No. 23-477

In the Supreme Court of the United States

UNITED STATES,

Petitioner,

v.

JONATHAN SKRMETTI, ATTORNEY GENERAL AND REPORTER FOR TENNESSEE, ET AL.,

Respondents.

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

BRIEF OF *AMICUS CURIAE* ABIGAIL MARTINEZ IN SUPPORT OF RESPONDENTS

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QUESTIONS PRESENTED

I. Whether Tennessee Senate Bill 1 (SB1), which prohibits all medical treatment intended to allow "a minor to identify with, or live as, a purported identity inconsistent with a minor's sex" or to treat "purported discomfort or distress from a discordance between the minor's sex and asserted identity," Tenn. Code Ann. § 68-33-103(a)(1), violates the Equal Protection Clause of the Fourteenth Amendment.

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INTEREST OF AMICI CURIAE[1]

Amicus Abigail Martinez is a bereaved mother who lost her daughter Yaeli Galdamez to suicide in September 2019. Ms. Martinez is a devout Christian who immigrated from El Salvador as a teen and raised four children in southern California. She shares her family's tragic story in hopes that other families will not experience similar heartache from policies that exclude parents and pressure vulnerable minors to pursue gender transitions, often at the expense of their mental and physical health.

Yaeli (right) and her mother Abigail Martinez. Photos courtesy of Abigail Martinez.

Ms. Martinez urges this Court to consider the consequences of striking down a bill that is meant to protect minors from making life-altering and irreversible decisions.

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[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Contrary to petitioners' assertions, the Sixth Circuit is correct that the Constitution does not guarantee a parent's right to access reasonably banned medical treatment for their children. Such an act is not objectively rooted in history and tradition and therefore is not guaranteed under this Court's substantive due process jurisprudence.

But parental rights are closely linked to free exercise rights and are especially strong for religious families seeking to teach their faith to the next generation. For nearly 100 years, the Court has reaffirmed the "enduring American tradition" of "the rights of parents to direct 'the religious upbringing' of their children." *Espinoza* v. *Montana Dep't of Revenue*, 140 S. Ct. 2246, 2261 (2020) (quoting *Yoder*, 406 U.S. at 213-214); see also *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2065-2066 (2020) (describing how many religious traditions entrust parents with primary responsibility for imparting their faith to their children without government interference). Despite this undeniable right, some states have taken custody of children whose parents cannot affirm gender transitions because of their sincere religious beliefs, violating both their parental rights and their free exercise rights.

SB1 furthers the protections of the First and Fourteenth Amendments in securing parental rights for religious parents. It helps to ensure that parents in Tennessee will not be forced to choose between keeping their children and raising them according to their religious beliefs regarding gender and sexuality.

ARGUMENT

I. Ms. Martinez's tragic story illustrates the importance of laws that protect minors.

In 2015, Abigail Martinez's teenage daughter Yaeli, a student in California's Arcadia Unified School District, began questioning her sexuality. She was bullied in middle school and struggled with depression, but this questioning was new. School staff told Yaeli to clandestinely join the LGBTQ club, where she was persuaded that the only way to be happy was to change her gender. An older transgender student, also a female transitioning to male, convinced Yaeli that her depression was because she was transgender. That same year, Arcadia Unified School District adopted a policy requiring staff to use preferred names and pronouns for transgender students without parental notification or permission, or any "medical or mental health diagnosis or treatment threshold." [2] The district directed staff to keep students' actual or perceived gender identity "private" from parents.

Compounding the social pressure, Yaeli's school psychologist encouraged her to pursue a gender transition instead of treating her depression, which was now severe.

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[2] "Transgender Students – Ensuring Equity and Nondiscrimination," Arcadia Unified School District Policy Bulletin (Apr. 16, 2015), https://1.cdn.edl.io/93AmzJRTCq6suoldNojjDs08MNuS39NaH7QaZaDgRKhXY2pU.pdf

Ms. Martinez tried to advocate for her daughter's mental health and recalls, "the school staff should have helped me, but they became my worst enemy." When Yaeli was hospitalized after attempting suicide, her former principal came to the hospital and pressured Ms. Martinez to call her daughter "Andrew," blaming Ms. Martinez and scornfully asking, "Is it too hard for you to call your child a new name?"[3]

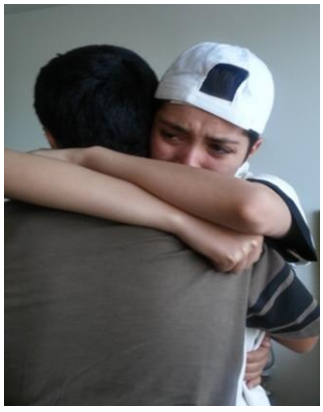
At age 16, the parent of Yaeli's transgender classmate took Yaeli from her mother's home and hid her for two days. The school psychologist pushing Yaeli's gender transition told her to accuse her mother of abuse at the police station, which would allow the state to pay for Yaeli's gender transition without parental consent. Based on this brainwashing, instead of sending Yaeli home or allowing her to talk to her mom, the California Department of Child and Family Services (DCFS) placed her in a group home. DCFS simultaneously placed Ms. Martinez on a child

[3] "The 'transition or die' narrative, whereby parents are told that their only choice is between a 'live trans daughter or a dead son' (or vice-versa), is both factually inaccurate and ethically fraught. Disseminating such alarmist messages hurts the majority of trans-identified youth who are not at risk for suicide. It also hurts the minority who are at risk, and who, as a result of such misinformation, may forgo evidence-based suicide prevention intervention in the false hopes that transition will prevent suicide." Stephen B. Levine, E. Abbruzzese & Julia W. Mason (2022) Reconsidering Informed Consent for Trans-Identified Children, Adolescents, and Young Adults, Journal of Sex & Marital Therapy, 48:7, 713, https://www.tandfonline.com/doi/pdf/10.1080/0092623X.2022.2046221 (emphasis added).

abuse registry, even as she continued raising her other three children.

Siding with the school psychologist, a judge ruled that Yaeli could receive cross-sex hormones. Because Yaeli was still a minor, the judge had to allow Ms. Martinez to be present in court, but she ignored Ms. Martinez's pleas to treat Yaeli's underlying depression. Instead, the judge said she could not "wait any longer" for Ms. Martinez to agree to hormone transition treatments for her "son." The judge then went against Ms. Martinez's express wishes and signed the order in her place, with a smile.

Meanwhile, Ms. Martinez was shut out of Yaeli's life, only allowed one hourly visit per week, and her visits were heavily monitored by members of RISE, activists from the Los Angeles LGBT Center who told her to "have a funeral for your daughter and adopt your son." "I was told not to talk about God," Martinez recalls. "They told me if you do that, you'll never see your daughter."



Family visit at the group home for Yaeli's 17th birthday.
Photos courtesy of Abigail Martinez.

By age 19, Yaeli was sent to an independent living situation but continued to struggle with deep depression and poverty. Desperate for food, she reached out to her mom who immediately brought her groceries. In response, Yaeli texted, "Mom, I wanted to cry because no matter what you're always there for me." Yaeli also told her mom that she knew she would never become a boy, and that the cross-sex hormone treatments were causing severe pain in her bones. Yet instead of providing Yaeli with care and medical treatment, the state of California gave her testosterone and took her away from her mom.

After a grueling legal battle, Ms. Martinez was absolved of all claims of abuse and removed from the child abuse registry. But the damage was already done. Two months later, Yaeli committed suicide by lying down on the tracks in front of a train. Her death was so gruesome that the funeral home was not able to show her body to Ms. Martinez.

After Yaeli's tragic death, Ms. Martinez requested meetings with the school staff and state workers who advised Yaeli, but no one responded. She eventually filed a civil lawsuit against the school district and DCFS. In response, DCFS admitted that they "aggressively pursued the implementation of inclusive, gender-affirming laws, policies, and supportive services for LGBTQ+ youth." According to the school district, "a claim suggesting our school or a staff member did not properly treat a student's severe depression is both completely inaccurate and troubling as our schools and staff would not be authorized or medically qualified to treat clinical depression." Yet the district thought itself medically

qualified to facilitate Yaeli's transition behind her mother's back and even advocate that she be removed from her home absent evidence of abuse.

The government's imposition into Yaeli's life against the wishes of her mother denied Ms. Martinez the opportunity to treat her daughter's mental health and save her life. "To them, my child was a number in the system. It's all political," said Ms. Martinez. "I want them to change this broken system, not to play with our children's lives, to give them what they really need. Not to go for what they believe. I don't want any parent to suffer and go through what I've been through. This pain doesn't have a beginning or an end."

II. Rather than violating parental rights as petitioners argue, SB1 protects parental rights.

a. The First Amendment enshrines the right to raise children according to the parent's religious beliefs.

This Court has "recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel* v. *Granville*, 530 U.S. 57, 66 (2000) (plurality opinion). But, contrary to petitioners' arguments, SB1 does not violate the parental rights of those who want their minor children to have gender-transition procedures and medications. As the Sixth Circuit correctly concluded, there is no deeply rooted tradition that supports a parent's right to obtain reasonably banned medical treatments for children. Pet. App. 17a. This Court recently clarified that "a fundamental right under the due process clause requires: (1) a 'careful

description of the asserted fundamental liberty interest,' and (2) a showing that the asserted right is 'deeply rooted in this Nation's history and tradition.'" *Department of State* v. *Muñoz*, 144 S. Ct. 1812, 1822 (quoting *Washington* v. *Glucksberg*, 521 U. S. 702, 720-721 (1997)). While the Sixth Circuit wisely declined to recognize a new constitutional right in the area of gender-transition procedures, there is perhaps no right more deeply rooted in our Nation's history and tradition than the right of parents to direct their children's religious upbringing.

But the right to raise children according to a parent's religious beliefs need not rely solely on due process. The First Amendment's Free Exercise Clause undeniably protects families seeking to raise their children in accordance with their religious beliefs. *See Wisconsin* v. *Yoder*, 406 U.S. 205, 214 (1972) (parental rights regarding religious upbringing are "specifically protected by the Free Exercise Clause," "[l]ong before . . . universal formal education"). The *Yoder* Court drew a direct connection between parental rights and religious beliefs, explaining that "[t]he duty to prepare the child for 'additional obligations,' referred to by the Court, must be read to include the inculcation of moral standards, [and] religious beliefs." *Id.* at 233. Any infringement of a parent's free exercise right to raise her children in accordance with her faith is subject to strict scrutiny. *See Yoder*, 406 U.S. at 215 ("[O]nly those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion."). Not only does the First Amendment protect parents' freedom to teach their faith to their children, but for many, including Ms.

Martinez, this obligation is at the core of the parents' own religious exercise.

For example, Jews believe that they have a biblical obligation to teach their children God's commandments. *See* Deuteronomy 6:7 ("And you shall teach them to your sons and speak of them when you sit in your house, and when you walk on the way, and when you lie down and when you rise up."). This is an obligation of the highest order, for "the world exists only by virtue of the breath coming from the mouths of children who study Torah."[4]

For Hindus, child-rearing is a parent's highest righteous (Dharmic) duty. Hindu legal texts from 200 B.C. provide detailed instructions regarding both parents' rights and responsibilities in child-rearing. "The educative influence of the mother during the early years is incalculable. She is the first teacher of the child . . . . The father and the mother transmit to the child the social ideals and values."[5] Thus, parental instructions on a Dharmic life are essential to a child's education.

For Muslim Americans, "the acquisition of at least rudimentary knowledge of religion and its duties [is] mandatory for the Muslim individual." [6] This

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[4] Maimonides, Mishne Torah, Hilkhot Talmud Torah 1:2; 2:1, 3, https://perma.cc/989H-JFYW.

[5] KEWAL MOTWANI, MANU DHARMA SASTRA: A SOCIOLOGICAL AND HISTORICAL STUDY 121 (1958).

[6] *Our Lady of Guadalupe*, 140 S. Ct. at 2065 (citing Asma Afsaruddin, *Muslim Views on Education: Parameters, Purview, and Possibilities*, 44 J. CATH. LEGAL STUDIES 143, 143–44 (2005)).

obligation, which applies to parents as they raise children, comes from the Prophet Mohammad, who proclaimed that "'[t]he pursuit of knowledge is incumbent on every Muslim.'"[7]

For millions of Christians, "[p]arents are to teach their children spiritual and moral values and to lead them, through consistent lifestyle example and loving discipline to make choices based on biblical truth."[8]

Moreover, traditional adherents to religions from diverse cultures and geographic regions assert—as they have for millennia—that sex is an objective, binary category that cannot be changed by self-perception and should not be obscured by medical intervention. These faith traditions include but are not limited to: Amish communities, Baha'i, Buddhism, Church of Jesus Christ of Latter-day Saints, Confucianism, Daoism, Falun Gong, Jehovah's Witnesses, Orthodox Christianity, Orthodox Judaism, Roman Catholicism, the Seventh-day Adventist Church, and Shi'ah and Sunni Muslims.[9] Sacred texts that define beliefs on marriage, sexuality, chastity, and sex as male and female include the Catholic Catechism, the Hebrew Bible, the New Testament, the Quran, Hadith, and the Book of Mormon. The First Amendment provides robust protection for

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[7] *Id.*

[8] Baptist Faith and Message (2000), https://perma.cc/6SGV-79K4.

[9] For a complete list of sources, see First Liberty Institute, *Public Comment on Section 1557 NPRM* (Oct. 3, 2022), at 4-9, https://perma.cc/97NU-VCMZ (detailing religious beliefs of 20 faith groups on sex and gender).

religious believers who adhere to these faiths, as well as for individuals who do not believe in and exercise a widely known faith but who hold sincere religious beliefs about the body, sexuality, marriage, and gender.

In recognition of the constitutionally protected right to raise children according to parents' religious beliefs, some federal courts have protected these rights in disputes about gender identity. *See, e.g., Tatel* v. *Mt. Lebanon School District*, No. 22-837, 2024 WL 4362459 (W.D. Pa. Sept. 30, 2024) (granting summary judgment to religious parents on their free exercise and due process claims, and requiring school district to provide notice and opt-outs from gender identity instruction); *Mirabelli* v. *Olson*, No. 3:23-cv-00768-BEN-WVG, 2023 WL 5976992 (S.D. Cal. Sept. 14, 2023) (enjoining a school policy requiring teachers to conceal gender transitions from parents, finding that this violated religious teachers' free exercise rights).

b. SB1 protects parental rights under the First Amendment because it will prevent the state from punishing religious parents who do not believe in gender transitions.

Despite the strength of the constitutional protections for the religious upbringing of children, some states have still acted as though it is up to the government to decide how parents should handle gender transitions. See, *e.g., In re Adoption/Guardianship of Rashawn H.*, 402 Md. 477, 497 (Md. 2007) (stating that it is "well-established" that in "a conflict between a parent's constitutional

right to raise the child and the State's interest in protecting the child's safety and welfare, the best interest of the child standard not only controls but also is of 'transcendent importance.'").

For example, in 2022, an Indiana court upheld a decision to take a child away from the parents because the parents religious beliefs prevented them from treating the child like the opposite sex. *See Matter of A.C.*, 198 N.E.3d 1, 15-17 (Ind. Ct. App. 2022), *cert. denied*, *M.C. and J.C.* v. *Indiana Dep't of Child Serv.*, No. 23-450 (Mar. 18, 2024). The court concluded that the parents' religious exercise was not substantially burdened by the state taking away the child. *Id.* The court reasoned that the determination was made based on the child's "medical and psychological needs and not the Parents' disagreement with Child's transgender identity." *Id.* The court stated that even if the parents' religious exercise was burdened, "protecting a child's health and welfare is well recognized as a compelling interest justifying state action that is contrary to a parent's religious beliefs." *Id.* at 37.

This analysis is flawed. A government action can place a substantial burden on the free exercise of religion even if the government does not intend to target the religious belief. See *Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 578 (1993) (stating that the government can inflict an intentional or unintentional substantial burden upon religiously motivated practice).

The state court incorrectly concluded that the parents' religious exercise was not substantially burdened because the determination was made based

on the child's "medical and psychological needs and not the Parents' disagreement with Child's transgender identity." *Matter of A.C.*, 198 N.E.3d at 15-17. It is enough that the parents were punished by losing their child because their religious convictions prevented them from treating their child as the opposite sex. The parents were ultimately punished because they refused to be subjugated by the state, and that constitutes a substantial burden on the exercise of religion. *Lukumi*, 508 U.S. at 578.

And the state's claimed compelling interest to "protect[] a child's health and welfare," *id.* at 37, does not meet the rigorous test for a compelling interest. *Fulton* v. *City of Philadelphia, Pennsylvania*, 593 U.S. 522, 541 (2021) (to prove compelling interest, courts must move beyond "broadly formulated interests" to "scrutinize the asserted harm of granting specific exemptions to particular religious claimants") (citing *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 430-432 (2006)).

Indiana's broadly stated interest would allow any state to take a child away from any parent who did not want to support their child's gender transition. This action is beyond the state's police power under the Free Exercise Clause. *Yoder*, 406 U.S. at 220 ("But to agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability.").

Moreover, since the child was not in immediate danger, the state had a myriad of less restrictive

means available to it rather than take the child from the home. One option was to allow the parents to decide until the child turned 18; the child was 17 at the time.

This opinion reveals how far some governmental entities will go to "protect" children from their parents' traditional beliefs about gender, even when the Constitution protects the parents. Regulations like Tennessee's SB1 provide important safeguards to prevent state and local governments from usurping the parental role and deciding that a minor should receive gender-transition treatments despite the parent's objections. If a law prohibits such medical interventions for minors, the corresponding state or local government cannot force parents to provide such treatments to their children, or punish them for voicing religious concerns. It is also likely that if the Court invents a constitutional right for minors to receive gender-transition treatments, religious parents will face even more opposition about withholding such procedures from their own children. Many parents would undoubtedly be accused of violating their children's constitutional rights by raising them according to religions that do not support gender transitions.

Thus, SB1 does not violate parental rights but strengthens the existing protections that the Constitution upholds. This is especially true for religious parents like Abigail Martinez. If her state had passed SB1, she would likely have never lost custody of Yaeli, government officials could not have mandated gender-transition treatments over her

objections, and her beloved daughter would likely be alive today.[10]

CONCLUSION

This Court should affirm the decision of the Sixth Circuit Court of Appeals.

Respectfully submitted,

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[10] California law allows a state juvenile court to take temporary custody of a child without a finding of parental unfitness if "the child has been unable to obtain gender-affirming health care." Cal. Fam. Code § 3424(a).