

No. 22-942

---

*In the Supreme Court of the United States*

BRIAN TINGLEY,

*Petitioner,*

*v.*

ROBERT W. FERGUSON, Attorney General of  
Washington, *et al.*,

*Respondents,*

---

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

**BRIEF OF *AMICUS CURIAE*  
WOMEN'S LIBERATION FRONT  
IN SUPPORT OF PETITIONER**

---

Andrea L. Shaw  
*Counsel of Record*  
Law Office of Andrew H.  
Shaw, P.C.  
2011 W. Trindle Road  
Carlisle, PA 17013  
(717) 243-7135  
andrea@ashawlaw.com

Lauren A. Bone  
Women's Liberation Front  
1800 M Street NW #33943  
Washington, D.C. 20033  
(608) 338-2345  
Lauren@laurenbone.law

*Counsel for Amicus Curiae*

---

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....iv

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

SUMMARY OF ARGUMENT.....2

ARGUMENT.....3

    I.    GENDER IDENTITY THEORY IS  
          ROOTED IN IDIOSYNCRATIC, QUASI-  
          RELIGIOUS BELIEFS.....3

        A. Sex is objective and immutable, while  
           gender is socially constructed and is  
           harmful and oppressive to women and  
           girls.....4

        B. “Gender identity” and “transgender” are  
           inconsistent concepts with no objective  
           definitions.....5

        C. Gender identity ideology elevates a  
           metaphysical gendered soul over the  
           material reality of biological sex, and  
           prioritizes “affirming” gender identity  
           above all other considerations.....9

    II.   GENDER IDENTITY IDEOLOGY IS  
          HOSTILE AND PARASITIC TO WOMEN  
          AND GIRLS, LGB PEOPLE, AND ANY  
          PERSON WHO DOES NOT CONFORM  
          TO SEX STEREOTYPES.....13

- A. Gender identity is harmful to women and girls.....13
- B. Reduced ability for LGB people to collectively organize politically.....13
- C. Conversion therapy and sterilization of LGB youth via “gender affirmation.”.....14
- D. “Conversion therapy” ban effectively bans care for detransitioners.....17

III. SB 5722 VIOLATES THE ESTABLISHMENT CLAUSE BY PROMOTING AND ADVANCING GENDER IDENTITY IDEOLOGY ABOVE ALL OTHER RELIGIONS, SECULAR BELIEFS, AND SCIENTIFIC FACTS.....18

- A. The primary purpose of SB 5722 is to promote gender identity ideology and its primary effect is to advance gender identity ideology.....19
  - i. The primary purpose of SB 5722 is to advance gender identity theory, not to protect minors from ideologically-based interference into their psychosexual development.....19
  - ii. The primary effect of SB 5722 is the removal of competing perspectives that

are critical of gender identity ideology.....	20
B. Endorsement Test.....	21
C. Coercion Test.....	22
CONCLUSION.....	22

## TABLE OF AUTHORITIES

### Cases

<i>B.P.J. v. West Virginia State Bd. of Educ.</i> , 2023 U.S. Dist. LEXIS 20427 (S.D. W.Va. 2023)...	7
<i>Cleveland Bd. of Ed. V. LaFleur</i> , 414 U.S. 632 (1974).....	3
<i>Craig v. Boren</i> , 429 U.S. 190 (1976) .....	3
<i>Doe 2 v. Shanahan</i> , 917 F.3d 694 (D.C. Cir. 2019).....	7
<i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971) .....	19
<i>Lynch v. Donnelly</i> , 465 U.S. 668, 104 S. Ct. 1355 (1984).....	21
<i>Phillips v. Martin Marietta Corporation</i> , 400 U.S. 542 (1971).....	3
<i>Price Waterhouse v. Hopkins</i> , 490 U.S. 228 (1989) ...	3
<i>Tingley v. Ferguson</i> , 47 F.4th 1055 (9th Cir. 2022) ..	6
<b>Constitutional Provisions</b>	
U.S. CONST. amend. I .....	18
U.S. CONST. amend. XIX .....	3

## Statutes

WASH. ADMIN. CODE 246-490-075 ..... 7

## Other Authorities

American Psychiatric Association,  
*Gender Dysphoria* (2013) ..... 8

Chris Bodenner, *Is the Transgender Movement a  
Spiritual One?*, *The Atlantic*, June 28, 2016 ..... 10

Dylan Vade, *Expanding Gender and Expanding the  
Law: Toward A Social and Legal  
Conceptualization of Gender That Is More  
Inclusive of Transgender People*,  
11 MICH. J. GENDER & L. 253 (2005) ..... 7

Elie Vandebussche, *Detransition-Related Needs  
and Support: A Cross-Sectional Online Survey*,  
69 J. OF HOMOSEXUALITY (2022) ..... 18

Human Rights Campaign, *Understanding the  
Transgender Community* ..... 9

Institute of Medicine (US) Committee on Assessing  
Interactions Among Social, Behavioral, and  
Genetic Factors in Health; Hernandez LM, Blazer  
DG, editors. *Genes, Behavior, and the Social  
Environment: Moving Beyond the Nature/Nurture  
Debate*. Washington (DC): National Academies  
Press (US); 2006. 5, Sex/Gender, Race/Ethnicity,  
and Health ..... 4

International Lesbian, Gay, Bisexual, Transgender, Queer and Intersex (LGBTQI) Youth & Student Organisation (IGLYO), <i>Only Adults? Good Practices for Legal Gender Change Recognition for Youth</i> , November 2019 .....	14
J.L. Turban, et. al., Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults, JAMA PSYCHIATRY (2020).....	12
Jack Turban, <i>The Disturbing History of Research into Transgender Identity</i> , Scientific American, Oct. 23, 2020 .....	12
Dr. Jack Turban, One Size Does Not Fit All: In Support of Psychotherapy for Gender Dysphoria, 50 ARCHIVES OF SEXUAL BEHAVIOR (2020) .....	12
Jesse Singal, <i>Netflix’s Chappelle of hate</i> , The Spectator, November 18, 2021 .....	10
Kai Shappley, <i>Imgur</i> , July 31, 2010.....	15
Kevin Liptak, <i>Biden says efforts to restrict transgender rights ‘close to sinful,’</i> CNN, March 13, 2023 .....	10
Leo Valdes and Kinnon MacKinnon, <i>Take Detransitioners Seriously</i> , The Atlantic, January 18, 2023 .....	16, 17

Lucy Bannerman, <i>It feels like conversion therapy for gay children</i> , The Times, August 4, 2019 .....	15, 21
M.S.C. Wallien, et al., <i>Psychosexual outcome of gender-dysphoric children</i> , J. OF THE AM. ACAD. OF CHILD AND ADOLESCENT PSYCHIATRY, 47, 1413–1423 (2008).....	8
Madeleine Carlisle, <i>Kid of the Year Finalist Kai Shappley, 11, Takes on Lawmakers in Her Fight for Trans Rights</i> , TIME, January 12, 2022 ...	15, 21
National Center for Transgender Equality, <i>What is Gender Dysphoria?</i> , (July 9, 2016) .....	8
Prism Sanctuary .....	10
Prism Sanctuary, <i>The Seven Tenets</i> .....	11
Rev. Valerie Spencer and Wren Sanders, <i>Reverend Valerie Spencer Sees the Divinity of Transness</i> , them, July 1, 2022 .....	10
S.B. 132, 2021-2022 Leg. Sess. (Ca. 2022) .....	11
S.E. James, et. al., <i>The Report of the 2015 U.S. Transgender Survey</i> (National Center for Transgender Equality, 2015).....	9

Sex, Male, and Female, MILLER-KEANE ENCYCLOPEDIA AND DICTIONARY OF MEDICINE, NURSING, AND ALLIED HEALTH (7th ed. 2003) .....	1
Dr. Sheila Jeffreys, <i>The transgendering of children: Gender eugenics</i> , WOMEN'S STUD. INT'L F. 35 (2012) 384-393 .....	17
Society for Evidence Based Gender Medicine, <i>Detransition: a Real and Growing Phenomenon</i> , May 30, 2021 .....	18
Sofia Bloem, <i>Pathologizing Identities Paralyzing Bodies IRAN</i> , Justice for Iran, 2014 .....	15, 21
Soul Definition, Dictionary.com (based on Random House Unabridged Dictionary, 2020).....	9
United Nations, <i>The right to choose and refuse sterilization</i> , United Nations Human Rights, June 6, 2014 .....	17
Walter L. Williams, <i>The 'two-spirit' people of indigenous North Americans</i> , The Guardian, October 11, 2010 .....	11
World Health Organization, <i>Gender, Equity, and Human Rights in Western Pacific</i> .....	5

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

*Amicus* is the Women’s Liberation Front (“WoLF”), a non-profit radical feminist organization dedicated to the liberation of women and girls by abolishing gender and sex discrimination.<sup>2</sup> As a radical feminist organization, WoLF rejects gender identity beliefs because they are founded on regressive sex stereotypes and undermine women’s sex-based rights (including lesbian and bisexual women who comprise nearly 40% of WoLF’s membership - and who make up the vast majority of women with gender dysphoria). WoLF’s interest in this case stems from its interest in protecting the girls impacted by SB 5722 from ideologically-based interference into their bodily autonomy and their freedom of speech and beliefs (including the right to seek therapy that does not “affirm” that they are boys trapped in girls’ bodies). WoLF’s goals are thwarted when the state abandons its responsibility to uphold

---

<sup>1</sup> No counsel for any party authored any part of this brief, and no party, their counsel, or anyone other than WoLF, has made a monetary contribution intended to fund its preparation or submission. *Amicus* provided 10 days advance notice of this brief to all parties.

<sup>2</sup> *Amicus* uses “sex” throughout to mean exactly what Congress meant when it incorporated the longstanding meaning of that term into Title VII of the Civil Rights Act: “the fundamental distinction, found in most species of animals and plants, based on the type of gametes produced by the individual,” and the resulting classification of human beings into those two reproductive classes: female (women and girls) or male (men and boys). *See* Sex, Male, and Female, MILLER-KEANE ENCYCLOPEDIA AND DICTIONARY OF MEDICINE, NURSING, AND ALLIED HEALTH (7th ed. 2003), <https://medical-dictionary.thefreedictionary.com>.

their free speech and to maintain neutrality with respect to religious belief and non-belief.

### **SUMMARY OF ARGUMENT**

SB 5722's real purpose is to advance gender identity ideology, rather than its stated purpose of protecting minors from ideologically-motivated interference into their psychosexual development. The bill withholds access from minors with gender dysphoria to alternative treatments to alleviate their symptoms prior to embarking on a lifetime of medicalized "affirmation."

SB 5722's real purpose is to advance the quasi-religious belief system of gender identity ideology, the highest tenet of which is that a person's "gender identity," is solely for them to determine, must be affirmed by all other believers, and that the state should be lobbied to enforce non-believers to express affirmation.

Tingley claims that his approach to what the state calls conversion therapy is triggered by and relies upon the patient's own expressed desire for change. This law ostensibly allows Tingley to engage in neutral talk therapy not aimed at change, yet clinicians are disfavored (if not forbidden entirely) from making objectively true statements about human reproduction (such as "men cannot become pregnant") if those statements contradict tenets of the government-favored gender identity belief system.

SB 5722 violates the First Amendment by imposing a faith-based belief system on Washington residents through compelled speech, chilled speech, and threatened loss of career and professional

standing; and by forbidding individuals from expressing private beliefs (whether religious or secular in nature). Even if constitutionally sound, this faith-based belief system harms women and girls in its rejection of pluralism and civil liberties, by demonstrating a tendency toward totalitarianism, and in its rejection of objective, material facts in favor of subjective beliefs (in a manner which tends to erode sex-based rights).

WoLF urges the Court to recognize the quasi-religious nature of gender identity ideology, reverse the Ninth Circuit's ruling.

## ARGUMENT

### I. GENDER IDENTITY THEORY IS ROOTED IN IDIOSYNCRATIC, QUASI-RELIGIOUS BELIEFS

While feminism has sought to improve women's status by dismantling sex-stereotyping, the concept of "transgender" depends on the continued existence of these same sex-stereotypes. Women and girls are generally protected in the U.S. from being subject to laws founded in sex stereotypes (such as whether and how they should work, parent, or vote, and how they ought to look and behave).<sup>3</sup> This protection is in

---

<sup>3</sup> U.S. CONST. amend. XIX (the right to vote cannot be limited on the basis of sex); *Cleveland Bd. of Ed. V. LaFleur*, 414 U.S. 632 (1974) (mandatory leave for pregnant teachers violates due process); *Craig v. Boren*, 429 U.S. 190 (1976) (different drinking ages for men and women violates the 14th amendment); *Phillips v. Martin Marietta Corporation*, 400 U.S. 542 (1971) (refusal to hire women with preschool-age children violates the Civil Rights Act of 1964); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (sex stereotyping is a form of sex discrimination).

conflict with efforts to adopt laws that privilege the concepts of “gender identity” and “transgender” over sex.

Subjective beliefs may not be imposed on the public nor used to justify eroding civil rights protections or erasing women as a sex class in law or culture. Women and girls are female whether or not they look, act, or live their lives in a stereotypically feminine manner. To believe that sex is determined by a gendered soul or feminine appearance is to believe that femininity is the same thing as being female. This belief is offensive and harmful to women and antithetical to civil rights jurisprudence.

**A. Sex is objective and immutable, while gender is socially constructed and is harmful and oppressive to women and girls.**

“Sex” and “gender” both have distinct and objective definitions and criteria.

Sex is an immutable characteristic based in reality. It is defined by reproductive function; a male produces sperm and a female produces eggs, gestates, and gives birth. The National Institute of Health (NIH) describes sex as “a classification based on biological differences . . . between males and females rooted in their anatomy and physiology. By contrast, gender is a classification based on the social construction (and maintenance) of *cultural* distinctions between males and females.” Institute of Medicine (US) Committee on Assessing Interactions Among Social, Behavioral, and Genetic Factors in Health; Hernandez LM, Blazer DG, editors. *Genes, Behavior, and the Social Environment: Moving*

*Beyond the Nature/Nurture Debate*. Washington (DC): National Academies Press (US); 2006. 5, Sex/Gender, Race/Ethnicity, and Health (emphasis added).<sup>4</sup> The World Health Organization (WHO) agrees, defining “gender” as “the socially constructed roles, behaviour, activities and attributes that a particular society considers appropriate for men and women.” World Health Organization, *Gender, Equity, and Human Rights in Western Pacific*.<sup>5</sup> WHO further notes that these socially constructed roles “give rise to gender inequalities, i.e., differences between men and women that systematically favor one group.” *Id.*

**B. “Gender identity” and “transgender” are inconsistent concepts with no objective definitions.**

Gender identity doctrine states that each person has an emotional or psychological core of their inner being called a “gender identity.” Gender identity theory believes that a person’s sex is not defined by objective criteria; instead, a person self-determines their own sex as male or female, or both, or neither, via this soul-like “gender identity.” The “gender identity” may relate to the individual’s feelings about his or her anatomy, physiology, or reproductive role, or may describe their relationship to social roles, forms of grooming or expression, or other customs locally prescribed for members of their sex.

While the Ninth Circuit relied in their decision on purported experts who claim that “gender identity” is a “well-established [concept] in the psychological

---

<sup>4</sup> <https://www.ncbi.nlm.nih.gov/books/NBK19934/>

<sup>5</sup> <https://www.who.int/westernpacific/health-topics/gender-equity-and-human-rights>

field,” *Tingley v. Ferguson*, 47 F.4th 1055 (9th Cir. 2022) this could not be less true. Definitions of “gender identity” under this belief system are invariably vague, circular, and self-referential and ultimately have different meaning depending on the reader’s familiarity with gender identity theory. An ordinary medical or mental health provider might hear that gender identity as “a person’s internal, innate sense of belonging to a particular sex,” and focus on the patient’s perception or state of mind (without ascribing objective meaning to that “sense of belonging,”) with the focus point of the definition for them is the. In contrast, an adherent to gender identity ideology believes that this person’s self-report of his or her subjective feelings is clinically significant to the point of eclipsing the material relevance of his or her sex, even to other people.

The concept of gender identity is so poorly defined, even among its most adamant supporters, that Dylan Vade, the co-founder of the Transgender Law Center, resorts to describing gender in the metaphysical. Vade writes in the Michigan Journal of Gender and Law:

*Gender is much bigger than a line. It is at least a threedimensional space, but not a Cartesian one, not a space created by three lines. There are no lines, no ordering. There is just space—an infinite space, a space that allows motion. I have gender claustrophobia and need a big space. I do not like it when people tell me that I have to identify as female or male. I also do not like it when people tell me that, because it is not radical enough, I cannot identify as female or male. I need a big space in*

*which everyone's gender has a space, and in which our genders are not hierarchically ordered. Thus, a conception that works for me is a galaxy. A gender galaxy.*

Dylan Vade, *Expanding Gender and Expanding the Law: Toward A Social and Legal Conceptualization of Gender That Is More Inclusive of Transgender People*, 11 MICH. J. GENDER & L. 253, 274–75 (2005) (footnotes omitted).

Indeed, a core concept of gender identity ideology is that the sole criteria for whether somebody is transgender is that he or she says that he or she is transgender. *See Doe 2 v. Shanahan*, 917 F.3d 694, 722 (D.C. Cir. 2019). Evidence offered to the court about dysphoria, cross-sex hormones, or “transitioning” is irrelevant because being “transgender” is increasingly a matter of self-declaration. *B.P.J. v. West Virginia State Bd. of Educ.*, 2023 U.S. Dist. LEXIS 20427, \*19 (S.D. W.Va. 2023). *See, e.g.* WASH. ADMIN. CODE 246-490-075 (revised in 2018 to permit a legal change of the sex designation on one’s birth certificate by completing a simple form).

Gender identity ideology conflates the concepts of “gender identity” and “transgender” with the psychiatric diagnosis of “gender dysphoria” in order to claim scientific legitimacy and co-opt useful talking points such as the medical necessity of cosmetic surgery), even though the terms are quite separate and distinct. Many people diagnosed with gender dysphoria do not identify as transgender, since the former is marked by clinically significant distress and impairment, while the latter is a personally defined identity (which does not resonate with many people who experience that distress). National Center for

Transgender Equality, *What is Gender Dysphoria?*, (July 9, 2016).<sup>6</sup> See also American Psychiatric Association, *Gender Dysphoria* (2013), (discussing the criteria contained in the APA’s Diagnostic and Statistical Manual of Mental Disorders (DSM-5) (2013)).<sup>7</sup> Gay and lesbian individuals are unsurprisingly at disproportionate risk of a gender dysphoria diagnosis, at least at some point in their lives, since few things are more “gender non-conforming” than rejecting heterosexuality. M.S.C. Wallien, et al., *Psychosexual outcome of gender-dysphoric children*, J. OF THE AM. ACAD. OF CHILD AND ADOLESCENT PSYCHIATRY, 47, 1413–1423 (2008). Most people who experience gender dysphoria do so for a limited time, especially if they are young. *Id.*

A person who believes in gender identity believes that a woman is a person (male or female) who “identifies” as a woman. But a man identifying as a member of the female *sex* would mean identifying as a member of the reproductive class that produces eggs, gestates, and gives birth. Of course, that is impossible. This belief system acknowledges that feminine stereotypes are imposed on women (but not men) by society on the basis of sex, causing them demonstrable harm, yet it simultaneously posits that the exact same stereotype can simultaneously be cheerfully adopted as an expression of a woman’s female “gender identity.”

---

<sup>6</sup> <https://transequality.org/issues/resources/frequently-asked-questions-about-transgender-people>

<sup>7</sup>

[https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA\\_DSM-5-Gender-Dysphoria.pdf](https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Gender-Dysphoria.pdf)

Nearly half of all respondents to the National Transgender Discrimination Survey (NTDS) identify as neither exclusively male nor exclusively female, but instead adopt a “non-binary” identity such as genderfluid. S.E. James, *et. al.*, *The Report of the 2015 U.S. Transgender Survey* (National Center for Transgender Equality, 2015). The Human Rights Campaign reported that three-quarters of trans-identified youth identified as something other than “boy” or “girl” reflecting his or her “personal experience.” Human Rights Campaign, *Understanding the Transgender Community*.<sup>8</sup>

**C. Gender identity ideology elevates a metaphysical gendered soul over the material reality of biological sex, and prioritizes “affirming” gender identity above all other considerations.**

Although people’s lives and personalities are not defined by their sex, their sex is always defined by their biology. The disconnect of the metaphysical “gender identity” from physical sex is akin to the religious concept of a soul: “the principle of life, feeling, thought, and action in humans, regarded as a distinct entity separate from the body, and commonly held to be separable in existence from the body; the spiritual part of humans as distinct from the physical part.” Soul Definition, Dictionary.com (based on Random House Unabridged Dictionary, 2020).<sup>9</sup>

Venerated leaders of the transgender movement openly describe the spiritual nature of

---

<sup>8</sup><https://www.hrc.org/resources/understanding-the-transgender-community>

<sup>9</sup> <https://www.dictionary.com/browse/soul>

their belief. For example, *them*, one of the largest LGBT magazines, published an interview with Reverend Valerie Spencer on the “divinity of transness.” Spencer states:

*“To be trans is one of the most spiritual things one can ever be in and itself — even should you never pray. We are the rare people that caught a glimpse of God being itself as us, dancing around as us. And when we begin to move towards that vision, that is divine.”*

Rev. Valerie Spencer and Wren Sanders, *Reverend Valerie Spencer Sees the Divinity of Transness*, *them*, July 1, 2022.<sup>10</sup>

This notion is repeated by many pro-trans advocates, including Caitlyn Jenner, who describes being trans as having “the soul of a female”<sup>11</sup>; President Biden, who called laws protecting children from unnecessary gender medicalization “sinful”<sup>12</sup>; and protesters who called for Dave Chappelle to “repent” in light of jokes about the trans community<sup>13</sup>. Gender ideologues have founded their own church, the Prism Sanctuary (formerly The Church of Prismatic Light), which earnestly describes itself as a

---

<sup>10</sup> <https://www.them.us/story/the-divinity-of-transness>

<sup>11</sup> Chris Bodenner, *Is the Transgender Movement a Spiritual One?*, *The Atlantic*, June 28, 2016, <https://www.theatlantic.com/national/archive/2016/06/is-the-transgender-movement-a-spiritual-one/623668/>

<sup>12</sup> Kevin Liptak, *Biden says efforts to restrict transgender rights ‘close to sinful,’* *CNN*, March 13, 2023, <https://www.cnn.com/2023/03/13/politics/joe-biden-daily-show-trans-rights/index.html>

<sup>13</sup> Jesse Singal, *Netflix’s Chappelle of hate*, *The Spectator*, November 18, 2021, <https://thespectator.com/topic/netflixs-chappelle-of-hate-netflix/>

religion that promotes “freedom to marry who they love, transition, have gender affirming care, and the right to bodily autonomy.”<sup>14</sup> Its tenets include “I have the right to discover and accept myself and to take steps to present my true self to the world,” and so-called “Prismatists” are able to become ordained through the church. Prism Sanctuary, *The Seven Tenets*.<sup>15</sup>

Many followers of gender identity ideology use the indigenous practice of ‘two-spirit’ identities as evidence for the universality of their belief system. This is so common that in California, ‘two-spirit’ identities were even written into SB 132, a law providing for self-ID in California prisons. 2021-2022 Leg. Sess. (Ca. 2022).<sup>16</sup> However, two-spirits are also a culturally religious role. Dr. Walter Williams, a Professor of Anthropology, History and Gender Studies, describes two-spirit individuals as “more spiritually gifted than the typical masculine male or feminine female,” and, “Therefore, many Native American religions, rather than stigmatising such persons, often looked to them as religious leaders and teachers.” *The ‘two-spirit’ people of indigenous North Americans*, *The Guardian*, October 11, 2010.<sup>17</sup>

A further example of the dogmatic nature of this belief system is prominent researcher Dr. Jack Turban, whose research defined gender identity conversion efforts (GICE) as *any* professional interaction the person subjectively perceives as not

---

<sup>14</sup> <https://prismaticlightchurch.org/>

<sup>15</sup> <https://prismaticlightchurch.org/about-us/tenets/>

<sup>16</sup> <https://legiscan.com/CA/drafts/SB132/2021>

<sup>17</sup> <https://www.theguardian.com/music/2010/oct/11/two-spirit-people-north-america>

“affirming” of their transgender identity, regardless of the purpose or nature of the interaction. J.L. Turban, et. al., Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults, *JAMA PSYCHIATRY* (2020). In an article for *Scientific American*, Dr. Turban argues against mental health research into causes of gender dysphoria and transgender identity, describing it as a “dangerous path.” Jack Turban, *The Disturbing History of Research into Transgender Identity*, *Scientific American*, Oct. 23, 2020.<sup>18</sup> Dr. Turban further ignores the harms caused by “affirmation-only” therapy for the growing number of “detransitioning” patients who “feel deeply traumatized by inappropriate transitions.” One Size Does Not Fit All: In Support of Psychotherapy for Gender Dysphoria, 50 *ARCHIVES OF SEXUAL BEHAVIOR* (2020) at 2.<sup>19</sup> That is particularly troubling because the survey that forms the basis of his research intentionally disqualified responses from those whose gender dysphoria desists or who “detransition,” and would therefore have benefitted from agenda-free care. *Id.* Dr. Turban’s approach treats a “gender identity” as something precious, denouncing even neutral, ethical treatments for gender dysphoria that may result in desistance from a transgender identity (even if desistance is not the primary aim). *Id.* Dr. Turban’s work is only one example of how adherents to gender identity ideology will, like followers of many

---

<sup>18</sup> <https://www.scientificamerican.com/article/the-disturbing-history-of-research-into-transgender-identity>

<sup>19</sup> [https://www.researchgate.net/publication/345640459\\_One\\_Size\\_Does\\_Not\\_Fit\\_All\\_In\\_Support\\_of\\_Psychotherapy\\_for\\_Gender\\_Dysphoria](https://www.researchgate.net/publication/345640459_One_Size_Does_Not_Fit_All_In_Support_of_Psychotherapy_for_Gender_Dysphoria)

religions, disregard any evidence that does not support their convictions.

## **II. GENDER IDENTITY IDEOLOGY IS HOSTILE AND PARASITIC TO WOMEN AND GIRLS, LGB PEOPLE, AND ANY PERSON WHO DOES NOT CONFORM TO SEX STEREOTYPES**

### **A. Gender identity is harmful to women and girls.**

One of the primary “human rights” promoted by gender identity theory is self-identification of sex, including the right of men to be legally recognized by the state as women if they wish (and to have that recognition enforced upon other private individuals and entities). This results in the loss of female-only intimate facilities, housing, shelters, and prisons, and athletic opportunities. Women bear these consequences of state-mandated gender identity ideology in addition to the loss of civil liberties, the corruption of data, and or the chilling of academic freedom which impact both men and women.

### **B. Reduced ability for LGB people to collectively organize politically.**

It is not commonly known that many LGB people do not agree with gender identity theory or its policy aims, primarily because this population has in recent years been effectively barred from collectively organizing or being recognized as distinct populations under the law. They have been prevented from forming civil organizations which exclusively promote their interests, while NGOs which previously focused

on LGB advocacy such as HRC, GLAAD, and the National Center for Lesbian Rights, now center their advocacy around transgender identification, which is completely separate and distinct from sexuality.

Gender identity advocates have used more mainstream acceptance of some LGB policy goals to fly their extreme gender proposals under the radar. Indeed, this is explicitly promoted by an international network which does lobbying on gender policies. A document called “Only Adults? Good Practices for Legal Gender Change Recognition for Youth” directs activists to “tie your campaign to a more popular reform,” noting that in some countries, changing the law on self-identification of sex was made easier by putting it through at the same time as same-sex marriage, providing what they call a “veil of protection,” advising NGOs to avoid media attention and to subvert the democratic process by avoiding public knowledge that policy changes are even being proposed. International Lesbian, Gay, Bisexual, Transgender, Queer and Intersex (LGBTQI) Youth & Student Organisation (IGLYO), November 2019.<sup>20</sup>

### **C. Conversion therapy and sterilization of LGB youth via “gender affirmation.”**

Gender identity theory promotes the idea that a person can be “born in the wrong body,” a view adopted by countries such as Pakistan and Iran (where homosexuality is punished by death, but “sex change” is government subsidized as a form of conversion therapy). Sofia Bloem, *Pathologizing*

---

<sup>20</sup>[https://www.iglyo.com/wp-content/uploads/2019/11/IGLYO\\_v3-1.pdf](https://www.iglyo.com/wp-content/uploads/2019/11/IGLYO_v3-1.pdf)

*Identities Paralyzing Bodies IRAN*, Justice for Iran, 2014.<sup>21</sup> This attitude may be more common than many realize - whistleblowers from a child “gender” clinic in the UK have stated that “gender-affirming” care is sometimes sought by families who prefer a “transgender” child over a gay child. Lucy Bannerman, *It feels like conversion therapy for gay children*, The Times, August 4, 2019.<sup>22</sup>

High-profile cases of children who have been ‘transed’ by their parents, such as Kai Shappely, painfully demonstrate this. Shappely’s mother, Kimberly Shappely, admits publicly to beating and abusing Kai as a toddler for demonstrating interest in “feminine” things. She stated in an interview: “I remember thinking even before Kai was 3, this kid might be gay. And, I thought, that cannot happen, would not happen. We started praying fervently. Prayers turned into googling conversion therapy, and how can we implement these techniques at home to make Kai not be like this.” Kai Shappely, Imgur, July 31, 2010.<sup>23</sup> Kai is now the poster-child for trans children<sup>24</sup>, and his mother heralded as a hero for the trans community. The form of conversion therapy Kai experienced to make him straight via ‘transition’ to a girl would not only still be allowed under the

---

<sup>21</sup> <https://www.scribd.com/document/295133278/Pathologizing-Identities-Paralyzing-Bodies-IRAN>

<sup>22</sup> <https://www.peaktrans.org/it-feels-like-conversion-therapy-for-gay-children-say-clinicians-lucy-bannerman-in-the-times-08-04-19/>

<sup>23</sup> <https://imgur.com/a/BqM7g1O>

<sup>24</sup> Madeleine Carlisle, *Kid of the Year Finalist Kai Shappely, 11, Takes on Lawmakers in Her Fight for Trans Rights*, TIME, January 12, 2022, <https://time.com/6128490/kid-of-the-year-kai-shappely-trans-activist/>

Washington law, but explicitly encouraged. In Kai's case, a male was effectively converted into a 'straight female' (at least according to believers of gender identity ideology). This should be in direct contradiction with the Washington law, which bans efforts to change "an individual's sexual orientation," demonstrating the lack of internal consistency both in this ideology and the law itself.

Given the high rate of desistance from childhood gender dysphoria, as well as the very high number of dysphoric youth who are same-sex attracted<sup>25</sup>, "gender affirming" care is reasonably viewed as eugenics-adjacent, by chemically castrating and removing the sex organs of healthy people because of nonconformity with sex-based stereotypes. This has been recognized by feminist historians such as Dr. Sheila Jeffreys as early as 2012:

*"Decades after sexual surgeries on the unfit for eugenic, punishment and therapeutic reasons were mostly abandoned, a similar practice is increasingly being carried out on children who are considered to be innately 'transgender' because they are disobeying culturally acceptable gender roles."*

*The transgendering of children: Gender eugenics,* WOMEN'S STUD. INT'L F. 35 (2012) 384-393.<sup>26</sup>

---

<sup>25</sup> Leo Valdes and Kinnon MacKinnon, *Take Detransitioners Seriously*, The Atlantic, January 18, 2023, <https://www.theatlantic.com/ideas/archive/2023/01/detransition-transgender-nonbinary-gender-affirming-care/672745/>.

<sup>26</sup> <https://objectnow.org/wp-content/uploads/2020/02/Transgenderingchildrenarticle.pdf>

A 2014 report to the United Nations Human Rights Council said that medical treatments that sterilize “may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned... notwithstanding claims of good intentions or medical necessity,” concluding that a person must “be able to choose and refuse sterilization.” United Nations, *The right to choose and refuse sterilization*, United Nations Human Rights, June 6, 2014.<sup>27</sup>

#### **D. “Conversion therapy” ban effectively bans care for detransitioners**

A result of the increasing push to transition gender-nonconforming, gay, and lesbian youth is the growing need for medical and therapeutic care for ‘detransitioners.’ A detransitioner is a person who has returned to living as one’s biological sex after a period of medical transition to the opposite sex/gender. According to a 2022 study in the *Journal of Homosexuality*, detransition occurs primarily because individuals realize their gender dysphoria was related to other issues (70%)<sup>28</sup>, and many of them are lesbian, gay, or bisexual. Valdes and MacKinnon, *The Atlantic*, *supra*. Detransition is highly stigmatized, including in the LGBT community, with research finding that over half of detransitioners “did not feel supported during their detransition.” Society for

---

<sup>27</sup> <https://www.ohchr.org/en/stories/2014/06/right-choose-and-refuse-sterilization>

<sup>28</sup> Elie Vandebussche, *Detransition-Related Needs and Support: A Cross-Sectional Online Survey*, 69 J. OF HOMOSEXUALITY (2022) 1602-1620, <https://www.tandfonline.com/doi/full/10.1080/00918369.2021.1919479>

Evidence Based Gender Medicine, *Detransition: a Real and Growing Phenomenon*, May 30, 2021.<sup>29</sup>

While the one-sided Washington ban on “conversion therapy” would protect the therapists who wished to transition these young people in the first place, the same law could ban therapists from providing minors desperately-needed care during their detransition. This issue will only become more pronounced as reports of detransition continue to grow.

**III. SB 5722 VIOLATES THE ESTABLISHMENT CLAUSE BY PROMOTING AND ADVANCING GENDER IDENTITY IDEOLOGY ABOVE ALL OTHER RELIGIONS, SECULAR BELIEFS, AND SCIENTIFIC FACTS.**

Religious freedom is guaranteed by the First Amendment. U.S. CONST. amend. I. (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”). It is well-settled that this principle of religious freedom extends to the right to have no religion (or other spiritual belief).

This Court has employed a variety of tests in different circumstances to determine whether a violation of the Establishment Clause has occurred. The phenomenon of gender identity ideology has little precedent, but SB 5722 fails each test as to its constitutionality.

---

<sup>29</sup> [https://segm.org/first\\_large\\_study\\_of\\_detransitioners](https://segm.org/first_large_study_of_detransitioners)

**A. The primary purpose of SB 5722 is to promote gender identity ideology and its primary effect is to advance gender identity ideology.**

Although increasingly less favored over time, applying the Lemon Test illustrates some of the ways in which SB 5722 promotes the gender identity belief system in a manner that violates the Establishment Clause. The three prongs are: one, the law or policy must have been adopted with a neutral or non-religious purpose; two, the principal or primary effect must be one that neither advances nor inhibits religion; and three, the statute or policy must not result in an "excessive entanglement" of government with religion. *Lemon v. Kurtzman*, 403 U.S. 602 (1971). SB 5722 fails all three.

**i. The primary purpose of SB 5722 is to advance gender identity theory, not to protect minors from ideologically-based interference into their psychosexual development.**

SB 5722 purports to serve a secular purpose - shielding minors from professional attempts to change their sexual orientation or "gender identity" - but only protects young people from certain attempts by clinicians to manipulate their beliefs and perceptions of their sex, sexuality, and aspects of their identity. With gender identity ideology having already captured mainstream medical associations, SB 5722 now aims to eradicate competing faith-based perspectives that directly challenge the gender identity ideology within the mental health field.

SB 5722 treats sexual orientation and gender identity as fungible, and thereby disparage the best clinical outcome for gender dysphoria - alleviating distress without permanent medicalization - as if a crime were committed. Child transgender identification is generally accompanied by persistent distress, so “changing” their gender identity essentially ends their suffering. Furthermore, if a child’s “gender identity” is *not* “changed,” via talk therapy or similar means, then the only other way to end this distress is a lifelong regimen of drugs, hormones, and potentially surgery. This is inarguably a worse outcome for any child, which a responsible provider would want to help them avoid, but which is now deemed unprofessional conduct.

**ii. The primary effect of SB 5722 is the removal of competing perspectives that are critical of gender identity ideology.**

While many members of the legislature no doubt voted for SB 5722 out of sincere concern for the young people under the law’s protection, the principal or primary effect of the law is to advance gender identity ideology. The cruel irony, indeed, is that so-called ‘transition’ is merely a modern form of ‘conversion.’

While the state and its supporters would aim to ban conversion while encouraging transition, these words both mean the same thing: change. The goal of transition, though, is to change not only the individual’s sexual orientation but also their entire body to the extreme degree that the victims of these therapies will be subjected to lifelong medicalization (including sterilization), with ultimately little improvement to their wellbeing. A minor patient who

is distressed about their sex or sexuality (or both) is not prevented by this law from changing their sexual orientation, so long as they do so via ‘transition’ rather than via ‘conversion’ — a method which is drastically more invasive and can involve irreversible harm to otherwise healthy body parts. Indeed, SB 5722 fails to accomplish even what it claims to do — protect minors from dangerous therapies.

In placing these same children on the road to drugs, hormones, and surgery, SB 5722 simply constructs for them a medicalized “heterosexuality” (which is the express aim of some who choose that path or who have that path chosen for them). Justice for Iran, *supra*; TIME, *supra*; The Times, *supra*.

### **B. Endorsement Test**

The Endorsement Test, as described by Justice O’Connor in her concurring opinion in *Lynch v. Donnelly*, 465 U.S. 668, 687 104 S. Ct. 1355 (1984), concludes that, “making adherence to a religion relevant in any way to a person’s standing in the political community” is a violation of the Establishment Clause, including “excessive entanglement” in which each institution has influence over the independence of the other. *Id.* at 687-88. When applying this test to SB 5722 – which bans mental health treatments that are not in alignment with gender identity ideology even when they have more favorable clinical outcomes for the patients - it blatantly fails.

SB 5722 bans therapy that seeks to change an individual’s “gender identity.” Gender identity is a quasi-religious concept that relies on the belief of an internal, gendered spirit or soul (as described by

adherents to this belief system, themselves). Most people, if asked, do not believe they have a gender identity. However, SB 5722's insistence that all people have a gender identity (and that this should be prioritized above all else, such as the material reality of human sexual dimorphism or uncertain medical outcomes) is a blatant endorsement of this religious belief. This sends a message to those who do not believe in gender identity that they are not full participants in the Washington political system and that only those who subscribe to this ideology are welcome. The perception likely to be formed by any informed observer is that, with SB 5722, the state has tacitly endorsed science denialism and implied disapproval of anyone who prefers to acknowledge reality.

### **C. Coercion Test**

SB 5722 imposes gender identity ideology on the public through compelling speech and actions in support of this belief system; by redefining words in law and policy to align with the belief system (e.g. permanently medicalized "transition" from one sex to another is celebrated, "conversion" is banned, sex is "assigned at birth" and "gender identity" is innate), indoctrination of children into thinking that discomfort with your sex is evidence that there is something wrong with your body and those who want to ease that discomfort are harming you and have nefarious motives.

### **CONCLUSION**

To affirm the Ninth Circuit's ruling and dismiss this case would be to ignore a significant body of jurisprudence on the Establishment Clause, and the

First Amendment generally. Dismissing Tingley's claims would embolden further state advancement and promotion of an ideology that is harmful specifically to women, girls, and LGB people. The outcome of this case is a statement on whether this Court will honor the First Amendment's prohibition on the establishment of a state religion. Young people in Washington state in counseling for distress related to sex, gender non-conformity, and sexuality deserve more than what the Ninth Circuit's ruling gives them, and we urge the Court to reverse that decision.

Respectfully submitted,

Andrea L. Shaw

*Counsel of Record*

Law Office of Andrew H. Shaw, P.C.

2011 W. Trindle Road

Carlisle, PA 17013

(717) 243-7135

andrea@ashawlaw.com

Lauren A. Bone

Women's Liberation Front

1800 M Street NW #33943

Washington, D.C. 20033-7543

(608) 338-2345

Lauren@laurenbone.law

*Counsel for Amicus Curiae*