSON AVE. #370953
DENVER, CO 80237
(720) 285-9552
KRISTIBURTONBROWN@GMAIL.COM

April 27, 2023