

In The Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

JONATHAN THOMAS SKRMETTI, ATTORNEY GENERAL
AND REPORTER FOR TENNESSEE, ET AL., RESPONDENTS,

AND

L.W., BY AND THROUGH HER PARENTS AND NEXT OF
FRIENDS, SAMANTHA WILLIAMS AND BRIAN WILLIAMS,
ET AL., RESPONDENTS IN SUPPORT OF PETITIONER

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

**BRIEF OF *AMICI CURIAE* DISABILITY RIGHTS EDUCA-
TION & DEFENSE FUND, ET AL. IN SUPPORT OF PETI-
TIONER AND RESPONDENTS IN SUPPORT OF PETITIONER**

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28 C.F.R. § 35.108 10

45 C.F.R. § 92.102 10

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Am. Civ. Liberties Union, *Supported Decision-Making: Frequently Asked Questions* (Apr. 11, 2016), <https://www.aclu.org/documents/faqs-about-supported-decision-making>; 14, 15

Am. Civ. Liberties Union, *What's Next?: A Self-Advocate's Guided Tour through Transition for Parents and Other Supporters* (Feb. 22, 2018) <https://www.aclu.org/documents/whats-next-self-advocates-guided-tour-through-transition-parents-and-other-supporters> 15

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Autistic Self Advocacy Network, *Model Legislation: An Act Relating to the Recognition of a Supported Health Care Decision-Making Agreement for Adults with Disabilities* (2017), <https://autisticadvocacy.org/wp-content/uploads/2014/07/ASAN-Supported-Decisionmaking-Model-Legislature.pdf> 15

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Consortium for Constituents with Disabilities Members Denounce Attacks on LGBTQI+ Rights, Call for Comprehensive NonDiscrimination, Care and Accessibility Measures (July 19, 2023), <https://www.c-c-d.org/fichiers/CCD-Trans-LGBTQI-Rights-Statement-Final-071923.pdf> 9, 10

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Nat'l Ctr. for Transgender Equality, <i>Understanding Transgender People: The Basics</i> (Jan. 27, 2023), https://transequality.org/issues/resources/understanding-transgender-people-the-basics	2
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Wylie C. Hembree, *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102(11) *J. Clinical Endocrinology & Metabolism* 3869 (2017).....3

INTERESTS OF *AMICI CURIAE*

Amici curiae, listed in the Appendix, are four organizations, many comprised of and led by people with disabilities, that promote the rights of people with disabilities to participate fully and equally in society. *Amici* pursue these goals using various tools, including legal advocacy, training, education, legislation, and public policy development.

Collectively and individually, *Amici* have a strong interest in ensuring that people with disabilities have equitable access to healthcare, including gender affirming medical care, so they can make self-determined decisions about their lives, health, and futures. Tennessee Senate Bill 1 (SB1) and other state laws like it are predicated on pernicious assumptions about transgender people and disabled people, including the assumption that people with disabilities lack the capacity to know their gender identity and to make decisions about their own medical care, even with the support of doctors and family. *Amici* are concerned that if affirmed, the Sixth Circuit's opinion will disproportionately harm people with disabilities, by needlessly and baselessly creating and perpetuating barriers to medically necessary care.¹

SUMMARY OF THE ARGUMENT

Tennessee Senate Bill 1 (SB1) and similar bans on gender-affirming medical care single out transgender adolescents using harmful myths and stereotypes

¹ Pursuant to Rule 37.6, *Amici* affirm that no counsel for any party authored this brief in whole or in part, and no person or entity other than *Amici*, their members and their counsel has made a monetary contribution to support the brief's preparation or submission.

about disability in an attempt to justify these sweeping prohibitions on a needed and widely-accepted set of medical treatments. Tennessee and other State Defendants have argued that gender dysphoria is a symptom of an underlying “real” diagnosis that must be treated first. There is no legal or medical basis for such a claim and no court has credited such arguments. Additionally, and particularly concerning to *Amici*, is the claim advanced by some of Tennessee’s experts here that disability prevents a person from knowing their gender identity and from making a real, informed choice about their own lives. Lawmakers are wrong. Transgender people with disabilities can and should make their own medical decisions with the support of their doctors and, for minors, their parents.

ARGUMENT

I. TENNESSEE SB1 IS ROOTED IN PERNICIOUS ASSUMPTIONS ABOUT PEOPLE WITH DISABILITIES.

A. Some Transgender People Have Disabilities.

Transgender is a broad term used to describe people whose “gender identity is different from the gender they were thought to be when they were born.”² By itself, being transgender is not a medical disorder or condition to be cured. Many transgender people, however, experience gender dysphoria. Gender dysphoria is a “marked incongruence between

² Nat’l Ctr. for Transgender Equality, *Understanding Transgender People: The Basics* (Jan. 27, 2023), <https://transequality.org/issues/resources/understanding-transgender-people-the-basics>; see also Pet. App. 250a.

one's experienced/ expressed gender and assigned gender, of at least 6 months in duration" that is associated with clinically significant distress or impairment in social, school, or other important areas of functioning.³ Gender dysphoria is a serious medical condition, for which there are well-established, evidence-based medical treatments.⁴

Disability is also a broad term. The Americans with Disabilities Act (ADA) defines disability as "a physical or mental impairment that substantially limits one or more major life activities," such as "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working."⁵ The range of people with disabilities is, thus, diverse, encompassing individuals at different stages of their life with different abilities, from children with developmental disabilities, to seniors who use wheelchairs. The disability community does share common interests and experiences, including barriers to self-determination and access to necessary medical care.

³ Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* at 511 (5th ed. rev. 2022) ("DSM"); see Pet. App. 251a.

⁴ See E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People*, Version 8, 23(sup1) Int'l J. Transgender Health, <https://doi.org/10.1080/26895269.2022.2100644> (2022); Wylie C. Hembree, *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102(11) J. Clinical Endocrinology & Metabolism 3869 (2017).

⁵ 42 U.S.C. § 12102(1)(A), (2)(A).

The trans and disability communities overlap—for example, some transgender people use a wheelchair, some transgender people are deaf, and some transgender people have autism or ADHD.⁶ Transgender people are more likely to have disabilities. In a 2015 survey by the National Center for Transgender Equality, 39 percent of respondents indicated that they had one or more disabilities, compared to 15 percent of the general population.⁷ Other studies show that transgender people are more likely to have certain disabilities such as autism and ADHD.⁸ Transgender people with disabilities face not only anti-trans bias but also disability discrimination in accessing medical care.⁹

⁶ Jennifer R. Pharr & Kavita Batra, *Physical and Mental Disabilities Among the Gender-Diverse Population Using the Behavioral Risk Factor Surveillance System, BRFSS (2017-2019): A Propensity-Matched Analysis*, 9:10 Healthcare (Basel) 1285 (2021).

⁷ S.E. James, et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality at 57 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

⁸ See, e.g., Jennifer Murphy, et al. *Autism and transgender identity: Implications for depression and anxiety*, 69 Research in Autism Spectrum Disorders 101466 (2020) (collecting studies); Varun Warriar, et al., *Elevated rates of autism, other neurodevelopmental and psychiatric diagnoses, and autistic traits in transgender and gender-diverse individuals*, 11(1) Nat. Commun. 3959 (Aug. 7, 2020).

⁹ See, e.g., Autistic Self Advocacy Network, *ASAN Condemns Restrictions on Gender-Affirming Care* (March 22, 2023), <https://autisticadvocacy.org/2023/03/asan-condemns-restrictions-on-gender-affirming-care/> (“ASAN Condemns Restrictions”); Gina Kolata, *These Doctors Admit They Don’t Want Patients With Disabilities*, The New York Times (Oct. 19, 2022), <https://www.nytimes.com/2022/10/19/health/doctors-patients-disabilities.html>.

B. Tennessee Cannot Use Misperceptions About Disabled People to Deny Transgender People Medical Care.

In the context of laws like Tennessee SB1, State Defendants have tried to use dangerous tropes about disability to undermine treatment for transgender adolescents with gender dysphoria.

First, legislators wrongly believe that gender dysphoria is a symptom of underlying “mental health issues” and therefore not real or valid. For example, in a newspaper op-ed in support of Tennessee SB1, the bill’s sponsors explained:

[C]hildren who say they’re transgender are at least 300% more likely to have mental health issues, ranging from anxiety to depression to ADHD. There are also much higher rates of autism among children seeking to change genders. These underlying conditions should be treated before children are subjected to body-altering sex-change drugs, much less surgeries.¹⁰

Other legislatures have made findings to support bans similar to Tennessee SB1, asserting that trans individuals “should be encouraged to seek mental health services to address comorbidities and underlying causes of their distress before undertaking any hormonal or surgical intervention.”¹¹ Proposing a

¹⁰ Jack Johnson & William Lamberth, *Tennessee Senate and House Leaders: Why We Defend Gender-Affirming Care Ban*, The Tennessean Online (August 7, 2023), <https://www.tennessean.com/story/opinion/contributors/2023/08/07/tennessee-senate-house-leaders-why-we-back-gender-affirming-care-ban/70529310007/> (“Tennessean Online”).

¹¹ AR LEGIS 626 (2021), 2021 Arkansas Laws Act 626 § 2(4), (5) (H.B. 1570); Ohio H.B. 68 § 2(D) (same) (2024); *see also* AL

similar law in Illinois, some legislators have said it more plainly, their “central contention is that transgender children don’t exist.”¹²

Legislators purport to rely on “the best available research for guidance.”¹³ Not so. Gender dysphoria is a recognized medical condition in the DSM.¹⁴ Decades of experience show gender-affirming care is safe, effective, and medically necessary when clinically indicated.¹⁵ Legislators neglect that their identified “mental health issues,” like autism, cannot be “cured,” such that delay for a “cure” amounts to denying care. Lawmakers incorrectly conflate a diagnosis of a disability, such as autism, ADHD, depression, or anxiety, with an inability to know gender identity, inability to identify and express gender dysphoria, and inability to make an informed decision with support from doctors and, for children, parents. Legislators’ belief is dangerous, because it “discourage[s] anyone who believes they may pursue

LEGIS 2022-289, 2022 Alabama Laws Act 2022-289 (S.B. 184) (“several studies demonstrate that hormonal and surgical interventions often do not resolve the underlying psychological issues”); 2023 Ga. Laws 4 § 1(1) (“[g]ender dysphoria is often comorbid with other mental health and developmental conditions”).

¹² Illinois HB3515 § 1(31) (2019); *see also Doe v. Ladapo*, 676 F. Supp. 3d 1205, 1211 (N.D. Fla. 2023) (“Still, an unspoken suggestion running just below the surface in some of the proceedings that led to adoption of the statute and rules at issue—and just below the surface in the testimony of some of the defense experts—is that transgender identity is not real, that it is made up.”).

¹³ Tennessean Online, *supra* n.10.

¹⁴ DSM, *supra* n.3, at 511.

¹⁵ Pet. App. 178a-181a, 254a; *see L.W. v. Jonathan Skrmetti*, Case No. 23-5600, Dkt. No. 102 (Brief of *Amici Curiae* American Academy of Pediatrics et al.) at 9, 15-17 (6th Cir. Aug. 10, 2023).

gender affirming care in the future from seeking mental health treatment even if it would benefit them.”¹⁶

State Defendants proffer their own expert testimony, which they say supports their position—including James Cantor, Ph.D. and Paul W. Hruz, M.D., Ph.D, in support of Tennessee SB1.¹⁷ They opine that “diverting distressed youth towards transition necessarily diverts youth away from receiving the psychotherapies designed for treating the issues actually causing their distress.”¹⁸ These experts’ opinions have, again and again, been rejected and debunked. They have failed *Daubert* challenges¹⁹ for lack of relevant expertise and credibility determinations, for having never diagnosed or treated an adolescent with gender dysphoria.²⁰ When they have offered testimony, fact-finders have found their testimony poorly supported and entitled to little weight.²¹ In sum:

¹⁶ See ASAN Condemns Restrictions, *supra* n.9.

¹⁷ J.A. 474 (Decl. of Paul W. Hruz, M.D., Ph.D.).

¹⁸ J.A. 315, 401, 404; *see also* J.A. 474, 504-505, 547.

¹⁹ Fed. R. Evid. 702; *see Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593-94 (1993).

²⁰ Pet. App. 125a, 176a-178a; *Koe v. Noggle*, 688 F. Supp. 3d 1321, 1354 (N.D. Ga. 2023); *Kadel v. Folwell*, 620 F. Supp. 3d 339, 364 (M.D.N.C. 2022); *Eknes-Tucker v. Marshall*, 603 F. Supp. 3d 1131, 1142-43 (M.D. Ala. 2022).

²¹ *Kadel*, 620 F. Supp. 3d at 363 (“Plaintiffs have offered evidence that calls Hruz’s motivations—and thereby, his reliability—into serious question.”); *see also Doe v. Ladapo*, 676 F. Supp. 3d 1205, 1211 n.8 (N.D. Fla. 2023) (“Dr. Hruz fended and parried questions and generally testified as a deeply biased advocate, not as an expert sharing relevant evidence-based information and opinions. I do not credit his testimony.”).

There is a notable inconsistency between, on the one hand, Defendants' experts' insistence on a very high threshold of evidence in the context of claims about hormone therapy's safety and benefits, and on the other hand their tolerance of a much lower threshold of evidence for claims about its risks, the likelihood of desistance and/or regret, and their notions about the ideological bias of a medical establishment that largely disagrees with them.²²

Mere negative attitudes and assumptions about transgender people and people with disabilities is not enough to ban medically necessary care.

Second, lawmakers wrongly believe that disability prevents a person from knowing their gender identity and from making real, informed choices about their lives, even with reasonable accommodations from the doctors and support from their family. Tennessee's experts questioned whether disabled minors had the "capacity to think through the momentousness of the decision" to seek gender-affirming care,²³ and, before this Court, Tennessee says that "Tennessee chose to protect the State's most vulnerable," in particular, "adolescent girls and minors on the autism spectrum" from the

²² *Koe*, 688 F. Supp. 3d at 1354.

²³ J.A. 597, 707-708 ("When the frequently encountered psychiatric co-morbidities of trans youth are entered into consideration—autism, depression, social avoidance, anxiety states, eating disorders, suicidality, and self-harming patterns—it seems prudent not to assume that a young person has the capacity to think through the momentousness of the decision.").

consequences of such decisions, by deciding for them.²⁴

People with disabilities have endured a long history of marginalization, stigmatization, and denial of autonomy in medical care, from the violence of state-mandated sterilization²⁵ to the indifference of unnoticed barriers.²⁶ For this reason, disability rights advocates emphasize “nothing about us without us,” whether a decision is personal or about public policy.²⁷ People with disabilities can and do make their own medical decisions, and serve as their own advocates.²⁸ People with disabilities have the right to reasonable accommodations in medical care under the ADA, including access to effective communications, to

²⁴ Opp. to Pet. for Cert at 34; *see also* Br. Amicus Curiae Alabama in Supp. of Opp. at 4 (stating similarly: “[T]he minor seeking gender affirming care “likely suffered from a range of psychological comorbidities or past trauma that shots of testosterone could not address.”).

²⁵ Lisa L. Iezzoni, *Stigma and Persons with Disabilities, in Stigma and Prejudice: Touchstones in Understanding Diversity in Healthcare* 3-21 (2016) (discussing, *e.g.*, *Buck v. Bell*, 274 U.S. 200 (1927)).

²⁶ Lisa L. Iezzoni et al., *US Physicians’ Knowledge About the Americans with Disabilities Act and Accommodation of Patients with Disability*, 41:1 Health Aff. 96 (2022).

²⁷ Autistic Self Advocacy Network, *Autism Research: Nothing About Us, Without Us!* (July 7, 2021), <https://autisticadvocacy.org/2021/07/autism-research-nothing-about-us-without-us/>.

²⁸ *See, e.g.*, ASAN Condemns Restrictions, *supra* n.9; Consortium for Constituents with Disabilities Members Denounce Attacks on LGBTQI+ Rights, Call for Comprehensive NonDiscrimination, Care and Accessibility Measures (July 19, 2023), <https://www.c-c-d.org/fichiers/CCD-Trans-LGBTQI-Rights-Statement-Final-071923.pdf>.

ensure informed consent.²⁹ People with disabilities have support structures, formal and informal, to help them get necessary care and make informed medical choices.³⁰ Laws that categorically ban medical treatment based on inaccurate assumptions about disabled people are not only inconsistent with these facts but constitutionally suspect.

Lawmakers assume that incapacity, not barriers to access and care, excludes people with disabilities from making informed decisions. The disability community faces known challenges accessing medical care. Health care providers may not have accessible facilities,³¹ may not understand their obligations under the ADA,³² and may fail to provide accommodations for effective communication with patients.³³ Health care providers may have negative perceptions of and assumptions about people with disabilities, whether explicit or internalized, that impact quality of care and willingness to accommodate disabilities.³⁴ These negative

²⁹ See 28 C.F.R. §§ 35.108(d)(2)(iii), 35.160; 45 C.F.R. § 92.102; U.S. Department of Justice, *Guidance on Nondiscrimination in Telehealth* (July 2022), https://www.ada.gov/telehealth_guidance.pdf.

³⁰ See *infra* Sect. II.

³¹ Nancy R. Mudrick et al., *Presence of Accessible Equipment and Interior Elements in Primary Care Offices*, 3.1 Health Equity 275 (2019).

³² Iezzoni, *US Physicians' Knowledge*, *supra* n.26.

³³ Iezzoni, *Stigma and Persons with Disabilities*, *supra* n.25, at 13-14.

³⁴ Lisa L. Iezzoni et al., *Physicians' Perceptions of People with Disability and Their Health Care*, 40:2 *Health Affairs* (2021); Kolata, *supra* n.9 (describing account of disability discrimination experienced by a trans disabled person who uses a wheelchair and a walker).

perceptions can extend from children with disabilities to their parents, who report experiencing “courtesy stigma” or stigma by association, “the negative attitudes and behaviors from others as a result of caring for someone with a stigmatizing condition” and encounter similar challenges in accessing medical care for their children.³⁵

Disparities in access to care are heightened for transgender people with disabilities.³⁶ Transgender people with autism face discrimination, ignorance, and barriers³⁷ predicated on “the discriminatory myth that autistic people are ‘too disabled’ to know our own genders.”³⁸

The ADA prohibits discrimination in health care on the basis of actual or perceived disabilities—this unambiguously includes ADHD, autism, depression, anxiety, and other intellectual, developmental, and

³⁵ Dominique H. Como et al., *Examining unconscious bias embedded in provider language regarding children with autism*, 22(2) Nursing & Health Sciences 197 (2020).

³⁶ Pharr & Batra, *supra* n.6.

³⁷ Como, *supra* n.35; Deanna Pistono, “Above All Else, Believe Us”: Advocates Say Doctors Can Show Biased Behavior Toward Autistic Adults, Cronkite News (Mar. 6, 2023); Autistic Self Advocacy Network, *ASAN Joint Statement on the Death of Kayden Clarke* (Feb. 8, 2016), <https://autisticadvocacy.org/2016/02/asan-joint-statement-death-of-kayden-clarke/>.

³⁸ ASAN Condemns Restrictions, *supra* n.9; see also Autistic Self Advocacy Network, National Center for Transgender Equality, & LGBTQ Task Force, *Joint statement on the rights of transgender and gender non-conforming autistic people* (2016), <https://autisticadvocacy.org/wp-content/uploads/2016/06/joint-statement-trans-autistic-GNC-people.pdf> (“ASAN Joint Statement”).

mental health conditions.³⁹ Legislators' misperceptions about people with disabilities cannot be used to delegitimize the evidence-based health care that disabled and non-disabled transgender people need.

II. PEOPLE WITH DISABILITIES CAN AND SHOULD MAKE THEIR OWN MEDICAL DECISIONS.

A. Existing Safeguards Help Patients Get the Care They Need.

In enacting Tennessee SB1, legislators found that gender-affirming care was “being performed on and administered to minors in this state for such purposes, notwithstanding the risks and harms to the minors.”⁴⁰ The record below does not support that claim but even if such concerns were legitimate, there are processes in place to ensure that patients and families are adequately informed of the risks and benefits of medical treatment.

First, legislators ignore the clear weight of evidence-based medical consensus and the caution already built into that consensus.⁴¹

Second, State Defendants mistake “low quality” data for the absence of scientific research. “Low

³⁹ 28 C.F.R. § 35.108(d)(2)(iii) (“[I]t should easily be concluded that ... Intellectual disability substantially limits brain function; ... Autism substantially limits brain function; ... Major depressive disorder, bipolar disorder, post-traumatic stress disorder, traumatic brain injury, obsessive compulsive disorder, and schizophrenia each substantially limits brain function.”).

⁴⁰ T.C.A. § 68-33-101(d).

⁴¹ Pet. App. 252a-255a, 274a-275a, 293a; J.A. 115-118, 158.

quality” data is a technical term that means the evidence did not come from a randomized control trial, but, generally, observational studies.⁴² Recommended interventions for pediatric conditions are “seldom” based on randomized control trials “due to their rarity.”⁴³ Indeed, most recommended medical interventions, pediatric or otherwise, are not based on randomized control trials, but “low” or “very low quality” evidence,⁴⁴ and randomized control trials is methodologically inappropriate for some conditions.⁴⁵

Third, legislators fail to recognize that gender dysphoria is not the only medical condition where families have to make decisions about medically necessary care. For other low incidence conditions, parents have to make decisions, early in their child’s life, that can have long-term effects. Parents of a child who is deaf may have to make decisions about cochlear implants, oralism, and ASL immersion. Parents of a child with cerebral palsy or other orthopedic impairment may have to make decisions about amputation. Parents must weigh their child’s specific medical needs against the risks of treatment and the risks of pursuing no intervention or an

⁴² J.A. 110-112.

⁴³ J.A. 114.

⁴⁴ Padhraig S. Fleming, et al., *High quality of the evidence for medical and other health-related interventions was uncommon in Cochrane systematic reviews*, 78 J. Clin. Epidemiology 34 (Oct. 2016); Ani Movsisyan, et al., *Outcomes in systematic reviews of complex interventions never reached “high” GRADE ratings when compared with those of simple interventions*, 78 J. Clin. Epidemiology 22 (Oct. 2016).

⁴⁵ See, e.g., Florence Ashley, *Randomized-controlled trials are methodologically inappropriate in adolescent transgender healthcare*, 25 Int’l J. of Transgender Health 407 (2024).

alternative intervention.⁴⁶ These are difficult, individualized medical decisions, often made on necessarily incomplete information. Courts have never told parents they cannot make these decisions for their child, or that they must adopt a wait-and-see approach to medically necessary care for their child simply because the medical treatment carries risks or the evidence of efficacy is based on “low quality” data. Lawmakers provide no principled reason for gender affirming medical care to be treated any different.

B. Supported Decision Making Helps Individuals and Their Families.

Where the general protections of evidence-based medicine—guidelines, expertise, and informed consent—are not enough, supported decision making is a well-established tool to improve access to necessary medical care and to help people with disabilities and their families make decisions for themselves.

Health care providers can and should implement appropriate supports for patients with intellectual, developmental, and psychiatric disabilities.⁴⁷ This includes the use of supported decision-making (SDM). SDM is a “tool that allows people with disabilities to retain their decision-making capacity by choosing supporters to help them make choices.”⁴⁸ It can

⁴⁶ See, e.g., Br. for Pet. at 46-47 (listing exemplary treatments and side effects).

⁴⁷ ASAN Joint Statement, *supra* n.38.

⁴⁸ See Am. Civ. Liberties Union, *Supported Decision-Making: Frequently Asked Questions* (Apr. 11, 2016), <https://www.aclu.org/documents/faqs-about-supported-decision-making>; see *id.* (“person using SDM selects trusted advisors, such as friends, family members, or professionals, to

include providing the person with disabilities with necessary information in an accessible format and giving them additional time to make a decision.⁴⁹ While parents are typically the final decision-makers for medical care for minor children, the principles of SDM can be used in the context of gender-affirming care for minors as an approach for adolescents and their parents to make complex decisions.⁵⁰ SDM is already used to help people with disabilities, like autism, make medical decisions more generally.⁵¹

While the process must be tailored to each individual's needs, the purpose is uniform—empowering disabled people and their families to make medically necessary decisions about their own lives. Doctors, not legislators, are in the best position to provide medical treatment options, taking into account any existing diagnoses. Individuals and their

serve as supporters. The supporters agree to help the person with a disability understand, consider, and communicate decisions, giving the person with a disability the tools to make her own, informed, decisions”).

⁴⁹ *Id.*

⁵⁰ Am. Civ. Liberties Union, *What's Next?: A Self-Advocate's Guided Tour through Transition for Parents and Other Supporters* (Feb. 22, 2018), <https://www.aclu.org/documents/whats-next-self-advocates-guided-tour-through-transition-parents-and-other-supporters>; see also A. Lambert et al., *Supporting Gender-Related Medical Decision Making for Transgender and Gender-Diverse Individuals: A Scoping Review*, 8(2) *Transgender Health* 113 (2023).

⁵¹ Autistic Self Advocacy Network, *Model Legislation: An Act Relating to the Recognition of a Supported Health Care Decision-Making Agreement for Adults with Disabilities* (2017), <https://autisticadvocacy.org/wp-content/uploads/2014/07/ASAN-Supported-Decisionmaking-Model-Legislature.pdf>.

families, not legislators, are in the best position to make decisions about that individual's medical care, balancing risks and benefits.

CONCLUSION

Tennessee SB1, and laws like it, ban medically necessary care for certain individuals on the basis of sex. These laws are, by lawmakers' own description, rooted in pernicious assumptions about transgender people and people with disabilities. People with disabilities, including transgender minors and adults with disabilities, can and should make their own medical decisions within the family and medical support structures that already exist. *Amici* respectfully request that the Court reverse the decision of the Sixth Circuit.

Respectfully submitted,

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APPENDIX — AMICI CURIAE

Disability Rights Education & Defense Fund (DREDF) is a national nonprofit law and policy center dedicated to advancing and protecting the civil and human rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by members of the communities for whom we advocate. DREDF pursues its mission through education, advocacy, and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal civil rights laws protecting persons with disabilities. DREDF works to secure and advance the rights of people with disabilities, including children with disabilities, to access the healthcare and support they need to participate equally in K-12 education and all aspects of community life. DREDF represents transgender people with disabilities. DREDF is a member of the Consortium of Constituents with Disabilities (CCD) and participated in the drafting and joined CCD's statement denouncing attacks on LGBTQI+ rights and affirms that all members of the LGBTQI+ community and people with disabilities have a right to bodily autonomy, self-determination, and equal access to healthcare, educational and employment opportunities, community-based services. Consortium for Constituents with Disabilities Members Denounce Attacks on LGBTQI+ Rights, Call for Comprehensive NonDiscrimination, Care and Accessibility Measures (July 19, 2023), <https://www.c-c-d.org/fichiers/CCD-Trans-LGBTQI-Rights-Statement-Final-071923.pdf>.

The **American Association of People with Disabilities (AAPD)** works to increase the political

and economic power of people with disabilities, and to advance their rights. A national cross-disability organization, AAPD advocates for full recognition of the rights of over 60 million Americans with disabilities.

The **Autistic Self Advocacy Network (ASAN)** is a national, private, nonprofit organization, run by and for autistic people. ASAN provides public education and promotes public policies that benefit autistic individuals and others with developmental or other disabilities, a disproportionate number of whom are transgender. ASAN's advocacy activities include combating stigma, discrimination, and violence against autistic people and others with disabilities. ASAN takes a strong interest in cases that affect the rights of LGBT autistic individuals, including transgender members of our community to participate fully in community life and enjoy the same rights as others without disabilities.

The **Autistic Women & Nonbinary Network (AWN)** provides community support, and resources for Autistic women, girls, transfeminine and transmasculine nonbinary people, trans people of all genders, Two Spirit people, and all people of marginalized genders or of no gender. AWN is committed to recognizing and celebrating diversity and the many intersectional experiences in our community. AWN's work includes solidarity aid, community events, publications, fiscal support, and advocacy to empower disabled and autistic people in their fight for disability, gender, and racial justice.