

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* WOMEN'S
DECLARATION INTERNATIONAL USA
IN SUPPORT OF RESPONDENTS**

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INTRODUCTION AND INTEREST OF *AMICUS*¹

Women’s Declaration International (WDI, of which WDI USA is one chapter) is an all-volunteer global organization of women who fight to protect women and girls as a sex class. We are women from every walk of life—from law and government to the hard sciences, the culture-shaping professions, and the nation-building trades. We are lesbians, straight women, and bisexual women. We are mothers and child-free women. We are women of all races, ethnicities, and religions. Globally, we are more than 38,000 individuals and 518 organizations from nearly 160 nations. But in our diversity we have a single message: Never again will we return to a world where women are defined by the patronizing, regressive, and oppressive stereotypes of gender, of which “gender identity” is one form.

WDI USA works to advance the Declaration on Women’s Sex-Based Rights (the Declaration)² throughout U.S. law, policy, and practice. WDI USA is a nonpartisan organization, but its supporters generally consider themselves to be liberal, very liberal, or progressive. Of the roughly 6500 U.S. signatories to the Declaration, around 30 percent are Democrats and 34 percent are Independents (many having left the Democratic Party, no doubt due to opposition to the Party’s support for “gender

1. No counsel for a party authored this brief in whole or in part. No party or counsel for a party contributed money that was intended to fund preparing or submitting this brief. No person—other than WDI USA, its members, or its counsel—contributed money intended to fund preparing or submitting this brief.

2. Declaration on Women’s Sex-Based Rights (March 2019).

identity”). Seven percent are Republicans and the rest are either unaffiliated or prefer not to say.

The Declaration reaffirms women’s sex-based rights, including women’s rights to physical and reproductive integrity and the elimination of all forms of discrimination against women and girls that result from the redefinition of the category of sex to include “gender identity.”³ The Declaration contains nine Articles, Article IX of which reaffirms the need for the protection of the rights of children.⁴ WDI USA’s interest in this case stems from its commitment to women and girls as a sex class and its opposition to practices that harm children. Relevant to this case involving the obligations of government bodies to protect young people, the Declaration provides that “[s]tates should recognize that medical interventions aimed at the ‘gender reassignment’ of children by the use of puberty-suppressing drugs, cross-sex hormones and surgery” should be prohibited. The Tennessee law at issue here, SB 1,⁵ aligns with the Declaration.

WDI USA is interested in this appeal first because, as an organization, we can not protect women and girls from harmful sex discrimination, invasions of their sexual privacy, and sex-based violence against women and girls, if sex is judicially redefined to mean an amorphous continuum of subjectively felt “genders” that may not be related to sex at all. Second, WDI USA understands that children have an internationally recognized right to

3. *See id.*, Introduction.

4. *See id.*, Article IX.

5. Tenn. S.B. 1, 113th Gen. Assemb., Reg. Sess. (Tenn. 2023).

grow into adulthood, and this case addresses whether governments should be permitted to protect children from the harms of what is colloquially referred to as “gender affirming care” (i.e., the use of hormones that cause irreversible damage to young peoples’ natural physical and psychological growth and development). Third, the linguistic destabilization caused by use of words like “transgender” (including in this Court’s decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020)) is producing profound confusion throughout society as well as in law about what basic words like “women,” “girls,” “men,” “boys,” “sex,” and “gender” mean, and WDI USA has expertise in how the Court can resolve such damaging and unnecessary confusion. In view of its work on these issues, WDI USA has a meaningful perspective to offer the Court.

SUMMARY OF ARGUMENT

There is a deepening conflict over meaning in the English-speaking world concerning the use of words that define some of our most basic realities. What is a woman? What is a man? What is sex—or gender? Academics, therapists, doctors, journalists, and legislators continue to ask these questions.

The primary reason for the confusion about our basic biology is that there has been an ongoing attempt over the past 30 years to redefine the terms “woman” and “man” (and related terms, such as “girl” and “boy” or “sex” and “gender”), and in so doing to change the way we think about ourselves. Is a “transgender woman” a woman or a man? Does performing the stereotypical actions of the opposite sex make you become the opposite sex, or are you

simply a mimic? Do “transgender” children need to change their “wrong” bodies through hormones and surgeries to be happy? These are new questions for society and the law.

WDI USA works to protect the sex-based rights of women and girls. When anyone tries to redefine the word “woman,” we take it seriously. We are deeply invested in ensuring that the rights granted to us based on the stable definitions of the past are protected. As radical feminists, we are gender abolitionists, meaning that we seek to abolish gender (defined as sex stereotypes). Further, we are clear about our sex. We are female human beings; this recognition is demonstrably more accurate than notions from the framework of so-called “gender identity.” In fact, not a single one of us has a “gender identity” at all, notwithstanding petitioner’s absurd and utterly baseless contention that “[e]very person has a gender identity,” Compl. in Intervention at 5, *L.W., et al. v. Skrmetti, et al.*, 3:23-cv-00376 (N.D.Tn. April 26, 2023).

It’s a bit maddening to speak when the meaning of words is up for grabs. In the case of the word “woman,” for example, it’s almost as if we are using homonyms, two words with the same sound but different meanings, one for the standard meaning and another for the proposed new meaning. For example, petitioner is essentially contending that there are two types of women: one type of woman who is female and another type of woman who is male. This is a neat little linguistic trick, but it is not grounded in reality.

Furthermore, proponents of “gender identity” often say that sex and gender are different (we agree); other times they say that sex and gender are the same (we disagree). Proponents of “gender identity” can never

make any of their arguments make sense. But for them, the point is not to make sense; the point is to play with material reality and language. The entire ideology of “gender identity” is in the realm of faith, ignorance, and proclamation, in full contempt of any collaborative social reality with shared meanings. Entangled in our individual inner worlds, all people are meant to see our thoughts as facts, shadows of concrete reality.

For serious users of (and people who care about the accurate use of) language, “woman” is a time-stable noun that references one of the most basic categorical distinctions society must acknowledge: sex. A woman is an adult human female, possibly a mother, or a sister, or a lover. This basic, commonsense word, spoken or written for centuries to refer to an essential member of the human family, is now being usurped and redefined by believers in “gender identity” to mean whatever any man wants it to mean. Worse, our words for female members of the human community are being hollowed out simply to serve as vessels for the creation of new “gender identities” with a seemingly endless set of behavioral and costume possibilities. Woman, man, boy, girl, sex, gender: all words warped by transgenderism and its unending, boring fascination with sex stereotypes.

“Transgender” children and adults ask us all to accept their claims of having a hidden feeling, experience, or essence, something that leads them to believe that there is a mismatch between what they are feeling/thinking/imagining and the sexed reality of their human bodies. Many go further then, and claim that alleviating the strain of the mismatch requires the recognition of rights, especially to “gender-affirming care” from mental health

therapists, endocrinologists, and surgeons, in order to modify their bodies. For those who believe in it, “gender identity” exists.

As feminists, however, we find ourselves having to wearily point out that biological sex differences do not exist because of a theoretical belief. They simply exist. As we generally understand the world, our bodies exist prior to the language others teach us to use when referring to our already-sexed bodies. In contrast, there is no shared or commonly understood evidence for “gender identity” or “transgender children,” and so we find ourselves forced to pit common sense and historical fact against modern-day conjecture and claims to transcendence.

In real life, the redefinition of “woman” (or “girl”) leads to an abrogation of the rights of the female sex. Past laws regarding sex-based rights refer to women and sex, and everyone—society and the courts—knew well enough what we all meant, and no one had to define those terms.

Now, this Court is being asked to see and understand a new category of women—supposedly male women. But the concept is so vague and variable, its meaning so packed with delusions, half-truths, and lies, that it is not a suitable candidate to serve as a subject at law. That was essentially the conclusion of the court below, which this Court should affirm. “Gender identity” is nothing more than a self-perception that can be changed at will, as evidenced by people who have “de-transitioned” out of a “gender identity,” or by people who change their “preferred pronouns” every Wednesday.

The distinction between “gender identity” and “sex” couldn’t be sharper. Alessandra Asteriti, a feminist

international law scholar, recently reviewed a case in Scotland that involved a conflict between the recognition of biological sex differences as an objective fact and the “woman identity” of a “transgender” male who insisted he had a right to invade women’s spaces. She warns: “While truth is not required in order for a belief to be protected, the law needs to make distinctions between things that are true and things that are not. Reality and delusions cannot hold the same value or society descends into chaos.”⁶

When it comes to historical shifts in linguistic meaning, some proposed changes are socially damaging. Observing that words can shift and change meaning over time does not mean that all changes are rational or useful to all groups. Attempts to enshrine “gender identity” into law are bound to lead to confusion in society and harm especially to women and girls, and especially lesbians. It’s clear which choice the law must make; it must be predicated on the (continued) existence of sex.

For all these reasons and the reasons set forth below, *amicus* argues that: (I) The word “transgender” is a linguistic sleight of hand that cannot be protected legally as a quasi-suspect class under equal protection analysis because it has no coherent meaning, is not an immutable trait, and does not describe a politically powerless group of people; (II) Children have an international human right to grow into adulthood and to be protected from the physical and psychological harms that result from suppressing puberty and/or administering opposite-sex hormones; and (III) Sex is grounded in material reality, whereas

6. Alessandra Asteriti, *The Edinburgh Rape Crisis Centre Judgment, Annotated*, GENDER DISSIDENT (May 22, 2024).

“gender” (including linguistic derivatives like “gender identity,” “transgender,” and “cisgender”) is grounded in regressive sexist stereotypes that have historically harmed women.

ARGUMENT

I. THE WORD “TRANSGENDER” IS A LINGUISTIC SLEIGHT OF HAND THAT CANNOT BE PROTECTED LEGALLY AS A QUASI-SUSPECT CLASS UNDER EQUAL PROTECTION ANALYSIS BECAUSE IT HAS NO COHERENT MEANING, IS NOT AN IMMUTABLE TRAIT, AND DOES NOT DESCRIBE A POLITICALLY POWERLESS GROUP OF PEOPLE.

The court below noted in its July 8, 2023, decision staying the district court’s injunction that “neither the Supreme Court nor this court has recognized transgender status as a quasi-suspect class [for equal protection purposes].” *L.W. ex rel. Williams v. Skrmetti*, 73 F.4th 408, 12 (6th Cir. 2023). This is true, and WDI USA urges this Court not to recognize such a class.

A. “TRANSGENDER” HAS NO COHERENT MEANING

Although this Court used the word “transgender” and the phrase “transgender status” repeatedly, uncritically, and without definition in its 2020 decision in *Bostock*, those words in fact do not have a coherent or stable meaning. WDI USA assumes that by “transgender” and “transgender status” in *Bostock*, the Court meant something along the lines of “not conforming to sex stereotypes” because Aimee Stephens, the employee in

that case who was terminated by his employer, was a man who did not conform to the stereotypes typically associated with masculinity (*see* Section III, *infra*, on why such stereotypes are harmful).⁷

The American Civil Liberties Union (ACLU), which represents the respondents in support of the petitioner in this matter, defines the term “transgender” to mean “a broad range of identities and experiences that fall outside of the traditional understanding of gender.”⁸ It continues: “Some of those identities and experiences include people whose gender identity is different from the sex they were assigned at birth, people who transition from living as one gender to another or wish to do so (often described by the clinical term ‘transsexual’), people who ‘cross-dress’ part of the time, and people who identify outside the traditional gender binary (meaning they identify as something other than male or female). Some transgender people describe themselves as gender variant or gender nonconforming. Not everyone who doesn’t conform to gender stereotypes, however, identifies as transgender. Many people don’t conform to gender stereotypes but also continue to identify with the gender assigned to them at birth, like butch women or femme men.”⁹ It would defy

7. Helpfully, the Court already decided in 1989 that employment discrimination on the basis of such stereotypes constitutes unlawful sex discrimination. *See Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

8. ACLU, “Transgender people and the law,” at 19-20.

9. *Id.* at 20. Notably, many lesbians find phrases like “butch women” and “femme men” to be not only misogynistic, but homophobic. Such phrases simply rely on outdated sex stereotypes and expectations of conformity with such stereotypes, including heterosexuality.

reason to establish a quasi-suspect class of such people for equal protection purposes, and this Court ought not want to be the Court that establishes such a classification for a group of people that, at least according to the ACLU, includes part-time cross-dressers.

In a similar vein, the Human Rights Campaign (HRC) defines the word “transgender” to mean an “umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth.”¹⁰ It uses the term “non-binary” to mean “[a]n adjective describing a person who does not identify exclusively as a man or a woman. Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all non-binary people do. Non-binary can also be used as an umbrella term encompassing identities such as agender, bigender, genderqueer or gender-fluid.”¹¹ So according to the HRC, “transgender” is an “umbrella term” encompassing people who have a “gender identity and/or expression” that differs from cultural expectations. Notably, all human beings, to varying degrees, defy conformity with sex stereotypes. Also according to the HRC, a “transgender” person can also be “non-binary,” or not. Said person might also be “agender, bigender, genderqueer, or gender-fluid,” or not. No one can say coherently what any of this actually means.

Perhaps the best we can do given the above definitions from the two most prominent “transgender” advocates in

10. HRC, “Glossary of terms.”

11. *Id.*

the U.S. is to point to them loosely and try to characterize any common ground. Claims to be “transgender” seem to involve a set of beliefs about an identity its adherents call “gender,” which appears to affect how they present themselves outwardly to others as well as what they believe about themselves and the people around them. People who claim to have a “gender identity” point to an ever-growing collection of subtypes, as evidenced by the healthy lists of options from both the ACLU and HRC. Depending on the advocates’ claims, these newly discovered identities may be said to exist for a small percentage of the population, on the one hand, and/or also for all of us, on the other hand, and they have definitely been experienced in all cultures and through all of human history, or they have some other equally implausible attribute.

As the court below noted, “[i]nstead of defining a ‘discrete group,’ . . . ‘transgender’ can describe ‘a huge variety of gender identities and expressions,’” *L.W., et al. v. Skrmetti, et al.*, 23-5600 at 34 (6th Cir. 2023), quoting *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987) (quotation omitted) and 2022 WPATH Guidelines.” The bottom line is that “transgender” and “transgender status” do not denote a sufficiently coherent category of people to warrant the recognition of a quasi-suspect class for equal protection purposes and this Court should affirm the decision of the court below holding as much.

B. “TRANSGENDER” IS NOT AN IMMUTABLE TRAIT

Even if “transgender” were a coherent category of people, it is not an immutable trait.

The U.S. judiciary has a long and venerable history of applying intermediate scrutiny to claims of sex-based discrimination under the Equal Protection Clause for the purpose of protecting women and girls *as a sex class* from unfair treatment under the law. *See, e.g., United States v. Virginia*, 518 U.S. 515 (1996); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); *City of Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702 (1978); *Arizona Governing Committee v. Norris*, 463 U.S. 1073 (1983); *Frontiero v. Richardson*, 411 U.S. 677 (1973).

All of this case law stems from the landmark case of *Reed v. Reed*, 404 U.S. 71 (1971), where the Supreme Court held for the first time that the promise of equal protection under the Constitution applies to women equally as it does to men. At issue in that case was an Idaho statute that expressly granted men an advantage over women in the administration of probate estates. The Idaho law stated: “Of several persons claiming and equally entitled to administer, *males must be preferred to females*, and relatives of the whole to those of the half blood” (emphasis added). *Reed*, 404 U.S. at 72 n.2 and 73.

In her briefing in *Reed*, then lawyer Ruth Bader Ginsburg argued, with her ACLU co-author Melvin Wulf, that “it is presumptively impermissible to distinguish on the basis of an unalterable identifying trait over which the individual has no control and for which he or she should not be disadvantaged by the law.” Appellant Br. at 5, *Reed v. Reed*, 404 U.S. 71 (1971). She was, of course, talking about sex, i.e., the difference between men and women, and the “unalterable identifying trait” to which she referred was the fact of her client Sally Reed being female. In contrast, the word “transgender” is anything but an

“unalterable identifying trait over which [an] individual has no control.” To equate it with the discrimination and other ill-treatment that women receive on account of being of the female sex would be a mistake of the highest proportions. It would be a grave insult to women (i.e., adult human females) and it would effectively gut the entire line of cases that established women’s sex-based rights.

As the court below noted, “[t]o establish a new classification, plaintiffs must show that transgender individuals ‘exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group.’” *L.W., et al. v. Skrmetti, et al.*, 23-5600 at 34 (6th Cir. 2023), quoting *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987) (quotation omitted). It continued: “It is difficult to see, at least at this stage of the case, how transgender identity fits that description. Unlike existing suspect classes, transgender identity is not ‘definitively ascertainable at the moment of birth.’” *Id.*, quoting *Ondo*, 795 F.3d at 609. “It is not necessarily immutable, as the stories of ‘detransitioners’ indicate and as plaintiffs do not dispute.” *Id.*, citing *Detransitioners’ Amicus Br.* 19-25.

To be sure, there are plenty of people who refer to themselves as “transgender.” However, as detransitioners demonstrate, many such people often later come to accept themselves as the sex they are. There is simply nothing “immutable” or “unchangeable” about claiming to have a “transgender” identity (whatever “transgender” might mean).

**C. “TRANSGENDER” DOES NOT DESCRIBE
A POLITICALLY POWERLESS GROUP OF
PEOPLE**

As noted in Section I(A), *supra*, in *Reed*, this Court ruled that women are a quasi-suspect class for equal protection purposes in the context of a case involving a state law that *explicitly expressed a preference for male people over female people in the administration of probate estates*. There is a reason the Idaho law in question expressed this preference: the historical oppression of women as a class by men as a class.

It is no secret that until 1920, states were constitutionally permitted to deprive women as a class of the right to vote, and most did. For the first few centuries of this country, women could be prohibited from voting, serving on juries, owning a credit card or bank account, and divorcing an abusive husband. No one has ever been confused about the class of people whose rights to all these things could constitutionally be withheld. In other words, part of the reason that this Court granted women quasi-suspect classification status in *Reed* was because at least up until 1971, women were politically powerless. The argument, as valid today as it was in 1971, was that the Equal Protection Clause protects women and girls on the basis of sex because women and girls have historically been discriminated against on that very basis.

In contrast, there is nothing “politically powerless” about the group of people who call themselves “transgender.” Since 2012, then Vice President Biden has been saying that “transgender discrimination” is the “civil rights issue of

our time.”¹² On his first day of taking office as President in 2021, he issued Executive Order 13988 on “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.”¹³ Since then, the executive branch has issued countless guidance documents, memos, and orders mandating that sex be redefined to include the nebulous concept of “gender identity” for all purposes under federal administrative law.¹⁴

As the court below noted: “[t]he President of the United States and the Department of Justice support the plaintiffs. . . . Fourteen States have passed laws specifically allowing some of the treatments sought here. Twenty States have joined an amicus brief in support of the plaintiffs. The major medical organizations support the plaintiffs. And the only large law firms to make an appearance in the case all entered the controversy in support of the plaintiffs. These are not the hallmarks of a skewed or unfair political process—and they offer no explanation for inviting a greater political dysfunction problem: the difficulty of amending the Constitution if the federal courts err in choosing to occupy the field.” *L.W., et al. v. Skrmetti, et al.*, 23-5600 at 35 (6th Cir. 2023). This

12. Donovan Slack, *Biden says transgender discrimination ‘civil rights issue of our time,’* POLITICO, (October 20, 2012).

13. The White House, Executive Order 13988 on “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation” (January 20, 2021).

14. Many of these guidance documents, memos, and orders, as well as the Department of Education’s final 2024 Title IX rule changes, are currently the subject of litigation in lower courts throughout the country. *See, e.g., Tennessee, et al. v. Department of Education, et al.*, 3:21-cv-00308 (E.D.Tn. July 15, 2022).

Court should acknowledge that the category of people who call themselves “transgender” have become one of the most powerful lobby groups in the country.

For each of these reasons, this Court should not recognize a quasi-suspect classification of “transgender” people or “transgender status” for equal protection purposes.

II. CHILDREN HAVE AN INTERNATIONAL HUMAN RIGHT TO GROW INTO ADULTHOOD AND TO BE PROTECTED FROM THE PHYSICAL AND PSYCHOLOGICAL HARMS THAT RESULT FROM BLOCKING PUBERTY AND/OR ADMINISTERING OPPOSITE-SEX HORMONES.

So-called “gender affirming care” has been called “a human experiment on children and teens” by Gerald Posner, one of the most respected investigative journalists in the country.¹⁵ Posner states that “[i]gnoring the long-term dangers posed by unrestricted off-label dispensing of powerful puberty blockers and cross-sex hormones, combined with the large overdiagnosis of minors as gender dysphoric, borders on child abuse.”¹⁶ The court below rightly referred to the procedures Tennessee has prohibited as “new,” “experimental,” and “potentially irreversible.” *See L.W., et al. v. Skrmetti, et al.*, 23-5600 at 35 and 36 (6th Cir. 2023).

15. Gerald Posner, *The Truth About Puberty Blockers*, THE WALL STREET JOURNAL (June 7, 2023).

16. *Id.*

Several countries outside of the U.S. are moving toward banning so-called “gender affirming care” for minors. In 2020, the Finnish Health Authority, after conducting a systematic review of the evidence that found the evidence for “gender affirming care” to be “inconclusive,” issued guidelines backing psychotherapy instead of puberty blockers and cross-sex hormones as the first line of treatment.¹⁷ Sweden decided in February 2022 to halt hormone therapy for minors except in “very rare cases.”¹⁸ In 2023, one of Australia’s biggest medical insurers decided to stop covering private practitioners prescribing puberty blockers and cross-sex hormones to adolescents.¹⁹ Also in 2023, NHS England confirmed that it would only give puberty blockers to minors “as part of clinical research,”²⁰ a policy that has continued into 2024. Additionally, a 2023 Swedish study concluded: “This systematic review of almost 10,000 screened abstracts suggests that long-term effects of hormone therapy on psychosocial and somatic health are unknown except that GnRHa treatment seems to delay bone maturation and gain in bone mineral density.”²¹ Surely the state of

17. Michael Cook, *Policy shift in Finland for gender dysphoria treatment*, BIOEDGE (July 25, 2021).

18. *Sweden puts brakes on treatments for trans minors*, FRANCE24 (Feb. 8, 2023).

19. Angus Thompson, ‘*What’s the real risk?*’ *Gender transition insurance cover cut for GPs*, THE SYDNEY MORNING HERALD (May 29, 2023).

20. Azeen Ghorayshi, *England Limits Use of Puberty-Blocking Drugs to Research Only*, THE NEW YORK TIMES (June 9, 2023).

21. Ludvigsson, *et al.*, *A systematic review of hormone treatment for children with gender dysphoria and recommendations for research*, ACTA PAEDIATRICA (Jan. 20, 2023).

Tennessee may lawfully join these countries in protecting the children in the state from these practices.

Why is the U.S. going in a different direction from these other countries? One reason, put forth by political scientist Leor Sapir, is that the other countries are following the principles of evidence-based medicine, while the U.S. is not.²² Systematic reviews are the highest quality of evidence that medical associations ought to be relying on when developing policies, practices, and guidelines. WPATH, the American Academy of Pediatrics (AAP), and the Endocrine Society have all issued guidelines encouraging the provision of “gender affirming care” for minors that do not rely on *any* systematic reviews. They don’t even claim that their policies and statements rely on systematic reviews. England has broken from WPATH, and the director of Belgium’s Center for Evidence-Based Medicine has said he would “toss [WPATH’s guidelines] in the bin.”²³

The U.S. has signed, but not ratified, the U.N. Convention on the Rights of the Child (UNCRC),²⁴ which recognizes all children’s rights to develop physically, mentally, and socially to their fullest potential, to express their opinions freely, and to participate in decisions affecting their future. The UNCRC provides, in relevant part, that:

22. Leor Sapir, *Why Europe and America are going in opposite directions on youth transgender medicine*, THE HILL (June 28, 2023).

23. *Id.*

24. U.N. Convention Rts. Child, G.A. Res. 44/25 (Nov. 20, 1989).

- In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Art. 3¶1.
- States should “ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety and health.” Art. 3¶3.
- States should “respect the responsibilities, rights and duties of parents or, where applicable, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.” Art. 5.
- States should “recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” Art. 24.
- States should “recognize the right of the child to education, with a view to achieving this right progressively and on the basis of equal opportunity.” Art. 28.
- States “agree that the education of the child shall be directed to [t]he preparation of the child for

responsible life in a free society, in the spirit of understanding, peace, tolerance, and equality of sexes.” Art. 29.

- States “shall protect the child against all forms of exploitation prejudicial to any aspects of the child’s welfare.” Art. 36

Medical interventions aimed at “gender reassignment,” also known as “gender affirming care,” of children through the use of puberty-suppressing drugs, cross-sex hormones, and surgery do not serve the best interests of children. Children are not developmentally competent to give full, free, and informed consent to such medical interventions, which carry a high risk of long-term adverse consequences to their physical and psychological health, and which may result in permanent adverse consequences, including sterility and permanent loss of sexual function. By prohibiting such practices, Tennessee is in alignment with international law and human rights principles.

This is a matter of particular urgency for young people who are lesbian or gay.²⁵ It has long been understood that harmful practices that fall under the category of

25. *See supra*, n.1 at 2 (“Sexual orientation rights are necessary in eliminating discrimination against those who are sexually attracted to persons of the same sex. Rights relating to sexual orientation are compatible with women’s sex-based rights, and are necessary to enable lesbians, whose sexual orientation is towards other women, to fully exercise their sex-based rights.”); Women’s Declaration International USA, *Lesbian Bill of Rights* (Sept. 4, 2022) (“WHEREAS, lesbians are females sexually attracted exclusively to other females, consistent with Article 1 of the Declaration on Women’s Sex-Based Rights.”).

“gay conversion therapy” are a form of torture and abuse. Unfortunately, in many cases that is exactly what is happening with “gender affirming care.” Young people who are exploring their sexuality sometimes find themselves attracted to members of the same sex. Often, such young people are today being told that this fact makes them “the opposite gender,” and persuaded to undergo “gender affirming care.” This is no different from the gay conversion therapy of the past, and it’s barbaric. Many lesbian and gay activists all over the world argue that “gender affirming care” *is* gay conversion therapy and that our society is trying to “trans the gay away.”²⁶

Puberty is not a medical condition. Advocates of “gender-affirming care” have pathologized childhood and confused a generation of children with stories, reality TV, movies, classroom lessons, safe houses, and other stops on the “gender medicine” school-to-clinic pipeline. It hardly seems that joining a child (or adult) in his or her

26. See, e.g., Transgender Trend, *Is ‘affirmation’ gay conversion therapy for children and young people?* (April 1, 2021) (“The evidence shows that the majority of adolescents and young people now identifying as transgender are lesbian, gay or bisexual, and that homophobic bullying is indicated as a possible reason. This is cause for serious concern that ‘affirmation’ is a way of ‘transing away the gay.’”); WDI USA Lesbian Caucus, *Lesbians in the Crosshairs: How the Forced Teaming of LGB with TQ+ Has Harmed Lesbians* (November 27, 2023) (“Most minor patients seen by the Tavistock and Portman clinic in the UK who were seeking such medicalization were reported to be same-sex attracted. While in early years most of these children were male, in the last several years there has been a greater than 5000% increase reported in the numbers of girls seeking ‘treatment.’ In combination, this data means that the huge increase in children and young adults is largely due to the increase in young lesbians seeking to disguise their sex medically.”).

flight from reality would be the most helpful or healthy approach to take. Hard truths still must be told: Sex is binary and immutable; the sex you are in your mother's womb is the sex you will always be; you have one body to carry you through life and there are only so many things you can change about it.

The crux of “gender affirming care” is the claim that this is an exceptional mental health issue that requires extraordinary medical treatments, extreme body modifications, and intrusive social interventions into other people's lives in classrooms, locker rooms, bedrooms, workplaces, nightclubs, rape crisis centers, jails, the courts, and even other people's use of the English language. Yet it appears that none of this is necessary. The belief structure of “gender-affirming care” is at odds with reality and its customer service model is out of step with good medical practice.

There is simply no valid reason to suppress a child's healthy, natural puberty for the purpose of “affirming” a child's “gender.” WDI USA understands that puberty blockers are approved for medical conditions like precocious puberty. However, it is completely appropriate for government entities, including Tennessee, to take legal measures such as SB 1 to protect children and adolescents from adults who would enforce sex role stereotypes on girls and boys by diagnosing and treating children as having been “born in the wrong body” when they do not conform to traditional, culturally imposed sex role stereotypes; identifying young people who are same-sex attracted as suffering from “gender dysphoria”; and using medical interventions on children that may result in their sterilization, loss of sexual function, and other permanent harms.

III. SEX IS GROUNDED IN MATERIAL REALITY, WHEREAS “GENDER” (INCLUDING LINGUISTIC DERIVATIVES LIKE “GENDER IDENTITY,” “TRANSGENDER” AND “CISGENDER”) IS GROUNDED IN REGRESSIVE SEXIST STEREOTYPES.

The human community exists because women and men exist. The subject of all law governing human communities, therefore, must be the affairs of women and men in the real world, that is, the actions of concrete human beings within the realm of the physical universe where there are material outcomes. Neither man nor woman can stand alone, and since the sexes are not interchangeable, they necessarily have different experiences and interests that must be accounted for in social interactions and law.

Sex and “gender” are not synonyms. The term sex refers to the observable fact of the distinction between female and male—based on genetic characteristics and reproductive biology—not a mutable status that everyone, as if by accident, is “assigned at birth.”²⁷ Women and girls are the female sex.²⁸ Sex is established at conception, when an X sperm or a Y sperm fertilizes an egg.²⁹ It is easily

27. See Kathleen Stock, *Changing the concept of “woman” will cause unintended harms*, THE ECONOMIST (Jul. 6, 2018),

28. See Andrea Orwoll, *Pregnant “Persons”: The Linguistic Defanging of Women’s Issues and the Legal Danger of “Brain-Sex” Language*, 17 NEV. L.J. 670, 693 (2017) (“There are undeniable legal consequences of living in a female body. . . . Thus, woman specific language must be used in legal discussions of sex-based discrimination. . . .”).

29. See Risa Aria Schnebly, *Sex Determination in Humans*, THE EMBRYO PROJECT ENCYCLOPEDIA (Jul. 16, 2021).

identifiable and recorded with nearly 100% accuracy.³⁰ In contrast, the expression “assigned at birth” was developed to indicate that medical professionals had “assigned” a sex to members of a tiny class of babies whose sex could not easily be determined because they had both male and female reproductive characteristics, but who were all nonetheless genetically either female or male (these are people with disorders of sexual development, or DSDs, which is a real and challenging medical phenomenon).³¹

Repurposing this limited medical description to imply that *every* human is arbitrarily “assigned” a sex that might not be his or her “real” sex exemplifies Orwell’s Newspeak: It denies women and girls the language necessary to oppose “gender identity” ideology and establish that they are unchangeably different from men and boys in ways that sometimes matter—especially in being subjected to sex-based discrimination.³² But just as two plus two equals four, every person is a member of either the female or male sex. However, we want to note that children who are convinced they were born in the wrong body didn’t get that idea on their own.

The shift in language to all humans being “assigned at birth” and the notion that a child can be “born in the

30. See Colin Wright, *A Biologist Explains Why Sex Is Binary*, THE WALL STREET JOURNAL (Apr. 9, 2023) (refuting arguments that the existence of intersex people renders “sex” indeterminate).

31. See Jessica A. Clarke, *Sex Assigned at Birth*, 122 COLUM. L. REV. 1821, 1834-36 (2022).

32. George Orwell, *Nineteen Eighty-Four* 309-10 (Plume/Harcourt Brace 2003 ed.); see also Stock, *supra* (discussing “conceptual engineering”).

wrong body” moves us away from our own experience: All of us already have sexed bodies as a bedrock condition of our existence, and this will be true from conception to death. No human has ever changed sex, and no men or women ever will, not even if they start young to modify the bodies they were born as/with/in.

In contrast to sex, “gender” refers to a set of stereotypes imposed on women (and girls) and men (and boys) on the basis of sex. It is, in the words of feminist scholar Sheila Jeffreys, the “foundation of the political system of male domination.”³³ For feminists, gender is purely a social construction loaded with various patriarchal roles, values, and expectations. For example, women in our society are expected to wear high heels in order to comply with the rules of womanhood and to attract the attention of men, even though it has been shown time and again that wearing high heels impairs mobility and causes lower back pain, sore calves, foot pain, ankle sprains, constricted blood vessels, crooked feet, and weakened ligaments. Women are also expected to be sweet, docile, and subservient to men. This is all still true, notwithstanding the gains that feminists have made over the years. Feminists call for the abolition of gender because gender is a prison that keeps women in

33. Sheila Jeffreys, *GENDER HURTS: A FEMINIST ANALYSIS OF THE POLITICS OF TRANSGENDERISM* (Routledge 2014), 1; *see also* Sandra Lee Bartky, “Shame and Gender,” in *FEMININITY AND DOMINATION* (Routledge 1990), 84 (“What patterns of mood or feeling, then, tend to characterize women more than men? Here are some candidates: shame; guilt; the peculiar dialectic of shame and pride in embodiment consequent upon a narcissistic assumption of the body as spectacle; the blissful loss of self in the sense of merger with another; the pervasive apprehension consequent upon physical vulnerability, especially the fear of rape and assault.”).

a position of subservience to men. For feminists, in other words, gender is the problem, not the solution.

The fabricated concept of “gender identity” manipulates regressive, sexist stereotypes for a particularly harmful purpose—to deny women the coherent, objective legal taxonomy that anchors the jurisprudence of women’s rights.³⁴ On its face, “gender identity” refers to a person’s subjective *identity*, not to his or her *sex*, defined by whatever feeling the person has of what it means to “be of the gender with which he or she identifies” and whatever expression the person gives that feeling. When men and boys claim to “identify as” women or girls, “gender identity” reduces women to regressive stereotypes about what it means to be female, deprives women of agency to define their role in the world for themselves, and subjects women to sex-based discrimination. As Jeffreys notes:

Transgenderism depends for its very existence on the idea that there is an ‘essence’ of gender, a psychology and pattern of behavior, which is suited to persons with particular bodies and identities. This is the opposite of the feminist view, which is that the idea of gender is the foundation of the political system of male domination.³⁵

How can a man or boy “feel” or “sense” that he is a woman and “express” that feeling by wearing dresses, earrings,

34. It does this in part by “reduc[ing] women’s consciousness, our understanding, our ability to see our own oppression.” Jo Brew, *Gender Ideology is a Political Attack on Radical Feminism*, RADICAL FEMINIST ESSAYS (July 23, 2024).

35. Jeffreys, *supra*, n.33 at 1.

and makeup, except by having lived in a society where that is demanded and expected of women?

A boy who professes to identify himself as a girl has no internal frame of reference from which to do so realistically. What he in fact identifies with are the socially given stereotypes and narratives that have been applied to girls and, by extension, to women. He is constructing an identity by creating his own private impersonation of femininity, or womanhood. It's this "woman-face" he wants to have protected, indeed, privileged over real girls and women. An idea.

"Gender identity" is a psychological concept with no fixed biological correlates. It has no relevance to human reproduction or the generation of the greater community. There is no claim that a "gender identity" can be detected at birth (or at any other time in a person's life) by any known measurement or laboratory test.

The claim that one has a "gender identity" isn't real in the same way that male or female sex is. A claim about your sex could be confirmed, true or false. The kinds of attributes we commonly use to determine a person's sex on sight can be known, recorded, and confirmed by agents of the state. Unfortunately, your claim about having a "gender identity" would lead to a spiral of additional claims about the meaning of your sex, your clothing, your facial hair, your makeup, your vocal qualities, your gestures, and so on down a checklist of behaviors that you believe will be understood as the stereotypical behaviors of the "gender identity" you have felt an urge to perform in front of others.

When it comes to the physical universe and the material reality of the world we live in, the truth of the matter is that human beings have sexed bodies and those bodies come in two types, female or male. No amount of body modification and play acting will make a male become female, a woman become a man, or a boy magically become a princess who will grow up to crash a sorority, flash at the sisters, and force them to live together pretending happily ever after.

None of this is resolved by adding a prefix like “trans” or “cis” to the word “gender.” A person is said to be “transgender” if said person prefers the sex stereotypes typically associated with the opposite sex.³⁶ A person is said to be “cisgender” if the person prefers the sex stereotypes typically associated with his or her own sex. None of this does anything to abolish sex stereotypes themselves, and in any event, very few human beings categorically prefer one set of sex stereotypes over the other; in that sense, all of us could be said to “be transgender” in one way or another. Furthermore, and most relevant to this appeal, if a “transgender” person is simply someone who prefers the sex stereotypes imposed on the opposite sex, there should be no need for doctors to intervene with medical treatment, especially on children and young people.³⁷

36. See, e.g., *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017) (“By definition, a transgender individual does not conform to the sex-based stereotypes of the sex that he or she was assigned at birth.”).

37. See, e.g., Colin Wright, *The Transgender Umbrella Casts Its Shadow Over Gender Nonconformity: Why are we pretending we don't know why kids think they're trans?* REALITY'S LAST STAND (August 31, 2022) (“The definition of “transgender” currently used and embraced by our largest and most prestigious

How we use words—the semantic meanings and grammatical rules language users apply in choosing one sound or spelling over another—is a matter of intense interest within the politics and practice of transgenderism. The men and women who believe in “gender-affirming care” have been engaged in a years-long effort to redefine some of the most foundational meanings in the English language: mother, father, boy, girl, woman, man, male, female and to compel that use of speech by others. When the material reality of sex and human sexuality itself are put into question, real people are harmed. This Court should take the opportunity to set the matter straight.

scientific, medical, and human rights organizations is literally synonymous with common gender nonconformity.”).

CONCLUSION

For all the foregoing reasons, *amicus* urges the Court to rule definitively that the phrase “transgender people” is not a quasi-suspect classification for equal protection purposes and that the Tennessee law in question comports with the Equal Protection Clause of the 14th Amendment.

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