No. 23-4169

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JESSICA BATES,
Plaintiff-Appellant,

v.

FARIBORZ PAKSERESHT, in his official capacity as Director of the Oregon Department of Human Resources, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Oregon
Case No. 2:23-cv-00474-AN

BRIEF OF AMICI CURIAE DETRANSITIONERS BILLY BURLEIGH, LAURA PERRY SMALTS, KATHYGRACE DUNCAN, AND AMANDA STEWART IN SUPPORT OF PLAINTIFF-APPELLANT SEEKING REVERSAL

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January 18, 2024

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STATEMENT OF INTEREST OF AMICI

Amici Billy Burleigh, Laura Perry Smalts, KathyGrace Duncan, and Amanda Stewart respectfully submit this brief in support of Plaintiff-Appellant. Plaintiff-Appellant and Defendants-Appellees have consented to this filing.[1]

Amici experienced gender dysphoria when they were adolescents and young adults. They were led to believe that "affirming" medical interventions for the purpose of "gender transition," such as cross-sex hormones and surgical procedures, would resolve their gender dysphoria and permit them to live healthy, well-adjusted lives. Sadly, Amici learned through their experiences that such interventions did not resolve their mental health issues or gender dysphoria, but only caused physical harm and increased their distress as they realized their bodies had been irreversibly altered based upon a false promise.

Amici respectfully submit this brief to provide this Court with an understanding of their experiences as detransitioners, which are shared by thousands of individuals in the United States who have undergone medicalized transition; the scientific evidence showing childhood gender dysphoria often resolves without medical intervention; and the State's obligation to protect children who face experiences similar to those Amici faced when they were young.

[1] No counsel for a party authored this brief in whole or in part, and no person other than Amici or their counsel contributed money that was intended to fund preparing or submitting the brief.

ARGUMENT

I. Amici, and Thousands of Others Like Them, Were Harmed by Medicalized "Gender Transition," Not Helped by It.

A. Amici Were Harmed by "Gender Transition" Procedures.

Amici experienced gender dysphoria when they were adolescents and young adults. They were led to believe that medical interventions for the purpose of "gender transition," such as cross-sex hormones and surgical procedures, would resolve their gender dysphoria and permit them to live healthy, well-adjusted lives. Sadly, Amici learned through their experiences that such interventions did not resolve their mental health issues or gender dysphoria, but only caused physical harm and increased their distress as they realized their bodies had been irreversibly altered based upon a false promise.

Billy Burleigh

Billy Burleigh grew up in a good family with supportive parents. But in the first grade he began experiencing intrusive thoughts that "God made a mistake. I'm a girl." Through elementary school he had learning and emotional difficulties. He was in emotional pain, and he withdrew from others, trying to cope. He was sexually abused in sixth grade by a male diving coach.

Looking for answers to his distress, the prevailing information he received was that the only way to overcome the disconnect was to change his body to conform to what his mind was telling him. Driven by depression and thoughts of

suicide, Billy was willing to try anything to relieve his suffering. He told his therapist he wanted to transition, and she provided him a letter to begin cross-sex hormones. Billy was prescribed spironolactone, to block testosterone, and estrogen. He underwent multiple surgeries. Starting at age 34, he underwent vaginoplasty, labioplasty, an Adam's apple shave, facial plastic surgery, and voice feminization surgery.

However, no matter how many surgeries he had, every time Billy looked in the mirror he saw a man staring back at him. Despite a successful professional career and passing well as a woman he still had all the same problems and mental distress he had before transitioning. After seven years, he began to detransition. What helped Billy come to terms with his male body was finding peace with God and a wonderful faith community. With the help of healthy relationships with other men and a community that loved and supported him, he was able to make the journey back to embracing his male self. Billy got married in 2011 and is currently living happily as a male, a husband, and father, although he still must live with the consequences of a scarred body and the inability to engage sexually with his wife.

Based on his experience, Billy believes strongly that, even with parental consent, the medical and surgical interventions aimed at "affirming" a discordant gender identity are harmful to children. They are putting a band-aid on the underlying issues that the child is having. Children are looking for acceptance,

significance, and security. "Gender-affirming" treatments are offered to satisfy those needs, but from his own painful experience Billy warns they cannot do that long term. Billy has spoken with many detransitioned young people. Many of them have experienced trauma and/or sexual abuse. Billy has realized that these kids need therapy and a safe environment to work through and address the severe mental health issues they are experiencing. Children facing the struggles Billy faced need help with their thoughts, not a body "fix" with hormones and surgery.

Laura Perry Smalts

Laura Perry Smalts will never experience giving birth to or breastfeeding a child because she became convinced that she was "born in the wrong body" and that her body needed to be altered to conform to her belief that she was really male. She now realizes that there are far better and healthier ways to assist a child who is distressed with her body that bring long-term resolution, and her story is living proof of that truth.

Like many detransitioners, Laura did not conform to gender stereotypes and experienced sexual abuse by a neighbor and family dysfunction during childhood, which contributed to her believing that she was really a boy. From an early age she fantasized about being a boy and wrote stories of herself as a male character but was not aware of the concept of being transgender until age 25. The desire to become male had become so strong that she began searching on the internet and

was shocked to find numerous stories, websites, and support groups related to being transgender.

Laura went to a support group which immediately affirmed her as "transgender." From that point on, she was absolutely convinced that she was a "man trapped in a woman's body" and her body needed to be fixed. She started taking testosterone at age 25 after receiving a diagnosis of gender identity disorder and letter from a therapist. Laura's physician, who was aware of her history of chronic hormone imbalance, nevertheless prescribed the cross-sex hormones on the same day. During nine years on testosterone, Laura experienced her voice getting lower, her jaw becoming more masculinized, her body shape changing, more hair growing on her body, and hair receding on her scalp. Her blood became very thick so that she became in danger of a stroke. Laura had to undergo therapeutic blood withdrawals to thin her blood.

With the medical interventions to support "gender transition," Laura fully passed as male and would have described herself as happy for the first few years. However, she also began to have problems with her memory and cognitive functioning. She became anxious, depressed, and neurotic about talking to people, becoming obsessed with "every detail of life fitting a male narrative." She couldn't function at work. Still, Laura was convinced that she wanted these interventions

and underwent a double mastectomy at age 27 and complete hysterectomy, sending her into menopause at age 30.

During the time that she lived as a man, Laura was constantly reminded of the truth, but had to constantly override it, which she found to be exhausting. After seven years of medical transition treatments, Laura was depressed and suicidal. She was so restless she had difficulty sleeping and staying focused at work. She credits faith in Jesus Christ and the "positive message of love in God's Word," as what brought true healing in her heart. If Laura had not given her life to Christ, she believes that she would have taken her own life because she realized she could neither escape the pain of her past nor become the man she longed to be. She entered a support group that helped her process the pain of her life and talk openly about the sexual trauma, issues with her mother, and rejection by others. She began working through a healing community, restoring her emotionally and psychologically as a woman. She received counseling that helped her see the broken patterns, process negative thinking towards herself, and understand healthy womanhood. She began to realize that she was not a man but had fixated on becoming a person who would be loved. In 2016 she detransitioned. In May 2022, Laura got married and no longer experiences any gender dysphoria.

Laura believes minors do not have the capacity to appreciate the gravity of these decisions involving the complications of medical transition and what they are

giving up, including sexual function and parenting. Nor does she believe a parent should be allowed to radically alter their child's body or allow their child to be sterilized because their child is experiencing a mental ailment. Based on her experience, Laura believes transition procedures do not solve anything but only give temporary relief, like taking a pain killer for a broken bone. From personal experience, Laura knows there are far healthier ways to help children resolve distress with their bodies.

KathyGrace Duncan

From a very young age, KathyGrace was gender nonconforming; she preferred male attire, thought she was a "boy," and wanted to live as one. However, it was not until after she had medically transitioned and lived for many years as a man that she was able to reflect on the complex true origins and causes of her self-perception and gender dysphoria. Growing up in a dysfunctional family in which her mother was often the victim of her father's emotional and verbal abuse, KathyGrace intuited the message that "my dad would love me if I were a boy." Sexual abuse by a family member between the ages of 10 and 12 further convinced her that being a girl meant being unsafe and unlovable.

In sixth grade, she learned about female to male transsexuals, leading her to conclude that her distress was caused by not having the "right" body and the only way to live a normal life was to medically transition and become a heterosexual

male. At age 19, she began living as a man named Keith and went to a therapist who formally diagnosed her with gender dysphoria. She began testosterone and a year later had a mastectomy. At the time, she believed changing her body was necessary so that what she saw in the mirror matched what she felt on the inside. She never viewed her condition as touching on mental health issues, and neither did the therapist who diagnosed her. Whether her self-perception and desire to transition was related to her mental health issues was never explored.

After 11 years passing as a man and living a relatively "happy" and stable life (which included having a number of girlfriends), KathyGrace realized that she was living a lie built upon years of repressed pain and abuse. Hormones and surgery had not helped her resolve underlying issues of rejection, abuse, and sexual assault. Her desire to live as a man was a symptom of deeper, unmet needs.

With the help of life coaches and a supportive community, KathyGrace returned to her female identity and began addressing the underlying issues that had been hidden in her attempt to live as a man. She experienced depression that she had repressed for years and grieved over the irreversible changes to her body. KathyGrace believes that if someone had walked with her through her feelings instead of affirming her desire to transition, she would have been able to address her mental health issues more effectively and not spent so many years making and recovering from a grave mistake.

Amanda Stewart

As a child, Amanda was a tomboy and thought she might want to serve the Catholic Church as a nun. When she was a young teenager, at age 14, Amanda suffered the trauma of having her mother sadly pass away, leaving her father as her sole parent. During her teen years Amanda also was diagnosed with autism and schizoaffective disorder.

When she was a young adult, at age 22, Amanda was set on a path of medicalized gender transition by health care providers she trusted to take care of her. A physician prescribed her testosterone. Amanda found that the testosterone the doctor prescribed her was highly addictive, and she proceeded to take it for the better part of 15 years.

Approximately four years after the doctor prescribed her testosterone, Amanda was misled into a double mastectomy, in which a surgeon removed her healthy breasts. Amanda feels this surgery was done incorrectly. The following year, another surgeon performed a hysterectomy and oophorectomy, removing Amanda's uterus and ovaries. Amanda does not believe any of these surgeries were medically necessary or appropriate, and she feels that she was deceived into undergoing those costly procedures.

Throughout this time, Amanda was seen by a nurse practitioner who prescribed her various psychotropic medications for her mental health issues. She also was seen by a therapist who encouraged her to stay on testosterone.

A few years ago, Amanda was prescribed Risperdal, a powerful antipsychotic medication used to treat schizophrenia, bipolar disorder, and autism spectrum disorder. It works by balancing the levels of dopamine and serotonin in the brain, substances that help regulate mood, behaviors, and thoughts.

After she was prescribed Risperdal, Amanda began to realize that her mental health issues were improved, something testosterone had not been able to achieve for her. Amanda realized that she did not need testosterone, and she was able to free herself from that controlled substance after being placed on it, and continued on it for many years, by her health care providers.

Amanda has only recently realized that her health care providers harmed her and misled her. She wishes she could have those years of her life back, as well as her healthy body and body parts, but she understands that is not possible.

B. Amici Are Representative of Thousands of Individuals Who Likewise Were Harmed by "Gender Transition" Procedures.

Amici are not alone in their experiences of being misled into life-altering medical interventions to change their bodies to look like the opposite sex. A growing body of research indicates that an increasing number of youth and adults are detransitioning, indicating harm and/or lack of efficacy of the

interventions. Vandenbussche 2021, for example, is a survey of 237 detransitioners with 70% reporting that they detransitioned after realizing their gender dysphoria was related to other issues. Elie Vandenbussche, *Detransition-Related Needs and Support: A Cross-Sectional Online Survey*, 69(9) J. Homosex., 1602-1620, 1606 (2022), Epub Apr. 30, 2021. And Littman 2021 is a survey of 100 detransitioners where 60% reported their decision to detransition was motivated by the fact that they "became comfortable identifying with their natal sex." Lisa Littman, *Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners,* 50(8) Arch. Sex. Behav. 3353-3369, 3361 (2021).

In her study, Dr. Littman found that, as is true of Amici, a majority of the study subjects felt that they had been rushed into medical "gender-affirmative" interventions with irreversible effects without the benefit of adequate psychologic evaluation. Littman 2021 at 3364-3366. Dr. Littman also found that several of the participants in her study felt pressured to transition from their doctors or therapists. *Id.* at 3366. Thirty-eight percent of participants in Dr. Littman's study said that their gender dysphoria was caused by trauma or mental health issues, and more than half said that transitioning delayed or prevented them from getting treatment for their trauma or mental health issues. *Id.* at 3361-3362.

Similarly, Reddit's "detrans" forum (http://www.reddit.com/r/detrans/) has more than doubled from over 23,000 members in November 2021, to 52,000 members today. One of the entries, titled "Still not me in the mirror" explains the anguish detransitioners face when they realize there is no "reset button" to undo what has happened to them:

> **Still not me in the mirror.**
>
> I had a nice night last night, but this morning I felt disgusting looking at what I've done to myself. Only positive in sight is that it looks like it's probably gotten a small bit better again. I won't know until I take pictures. Either way, I'm pretty sure it'll never be me again. I want very badly to just see me in the mirror and not any of the changes I suffered. It makes me very strongly want surgery. I don't want surgery, but I do want it too. I feel like this is a problem that will never resolve itself and I'll be haunted by it unendingly. I'm certain surgery will not make me really look like myself. It's not a reset button. It's going to just be a new different look. I don't know if that's really what I need. I just don't know if I'll ever answer this question.

Reddit entry by UniquelyDefined,

https://www.reddit.com/r/detrans/comments/10alig1/still_not_me_in_the_mirror/.

Amici, and thousands others like them, were harmed by medicalized "gender transition," not helped by it.

II. Scientific Evidence Shows Gender Dysphoria Usually Resolves On Its Own, in Which Case Life-Altering "Affirmation" and Medical Intervention Is Proved Unnecessary and Only Harmful.

Over the last 50 years, numerous scientific studies have shown that gender dysphoria in children is not fixed; rather, the vast majority of prepubertal children

with gender dysphoria *who do not socially or medically transition* will stop feeling dysphoric by the time they reach adulthood. Eleven peer-reviewed studies published between 1972 and 2021 investigated the persistence of childhood-onset gender dysphoria, and all reached the same conclusion: "among prepubescent children who feel gender dysphoric, the majority cease to want to be the other gender over the course of puberty—ranging from 61-88% desistance across the large, prospective studies." Expert Decl. of James Cantor, PhD in *L.W., et al. v. Skrmetti, et al.*, No. 3:23-cv-00376 (M.D. Tenn.), ECF 113-3 at 59 (listing studies). No published study has shown otherwise.

Given this evidence, the Endocrine Society's Clinical Practice Guidelines acknowledge "the large majority (about 85%) of prepubertal children with a childhood diagnosis did not remain GD/gender incongruent in adolescence." Wylie C. Hembree, et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102(11) J. of Clinic. Endocrin. & Metab. 3869-3903, 3879 (2017).

Yet among children who are *affirmed* in a transgender identity, multiple studies have found that few or none grow into comfort with their biological sex. "The gender identity affirmed during puberty appears to predict the gender identity that will persist into adulthood." Carly Guss, et al., *Transgender and Gender Nonconforming Adolescent Care: Psychosocial and Medical Considerations*, 27(4)

Curr. Opin. Pediatr. 421-26, 421 (2015); *see also* Thomas D. Steensma, et al., *Factors Associated With Desistence and Persistence of Childhood Gender Dysphoria: A Quantitative Follow-Up Study*, 52(6) J. Am. Aca. Child Adolesc. Psychiatry 582-590, 588-89 (2013) (childhood social transitions are "important predictors of persistence").

Available evidence, then, suggests that affirming a transgender identity in children changes outcomes and prevents natural desistence in many children. Dr. Littman observed that her research into detransitioners "adds to the existing evidence that gender dysphoria can be temporary." Littman 2021 at 3365. She concluded that "intervening too soon to medicalize gender dysphoric youth risks iatrogenically derailing the development of youth who would otherwise grow up to be LGB nontransgender adults." *Id.*

In addition, many clinicians have commented on the rising numbers of detransitioners appearing in their clinics. *See, e.g.,* 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/ (noting "rising number of detransitioners that clinicians report seeing," which is typically "youth who experienced gender dysphoria and other complex mental health issues, rushed to medicalize their bodies and regretted it"); Lisa Marchiano, *Gender Detransition: A Case Study*, 66(4) J. of Anal.

Psychol. 813-832, 814 (2021) ("[T]he number of young people detransitioning (reaffirming their natal sex) … appears to be increasing. Detransitioners are now sharing their stories online and entering therapy."); *see also* R. Hall, et al., *Access to Care and Frequency of Detransition Among a Cohort Discharged by a UK National Adult Gender Identity Clinic: Retrospective Case-Note Review*, 7(6):e184 BJPsych Open. 1-8, 1 (2021) ("Detransitioning might be more frequent than previously reported."); Isabel Boyd, et al., *Care of Transgender Patients: A General Practice Quality Improvement Approach*, 10(1) Healthcare 121 (2022) ("[T]he detransition rate found in this population is novel and questions may be raised about the phenomenon of overdiagnosis, overtreatment, or iatrogenic harm as found in other medical fields.").

The popular press is filled with accounts of detransitioners who now regret their transition to a transgender identity. *See* Lisa Selin Davis, *The Mainstream Media Needs to Talk About Detransitioners*, Psychreg, last updated Feb. 12, 2023, https://www.psychreg.org/mainstream-media-talk-about-detransitioners/; Ross Pomeroy, *Transgender Detransition Is a Taboo Topic, But Data Shows It's On the Rise*, Big Think, June 20, 2023, https://bigthink.com/health/transgender-detransition/; Lauren Smith, *Detransitioners Can No Longer Be Ignored*, Spiked, Oct. 7, 2022, https://www.spiked-online.com/2022/10/07/detransitioners-can-no-longer-be-ignored/.

Numerous forums and online resources have been established for detransitioners, including: (1) Post Trans, (2) Beyond Trans, (3) a Reddit forum for detransitioners (r/detrans), (4) the Pique Resilience Project, (5) Sex Change Regret, (6) Gender Exploratory Therapy Association/Detransitioners, (7) Life (de)transitions, and (8) Detrans Foundation.[2]

The Swedish National Board of Health and Welfare has recognized "[t]he documented prevalence among young adults of medical detransition." *Care of Children and Adolescents With Gender Dysphoria, Summary of National Guidelines*, Socialstyrelsen, The National Board of Health and Welfare 4 (Dec. 2022). Notably, March 12, 2021, was the first International Detransition Awareness Day. *See* Detrans Awareness Day, https://www.detransawareness.org/; Our Duty, Detransition Awareness Day, https://ourduty.group/2021/03/12/detransition-awareness-day/ ("March 12, 2021 the inaugural 'Detransition Awareness Day', provided an opportunity to raise awareness of detransition and of the stories of detransitioners.").

[2] Post Trans, https://post-trans.com/; Beyond Trans, https://beyondtrans.org; Reddit forum, https://www.reddit.com/r/detrans/; Pique Resilience Project, https://www.piqueresproject.com/; Sex Change Regret, https://sexchangeregret.com/; Gender Exploratory Therapy Association/Detransitioners, https://www.genderexploratory.com/detransitioners/; Life (de)transitions, https://lifedetransitions.com/; Detrans Foundation, https://www.detransfoundation.com/.

III. Oregon's Asserted Interest in Denying the Plaintiff's Application to Adopt From Its Foster-Care System Is Not Compelling.

Amici's unique perspective reinforces that the government's asserted interest in denying the Plaintiff's application to adopt from its foster-care system is not compelling. Under either the Free Exercise Clause or the Free Speech Clause, the compelling interest requirement is extremely rigorous. "A government policy can survive strict scrutiny only if it advances interests of the highest order and is narrowly tailored to achieve those interests." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1881 (2021) (internal quotation marks and citation omitted). The government cannot "rely on 'broadly formulated interests'" and must instead undergo a court's scrutiny of "'the asserted harm of granting *specific* exemptions to *particular* religious claimants.'" *Id.* (quoting *Gonzalez v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418, 431 (2006)) (emphasis added). Neither general interests, such as nondiscrimination, nor speculative assumptions about possible harms that may never materialize are sufficient to carry this burden. *See id.* at 1881–82.

Here, Oregon argued that it had a compelling interest in denying the Plaintiff's application because her "refusal to respect, accept, and support a child's sexual orientation, gender identity, and gender expression poses a 'real and significant threat to the physical and psychological well-being of the children in the state's care and custody.'" *Bates v. Pakseresht*, No. 2:23-CV-00474-AN, 2023

WL 7546002, at *18 (D. Or. Nov. 14, 2023) (quoting State's brief at 19). As part of this reasoning, the State categorically disqualified the Plaintiff because of her religious objections to agreeing to facilitate medical transition for a hypothetical child under the age of nine years old. Compl. ¶¶ 177–78. Amici's experiences as detransitioners provide a different perspective and demonstrate that "affirming" a child's asserted gender identity can lead to significant physical and psychological harm. As a result, the State's interest in denying Plaintiff the opportunity to adopt from its foster-care system because of her religious beliefs and religiously-motivated expression is not a compelling one.

In fact, Amici's experiences show that the State would discharge its obligation to "'safeguard the well-being of this helpless and vulnerable population'" by allowing the Plaintiff and others like her to care for these children. *Bates*, 2023 WL 7546002, at *19 (quoting *Tamas v. Dep't of Soc. & Health Servs.*, 630 F.3d 833, 843 (9th Cir. 2010)). These children, who face the same challenges Amici faced, deserve to grow up in a truly supportive environment where they are loved for who they are, and no one tries to change them into someone else through harmful medical procedures.

CONCLUSION

Amici respectfully submit that this Court should reverse the decision of the district court.

Dated: January 18, 2024.

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CERTIFICATE OF COMPLIANCE

9th Cir. Case Number(s) 23-4169

I am the attorney or self-represented party.

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Signature /s/ Lea E. Patterson **Date** January 18, 2024

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2024, I electronically filed the amicus brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system, which will accomplish service on counsel for all parties through the Court's electronic filing system.

Dated: January 18, 2024.

/s/ Lea E. Patterson
Lea E. Patterson