UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

CATHOLIC CHARITIES OF JACKSON, LENAWEE AND HILLSDALE COUNTIES and EMILY MCJONES,

Plaintiffs,

v.

GRETCHEN WHITMER, ET AL.,

Defendants.

Civil No. 1:24-cv-00718-JMB-SJB

BRIEF OF ETHICS AND PUBLIC POLICY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1, the undersigned counsel for *amicus curiae* Ethics and Public Policy Center represent that none of the above-referenced individuals is a corporate entity or has issued stock.

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INTERESTS OF *AMICUS CURIAE* [1]

The Ethics and Public Policy Center ("EPPC") is a nonprofit research institution dedicated to applying the Judeo-Christian moral tradition to critical issues of public policy, law, culture, and politics. EPPC's Programs cover a wide range of issues, including bioethics and human flourishing, governmental and judicial restraint, personhood and identity, and religious liberty. EPPC has a strong interest in promoting the Judeo-Christian vision of the human person, upholding rights of free speech and religious liberty, and responding to the challenges of gender ideology.

Ryan T. Anderson, Ph.D., the President of EPPC, Mary Hasson, J.D., the Kate O'Beirne Senior Fellow at EPPC and Director of EPPC's Person and Identity Project, and EPPC Fellow Eric Kniffin, J.D. contributed to this brief.

SUMMARY OF ARGUMENT

The ethics of Michigan's "Conversion Law" ("HB 4616") cannot be considered apart from the gender-affirming approach that underlies it. Gender affirmation provides the theoretical basis for HB 4616 and similar state statutes that treat a minor who declares a transgender identity as presumptively correct in that judgment, so clinicians must affirm the minor's asserted identity and gender transition desires. This brief presents ethical concerns regarding gender affirmation as a prescriptive response to a minor's identity distress. It also raises concerns regarding HB 4616 itself, which

[1] No party or counsel for any party has authored this brief in whole or in part, nor made any monetary contribution to fund the preparation or submission of this brief.

denies effective psychotherapy to minors seeking to explore alternative pathways, including the possibility of changing or desisting from a transgender gender identity.

Across the globe, gender specialists, clinicians, and whistleblowers have raised alarm over the scant evidence supporting gender-affirming protocols and the mounting evidence that gender affirmation seriously harms children and adolescents.

In April 2024, a four-year substantive evidence review (the "Cass Review"), commissioned by the UK National Health Service, delivered the most definitive research analysis to date of gender-affirming interventions for minors. The Cass researchers scrutinized arguments justifying social transition (the first stage of gender affirming care) and determined the arguments were "not supported" by evidence.[2] Overall, the Cass Review concluded that the evidence base for gender-affirming interventions in minors is "remarkably weak," with "no good evidence on the long-term outcomes of interventions to manage gender-related distress."[3] In response, the UK government issued an emergency ban on puberty suppression for identity-distressed minors; the ban was upheld in July 2024 by the High Court.[4]

The UK is not the only country reassessing gender affirming care for minors. Scandinavian countries were early adopters of gender-affirming protocols but,

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[2] Ruth Hall, et al., *Impact of social transition in relation to gender for children and adolescents: a systematic review,* Archives Child. Disease, Apr. 2024, at 6, https://pubmed.ncbi.nlm.nih.gov/38594055/.
[3] Dr. Hilary Cass, OBE, *Independent review of gender identity services for children and young people: Final Report,* The Cass Review, April 2024, at 13, https://cass.independent-review.uk/home/publications/final-report/.
[4] *Puberty blockers ban is lawful, says High Court*, BBC (July 29. 2024), https://www.bbc.com/news/articles/c4ng3gz99nwo.

beginning in 2020, several reversed course and curtailed medical gender transition interventions, citing concerns over lack of evidence, harmful outcomes (including impaired fertility), changing demographics (rising numbers, adolescent onset, predominantly female), high rates of psychiatric comorbidities, and the emergence of detransitioners.[5] Notably, Danish researchers voiced the growing concern that the premise of gender affirming care, i.e., the claim that "cross-sex identity in adolescents" is "permanent, or 'stable'" is, in fact, wrong.[6]

The latest research confirms that "change" in gender identity and related experiences is not unexpected and may be desired by an individual. Psychological measures of gender identity increasingly incorporate the concept of "change" into assessments.[7] A 2024 study of sexual and gender minority youth (SGM) found that "18.2% reported a different gender identity over time," indicating that "gender identity can evolve among SGM youths across time."[8] "Non-binary" and "gender-fluid" identification demonstrates that an individual's "relationship to the body can vary at

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[5] Sarah C. J. Jorgensen, et al, *Puberty Suppression for Pediatric Gender Dysphoria and the Child's Right to an Open Future,* 53 Archives Sexual Behav. 1941 (May 2024), https://pubmed.ncbi.nlm.nih.gov/38565790/.

[6] Society for Evidence-Based Medicine, *Denmark Joins the List of Countries That Have Sharply Restricted Youth Gender Transitions,* SEGM (August 17, 2023), https://segm.org/Denmark-sharply-restricts-youth-gender-transitions.

[7] Penelope Strauss, et al., *A critical discussion of pediatric gender measures to clarify the utility and purpose of "measuring" gender,* Int'l J. Transgender Health (Aug. 2024), https://www.tandfonline.com/doi/full/10.1080/26895269.2024.2375409.

[8] The study also noted that "changes in gender identity are not associated with changes in depressive symptoms." Andre Gonzales Real, et al., *Trajectories of Gender Identity and Depressive Symptoms in Youths*, 7 JAMA Open Network e2411322 (2024), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC11112442/.

different time points in relation to a dynamic gender identity."[9] And new research insists that respect for the "child's right to an open future" includes recognizing that "[g]ender identity and the importance of gender to an individual's sense of self can change over time."[10]

In short, gender identity and related personal goals *can and do* change. Ethical counseling considers and responds to changes in a client's self-knowledge and individual goals in accordance with the client's wishes, rather than imposing a one-size-fits-all approach, driven by the state's ideological viewpoint.

Research on detransitioners (persons who discontinue gender transition and embrace their given male or female sex) reveals that a "change in identity" often spurs the detransition decision.[11] Detransitioners report reasons for becoming "more comfortable identifying as my natal sex" and finding alternative ways to alleviate their distress.[12] Psychological exploration and openness to change *before* transitioning would have protected many detransitioners from life-altering body modifications.

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[9] Nastasja M. de Graaf, et al., *Psychological Functioning in Non-binary Identifying Adolescents and Adults*, 47 J. Sex Marital Therapy 773 (2021), https://pubmed.ncbi.nlm.nih.gov/34344272/.

[10] Jorgensen, *supra* at n.5.

[11] Morgane Audrey Gelly, *Gender-Related Medical Experiences of Youth Who Have Detranstioned* [sic], J. Homosexuality 1 (June 2024), https://www.tandfonline.com/doi/full/10.1080/00918369.2024.2362268.

[12] Lisa Littman, *Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners.* 50 Archives Sexual Behav. 3353 (Nov. 2021), https://pubmed.ncbi.nlm.nih.gov/34665380/; Elie Vandenbussche, *Detransition-related needs and support: A cross-sectional online survey*, 69 J. Homosexuality 1602 (July 2022), https://pubmed.ncbi.nlm.nih.gov/33929297/.

It is not surprising that European countries have pivoted to psychotherapy (or talk therapy), which explores alternative diagnoses and non-invasive ways to manage dysphoria, as the first-line of treatment for identity-distressed minors. It is troubling that some U.S. states, including Michigan, seek to foreclose, rather than enable, sound therapeutic options.

Gender therapists acknowledge that gender identity "conversion therapy" laws exert a chilling effect, causing some therapists to avoid offering minors the careful psychological assessments and counseling they need.[13] Without in-depth counseling to address psychological comorbidities and to explore the roots of identity distress, some minors will pursue body modifications they will later regret. Research on detransitioners confirms that regret is real and likely to increase in a clinical environment where professionals must rely on adolescent self-diagnosis and false claims of certainty.

We urge the Court to consider the serious ethical concerns raised by the HB 4616: it effectively mandates a gender-affirmation-only approach and denies effective talk therapy to minors seeking psychological help for their distress or an opportunity to explore alternative paths, including becoming more comfortable with their biological sex.

[13] Cass Review, *supra* at n.3.

ARGUMENT

I. Michigan HB 4616 fails to recognize gender identity can change over time and presumes gender affirmation is the only ethical way to treat gender dysphoria.

The ethics of HB 4616 cannot be considered apart from the gender-affirming approach that underlies it. The gender-affirming approach, explains Florence Ashley, a "transfeminine legal scholar and bioethicist," requires therapists to "trust the child's self-understanding," offer "acceptance and support," and permit the child "to make the best decision for themselves." Gender affirmation provides the theoretical basis for HB 4616 and the rationale for barring exploration of the full range of the minor's feelings and bodily experiences and alternative ways to address them. HB 4616 presumes that a minor's experience of gender dysphoria (disharmony between self-perceived gender identity and the body) is immutable and the minor's judgment concerning gender identity and the source of his or her distress is always correct. This mistaken view has serious consequences. The number of children and adolescents diagnosed with gender dysphoria or identifying as transgender has risen dramatically over the past decade, becoming "an international phenomenon."[14] Patient demographics shifted markedly too. Past gender dysphoria sufferers were usually adult males or young children, mostly boys. Today, the typical patient is an adolescent female.[15] The explosion in transgender

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[14] Kenneth J. Zucker, *Adolescents with Gender Dysphoria: Reflections on Some Contemporary Clinical and Research Issues*, 48 Archives Sexual Behav. 1983 (July 2019), https://doi.org/10.1007/s10508-019-01518-8.

[15] *Id.*

identification coincided with a sea change in the dominant clinical approach, raising serious ethical questions.

For years, childhood gender dysphoria was addressed through "watchful waiting" or psychotherapy for the child and family. In most situations (88%), gender dysphoria resolved by puberty.[16] In contrast, nearly all minors who begin gender-affirming social and medical transitions today *persist* in transgender identification.[17] Proponents of gender affirming care believe a child's identity claim must be accepted without question because gender affirmation, according to gender clinician Laura Edwards-Leeper, is based on "the notion that the gender identity and related experiences asserted by a child, an adolescent, and/or family members are true, and that the clinician's role in providing affirming care to that family is to empathetically support such assertions."[18]

[16] Devita Singh, et al., *A Follow-Up Study of Boys With Gender Identity Disorder*, 12 Frontiers Psych., Mar. 2021, at 8, https://doi.org/10.3389/fpsyt.2021.632784; Thomas D. Steensma, et al., *Desisting and persisting gender dysphoria after childhood: a qualitative follow-up study*, 16 Clinical Child. Psychol. & Psychia. 499 (2011), https://doi.org/10.1177/1359104510378303; Thomas D. Steensma, et al., *Factors associated with desistence and persistence of childhood gender dysphoria: a quantitative follow-up study*, 52 J. Am. Acad. Child & Adolescent Psych. 582 (2013), https://pubmed.ncbi.nlm.nih.gov/23702447/.

[17] See, for example, this study from the Tavistock and Portman NHS Gender Identity Development Service (UK), which found 98% of adolescents who underwent puberty suppression continued on to cross-sex hormones. Polly Carmichael, et al., *Short-term outcomes of pubertal suppression in a selected cohort of 12 to 15 year old young people with persistent gender dysphoria in the UK*, 16 PLOS ONE e0243894 (2021), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0243894.

[18] Laura Edwards-Leeper, et al., *Affirmative practice with transgender and gender nonconforming youth: Expanding the model*, 3 Psych. Sexual Orientation & Gender Diversity 165, 166 (2016), https://dx.doi.org/10.1037/sgd0000167 (citing Marco A. Hidalgo, et al., *The Gender Affirmative Model: What We Know and What We Aim to Learn*, 56 Hum. Dev. 285, 286 (2013), https://doi.org/10.1159/000355235.

Gender affirming care, and HB 4616, make little sense from a clinical perspective.[19] When HB 4616 treats a minor's transgender identification as "a fixed or stable entity, rather than a state of mind with multiple causative factors," it "closes down opportunities for doctors and patients to explore the meaning of any discomfort."[20] Danish researchers recently limited medicalized gender affirmation, voicing concern that the premise of gender affirming care, i.e., the claim that "cross-sex identity in adolescents" is "permanent, or 'stable,'" is simply wrong.[21] "Comprehensive treatment of gender dysphoria," writes psychiatrist Andrew Amos, instead requires "exploration of childhood adversity and trauma and comprehensive formulation with differential diagnosis and treatment options."[22]

A growing body of research shows that "change" in gender identity and related experiences is not unexpected and may be desired. "Non-binary" and "gender-fluid" self-identifications, for example, demonstrate that an individual's "relationship to the

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[19] HB 4616 provides that "[a] mental health professional shall not engage in conversion therapy with a minor." "Conversion therapy," in turn, is defined by HB 4617: "Conversion therapy" means any practice or treatment by a mental health professional that seeks to **change** an individual's sexual orientation or gender identity, *including, but not limited to, efforts to **change** behavior or gender expression* or to reduce or eliminate sexual or romantic attractions or feelings toward an individual of the same gender." MCL 330.1100a(20) (emphasis added). HB 4617 specifically excludes gender-affirmation from HB 4616's definition of conversion therapy: "Conversion therapy does not include counseling that provides assistance to an individual undergoing a gender transition, counseling that provides acceptance, support, or understanding of an individual or facilitates an individual's coping, social support, or identity exploration and development, including sexual orientation-neutral intervention to prevent or address unlawful conduct or unsafe sexual practices, as long as the counseling does not seek to change an individual's sexual orientation or gender identity." *Id.*

[20] Lucy Griffin, et al., *Sex, gender and gender identity: a re-evaluation of the evidence*, 45 B. J. Psych. Bull. 291 (2021), https://doi.org/10.1192/bjb.2020.73.

[21] Society for Evidence-Based Gender Medicine, *supra* at n.6.

[22] George Halasz & Andrew Amos, *Gender Dysphoria: Reconsidering ethical and iatrogenic factors in clinical practice*, 32 Australas Psych. 26 (2024). https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10809775/.

body can vary at different time points in relation to a dynamic gender identity."[23] A 2024 study of sexual and gender minority (SGM) youth found that "18.2% reported a different gender identity over time," evidence that "gender identity can evolve among SGM youths across time." Notably, "changes in gender identity" were not linked to "changes in depressive symptoms."[24]

Psychological measures of gender identity also incorporate the concept of "change" into assessments.[25] A narrative review of "pediatric gender measures" reveals that "change," including the client's change expectations (predictions and desires for change) and "change" over time are common areas of clinical assessment.[26]

For example, the Perth Gender Picture, a "pictorial and narrative tool used … with young people aged 11–18 to reflect on and communicate gender identity," asks the child to "use colored markers to show…their current gender identity, how it was in the past, and how they hope or wish it will be in five or ten years in the future."[27] The Genderqueer Identity Scale, "a tool to measure non-binary and genderqueer identities and expression across time, including before, during and after medical transition," asks whether "[i]n the future, I think my gender will be fluid or change over time."[28] The

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[23] de Graaf, *supra* at n.9.

[24] Gonzales Real, *supra* at n.8.

[25] Strauss, *supra* at n.7.

[26] *Id.*

[27] *Id.* at 13.

[28] *Id.* at 12.

Gender Preoccupation and Stability Questionnaire probes the client's experience of gender dysphoria and response to treatment, asking: "Over the past two weeks how often has your sense of what gender you identify with changed at all?"[29] HB 4616 renders it near-impossible, and quite risky, to determine which "change" discussions are permissible or prohibited.

The testimony of detransitioners (persons who discontinue gender transition and embrace their given male or female sex) reinforces the need for exploration, curiosity, and openness to change, by the individual and in the therapeutic relationship. Studies report that formerly transgender-identified young people attribute their detransition decisions to deeper self-understanding and changed perspectives, including becoming "more comfortable identifying as my natal sex," realizing their gender dysphoria stemmed from other sources, and finding alternative ways to manage distress.[30] Psychological exploration and openness to change *before* they transitioned would have saved many from lifelong regret.

New research emphasizes that respect for the "child's right to an open future," includes recognizing that "[g]ender identity and the importance of gender to an individual's sense of self can change over time."[31] Put differently, "change" is a feature,

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[29] *Id.* at 13.

[30] Littman, *supra* at n.12; Elie Vandenbussche, *Detransition-related needs and support: A cross-sectional online survey*, 69 J. Homosexuality 1602 (July 2022), https://pubmed.ncbi.nlm.nih.gov/33929297/.

[31] Jorgensen, et al, *supra* at n.5.

not a bug, when it comes to gender identity. Ethical counseling seeks to respond to changes in a client's self-knowledge and individual goals, rather than imposing an inflexible, state-favored goal.

It is not surprising that European countries that have assessed the evidence have pivoted away from gender affirming care and increasingly prioritize psychotherapy (or talk therapy) as the "first-line" treatment for identity-related distress in minors.[32] It is troubling, however, that some U.S. states, including Michigan, seek to foreclose, rather than enable, sound therapeutic options, such as the talk therapy offered by Plaintiffs. HB 4616 creates an unresolvable ethical dilemma for therapists who seek to respond to their clients' goals and desires while navigating arbitrary and vague distinctions between prohibited versus permissible "change" discussions. Experienced clinicians warn that laws like HB 4616 leave therapists "unsure whether addressing psychological and social antecedents will lead to accusations of conversion therapy. Attempts to reconcile a sufferer's discomfort with their actual body would be good practice in other conditions involving body image disturbance, such as anorexia nervosa," but not under HB 4616.[33]

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[32] Council for Choices in Healthcare (COHERE), Recommendation of the Council for Choices in Health Care in Finland (2020), *https://palveluvalikoima.fi/en/recommendations#genderidentity*; Society for Evidence-Based Medicine, *supra* at n.6.

[33] Griffin, *supra* at n.20.

Instead, the gender-affirming model deems "therapeutic approaches that encourage individuals to accept their given body" to be "harmful."[34]

Despite the "absence of empirical data" supporting it, the gender-affirming model continues to be heavily promoted by transgender activists and underpins "conversion therapy bans" across the country.[35] As a result, identity-distressed adolescents will mistakenly believe that gender transition and irreversible gender-affirming body modifications are the only solutions to their distress because their therapists will be prevented from offering alternatives.[36]

II. Gender affirmation is an unethical approach based on faulty anthropology.

Medical ethics standards require clinicians to treat patients with "honesty, beneficence [doing good], nonmaleficence [doing no harm], justice, and respect for patient autonomy."[37] Good medicine facilitates human flourishing, where mind and body function well, and the bodily systems achieve their ends. A person's thoughts and feelings achieve their ends by being in contact with reality.

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[34] Substance Abuse and Mental Health Services Administration (SAMHSA), *Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth.* (Mar. 2023), at 8, https://store.samhsa.gov/product/moving-beyond-change-efforts-evidence-and-action-support-and-affirm-lgbtqi-youth/pep22-03-12-001.

[35] Laura Edwards-Leeper, Am. Acad. Pediatrics, *Policy Statement: Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 Pediatrics e20182162 (2018), https://pubmed.ncbi.nlm.nih.gov/30224363/.

[36] Littman, *supra* at n.12; *see also* Lisa Littman, et al., *Detransition and Desistance Among Previously Trans-Identified Young Adults*, Arch Sex Behav.(Jan. 2024), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10794437/.

[37] Stephen B. Levine, *Informed Consent for Transgendered Patients*, 45 J. Sex & Marital Therapy 218 (2019), https://doi.org/10.1080/0092623X.2018.1518885.

The human sexual binary *is* reality. According to the National Academy of Science's Committee on Understanding the Biology of Sex and Gender Differences, sex is "the classification of living things . . . as male or female according to their reproductive organs and functions assigned by the chromosomal complement."[38] A person's sex is imprinted in every cell of the person's body and cannot change.[39]

If an adolescent seeks validation for an identity that does not correspond to reality, a therapist has an ethical duty to speak the truth, not to validate a false self-perception. It is profoundly unethical, for example, to reinforce a male child's belief that he is not a boy, or that he "is" or can "become" a female. It is similarly unethical for a therapist to tell a female patient that her self-perception that she "is" a boy overrides the reality of her female-sexed body. No one can change sex. And it is physically and emotionally damaging to introduce cross-sex hormones, destroy fertility, or remove genitals or reproductive organs to (in the words of one gender clinic) "help make the body look and feel less masculine and more feminine" (for males who identify as a "girl") or "less feminine and more masculine" (for females who identify as a "boy")."[40]

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[38] Institute of Medicine, *Exploring the Biological Contributions to Human Health: Does Sex Matter?* 1 n.1 (2001), https://www.ncbi.nlm.nih.gov/books/NBK222288/.

[39] *Id.* at 28-44 (Chapter 2: "Every Cell has a Sex").

[40] "Transgender resources for patients," Randall Children's Hospital Legacy Health T-Clinic (last visited Aug. 9, 2024), https://www.legacyhealth.org/Children/health-services/transgender/kids-faq (links for "Estrogen" and "Testosterone" under "Gender-affirming medical care resources"). This resource is listed on the website of Dr. Laura Edwards-Leeper. *See* "Dr. Laura Edwards-Leeper, Ph.D. – Resources" (last visited Aug. 9,

Medical interventions that affirm a person's false beliefs are inherently misguided. Gender affirmation, along with the resulting bodily modifications that come with this approach, not only fails to meet the standards of medical ethics, it is ethically indefensible as a prescriptive response to identity distress.

III. Gender affirmation leads to poor outcomes and irreversible harm.

The original Dutch protocol for "transitioning" identity-distressed minors, begun in the late 1990s, was presented as "safe" and "reversible."[41] A decade later, American clinicians innovated an accelerated approach, gender affirmation, that introduced transition interventions at earlier ages despite scant research of either risks or benefits. Clinical concerns over the outcomes of gender affirmation for minors have escalated, however, as substantive evidence reviews reveal "weak evidence" of benefit and demonstrable, serious harms.[42]

Gender affirmation has a domino effect, beginning with psycho-social transition.[43] Although not physically invasive, psycho-social transition is psychologically

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2024), http://www.drlauraedwardsleeper.com/resources (link for "Legacy Health T-Clinic" under "Portland, OR Area Resources").

[41] Zhenya Abbruzzese, et al, *The Myth of Reliable Research in Pediatric Gender Medicine: A Critical Evaluation of the Dutch Studies – and research that has followed*, 49 J. Sex and Marital Therapy 673 (2023), https://pubmed.ncbi.nlm.nih.gov/36593754/.

[42] *See, e.g.*, Alison Clayton, *Gender-Affirming Treatment of Gender Dysphoria in Youth: A Perfect Storm Environment for the Placebo Effect – The Implications for Research and Clinical Practice*, 52 Archives Sexual Behav. 483 (2023), https://doi.org/10.1007/s10508-022-02472-8; Kirsty Entwistle, *Debate: Reality check–Detransitioner's testimonies require us to rethink gender dysphoria*, 26 Child & Adolescent Mental Health 15 (2020), https://pubmed.ncbi.nlm.nih.gov/32406585/; Cass Review, *supra* at n.3.

[43] When a minor's desired identity is affirmed, the minor initiates external "social" changes to express the desired identity (name, pronouns, hair, clothing, etc.).

difficult to reverse. The Dutch gender-affirming protocol never supported social transition for pre-pubertal children because of concerns that it would be self-reinforcing and induce persistence of transgender identification.[44] Research bears this out: children who socially transition are overwhelmingly likely to persist in a transgender identification.[45] This raises serious ethical questions. Social transition may be the "initiating factor" in a medical "cascade," a stepwise series of events that proceed with increasing momentum to a seemingly inevitable conclusion" – medical transition, long before the child is mature enough to appreciate its long-term consequences.[46] A pre-pubertal child who begins presenting as a member of the opposite sex is likely to experience extreme anxiety as puberty approaches, fearing that the appearance of secondary sex characteristics will reveal the child's true sexual identity. Fear and anxiety propel the child towards puberty suppression.

Although the Dutch viewed puberty suppression in identity-distressed but otherwise healthy minors as "safe" and "reversible,"[47] those claims have not held up under scrutiny. Puberty blockers can preserve the child's secret, by disrupting the child's natural development and suppressing the development of secondary sex characteristics,

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[44] Annelou L.C. de Vries & Peggy T. Cohen-Kettenis, *Clinical Management of Gender Dysphoria in Children and Adolescents: The Dutch Approach*, 59 J. Homosexuality 301 (2012), https://pubmed.ncbi.nlm.nih.gov/22455322/.

[45] Kristina R. Olson, et al, *Gender Identity 5 Years After Social Transition*, 150 Pediatrics e2021056082 (2022), https://pubmed.ncbi.nlm.nih.gov/35505568/.

[46] Jorgensen, *supra* at n.5, at 1945.

[47] E. Abbruzzese, *supra* at n.41.

but only for a time. Puberty is a whole-body developmental process. Preventing its normal course has consequences beyond preventing the appearance of secondary sex characteristics: Puberty blockers stop a child's age-appropriate social and cognitive maturation, leaving the child out of step with peers; bone mineralization, critically important developmentally, is suspended; new research from the Mayo Clinic found that puberty blockers cause testicular gland and cell abnormalities, with unknown long-term consequences on fertility.[48] Months or years later, if puberty blockers are stopped, the child's body will resume normal development. The time lost from the disruption in biological maturation, however, cannot be recaptured, and the lifetime consequences are unknown.[49] Finally, puberty blockers generally fail to lessen the child's gender dysphoria and produce mixed results on mental health; the long-term effects remain unknown.[50]

"In practice, puberty suppression is not a distinct, time-limited intervention," but leads to "increasingly invasive medical interventions."[51] Multiple studies show that nearly all children who begin puberty blockers go on to receive cross-sex hormones,

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[48] Murugesh V, et al., *Puberty Blocker and Aging Impact on Testicular Cell States and Function*, bioRxiv [Preprint], Mar. 2024, https://www.biorxiv.org/content/10.1101/2024.03.23.586441v1..

[49] Nat'l Inst. for Health and Care Excellence (NICE), *Evidence review: Gonadotrophin releasing hormone analogues for children and adolescents with gender dysphoria* (2020), https://cass.independent-review.uk/wp-content/uploads/2022/09/20220726_Evidence-review_GnRH-analogues_For-upload_Final.pdf; Michael Biggs, *Revisiting the effect of GnRH analogue treatment on bone mineral density in young adolescents with gender dysphoria*, 34 J. Pediatric Endocrinology & Metabolism. 937 (2021), https://doi.org/10.1515/jpem-2021-0180.

[50] Carmichael, *supra* at n.17; Clayton *supra* at n.42; Cass Review, *supra* at n.13.

[51] Jorgensen, *supra* at n.5, at 1945.

with life-altering consequences.[52] Introducing cross-sex hormones after blocking the maturation of genitals and reproductive organs causes sterility and likely impairs later sexual function, facts known by gender clinicians but incomprehensible to a child.[53] Cross-sex hormones also carry numerous health risks, including genital and vaginal atrophy, hair loss (or gain), voice changes, infertility, cardiovascular risks, and liver and metabolic changes.[54]

In addition, the flood of high-dose, opposite-sex hormones cause emotional and psychological changes. Females taking testosterone experience increased gender dysphoria, particularly regarding their breasts, creating heightened demand for double mastectomies as the solution, even for children as young as 13.[55] This is iatrogenic harm or, in the words of psychotherapist Alison Clayton, "dangerous medicine."[56]

Proponents of the gender-affirming approach continue to push ethical boundaries. HHS Assistant Secretary Rachel Levine and others pressured the activist-dominated World Professional Association for Transgender Health (WPATH) to

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[52] Carmichael, *supra* at n.17; Stephen B. Levine, *Ethical Concerns About Emerging Treatment Paradigms for Gender Dysphoria*, 44 J. Sex & Marital Therapy 29 (2018), https://doi.org/10.1080/0092623X.2017.1309482

[53] Diane Ehrensaft, a leading proponent of gender-affirming care, notes that a "child who begins puberty blockers at Tanner Stage 2 and proceeds directly to cross-sex hormones will be rendered infertile." Diane Ehrensaft, *Gender nonconforming youth: current perspectives*, 8 Adolescent Health Med. Therapy 57 (2017), https://doi.org/10.2147/AHMT.S110859.

[54] Carl Heneghan & Tom Jefferson, *Gender-affirming hormone in children and adolescents*, BMJ EBM Spotlight (Feb. 25, 2019), https://blogs.bmj.com/bmjebmspotlight/2019/02/25/gender-affirming-hormone-in-children-and-adolescents-evidence-review/.

[55] Johanna Olson-Kennedy, et al., *Chest Reconstruction and Chest Dysphoria in Transmasculine Minors and Young Adults: Comparisons of Nonsurgical and Postsurgical Cohorts*, 172 JAMA Pediatrics 431 (2018), https://doi.org/10.1001/jamapediatrics.2017.5440.

[56] Clayton, *supra* at n.42.

remove the minimum age guidelines in WPATH's 2022 "Standards of Care Version 8" for political purposes, a reckless move permitting minors to receive cross-sex hormones and undergo breast, genital, or facial surgeries at any age.[57] Recently leaked WPATH conference videos and member emails reveal a shocking pattern among WPATH-affiliated clinicians of performing unproven (but "affirming") medical and surgical procedures on vulnerable youth, with little regard for the lifelong consequences or lack of informed consent.[58] This is unethical human experimentation—on *children*. One anguished Swedish teen who detransitioned after suffering substantial bodily harm describes the gender-affirming medical protocol in stark terms: "They're experimenting on young people . . . we're guinea pigs."[59]

IV. Other countries are increasingly aware of the unethical nature of gender affirmation.

The unethical nature of these interventions has drawn global attention, including from progressive nations that initially embraced gender-transition interventions.[60] The

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[57] Azeen Ghorayshi, *Biden Officials Pushed to Remove Age Limits for Trans Surgery, Documents Show*, N.Y. Times (June 25, 2024), https://www.nytimes.com/2024/06/25/health/transgender-minors-surgeries.html; Eli Coleman, et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 Int'l J. Transgender Health, S1 (2022), https://doi.org/10.1080/26895269.2022.2100644.

[58] Mia Hughes, The WPATH Files, *Pseudoscientific Surgical and Hormonal Experiments on Children, Adolescents, and Vulnerable Adults*, Env't Progress (March 4, 2024), https://environmentalprogress.org/big-news/wpath-files; Megan Brock & Kate Anderson, *The WPATH Tapes: Behind-the-Scenes Recordings Reveal What Top gender Doctors Really Think About Sex Change Procedures*, Daily Caller (May 14, 2024), https://dailycaller.com/2024/05/14/wpath-tapes-gender-doctors-recordings-sex-changes/.

[59] *Uppdrag granskning: Transbarnen* (SVT television broadcast Nov. 26, 2021) [translation: *Mission Investigate: Trans Children*], https://www.svtplay.se/video/33358590/uppdrag-granskning/ mission-investigate-trans-children-avsnitt-1.

[60] Becky McCall & Lisa Nainggolan, *Transgender Teens: Is the Tide Starting to Turn?*, Medscape (Apr. 26, 2021), https://www.medscape.com/viewarticle/949842; Chad Terhune, et al., *A Reuters Special Report: As more*

leading gender clinic in Sweden has stopped using puberty blockers for minors.[61] Finland has likewise reversed course, issuing new guidelines that prioritize psychotherapy as the first-line treatment for gender dysphoric minors.[62] Denmark recently followed the lead of Sweden and Finland and now drastically limits its use of puberty blockers and hormones in minors, citing the psychiatric comorbidities of its young patients and the lack of evidence to justify life-altering interventions.[63] In the United Kingdom, whistleblower complaints, a landmark lawsuit, two substantive evidence reviews by the British National Institute for Clinical Excellence (NICE), and the four-year Cass Review culminated in a government ban on puberty blockers for identity-distressed minors.[64] The NHS also will begin an investigation of its adult gender clinics in September 2024, after complaints over safety and the ideologically-driven gender-affirming approach.[65]

Psychotherapists in Australia and New Zealand issued a policy statement

transgender children seek medical care, families confront many unknowns, Reuters (Oct. 6, 2022), https://www.reuters.com/investigates/special-report/usa- transyouth-care/; Megan Twohey & Christina Jewett, *They paused puberty, but is there a cost?*, N.Y. Times (Nov. 14, 2022), https://www.nytimes.com/2022/11/14/health/puberty-blockerstransgender.html.

[61] Lisa Nainggolan, *Hormonal Tx of Youth With Gender Dysphoria Stops in Sweden*, Medscape (May 12, 2021), https://www.medscape.com/viewarticle/950964.

[62] June 16, 2020 Recommendations, Council for Choices in Healthcare (COHERE), Finland (summarized), https://palveluvalikoima.fi. COHERE works in conjunction with the Ministry of Social Affairs and Health.

[63] Society for Evidence-Based Gender Medicine, *supra* at n.6.

[64] Hannah Barnes, *Time to Think: The Inside Story of the Collapse of the Tavistock's Gender Service for Children* (Swift Press 2023); Cass Review, *supra* at n.3.

[65] Aine Fox, *Review into safety of adult gender services to begin within weeks*, Independent (August 7, 2024), https://www.independent.co.uk/news/uk/lancashire-nhs-b2592534.html.

stressing the importance of assessing the "psychological state and context in which gender dysphoria has arisen," before making treatment decisions.[66] France, too, has urged caution in the use of medical interventions, citing rising cases of adolescent identity distress, and prioritizing psychotherapy.[67] The Norwegian Healthcare Investigation Board (NHIB/UKOM) also has restricted the use of puberty blockers for gender affirmation to research settings, deeming their use "experimental" and lacking in evidence-based support.[68]

V. Many states are likewise expressing caution about the gender-affirmation model.

In America, many states are paying attention to these international developments: 25 states have currently banned or restricted gender-affirming interventions for minors on the basis that this radical approach is experimental and unethical.[69] In February 2022, for example, the Texas Attorney General issued an opinion letter stating that sterilizing treatments and other permanent "sex-change procedures," including puberty

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[66] Becky McCall, *Psychiatrists Shift Stance on Gender Dysphoria, Recommend Therapy*, Medscape (Oct. 7, 2021), https://www.medscape.com/viewarticle/960390.

[67] Academie Nationale de Medecine, *Medicine and gender transidentity in children and adolescents* (February 25, 2022), https://www.academie-medecine.fr/la-medecine-face-a-la-transidentite-de-genre-chez-les-enfants-et-les-adolescents/?lang=en

[68] Society for Evidence-based Gender Medicine (@segm_ebm), X (AKA Twitter) (Mar. 9, 2023), https://twitter.com/segm_ebm/status/1634032333618819073 (citing UKOM, for Pasientsikkerhet for barn og unge med kjønnsinkongruens (2023), https://ukom.no/rapporter/pasientsikkerhet-for-barn-og-unge-med-kjonnsinkongruens/sammendrag [translated: Norwegian Healthcare Investigation Board (NHIB), "Patient Safety for Children & Young People with Gender Incongruence" (Mar. 2023)].

[69] Selena Simmons-Duffin & Hilary Fung, *In just a few years, half of all states passed bans on trans health care for kids*, NPR (July 3, 2024), https://www.npr.org/sections/shots-health-news/2024/07/03/nx-s1-4986385/trans-kids-health-bans-gender-affirming-care.

suppression, cross-sex hormones, and various surgeries, "can constitute child abuse when performed on minor children."[70] Texas's governor subsequently directed the Texas Department of Family and Protective Services to "conduct a prompt and thorough investigation of any reported instances of these abusive procedures in the State of Texas."[71]

Florida has taken multiple actions to restrict the provision of gender-transition interventions. In February 2023, the Florida Board of Medicine and Florida Board of Osteopathic Medicine finalized rules prohibiting the provision of gender-transition interventions for minors, eliminating an earlier exception for research.[72] Earlier, the Florida Department of Health issued guidelines in 2022 that clarified that treatment of gender dysphoria for children and adolescents should *not* include social gender transition, puberty blockers, cross-sex hormones, or transitioning surgeries because of "the lack of conclusive evidence, and the potential for long-term, irreversible effects."[73]

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[70] Tex. Att'y Gen. Op. Letter No. KP-0401, from Ken Paxton, Attorney General, to Matt Krause, Chair, House Comm. on Gen. Investigating 1-2 (Feb. 18, 2022), https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2022/kp-0401.pdf.

[71] Letter from Greg Abbott, Governor, State of Tex., to Jaime Masters, Comm'r, Tex. Dep't of Fam. Prot. Servs. (Feb. 22, 2022), https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf.

[72] Associated Press, *Florida boards of medicine confirm ban on gender-affirming care for transgender youth*, WUSF Public Media (Feb. 10, 2023), https://wusfnews.wusf.usf.edu/health-news-florida/2023-02-10/florida-boards-of-medicine-confirm- ban-on-gender-affirming-care-for-transgender-youth.

[73] Press Release, Off. of the State Surgeon Gen., Fla. Dep't of Health, *Treatment of Gender Dysphoria for Children and Adolescents* (Apr. 20, 2022), https://www.floridahealth.gov/newsroom/2022/04/20220420-gender-dysphoria-guidance.pr.html; *cf.* "Setting the Record Straight," Fla. Agency for Health Care Admin. (2022), https://ahca.myflorida.com/LetKidsBeKids/page3.shtml ("detailing the lack of conclusive evidence in recent directives and 'fact sheets' issued by [HHS] for the coverage of 'gender affirming' care, for children and adolescents").

Florida's Agency for Health Care Administration also issued rules in August 2022 eliminating state Medicaid coverage of gender-transition interventions.[74] Numerous legal challenges to Florida's restrictions, however, continue to play out in the courts.[75]

VI. Michigan's HB 4616 forecloses the most ethical treatment: client-responsive psychotherapy.

Treating youth struggling with gender dysphoria is difficult and complex. "There is no common underlying meaning to gender dysphoria," writes psychologist David Schwartz.[76] The circumstances giving rise to body-related discontent or identity confusion are as varied as the individuals themselves. Although the specific causes of gender dysphoria are often unclear, it is well-documented that minors experiencing it generally present with multiple comorbidities, such as depression or anxiety, or suffer from histories of trauma and adverse childhood experiences.[77]

In light of these complicated histories, adequate psychotherapy ought to explore,

[74] Brooke Migdon, *Florida Publishes Rule Barring Medicaid Coverage for Gender-Affirming Health Care*, The Hill (Aug. 12, 2022), https://thehill.com/changing-america/respect/equality/3598274-florida-publishes-rule-barring-medicaid-coverage-for-gender-affirming-health-care/.

[75] Jim Saunders, *Plaintiffs push back in a Florida trans treatment fight*, NPR (July 30, 2024), https://www.wusf.org/courts-law/2024-07-30/plaintiffs-push-back-florida-gender-affirming-care-fight-transgender; Gary Fineout, *Federal Judge knocks down Florida's Medicaid ban on gender-affirming treatment*, Politico (June 21, 2023), https://www.politico.com/news/2023/06/21/florida-gender-affirming-ban-00103067.

[76] David Schwartz, *Clinical and Ethical Considerations in the Treatment of Gender Dysphoric Children and Adolescents: When Doing Less Is Helping More*, 20 J. Infant, Child, & Adolescent Psychotherapy 439 (2021), https://doi.org/10.1080/15289168.2021.1997344.

[77] A recent study reported that 87.7% of children and adolescents diagnosed with gender dysphoria had comorbid psychiatric diagnoses, and many had a "history of self-harm, suicidal ideation, or symptoms of distress." Kasia Kozlowska, et al., *Attachment Patterns in Children and Adolescents With Gender Dysphoria*, 11 Frontiers Psych. 582688 (2021), https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2020.582688/full.

at a minimum, "factors that could be misinterpreted as non-temporary gender dysphoria as well as factors that could be underlying causes for gender dysphoria."[78]

The gender-affirming protocol, however, sidelines all of this evidence. It does not look for "reasons why" an adolescent feels alienated from the body, because gender affirmation posits an "essentialist" view of gender, a supposed true gender self, awaiting discovery.[79] Because gender identity is perceived as a "soul-like quality or 'essence,'" "questioning the . . . existence of gender identity becomes equated with questioning that person's entire sense of being."[80]

The recent sharp rise in gender dysphoria among adolescents, particularly females, challenges this view. Colloquially described as "rapid onset gender dysphoria," this new presentation is linked to "predisposing psychosocial factors," undermining the claim that an adolescent's asserted identity should be uncritically accepted, and weighing strongly against medical and surgical interventions.[81]

The complexity of these situations underscores the need for therapeutic goals to meet the client's (not others') needs and wishes. The therapeutic goal of "desisting," or re-integrating one's sense of identity with the reality of the sexed body, should never be

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[78] Littman, *supra* at n. 12.

[79] Zucker, *supra* at n.14.

[80] Griffin, *supra* at n.20.

[81] Zucker, *supra* at n.14 (referencing the research of Dr. Lisa Littman. *See* Lisa Littman, *Parent reports of adolescents perceived to show signs of a rapid onset of gender dysphoria*, 13 PLOS ONE e0202330 (2018), https://doi.org/10.1371/journal.pone.0202330.

precluded. As Dr. Schwartz writes, "Remember what desisting is: the child becomes *comfortable* in his or her skin. The child stops insisting that he or she *is* really another gender. The child is at relative peace with the body he or she has. By what logic could the child's acquisition of peace and comfort not be a desirable outcome?"[82]

Nearly 85% of gender dysphoric minors *do* become "comfortable in their own skin" *if* they receive psychotherapy or are simply left alone. In contrast, nearly all gender dysphoric minors who receive gender affirmation will *persist* in transgender identities and experience poor long-term outcomes. Based on his experience treating such minors, Dr. Schwartz concludes "desistance, when it happens, is desirable. [W]e should think of every trans aspiring child as a potential desister."[83]

The gender-affirming approach maintains otherwise, treating desistance as unethical, while reifying a minor's identity desires and treating them as fact. Under HB 4616, gender dysphoric minors must be "affirmed"—and deprived of the psychotherapy needed to find healing or to realize their personal goals. Presuming that a minor's dissociative feelings are indicative of an emergent, fixed identity leads clinicians to ignore other possible causes, such as autistic spectrum disorders, mental health issues, traumatic histories, or same-sex attraction.

Time to Think: The Inside Story of the Collapse of the Tavistock's Gender Service for Children,

[82] Schwartz, *supra* at n.76.

[83] *Id.*

by veteran BBC journalist Hannah Barnes, reports that Tavistock clinicians routinely failed to explore alternative diagnoses and treated nearly all children as presumptively "transgender."[84] This approach, observed former Tavistock clinician Anna Hutchinson, meant that "If the service was getting this wrong, it was getting it wrong with some of the most vulnerable children and young people."[85] Two leading U.S. gender clinicians say that clinicians increasingly fail to provide comprehensive assessments and therapy because they fear "being cast as transphobic bigots by their local colleagues and referral sources if they engage in gender exploring therapy with patients, as some have equated this with conversion therapy."[86] Clinicians fear running afoul of "conversion therapy" laws, like the one at issue here.

VII. HB 4616 forces every adolescent down the gender-affirming pathway, towards irreversible medical harm.

Despite the evidence above, Michigan now gives gender dysphoric adolescents little choice but to travel the gender-affirming path, as HB 4616 prohibits open-ended psychotherapy and alternative pathways. The long-term outcomes are not promising. Adults who identify as transgender have high rates of reported suicidality and those

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[84] Gaby Hinsliff, *Time to Think by Hannah Barnes Review—inside Britain's only clinic for trans children*, Guardian (Mar. 10, 2023), https://www.theguardian.com/books/2023/mar/10/time-to-think-by-hannah-barnes-review-inside-britains-only-clinic-for-trans-children.

[85] Christina Buttons, *U.K.'s Largest Pediatric Gender Clinic Ignored Autism Connection In Teens Seeking Sex Changes, New Book Claims*, Daily Wire (Feb. 15, 2023), https://www.dailywire.com/news/u-k-s-largest-pediatric-gender-clinic-ignored-autism-connection-in-teens-seeking-sex-changes-new-book-claims#.

[86] Laura Edwards-Leeper & Erica Anderson, *The mental health establishment is failing trans kids*, Wash. Post (Nov. 24, 2021), https://www.washingtonpost.com/outlook/2021/11/24/trans-kids-therapy-psychologist/.

who have had genital surgery are nineteen times more likely than the general population to commit suicide.[87] Other recent studies of adults found similar results after gender-affirming surgeries: suicide risks and mental health issues remain high.[88]

Gender therapists Laura Edwards-Leeper and Erica Anderson warn that transgender-identified minors are receiving "sloppy, dangerous," and "substandard" care from mental health professionals who practice "gender-affirmative care," because gender-affirming providers "affirm without question" an adolescent's asserted identity and "assume that a person with gender dysphoria who declares they are transgender is transgender and needs medical interventions immediately."[89]

A recent study of 100 detransitioners proves those assumptions wrong: "38 percent reported that they believed their original dysphoria had been caused by 'something specific, such as trauma, abuse, or a mental health condition'" and "fifty-five percent said they 'did not receive an adequate evaluation from a doctor or mental health professional before starting transition.'"[90]

Three adult detransitioners, Walt Heyer, Ted Halley, and Billy Burleigh, filed an

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[87] Cecilia Dhejne, et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 6 PLOS ONE e16885 (2011), https://doi.org/10.1371/journal.pone.0016885.

[88] Roberto D'Angelo, *One Size Does Not Fit All: In Support of Psychotherapy for Gender Dysphoria*, 50 Archives Sexual Behav. 7 (2021), https://doi.org/10.1007/s10508-020-01844-2; Chantal M. Wiepjes, et al., *Trends in suicide death risk in transgender people: results from the Amsterdam Cohort of Gender Dysphoria study (1972-2017)*, 141 Acta Psych. Scandinavica 486 (2020), https://pubmed.ncbi.nlm.nih.gov/32072611/.

[89] Abigail Shrier, *Top Trans Doctors Blow the Whistle on 'Sloppy' Care*, Free Press (Oct. 4, 2021), https://www.thefp.com/p/top-trans-doctors-blow-the-whistle.

[90] Littman, *supra* at n.12.

amicus curiae brief opposing a challenge to Florida's restriction on Medicaid reimbursements for gender-affirmation care. At one point, all three men "were excited when doctors they trusted told them that a gender transition was the silver bullet solution to their dysphoria."[91] "But after years of fully committing to their gender transitions, [all three] came to see that gender transition interventions were not the answer to their problems. Thankfully, they found others who gave them different advice. Walt, Ted, and Billy worked through their childhood trauma and their gender dysphoria resolved, and today they are today happier and healthier than they ever were when they were presenting as women."[92]

"The bedrock principle of all clinical practice" is "[f]irst, do no harm."[93] Gender affirmation for minors is ethically indefensible as a treatment pathway and as a basis for restricting counseling and psychotherapy under HB 4616.

We urge the Court to consider the serious ethical issues surrounding HB 4616, which effectively mandates "gender-affirmation-only" and denies effective psychotherapy to minors seeking psychological help for their gender dysphoria, including the possibility of harmonizing identity and the physical body.

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[91] Brief for Walt Heyer, Ted Halley, & Billy Burleigh as *Amici Curiae* Supporting Defs. at 5, *Dekker v. Weida*, 4:33-cv-325 (N.D. Fl. Apr. 7, 2023), available at https://eppc.org/wp-content/uploads/2023/04/140-1-Detransitioners-Amicus-Brief.pdf.

[92] *Id.*

[93] Schwartz, *supra* at n.76.

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs' Motion for Preliminary Injunction.

DATED this 9th day of August, 2024.

Dated August 9, 2024.

Respectfully submitted,

/s/ B. Tyler Brooks
Peter Breen (Ill. Bar No. 6271981)
B. Tyler Brooks (P82567)
THOMAS MORE SOCIETY
309 W. Washington Street
Suite 1250
Chicago, IL 60606
Telephone: (312) 782-1680
Fax: (336) 900-6535
pbreen@thomasmoresociety.org
tbrooks@thomasmoresociety.org

Counsel for Amicus Curiae
The Ethics and Public Policy Center

CERTIFICATE OF COMPLIANCE

Pursuant to L.Civ.R. 7.2(b)(ii), I hereby certify that the foregoing brief contains 6,619 words as defined by L.Civ.R. 7.3(b)(i). The brief was prepared, and word count generated, using Microsoft Word for Microsoft 365, Version 2407.

/s/ *B. Tyler Brooks*
B. Tyler Brooks

Dated: August 9, 2024