
No. 24-1942

In the
United States Court of Appeals
for the **Seventh Circuit**

JOHN M. KLUGE,

Plaintiff-Appellant,

v.

BROWNSBURG COMMUNITY SCHOOL CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Indianapolis, Indianapolis Division, No. 1:19-cv-02462-JMS-KMB.
The Honorable Jane Magnus-Stinson, Judge Presiding.

**BRIEF OF *AMICUS CURIAE* WOMEN'S LIBERATION FRONT
IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 24-1942

Short Caption: John M.Kluge v. Brownsburg Community School Corporation

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Attorney’s Signature: /s/ Lauren A. Bone Date: July 17, 2024

Attorney’s Printed Name: Lauren A Bone

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

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Attorney’s Printed Name: Nancy K. Stade

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INTEREST OF AMICUS CURIAE¹

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.² 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 majority of women with diagnosed with gender dysphoria). WoLF’s interest in this case stems from its interest in protecting those most affected by gender ideology, women and girls, from its harmful effects. These include compelled adherence to a state sponsored religion, 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 their free speech and to maintain neutrality with respect to religious belief and non-belief.

¹ 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, and counsel of record for all parties have consented to its filing.

² *Amicus* uses “sex” throughout to mean “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.dictionnaire.thefreedictionary.com>.

ARGUMENT

I. The belief system underpinning BCSC actions—gender ideology—is religious in nature.

At issue in this case is a policy developed by BCSC concerning certain students who claim to have a “gender identity” different from their sex. Under such policy, BCBS mandated that such students be referred to by names and pronouns and allowed to use their bathroom and locker rooms that purportedly aligned with their gender identities, even if inconsistent with their sex. In other words, males could be referred to as “she” or “her,” females as “he” or “him,” and male and female bathrooms and locker rooms would in fact be mixed sex. Mr. Kluge told BCSC that participating in this policy goes against the principles of his Christian faith, which according to Mr. Kluge include the principles that:

God created mankind as either male or female, that this gender is fixed in each person from the moment of conception, and that it cannot be changed, regardless of an individual's feelings or desires.

Kluge v. Brownsburg Community School Corporation, Case 1:19-cv-02462 at

3. Mr. Kluge proposed an accommodation: instead of using wrong-sex pronouns to refer to students, he asked to refer to all his students by their last names only.

While initially BCSC accepted this accommodation, in time BCSC indicated it would withdraw the accommodation. Given his only options were to comply with the BCSC policy, resign, or be terminated, Mr. Kluge chose to resign.

Thus, the District Court presents the issues in this case as arising from a conflict between the interest of students served by BCSC—particularly, students who claim a gender identity different from their sex—and the religious beliefs of a

teacher, Mr. Kluge. But this framing overlooks that it is the BCSC policy, and not Mr. Kluge's proposed accommodation, that requires a radical inversion of basic physical reality—namely, the immutable nature of sex—to adhere to a mystical ideology surrounding the notion of a “gender identity.”

A. Gender identity is incompatible with the physical reality of sex.

“Gender identity” is notoriously difficult to define, and many attempts often result in circular reasoning. Many persons identifying as “transgender” believe that they were “born in the wrong body” or that “God made a mistake.” In fact, there exists a church, “The Church of Prismatic Light” which posits tenets around the ideas of “gender identity.” See <https://churchofprismaticlight.wordpress.com/> (last visited July 10, 2024).

Whereas sex is objective and immutable, gender is subjective and forever mutable. Sex is based on physical 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. <https://orwh.od.nih.gov/sex-gender> (last visited July 10, 2024). In some contexts, these classifications matter. Courts have long recognized that the sexes are “not similarly situated in certain circumstances,” due to innate and enduring physical differences between male and female physiology. *Michael M. v. Superior Court*, 450 U.S. 464, 469 (1981); *United States v. Virginia*, 518 U.S. 515, 533 (1996). Government decision makers that ignore necessary and appropriate distinctions

between men and women (when relevant) build unworkable public policy which tends to disproportionately harm women and girls.

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. *Sex/Gender, Race/Ethnicity, and Health* 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* 5. 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.*

A key mandate of those who believe in “gender identity” is that all that it requires is that the individual “self-identify.” Self-identity is unfalsifiable, unverifiable, incoherent, and inconsistent from person to person. The belief system surrounding “gender identity” elevates the metaphysical belief in a gendered soul over other religious beliefs and over material reality. Self-identification does nothing to ameliorate the real-world physical and social burdens that women and girls incur because of their sex.

The only defining characteristic of a person claiming legal transgender status (which includes neologisms like “gender-fluid” and “genderqueer”) is the demand to be legally recognized as one’s subjective gender identity instead of one’s sex. Any person, at any time, and for any reason, may claim to possess a gender identity, thus there is no inherent limit to the potential size of the transgender category, nor can gender identity or transgender status be described as stable or as having discrete characteristics.

Nor is a person’s self-described “gender identity” alleged to always be the same across a lifespan. Katz-Wise, *Gender fluidity: What It Means And Why Support Matters*, Harvard Health Publishing, (2020).

This leads to a perplexing ritual: first a person “comes out” as “transgender” which suggests a disembodiment, a separation of the free mind from the trappings of the sexed body. Because claims based on gender identity lack grounding in material reality, they must always ride on the coattails of other distinct classes of people whose status is determined by a material state of being. It also expressly appropriates a term many lesbian, gay, and bisexual people use to describe their experience of telling friends and family about their sexual orientation—a characteristic that has objective implications: who one dates, who one marries, the way in which one may have children. It is no exaggeration to say that the current wave of “gender identity” advocacy involves an explicit rejection of objective scientific fact.

B. Gender ideology is idiosyncratic and based on metaphysical and spiritual beliefs in the soul.

The belief system centered on gender identity, elevating it over sex, is known as “gender ideology.” Its central tenets are that all people have an internal “gender identity” and that, when a person’s gender identity does not align with that person’s sex, gender identity dictates how law and society must treat that person. According to gender ideology, a male who claims to have a female gender identity must be referred to by female pronouns and must have access to female-only spaces. Besides these social interventions, gender ideology also champions medical interventions to cosmetically align one’s sexed body with a discordant gender identity. *See* Kathleen Stock, *Material Girls: Why Reality Matters for Feminism*, Fleet (2022) at 11.

Here, BCSC has treated gender ideology like a state-sponsored religion, demanding adherence to its tenets, favoring it over the sincerely held beliefs (religious and otherwise) of teachers and students, and compelling that their speech conform to its edicts. The Constitution does not define religion, the Founders did not define religion, and the Court has not set forth a comprehensive definition of religion. “When trying to define religion, the fundamental problem is that the definition arrived at generally is ‘either too narrow and excludes many belief systems which most agree are religions, or [it is] too vague and ambiguous, suggesting that just about anything and everything is a religion.’” Jeffrey Omar Usman, *Defining Religion: The Struggle to Define Religion Under the First Amendment and the Contributions and Insights of Other Disciplines of Study Including Theology, Psychology, Sociology, the Arts, and Anthropology*, 83 N.D. L.

Rev.123, 149 (2007) quoting Austin Cline, *What is Religion? Defining the Characteristics of Religion*, see <http://atheism.about.com/od/religiondefinition/p/WhatReligion.htm> (last visited July 9, 2024).

In attempting to define religion, a plurality of the Supreme Court at one time stated, “If an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual a place parallel to that filled by God in traditionally religious persons. Thus, purely moral and ethical beliefs, both in their source and content, were religious beliefs.” *Welsh v. United States*, 398 U.S. 333, 340 (1970); *U.S. v. Seeger*, 380 U.S. 165, 177 (1965) (holding that meaningful and sincere beliefs are religious beliefs). This Circuit has stated that “when a person sincerely holds beliefs dealing with issues of ‘ultimate concern’ that for her occupy a ‘place parallel to that filled by . . . God in traditionally religious persons,’ those beliefs represent her religion” for purposes of free exercise. *Fleischfresser v. Dir. of School*, Dist. 200,15 F.3d 680, 688 n.5 (7th Cir. 1994).

In that it is mystical and unverifiable, gender identity, which has never been proven to exist in the physical or scientific world, is a mystical concept and gender ideology is more like a religion than an intellectual, scientific, or philosophical belief.

II. Mandating adherence to gender ideology violates the First Amendment.

The relevant provision of the First Amendment commands that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech,.. . “ U.S. Const. amend. I. The termination of Mr. Kluge by the Brownsburg Community School Corporation (“BCSC”) for his refusal to follow the tenets of gender ideology violates each of these commands.

A. Accommodating Mr. Kluge’s religious belief does not create an undue hardship on the school.

In *Kluge*, the Seventh Circuit remanded the case to the District Court to apply the holding of *Groff v. DeJoy* to determine whether providing Mr. Kluge a religious accommodation would result in “undue hardship” in relation to its “business.” *Kluge v. Brownsburg Cmty. Sch. Corp.*, 2024 WL 1885848 1 (S.D. Ind. Apr. 30, 2024) (*Kluge II*).

The Supreme Court of the United States resolved questions surrounding the definition of “undue hardship.” *Groff v. DeJoy*, 600 U.S. 447, 143 S. Ct. 2279, 2281, 216 L. Ed. 2d 1041 (2023). The Court stated, “We. . . , understand *Hardison* to mean that ‘undue hardship’ is shown when a burden is substantial in the overall context of an employer's business. (record citation omitted). *Groff* at 468.

The District Court concluded accommodating Mr. Kluge would cause the school undue hardship. However, as we learn from *Groff*, “undue hardship” is shown when a burden is substantial...” *Id.* at 469. A burden that is a hardship is

more than a mere burden, rather it is substantial. It is an undue burden when it is something greater than hardship. *Id.*

Mr. Kluge had always called his students by an honorific and their last name, to create a more serious and professional learning environment. The school had never objected to this. Faced with the compelled use of wrong-sex pronouns Mr. Kluge adjusted his practice and called all the students by their last names, without the honorific. Thus, Mr. Kluge created his own evenly applied, professional, and neutral accommodation.

Title VII requires that an employer reasonably accommodate an employee's practice of religion, not merely that it assess the reasonableness of a particular accommodation or possible accommodations. See *Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444, 455 (7th. Cir). *Groff* at 473. The District Court's evaluation of whether the accommodation created an undue hardship was not fully considered in the context of the entire situation. The school disregarded and did not seriously consider whether Mr. Kluge's religious beliefs were sincere. The school came to this conclusion because when Mr. Kluge gave out awards at the student banquet he called the students who identify as transgender by their new names rather than referring to them by their last name. Mr. Kluge explained that he was trying to approach the entire situation as a coach would, and that at a banquet a coach would use their first names. He also did not want to cause disruption. That Mr. Kluge balanced the competing requirements of his religious beliefs and the students' beliefs demonstrates that he meant no ill will to the students identifying as

transgender, was not trying to make a point, and wanted to honor this special day. We all make such balancing choices in our daily lives. For Mr. Kluge to forgo assertion of his religious beliefs in this regard on this one instance, rather than daily re-affirming the children in class, does not demonstrate that his beliefs were insincere.

B. Enforcing the use of mandatory wrong sex pronouns violates the Establishment Clause and constitutes compelled speech.

Subjective beliefs may not be imposed on the public nor used to justify mandating a specific belief system that contradicts certain religious principles. Requiring the use of wrong sex pronouns mandates that the speaker make public shows of faithfulness to the spiritual beliefs of the “transgender” person. Debate and discussion of alternatives are not permitted.³ This practice creates - and is intended to create - an illusion that everyone agrees that “gender identities” objectively exist based on internal feelings.

³ The list of women and men cancelled, deplatformed, or fired is long. See e.g., Max Dashu <https://www.facebook.com/photo.php?fbid=10160801780295372&set=a.10150224852420372.472364.733245371&type=3>; Michelle Evans <https://unfairlycanceled.com/stories/eventbrite-bans-let-women-speak-austin-event/>; Riley Gaines <https://www.foxnews.com/sports/riley-gaines-says-penn-state-canceled-her-real-womens-day-speech-calls-out-schools-hypocrisy>; Carole Hooven <https://whyevolutionistrue.com/2022/11/11/the-cancellation-of-carole-hooven/>; Fran ItKoff <https://www.dailymail.co.uk/news/article-13088453/ms-society-slammed-firing-elderly-volunteer-pronouns.html>; Lisa Littman <https://www.nbcnews.com/feature/nbc-out/brown-university-criticized-over-removal-transgender-study-n906741>; Nina Paley <https://quillette.com/2023/03/27/dont-let-cancellation-become-banal/>; Derrick Jensen <https://twitter.com/EmmaBatemanGPW/status/1763584914245521689>; John Parks <https://www.msn.com/en-us/news/us/lake-oswego-coach-says-district-ousted-him-after-pushed-change-in-transgender-athlete-law/ar-BB1oqcSj> (all last visited July 11, 2024). This is but a sampling.

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.”

Many teachers who have refused to adhere to these pronoun policies have been disciplined or terminated, violating their First Amendment rights to free expression and free exercise of religion. *Vlaming v. W. Point Sch. Bd.*, 480 F. Supp. 3d 711, 716, 720 (E.D. Va. 2020); *Loudoun Cnty. Sch. Bd. v. Cross*, No. 210584, at 3 (Va. Aug. 30, 2021).

Advocates for gender ideology claim that failure to affirm children will result in harm to the child, therefore it is not necessary to accommodate people with other views. Contrary to popular narrative, there is no evidence that real harm is created for students if they are called by their last names without an honorific.

Furthermore, actual studies show that over 80 percent of children who experience “gender dysphoria” will grow out of it if left alone. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5841333/>. Nor is there evidence supporting the frequent claim that the failure to “affirm” children will result in suicide. *Infra* at III.A.2. In fact, there are actual studies showing that children who

are “transitioned” commit suicide at a higher rate than other children. *Id.*

Endorsement of a belief system that significantly harms children and leads to a higher suicide rate cannot be what the First Amendment demands of us.

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.

III. Gender ideology is harmful to children, women, and other vulnerable groups.

Gender ideology claims to liberate people to live as their true selves by affirming and sanctifying an internal, unverifiable gender identity that is different from one’s sex. But “living as one’s true self” in this context does not mean self-acceptance, nor does it mean challenging the injustices and oppression faced by some people whose true selves do not conform to societal expectations. “Living as one’s true self” according to gender ideology means a reworking of society and the self, requiring radical disruptions to language, biology, anatomy, and single sex spaces to accommodate a gender identity that is supposedly innate. These disruptions cause great harm to society’s most vulnerable groups: children, women—especially lesbians—and all same-sex attracted people.

A. Gender ideology promotes harmful social and medical interventions in children.

The harms to children are extreme, often irreversible, and inflicted disproportionately on children who are the most vulnerable. Studies show that children who account for the recent dramatic increase in wrong-sex identification are more likely to have histories of trauma, including sexual trauma; they are more likely to be gender nonconforming and/or same sex attracted; and they are more likely to be female. *See, e.g.,* Lisa Littman, *Rapid-Onset Gender Dysphoria in Adolescents and Young Adults: A Study of Parental Reports*, 13 PLoS ONE 1 (2018).

For girls who are gender nonconforming and/or lesbians, and who may have experienced childhood sexual trauma, identification as a male offers an escape from oppressive gender stereotypes and from the heightened threat of sexual violence faced by women and girls. But no human can change sex, so the promise of escape offered by gender ideology is false. Instead of liberation from internalized and socially enforced stereotypes, gender ideology offers harmful social and medical interventions that only reinforce rigid gender roles.

These social interventions include the practices of BCSC to which Mr. Kluge objected—such as the use of pronouns, names, and bathrooms that align with a child’s wish to be the opposite sex. They are part of standards of care that—at least until recently—were followed worldwide by clinicians who treat children and adults who claim to have a gender identity different from their sex. These standards of care advocate restructuring society through such extreme measures as altering official documents and eliminating same sex spaces to accommodate wrong-sex

identities, among other things. Eli Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People*, Version 8, 23 Int'l J. Transgender Health (2022) (WPATH SOC 8) at S76. The organization responsible for these standards of care, the World Professional Association for Transgender Health (WPATH), functions as an arm of gender ideology, developing social and clinical recommendations that elevate gender at the expense of sex.

In the WPATH Standards of Care, these social interventions are part of a series of escalating interventions referred to by the benign—and misleading—terms “gender affirmation” or “gender affirming care (GAC).” (WoLF contests that these interventions are affirming or that they constitute care but will use these terms for simplicity and commonality of understanding when referring to the full set of procedures prescribed for trans-identified people.) According to the WPATH, “gender affirmation” includes social, hormonal, and surgical interventions to “recogniz[e] or affirm[]” one’s gender identity. WPATH SOC 8 at S18. If WPATH functions as the sociomedical arm of gender ideology, “gender affirmation” operates as a core tenet.

BCSC, and the court in *Kluge II*, accept this tenet uncritically. In finding that accommodating Mr. Kluge’s sincerely held religious beliefs would impose an “undue hardship” on BCSC, the District Court relies heavily on the assertion that social interventions such as using wrong-sex pronouns benefit trans-identified children. *Kluge II* at 36-37. Besides disregarding the harm to other children in the school environment, the assertion is simply untrue concerning the child who is the

intended beneficiary. To the contrary, comprehensive scientific reviews and damning revelations about WPATH have discredited GAC and its proponents, leading many countries to restrict and even ban certain interventions.

1. “Social transition” is a potent psychosocial intervention that harms trans-identified children and the entire student body, especially girls.

When a school mandates “gender affirming” social interventions, as BCSC has done, the school becomes a participant in the “social transition” of that student. Gender ideology advocates often portray social transition as a neutral or even benign process to respect a child’s claimed wrong-sex identity, but in fact, social transition is itself an active intervention that may affect a child’s psychological well-being, including whether the child continues in wrong-sex identification. As one review of the literature concerning social transition put it:

There is emerging evidence that children who are “affirmed” by the adults around them, *i.e.* told to believe that their body has been wrongly sexed, and encouraged to adopt the behaviours and attributes stereotypically associated with the opposite sex, are less likely to change their minds about having a transgender identity than other children whose social transition is not endorsed in this manner. This is especially the case for girls, and for those for whom this process begins relatively early in childhood.

Jane Martin, MD, *What is ‘Social Transition’ and why is it important?*

[Clinical Advisory Network on Sex and Gender \(can-sg.org\)](https://can-sg.org) (2023) (*citations omitted*). In other words, by reinforcing a child’s wrong-sex identification, social transition may lock a false identity in place.

Once a wrong-sex identity is cemented by social transition, there is evidence that children are likely to pursue hormonal and surgical interventions. *See* Ruth

Hall et al., *Impact of Social Transition in Relation to Gender for Children and Adolescents: A Systematic Review*, *Archives Disease Childhood* 1, 1 (2024).

Hormonal interventions include the use of gonadotropin-releasing hormone (GnRH) agonists to block the normal course of puberty and the administration of cross-sex hormones to promote secondary sex traits associated with the opposite sex. The list of “gender affirming” surgical interventions is extensive, and includes genital surgeries with high rates of complication:

hysterectomy +/- bilateral salpingo-oophorectomy; bilateral mastectomy, chest reconstruction or feminizing mammoplasty, nipple resizing or placement of breast prostheses; genital reconstruction, for example, phalloplasty and metoidioplasty, scrotoplasty, and penile and testicular prostheses, penectomy, orchiectomy, vaginoplasty, and vulvoplasty; hair removal from the face, body, and genital areas for gender affirmation or as part of a preoperative preparation process; gender-affirming facial surgery and body contouring; voice therapy and/or surgery[.]

WPATH SOC 8 at S18. Proponents of GAC often deny that these surgeries are performed on minors, but data shows thousands of girls ages 12 to 18 had their healthy breasts removed in recent years in the name of “gender affirmation” while hundreds of males and females in this age group have had genital surgeries. See Wright JD, Chen L, Suzuki Y, Matsuo K, Hershman DL. National Estimates of Gender-Affirming Surgery in the US. *JAMA Netw Open*. 2023;6(8):e2330348; Das RK, Perdakis G, Al Kassis S, Drolet BC. *Gender-Affirming Chest Reconstruction Among Transgender and Gender-Diverse Adolescents in the US From 2016 to 2019*. *JAMA Pediatr*. 2023;177(1):89–90. By mandating affirmation of wrong-sex identities as part of “social transition,” BCSC’s policy may make it more likely that

troubled, often same sex attracted youth (especially females) will pursue radical transformations of their bodies through hormonal and surgical procedures to cosmetically align with the opposite sex rather than challenge the rigid societal expectations that gender ideology upholds.

Moreover, while the court in *Kluge II* accepts that the mission of BCSC is to provide “a safe and supportive educational environment *for all students*,” *Kluge II* at 36 (*emphasis added*) the court ignores the damaging effect these practices have on other students. Psychologists recognize a phenomenon known as “the Stroop effect,” which refers to a delay in reaction time when processing incongruent stimuli. For example, the brain processes the word “red” written in red letters more quickly than the word “red” written in green letters. By asking children to refer to students by wrong-sex pronouns, BCSC is conducting an unconsented Stroop Test on its entire student body. See Barra Kerr, *Pronouns are Rohypnol* (2019) [Pronouns are Rohypnol • Fair Play For Women](#).

This is so because humans have evolved to instantly recognize sex differences. Especially for females, this ability is adaptive: males pose a far greater threat of violence; the ability to quickly and instinctively distinguish males from females allows girls to adopt protective behaviors in the presence of men, such as fleeing or avoiding confrontation. The use of wrong sex pronouns to undermine the instantaneous, adaptive association of a male physical form with a male identity has been compared to the experience of taking Rohypnol:

[wrong sex pronouns] dull your defences. They change your inhibitions. They're meant to. You've had a lifetime's experience learning to be alert to 'him' and relax to 'her'. For good reason. This instinctive response keeps you safe. ...

Incongruent pronouns also make your brain work much harder; not just when you are using them, but when you are receiving them as information. You are working constantly to keep that story straight in your head. Male or female? Which one, again? Concentrate harder. Ignore your instincts, ignore your reaction.

Id. In other words, like the date rape drug, wrong sex pronouns interfere with a female's instinctive response to males. Mandating wrong-sex pronouns forces girls to override instinctual associations, confounding protective responses and increasing female vulnerability to male violence.

The weakening of girls' protective instincts is especially dangerous now, as gender ideology infuses laws, policies, and practices that eliminate single sex spaces. The elimination of single sex facilities and programs in schools has already traumatized girls forced to change in front of boys and has been implicated in sexual harassment and assaults. *See State of Kansas v. United States Department of Education (2024)*, No. 24-4041-JWB at 35; *see also* Charles Homans, *How a Sexual Assault in a School Bathroom Became a Political Weapon*, NY Times (August 8, 2023). The danger to girls may soon spread. If allowed to go into effect, a federal regulation will effect a nationwide ban on female-only locker rooms and bathrooms in publicly funded schools, meaning girls whose defenses have been eroded by wrong-sex pronoun mandates would be required to undress and relieve themselves in intimate settings with males. *See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89

Federal Register 33474 (April 29, 2024) (2024 Title IX Regulation); *see also Kansas v. DoE* (2024) at 23 (“The Final Rule would, among other things, require schools to subordinate the fears, concerns, and privacy interests of biological women to the desires of transgender biological men to shower, dress, and share restroom facilities with their female peers.”) It is not Mr. Kluge’s refusal to participate in such harmful practices that creates hardship to the school’s mission, but the practice of social transition itself, which poses a serious threat to the safety and well-being of the most vulnerable students.

2. Social interventions do not prevent suicide in transgender children and may increase the risk.

To justify the radical social interventions described by WPATH and adopted by schools like BCSC, proponents of gender affirmation often rely on the claim that children who identify with the opposite sex are at high risk of suicide without so-called affirmative care. *See Kluge v. Brownsburg Cmty. Sch. Corp.*, 548 F. Supp. 3d 814, 833 (S.D. Ind. 2021) (Kluge I). Multiple reviews of the literature, however, have refuted this claim. *See, e.g.*, The Cass Review, *infra* at 95-97. More disturbingly, a 30-year longitudinal study of over three hundred Swedish people who underwent “gender reassignment” surgery found that:

[p]ersons with transsexualism, after sex reassignment, have considerably higher risks for mortality, suicidal behaviour, and psychiatric morbidity than the general population. Our findings suggest that sex reassignment, although alleviating gender dysphoria, may not suffice as treatment for transsexualism, and should inspire improved psychiatric and somatic care after sex reassignment for this patient group.

Cecilia Dhejne, et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden* (2011), Plos One. A recent retrospective study of adolescents with gender dysphoria similarly found “mental healthcare did not significantly change” among subjects receiving care under the gender affirming model. See Elizabeth Hisle-Gorman et al., *Mental Healthcare Utilization of Transgender Youth Before and After Affirming Treatment*, J Sex Med. 2021 Aug;18(8):1444-1454. These findings undercut the argument that withholding GAC interventions may provoke trans-identifying children to end their lives and suggest a different, deeply troubling hypothesis: that social transition inducts emotionally troubled children into a process that may consign them to lifelong medicalization and that this process at best ignores underlying psychological causes of distress and at worse, may deepen them.

3. “Gender affirmation” has been discredited and increasingly rejected by European countries.

The threat to vulnerable children from GAC remains dire in the United States, despite mounting information discrediting the practice and its proponents. Several countries have commissioned systematic reviews of the evidence behind GAC; all have found the evidence base to be poor. See *Treatment of Gender-Diverse Youth: A growing chasm between North America and Europe* at www.segm.org. Pediatrician Hilary Cass of England’s National Health Service (NHS) issued the most recent and consequential of these reviews in April, 2024, *The Independent Review of Gender Identity Services for Children and Young People* (“The Cass Review”). While the Cass Review echoed the previous systematic reviews finding

the evidence for gender affirming care to be weak, its impact was far greater, leading England to ban puberty blockers and prompting several other countries to restrict or reconsider pediatric GAC.

Recent revelations have also discredited WPATH as an organization. On March 4, 2024, two journalists published the WPATH files, a sprawling collection of private messages documenting conversations among WPATH members—physicians, mental health clinicians, and activists—about providing so-called gender affirming care to often profoundly mentally ill children and adults. See Mia Hughes, *The WPATH files: Pseudoscientific surgical and hormonal experiments on children, adolescents, and vulnerable adults*, ENVIRONMENTAL PROGRESS (March 4, 2024). The messages revealed that care provided by these practitioners was not evidence-based but based instead on gender ideology activism and, to a large degree, guesswork. For example, in one message, a surgeon asked if others had experience with “low frequency” surgical requests, such as mastectomy without nipples, “nullification” surgery to remove all external genitals and create a smooth front appearance, and “phallus preserving vaginoplasty.” This surgeon stated he was “quite comfortable” performing such surgeries, even though the standards of care at that time did not address them and he could not find other surgeons willing to discuss such cases. One response noted the lack of best practices when working with eunuchs. WPATH SOC 8 at 152, 157. Another response opined that rather than standards for such situations, what was needed was “a different way of looking at gender that is not through a cisgenderist lens.” *Id.* at 153.

Amidst these developments, multiple countries outside the U.S. have rejected pediatric gender affirmation. England, Sweden, Finland, Denmark, and Norway have all restricted aspects of gender affirming care in minors, while health authorities in Australia, New Zealand, multiple European countries and the World Health Organization have acknowledged the limited evidence for pediatric transition. Half of the states within the U.S. have banned or restricted pediatric gender affirmation. *See Treatment of Gender-Diverse Youth, supra*, at www.segm.org.

While the U.S. federal government has ignored evidence against GAC and its practitioners, pressure is increasing for it to reverse course. In April, WoLF was one of over 60 signatories—including international practitioners, researchers, and organizations from ten different countries—on a petition asking the U.S. Food and Drug Administration to take action against the off-label use of puberty blockers in GAC. *See Supplement to Citizen Petition, FDA-2023-P-3767-0654 (2024)*, [regulations.gov](https://www.regulations.gov). Court filings have revealed that a high-level government official improperly influenced WPATH's Standards of Care 8, leading to calls for the official's resignation. *See Azeen Ghorayshi, Biden Officials Pushed to Remove Age Limits for Trans Surgery*, N.Y. Times (June 25, 2024). On June 24, 2024, the Supreme Court granted certiorari to review the Sixth Circuit's decision to uphold Tennessee's ban on gender affirming care. *L. W. v. Skrmetti*, 83 F.4th 460 (6th Cir. 2023), *cert. granted, United States v. Skrmetti*, doc. no. 23- 4077 (June 24, 2024). No

one should lose employment for rejecting the tenets of a regressive, anti-science, anti-child, and anti-woman belief system that has left the U.S. increasingly isolated and on the defensive.

B. Gender ideology harms women and other vulnerable groups.

The harms from gender ideology extend beyond its assault on free speech and beyond school systems and students, infiltrating virtually all institutions in the United States. And while sex-based distinctions are unnecessary in many contexts, where they do exist, it is almost always to protect women from male physical advantage, as in sport, and greater male propensity for violence—particularly sexual violence—as in prison. *See, e.g.* Satoshi Kanazawa & Mary C. Stil, *Why Men Commit Crimes (And Why They Desist)*, *SOCIOLOGICAL THEORY*, 434 (Nov., 2000); Gong Chen et al., *A Comparative Study on Strength between American College Male and Female Students in Caucasian and Asian Populations*, 21 *SPORT SCIENCE REV.* 153 (Aug. 2012). Gender ideology is eroding these distinctions, exposing women to lost opportunities, harassment, physical harm, and sexual violence.

The harm to women is perhaps most obvious in sports because athletic competition brings the sex-based differences between men and women into stark relief. In the United States, policies and laws that elevate a male's claim to a female "gender identity" over the sex-based rights of women and girls have allowed males to compete in female sports at all levels and across sport categories. Male participation has deprived female athletes of victories in high school track and field,

elite cycling events, and professional mixed martial arts (MMA), among many other sport categories. An organization formed to keep track of males claiming victory in female sports has identified over 1,000 instances in which males deprived female athletes of records, scholarships, or other opportunities, many of those involving female sport in the United States. *See* SheWon.org.

If allowed to take effect, the 2024 Title IX regulation will override laws and policies that preserve sex-based sport in publicly funded educational institutions by defining sex discrimination to include discrimination based on “gender identity.” By ending female-only sport in publicly funded education, the 2024 Title IX Regulation would deprive female athletes of scholarships, cash prizes, and sports-based academic opportunities; expose female athletes to increased risk of psychological harm, sexual violation and assault by placing males in female changing rooms; and increase the risk of serious physical injury to female players.

Less visible but even more dangerous to women is the practice of placing males in female prisons. Many women’s prisons in the United States allow violent male prisoners into the female population if they simply claim to identify as women. In California, S.B. 132, an act titled “The Transgender Respect, Agency, and Dignity Act” (“S.B. 132”) amended California Penal Code §§ 2605, 2606 to allow any male prisoner who identifies as “transgender, nonbinary, or intersex” to seek transfer to the women’s prison. WoLF represents four incarcerated women in California in a lawsuit challenging the law, which has placed male offenders in cells with female prisoners typically serving time for nonviolent offenses. The American Civil

Liberties Union intervened in the lawsuit on behalf of four such men, one of whom is Tremaine Carroll, a fully intact violent male offender. *See Chandler v. California Department of Corrections and Rehabilitations*, Case No. 1:21-cv-01657-JLT-HBK (May 14, 2024). Recently, California transferred Mr. Carroll back to the men's prison, but only after he was charged with the forcible rape of two female inmates. Chris Pandolfo, Michael Ruiz, *3rd-strike 'trans' rape suspect prompts rebellion against CA law after attack in women's prison*, www.foxnews.com (June 3, 2024). It is estimated there are nearly fifty males in women's prisons in California, with several hundred transfer requests under review, and approximately 1,900 who identify as transgender. Most of them are male, and could seek transfer to women's prison under S.B. 132, exposing female inmates to potential unwanted pregnancy, harassment, and sexual assault. *Id.*

Lesbians, gay men, and bisexuals are also harmed by gender identity theory and practices. Because WPATH recommends only “gender affirming care” therapists and counselors are unable to conduct, or do not conduct, exploratory therapy. Clients are not screened for internalized homophobia but are convinced that transition will “remove” their same-sex feeling, because they will be of a different sex. This is actual conversion therapy coupled with medicalization. *The New Gay-Conversion Therapy: A Psychologist's Perspective — Genspect*, <https://genspect.org/the-new-gay-conversion-a-psychologists-perspective> (visited July 11, 2024). In addition, clients with co-morbid conditions such as depression, borderline personality disorder, anxiety, and other disorders do not receive

treatment for such disorders but are assured that they will resolve once the “gender issue” is addressed by medical interventions such as puberty blockers, wrong-sex hormones, and multiple surgeries. The drugs have not been approved by the FDA for these uses and the short- and long-term medical effects are devastating, including impaired brain development, loss of sexual function, loss of reproductive capacity, osteoporosis, diabetes, higher or lower blood pressure, liver damage, blood clots, increased cholesterol, increased risk for heart failure, as well as increased depression and anxiety. <https://www.vumc.org/lgbtq/key-transgender-health-concerns> (visited July 11, 2024). These are only some of the effects known *today*. An open-air experiment is being conducted on the nation’s children and same-sex attracted people are being eliminated.

After the success that same-sex attracted people achieved in civil rights, many object to this “forced teaming” with transgender issues. New groups are being formed to advocate for same-sex concerns without being included in the LGBTQIA organizations. See, e.g. LGB United, <https://x.com/LGBAllied>, visited July 11, 2024. And, some transgender or transexual people have concerns as well and are speaking up. See e.g. https://lgbtcouragecoalition.substack.com/p/what-is-a-coalition?utm_medium=email(visited July 11, 2024; Corinna Cohn, <https://www.washingtonpost.com/opinions/2022/04/11/i-was-too-young-to-decide-about-transgender-surgery-at-nineteen/>.(visited July 11, 2024).

CONCLUSION

To affirm the District Court's ruling would be to accede to the establishment of gender ideology as a state sponsored religion. Gender ideology has already had devastating impacts on minors, women, and LGB people, causing irreversible psychosocial and medical harms, the loss of single sex spaces, infringement on freedom of speech and conscience, and the resurgence of conversion therapy. We ask this Court to rule that BCSC violated Mr. Kluge's rights under the First Amendment of the U.S. Constitution to freedom of religion, freedom from state establishment of religion, and free speech and to *reverse* the decision of the District Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing *Amicus Curiae* Brief complies with Fed. R. App. P. 29(c) and the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 6,628 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

The undersigned further certifies that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 2010 in 12 point Century Schoolbook font.

Dated: July 17, 2024

/s/ Lauren A. Bone

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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2024, the Brief of *Amicus Curiae* was filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system.

The participants in this case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Lauren A. Bone

Lauren A Bone