No. 23-450

In the Supreme Court of the United States

M.C. AND J.C.,

Petitioners,

v.

INDIANA DEPARTMENT OF CHILD SERVICES,

Respondents.

On Petition for a Writ of Certiorari to the Indiana Court of Appeals

BRIEF OF AMICI CURIAE ADVANCING AMERICAN FREEDOM; ALASKA FAMILY ACTION; GARY L. BAUER, PRESIDENT, AMERICAN VALUES; CENTER FOR POLITICAL RENEWAL; CENTER FOR URBAN RENEWAL AND EDUCATION; CHRISTIANS ENGAGED; EAGLE FORUM; E. CALVIN BEISNER, PH.D., HISTORY OF POLITICAL PHILOSOPHY; FAITH AND FREEDOM COALITION; FRONTLINE POLICY COUNCIL; INTERNATIONAL CONFERENCE OF EVANGELICAL CHAPLAIN ENDORSERS; JAMES DOBSON FAMILY INSTITUTE; MANHATTAN INSTITUTE; MINNESOTA FAMILY COUNCIL; TIM JONES, MISSOURI CENTER-RIGHT COALITION; NATIONAL APOSTOLIC CHRISTIAN LEADERSHIP CONFERENCE; NATIONAL ASSOCIATION OF PARENTS (D/B/A "PARENTSUSA"); NATIONAL CENTER FOR PUBLIC POLICY RESEARCH; PROJECT21 BLACK LEADERSHIP NETWORK; SETTING THINGS RIGHT; THE JUSTICE FOUNDATION; UPPER MIDWEST LAW CENTER; AND YOUNG AMERICA'S FOUNDATION SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

1. Whether a prior restraint barring a religious parent's speech about the topic of sex and gender with their child while allowing and even requiring speech on the same topic from a different viewpoint violates the Free Speech or Free Exercise clause of the First Amendment.

2. Whether a trial court's order removing a child from fit parents without a particularized finding of neglect or abuse violates their right to the care, custody, and control of their child under the Fourteenth Amendment.

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STATEMENT OF INTEREST OF AMICI CURIAE

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate American freedom which derives from the uniquely American idea that all men are created equal and endowed by their Creator with unalienable rights to life, liberty, and the pursuit of happiness.[1]

Amici Alaska Family Action; Gary L. Bauer, President, American Values; Center for Political Renewal; Center for Urban Renewal and Education (CURE); Christians Engaged; Eagle Forum; E. Calvin Beisner, Ph.D., History of Political Philosophy; Faith and Freedom Coalition; Frontline Policy Council; International Conference of Evangelical Chaplain Endorsers; James Dobson Family Institute; Manhattan Institute; Minnesota Family Council; Tim Jones, Missouri Center-Right Coalition; National Apostolic Christian Leadership Conference; National Association of Parents (d/b/a "ParentsUSA"); National Center for Public Policy Research; Project21 Black Leadership Network; Setting Things Right; The Justice Foundation; Upper Midwest Law Center; and Young America's Foundation are organizations and individuals that believe parents have the fundamental right to direct the upbringing of their children, and that state officials may not use a child's struggles with

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[1] The parties received timely notice of the filing of this brief. No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

gender identity as a justification to infringe on that right.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In this case, the state of Indiana has decided to "protect" an adolescent child who is suffering from confusion about his gender identity from his parents. M.C. and J.C. were accused of and investigated for abuse and neglect of their son, A.C. On that basis, the court removed him from their custody and prevented them from speaking to him about his gender identity outside of therapy sessions. Months later, the Indiana Department of Child Services ("DCS") agreed to withdraw and expunge its abuse and neglect claims and proceed under a different part of the child protection law the adjudication of which "is made 'through no wrongdoing on the part of either parent.'" *In re A.C.*, No. 22A-JC-49, __ N.E.3d __, slip op. at 10 (Ind. Ct. App. Oct. 21, 2022) (quoting *In re N.E.*, 919 N.E.2d 102, 105 (Ind. 2010)). Nonetheless, its decision, which the appellate court upheld, was that A.C.'s best interest would be served by continued separation from his parents. This is at least the second case where this pattern seems to have occurred: an initial claim of abuse or neglect that is later dropped yet the court continues the child's separation from his or her parents on the grounds that doing so is in the child's best interest.

The appellate court said that M.C. and J.C.'s son's continued removal from their home is necessary to provide "the family with the structure and support they need to enable them to learn to deal constructively with their disagreement regarding

Child's transgender identity." *Id.* at 12. In practice, then, M.C. and J.C. can do nothing to regain custody of their son but change their language about, and approach towards, his newly asserted gender identity. Hard cases make bad law, as the saying goes. But this is not a hard case. Instead, because there are no claims of abuse or neglect, this Court has the opportunity to clearly state the principle that a disagreement between parents and their child's asserted gender identity does not warrant state intervention.

America's young people are in crisis. One CDC study found that during the 12 months preceding the survey, 44% of high school students reported experiencing "persistent feelings of sadness or hopelessness."[2] Similarly, 19.9% had seriously considered committing suicide.[3] Another study found that as of 2016, about 73.8% of children with depression also had anxiety.[4] An obvious question arises: what is to be done? This case concerns the question implied within the question: who will decide? According to the Supreme Court, parents have the right to decide. "The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for

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[2] Sherry Everett Jones, et al., *Centers for Disease Control and Prevention, Mental Health, Suicidality, and Connectedness Among High School Students During the COVID-19 Pandemic — Adolescent Behaviors and Experiences Survey, United States, January–June 2021*, 71 MMWR No. 3, April 1, 2022, at 16, 16.

[3] *Id.*

[4] Reem M. Ghandour, et al., *Prevalence and Treatment of Depression, Anxiety, and Conduct Problems in US Children*, 206 J. Pediatr., March 2019 at 256, 258.

judgment required for making life's difficult decisions." *Parham v. J. R.*, 442 U.S. 584, 602 (1979).

According to the State of Indiana, on the other hand, it will decide what is best for children, to the exclusion of parents. Indiana's decision in this case is not based on decades of research nor on centuries of human experience. The Court should grant certiorari to protect M.C. and J.C.'s parental rights.

ARGUMENT

I. The Courts Below Removed M.C. and J.C.'s Son from Their Custody Because of Their Statements Regarding His Claimed Transgender Identity.

In May of 2021, the Indiana Department of Child Services ("DCS") received and investigated reports that M.C. and J.C. were using "rude and demeaning language" toward their son, A.C., regarding his asserted transgender identity, that this was causing A.C. thoughts of self-harm, that they "were verbally and emotionally abusing [A.C.] because they do not accept [his] transgender identity," and that they were being "mean" to him. *In re A.C.*, No. 22A-JC-49, __ N.E.3d __, slip op. at 2-3 (Ind. Ct. App. Oct. 21, 2022). The investigation found that their son was suffering from an eating disorder, that they had withdrawn him from his previous school at the end of the school year and had not yet re-enrolled him at a different school, that M.C. and J.C. had discontinued their son's therapy, that their son did not feel "mentally and/or emotionally safe" in their home, that M.C. had used explicit language in addressing her son's gender identity, that their son would be more

likely to have thoughts of self-harm and suicide in his parents' home, and that the parents were planning to obtain treatment for their son's eating disorder. *Id*. at 4.

In early June, on the basis of these allegations of abuse and neglect (which were soon to be dropped), the trial court found that M.C. and J.C.'s son was a Child in Need of Services ("CHINS"), removed him from their home "due to the Parents' 'inability, refusal or neglect to provide shelter, care, and/or supervision at the present time,'" and "cautioned the Parents to avoid discussing the Child's transgender identity during visitation." *Id*.

In November of the same year, the trial court accepted an agreement between the parents and DCS to dismiss the allegations of neglect and "unsubstantiate and expunge the record of any reports related to Parents and proceed" under an alternative CHINS designation. *Id*. at 5. Despite the absence even of allegations of abuse and neglect, the court still found it within its power to continue M.C. and J.C.'s son's removal from their home because he "had an eating disorder that jeopardized [his] health and the eating disorder was 'fueled partly because of [his] self-isolation from' his parents." *Id*.

The appellate court affirmed the trial court's disposition, including its prohibition of M.C. and J.C.'s discussing their son's gender identity with him outside of therapy. *Id*. at 28. Throughout its opinion, the Indiana appellate court maintains that "Child's removal from the home was not based on the fact that the Parents did not accept the Child's transgender identity, and reunification is not contingent on the

Parents violating their religious beliefs and affirming child's transgender identity."[5] *Id.* at 23. In practice, however, it seems clear that only a change in their views, or at minimum a change in their language and approach, would result in their son's return to their custody.

The appellate court quotes the lower court as acknowledging that there have always been disagreements between parents and their children, especially teenagers, about lifestyle choices, but "to the extent that *we now have these medical issues that, again, there is a [nexus] between this discord about the lifestyle and the medical issues.* That has to get resolved and this [is] going to take some therapy and that is going to take some cooperation from all involved." *Id.* at 12 (emphasis in original) (alteration in original). In other words, because M.C. and J.C. do not agree with A.C.'s gender identity and that is connected, in the court's view, with the A.C.'s other mental illness issues, the separation must continue. The appellate court, too, suggested that M.C. and J.C.'s effective, if not actual, acceptance of A.C.'s claimed transgender identity of their son is a prerequisite to their reunification. The court said that their son's continued removal from their home is

[5] In a footnote rejecting M.C. and J.C.'s claim that their son was removed on the basis of a philosophical disagreement, the court characterizes "DCS's intervention in this case" as an effort "to provide Child with the help and resources to address Child's eating disorder and provide therapy to enable Child to establish a healthier response to Child's disagreement with the Parents so that reunification can be achieved." *In re A.C.*, slip op. at 16 n.4. This framing obfuscates the obvious: the parents' beliefs are the immediate barrier to reunification.

necessary to provide "the family with the structure and support they need to enable them to learn to deal constructively with their disagreement regarding Child's transgender identity." *Id*. Finally, regarding the parents' religious liberty claim, the appellate court quoted the DCS case manager who handled M.C. and J.C.'s case as saying, "it 'was not a matter of who's right or who's wrong [. . .], it's just more of a matter of ensuring the child's safety." *Id*. Thus, it appears the only way M.C. and J.C. could reasonably expect to regain full custody of A.C. is to change their language towards their son's self-identification as transgender.

II. This Case is Both a Proper and a Particularly Viable Vehicle for Review.

At issue in this case is whether the right to raise one's children without government interference, except in the most extreme of situations, is subject to the whims of State bureaucrats. If left unprotected, parental rights will continue to be undermined as they were here and as they already have been around the country. The Court, in its discretion may grant certiorari in cases in which "a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c). Similarly, the Court may also grant certiorari when a state court "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(b). Because the Indiana courts' decisions are directly at odds with this Court's decisions on parental rights, and because the undecided question of federal law in this case, parental rights in the context of a

transgender identifying child, is unresolved, the Court should grant certiorari in this case.

A. On relevant questions of law, the Indiana courts' rulings were inconsistent with previous decisions of this Court because they undervalued parental, Free Speech, and Free Exercise rights.

The Court has long recognized fundamental parental rights, as well as the First Amendment Free Speech and Free Exercise rights of parents. Parental rights, like all other fundamental rights, pre-exist government, and "governments are instituted among men," to secure them. *See* The Declaration of Independence para 2 (U.S. 1776). Thus, the state may only step between parents and their children in narrow, well-defined circumstances. The definition of those circumstances is generally a question of policy and turns on a determination of harm. However, if no constitutional bounds are set as an outer limit, then the rights of parents are effectively destroyed. If the state can freely redefine what constitutes harm to a child and harm is the trigger of legitimate state interference, then parents can be deprived of their parental rights at almost any time.

Parental rights are among the most fundamental of rights. As this Court recognized in *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) (emphasis added), "The *fundamental theory of liberty* upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction . . . The child is not the mere creature of the State." Further, parental rights have been "established

beyond debate as an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). Further, the rights of parents are natural rights that pre-exist government. As the Court explained, "The liberty interest in family privacy has its source, and its contours are ordinarily to be sought, not in state law, but in intrinsic human rights, as they have been understood in 'this Nation's history and tradition.'" *Smith v. Organization of Foster Families*, 431 U.S. 816, 845 (1977) (quoting *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977)). Further, "the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition" *Moore*, 431 U.S. at 503. For these reasons, the state may not "unreasonably interfere[] with the liberty of parents and guardians to direct the upbringing and education of children under their control." *Pierce*, 268 U.S. at 534-35.

Parental rights, fundamental as they are on their own, depend for their efficacy on the support of other rights, including Free Speech and Free Exercise, the First Amendment's protection of which has been incorporated against the states by the Fourteenth Amendment. *Yoder*, 406 U.S. at 207. Parental rights depend on the support of these other rights because, "[i]t is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." *Moore*, 431 U.S. at 503. As the Supreme Court observed in *Obergefell v. Hodges*, 576 U.S. 644, 679 (2015), "[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths."

This Court's precedents make "plain beyond the need for multiple citation that a parent's desire for and right to 'the companionship, care, custody, and management of his or her children' is an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.'" *Lassiter v. Dept. of Soc. Services*, 452 U.S. 18, 27 (1981) (quoting *Stanley* v. *Illinois*, 405 U.S. 645, 651 (1972)). When the state begins proceedings against parents to protect children, it must be careful and specific lest it violate those rights. Discussing the permanent termination of parental rights, the Court wrote,

> When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. "If the State prevails, it will have worked a unique kind of deprivation . . . A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one."

Santosky v. Kramer, 455 U.S. 745, 759 (quoting *Lassiter v. Dept' of Soc. Servs.*, 452 U.S. 18, 27 (1981)). In *Santosky*, the Court was considering the issue of permanent familial separation which it understood as a particularly serious deprivation of parental rights. But the years-long forced separation of parents from their children as in this and other similar cases, even if not permanent *de jure*, is a drastic measure. Time lost cannot be regained. Parents fighting for reunification with their child with no knowledge of when the separation might end will find but small comfort in a court's assurance that they may yet be

reunified with their child at an unspecified time in the future on unspecified terms. What is more, if the state runs out the clock until the child turns 18, it will never need an official ruling to permanently sever custody to affect one it in practice.

Finally, the state may not violate the parental right prior to a finding of parental unfitness. "[U]ntil the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Santosky v. Kramer*, 455 U.S. 745, 760 (1982) (citation omitted) (first emphasis added). Here, the court below expunged all claims of abuse and neglect against M.C. and J.C. and yet upheld their separation from A.C. The state cannot bring a claim of abuse and on that basis remove a child from his or her parents' custody, then later withdraw the claim of abuse or neglect but maintain that the child should still be separated from his or her parents.

B. The Indiana court wrongly decided an important question of law this Court has not yet addressed.

Children's gender identity claims are being used as a basis to undermine parental authority around the country. From cases like this one, to custody disputes, to schools hiding children's asserted gender identity from parents,[6] this problem is widespread. Parental authority will continue to be undermined until it is made clear to lower courts that

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[6] Advancing American Freedom has argued in favor of parental rights in such cases in the First, Fourth, Eighth, and Eleventh Circuits.

the rights of parents do not end where transgender identification begins.

M.C. and J.C. are not the first parents in America to find themselves separated from their child because of their objections to his or her sudden change in gender self-identification. In Ohio in 2018, a juvenile court stripped parents of their legal right to make a life-altering medical decision for their daughter because they would not support her taking a course of hormones nor would they call her by an alternative name. *In re: JNS*, No. F17-334 X (Hamilton County, Ohio).[7] In that case, "the allegations of abuse and neglect were withdrawn," per an agreement between the parents and the state. *In re: JNS* at 1. Nonetheless, the court granted the daughter's grandparents, who supported her efforts at gender transition, "the right to determine what medical care shall be pursued at Children's Hospital and its Transgender Program." *In re: JNS* at 4.

Similarly, in divorce custody disputes, it has repeatedly been the case that the parent who opposed gender transition was disfavored while the parent seeking to encourage or advance the gender transition of the child in question was favored. For example, in 2019 in Illinois, Jeannette Cooper had custody of her twelve-year-old daughter six days and seven nights a

[7] A copy of the *In re: JNS* order has been republished at https://www.wcpo.com/news/local-news/hamilton-county/cincinnati/transgender-boy-from-hamilton-county-wins-right-to-transition-before-college (last accessed November 28, 2023).

week.[8] However, in July of 2019, Ms. Cooper's ex-husband would not return her daughter after a regular visit because her daughter identified as transgender and felt "unsafe" with her mother.[9] According to Ms. Cooper, as of August 2022, she had spent less than 10 hours with her daughter since July of 2019, and was only allowed to communicate with her daughter via mail.[10] All this despite efforts to comply with the government's demands like going to "support group sessions for parents of transgender-identifying children," and trying to schedule appointments with a court-ordered therapist, though that therapist had no openings and a full waitlist as of August 2022.[11]

The most dramatic of such cases occurred in California in 2022 in which a father named Ted Hudacko lost custody of his son because he was deemed insufficiently supportive of his son's gender identity.[12] The details of Mr. Hudacko's ordeal are shocking. Before denying Mr. Hudacko custody of his son, the judge initially presiding over the case, Judge Joni Hiramoto, asked him a series of patronizing questions.[13] These questions included whether Mr. Hudacko believed being transgender is a sin and

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[8] Kelsey Bolar, *Chicago Mother Loses Custody of Her Daughter-For Insisting that Her Daughter is a Girl*, Independent Women's Forum, https://www.iwf.org/identity-crisis-jeannette/.
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] Abigail Shrier, *Child Custody's Gender Gauntlet*, City Journal (Feb. 07, 2022) https://www.city-journal.org/article/child-custodys-gender-gauntlet.
[13] *Id*.

whether he preferred to think that his son was just going through a phase.[14] After this line of questioning, Judge Hiramoto granted Mr. Hudacko's ex-wife full legal custody of his son.[15] However, she granted Mr. Hudacko and Ms. Hudacko joint custody of their other son,[16] suggesting that the only reason he was not awarded partial custody the son at issue in the case was his lack of total support for that son's transgender self-identification. Judge Hiramoto was eventually replaced on the case because of her failure to disclose to the parties that she was a parent to, and vocal supporter of, a son who identifies as a woman.[17] As of July of 2023, Mr. Hudacko said he had not seen his son in three years.[18]

These stories represent just a few of the families broken by family courts around the country who have taken it upon themselves to deprive parents of their rights. The authority of parents is undermined in other areas as well. Most notably, according to Parents Defending Education, more than 18,000 schools educating more than 10,000,000 students have adopted policies that would prevent teachers and staff

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[14] *Id.*
[15] *Id*.
[16]*Id*.
[17] *Id*.
[18] Brandon Showalter, *Inside a Father's Fight to Save His Son in 'Trans Sanctuary State' of California*, Christian Post (July 17, 2023) https://www.christianpost.com/news/fathers-fight-to-save-son-in-trans-sanctuary-state-of-california.html.

from informing parents about their child's claimed gender identity.[19]

Custody cases revolving around the gender identity of a child often take years to resolve and thus the opportunity to review a future case might only come after parents and child have already been forcefully separated for a significant amount of time. Further, there is no indication that this pattern will let up. The distinction between permanent and temporary removal of custody is specious. Any parent knows that being forced to spend years separated from one's child with no knowledge of when it might end is no less painful because the word "temporary" is stamped on the order. Parental rights will continue to be violated until lower courts have a clear standard against which to measure state action.

C. This case is particularly viable for review because it lacks complicating features.

This case is particularly viable as a vehicle for review because it is uncomplicated by factors that would make it more difficult to decide. "Hard cases make bad law." *Northern Securities Co. v. United States*, 193 U.S. 197, 400 (1904) (Holmes, J., dissenting). This is not a hard case. All claims of abuse and neglect have been withdrawn. Thus, it provides the opportunity for this Court to announce a clear statement of legal principle without having to weigh other factors that might support continued separation.

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[19] *List of School District Transgender-Gender Nonconforming Student Policies*, Parents Defending Education (Mar. 07, 2023) (updated Oct. 24, 2023) https://defendinged.org/investigations/list-of-school-district-transgender-gender-nonconforming-student-policies/.

Parents should be able to raise their children without fear that their views on their child's gender identity claims will not be considered in determination of their parental rights.

This is an important issue because it is at the very heart of parental rights, which itself is at the heart of civilization. If parents can have their children removed because they do not have the right beliefs, then parents have no meaningful rights. Rather, they exist as temporary delegates of the state who act as parents at its pleasure.

III. States and Courts May Not Remove a Child From the Home Over Doubts About Transgender Theory.

As discussed below, parental doubt regarding a child's newfound discomfort with his or her gender is justified. States and courts that seek to hold parents responsible for abuse on the basis of such a novel and scientifically unsubstantiated set of propositions far overstep their constitutional bounds. Nor did the state courts in this case base their separation of A.C. from his parents on a claim of abuse. *In re A.C.*, No. 22A-JC-49, __ N.E.3d __, slip op. at 10.

Parents of adolescents today face an unprecedented threat to their authority over their own children. An increasing number of teachers, school administrators, child protective agencies, and courts see parents as a danger to their children when they attempt to exercise their best judgment for their children in ways that, just a matter of years ago, would have been not only unobjectionable but expected. The first offensive against parental rights is

a threat, sometimes tacit, sometimes explicit: if parents fail to act as though their adolescent child has complete self-awareness of both his current and future needs and desires, their child may commit suicide and, darkest of insult to greatest of injury, it will be their fault.[20] Where this emotional manipulation does not provide the desired results, state intervention is the next and potentially devastating plan B. In light of the evidence presented below, parental hesitation in the face of a child's sudden expression of gender-related distress is justified. The point of what follows is not that this Court should decide that the spike in adolescent transgender identity is, in fact, a product of social contagion. Rather, it is to show that those state officials who so aggressively claim the moral high ground in fact do not have a basis for replacing, with their own judgment, that of parents who know their children better than anyone else, and certainly better than representatives of the state.

In the past, identification as transgender was very rare.[21] Around the mid-2000s, however, there was a significant increase in those seeking treatment for gender dysphoria. To take one example, the number of patients treated at the Doernbecher Children's Hospital's gender clinic in Portland,

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[20] *See e.g.*, @HHS_ASH, X (Feb. 24, 2022 9:58 AM) https://twitter.com/HHS_ASH/status/1496862186664341505 ("Gender affirming care for transgender youth is essential and can be life-saving.").

[21] *See* Kaltiala-Heino, Riittakerttu et al., *Gender dysphoria in adolescence: current perspectives*, at 32 (Mar. 2, 2018) (available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5841333/pdf/ahmt-9-031.pdf).

Oregon, increased by 4,500 percent from 2013 to 2021.[22]

A more plausible explanation for this significant increase is that at least many adolescents, influenced by teachers, school administrators, friends or peers, and online influencers, are concluding that they are transgender as an explanation for, or solution to other difficulties they are facing, be they the normal emotional and social difficulties of adolescence or other phycological difficulties like depression or anxiety. As Dr. Lisa Littman concludes in an early study of what she termed rapid onset gender dysphoria ("ROGD"), the data,

> [S]uggests that not all [adolescents and young adults] presenting at these vulnerable ages are correct in their self-assessment of the cause of their symptoms; some may be employing a drive to transition as a maladaptive coping mechanism; and that careful evaluation is essential to protect patients from the clinical harms of overtreatment and undertreatment.[23]

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[22] Chad Terhune, Robin Respaut, Michael Conlin, *As more transgender children seek medical care, families confront many unknowns*, Reuters (Oct. 6, 2022) https://www.reuters.com/investigates/special-report/usa-transyouth-care/.

[23] Lisa Littman, *Parent reports of adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria*, PLoS One at 37 (Aug. 16, 2018) (available at https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0202330&type=printable).

Dr. Littman also notes, "[a]dolescent-onset gender dysphoria is sufficiently different from early-onset of gender dysphoria that persists or worsens at puberty."[24]

Despite the sudden increase in the numbers of those experiencing symptoms of gender dysphoria, many in the United States, including schools, courts, and professional organizations have adopted an approach to treating those with this condition known as "gender-affirmative care." This approach depends on the assumption that transgender identity is an innate personal characteristic, and that children and adolescents can know with confidence that they are transgender with no professional assessment.[25]

For many adolescents who begin to experience gender dysphoria for the first time, the progression of so-called "treatment" is from "social transition" (dressing as, and using the pronouns of, the opposite sex and using a different name) to chemical and potentially surgical transition. "Social transition," which is supposed to help a child feel more comfortable with him or herself, may in fact produce the opposite result. Social transition may well be iatrogenic, meaning it reinforces a psychological state that, on its

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[24] *Id*. at 39.

[25] As Dr. Megan Mooney said in an interview, "[I]t's believing children. That is the purest essence of gender-affirming care. When a child tells you who they are, you believe them." Katelyn Burns, '*When a Child Tells You Who They Are, You Believe Them': The Psychologist Taking on Texas' Anti-trans Policies*, The Guardian (Mar. 2, 2022) https://www.theguardian.com/world/2022/mar/02/megan-mooney-texas-psychologist-taking-on-anti-trans-policies.

own, would likely resolve.[26] According to Dr. Riittakerttu Kaltiala, "the top expert on pediatric gender medicine in Finland," "sees [social transition] as a powerful intervention in a young person's psychosocial development," that "can solidify what is otherwise likely to be a passing phase into a more permanent state or mind . . . and put the minor on the path to drugs and surgeries."[27] Such interventions can have permanent effects, such as medically unnecessary mastectomies for young women.

Parents have ample reason not only to doubt their child's sudden assertion of gender identity but also to doubt the reliability of medical professionals in this area given its politicization. Thus, parental concern about gender transition is not only reasonable; it is warranted. Yet parents who object to their child's sudden claims to be transgender face not merely disagreement but vindictive and vicious opposition from multiple directions. Their child, their child's schools, doctors and therapists, and, in some cases like the one at bar, State bureaucrats and courts, will accuse the parents of transphobia and of engaging in behavior that will drive their child to suicide. Faced with such charges, many parents may simply give in and hope for the best. Those with the audacity to stay the course may then face the State and the threat of

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[26] *See*, Leor Sapir, *Finland Takes Another Look at Youth Gender Medicine*, Tablet (Feb. 21 2023) https://www.tabletmag.com/sections/science/articles/finland-youth-gender-medicine.

[27] *Id*. *See also*, Ilya Shapiro, Leor Sapir, John Ketcham, *Correcting the Record on Social Transition*, City Journal (Mar. 23, 2023) https://www.city-journal.org/article/correcting-the-record-on-social-transition.

the removal of their child. Parents should be able, as the greatest experts on their own children, to make decisions about what is best for them, especially when the stakes are so high. These are complicated issues and parents have a right to plant their feet on the ground rather than allowing themselves to be swept along by whatever critical theory is asserted by the state.

CONCLUSION

The Court should grant M.C. and J.C.'s petition for certiorari and rule in their favor on the merits.

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