No. 24-43

IN THE
Supreme Court of the United States

STATE OF WEST VIRGINIA, *ET AL.*,
Petitioners,
v.
B.P.J., BY NEXT FRIEND AND MOTHER, HEATHER JACKSON, *Respondent*.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

Brief *Amici Curiae* of America's Future, Public Advocate of the United States, Eagle Forum, Eagle Forum Foundation, Clare Boothe Luce Center for Cons. Women, Leadership Institute, U.S. Constitutional Rights Legal Def. Fund, Fitzgerald Griffin Foundation, One Nation Under God Foundation, and Conservative Legal Def. and Education Fund in Support of Petitioners

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INTEREST OF THE *AMICI CURIAE*[1]

America's Future, Public Advocate of the United States, Eagle Forum, Eagle Forum Foundation, Clare Boothe Luce Center for Conservative Women, Leadership Institute, U.S. Constitutional Rights Legal Defense Fund, Fitzgerald Griffin Foundation, One Nation Under God Foundation, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under either section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law. Yesterday, these same *amici* filed an *amicus* brief in this Court in *Little v. Hecox*, U.S. Supreme Court No. 24-38 (Aug. 14, 2024), urging that certiorari in both of these cases be granted so they could be considered together.

Some of these *amici* filed an *amicus* brief in this case in the Fourth Circuit: *B.P.J. v. West Virginia State Board of Education, et al.*, Brief *Amicus Curiae* of Public Advocate of the United States, *et al.*, No. 23-1078 (May 3, 2023).

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[1] It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

STATEMENT OF THE CASE

In 2021, the West Virginia legislature enacted the "Save Women's Sports Bill," WV Code § 18-2-25d ("the Act"), to protect women's sports by defining the terms "female," "girl," and "woman" as describing biological females. B.P.J., a biological male, who describes himself as a "transgender girl," challenged the law under the Equal Protection Clause and Title IX, seeking to compete on the girls' track and cross country teams.

The district court initially granted a temporary injunction against the law in July 2021. *B.P.J. v. W. Va. State Bd. of Educ.*, 550 F. Supp. 3d 347 (S.D. W. Va. 2021). However, in January 2023, after considering substantial evidence offered by the parties, the district court granted summary judgment to the State of West Virginia, holding that "the legislature's chosen definition of 'girl' and 'woman' in [the sports] context is constitutionally permissible," and dissolved its injunction. *B.P.J. v. W. Va. State Bd. of Educ.*, 2023 U.S. Dist. LEXIS 1820 (S.D. W. Va. 2023) at *3, *30.

While pending on appeal, the Fourth Circuit granted a temporary injunction against the Act without opinion. *B.P.J. v. W. Va. State Bd. of Educ.*, Case No. 23-1078, Dkt. 50 (4th Cir. 2023). This Court denied an application to vacate that injunction, with Justices Thomas and Alito dissenting. *West Virginia v. B.P.J.*, 2023 U.S. LEXIS 1497 (U.S. 2023). While the injunction was in place, Respondent B.P.J. competed in girls' track and field events, defeating a

significant number of biological girls in 2023 and 2024, and taking spots from biological girls to compete in conference championships.

The Fourth Circuit overturned the district court's decision, holding that district court wrongly decided that West Virginia's Act does not violate the Equal Protection Clause and Title IX. The Fourth Circuit directed the district court to enter summary judgment against West Virginia on the Title IX claims. *B.P.J. v. W. Va. State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024) ("*BPJ II*").

SUMMARY OF ARGUMENT

This case is a challenge to an effort by the West Virginia legislature to protect girls who participate in girls' sports from unfair and potentially dangerous competition from biological men. Those men have an unfair physical advantage over girls for many reasons, and allowing them to compete against girls deprives women of the ability to develop their own abilities and be recognized for their achievements.

The Fourth Circuit, over a strong and thoughtful dissent, sacrificed girls' sports on the altar of transgenderism. The division in sports between girls and boys has been well established and is unquestionably legal and constitutional. The fact that one boy feels that he was born in the wrong body does not empower the Fourth Circuit to address his problems at the expense of all girls. The *Grimm* decision, on which the circuit relied, allowed a girl to use the boys' room. It is no precedent whatsoever for

compelling a school to allow boy to compete against girls in girls' sports.

The *Grimm* decision was based on the Standards of Care published by the World Professional Association for Transgender Health ("WPATH"). Despite its noble-sounding name, that organization has been exposed as having been more a political player in the transgender wars than a neutral medical organization focused on actual health issues. If it had a focus on health, it would be concerned about the girls who it believes should be subjected to unfair and dangerous competition. The circuit court assumed that WPATH's pronouncements were reliable, but a review of its actions demonstrate that WPATH has tailored its standards to facilitate wins in court, such as in the *BPJ* and *Hecox* cases.

Lastly, no court should operate on the assumption that transgenderism is a new phenomenon which must be accommodated based on the views of so-called "experts." Even if a court believes a specific transgender person could benefit from some policy, that does not provide the judiciary the authority to override the state legislature and impose that policy on a state. No court has the right to compel the rest of the country to sacrifice their liberty to satisfy those who wish to participate in what is, at base, an ancient Pagan practice, dangerous to all concerned.

ARGUMENT

I. THE FOURTH CIRCUIT ERRONEOUSLY RELIED ON THE *GRIMM* DECISION.

The Fourth Circuit viewed its earlier decision in *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), as binding here. *Grimm* involved a biological girl who viewed herself as a boy and wanted to use the boy's rest room — a seemingly innocuous matter, and certainly a much different issue than forcing girls to compete in sports against biological males, which can result great unfairness and danger. Nevertheless, the court below did not hesitate to rely on *Grimm* throughout its opinion.

The *Grimm* case demonstrates the need to prevent the camel's nose from getting under the tent. That idiom is defined as "[a] small, seemingly innocuous act or decision that will lead to much larger, more serious, and less desirable consequences down the line."[2] The *Grimm* case was brought, very strategically, by a girl who wanted to use the boys' room. Had the case been brought by a boy who wanted access to the girls' bathroom, locker room, and showers, it is difficult to believe that any civil liberties organization would choose such a case as its test case. With *Grimm* having been racked up as a win in the Fourth Circuit, BPJ's legal team took that victory in a case designed to help a single girl and here uses it in an effort to prevent the West Virginia legislature from enacting a

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[2] "A Camel's nose" *The Free Dictionary* (emphasis added).

law to protect all girls participating in sports. This decision cries out for this Court to apply the principle: "Where the reason for the rule does not apply, so also should not the rule."

The court began by objecting that West Virginia's statute made a distinction based on sex that was illegal because it was based only on "reproductive biology and genetics at birth." If a statute is now to be deemed illegal or unconstitutional because it draws a distinction based on sex, many hundreds, if not thousands, of statutes will need to be re-written. All biology text books will need to be re-written. Doctors will need to be re-trained when they confront medical conditions that affect men and women differently to ignore them, and only ask with which gender the patient identifies at that time. The Fourth Circuit asserted:

> [t]he Act declares a person's **sex** is defined only by their "**reproductive biology and genetics at birth**." § 18-2-25d(b)(1). The undisputed purpose — and the only effect — of that definition is to exclude transgender girls from the definition of "female" and thus **to exclude** them from participation on girls sports teams. That is a facial classification based on **gender identity**. And, **under this Court's binding precedent**, such classifications trigger intermediate scrutiny. *See Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 610-13 (4th Cir. 2020). [*BPJ II* at 556 (emphasis added).]

Indeed, reproductive biology and genetics does determine whether a person is male or female, as the statute states. Surprisingly, the court of appeals did not attempt to correct the West Virginia legislature by repeating the transgender mantra that sex is only "assigned" at birth, which is demonstrably false.[3] But its logic assumes both that gender is only assigned at birth and can be changed. Under that logic, a biological man can change genders by choice, and that choice is so important to the law, that it overrides the reality of biology. The reason that a distinction based on sex is impermissible is that it excludes a tiny fraction (albeit apparently growing) of biological men who feel they really are women trapped in a man's body. Implicitly, the court believes that excluding all males who know they are male — as everyone did until only a few short years ago — would be fully permissible. However, once one male feels he is a female, the category of sex cannot be applied to his disadvantage. That would be, so the theory goes, invidious discrimination.

The effort to conflate the objective truth of biological sex with the subjective perception of gender identity is a key part of the strategy to manipulate the judiciary to achieve what cannot be achieved through legislative processes. Mount Holyoke College

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[3] Actually, sex is determined before birth — at conception. University of Melbourne, "Geneticists make new discovery about how a baby's sex is determined," *ScienceDaily* (Dec. 15, 2018). With ultrasound, it is observable in the womb. It is even more observable at birth. It can be established genetically. It is immutable.

Professor Joanna Wuest explains how this "clever legal maneuver" works:

> Convincing courts that **gender identity** *is* **sex** itself is **a clever legal maneuver** through which to **achieve protections** under sex-based statutory civil rights laws like Title VII and IX as well as the Constitution's equal protection clause. This route **bypasses** a polarized and gridlocked **Congress**, which has stalled repeatedly on legislation like a gender-identity-inclusive Employment Non-Discrimination Act and its revamped version, the Equality Act. [Joanna Wuest, Born this Way: Science, Citizenship, and Inequality in the American LGBTQ+ Movement at 11 (Univ. Chicago Press: 2023) (bold added).]

This Court should make clear to both litigants and the courts below that neither the U.S. Constitution nor statutes are to be interpreted by rhetorical legerdemain.

The circuit court's ruling, BPJ's position, and transgender dogma all take the position that a statute based on sex cannot be lawful if even one of the persons who would be disadvantaged by it is "trans" — one who believes himself or herself to have been born in the wrong body by accident. Historically, virtually no boys would want to compete on the girls' teams, so such a law might not have been needed in the past. But when one or more boys declares themselves to be in the wrong body, that person's preferences override the interests of all others. Here, the interests of all of

the girls in school sports in West Virginia must be subordinated to how that one male student feels about himself at a given time. Some transgender advocates would concede that even if a male "identifies" as a girl, his sex does not change — just his perceived "gender." But once the term "gender" is used, it becomes forbidden by transgender dogma to ever think again of that person as male — unless and until that person changes how he feels about himself — in a day, a week, or a month.

II. THE CIRCUIT COURT RELIED ON A PRIOR CIRCUIT COURT DECISION BASED HEAVILY ON THE FABRICATED VIEWS OF WPATH.

A. The *Grimm* Decision Was Based on WPATH Standards of Care.

It is important to examine the foundational source of these counter-intuitive, transgender notions of how gender supplants sex. Although the circuit court's opinion did not cite WPATH directly,[4] it viewed *Grimm*

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[4] The dissent recognizes the significance of WPATH to the *Grimm* decision: "Most evidently, transgender individuals do not share an obvious, immutable, or distinguishing characteristic. In fact, as the World Professional Association for Transgender Health Guidelines — relied on by the *Grimm* majority — explain, the word 'transgender' is used 'to describe a **diverse** *group* of individuals who cross or transcend culturally-defined categories of gender. The gender identity of transgender people **differs to varying degrees** from the sex they were assigned [at] birth.'" [*BPJ II* at 577 (Agee, J., dissenting) (bold added) (citation omitted).]

as controlling, and the *Grimm* case relied heavily on the "Standards of Care" ("SOC") published by the "World Professional Association for Transgender Health" ("WPATH") to learn how courts must treat trans people.

> Fortunately, we now have modern **accepted treatment protocols** for gender dysphoria. Developed by the World Professional Association for Transgender Health (WPATH), the Standards of Care ... represent **the consensus approach of the medical and mental health community** ... and have been recognized by various courts, including this one, as **the authoritative standards of care**, *see De'lonta v. Johnson,* 708 F.3d 520, 522-23 (4th Cir. 2013); *see also Edmo*, 935 F.3d at 769; *Keohane v. Jones*, 328 F. Supp. 3d 1288, 1294 (N.D. Fla. 2018), *vacated sub nom. Keohane v. Fla. Dep't of Corr. Sec'y,* 952 F.3d 1257 (11th Cir. 2020). "**There are no other competing, evidence-based standards that are accepted by any nationally or internationally recognized medical professional groups**." *Edmo*, 935 F.3d at 769 (quoting *Edmo v. Idaho Dep't of Corr.,* 358 F. Supp. 3d 1103, 1125 (D. Idaho 2018)). **The WPATH Standards of Care outline appropriate treatments** for persons with gender dysphoria.... [*Grimm* at 595-596 (emphasis added).]

The embedded citations demonstrate that WPATH's views have been accepted as authoritative

— even unquestionable — by numerous courts. WPATH, according to its website, creates "internationally accepted Standards of Care (SOC) ... to promote the health and welfare of transgender, transsexual and gender variant persons...."[5] The prior revision of the SOC guidelines, SOC-7, was released by WPATH in 2012, and was updated with SOC-8 in 2022.[6] It is these SOC which the court below, along with the Fourth Circuit in *Grimm* and a number of other courts, viewed as the authoritative scientific standard.

Having accepted the authority of WPATH, the Fourth Circuit repeated the mistake this Court made in *Roe v. Wade,* 410 U.S. 113 (1973), which made a legal ruling based on politicized "experts." When *Roe* was overturned in 2022, this Court properly criticized its previous decision for relying on the "expertise" of activists devoted to skewing the debate. "**Relying on two discredited articles** by an **abortion advocate**, the Court erroneously suggested — contrary to Bracton, Coke, Hale, Blackstone, and a wealth of other authority — that the common law had probably never really treated post-quickening abortion as a crime." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 272 (2022) (emphasis added).

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[5] WPATH, "Mission and Vision," *WPATH.org*.

[6] M. Cooper, "The WPATH guidelines for treatment of adolescents with gender dysphoria have changed," *MDEdge.com* (Oct. 17, 2022).

B. WPATH Subordinates Medicine and Science to Politics and Litigation Priorities.

WPATH is not a neutral scientific organization. It is an active combatant in the culture wars. WPATH has been concisely described as "a hybrid professional and activist organization, where activists have become voting members."[7] As James Esses of the British "Thoughtful Therapists Network" puts it:

> [t]here have long been concerns that the organisation acts more as a partisan lobby group underpinned by gender ideology, instead of a body driven by medical evidence. Many of the senior members of WPATH identify as "trans" or "non-binary" themselves or are gender activists.[8]

WPATH reportedly receives a large percentage of its funding from donations from wealthy progressive billionaires committed to a radical program of ending all distinctions between the sexes. A primary funder of WPATH is the Tawani Foundation. Tawani was founded by the former James Pritzker, who now

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[7] L. MacRichards, "Bias, not evidence dominates WPATH transgender standard of care," *Canadian Gender Report* (Oct. 1, 2019).

[8] J. Esses, "What's wrong with WPATH version 8?" *Sex-Matters.org* (Sept. 20, 2022).

identifies as Jennifer Pritzker.[9] Pritzker, known as the "first transgender billionaire," is the cousin of Illinois Governor J.B. Pritzker. The entire Pritzker family is committed to the transgender revolution and are some of its biggest funders.[10]

> Over the past decade, the Pritzkers of Illinois, who helped put Barack Obama in the White House and include among their number former U.S. Secretary of Commerce Penny Pritzker, current Illinois Gov. J.B. Pritzker, and philanthropist Jennifer Pritzker, appear to have used a family philanthropic apparatus to drive an ideology and practice of disembodiment into our medical, legal, cultural, and educational institutions. [*Id.*]

Since 2013, "Pritzker has used the Tawani Foundation to help fund various institutions that support the concept of a spectrum of human sexes." *Id.* WPATH recognized the Tawani Foundation in 2018 for its financial support in producing the then-current SOC-7 version of the WPATH "Standards of Care."[11]

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[9] D. Larson, "The billionaire Duke trustee behind the remaking of gender," *Carolina Journal* (Sept. 22, 2022).

[10] J. Bilek, "The Billionaire Family Pushing Synthetic Sex Identities (SSI)," *TabletMag.com* (June 14, 2022).

[11] "Col. Jennifer Pritzker and TAWANI Foundation Win WPATH Philanthropy Award," *Tawani Foundation* (Nov. 6, 2018).

The WPATH committee that produced the current SOC-8 guidelines is dominated by those with obvious conflicts of interest:

> All of them either receive income based on recommendations in the guidelines, work at clinics or universities who receive funds from advocacy groups, foundations, or pharmaceutical companies who heavily favour a certain treatment paradigm, or have received grants and published papers or research in transgender care. The majority of the members are from the US, and six of them have affiliations with the same university – the University of Minnesota Program in Sexuality, which is primarily funded by ... [Pritzker's] Tawani Foundation....[12]

C. Numerous Scientific Entities Have Finally Begun to Question the Politicization of WPATH.

WPATH's Standards have been criticized by others working with transgender persons. "Beyond WPATH," an organization of "concerned medical and mental health professionals" including numerous doctors, psychiatrists, counselors, and mental health professionals, attacked WPATH's new SOC-8 for a long list of "errors and ethical failures":

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[12] L. MacRichards, *supra*.

> WPATH endorses early medicalization as fundamental while **[European] countries now promote psychosocial support as the first line of treatment** [of gender dysphoria], delaying drugs and surgery until the age of majority is reached in all but the most exceptional cases. A **chapter on ethics** that had appeared in earlier drafts was **eliminated** in the final release — a further abdication of ethical responsibility.[13]

In fact, "a very short time after [WPATH's SOC-8] went public, a major unexpected 'correction' was issued. However this wasn't a 'correction' this was an ideological turnaround. This change of heart was reported all over the world as it **removed all minimum age requirements** for 'gender affirmative' surgeries," including "14+ years old for cross-sex hormones [and] 15+ years old for double mastectomies."[14] In the final version, WPATH eliminated even these minimum age recommendations, opening the door to a medical and judicial assault on the bodies of young children.

In addition, Beyond WPATH notes, "[w]hile presented as evidence-based, the Standards of Care fail to acknowledge that independent systematic reviews have deemed the evidence for gender-affirming

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[13] "WPATH Has Discredited Itself," *BeyondWPATH.org* (emphasis added).

[14] "WPATH Explained," *Genspect.org* (Oct. 1, 2022) (emphasis added).

treatments in youth to be of very low quality and subject to confounding and bias, rendering any conclusions uncertain." It adds, "[f]or these and other reasons, we believe **WPATH can no longer be viewed as a trustworthy source** of clinical guidance in this field." *Id.* (emphasis added).

D. Discovery Elsewhere Has Revealed WPATH'S Politicization and Conflicts of Interest.

Ongoing litigation in federal court in Alabama has uncovered evidence that WPATH is far more driven by politics and profits than science. A report provided by Dr. James Cantor, Ph.D., exposes internal WPATH communications admitting that WPATH **changed the recommendations** in SOC-8, under pressure from the Biden administration, and **at the urging of attorneys hoping to use the SOC in courts** against states like Alabama that seek to protect children from irreversible and damaging surgeries and puberty blocker "treatments."

WPATH presents to the public the appearance of scholarly unanimity, while at least some WPATH stakeholders harbor grave doubts about the safety and efficacy of irreversible surgical and puberty blocker treatments, and whether young children can even give informed consent.

Dr. Cantor states that "[m]embers of the Guideline Development Group acknowledged that there is no consensus among treatment providers regarding the

use of puberty blockers."[15] One wrote, "I think *there is no agreement on this within pediatric endocrinologists*, what is **significant risk** especially balanced against the benefits of e.g. **thinking time which can be very important for a 14 year old.**" *Id.* (bold added). Another member stunningly admitted, "I'm not clear on which 'agreement regarding the value of blockers' is required to be espoused by a WPATH member/mentor. My understanding is that *a global consensus on 'puberty blockers' does not exist.*" *Id.*

Other members "of the WPATH Guideline Development Group repeatedly and explicitly lobbied to **tailor language of the guidelines for the purposes of influencing courts** and legislatures, and to strengthen their own testimony as expert witnesses." *Id.* at vi (emphasis added). Although names were redacted from the communications, one SOC guideline developer stated:

> *I am concerned about language such as '**insufficient evidence**,' 'limited data,' etc… I say this from the perspective of current **legal challenges** in the US.* Groups in the US are trying to claim that gender-affirming interventions are experimental and should only be performed under research protocols (*this is based on two recent federal cases in which I am an expert witness*). In addition, these groups already assert that research in

[15] Appendix A to supplemental expert report of James Cantor, Ph.D., *Boe v. Marshall*, Case No. 2:22-cv-00184, Dkt. 591-24, p. ii (M.D. Ala. 2024).

> this field is low quality (ie [sic] small series, retrospective, no controls, etc.…). My specific concern is that this type of language (insufficient evidence, limited data, etc...) will empower these groups.... [*Id*. (bold added).]

Another member wrote, "I think we need a more detailed defense that we can use that can respond to academic critics and that *can be used in the many court cases that will be coming up*." *Id.* And yet another wrote, "Here are a number of my thoughts which may be *helpful for Chase and the legal team*." *Id.* (Chase Strangio is Deputy Director for Transgender Justice with the ACLU's LGBT & HIV Project). Another wrote, "*There are* ***important lawsuits happening*** *right now in the US, one or more of which* ***could go to the Supreme Court****, on whether trans care is medically necessary vs experimental or cosmetic. I cannot overstate the importance of SOC 8 getting this right at this important time*." *Id.* at vii (bold added).

Dr. Cantor notes, "Members of the WPATH Guideline Development Group went so far as to explicitly advocate that SOC 8 be written to maximize impact on litigation and policy *even at the expense of scientific accuracy*." *Id.* One wrote, "*My hope with these SoC is that they land in such a way as to have serious effect in the law and policy settings* that have affected us so much recently; *even if the wording isn't quite correct* for people who have the background you and I have." *Id.*

E. The Federal Government Has Pressured WPATH.

The internal communications reveal that WPATH was intensely pressured by Biden administration officials to change its SOC-8 recommendations to suit the administration's policy preferences. One WPATH contributor wrote, "I have just spoken to Admiral Levine today, who — as always is extremely supportive of the SOC 8, but also very eager for its release — so to ensure integration in the US health policies of the Biden government." *Id.* at viii.[16]

Another wrote, "I am meeting with Rachel Levine[17] and her team next week, as the US Department of Health is very keen to bring the trans health agenda forward." *Id.* Another stated, "[T]his should be taken as a charge from the United States government to do what is required to complete the project immediately." *Id.* Dr. Cantor reports, "Specifically, Assistant Secretary Levine, though a staff member, pressured WPATH to remove recommended minimum ages for medical transition treatments from SOC-8." *Id.* at viii.

> The issue of ages and treatment has been quite controversial (mainly for surgery) and it has come up again. We sent the document to

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[16] Levine is an Admiral in the U.S. Public Health Service Commissioned Corps, not in the armed services.

[17] Admiral Rachel Levine, born Richard Levine and the father of two grown children, "transitioned" in 2011, and then divorced his wife Martha Levine in 2013.

> Admiral Levine.... She like [sic] the SOC-8 very much but **she was very concerned that having ages (mainly for surgery)** will affect access to health care for trans youth and maybe adults too. Apparently the situation in the USA is terrible and she and the Biden administration worried that having ages in the document will make matters worse. **She asked us to remove them**. [*Id*. at viii-ix (emphasis added).]

According to Dr. Cantor, the American Academy of Pediatricians added to the pressure, and "issued an ultimatum to WPATH: Should WPATH not delete the age minimums, AAP would not only withhold endorsement of SOC-8, but would publicly oppose the document." *Id.* at x. "As a result of this additional pressure, on top of that from Assistant Secretary Levine, WPATH capitulated and removed the text in violation of its own process despite the preference of its own committee members to retain the age limits." *Id.* "One committee member objected to the after-the-last-minute removal of the age minimums as a violation of WPATH's formal process, but acknowledged that 'it's all about the messaging and marketing.'" *Id.* at ix. "Another committee member said it was 'the most strange experience' to see the changes (elimination, really) to the minimum age recommendations made at the 'last minute' after internal discussion made clear that 'nobody [on the committee] wanted to make them, and personally not agreeing with the change.'" *Id.* at x.

Ultimately, WPATH caved to the pressure and eliminated its initial recommendations to wait until age 15 before surgically **removing breasts**, and age 17 before performing **castrations**. *Id.* at viii, x.

F. SOC-8 Has Been Discredited as an Impartial Medical Document.

The British National Health Service ("NHS") recently commissioned a study led by Dr. Hilary Cass that concluded that WPATH's (public) assurances that puberty blockers and radical surgeries are the required and effective alternative to suicide among "transgender" youth are based on at best shaky evidence. *See* B. Ryan, "Major U.K. Report Finds Pediatric Gender Medicine Is Based on 'Remarkably Weak Evidence,'" *New York Sun* (Apr. 10, 2024).

For cross-sex hormone treatments for adolescents, the review was almost equally inconclusive, as "investigators reviewed 53 studies and reported: 'Moderate-quality evidence suggests mental health may be improved during treatment, but robust study is still required. For other outcomes, no conclusions can be drawn.'" *Id.* In fact, "the report suggested that **these drugs may in effect lock in a trans identity that otherwise might have dissipated** without the drugs." *Id.* (emphasis added.)

Notably, "Dr. Cass' team could find **no evidence** that cross-sex hormone treatment in particular **reduces the elevated rate of suicide** deaths among gender-distressed youths." *Id.* (emphasis added).

The Cass Report undermines the credibility of WPATH and its SOC. "Between them, the new review papers and the Cass report serve as a stinging rebuke to ... WPATH.... [T]he Cass Review found that WPATH's guidelines for minors 'lack developmental rigor' and that the document 'overstates the strength of the evidence.'" *Id.* WPATH caved to Administration pressure and has allowed itself to be used as a litigation tool instead of a healthcare organization.

Dr. Cass herself highlighted the huge financial conflicts of interest of practitioners who stand to profit financially off irreversible mutilation of children. "I do worry that some of the people, certainly in the US, who've been most critical of my review are the ones who have private practices and are therefore financially conflicted in some of their comments on not following a cautious approach," she said.[18]

Grimm was based on the belief that "[t]here are no other competing, evidence-based standards that are accepted by any nationally or internationally recognized medical professional groups" (*Grimm* at 595-96), but now that WPATH's SOC have been debunked, both *Grimm* and *BPJ* are revealed to be based on a house of cards.

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[18] B. Lane, "Money Talks," *GenderClinicNews.com* (July 3, 2024).

III. TRANSGENDERISM HAS ITS ROOTS IN THE ANCIENT RELIGION OF PAGANISM.

The Fourth Circuit purports to be deciding the Title IX issue based on settled science. As demonstrated in Section II, *supra*, the "science" on which *BPJ* is purportedly based is not just unsettled, and it is not just science compromised by politics and litigation strategy. Rather, it is anti-science — denying biological reality. That leaves open the question: what are the roots of transgenderism? From where did it burst upon the scene in the last few years?

The astonishing fact is that transgenderism has ancient spiritual roots. Without even knowing it, many of its proponents have embraced what was a foundational principle of early pagan religions. One of the "gods" of the pagan world was Ishtar, the "goddess of war and sexual love." *See* "Ishtar," *Britannica.* "An ancient Mesopotamian tablet records.... 'When I sit in the alehouse, I am a woman, and I am an exuberant young man.'" J. Cahn, The Return of the Gods (Frontline: 2022) at 118. The goddess Ishtar had summertime festivals and parades. "The parades of the goddess featured men dressed as women, women dressed as men, each dressed as both, male priests parading as women, and cultic women acting as men. They were public pageants and spectacles of the transgendered, the cross-dressed, the homosexual, the intersexual, the cross-gendered." *Id.* at 181.

While the term "transgender" may have been coined only in 1965, those ancient pagan roots confirm what Solomon explained: "there is no new thing under

the sun." *Ecclesiastes* 1:9. Thus, transgenderism is not just a new political and cultural issue, but also has deep spiritual roots. People who embrace transgenderism believe that they were born into the wrong body. The Bible teaches that we are "fearfully and wonderfully made." *Psalm* 139:14. Courts should be aware that when they embrace the transgender agenda, they are rejecting the faith embodied in the Declaration of Independence where our forefathers showed reverence for our Creator, the Law of Nature's God, and Divine Providence.

The Fourth Circuit's decision is reminiscent of a lawless time that "there was no king in Israel: every man did that which was right in his own eyes." *Judges* 21:25. As professor, writer, feminist, and student of the history of sex and culture, Camille Paglia, has explained:

> **[T]ransgender phenomena** multiply and spread in "late" phases of culture, as religious, political, and family traditions weaken and **civilizations begin to decline**. [C. Paglia, Free Women, Free Men: Sex, Gender, Feminism at 238 (Vintage Books: 2018) (emphasis added).]

West Virginia sought to protect its students from the unfairness and danger of biological men competing in women's sports. The circuit court would deny this power of the state legislature based on its peculiar view of the world which elevates at best an illusion ("gender identity") over an irrefutable fact (biological sex). It explains how the court could state as fact: "At

birth, B.P.J.'s sex was **assigned** as male, but she publicly **identified** as a girl since third grade." *BPJ II* at 551 (emphasis added). The court of appeals chose to adopt that framing of the question by the plaintiff. The dissent expressed rejected this false framing of the issue, correctly stating that "the majority ... without explanation, erroneously concludes that B.P.J. — a biological boy — is similarly situated to biological girls." *Id.* at 567. Only by adopting *sub silentio* the proposition that the Created Order is an illusion and only feelings are real and meaningful, the Fourth Circuit implicitly embraced an ancient and dangerous doctrine. The circuit court's ruling is profoundly wrong and dangerous requires review by this Court.

CONCLUSION

The Transgender craze is showing signs of burning out, as reason and rationality is returning to the medical community. Just days ago, the American Society of Plastic Surgeons ("ASPS") announced it is reviewing the issue of transgender surgery, because there is: "'considerable uncertainty as to the long-term efficacy for the use of chest and genital surgical interventions' and that 'the existing evidence base is viewed as low quality/low certainty.'" Kendall Tietz, "American Society of Plastic Surgeons breaks consensus of medical establishment on transgender care," *Fox News* (Aug. 15, 2024); *see also* "American Society of Plastic Surgeons Acknowledges 'Low Quality' Evidence Backing Gender Surgeries for Minors," *Do No Harm* (Aug. 14, 2024); "A Consensus No Longer," *City Journal* (Aug 12, 2024). Enough children have been harmed by the Cult of

Transgenderism. There is an abundance of reasons why this Court needs to address these issues without further delay.

For the foregoing reasons, the Petition for Certiorari should be granted, together with the Petition in *Little v. Hecox*, U.S. Supreme Court No. 24-38, now pending before this Court.

Respectfully submitted,

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