

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 AND  
REPORTER FOR TENNESSEE, *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 ALABAMA AS *AMICUS CURIAE*  
SUPPORTING RESPONDENTS**

---

---

Steve Marshall  
*Alabama Attorney General*

Edmund G. LaCour Jr.  
*Solicitor General*  
*Counsel of Record*

A. Barrett Bowdre  
*Principal Deputy Solicitor General*

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL  
501 Washington Ave.  
Montgomery, AL 36130  
(334) 242-7300  
Edmund.LaCour@AlabamaAG.gov

*Counsel for Amicus Curiae State of Alabama*

---

---

UNITED STATES OF AMERICA,

*Petitioner,*

v.

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

*Respondents.*

---

JANE DOE 1, *et al.*,

*Petitioners,*

v.

KENTUCKY, EX REL. RUSSELL COLEMAN,  
ATTORNEY GENERAL OF KENTUCKY,

*Respondent.*

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES..... ii

INTEREST OF *AMICUS CURIAE* .....1

SUMMARY OF ARGUMENT .....3

ARGUMENT .....7

    I. Petitioners’ Claims Depend On The  
    Reliability Of The WPATH “Standards of  
    Care.” .....7

    II. Discovery Could Confirm That The  
    WPATH Standards Are Not Reliable. ....9

        A. The WPATH Standards Are Not  
        Evidence Based .....10

        B. WPATH Suppresses Scientific  
        Inquiry .....14

        C. Many Clinicians Do Not Follow  
        the WPATH Standards .....20

        D. Petitioners’ Other Preferred  
        Medical Interest Groups Are Not  
        Reliable.....24

CONCLUSION .....27

## TABLE OF AUTHORITIES

### Cases

<i>Boe v. Marshall</i> , 2:22-cv-184 (M.D. Ala.) .....	2
<i>Brandt v. Griffin</i> , No. 23-2681 (8th Cir. Oct 6, 2023).....	3
<i>Eknes-Tucker v. Marshall</i> , 603 F. Supp. 3d 1131 (M.D. Ala. 2022), <i>rev'd sub nom. Eknes-Tucker v. Governor of</i> <i>Ala.</i> , 80 F.4th 1205 (11th Cir. 2023).....	1
<i>Gibson v. Collier</i> , 920 F.3d 212 (5th Cir. 2019).....	14
<i>Kosilek v. Spencer</i> , 774 F.3d 63 (1st Cir. 2014) .....	14

### Regulations

Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37160, 37198 (June 19, 2020).....	15
---	----

### Other Authorities

Aaron Devor, WPATH, <i>History of the Association</i> , <a href="https://perma.cc/SF7Y-SD3W">https://perma.cc/SF7Y-SD3W</a> .....	26
Abigail Shrier, <i>Top Trans Doctors Blow the</i> <i>Whistle on “Sloppy” Care</i> , THE FREE PRESS (Oct. 4, 2021), <a href="https://www.thefp.com/p/top-trans-doctors-blow-the-whistle">https://www.thefp.com/p/top-trans-doctors-blow-the-whistle</a> .....	19, 20
Affidavit of Jamie Reed, Missouri Attorney General’s Office (Feb. 7, 2023), <a href="https://perma.cc/QE9Q-K2QP">https://perma.cc/QE9Q-K2QP</a> .....	5, 23

- Agnieszka Marianowicz-Szczygiel, *Rise of Gender Identity Disorders Among Children and Adolescents—Data From 10 Countries*, 49 Q. J. OF FIDES ET RATIO 122 (2022) .....4
- AHRQ, *Topic Brief: Treatments for Gender Dysphoria in Transgender Youth* (Jan. 8, 2021), <https://perma.cc/23B5-D7C8>.....6
- American Society of Plastic Surgeries, *Aesthetic Genital Plastic Surgery Surgical Options: What Is A Vaginoplasty?*, <https://perma.cc/5WFH-57QP> .....21
- Andrew Gelman & Eric Loken, *The Statistical Crisis in Science*, 102 AMERICAN SCIENTIST 460 (2014) .....24
- Azeen Ghorayshi, *How a Small Gender Clinic Landed in a Political Storm*, N.Y. TIMES (Aug. 23, 2023), <https://www.ny-times.com/2023/08/23/health/transgender-youth-st-louis-jamie-reed.html>.....5, 23
- Azeen Ghorayshi, *Medical Group Backs Youth Gender Treatments, but Calls for Research Review*, N.Y. TIMES (Aug. 3, 2023), <https://perma.cc/N3BJ-TB9J> .....25
- Azeen Ghorayshi, *More Trans Teens Are Choosing “Top Surgery,”* N.Y. TIMES (Sept. 26, 2022), <https://perma.cc/2K79-A7S8> .....4, 12, 21-23

- Christine Milrod & Dan H. Karasic, *Age is Just a Number: WPATH-Affiliated Surgeons' Experiences and Attitudes Toward Vaginoplasty in Transgender Females Under 18 Years of Age in the United States*, 14 J. SEXUAL MED. 524 (2017) .....21
- Colin Wright, *Anatomy of a Scientific Scandal*, CITY JOURNAL (June 12, 2023), <https://perma.cc/22J3-C5JA>.....17, 18
- Correction*, 23 INT'L J. OF TRANSGENDER HEALTH S259 (2022), <https://perma.cc/4342-KFEN>.....12
- E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, INT'L J. OF TRANSGENDER HEALTH (Sept. 6, 2022), <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644>.....10, 11, 13
- Emily Bazelon, *The Battle Over Gender Therapy*, N.Y. TIMES MAG. (June 15, 2022, updated June 24, 2022), <https://www.nytimes.com/2022/06/15/magazine/gender-therapy.html> ..... 15-17, 20
- Erica Ciszek et al., *Discursive Stickiness: Affective Institutional Texts and Activist Resistance*, 10 PUBLIC RELATIONS INQUIRY 295 (2021)..... 15-17
- Fan Liang, Johns Hopkins Medicine, *Vaginoplasty for Gender Affirmation*, <https://perma.cc/RFU9-S72N>.....21

Genevieve Gluck, <i>Top Trans Medical Association Collaborated With Castration, Child Abuse Fetishists</i> , REDUXX (May 17, 2022), <a href="https://perma.cc/5DWF-MLRU">https://perma.cc/5DWF-MLRU</a> .....	13
Hannah Barnes, TIME TO THINK: THE INSIDE STORY OF THE COLLAPSE OF THE TAVISTOCK'S GENDER SERVICE FOR CHILDREN (2023) .....	5
Jennifer Block, <i>Gender Dysphoria in Young People is Rising—and So Is Professional Disagreement</i> , BRITISH MED. J. (Feb. 23, 2023), .....	4, 6, 10, 11, 26
Jenny Jarvie, <i>This Abortion Doctor is Not Ready to Leave Alabama</i> , L.A. TIMES (Apr. 28, 2023), <a href="https://perma.cc/G5KZ-J7TB">https://perma.cc/G5KZ-J7TB</a> .....	22
Joint Letter from USPATH and WPATH (Oct. 12, 2022), <a href="https://perma.cc/X7ZN-G6FS">https://perma.cc/X7ZN-G6FS</a> .....	20
Joshua Safer, <i>State of the Art: Transgender Hormone Care</i> , YOUTUBE (Feb. 15, 2019) .....	26
Julia Mason & Leor Sapir, <i>The American Academy of Pediatrics' Dubious Transgender Science</i> , WALL ST. J. (Apr. 17, 2022), <a href="https://www.wsj.com/articles/the-american-academy-of-pediatrics-dubious-transgender-science-jack-turban-research-social-contagion-gender-dysphoria-puberty-blockers-uk-11660732791">https://www.wsj.com/articles/the-american-academy-of-pediatrics-dubious-transgender-science-jack-turban-research-social-contagion-gender-dysphoria-puberty-blockers-uk-11660732791</a> .....	25

- Kimberlee Kruesi, *Vanderbilt to Review Gender-Affirming Surgeries for Minors*, ASSOCIATED PRESS (Oct. 7, 2022), <https://apnews.com/article/health-business-tennessee-nashville-vanderbilt-university-6deb93f7dea92f1b2082c39f72b59766>.....21
- Laura Edwards-Leeper & Erica Anderson, *The Mental Health Establishment Is Failing Trans Kids*, WASHINGTON POST (Nov. 24, 2021) <https://www.washingtonpost.com/outlook/2021/11/24/trans-kids-therapy-psychologist/> ..... 19
- Lisa Selin Davis, *Kid Gender Guidelines Not Driven by Science*, N.Y. POST (Sept. 29, 2022), <https://perma.cc/S3FF-Q66A> ..... 12
- Nat'l Inst. for Health & Care Excellence, *Gender-affirming hormones for children and adolescents with gender dysphoria* (Mar. 11, 2021), <https://perma.cc/M8J5-MXVG> ..... 6
- Open Letter (May 5, 2023), <https://perma.cc/3HGZ-5CME> ..... 17
- Riitakerttu Kaltiala, “*Gender-Affirming Care Is Dangerous. I Know Because I helped Pioneer It.*”, THE FREE PRESS (Oct. 30, 2023), <https://perma.cc/Q3E5-YBXQ> ..... 5
- Robin Respaut et al., *Why Detransitioners Are Crucial to the Science of Gender Care*, REUTERS (Feb. 22, 2022), <https://www.reuters.com/investigates/special-report/usa-transyouth-outcomes/> ..... 5

- Roy Eappen & Ian Kingsbury, *The Endocrine Society's Dangerous Transgender Politicization*, WALL ST. J. (June 28, 2023), <https://www.wsj.com/articles/the-endocrine-societys-dangerous-politicization-endocrinologists-gender-affirming-care-arkansas-dac768bd> .....25
- Stephen B. Levine & E. Abbruzzese, *Current Concerns About Gender-Affirming Therapy in Adolescents*, 15 CURRENT SEXUAL HEALTH REPORTS 113 (Apr. 14, 2023) .....4
- Stephen M. Rosenthal, *Challenges in the Care of Transgender and Gender-Diverse Youth*, 17 NATURE REVIEWS 581 (Oct. 2021).....3
- Suzanna Diaz & J. Michael Bailey, *Rapid Onset Gender Dysphoria: Parent Reports on 1,655 Possible Cases*, J. OF OPEN INQUIRY IN THE BEHAVIORAL SCIENCES (2023), <https://researchers.one/articles/23.10.00002v1...>18
- Suzanna Diaz & J. Michael Bailey, *Retraction Note: Rapid Onset Gender Dysphoria: Parent Reports on 1,655 Possible Cases*, ARCHIVES OF SEXUAL BEHAVIOR (June 14, 2023), <https://perma.cc/5UGW-EGEV> .....18
- Sweden National Board of Health and Welfare Policy Statement, Socialstyrelsen, *Care of Children and Adolescents with Gender Dysphoria: Summary* 3 (2022), <https://perma.cc/FDS5-BDF3>.....6

*USPATH Gala Part 2*, YOUTUBE (Feb. 6, 2017),  
<https://www.youtube.com/watch?v=wxbsOX4hX0M&t=163s> .....17

Videorecording of Dr. Tishelman’s WPATH  
presentation,  
<https://twitter.com/SwipeWright/status/1571999221401948161> .....12

World Health Organization, *Frequently Asked Questions – WHO Development of a Guideline on the Health of Trans and Gender Diverse People* (Jan. 15, 2024), <https://perma.cc/L39M-MH7N> .....6

*World Professional Association for Transgender Health Standards of Care for Transgender and Gender Diverse People, Version 8 Frequently Asked Questions (FAQs)*, WPATH,  
<https://perma.cc/D4QG-UT6Q> .....10

Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, 102(11) *J. CLINICAL ENDOCRINOLOGY & METABOLISM* 3869 (Nov. 2017).....26

Yuval Levin, *A TIME TO BUILD: FROM FAMILY AND COMMUNITY TO CONGRESS AND THE CAMPUS, HOW RECOMMITTING TO OUR INSTITUTIONS CAN REVIVE THE AMERICAN DREAM* (2020) .....24

**INTEREST OF *AMICUS CURIAE***<sup>1</sup>

Like respondents and nearly twenty other States,<sup>2</sup> Alabama requires children to reach the age of majority before undergoing medicalized sex-change procedures. And like respondents, Alabama saw its health and welfare law wrongly subjected to heightened scrutiny and enjoined. *See Eknes-Tucker v. Marshall*, 603 F. Supp. 3d 1131 (M.D. Ala. 2022), *rev'd sub nom. Eknes-Tucker v. Governor of Ala.*, 80 F.4th 1205 (11th Cir. 2023).

Alabama's litigation is about a year ahead of Tennessee's and Kentucky's. Their laws were enacted and enjoined in 2023; Alabama's in 2022. Like the district courts here, the court in Alabama also relied on the imprimatur of the World Professional Association for Transgender Health (WPATH) and certain American medical interest groups to enjoin Alabama's law. While acknowledging that "[k]nown risks" of transitioning treatments "include loss of fertility and sexual function," the court dismissed the State's concerns with two words: "Nevertheless, WPATH." *Eknes-Tucker*, 603 F. Supp. 3d at 1139. "Nevertheless," the court said, "WPATH recognizes transitioning medications as established medical treatments." *Id.* As a result, Alabama's law to the contrary had to be enjoined. *See id.* at 1145, 1148.

Alabama has since engaged in extensive discovery to show that the court's deference to WPATH was unwarranted. *See, e.g., Order, Boe v. Marshall*, 2:22-cv-

---

<sup>1</sup> In accordance with Rule 37.2, Alabama provided all parties notice of its intention to file this brief on January 15, 2024.

<sup>2</sup> *See* No. 23-466 Pet. App. 17a.

184 (M.D. Ala. Mar. 27, 2023), ECF 263 (detailing categories of responsive documents WPATH must produce). The State has received significant document productions from WPATH and the U.S. Department of Health and Human Services, among other organizations. While much of that discovery is subject to a protective order and cannot be discussed at this time, Alabama offers this brief to highlight just some of the publicly available information that led it to seek discovery in the first place. As the United States has admitted (publicly), some of the “2.3 million pages of documents” Alabama has received concern communications between WPATH and senior HHS officials. *See* United States’ Resp. to Defs’ Notice of Suppl. Auth., *Boe*, 2:22-cv-184 (M.D. Ala.), ECF 330 at 3; United States’ Notice Regarding the Status of Discovery, ECF 315 at 1.

It appears that the United States and the other petitioners don’t want this Court to see that evidence, or similar evidence Kentucky or Tennessee may uncover. Petitioners have rushed to this Court, seeking review of preliminary decisions before discovery takes place. The United States even asked the district court in Alabama’s litigation to shut down discovery and pause all litigation merely because it had *filed* a cert petition in this case. *See* United States’ Mot. to Stay All District Court Proceedings, *Boe*, 2:22-cv-184 (M.D. Ala.), ECF 387. But if and when the Court decides one of these cases, it shouldn’t do so based on euphemisms about “affirming care” and unsupported appeals to “expert” organizations. The Court should have a full evidentiary record that reveals the true story of

“Nevertheless, WPATH.” Alabama supports Kentucky and Tennessee in opposing certiorari review at this time.

### SUMMARY OF ARGUMENT

If one didn’t know better, one might think petitioners jumped the gun. They seek review of decisions arising in a preliminary posture, with limited evidence and no evidentiary hearings—even as the petitions and amicus briefs supporting them are chock full of disputed factual claims necessary to their arguments. And the 2-1 circuit split they invoke is only months old and may resolve naturally when the Eighth Circuit convenes *en banc* to reconsider the lone decision on petitioners’ side of the split.<sup>3</sup> By traditional criteria, the petitions are poor vehicles for review.

So perhaps there is something else going on. For many years, petitioners’ preferred interest groups went unchallenged. Comprised of transgender activists and clinicians interested in—and financially dependent on—sex-modification procedures, groups like WPATH promulgated so-called “standards of care” that promised that providing sex-change procedures to a 12-year-old girl uncomfortable in her body was the only way to treat her discomfort. Never mind that the puberty blockers followed by testosterone would likely leave the girl infertile.<sup>4</sup> Or that the “chest surgeries”—or “Yeet the Teet” surgeries, as one plastic

---

<sup>3</sup> See Order, *Brandt v. Griffin*, No. 23-2681 (8th Cir. Oct 6, 2023).

<sup>4</sup> E.g., Stephen M. Rosenthal, *Challenges in the Care of Transgender and Gender-Diverse Youth*, 17 NATURE REVIEWS 581, 587 (Oct. 2021).

surgeon advertises on TikTok<sup>5</sup>—would rob the girl of the opportunity to breastfeed. Or that, statistically speaking, the girl likely suffered from a range of psychological comorbidities or past trauma that shots of testosterone could not address.<sup>6</sup> WPATH’s standards recommended the treatments, and for many—and for a time—that was enough.

During the 2010s, the western world experienced an unexplained explosion of self-identified transgender teenagers, primarily natal girls—a new patient profile distinct from the traditional pre-adolescent boy that suffered from the childhood-onset gender dysphoria depicted in the DSM-V.<sup>7</sup> Pediatric gender clinics sprouted up everywhere.<sup>8</sup> And clinicians, purporting to follow the WPATH standards, assured anxious parents that a sex-change procedure

---

<sup>5</sup> See Azeen Ghorayshi, *More Trans Teens Are Choosing “Top Surgery,”* N.Y. TIMES (Sept. 26, 2022), <https://perma.cc/2K79-A7S8>.

<sup>6</sup> *E.g.*, Stephen B. Levine & E. Abbruzzese, *Current Concerns About Gender-Affirming Therapy in Adolescents*, 15 CURRENT SEXUAL HEALTH REPORTS 113, 114 (Apr. 14, 2023).

<sup>7</sup> *E.g.*, Agnieszka Marianowicz-Szczygiel, *Rise of Gender Identity Disorders Among Children and Adolescents—Data From 10 Countries*, 49 Q. J. OF FIDES ET RATIO 122, 126-27 (2022).

<sup>8</sup> *E.g.*, Jennifer Block, *Gender Dysphoria in Young People is Rising—and So Is Professional Disagreement*, BRITISH MED. J. (Feb. 23, 2023), <https://perma.cc/5SC6-FY2Z> (“[T]he number of private clinics that focus on providing hormones and surgeries has grown from just a few a decade ago to more than 100 today.”).

would save their sick child. Wouldn't they prefer a living "son" to a dead daughter?<sup>9</sup>

Then things began to change. Stories of rushed transitions and regret made their way into the media.<sup>10</sup> Once-lauded multidisciplinary pediatric gender centers were shut down or investigated for providing inadequate mental health care (but lots of hormones).<sup>11</sup> Gender clinics founded on the promise of helping suffering children saw their patients get worse after transitioning.<sup>12</sup> And healthcare authorities, particularly in Europe, began reviewing the evidence for themselves. Remarkably—horrifically—they discovered that the handful of studies shedding light on the safety and efficacy of transitioning minors were *all* "small, uncontrolled observational studies," "subject to bias and confounding," with "results ... of very low certainty," to quote Britain's National

---

<sup>9</sup> See Affidavit of Jamie Reed, Missouri Attorney General's Office (Feb. 7, 2023), <https://perma.cc/QE9Q-K2QP> (testifying that clinicians at the Washington University Pediatric Transgender Center gained parental "consent" by threatening parents: "You can either have a living son or a dead daughter").

<sup>10</sup> *E.g.*, Robin Respaut et al., *Why Detransitioners Are Crucial to the Science of Gender Care*, REUTERS (Feb. 22, 2022), <https://www.reuters.com/investigates/special-report/usa-transyouth-outcomes/>.

<sup>11</sup> *E.g.*, Hannah Barnes, TIME TO THINK: THE INSIDE STORY OF THE COLLAPSE OF THE TAVISTOCK'S GENDER SERVICE FOR CHILDREN (2023); Azeen Ghorayshi, *How a Small Gender Clinic Landed in a Political Storm*, N.Y. TIMES (Aug. 23, 2023), <https://www.nytimes.com/2023/08/23/health/transgender-youth-st-louis-jamie-reed.html>.

<sup>12</sup> *E.g.*, Riitakerttu Kaltiala, "Gender-Affirming Care Is Dangerous. I Know Because I helped Pioneer It.", THE FREE PRESS (Oct. 30, 2023), <https://perma.cc/Q3E5-YBXQ>.

Institute for Health and Care Excellence.<sup>13</sup> Sweden’s National Board of Health and Welfare thus concluded that “the risk” of transitioning treatments for youth “currently outweigh the possible benefits.”<sup>14</sup> These and other countries rejected the WPATH model of “care” and severely restricted the availability of sex-modification procedures for youth.<sup>15</sup> Even the U.S. Agency for Healthcare Research and Quality agrees “[t]here is a lack of current evidence-based guidance for the care of children and adolescents who identify as transgender, particularly regarding the benefits and harms of pubertal suppression, medical affirmation with hormone therapy, and surgical affirmation.”<sup>16</sup> And the World Health Organization just recently determined that it would not promulgate treatment guidelines for gender dysphoric adolescents because “the evidence base for children and adolescents is limited and variable regarding the longer-term outcomes of gender affirming care.”<sup>17</sup>

---

<sup>13</sup> Nat’l Inst. for Health & Care Excellence, *Gender-affirming hormones for children and adolescents with gender dysphoria* (Mar. 11, 2021), <https://perma.cc/M8J5-MXVG>.

<sup>14</sup> Sweden National Board of Health and Welfare Policy Statement, Socialstyrelsen, *Care of Children and Adolescents with Gender Dysphoria: Summary 3* (2022), <https://perma.cc/FDS5-BDF3>.

<sup>15</sup> See Block, *supra* note 8.

<sup>16</sup> AHRQ, *Topic Brief: Treatments for Gender Dysphoria in Transgender Youth* (Jan. 8, 2021), <https://perma.cc/23B5-D7C8>.

<sup>17</sup> World Health Organization, *Frequently Asked Questions – WHO Development of a Guideline on the Health of Trans and Gender Diverse People* (Jan. 15, 2024), <https://perma.cc/L39M-MH7N>.

This changing landscape may explain petitioners' rush. Assuring the Court that the WPATH guidelines reflect the uncontested standard of care, petitioners appear to hope that the Court will decide these cases before more evidence comes to light. The Court need not acquiesce. Although the Sixth Circuit was right that laws like Kentucky's, Tennessee's, and Alabama's are subject only to rational-basis review—and under that standard, States need not build mountains of evidence to justify their refusal to outsource medical regulations to interest groups—the Court would nonetheless be in a better position to rule if it had the full picture before it. That picture is not nearly as pretty as the one petitioners and their amici paint.

## ARGUMENT

### **I. Petitioners' Claims Depend On The Reliability Of The WPATH "Standards of Care."**

Even under their own (flawed) legal theories, petitioners' evidentiary claims largely boil down to the say-so of WPATH and other preferred medical interest groups. So the district courts thought, accepting petitioners' assertions that WPATH and the Endocrine Society "have published widely accepted guidelines for treating gender dysphoria." No. 23-466 Pet. App. 151a. Deferring to petitioners' favored organizations, the courts determined that the guidelines provide "evidence-based standards of care" and that the sex-modification procedures they recommend are "medically appropriate and necessary" for minors. No. 23-492 Pet. App. 115a (citing amicus brief by WPATH, Endocrine Society, and the American Academy of

Pediatrics (AAP)); No. 23-466 Pet. App. 151a (the WPATH standards are “endorsed by the American Academy of Pediatrics” and are “based on scientific research and clinical experience”). The district court in *L.W.* even went so far as to “evaluate [Tennessee’s] evidence in light of the prevailing standards of care and conclusions contained in the WPATH and Endocrine Society guidelines.” No. 23-466 Pet. App. 151a. If Tennessee’s experts said anything contrary, the court went with WPATH. *See, e.g., id.* at 160a (rejecting testimony of Tennessee’s expert because “the guidelines tell a different story”).

Petitioners double down before this Court. Even after the Court of Appeals reminded them that “a state’s authority to regulate does not turn on consistency with the views of certain medical groups,” No. 23-466 Pet. App. 32a (cleaned up), over and over petitioners invoke WPATH and American medical interest groups to assure the Court that transitioning treatments are safe, effective, and medically necessary for gender dysphoric youth. *E.g.*, No. 23-466 Pet. 5 (asserting that WPATH has “published widely accepted clinical guidelines for diagnosing and treating gender dysphoria”); *id.* at 5-7, 13-14 (using WPATH standards to explain preferred treatments); *id.* at 36 (arguing that Tennessee’s law “is in no way reasonable” because it “contravenes the established medical guidelines” set by WPATH); No. 23-477 Pet. 4 (“All of the Nation’s major medical and mental health organizations recognize” WPATH’s guidelines); No. 23-492 Pet. 6 n.2 (“The major professional medical and mental health associations in the United States ... have adopted the standards developed by [WPATH]”); *id.*

(“The current WPATH standards are based on evidence and professional consensus and were developed in the same way as treatment guidelines for other medical conditions.”).

Clearly, the WPATH standards and their adoption by “[t]he major professional medical and mental health associations in the United States,” No. 23-492 Pet. 6 n.2—note the geographic qualifier—are at the center of petitioners’ claims. They even make the positions of “the nation’s leading medical and mental health organizations” an element of their “fundamental right.” No. 23-492 Pet. 26. Wouldn’t it be nice to have evidence to determine whether those assertions are true?

## **II. Discovery Could Confirm That The WPATH Standards Are Not Reliable.**

Discovery could reveal a very different story from the one petitioners tell. From what can be gleaned from the public record, WPATH is no normal medical organization. Its guidelines purport to be evidence-based, but WPATH admits it skipped the foundational step of conducting a systematic evidence review when it crafted its treatment recommendations for adolescents. It routinely suppresses scientific inquiry, silencing scholars who question the WPATH standard of “care” and censuring members who go public with their concerns. And many clinicians don’t follow the WPATH standards anyway, as a survey of WPATH’s own doctors show—and as story after tragic story of inadequate care at gender clinics confirm. In short, recent reporting has raised questions about nearly every

assertion petitioners and their amici make concerning the reliability of WPATH.

**A. The WPATH Standards Are Not Evidence Based.**

According to Dr. Gordan Guyatt—one of the fathers of evidence-based medicine who helped to develop the widely accepted GRADE system invoked repeatedly by petitioners’ preferred medical organizations<sup>18</sup>—a “trustworthy guideline” should be “based on systematic review of the relevant evidence.”<sup>19</sup> It should *not* be “a bunch of experts writ[ing] whatever they felt like.”<sup>20</sup>

Now turn to the Standards of Care 8, the latest WPATH guideline published in 2022.<sup>21</sup> WPATH claims SOC 8 was “based on decades of research, including systematic reviews of evidence conducted by a team of independent researchers at Johns Hopkins University.”<sup>22</sup> But it also admits that “consensus-based expert opinion”—with the “experts” being

---

<sup>18</sup> See No. 23-466, Br. of *Amici Curiae* Am. Academy of Pediatrics et al. at 16, 21-22.

<sup>19</sup> Block, *supra* note 8.

<sup>20</sup> *Id.*

<sup>21</sup> See E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, INT’L J. OF TRANSGENDER HEALTH (Sept. 6, 2022), <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644> (“SOC 8”).

<sup>22</sup> See *WPATH Standards of Care for Transgender and Gender Diverse People, Version 8 Frequently Asked Questions (FAQs)*, WPATH, <https://perma.cc/D4QG-UT6Q>.

limited to existing WPATH members—drove its recommendations.<sup>23</sup> Which was it?

For the adolescent chapter, the answer is clear. As WPATH admits in SOC 8, “[a] key challenge in adolescent transgender care is the quality of evidence evaluating the effectiveness of medically necessary gender-affirming medical and surgical treatments.”<sup>24</sup> (One might wonder how WPATH knows a procedure is “medically necessary” if the “quality of evidence evaluating the effectiveness” of that procedure is poor, but hold that thought.) The “number of studies is still low,” WPATH notes, “and there are few outcome studies that follow youth into adulthood.”<sup>25</sup> “Therefore,” WPATH states, “a systematic review regarding outcomes of treatment in adolescents is not possible.”<sup>26</sup> WPATH provided “[a] short narrative review” instead.<sup>27</sup>

This admission is damning. The lack of a systematic evidence review moves WPATH’s recommendations for treating adolescents out of the field of evidence-based medicine and into the bad-old-days of “a bunch of experts writ[ing] whatever they felt like.”<sup>28</sup> Worse, WPATH wasn’t even honest when it went that route. According to Dr. Guyatt, “systematic reviews are *always* possible,’ even if few or no studies meet the

---

<sup>23</sup> SOC 8, *supra* note 21, at S8, S248.

<sup>24</sup> *Id.* at S45-46.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at S46.

<sup>27</sup> *Id.*

<sup>28</sup> Block, *supra* note 8.

eligibility criteria.”<sup>29</sup> To Guyatt, that WPATH “made a recommendation without one” means it “violat[ed] standards of trustworthy guidelines.”<sup>30</sup>

Without a systematic review to guide their work, the authors of the adolescent chapter were left to decide for themselves what recommendations to make. And initially, it appeared that they voted to retain (some) age requirements for transitioning minors—14 years old for cross-sex hormones (down from 16 in SOC 7), 15 for mastectomies, “and vaginoplasty and hysterectomy at 17.”<sup>31</sup> Though SOC 8 had been in development for years, WPATH issued a “correction” shortly after publication removing the minimum age requirements.<sup>32</sup> Why? WPATH didn’t say. But according to Dr. Amy Tishelman, lead author of the chapter on children, it was to “bridge th[e] considerations” regarding the need for insurance coverage with the desire to ensure that doctors would not be held liable for malpractice if they deviated from the standards.<sup>33</sup> Plus, according to WPATH’s president, to “propose” surgeries at defined “younger age[s]” would require “a better political climate.”<sup>34</sup>

---

<sup>29</sup> *Id.* (emphasis added).

<sup>30</sup> *Id.*

<sup>31</sup> Lisa Selin Davis, *Kid Gender Guidelines Not Driven by Science*, N.Y. POST (Sept. 29, 2022), <https://perma.cc/S3FF-Q66A>.

<sup>32</sup> *See Correction*, 23 INT’L J. OF TRANSGENDER HEALTH S259 (2022), <https://perma.cc/4342-KFEN>. Remarkably, this correction has itself since been removed. *See* <https://bit.ly/3qSqC9b>.

<sup>33</sup> Videorecording of Dr. Tishelman’s WPATH presentation, <https://twitter.com/SwipeWright/status/1571999221401948161>

<sup>34</sup> Ghorayshi, *More Trans Teens*, *supra* note 5.

Then there is the Eunuch chapter. Lest anyone mistake it for a scientific medical organization, WPATH devoted an entire chapter in *Standards of Care 8* to “eunuchs”—individuals “assigned male at birth” who “wish to eliminate masculine physical features, masculine genitals, or genital functioning.”<sup>35</sup> Because eunuchs “wish for a body that is compatible with their eunuch identity,” WPATH recommends “castration to better align their bodies with their gender identity.”<sup>36</sup>

How did WPATH learn that castration constitutes “medically necessary gender-affirming care” for eunuchs?<sup>37</sup> From the internet of course—specifically from a “large online peer-support community” called the “Eunuch Archive,” which WPATH boasts—in *Standards of Care 8*—houses “the greatest wealth of information about contemporary eunuch-identified people.”<sup>38</sup> Part of that “wealth of information” comes in the form of the Archive’s fiction repository, which hosts thousands of stories that “focus on the eroticization of child castration” and “involve the sadistic sexual abuse of children.”<sup>39</sup> “The fictional pornography” “includes themes such as Nazi doctors castrating children, baby boys being fed milk with estrogen in order to be violently sex trafficked as adolescents, and

---

<sup>35</sup> SOC 8, *supra* note 21, at S88.

<sup>36</sup> *Id.* at S88-89.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at S88.

<sup>39</sup> Genevieve Gluck, *Top Trans Medical Association Collaborated With Castration, Child Abuse Fetishists*, REDUXX (May 17, 2022), <https://perma.cc/5DWF-MLRU>.

pedophilic fantasies of children who have been castrated to halt their puberty.”<sup>40</sup>

Despite all this, Petitioners make the remarkable claim that WPATH’s standards “were developed in the same way as treatment guidelines for other medical conditions.” No. 23-492 Pet. 6 n.2. Let’s hope not.

### **B. WPATH Suppresses Scientific Inquiry.**

One reason why WPATH’s standards reflect ideology more than science could be that the organization itself is torn between those competing interests. According to Dr. Stephen Levine, one of respondents’ experts who “helped to author the fifth version of the [WPATH] Standards of Care,” “WPATH aspires to be both a scientific organization and an advocacy group for the transgendered,” and “[t]hese aspirations sometimes conflict.” *Kosilek v. Spencer*, 774 F.3d 63, 78 (1st Cir. 2014). “Skepticism and strong alternative views are not well tolerated” at WPATH, Levine says, and “have been known to be greeted with antipathy from the large numbers of nonprofessional adults who attend each of the organization’s biennial meetings.” *Id.* (alteration omitted). This and other testimony has led both the First and Fifth Circuits—and, until recently, the U.S. Department of Health and Human Services—to find that “the WPATH Standards of Care reflect not consensus, but merely one side in a sharply contested medical debate.” *Gibson v. Collier*, 920 F.3d 212, 221 (5th Cir. 2019); *see Kosilek*, 774 F.3d at 90; Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed.

---

<sup>40</sup> *Id.*

Reg. 37160, 37198 (June 19, 2020) (warning of “rel[ying] excessively on the conclusions of an advocacy group (WPATH) rather than on independent scientific fact-finding”).

Dr. Ken Zucker was one such professional “greeted with antipathy” by the activists at WPATH for his alternative views. Zucker is “a psychologist and prominent researcher who directed a gender clinic in Toronto” and headed the committee that developed the American Psychiatric Association’s criteria for “gender dysphoria” in the DSM-V.<sup>41</sup> The 2012 WPATH Standards of Care cite his work 15 times.<sup>42</sup> In his nearly forty years of research, Zucker discovered “that most young children who came to his clinic stopped identifying as another gender as they got older.”<sup>43</sup> Zucker thus became concerned that transitioning children could entrench gender dysphoria that would otherwise resolve.

That position was not popular at WPATH. In 2017, Zucker applied to present at the inaugural conference of USPATH, WPATH’s American affiliate. “[H]is research passed the peer review process,” and Zucker was invited to present.<sup>44</sup> When his panel discussion began, though, “protesters interrupted and

---

<sup>41</sup> Emily Bazelon, *The Battle Over Gender Therapy*, N.Y. TIMES MAG. (June 15, 2022, updated June 24, 2022), <https://www.nytimes.com/2022/06/15/magazine/gender-therapy.html>.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Erica Ciszek et al., *Discursive Stickiness: Affective Institutional Texts and Activist Resistance*, 10 PUBLIC RELATIONS INQUIRY 295, 302 (2021).

picketed.”<sup>45</sup> Security had to be called.<sup>46</sup> “That evening, at a meeting with the conference leaders, a group of advocates led by transgender women of color read aloud a statement in which they said the ‘entire institution of WPATH’ was ‘violently exclusionary’ because it ‘remains grounded in cis-normativity and trans exclusion.’”<sup>47</sup> “Activists demanded Zucker’s symposium be cancelled,” for “the WPATH Executive Board to provide an explanation and apology for [Zucker’s] presence at the conference,” and for “gender transgressive persons” to “be given seats on WPATH committees, including the scientific committees that decide which academic papers are accepted for conferences.”<sup>48</sup>

The organization caved. WPATH cancelled Zucker’s panels, and “organizers and board members publicly apologized for Zucker’s presence at the conference and their part in perpetuating the mistreatment of and violence against transgender women of color” by allowing Zucker to attend.<sup>49</sup> They also “promised to incorporate transgender women of color into each level of WPATH’s organization”—including, presumably, “the scientific committees that decide which academic papers are accepted for conferences.”<sup>50</sup> The former president of WPATH told the activists—not

---

<sup>45</sup> Bazelon, *supra* note 41.

<sup>46</sup> Ciszek, *supra* note 44, at 302.

<sup>47</sup> Bazelon, *supra* note 41.

<sup>48</sup> Ciszek, *supra* note 44, at 302.

<sup>49</sup> *Id.* at 304.

<sup>50</sup> *Id.* at 304.

Zucker—“We are very, very sorry.”<sup>51</sup> The public apology ended with the protesters on stage chanting “Trans Power!”<sup>52</sup>

WPATH’s members tried to silence Zucker again last year. Zucker is the editor of the *Archives of Sexual Behavior*, an academic journal that publishes a broad array of articles examining LGBTQ+ issues. Because some of the articles published in the journal question WPATH’s preferred model of “care,” WPATH’s president and other activists called on the publisher to replace Zucker “with an editor who has a demonstrated record of integrity on LGBTQ+ matters and, especially, trans matters.”<sup>53</sup> The apparent straw that broke the camel’s back was an article published in the *Archives* that examined survey data from over a thousand parents of gender-dysphoric adolescents who believed their teen’s gender dysphoria arose rapidly and in connection with social influences or preexisting mental health conditions (or both). This phenomenon had earlier been termed “Rapid-Onset Gender Dysphoria” by a different researcher who also saw her work pilloried by WPATH activists.<sup>54</sup> Because the theory suggests that social elements could play a role in the recent skyrocketing of gender dysphoria in

---

<sup>51</sup> Bazelon, *supra* note 41.

<sup>52</sup> Ciszek, *supra* note 44, at 304; *USPATH Gala Part 2*, YOUTUBE (Feb. 6, 2017), <https://www.youtube.com/watch?v=wxbsOX4hX0M&t=163s>

<sup>53</sup> Open Letter (May 5, 2023), <https://perma.cc/3HGZ-5CME>.

<sup>54</sup> See Colin Wright, *Anatomy of a Scientific Scandal*, CITY JOURNAL (June 12, 2023), <https://perma.cc/22J3-C5JA>.

adolescents—in turn suggesting caution might be prudent—WPATH cannot tolerate it.

Hence the letter. In addition to demanding that Zucker be fired, the activists urged the publisher to retract the article over an alleged technicality regarding oversight by an Institutional Review Board (IRB). When the authors explained why there was no IRB violation, the goalposts shifted: now the criticism was that the parents who took the surveys did not sign a consent form to have their responses published in a peer-reviewed journal (though they were expressly told that the anonymized results would be published online).<sup>55</sup> Though thousands of the publisher’s other papers had used a similar consent mechanism, the publisher caved and retracted the article.<sup>56</sup>

Even its own members are not safe from WPATH’s censorship. In 2021, three leading members of WPATH spoke publicly about their concern that medical providers in the United States were too quick to provide transitioning treatments to minors. Dr. Marci Bowers, who has performed more than 2,000 gender-transition surgeries and currently serves as WPATH’s president, confessed that “maybe we zigged a little too far to the left in some cases” due to the “naivete on the

---

<sup>55</sup> *Id.*

<sup>56</sup> Suzanna Diaz & J. Michael Bailey, *Retraction Note: Rapid Onset Gender Dysphoria: Parent Reports on 1,655 Possible Cases*, ARCHIVES OF SEXUAL BEHAVIOR (June 14, 2023), <https://perma.cc/5UGW-EGEV>. The article has since been republished elsewhere. See Suzanna Diaz & J. Michael Bailey, *Rapid Onset Gender Dysphoria: Parent Reports on 1,655 Possible Cases*, J. OF OPEN INQUIRY IN THE BEHAVIORAL SCIENCES (2023), <https://researchers.one/articles/23.10.00002v1>.

part of pediatric endocrinologists who were proponents of early [puberty] blockade thinking that just this magic can happen.”<sup>57</sup>

Dr. Erica Anderson, then a clinical psychologist at the University of California San Francisco’s Child and Adolescent Gender Clinic and a former president of USPATH, agreed: “It is my considered opinion that due to some of the—let’s see, how to say it? what word to choose?—due to some of the, I’ll call it just ‘sloppy,’ sloppy healthcare work, that we’re going to have more young adults who will regret having gone through this process.”<sup>58</sup> Writing with Dr. Laura Edwards-Leeper, the founding psychologist at the first hospital-based pediatric gender clinic in the United States, Anderson elaborated: “[W]e find evidence every single day, from our peers across the country and concerned parents who reach out, that the field has moved from a more nuanced, individualized and developmentally appropriate assessment process to one where every problem looks like a medical one that can be solved quickly with medication or, ultimately, surgery.”<sup>59</sup>

When Anderson, Bowers, and Edwards-Leeper went public with their concerns, they knew their colleagues at WPATH would not welcome the open discussion. As Bowers put it, “[t]here are definitely

---

<sup>57</sup> Abigail Shrier, *Top Trans Doctors Blow the Whistle on “Sloppy” Care*, THE FREE PRESS (Oct. 4, 2021), <https://www.thefp.com/p/top-trans-doctors-blow-the-whistle>.

<sup>58</sup> *Id.*

<sup>59</sup> Laura Edwards-Leeper & Erica Anderson, *The Mental Health Establishment Is Failing Trans Kids*, WASHINGTON POST (Nov. 24, 2021), <https://www.washingtonpost.com/outlook/2021/11/24/trans-kids-therapy-psychologist/>.

people who are trying to keep out anyone who doesn't absolutely buy the party line that everything should be affirming, and that there's no room for dissent."<sup>60</sup> Sure enough, USPATH and WPATH soon released a joint statement condemning "the use of the lay press ... as a forum for the scientific debate" over "the use of pubertal delay and hormone therapy for transgender and gender diverse youth."<sup>61</sup> The next month, "the board of USPATH privately censured Anderson, who served as a board member."<sup>62</sup> It then imposed a 30-day moratorium on speaking to the press for all board members. Anderson resigned, refusing to abide by USPATH's gag order.<sup>63</sup>

### **C. Many Clinicians Do Not Follow the WPATH Standards.**

Since Anderson, Bowers, and Edwards-Leeper went public, concerns over "sloppy care" have only grown. Though petitioners paint a rosy portrait of detailed assessments, ample mental health care, and physicians closely following the WPATH standards, the reality is far different. WPATH has long known that many of its own practitioners do not follow its guidelines, particularly the parts they view as too conservative—the very components petitioners now emphasize. A 2017 survey found that a majority of WPATH-affiliated plastic surgeons in the United States had performed transitioning "vaginoplasties"

---

<sup>60</sup> Shrier, *supra* note 57.

<sup>61</sup> Joint Letter from USPATH and WPATH (Oct. 12, 2022), <https://perma.cc/X7ZN-G6FS>.

<sup>62</sup> Bazelon, *supra* note 41.

<sup>63</sup> *Id.*

on minors, “thereby contravening” the WPATH standards that at the time restricted such surgeries to adults.<sup>64</sup> (In this context, “vaginoplasty” refers not to the minor surgery performed on a woman’s body to bring “separated [vaginal] muscles together” following trauma,<sup>65</sup> but to the attempted creation of a faux-vagina in a teenaged boy that begins by “removing the penis, testicles and scrotum.”<sup>66</sup>) No wonder “[t]he term *Wild West*” was used in the survey “by a few highly experienced surgeons who were alarmed at the absence of surgical standards and the ease of entering the subspecialty without any documented training.”<sup>67</sup>

We still live in the Wild West. As one doctor at Vanderbilt’s gender clinic bragged, transitioning services are “huge money makers.”<sup>68</sup> A surgeon profiled by the *New York Times* “has built a thriving top surgery specialty” by advertising her services to children on social media.<sup>69</sup> Dr. Sidhbh Gallagher in Miami “frequently posts photos, FAQs and memes on Facebook,

---

<sup>64</sup> Christine Milrod & Dan H. Karasic, *Age is Just a Number: WPATH-Affiliated Surgeons’ Experiences and Attitudes Toward Vaginoplasty in Transgender Females Under 18 Years of Age in the United States*, 14 J. SEXUAL MED. 524, 626 (2017).

<sup>65</sup> See American Society of Plastic Surgeries, *Aesthetic Genital Plastic Surgery Surgical Options: What Is A Vaginoplasty?*, <https://perma.cc/5WFH-57QP>.

<sup>66</sup> See Fan Liang, Johns Hopkins Medicine, *Vaginoplasty for Gender Affirmation*, <https://perma.cc/RFU9-S72N>.

<sup>67</sup> Milrod & Karasic, *supra* note 64.

<sup>68</sup> Kimberlee Kruesi, *Vanderbilt to Review Gender-Affirming Surgeries for Minors*, ASSOCIATED PRESS (Oct. 7, 2022), <https://apnews.com/article/health-business-tennessee-nashville-vanderbilt-university-6deb93f7dea92f1b2082c39f72b59766>.

<sup>69</sup> Ghorayshi, *More Trans Teens*, *supra* note 5.

Instagram and TikTok” to “connect[] with hundreds of thousands of followers.”<sup>70</sup> “Her feeds often fill with photos tagged #NipRevealFriday, highlighting patients ... whose bandages were just removed.”<sup>71</sup>

Dr. Gallagher regularly provides surgeries to minors as young as 13 and initially told the *Times* that she didn’t “know of a single case of regret” and assumed that reports of her patients detransitioning were “a hoax.”<sup>72</sup> She later “amended her stance” when confronted with a patient who detransitioned 16 months after surgery. The patient told the *Times* that the surgery “had been a mistake born out of a mental health crisis.”<sup>73</sup>

Even in *amicus*’s home state of Alabama physicians have jettisoned the WPATH standards in favor of quicker “care.” Dr. Leah Torres, an OB-GYN in Tuscaloosa, started “provid[ing] hormone therapy to transgender patients, including minors,” after her abortion practice dried up.<sup>74</sup> Though admitting that “this area of medicine is pretty new to [her]” and “is a relatively experimental area of medicine without a lot of data,” Dr. Torres has already rejected WPATH’s recommendations, “not believe[ing] [that] adolescents seeking hormones require mental health

---

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See Jenny Jarvie, *This Abortion Doctor is Not Ready to Leave Alabama*, L.A. TIMES (Apr. 28, 2023), <https://perma.cc/G5KZ-J7TB>.

evaluations.”<sup>75</sup> At her first meeting—via telehealth—with a teenaged girl with “a history of depression and anxiety,” Torres told the patient “straight up that she would prescribe a low dose of testosterone”—something “the teen’s pediatrician and staff at a psychiatric hospital” had refused to do.<sup>76</sup>

While Dr. Torres practices alone, the care doesn’t seem to be much better at the academic clinics that purport to practice with multidisciplinary teams. The endocrinologist head of Washington University’s pediatric gender clinic, for instance, admitted he had “no idea how to meet” “intensive interpretations” of the WPATH standards and “worried that his clinic would not be able to adjust” to them.<sup>77</sup> So it didn’t. As one patient told the *New York Times*, the doctor prescribed her testosterone “after one appointment.”<sup>78</sup> “There was no actual speaking to a psychiatrist or another therapist or even a case worker,” the patient said.<sup>79</sup> The clinic is currently under investigation by the Missouri Attorney General after a whistleblower detailed ways “doctors at the clinic had hastily prescribed hormones with lasting effects to adolescents with pressing psychiatric problems.”<sup>80</sup>

---

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Ghorayshi, *How a Small Gender Clinic*, *supra* note 11.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*; *see* Reed, *supra* note 9.

#### **D. Petitioners’ Other Preferred Medical Interest Groups Are Not Reliable.**

Though petitioners primarily rely on WPATH, they also invoke the Endocrine Society, the American Academy of Pediatrics, and the American Medical Association, among other domestic interest groups.<sup>81</sup> One would hope that these medical societies would be honest brokers, reviewing the evidence as Europe has done and responding accordingly. And one would hope that organizations like the American Medical Association—which has not published guidelines on this topic but supports the WPATH Standards of Care—would use their institutional goodwill, built up over time, to be the voice of reason and prioritize the safety of children.

Sadly, this has not happened. As with other institutions, American medical societies have become increasingly “performative,” treated by their leaders as platforms for advancing the current moment’s cause célèbre.<sup>82</sup> Add to this a replication crisis in scientific literature and the ability of researchers to use statistical tricks to make their preferred findings appear significant,<sup>83</sup> and it is no wonder that medical organizations find it easier to just go with the zeitgeist. (Not to mention that the American interest groups that

---

<sup>81</sup> See No. 23-466 Pet. 15; No. 23-477 Pet. 5 n.2; No. 23-492 Pet. 6 n.2.

<sup>82</sup> See generally Yuval Levin, *A TIME TO BUILD: FROM FAMILY AND COMMUNITY TO CONGRESS AND THE CAMPUS, HOW RECOMMITTING TO OUR INSTITUTIONS CAN REVIVE THE AMERICAN DREAM* (2020).

<sup>83</sup> E.g., Andrew Gelman & Eric Loken, *The Statistical Crisis in Science*, 102 *AMERICAN SCIENTIST* 460, 460-65 (2014) (noting “statistical significance” can “be obtained even from pure noise”).

endorse gender-transition procedures are just that—interest groups, with a strong financial interest in promoting the procedures their members make a living by providing.) Science is *hard*, and there is no reward in the current climate for any organization that questions the safety and efficacy of using sterilizing sex-modification procedures on children.

Take the American Academy of Pediatrics, for instance, which has “decried” “as transphobic” a resolution by its members discussing “the growing international skepticism of pediatric gender transition” and calling for a literature review.<sup>84</sup> Then, when AAP finally acknowledged the lack of systematic reviews supporting the treatments it recommends, the group promised to conduct one—while also promising that it would continue recommending the treatments while awaiting evidence of their safety and efficacy. To quote Dr. Guyatt again, that “puts the cart before the horse.”<sup>85</sup>

Similar concerns have been raised about the Endocrine Society.<sup>86</sup> As with WPATH, it appears that the

---

<sup>84</sup> Julia Mason & Leor Sapir, *The American Academy of Pediatrics’ Dubious Transgender Science*, WALL ST. JOURNAL (Apr. 17, 2022), <https://www.wsj.com/articles/the-american-academy-of-pediatrics-dubious-transgender-science-jack-turban-research-social-contagion-gender-dysphoria-puberty-blockers-uk-11660732791>.

<sup>85</sup> Azeen Ghorayshi, *Medical Group Backs Youth Gender Treatments, but Calls for Research Review*, N.Y. TIMES (Aug. 3, 2023), <https://perma.cc/N3BJ-TB9J>.

<sup>86</sup> *E.g.*, Roy Eappen & Ian Kingsbury, *The Endocrine Society’s Dangerous Transgender Politicization*, WALL ST. J. (June 28, 2023), <https://www.wsj.com/articles/the-endocrine-societys->

Endocrine Society conducted *some* systematic evidence reviews for its guideline on transitioning treatments.<sup>87</sup> But as with WPATH, those evidence reviews apparently failed to look at what Dr. Guyatt recognized was “the most important outcome”: “the effect of the interventions on gender dysphoria itself.”<sup>88</sup> No matter: The Endocrine Society recommends the treatments anyway.

The Endocrine Society knows that plaintiffs in cases like this one bandy about its guidelines to justify the procedures its members profit from, yet the guidelines themselves emphasize that they do not “establish a standard of care.”<sup>89</sup> One member of the guidelines authoring committee even bragged, when not testifying in court against the States, that the committee did not even have “some little data”—it “had none”—to justify the language in the guideline allowing doctors to prescribe cross-sex hormones to youth under 16.<sup>90</sup> It perhaps comes as little surprise to learn that nearly all the authors of the Endocrine Society

---

dangerous-politicization-endocrinologists-gender-affirming-care-arkansas-dac768bd.

<sup>87</sup> See Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, 102(11) J. CLINICAL ENDOCRINOLOGY & METABOLISM 3869, 3873 (Nov. 2017).

<sup>88</sup> Block, *supra* note 8.

<sup>89</sup> See Hembree et al., *supra* note 87, at 3895.

<sup>90</sup> Joshua Safer, *State of the Art: Transgender Hormone Care*, YOUTUBE (Feb. 15, 2019), [https://www.youtube.com/watch?v=m7Xg9gZS\\_hg](https://www.youtube.com/watch?v=m7Xg9gZS_hg).

guidelines were WPATH leaders and that WPATH itself is an official co-author.<sup>91</sup>

\* \* \*

These vignettes are necessarily incomplete, and much more could be said. But the point is a simple one. Petitioners rush to this Court and ask it to decide these cases on a preliminary posture before more evidence comes to light. Their fear is reasonable. Each day that passes seems to bring more evidence to light showing that the WPATH emperor has no clothes. But that is no reason for this Court to rush. It may need to decide these cases one day, but it should do so only when it is assured the full story.

### CONCLUSION

For the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

Steve Marshall

*Attorney General*

Edmund G. LaCour Jr.

*Solicitor General*

*Counsel of Record*

A. Barrett Bowdre

*Principal Deputy Solicitor General*

STATE OF ALABAMA

OFFICE OF THE ATTORNEY GENERAL

501 Washington Avenue

---

<sup>91</sup> Compare Hembree et al., *supra* note 87, at 3869, with Aaron Devor, WPATH, *History of the Association*, <https://perma.cc/SF7Y-SD3W>.

28

P.O. Box 300152  
Montgomery, AL 36130-0152  
(334) 242-7300  
Edmund.LaCour@AlabamaAG.gov  
*Counsel for Amicus Curiae*

FEBRUARY 2, 2024