

Nos. 23-466, 23-477, 23-492

IN THE
Supreme Court of the United States

L.W., BY AND THROUGH HER PARENTS
AND NEXT FRIENDS, SAMANTHA WILLIAMS AND
BRIAN WILLIAMS, *et al.*,
Petitioners,
v.

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

(For Continuation of Caption, See Inside Cover)

ON PETITIONS FOR WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

**BRIEF OF FOREIGN NON-PROFIT
ORGANIZATIONS ADVOCATING FOR
THE RIGHTS OF TRANSGENDER PEOPLE
AS AMICI CURIAE IN SUPPORT OF PETITIONERS**

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UNITED STATES,

Petitioner,

v.

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

Respondents.

JANE DOE 1, *et al.*,

Petitioners,

v.

KENTUCKY, EX REL. DANIEL CAMERON,
ATTORNEY GENERAL OF KENTUCKY,

Respondent.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICI CURIAE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	3
I. TRANSGENDER ADOLESCENTS HAVE ACCESS TO APPROPRIATE GENDER- AFFIRMING HEALTHCARE IN SWEDEN, THE UNITED KINGDOM, FINLAND, AND NORWAY	3
A. Sweden.....	4
B. United Kingdom.....	6
C. Finland.....	10
D. Norway	12
II. GENDER-AFFIRMING HEALTHCARE IS AVAILABLE TO ADOLESCENTS IN OTHER DEVELOPED COUNTRIES	12
A. Australia.....	13
B. Germany	15
C. Mexico.....	16
D. New Zealand.....	16
E. Spain.....	18
CONCLUSION	20
APPENDIX: List of Amici Curiae.....	1a

TABLE OF AUTHORITIES**CASES**

	Page(s)
<i>Bell v. Tavistock & Portman NHS Foundation Trust</i> , [2021] EWCA 1363 (Civ)	9, 10
<i>Gillick v. West Norfolk & Wisbech Health Authority</i> , [1986] 1 AC 112 (HL)	9
<i>Re Imogen</i> (No. 6), [2020] FamCA 761 (Austl.)	14, 15
<i>Re J (An Infant): B & B v. Director-General of Social Welfare</i> , [1996] 2 NZLR 134 (N.Z.)	17
<i>Secretary, Department of Health & Community Services v. JWB & SMB (“Marion’s case”)</i> , (1992) 175 CLR 218 (Austl.).....	14

STATUTUTORY PROVISIONS

Care of Children Act 2004, Public Act 2004 No. 90 (N.Z.), https://legislation.govt.nz/act/public/2004/0090/latest/DLM317233.html	17
Ky. Rev. Stat. § 311.372.....	2
Spain Law 2/2016 (July 1, 2016) (Community of Madrid, Spain).....	19
Spain Law 4/2023, B.O.E. No. 51, art. 16 (Mar. 1, 2023) (Protection and Promotion of the Health of LGBTI People), https://www.boe.es/buscar/act.php?id=BOE-A-2023-5366&p=20230301&tn=1#a1-8	19
Spain Law 8/2016 (May 27, 2016) (Region of Murcia, Spain)	19
Tenn. Code Ann. § 68-33-101	2

TABLE OF AUTHORITIES—Continued

	Page
OTHER AUTHORITIES	
AusPATH, <i>Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents</i> (Nov. 2020), https://www.rch.org.au/uploadedFiles/Main/Content/adolescent-medicine/australian-standards-of-care-and-treatment-guidelines-for-trans-and-gender-diverse-children-and-adolescents.pdf	13, 14
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TABLE OF AUTHORITIES—Continued

	Page
FRA European Union Agency for Fundamental Rights, <i>Access to Sex Reassignment Surgery</i> , https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/access-sex-reassignment-surgery (visited Nov. 14, 2023).....	19
FRA European Union Agency for Fundamental Rights (Access to Transgender Hormone Therapy), https://fra.europa.eu/en/publications-and-resources/data-and-maps/minag?dataSource=MINAG_en_76078&media=png&width=740&topic=group16&question=MINAG_LGB04&plot=MAP&subset=NONE&subsetValue=NONE&answer=MINAG_LGB04&year=2017 (visited Nov. 14, 2023)	18
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Mahfouda, Simone, et al., <i>Puberty Suppression in Transgender Children and Adolescents</i> , 5 <i>Lancet Diabetes & Endocrinology</i> 816 (2017), https://www.sciencedirect.com/science/article/pii/S2213858717300992	14

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	Page
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NHS England, Gender Dysphoria – Treatment, https://www.nhs.uk/conditions/gender-dysphoria/treatment (visited Nov. 14, 2023).....	6
NHS England, <i>Interim Service Specification</i> (June 9, 2023), https://www.england.nhs.uk/wp-content/uploads/2023/06/Interim-service-specification-for-Specialist-Gender-Incongruence-Services-for-Children-and-Young-People.pdf	6

TABLE OF AUTHORITIES—Continued

	Page
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NICE, <i>Evidence Review: Gonadotrophin Releasing Hormone Analogues for Children and Adolescents with Gender Dysphoria</i> (Mar. 11, 2021), https://segm.org/sites/default/files/20210323_Evidence%2Breview_GnRH%2Banalogues_For%2Bupload_Final_download.pdf	7, 8
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TABLE OF AUTHORITIES—Continued

	Page
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INTEREST OF AMICI CURIAE¹

Amici curiae (1) Stonewall Equality Limited; (2) the Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights (“RFSL”); (3) RFSL Ungdom; (4) Transammans; (5) Seta ry / Seta rf / Seta Lgbtiq Rights in Finland; (6) the Norwegian Organization for Sexual and Gender Diversity; (7) the Australian Professional Association for Trans Health; (8) Bundesverband Trans* e.V.; (9) the Fundación Colectivo Hombres XX, AC; (10) the Professional Association for Transgender Health Aotearoa New Zealand; and (11) the Federación Estatal de Lesbianas, Gais, Trans, Bisexuales, Intersexuales y más (collectively, the “Amici Organizations”) are non-profit organizations dedicated in whole or in part to securing and protecting the rights of transgender people. The Amici Organizations respectfully submit this brief to assist the Court in understanding the availability of gender-affirming healthcare for adolescents in each of the Amici Organizations’ respective home countries, and to urge the Court to grant review of the Sixth Circuit’s decision.

A more detailed statement of interest for each of the Amici Organizations is included in the Appendix.

INTRODUCTION AND SUMMARY OF ARGUMENT

Earlier this year, state legislators in Kentucky and Tennessee enacted statutes prohibiting gender-affirming healthcare for adolescents (the “State Healthcare

¹ No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici curiae, their members, and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. No advance notice of intent to file this brief was required, because this brief is being filed at least 10 days prior to its due date.

Bans”). *See* Ky. Rev. Stat. § 311.372; Tenn. Code Ann. § 68-33-101. Federal district courts in both States preliminarily enjoined portions of each State Healthcare Ban from taking effect, finding a likelihood of success on the merits on the plaintiffs’ constitutional challenges and a risk of irreparable harm to transgender adolescents with gender dysphoria if this care is denied. By reversing those preliminary injunctions, the Sixth Circuit permitted enforcement of these likely unconstitutional statutes and revived that imminent risk of acute harm.

In defense of the State Healthcare Bans, Kentucky and Tennessee—as well as some of their amici—claimed in the lower courts that the legislation finds support in recent actions taken in certain European countries regarding the treatment of transgender adolescents. Specifically, they have pointed to some assessments of existing research conducted by certain European governmental and nongovernmental bodies, and to changes in practices adopted regarding the provision of care.

These reports and practices, however, neither amount to nor support a ban on gender-affirming treatment for transgender adolescents. And the assertions by Kentucky, Tennessee, and their amici about the approach that other developed countries are taking to the provision of gender-affirming healthcare to transgender adolescents are not correct—or, at a minimum, are exaggerated and misleading, and presented without vitally important context. In truth, the State Healthcare Bans are outliers when viewed against a global backdrop. In each of the countries that Kentucky, Tennessee, and their amici have referenced, care continues to be provided to adolescents who need it. The State Healthcare Bans, and the many similar laws recently enacted across the United States, are thus inconsistent with international practices.

The Amici Organizations submit this brief to ensure that the Court has the benefit of accurate information about the gender-affirming healthcare that is available to adolescents in the foreign countries that Kentucky, Tennessee, and their amici have referenced: Sweden, the United Kingdom, Finland, and Norway. This brief also provides information about the availability of gender-affirming healthcare to transgender adolescents in several other developed countries: Australia, Germany, Mexico, New Zealand, and Spain.

In all the countries surveyed below, adolescent patients—together with their physicians, and their parents or legal guardians—make decisions about whether gender-affirming healthcare is appropriate. And in all those countries, when medically appropriate, adolescent patients have access to treatment that is prohibited by the State Healthcare Bans. These foreign sovereigns leave these important decisions principally to patients, their families, and the medical community—not to lawmakers enacting blanket prohibitions on entire categories of medical treatments.

The Court should grant the petitions for writs of certiorari and reverse the Sixth Circuit’s judgment.

ARGUMENT

I. TRANSGENDER ADOLESCENTS HAVE ACCESS TO APPROPRIATE GENDER-AFFIRMING HEALTHCARE IN SWEDEN, THE UNITED KINGDOM, FINLAND, AND NORWAY

In the courts below, Kentucky, Tennessee, and certain other states appearing as amici curiae (the “Amici States”) cited materials referencing Sweden, the United Kingdom, Finland, and Norway in support of the State Healthcare Bans. *See* Tennessee C.A. Br. 3-4, 15 (No. 23-5600, Doc. 64); Kentucky C.A. Br. 5-6 (No. 23-5609,

Doc. 38); Brief of Alabama, Arkansas, and 19 Other States as Amici Curiae Supporting Appellants and Reversal (“Amici States C.A. Br.”) 20-24 (No. 23-5600, Doc. 63). The court of appeals then alluded to these materials and assertions when it invoked the “diverse ... practices of other nations.” No. 23-466 Pet. App. 30a.

Although some assessments of the existing research performed in these European countries have recommended certain changes to how medical care is delivered to transgender adolescents, the governments in those countries—unlike Kentucky’s and Tennessee’s—have not prohibited clinicians from treating their patients. Instead, in all four of those countries—and in many other developed nations around the world, *see infra* Part II—transgender adolescents have access (when needed) to appropriate gender-affirming healthcare, including care that the State Healthcare Bans prohibit.

A. Sweden

In the court of appeals, Kentucky, Tennessee, and the Amici States did not accurately describe the state of Swedish healthcare for transgender adolescents. For example, Tennessee cited a literature review released by the Swedish Agency for Health Technology Assessment and Assessment of Social Services (“SBU”) and policy guidance from the Swedish National Board of Health and Welfare as purported evidence that Sweden no longer permits gender-affirming healthcare. Tennessee C.A. Br. 3-4. But gender-affirming healthcare is available to adolescents on an individual basis in Sweden, and the Swedish government has not inserted itself into its citizens’ medical decision-making, as Kentucky and Tennessee have done by imposing prohibitions on care through the State Healthcare Bans. Far from imposing a “ban” on gender-affirming healthcare for

adolescents, *id.* at 4, Sweden and its national health agency have simply updated the agency’s non-binding medical recommendations. Sweden continues to permit individual patients to receive appropriate gender-affirming healthcare when a physician considers that course of treatment appropriate.

In Sweden, access to healthcare is governed by the Health and Medical Services Act. Under the framework of that law, medical treatment is valid so long as it comprises treatment that can relieve or alleviate pain or illness. Gender-affirming healthcare, like all medical practice in Sweden, needs to be performed within the framework of the law, based on medical evidence and well-known practice. Sweden also adheres to the United Nations Convention of the Rights of the Child, which recognizes a child’s right to have a say in their medical treatment and that this right increases with age.

For over twenty years, adolescent patients in Sweden have had access to gender-affirming healthcare. The Swedish National Board of Health and Welfare promulgates national guidelines to support clinicians in making decisions concerning the healthcare needs of their patients. Since 2015, the guidelines have addressed hormone treatment for gender dysphoria. And although those guidelines were updated in 2022—to advise that hormone treatment should be “administered in exceptional cases” rather than at “a group level”—the guidelines still permit the use of puberty blockers and gender-affirming hormones on a case-by-case basis, and they emphasize the importance of young people with gender dysphoria continuing to receive care within the healthcare system.

B. United Kingdom

Kentucky, Tennessee, and the Amici States also presented the court of appeals with an incorrect and incomplete picture of transgender adolescents' access to gender-affirming healthcare in the United Kingdom, asserting that the United Kingdom has "banned these treatments outside controlled research settings." Tennessee C.A. Br. 15; *see also* Amici States C.A. Br. 21.

First, these claims ignored that the cited policies apply only to the United Kingdom's publicly funded National Health Service (the "NHS").² There is no ban on gender-affirming healthcare for adolescents in the United Kingdom; in fact, the very policies cited contemplate adolescents coming into the NHS's care after having already received puberty blockers and/or hormone therapy from a private physician.³ The NHS's webpage of information on Treatment of Gender Dysphoria includes information on hormone therapy for adolescents.⁴

Second, Kentucky, Tennessee, and the Amici States have sought to portray gender-affirming care as "experimental," *e.g.*, Tennessee C.A. Br. 44, going so far as to accuse European nations of treating their "children as guinea pigs," Amici States C.A. Br. 24. But the fact that adolescents, to access free hormone therapy from the NHS, will be enrolled in "formal research protocol[s]"

² NHS England, *Interim Service Specification* (June 9, 2023), <https://www.england.nhs.uk/wp-content/uploads/2023/06/Interim-service-specification-for-Specialist-Gender-Incongruence-Services-for-Children-and-Young-People.pdf>.

³ *Id.* at 16-18.

⁴ NHS England, Gender Dysphoria – Treatment, <https://www.nhs.uk/conditions/gender-dysphoria/treatment> (visited Nov. 14, 2023).

does not indicate that the treatment is “experimental,” nor does it render the treatment’s benefits any less meritorious. *Id.* at 22, 24. It shows only that the United Kingdom is doing precisely what the respondent States and their amici purport to believe should occur: developing more data to drive evidence-based policies.⁵

The Amici States also misconstrue the review by the U.K. National Institute for Health and Care Excellence (“NICE”), from which they quote selectively. Amici States C.A. Br. 21-22. Although NICE concluded that the evidence of the effectiveness of treatment with puberty blockers was of “very low certainty” under the GRADE rating system,⁶ the report recommended that gender dysphoria should be treated with “management plans [that] are tailored to the needs of the individual.”⁷ According to NICE, such treatment plans may include “psychological support and exploration and, for some individuals, the use of GnRH analogues [i.e., puberty blockers] in adolescence to suppress puberty; this may

⁵ See generally NHS Standard Contract for Gender Identity Service for Children and Adolescents (Dec. 30, 2019), <https://www.england.nhs.uk/wp-content/uploads/2017/04/gender-development-service-children-adolescents.pdf>, as amended, Amendments to Service Specification for Gender Identity Development Service for Children and Adolescents (Oct. 6, 2021), <http://qna.files.parliament.uk/qna-attachments/1258355/original/HL11064-Amendment-to-Gender-Identity-Development-Service-Specification-for-Children-and-Adolescents.pdf>.

⁶ NICE, *Evidence Review: Gonadotrophin Releasing Hormone Analogues for Children and Adolescents with Gender Dysphoria* 4-6 (Mar. 11, 2021), https://segm.org/sites/default/files/20210323_Evidence%2Breview_GnRH%2Banalogues_For%2Bupload_Final_download.pdf.

⁷ *Id.* at 3.

be followed later with gender-affirming hormones of the desired sex.”⁸

Moreover, the NHS’s recent Interim Report makes clear that gender-affirming healthcare should be available to adolescents in the United Kingdom when appropriate. To be sure, the Interim Report urges caution, and states that “clinical services must be run as safely and effectively as possible, within the constraints of current knowledge,” and that “treatment options must be weighed carefully.”⁹ Unlike Kentucky and Tennessee, however, the NHS’s Interim Report acknowledges that “treatment decisions must be made in partnership between the clinicians and the children, young people and their families and carers, based on our current understanding about outcomes.”¹⁰

The Interim Report does not advocate for a ban on gender-affirming healthcare services for transgender adolescents. To the contrary, it calls for the immediate expansion and regionalization of services, so that patients under eighteen have access to a better quality of care closer to home, and with reduced waiting time.¹¹

As to puberty blockers in particular, the Interim Report again does not recommend a ban, but instead observes that it is especially important for an adolescent

⁸ *Id.*

⁹ The Cass Review, *The Independent Review of Gender Identity Services for Young People: Interim Report* 68, NHS (Feb. 2022), <https://cass.independent-review.uk/publications/interim-report> (select “Download the Interim report”).

¹⁰ *Id.*

¹¹ *Id.* at 69-72.

patient’s treating clinician to be able to demonstrate informed consent.¹²

This point about informed consent—which Kentucky, Tennessee, and the Amici States do not meaningfully address—is critical. In the United Kingdom, unlike in many U.S. jurisdictions, minors can validly consent to a medical procedure, provided that they have so-called *Gillick* competence. See *Gillick v. West Norfolk & Wisbech Health Auth.*, [1986] 1 AC 112 (HL). Under *Gillick*, a minor’s “capacity to make his or her own decision depends upon the minor having sufficient understanding and intelligence to make the decision,” without regard to any “judicially fixed age limit.” *Id.* ¶ 188B. It is not the role of the court to intercede into a clinician’s authority in determining whether to recommend treatment—or the decision of a competent minor in determining whether to undergo such treatment. See *id.*

Applying these principles, the Court of Appeal for England and Wales has established that an adolescent’s ability to consent to gender-affirming healthcare—like other healthcare—is a matter for adolescents and their clinicians and parents or legal guardians, not for the government. *Bell v. Tavistock & Portman NHS Found. Tr.*, [2021] EWCA 1363 (Civ), ¶¶ 86-87. In so holding, the Court of Appeal roundly rejected a trial court’s conclusion in that case that adolescents under the age of sixteen were generally incapable of providing such consent and that judicial involvement in the medical decision-making process was therefore needed. See *id.* ¶¶ 91-94. The Court of Appeal acknowledged that the provision of gender-affirming healthcare is a complex topic, noting that clinicians should take “great care” before

¹² *Id.* at 72.

recommending gender-affirming treatment to an adolescent, *id.* ¶ 92, but concluded that, as far as a minor’s *Gillick* competence to consent to such care is concerned, “[n]othing about the nature or implications of the treatment with puberty blockers allows for a real distinction to be made” between that and any other medical treatment, *id.* ¶ 76. In the Court of Appeal’s judgment, “the [trial] court was not in a position to generalise about the capability of persons of different ages to understand what is necessary for them to be competent to consent to the administration of puberty blockers.” *Id.* ¶ 85. Likewise, Kentucky, Tennessee, and the Amici States are in no such position.

C. Finland

Tennessee and the Amici States cite to recommendations promulgated by the Council for Choices in Health Care in Finland (“COHERE Finland”) in support of the State Healthcare Bans. *See* Tennessee C.A. Br. 3, 15; Amici States C.A. Br. 23. However, Tennessee seeks to do something Finland has never done—ban treatment—and Tennessee and its Amici States misconstrue the contours of the COHERE Finland recommendations they cite.

COHERE Finland is a permanent body, appointed by the Government of Finland, that works in conjunction with Finland’s Ministry of Social Affairs and Health.¹³ In 2011, Finland created an avenue for adolescents to seek treatment for trauma caused by gender dysphoria.

¹³ *See* COHERE Finland, *Background Memorandum and Recommendations*, https://palveluvalikoima.fi/documents/1237350/22895008/Valmistelumuistio_sukupuoli-identiteetin+variaatiot.pdf/991c7413-3bd5-3e9d-52c4-24c4e2a7a9e5/Valmistelumuistio_sukupuoli-identiteetin+variaatiot.pdf (visited Nov. 14, 2023).

Although adolescents cannot access surgical treatment for gender dysphoria until age eighteen, they can begin the diagnostic process at age thirteen.¹⁴ COHERE Finland's recommendations recognize a treatment protocol for transgender adolescents as part of the Finnish healthcare system. Patients whose puberty has not started and who experience long term or severe gender dysphoria-related anxiety can be sent for consultation at the university hospitals in Helsinki or Tampere.¹⁵ There, after conducting diagnostics to confirm medical necessity with no contraindications, clinicians can treat a patient with puberty blockers upon the onset of puberty.¹⁶ It is also possible to access medication to block menstruation.¹⁷

COHERE Finland's recommendations also state that an adolescent who has already begun puberty can be referred to a university hospital for gender-affirming treatment if the patient's gender identity variation and related dysphoria appear stable over the long term.¹⁸ Gender-affirming hormonal interventions can be prescribed for patients commencing at age sixteen, absent contraindications, if the patient's gender dysphoria is considered permanent and severe and the patient has the capacity to understand the impact of the non-

¹⁴ *See id.* at 16.

¹⁵ *Id.* at 7.

¹⁶ *Id.* at 14, 17.

¹⁷ *Id.* at 16.

¹⁸ *Id.* at 15.

reversible aspects of the treatment and the pros and cons of hormonal treatment.¹⁹

D. Norway

In Norway, both puberty blockers and hormone therapy are available to adolescent patients, although surgical treatment is generally not available before the age of majority. Access to gender-affirming healthcare, including hormone therapy and mental health support, for adolescent patients is defined in the National Guidelines on the Treatment of Gender Incongruence, promulgated by the Norwegian Directorate of Health. Puberty blockers are administered to patients based on their pubertal development stage. Any patient over the age of sixteen may access puberty blockers and hormone therapy upon prescription by a clinician; parental consent is not required.

For adolescents under sixteen, puberty blockers are available with parental consent on a case-by-case basis after an evaluation by medical experts, either through the clinician specialist team at Oslo University Hospital or via a health service organized under the Municipality of Oslo which specializes in services for gender non-confirming and LGBTQI youth.

II. GENDER-AFFIRMING HEALTHCARE IS AVAILABLE TO ADOLESCENTS IN OTHER DEVELOPED COUNTRIES

A review of the status of transgender adolescents' access to gender-affirming healthcare in other countries

¹⁹ See COHERE Finland, *Recommendations* 9, https://palvelivalikoima.fi/documents/1237350/22895008/Alaik%C3%A4isetsuositus.pdf/c987a74c-dfac-d82f-2142-684f8ddead64/Alaik%C3%A4iset_suositus.pdf?t=1592317701000 (visited Nov. 14, 2023).

reveals a common thread.²⁰ With appropriate consultation and diagnoses and properly informed consent, transgender adolescents can access various forms of gender-affirming care, including treatment that the State Healthcare Bans prohibit.

A. Australia

The Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents (the “ASOCT Guidelines”), developed with available evidence and supported by AusPATH, recommend that, following a DSM-V diagnosis of gender dysphoria and comprehensive, developmentally appropriate medical and psychosocial assessment, clinicians prescribe puberty blockers, hormone treatment, and psychological support as appropriate where the patient agrees that hormone therapy or puberty blockers is in their best interest.²¹ The ASOCT Guidelines rely on empirical evidence and clinical consensus and were developed in consultation with professionals working with

²⁰ Absent a French amicus organization, this brief does not address the situation in France. The States’ own expert, however, acknowledged in the district court proceedings that “medical authorities in France have not issued any actual restriction” prohibiting clinicians from providing gender-affirming healthcare. Cantor Decl. ¶ 29, Dist. ECF No. 113-3, PageID#1108. On the contrary, France’s Académie Nationale de Médecine contemplates that clinicians may provide such treatment, provided that they exercise “great medical caution” and explore alternative therapies as well. *Id.*

²¹ See AusPATH, *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents* 23-24 (Nov. 2020), <https://www.rch.org.au/uploadedFiles/Main/Content/adolescent-medicine/australian-standards-of-care-and-treatment-guidelines-for-trans-and-gender-diverse-children-and-adolescents.pdf>.

transgender and gender diverse communities across Australia and New Zealand.²²

In Australia, a parent generally has power to consent to medical treatment, but the parental power to consent diminishes as the patient’s capacities and maturities grow. See *Secretary, Dep’t of Health & Cmty. Servs. v. JWB & SMB (“Marion’s case”)*, (1992) 175 CLR 218 (Austl.). The Australian High Court has adopted the *Gillick* competence framework, see *supra* p. 9, holding that a minor is capable of giving informed consent, and a parent is no longer capable of consenting on the minor’s behalf, when the minor achieves *Gillick* competence—that is, a sufficient understanding and intelligence to enable them to understand fully what treatment is proposed. See *Marion’s case*, 175 CLR at 237 (Mason CJ, Dawson, Toohey and Gaudron JJ) (citing *Gillick*).

Legal access to gender-affirming healthcare for patients under eighteen was addressed in *Re Imogen* (No. 6), [2020] FamCA 761 (Austl.), in which the Australian Family Court held that adolescent patients can legally receive hormone treatment if there is no dispute between parents (or those with parental responsibility), the medical practitioner, and the patient with regard to *Gillick* competence, the diagnosis of gender dysphoria, or the proposed treatment for alleviating the suffering

²² See *id.* at 2. Australia is also home to clinical research affirming the medical benefit of puberty blockers for transgender youth. For example, one published Australian study found that the available evidence, although limited, points to the safety of puberty blockers and the psychological benefits of suppressing puberty before the possible future commencement of hormone therapy. See Mahfouda et al., *Puberty Suppression in Transgender Children and Adolescents*, 5 *Lancet Diabetes & Endocrinology* 816, 819-820 (2017), <https://www.sciencedirect.com/science/article/pii/S2213858717300992>.

caused by the gender dysphoria. *See id.* ¶ 35. Any such dispute requires an application to the Family Court. *Id.* ¶¶ 35, 38. But where the adolescent, their parents, and their clinician are all in agreement, care is available, and there are no governmental barriers.

B. Germany

Gender-affirming healthcare for transgender adolescents under the age of eighteen is available in various forms throughout Germany. German medical associations are developing guidelines for gender-affirming healthcare relating to teenage transgender patients.

In February 2020, the German Ethics Council addressed healthcare for transgender teenagers.²³ The Council acknowledged the tension created by the potentially irreversible consequences of either administering treatment or withholding treatment, but its statement declared that it is not an option to limit access to gender-affirming healthcare for adolescents who understand the consequences of their decision to undergo treatment.²⁴ The Council noted that where “the child is sufficiently capable of insight and judgement to understand the scope and significance of the planned treatment, to form his own judgement and to decide accordingly, his will must be decisively taken into account.”²⁵

²³ Press Release, *German Ethics Council Publishes Ad Hoc Recommendation on Trans Identity in Children and Adolescents* (Feb. 20, 2020), <https://www.ethikrat.org/mitteilungen/mitteilungen/2020/deutscher-ethikrat-veroeffentlicht-ad-hoc-empfehlung-zu-trans-identitaet-bei-kindern-und-jugendlichen> (select “English” translation).

²⁴ *Id.*

²⁵ *Id.*

C. Mexico

Transgender healthcare in Mexico is guided by the Protocol for Access without Discrimination to Health Care Services for Lesbian, Gay, Bisexual, Transsexual, Transvestite, Transgender, and Intersex Persons and Specific Care Guidelines.²⁶ The Protocol is observed in healthcare facilities administered by the Mexican federal government. The Protocol acknowledges that the process of defining one's sexual orientation, gender identity and/or expression may occur at early stages.²⁷ Protocol therefore advises that medical facilities start from a presumption of providing medical care where needed, and it recommends that clinicians consider the use of puberty blockers and hormone treatment when appropriate.²⁸ In addition to the Protocol, various Mexican states have reformed their civil codes to recognize the right to gender-affirming healthcare for transgender patients under eighteen.

D. New Zealand

In New Zealand, the Care of Children Act 2004 empowers adolescents aged sixteen and older to consent to

²⁶ Government of Mexico, Secretary of Health, *Protocolo para el Acceso sin Discriminación a la Prestación de Servicios de Atención Médica de las Personas Lésbico, Gay, Bisexual, Transexual, Travesti, Transgénero e Intersexual y Guías de Atención Específicas* (2020), https://www.gob.mx/cms/uploads/attachment/file/558167/Versi_n_15_DE_JUNIO_2020_Protocolo_Comunidad_LGBTI_DT_Versi_n_V_20.pdf.

²⁷ *Id.* at 35.

²⁸ *Id.* at 36.

medical care.²⁹ With respect to medical care generally, including gender-affirming care for transgender patients, adolescents under sixteen may consent to treatment if they meet the *Gillick* standard, *see supra* p. 9, which the New Zealand Court of Appeal has cited with approval, *see Re J (An Infant): B & B v. Director-General of Social Welfare*, [1996] 2 NZLR 134 (N.Z.). Family support is, however, considered an important aspect of gender-affirming care for all adolescents in New Zealand, with families involved in care wherever possible.

New Zealand has provided gender-affirming healthcare to adolescents for over sixteen years. Clinicians in New Zealand also utilize the ASOCT Guidelines—developed, as noted above, with the help of New Zealand adolescent-health clinicians. *See supra* pp. 13-14. New Zealand’s current national guidelines for gender-affirming healthcare for gender diverse and transgender patients were published in 2018; they allow for puberty blockers to be prescribed depending on the stage of puberty, and also allow for hormone treatment.³⁰

In September 2022, New Zealand’s Ministry of Health altered certain language on its website relating to puberty blockers.³¹ The update “recognised that

²⁹ Care of Children Act 2004, Public Act 2004 No. 90, <https://legislation.govt.nz/act/public/2004/0090/latest/DLM317233.html>.

³⁰ Oliphant et al., *Guidelines for Gender Affirming Healthcare for Gender Diverse and Transgender Children, Young People and Adults in Aotearoa New Zealand* 29-31, Transgender Health Research Lab, University of Waikato (Oct. 2018), <https://researchcommons.waikato.ac.nz/bitstream/handle/10289/12160/Guidelines%20for%20Gender%20Affirming%20Health%20low%20res.pdf>.

³¹ *See* New Zealand Ministry of Health, *Response to Your Request for Official Information* (Apr. 27, 2023), <https://>

overseas jurisdictions, including [the United Kingdom], Norway and Sweden, were reviewing the use of puberty blockers in their health systems particularly in younger people,” and that “any medical intervention carries a balance of benefit and risk that needs to be considered in context by the person in partnership with their health professional.”³² But the Ministry of Health has since re-affirmed that “[i]t is important that health services meet the needs of all New Zealanders, with inclusiveness and dignity for all”³³—and that the Ministry “has not advised any change to access to services for young people” in New Zealand.³⁴

E. Spain

In Spain, patients over the age of sixteen can validly consent to medical care, including gender-affirming healthcare.³⁵ Access to gender-affirming healthcare is generally available throughout the country for transgender patients under the age of sixteen, and

www.health.govt.nz/system/files/documents/information-release/h2023022566_response_letter.pdf.

³² *Id.*

³³ *Id.*

³⁴ See New Zealand Ministry of Health, *Response to Your Request for Official Information* (June 1, 2023), https://www.health.govt.nz/system/files/documents/information-release/h2023024782_response_-_proactive_release.pdf.

³⁵ See FRA European Union Agency for Fundamental Rights (Access to Transgender Hormone Therapy), https://fra.europa.eu/en/publications-and-resources/data-and-maps/minag?dataSource=MINAG_en_76078&media=png&width=740&topic=group16&question=MINAG_LGB04&plot=MAP&subset=NONE&subsetValue=NONE&answer=MINAG_LGB04&year=2017 (visited Nov. 14, 2023).

specific laws governing availability vary among the seventeen autonomous regions in the country. For example, in the Community of Madrid, adolescent patients have the right to treatment by pediatric physicians and to receive puberty blockers and hormone therapy upon the onset of puberty.³⁶ In the Region of Murcia, patients over twelve can access gender-affirming healthcare with consent of the minor’s legal representative.³⁷ Throughout Spain, gender-reassignment surgery is prohibited before the age of majority.³⁸ Moreover, new national legislation also requires the government to develop trainings for healthcare providers on LGBTQ issues.³⁹

³⁶ Spain Law 2/2016 (July 1, 2016) (Community of Madrid, Spain).

³⁷ Spain Law 8/2016 (May 27, 2016) (Region of Murcia, Spain).

³⁸ FRA European Union Agency for Fundamental Rights, *Access to Sex Reassignment Surgery*, <https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu/access-sex-reassignment-surgery> (visited Nov. 14, 2023).

³⁹ Spain Law 4/2023, B.O.E. No. 51, art. 16 (Mar. 1, 2023) (Protection and Promotion of the Health of LGBTI People), <https://www.boe.es/buscar/act.php?id=BOE-A-2023-5366&p=20230301&tn=1#a1-8> (select “English” translation).

CONCLUSION

The Court should grant the petitions for writs of certiorari and reverse the Sixth Circuit's judgment.

Respectfully submitted.

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APPENDIX

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Stonewall Equality Limited (“Stonewall”) has fought since 1989 to create transformative change in the lives of LGBTQ+ people across communities in the United Kingdom and around the world. Stonewall seeks to drive positive change in public attitudes and public policy, and to ensure that LGBTQ+ people can thrive throughout their lives by building deep, sustained change programs with the institutions that have the biggest impact on them. Stonewall’s work includes supporting legal efforts to ensure that trans young people have access to gender-affirming medical treatment.

The Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights (“RFSL”) is a non-profit community organization that has been advocating for the rights of LGBTQIA persons in Sweden and internationally since its founding in 1950. RFSL engages support and educational services, political advocacy, lobbying initiatives, and community space in furtherance of its mission supporting LGBTQIA persons. Since 2001, RFSL has formally included transgender people within the communities it serves. RFSL’s key initiatives today include transgender rights advocacy, asylum rights, and family law.

RFSL Ungdom is a children’s and youth organization affiliated with RFSL. The organization works to ensure that all young people in Sweden, regardless of sexual orientation, gender identity, gender expression or gender characteristics, have their human rights, as described in the U.N. Declaration of Human Rights and in the European Convention on Human Rights, fulfilled.

Transammans, a Swedish non-profit organization for trans people and relatives, works across all of Sweden to influence, support and educate. Transammans is

a strong voice in the public debate and an important driving force for creating better living conditions for trans people of all ages and people with thoughts about their gender identity.

Seta ry / Seta rf / Seta Lgbtiq Rights in Finland is a non-profit organization that has been advocating for the rights of LGBTI persons in Finland since its founding in 1974. Seta ry / Seta rf / Seta Lgbtiq Rights in Finland aims for an equal society and individual welfare that includes everyone, regardless of sexual orientation, gender identity and gender expression.

The Norwegian Organization for Sexual and Gender Diversity (“FRI”) is a membership-based nongovernmental organization with local chapters throughout Norway. FRI’s vision is a society free from harassment and discrimination based on sexual orientation, gender identity, and/or gender expression. FRI’s key activities include national-level advocacy for the rights of LGBTI people, building competency of government institutions and employees within different sectors (education, health, social welfare, justice) to include LGBTI people in a non-discriminatory way, and engaging in international solidarity by partnering with LGBTI organizations in Europe, Asia and Africa. As a membership and community-based organization, FRI has firsthand experience of the impact that gender-affirming healthcare—or the lack thereof—has on transgender people, and has deep concern that the State Healthcare Bans, by restricting access to gender-affirming care, will be detrimental to the lives of transgender people in Kentucky and Tennessee.

The Australian Professional Association for Trans Health (“AusPATH”) is Australia’s principal body representing, supporting, and connecting those working to

strengthen the health, rights, and wellbeing of all transgender people—binary and non-binary. The AusPATH membership comprises over 350 experienced professionals working across Australia. AusPATH firmly believes that all young people who desire puberty suppression should be able to access such care in a timely manner under appropriate supervision and assessment by a multidisciplinary team. AusPATH advocates for access to timely, culturally safe, and person-centered gender-affirming healthcare as critical to protect transgender children, adolescents, and adults from negative health and well-being implications.

Bundesverband Trans* e.V. (“BVT*”) is the largest transgender association in Germany. The association’s common endeavor is the commitment to gender diversity and self-determination. BVT* is committed to human rights and to the respect, recognition, equality, social participation and health of transgender and non-binary people.

Fundación Colectivo Hombres XX, AC (the “Fundación”) is a non-profit community LGBTI organization with a particular focus on men in Mexico who were assigned a female gender at birth. The Fundación has operated since 2012 as a collective and since 2018 as a Civil Association and has extensive lobbying experience. The Fundación participated in the drafting of the Protocol for Access without Discrimination to Health Care Services for Lesbian, Gay, Bisexual, Transsexual, Transvestite, Transgender and Intersex Persons and Specific Care Guidelines, which provides guidance for the administration of healthcare to transgender individuals in Mexico.

The Professional Association for Transgender Health Aotearoa New Zealand (“PATHA NZ”) is an

incorporated society established in May 2019 to be an interdisciplinary professional organization working to promote the health, wellbeing, and rights of transgender people. PATHA NZ comprises over 200 members who work professionally for transgender health in clinical, academic, community, legal, and other settings. As a society committed to supporting gender-affirming care, PATHA NZ's role includes advocacy both within New Zealand and internationally. PATHA NZ views gender-affirming care for children and adolescents as an essential part of healthcare and views the denial of access to care until the age of eighteen in any country or state as a violation of human rights.

The Federación Estatal de Lesbianas, Gais, Trans, Bisexuales, Intersexuales y más (“FELGTBI+”) is the largest LGTBI+ organization in Spain and one of the largest in Europe, with fifty-seven nongovernmental organizations and associations collaborating as member entities. It is one of only eight LGBTI+ organizations in the world that has consultative status with the United Nations. With thirty years of history, FELGTBI+ is one of the reference organizations in the promotion and defense of rights for LGBTI+ people. FELGTBI+'s mission is to defend and promote human rights and equality for lesbian, gay, transgender, bisexual, and intersex people and their families in all areas of life (social, health, work, educational, cultural, etc.). In addition, FELGTBI+ works to strengthen and unify the LGBTI+ associative movement in the Spanish territory from a networking approach and a secular, feminist, non-partisan, and non-unionist perspective.