

**No. 15-2056**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE FOURTH CIRCUIT**

---

**G.G. by her next friend and mother, DEIRDRE GRIMM,**

**Plaintiff/Appellant**

**v.**

**GLOUCESTER COUNTY SCHOOL BOARD,**

**Defendant/Appellee.**

---

**On Appeal from the United States District Court**  
**for the Eastern District of Virginia, Newport News Division**

---

**POST-REMAND BRIEF OF AMICI CURIAE DR. JUDITH REISMAN AND**  
**THE CHILD PROTECTION INSTITUTE IN SUPPORT OF APPELLEE**

---

Mathew D. Staver  
Anita L. Staver  
Horatio G. Mihet  
LIBERTY COUNSEL  
P.O. Box 540774  
Orlando, FL 327854  
(407) 875-1776  
court@lc.org  
*Attorneys for Amici Curiae*  
*The Child Protection Institute*  
*and Judith Reisman, Ph.D.*

Mary E. McAlister  
LIBERTY COUNSEL  
P.O. Box 11108  
Lynchburg, VA 24506  
(407) 875-1776  
court@lc.org  
  
*Attorney for Amici Curiae*  
*The Child Protection Institute*  
*and Judith Reisman, Ph.D.*

**STATEMENT REGARDING CONSENT TO FILE, AUTHORSHIP, AND MONETARY CONTRIBUTIONS**

Counsel for both parties have consented to the filing of this brief.

Pursuant to Rule 29(c) of the Federal Rules of Appellate Procedure, Amici Curiae state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amici Curiae or their counsel made a monetary contribution to its preparation or submission.

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER  
INTERESTS**

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is not required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case. Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements. If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 15-2056

Caption: G.G. v. Gloucester County School Board

Pursuant to FRAP 26.1 and Local Rule 26.1, The Child Protection Institute and Judith Reisman, Ph.D. (name of party/amicus) who is Amici Curiae (appellant/appellee/petitioner/respondent/amicus/intervenor) make the following disclosure:

1. Is party/amicus a publicly held corporation or other publicly held entity?  
NO
2. Does party/amicus have any parent corporations?  
NO

If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?

NO

If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?

NO

If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?

NO

If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Mary E. McAlister Date: May 15, 2017

Counsel for: Amici Curiae

#### CERTIFICATE OF SERVICE

I certify that on May 15, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Mary E. McAlister (signature)

May 15, 2017(date)

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	vi
INTEREST OF AMICI .....	1
INTRODUCTION .....	1
LEGAL ARGUMENT .....	3
I. THERE IS NO SCIENTIFIC EVIDENCE FOR THE CONCEPT OF A DIFFERENTIAL “GENDER IDENTITY.” .....	3
II. THIS COURT SHOULD NOT REPLACE SCIENTIFIC REALITY WITH AN ARTIFICIAL SOCIAL CONSTRUCT BUILT UPON CHILD SEXUAL ABUSE, FRAUD AND HUMAN EXPERIMENTATION.....	9
A. Alfred Kinsey Disguised Child Sexual Abuse As Scientific Data On “Pre-Adolescent Orgasm” And Launched The Idea Of Fluid Sexuality.....	10
B. Dr. Harry Benjamin Used Kinsey’s Concepts To Posit The Existence of Seven Sexes.....	12
C. Dr. John Money Used Kinsey’s Model Of Human Experimentation To Develop His Concept Of Transgenderism.....	15
D. Socio-Political Change Agents Have Hijacked Language To Further Their Agenda Of Deconstructing Binary Sex. ....	18
III. REDEFINING “SEX” TO INCLUDE “GENDER IDENTITY” IS INIMICAL TO CHILDREN’S HEALTH AND WELFARE.....	20
A. Adding “Gender Identity” As Part of “Sex Discrimination” Would Mean Sanctioning The Administration Of Irreversible, Harmful, Life-Changing Procedures to Children Without Informed Consent.....	21
B. Adding “Gender Identity” As Part of “Sex Discrimination” Would Endanger Children’s Mental And Emotional Health And Create Unsafe School Environments. ....	24
CONCLUSION.....	28

CERTIFICATE OF COMPLIANCE WITH  
FEDERAL RULE OF APPELLATE PROCEDURE 32(a)(7)(C) ..... 30  
CERTIFICATE OF SERVICE..... 31

## TABLE OF AUTHORITIES

### Cases

<i>Hein v. Freedom From Religion Found., Inc.</i> , 551 U.S. 587 (2007) .....	20
<i>Kosilek v. Maloney</i> , 221 F. Supp. 2d 156 (D. Mass. 2002) .....	14
<i>Obergefell v. Hodges</i> , 135 S. Ct. 2584 (2015).....	20

### Other Authorities

Alfred Kinsey, <i>et. al.</i> , SEXUAL BEHAVIOR IN THE HUMAN FEMALE (1953) .....	10
Alfred Kinsey, <i>et. al.</i> , SEXUAL BEHAVIOR IN THE HUMAN MALE (1948).....	<i>passim</i>
Alice Sterling Honig, <i>Psychosexual Development in Infants and Young Children: Implications for Caregivers</i> , 55 YOUNG CHILDREN 70 (2000).....	24, 25
<i>An Interview with John Money</i> , PAIDIKA: THE JOURNAL OF PAEDOPHILIA 12 (Spring 1991) .....	15
Andrew R. Flores et al., Williams Institute, UCLA School of Law, <i>How Many Adults Identify as Transgender in the United States?</i> (June 30, 2016) .....	2
Arno Karlen, SEXUALITY AND HOMOSEXUALITY 456 (1971), .....	12
Ashley Collman, <i>From coaches sleeping with athletes to substitutes sexting with 15-year-olds: Alabama tops list of states with highest rate of teachers busted for sex with students ...an average of two a month</i> , UK DAILY MAIL, January 15, 2015 .....	27
Claudia Winkler, <i>Boy Interrupted</i> , THE WEEKLY STANDARD, 31 (June 19, 2000) .....	17
Dox, Biagio Melloni & Gilbert Eisner, MELLONI’S ILLUSTRATED MEDICAL DICTIONARY, 199 (1979) .....	16
Dr. Veritas, “P” for Pedophile, AMERICAN COLLEGE OF PEDIATRICIANS, June 15, 2015, <a href="http://www.acpeds.org/p-for-pedophile">http://www.acpeds.org/p-for-pedophile</a> .....	9

F.I. Reyes, et. al., <i>Studies on human sexual development fetal gonadal and adrenal sex steroids</i> , 37 J. CLIN ENDOCRINOL METAB. 74-78 (1973) .....	4
Gabriele Kuby, THE GLOBAL SEXUAL REVOLUTION: DESTRUCTION OF FREEDOM IN THE NAME OF FREEDOM (2015).....	18, 19
Gary F. Kelly, AMERICA’S SEXUAL TRANSFORMATION: HOW THE SEXUAL REVOLUTION’S LEGACY IS SHAPING OUR SOCIETY, OUR YOUTH AND OUR FUTURE (2012) .....	12
Gina Loudon, Ph.D., <i>The Dark, Untold Story of Transgenderism</i> , WORLD NET DAILY, June 5, 2015 .....	17
Harry Benjamin, M.D., <i>Introduction to the Second Printing of Rene Guyon, THE ETHICS OF SEXUAL ACTS</i> (1948). .....	13, 14
Harry Benjamin, M.D., <i>7 Kinds of Sex</i> . 27 SEXOLOGY: SEX SCIENCE ILLUSTRATED 436 (Feb. 1961) .....	13
Jay N Giedd, et. al., <i>The Teen Brain: Insights from Neuroimaging</i> , 42 JOURNAL OF ADOLESCENT HEALTH 335–43 (2008) .....	22
Jay N. Giedd et al., <i>Brain Development during Childhood and Adolescence: A Longitudinal MRI Study</i> , 2 NATURE NEUROSCIENCE 861–63 (October 1999).....	23
John Colapinto, AS NATURE MADE HIM (2000) .....	16, 17
John Money, ed. SEX RESEARCH RECENT DEVELOPMENTS (1965).....	15
John Money, <i>Gender Role, Gender Identity, Core Gender Identity: Usage and Definition of Terms</i> , JOURNAL OF THE AMERICAN ACADEMY OF PSYCHOANALYSIS 397 (1973) .....	15
Judith A. Reisman, et. al. KINSEY, SEX & FRAUD (1990).....	10
Judith Reisman, Ph.D., STOLEN HONOR, STOLEN INNOCENCE (2013) .....	11
Keith Ablow, M.D., <i>All wrong in California, girls can use urinals in the boys' restroom</i> , Fox News, January 14, 2014.....	25, 26



Lawrence S. Mayer, Ph.D. & Paul R. McHugh, M.D., <i>Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences</i> , 50 THE NEW ATLANTIS 12 (Fall 2016).....	6-9
Leah Cahan Schaefer & Connie Christine Wheeler, <i>Harry Benjamin's First Ten Cases (1938-1953): A Clinical Historical Note</i> , 24 ARCHIVES OF SEXUAL BEHAVIOR 73 (1995) .....	13
LGBT History Month, October: 31 days, 31 icons: Alfred Kinsey, sex researcher, <a href="http://lgbthistorymonth.com/alfred-kinsey">http://lgbthistorymonth.com/alfred-kinsey</a> . ....	10
M. Lombardo, <i>Fetal testosterone influences sexually dimorphic gray matter in the human brain</i> 32 J NEUROSCIENCE 674-80 (2012).....	4
Mary Beckman, <i>Crime, Culpability and the Adolescent Brain</i> , 305 SCIENCE 596 (July 30, 2004) .....	22, 24
Michelle Cretella, M.D., <i>Gender Dysphoria in Children</i> , AMERICAN COLLEGE OF PEDIATRICIANS (August 2016) .....	<i>passim</i>
Milton Diamond, Ph.D. & H. Keith Sigmundson, M.D., <i>Sex Reassignment at Birth: A Long Term Review and Clinical Implications</i> , 151 ARCHIVES OF PEDIATRICS AND ADOLESCENT MEDICINE 298 (1997).....	18
Milton Diamond, <i>Transsexuality Among Twins: identity concordance, transition, rearing, and orientation</i> , 14 INTERNATIONAL JOURNAL OF TRANSGENDERISM, 24–38 (2014) .....	5
Miriam Grossman, M.D., <i>YOU'RE TEACHING MY CHILD WHAT?</i> (2009) .....	3, 4
Moran Gershoni & Shmuel Pietrokovski, <i>The landscape of sex-differential transcriptome and its consequent selection in human adults</i> , 15 BIO MED CENTRAL BIOLOGY 1 (2017). ....	3
NOVA, <i>Sex Unknown</i> , (PBS October 30, 2001) .....	16
OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION, <i>SEXUAL HARASSMENT: IT'S NOT ACADEMIC</i> , 10 (2008),.....	20
OFFICE FOR HUMAN RESEARCH PROTECTIONS U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, <i>Nuremberg Code, Section 1</i> (2016), .....	23

OFFICE OF THE UNDER SECRETARY, U.S. DEPARTMENT OF EDUCATION, EDUCATOR SEXUAL MISCONDUCT: A SYNTHESIS OF EXISTING LITERATURE, 2004 (Dr. Charol Shakeshaft, ed.) .....	27
OXFORD ENGLISH DICTIONARY, North American version .....	20
P.T. Cohen-Kettenis, <i>et. al.</i> , <i>The treatment of adolescent transsexuals: changing insights</i> , 5 J SEXUAL MED., 1892–97 (2008) .....	21
Rene A. Wormser, FOUNDATIONS: THEIR POWER AND INFLUENCE 104 (1993).....	12
Rhiannon Williams, <i>Facebook's 71 gender options come to UK users</i> , THE TELEGRAPH (June 27, 2014) .....	20
Richard P. Fitzgibbons, M.D. et. al., <i>The Psychopathology of “Sex Reassignment” Surgery Assessing Its Medical, Psychological, and Ethical Appropriateness</i> , THE NATIONAL CATHOLIC BIOETHICS QUARTERLY, 97, 103 (Spring 2009) .....	3
Robert C. Kolodny, William H. Masters & Virginia E. Johnson, TEXTBOOK OF SEXUAL MEDICINE, 65 (1979).....	17
Samantha Levy, <i>Trans-Forming Notions of Equal Protection: The Gender Identity Class</i> , 12 TEMP. POL. & CIV. RTS. L. REV. 141, 143 (2002) .....	27
Walt Heyer, <i>Public School LGBT Programs Don’t Just Trample Parental Rights. They Also Put Kids at Risk</i> . PUBLIC DISCOURSE, June 13, 2015 .....	27
<i>When Sex Changes Are Involuntary</i> , WORLD NET DAILY, November 17, 2001 .....	15, 16

## INTEREST OF AMICI

Amici are The Child Protection Institute and Judith Reisman, Ph.D., who is Founder of the Institute as well as a research professor at Liberty University School of Law. Dr. Reisman served as Principal Investigator for the United States Department of Justice Office of Juvenile Justice on child sexual abuse and child pornography, and has provided expert reports and testimony in cases worldwide. She is an internationally recognized expert on the history, fraudulent research and societal effects of Dr. Alfred Kinsey.

Amici's extensive information on the history and effects of Kinsey's research on cultural values and institutions over the last 60 years is monumentally important to this Court's decision. Amici respectfully submit this Brief for the Court's consideration.

## INTRODUCTION

Replacing the binary definition of sex with "gender identity" would sanction a scientifically unproven sociopolitical ideology rooted in serial sexual abuse of infants and children,<sup>1</sup> and advance an *experimental* ideology that replaces biological and social reality with an artificial social construct that harms children.

---

<sup>1</sup> As described more fully *infra*, Part II, Alfred Kinsey's book, *SEXUAL BEHAVIOR IN THE HUMAN MALE* (1948) is credited with launching the sexual revolution including the concept of gender fluidity. His reports included "data" on "pre-adolescent" sexual experiences, collected by pedophiles, set forth in five tables, including Table 34:

Expanding Title IX to include “gender identity” would place children at risk by providing sexual predators with greater access to children if they simply masquerade as the opposite sex. This is particularly concerning since it is likely that less than one percent of students identify as transgender.<sup>2</sup> Consequently, an expanded definition of “sex” under Title IX would mean requiring that 99+ percent of students give up privacy and safety so that less than one percent can feel comfortable entering a private space that matches what they say is their “internal sense of gender.” The dangerous *experimental* worldview underlying the attempt to expand the definition of “sex” under Title IX should be rejected by this Court.

AGE	NO. OF ORGASMS	TIME INVOLVED	AGE	NO. OF ORGASMS	TIME INVOLVED
5 mon.	3	?	11 yr.	11	1 hr.
11 mon.	10	1 hr.	11 yr.	19	1 hr.
11 mon.	14	38 min.	12 yr.	7	3 hr.
2 yr.	{ 7	9 min.	12 yr.	{ 3	3 min.
	{ 11	65 min.		{ 9	2 hr.
2½ yr.	4	2 min.	12 yr.	12	2 hr.
4 yr.	6	5 min.	12 yr.	15	1 hr.
4 yr.	17	10 hr.	13 yr.	7	24 min.
4 yr.	26	24 hr.	13 yr.	8	2½ hr.
7 yr.	7	3 hr.	13 yr.	9	8 hr.
8 yr.	8	2 hr.		{ 3	70 sec.
9 yr.	7	68 min.	13 yr.	{ 11	8 hr.
10 yr.	9	52 min.		{ 26	24 hr.
10 yr.	14	24 hr.	14 yr.	11	4 hr.

**Table 34. Examples of multiple orgasm in pre-adolescent males**  
Some instances of higher frequencies.

<sup>2</sup> The number of children who identify as “transgender” has not been estimated, but the latest studies show that only 0.6 percent of adults identify as “transgender.” Andrew R. Flores et al., Williams Institute, UCLA School of Law, *How Many Adults Identify as Transgender in the United States?* (June 30, 2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

## LEGAL ARGUMENT

### I. THERE IS NO SCIENTIFIC EVIDENCE FOR THE CONCEPT OF A DIFFERENTIAL “GENDER IDENTITY.”

Advancements in biotechnology have demonstrated what society has intuitively understood for millennia, *i.e.*, that human beings are conceived as either male or female and there is no scientific basis for a claim that individuals have a separate “gender identity” that can differ from their biological sex. “A baby is conceived genetically male or female. Prenatal brain development is influenced by the same hormones that trigger the development of the reproductive organs.”<sup>3</sup> “The sex of each individual is encoded in the genes—XX if female, XY if male.”<sup>4</sup>

Researchers are now able to map DNA.<sup>5</sup> This mapping has proven that there are distinct “male” and “female” blueprints created from the moment of conception.<sup>6</sup> In early 2017, researchers reported on the first comprehensive mapping of the sex-specific genetic architecture of human adults.<sup>7</sup> The researchers

---

<sup>3</sup> Richard P. Fitzgibbons, M.D. et. al., *The Psychopathology of “Sex Reassignment” Surgery Assessing Its Medical, Psychological, and Ethical Appropriateness*, THE NATIONAL CATHOLIC BIOETHICS QUARTERLY, 97, 103 (Spring 2009).

<sup>4</sup> *Id.* at 118.

<sup>5</sup> Miriam Grossman, M.D., YOU’RE TEACHING MY CHILD WHAT? 163-66 (2009).

<sup>6</sup> *Id.* at 164.

<sup>7</sup> Moran Gershoni & Shmuel Pietrokovski, *The landscape of sex-differential transcriptome and its consequent selection in human adults*, 15 BIO MED CENTRAL BIOLOGY 1 (2017).

found more than 6,500 genes with significant sexually differentiated expressions.<sup>8</sup>

“This remarkable sex-biased gene expression is likely due to the distinct physiologic properties of this tissue between men and women.”<sup>9</sup>

In addition, DNA blueprints for a male versus a female brain are established eight weeks after conception.<sup>10</sup>

The brains of all male infants are masculinized prenatally by their own endogenous testosterone, which is secreted from their testes beginning at approximately eight weeks’ gestation. Female infants, of course, lack testes, and therefore, do not have their brains masculinized by endogenous testosterone. For this reason, barring one of the rare disorders of sex development (DSD), boys are not born with feminized brains, and girls are not born with masculinized brains.<sup>11</sup>

“We’re not psychological hermaphrodites at birth, potentially masculine or feminine—we are wired for one or the other in the womb.”<sup>12</sup>

The biological reality is that human sexuality is binary by design.

The norm for human design is to be conceived either male or female. Sex chromosome pairs “XY” and “XX” are genetic determinants of

---

<sup>8</sup> *Id.* at 8.

<sup>9</sup> *Id.*

<sup>10</sup> Grossman at 165.

<sup>11</sup> Michelle Cretella, M.D., *Gender Dysphoria in Children*, AMERICAN COLLEGE OF PEDIATRICIANS, (August 2016) <https://www.acped.org/the-college-speaks/position-statements/gender-dysphoria-in-children>, citing F.I. Reyes, et. al., *Studies on human sexual development fetal gonadal and adrenal sex steroids*, 37 J. CLIN ENDOCRINOL METAB. 74-78 (1973); M. Lombardo, *Fetal testosterone influences sexually dimorphic gray matter in the human brain* 32 J NEUROSCIENCE 674-80 (2012).

<sup>12</sup> Grossman, at 168.

sex, male and female, respectively. They are not genetic markers of a disordered body or birth defect.”<sup>13</sup>

Infants are not, except in cases of rare disorders, “assigned” a sex at birth; “rather birth sex declares itself anatomically in utero and is clearly evident and acknowledged at birth.”<sup>14</sup> Sex can be said to be “assigned” at birth only in the exceedingly rare cases “which are medically identifiable deviations from the human binary sexual norm. Those with DSD have an innate biological condition. The sex of individuals with DSDs is complex and dependent on a variety of genetic, hormonal, and physical factors.”<sup>15</sup>

Studies of identical twins who share 100 percent of the same DNA from conception and develop in exactly the same prenatal environment have further shown the fallacy of asserting that “gender identity” is a deviation of the binary sexual norm. “The largest study of twin transsexual adults found that only 20 percent of identical twins were both transidentified.”<sup>16</sup> If genes and/or prenatal hormones contributed significantly to transgenderism, the concordance rates would be close to 100 percent.<sup>17</sup>

---

<sup>13</sup> Cretella, *Gender Dysphoria in Children*, at 3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 4, citing Milton Diamond, *Transsexuality Among Twins: identity concordance, transition, rearing, and orientation*, 14 INTERNATIONAL JOURNAL OF TRANSGENDERISM, 24–38 (2014).

<sup>17</sup> *Id.*

Instead, 80 percent of identical twin pairs were discordant. This means that at least 80 percent of what contributes to transgenderism in one adult co-twin consists of one or more non-shared post-natal experiences including but not limited to non-shared family experiences. This is consistent with the dramatic rates of resolution of gender dysphoria documented among children when they are not encouraged to impersonate the opposite sex.<sup>18</sup>

The low rate of persistence, absence of scientific evidence, and the severe and irreversible nature of the hormonal and surgical interventions used to change children's bodies, have prompted leading researchers to classify such treatments as "alarming" and "disturbing."<sup>19</sup> This is particularly true due to the fact that:

There are no studies that demonstrate that any of the biological differences being examined have predictive power, and *so all interpretations*, usually in popular outlets, claiming or *suggesting that a statistically significant difference between the brains of people who are transgender and those who are not is the cause of being transgendered or not* — that is to say, that the biological differences determine the differences in gender identity — *are unwarranted*.<sup>20</sup>

After a comprehensive study of research on sexual orientation and gender identity from the biological, psychological and social sciences, epidemiologist Lawrence Mayer and psychiatrist Paul McHugh, former head of the Johns Hopkins sex change clinic, determined that "the consensus of scientific evidence overwhelmingly supports the proposition that a physically and developmentally

---

<sup>18</sup> *Id.*

<sup>19</sup> Lawrence S. Mayer, Ph.D. & Paul R. McHugh, M.D., *Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences*, 50 THE NEW ATLANTIS 12 (Fall 2016).

<sup>20</sup> *Id.* at 104 (emphasis added).



normal boy or girl is indeed what he or she appears to be at birth. The available evidence from brain imaging and genetics *does not* demonstrate that the development of gender identity as different from biological sex is innate.”<sup>21</sup> They noted that, unlike the differences between the sexes, there are no biological features that can reliably identify transgender individuals as different from others.<sup>22</sup> The idea of “gender identity” is elusive and difficult to define apart from the concepts of biological sex and socially constructed “gender roles.”<sup>23</sup>

In reviewing the scientific literature, we find that *almost nothing is well understood when we seek biological explanations for what causes some individuals to state that their gender does not match their biological sex.* The findings that do exist often have sample-selection problems, and they lack longitudinal perspective and explanatory power. Better research is needed, both to identify ways by which we can help to lower the rates of poor mental health outcomes and to make possible more informed discussion about some of the nuances present in this field.

Yet despite the scientific uncertainty, drastic interventions are prescribed and delivered to patients identifying, or identified, as transgender. This is especially troubling when the patients receiving these interventions are children. We read popular reports about plans for medical and surgical interventions for many prepubescent children, some as young as six, and other therapeutic approaches undertaken for children as young as two. *We suggest that no one can determine the gender identity of a two-year-old.* We have reservations about how well scientists understand what it even means for a child to have a developed sense of his or her gender, but notwithstanding that issue, we are deeply alarmed that these therapies, treatments, and surgeries seem disproportionate to the severity of the distress being experienced by these young people, and are at any rate premature

---

<sup>21</sup> *Id.* at 105 (emphasis added).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 115.

since the majority of children who identify as the gender opposite their biological sex will not continue to do so as adults.<sup>24</sup>

Adolescents and adults who undergo such treatments have high subsequent rates of mental illness, suicidal ideation and even suicide. Post-operative adult transsexuals were found to have about three times the risk of psychiatric hospitalization, even after adjusting for prior psychiatric problems.<sup>25</sup> Sex-reassigned adults were 4.9 times more likely to attempt suicide and 19.1 times more likely to die by suicide compared to members of control groups.<sup>26</sup>

Drs. Mayer and McHugh concluded, “[t]he scientific evidence summarized suggests we take a skeptical view toward the claim that sex-reassignment procedures provide the hoped for benefits or resolve the underlying issues that contribute to elevated mental health risks among the transgender population.”<sup>27</sup> This is particularly true for children, the majority of whom will not continue to experience gender dysphoria after adolescence.<sup>28</sup> That fact, plus the lack of reliable studies on the long-term effects of hormonal and surgical treatment on children, led the researchers to “strongly urge caution” regarding such treatments for adolescents.<sup>29</sup>

---

<sup>24</sup> *Id.* (emphasis added).

<sup>25</sup> *Id.* at 111

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 112.

<sup>28</sup> *Id.* at 115.

<sup>29</sup> *Id.*

Overall, “there is a great chasm between much of the public discourse and what science has shown.”<sup>30</sup> That chasm means that this Court should not sanction an experimental change in policy, and particularly in rules that protect the health and safety of children by separating the sexes in private spaces.

**II. THIS COURT SHOULD NOT REPLACE SCIENTIFIC REALITY WITH AN ARTIFICIAL SOCIAL CONSTRUCT BUILT UPON CHILD SEXUAL ABUSE, FRAUD AND HUMAN EXPERIMENTATION.**

“Gender identity” is based on an artificial social construct that not only disregards biology, psychology and social development, but is based on pseudo-science built upon child sexual abuse and advanced by human experimentation and socio-political ideology. The American College of Pediatricians (“ACP”) summarized the pseudo-scientific history and underlying worldview upon which “gender identity” has been developed.

...When I look at the origins of the transgender movement I find John Money and Harry Benjamin, both bisexuals, who failed to condemn pedophiles, and freely associated with them...When I look at sex education in schools, I see Alfred C. Kinsey, and his colleagues, and I see pansexuality and an embracing of pedophilia, along with bestiality.<sup>31</sup>

---

<sup>30</sup> *Id.* at 116.

<sup>31</sup> Dr. Veritas, “*P*” for *Pedophile*, AMERICAN COLLEGE OF PEDIATRICIANS, June 15, 2015, <http://www.acpeds.org/p-for-pedophile>.

**A. Alfred Kinsey Disguised Child Sexual Abuse As Scientific Data On “Pre-Adolescent Orgasm” And Launched The Idea Of Fluid Sexuality.**

The ideological movement to transform the scientific reality of binary biological sex into a fluid concept embracing “gender identity” can be traced in large part to Alfred Kinsey’s 1948 and 1953 books on male and female sexuality.<sup>32</sup> The books were widely promoted as scientifically sound treatises which “proved” that sexuality is fluid and that children are sexual from birth.<sup>33</sup> Still today, “Alfred Kinsey is known as the father of sexology. His groundbreaking and controversial research on human sexuality profoundly influenced social and cultural values.”<sup>34</sup>

What those relying upon the research have failed to address is that the “groundbreaking” research, and in particular, Kinsey’s claim that children are sexual from birth, was founded on systematic sexual abuse of children and infants.<sup>35</sup> Hidden in plain sight in the 1948 book on male sexuality are five tables in which Kinsey listed “data” on what he called “multiple orgasms in pre-adolescent males.”<sup>36</sup> In fact, the tables list infants as young as two months and

---

<sup>32</sup> Alfred Kinsey, *et. al.*, SEXUAL BEHAVIOR IN THE HUMAN MALE (1948) (“Kinsey MALE”); Alfred Kinsey, *et. al.*, SEXUAL BEHAVIOR IN THE HUMAN FEMALE (1953) (“Kinsey FEMALE”).

<sup>33</sup> Judith A. Reisman, *et. al.* KINSEY, SEX & FRAUD, 19 (1990); Kinsey MALE, at 175-80; 638-39.

<sup>34</sup> See LGBT History Month, October: 31 days, 31 icons: Alfred Kinsey, sex researcher, <http://lgbthistorymonth.com/alfred-kinsey>.

<sup>35</sup> Kinsey MALE, at 175-80.

<sup>36</sup> *Id.*, particularly Tables 30-34.

children up to age 14 alongside information on the number of “orgasms” they were “observed” having over certain periods of time.<sup>37</sup> The book was circumspect about the nature of the “observations,” saying that they came from “the histories of adult males who have had sexual contacts with younger boys and who, with their adult backgrounds, are able to recognize and interpret the boys’ experiences.”<sup>38</sup>

What was implicit in the 1948 statement was later made explicit by Kinsey’s biographers. The information presented in Tables 30-34 as “scientific data” was in fact records of serial child sexual abuse collected by pedophiles, including Rex King and Nazi Fritz von Balluseck, who used stopwatches and took meticulous notes that were transmitted to Kinsey.<sup>39</sup> In other words, the “data” used to justify wholesale changes in laws and policies affecting children were not meticulously gathered scientific findings but pedophiles’ journals of serial child sexual abuse.<sup>40</sup>

Another Kinsey innovation, and one upon which the concept of “gender identity” was built, is the “Kinsey Scale,” which purports to show that sexuality, and in particular what is today known as sexual orientation, is fluid and changeable throughout life.<sup>41</sup> The scale quickly became a convenient tool for graphically depicting Kinsey’s concept of what is now called “gender fluidity:”

---

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 177.

<sup>39</sup> Judith Reisman, Ph.D., *STOLEN HONOR, STOLEN INNOCENCE*, 135-39 (2013).

<sup>40</sup> *Id.*

<sup>41</sup> Kinsey *MALE*, at 638-39.

Males do not represent two discrete populations, heterosexual and homosexual. The world is not to be divided into sheep and goats. Not all things are black nor all things white. It is a fundamental of taxonomy that nature rarely deals with discrete categories. Only the human mind invents categories and tries to force facts into separated pigeon-holes. The sooner we learn this concerning human sexual behavior, the sooner we shall reach a sound understanding of the realities of sex.<sup>42</sup>

As was true of the “pre-adolescent orgasm” tables, the Kinsey Scale was not based upon scientifically and statistically sound research, but on interviews with prisoners, sex offenders, pedophiles and others who were deceptively portrayed as a representative sample of American men.<sup>43</sup> Based upon that unrepresentative “representative sample,” Kinsey created his seven-point scale graphically depicting his “conclusions” that sexuality was fluid and often changed throughout men’s lives.<sup>44</sup> That scale and the statements underlying it became the cornerstone for the concept of “gender identity.”

**B. Dr. Harry Benjamin Used Kinsey’s Concepts To Posit The Existence of Seven Sexes.**

Kinsey’s concept of gender fluidity was adopted by Dr. Harry Benjamin and later by Dr. John Money, pioneers in the “transgender” movement. Benjamin is

---

<sup>42</sup> *Id.* at 639.

<sup>43</sup> Kinsey’s sampling techniques and extrapolation to the general population have been discredited by statisticians and scientists. *See* Arno Karlen, *SEXUALITY AND HOMOSEXUALITY* 456 (1971), Gary F. Kelly, *AMERICA’S SEXUAL TRANSFORMATION: HOW THE SEXUAL REVOLUTION’S LEGACY IS SHAPING OUR SOCIETY, OUR YOUTH AND OUR FUTURE* 7 (2012); Rene A. Wormser, *FOUNDATIONS: THEIR POWER AND INFLUENCE* 104 (1993).

<sup>44</sup> Kinsey *MALE* at 639.

known as the “Father of Transsexualism.”<sup>45</sup> His embrace of the Kinsey concept of sexual fluidity was apparent in a 1948 introduction to *Ethics of Sexual Acts*: “Guyon’s message of sexual freedom is a clarion call to all victims of anti-sexualism and puritanical terror.”<sup>46</sup>

Benjamin carried that worldview forward as he spent 30 years treating patients suffering from “gender dysphoria” by developing strategies to create an atmosphere of acceptance of “gender” separate from biological sex.<sup>47</sup> “Instead of the conventional two sexes, symbolized by Adam and Eve with their anatomical differences, there may be seven or even more—that is to say, at least seven separate concepts and manifestations of sex, each of more or less vital importance to the individual.”<sup>48</sup> While he did not use the term “gender identity,” Benjamin was promoting that concept by asserting that sex was not binary. At the same time, Benjamin could not deny the realities of biology:

[T]he surgeon’s knife can remove the male organs and also the internal organs of the female, ... not a ‘change of sex,’ but a change of secondary sex characteristics...<sup>49</sup>

---

<sup>45</sup> Leah Cahan Schaefer & Connie Christine Wheeler, *Harry Benjamin’s First Ten Cases (1938-1953): A Clinical Historical Note*, 24 ARCHIVES OF SEXUAL BEHAVIOR 73, 74 (1995).

<sup>46</sup> Harry Benjamin, M.D., *Introduction to the Second Printing of Rene Guyon, THE ETHICS OF SEXUAL ACTS*, at a, b (1948).

<sup>47</sup> Schaefer & Wheeler, at 74.

<sup>48</sup> Harry Benjamin, M.D., *7 Kinds of Sex*. 27 SEXOLOGY: SEX SCIENCE ILLUSTRATED 436, 437 (Feb. 1961).

<sup>49</sup> *Id.* at 438.

Man is male and woman is female because of his or her genetic inheritance...The Y spells male for the offspring, the X female....<sup>50</sup>

Sometimes, but not always, the history of transvestites and transsexualists reveals that as young children they were raised, wholly or partly, as if they belonged to the opposite sex. Their sex of rearing was wrong. The boy was brought up as a girl and the girl as a boy (tomboy).<sup>51</sup>

Nevertheless, Benjamin claimed that “[i]nstead of treating the patient, might it not be wiser and more sensible to treat society educationally so that logic, understanding and compassion might prevail?”<sup>52</sup>

Benjamin provided *no* scientific evidence for his statements regarding “transsexuals” or for the standards of care he developed, which are still used today.<sup>53</sup> Instead, like Kinsey, Benjamin sought to change prevailing attitudes and particularly Judeo-Christian principles, which he blamed for the distress suffered by “transsexuals.”<sup>54</sup> As was true with Kinsey, Benjamin used a façade of “science” to foment fundamental social transformation.

---

<sup>50</sup> *Id.* at 440.

<sup>51</sup> *Id.* at 441.

<sup>52</sup> Schaefer & Wheeler, at 91.

<sup>53</sup> *See Kosilek v. Maloney*, 221 F. Supp. 2d 156, 158 (D. Mass. 2002).

<sup>54</sup> *See Harry Benjamin, Introduction*, at i.



**C. Dr. John Money Used Kinsey's Model Of Human Experimentation To Develop His Concept Of Transgenderism.**

Kinsey's and Benjamin's animus for Judeo-Christian sexual mores was shared by pedophile apologist<sup>55</sup> Dr. John Money of Johns Hopkins University. In fact, Money is described as hating Judeo-Christian "repressive religious structures....the anti-masturbatory, anti-sexual fervor."<sup>56</sup> Money coined the term "gender role" to overcome the confusion between "the sex of the genitalia and their activities [and] the nonerotic and nongenital sex roles and activities that are prescribed culturally and historically."<sup>57</sup> By 1967 he had developed two terms—"gender role" and "gender identity," with "gender role" used to refer to empirically observable behavior and "gender identity" to psychological beliefs.<sup>58</sup> According to Money, "Gender identity is the private experience of gender role and gender role is the public expression of gender identity."<sup>59</sup>

---

<sup>55</sup> In an interview published in *Paidika*, an international journal for those advocating for pedophilia, Dr. Money said that adult sex with children is normal and often beneficial and said, "regarding paedophilia [sic] that I would never report anybody." *An Interview with John Money*, PAIDIKA: THE JOURNAL OF PAEDOPHILIA 12 (Spring 1991).

<sup>56</sup> *When Sex Changes Are Involuntary*, WORLD NET DAILY, November 17, 2001, <http://www.wnd.com/2001/11/11692>.

<sup>57</sup> John Money, *Gender Role, Gender Identity, Core Gender Identity: Usage and Definition of Terms*, JOURNAL OF THE AMERICAN ACADEMY OF PSYCHOANALYSIS 397, 398 (1973).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 398-99, citing John Money, ed. SEX RESEARCH RECENT DEVELOPMENTS (1965).

Money advocated surgery, hormones and behavior modification to “redefine sex,”<sup>60</sup> and he established the Johns Hopkins clinic for “sex re-assignment” surgeries for adults and children.<sup>61</sup> Money extrapolated information he obtained from studying intersex<sup>62</sup> infants to conclude that all newborns are psychosexual blank slates.<sup>63</sup> Money used that concept to develop medical protocols in which infants born with ambiguous genitalia due to rare physical abnormalities were surgically altered and raised to correspond to their altered genitalia.<sup>64</sup>

In 1967 Money for the first time experimented on children born with normal genitalia which had been later damaged. Twins Bruce and Brian Reimer were born with anatomically normal genitalia, but Bruce’s penis was severely injured in a botched circumcision and was removed.<sup>65</sup> The twins’ parents contacted Dr. Money after seeing him on television.<sup>66</sup> Dr. Money recommended Bruce be castrated and “re-assigned” as a girl.<sup>67</sup> The surgery was conducted; the Reimers changed Bruce’s

---

<sup>60</sup> *When Sex Changes Are Involuntary.*

<sup>61</sup> John Colapinto, *AS NATURE MADE HIM* 25 (2000).

<sup>62</sup> “Intersex” or “hermaphrodite” individuals are those who are born with both ovarian and testicular tissues and so have ambiguous genitalia. Ida Dox, Biagio Melloni & Gilbert Eisner, *MELLONI’S ILLUSTRATED MEDICAL DICTIONARY*, 199 (1979).

<sup>63</sup> Colapinto at 31-32.

<sup>64</sup> NOVA, *Sex Unknown*, (PBS October 30, 2001), <http://www.pbs.org/wgbh/nova/transcripts/2813gender.html>.

<sup>65</sup> Colapinto at 49-64.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

name to “Brenda” and, as urged by Money, attempted to raise him as a girl.<sup>68</sup> Beginning at age six, Money engaged in what he called therapy sessions in which he would make the twins simulate having sex with each other, claiming this was to reinforce the idea that Bruce was a girl.<sup>69</sup> Bruce did not adjust to his sex “change,” and by 1980 his psychological and emotional distress convinced his parents to reveal the truth.<sup>70</sup> Bruce then transitioned back to male and took the name David.<sup>71</sup> He married and helped parent his wife’s children from a prior marriage but the trauma he and his brother suffered took its toll and they both killed themselves within weeks of each other in 2004.<sup>72</sup>

Nevertheless, Money promoted his failed experiment as proof that those born as psychological hermaphrodites can be “re-assigned” through hormones, surgery and behavior modification.<sup>73</sup> A textbook on sexual medicine referenced the case as proof of “the plasticity of human gender identity.”<sup>74</sup> Finally, in 1997 the

---

<sup>68</sup> *Id.* at 52-53.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 180-95.

<sup>71</sup> *Id.*

<sup>72</sup> Gina Loudon, Ph.D., *The Dark, Untold Story of Transgenderism*, WORLD NET DAILY, June 5, 2015, <http://www.wnd.com/2015/06/untold-dark-story-of-transgenderism/>.

<sup>73</sup> Claudia Winkler, *Boy Interrupted*, THE WEEKLY STANDARD, 31, 34 (June 19, 2000).

<sup>74</sup> Robert C. Kolodny, William H. Masters & Virginia E. Johnson, TEXTBOOK OF SEXUAL MEDICINE, 65 (1979).

scientific literature reported that Money's experiment did not prove that gender is fluid and fungible.<sup>75</sup>

As was true with Kinsey, Money built a new sexual paradigm by experimenting on children and disguising it as scientific research. That is the unethical, fraudulent foundation of the "gender identity" phenomenon. This Court should not sanction such deceptive practices by adopting the proposed expanded definition of sex under Title IX.

**D. Socio-Political Change Agents Have Hijacked Language To Further Their Agenda Of Deconstructing Binary Sex.**

The unproven concept of "gender identity" being separate from biological sex was also championed in the 1960s and 1970s by cultural change agents who wanted to eliminate sexual differences that they saw as oppressive.<sup>76</sup> These change agents used "gender," much as Money did, to refer to a "social sex" that could differ from one's "biological sex" in order to overcome unjust discrimination against women rooted in sex stereotypes.<sup>77</sup> They wanted to change the language to counter sex role stereotypes as well as to implement Kinsey's concept that all

---

<sup>75</sup> Milton Diamond, Ph.D. & H. Keith Sigmundson, M.D., *Sex Reassignment at Birth: A Long Term Review and Clinical Implications*, 151 ARCHIVES OF PEDIATRICS AND ADOLESCENT MEDICINE 298 (1997).

<sup>76</sup> Gabriele Kuby, THE GLOBAL SEXUAL REVOLUTION: DESTRUCTION OF FREEDOM IN THE NAME OF FREEDOM, 43-44 (2015)

<sup>77</sup> Cretella, *Gender Dysphoria in Children*, at 2.

manner of sexual activity is normal and harmless,<sup>78</sup> by “deconstructing the binary sexual identity of man and woman and what they called ‘compulsory heterosexuality.’”<sup>79</sup>

Enforcing this social policy required a new word, because language doesn’t just reflect reality; it creates it. *Gender* was the magic word. The word *sex* had to be replaced; for prior to that, if someone was asked, “What is your sex?,” they could answer only one of two things; man or woman.<sup>80</sup>

Because the change agents wanted to create a new reality of non-binary sexuality, they adopted a redefined version of the word “gender” which they could then use to “deconstruct binary gender identity.”<sup>81</sup> Those seeking to implement the new paradigm conflated biological sex and sexual orientation to create the redefined concept of “gender” or “gender identity.”<sup>82</sup> This new definition meant change agents could assert that human identity is not based on whether someone is a man or a woman, but on a mutable sexual orientation,<sup>83</sup> thus perpetuating Kinsey’s claim that sexuality is fluid and changeable throughout life.<sup>84</sup>

Popular culture has embraced the attempt to make the idea of changeable “gender identity” mainstream, as seen in social media sites listing 71 or more

---

<sup>78</sup> Kinsey MALE, at 678.

<sup>79</sup> Kuby, *Global Sexual Revolution*, at 44.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 46-47.

<sup>83</sup> *Id.* at 47.

<sup>84</sup> Kinsey MALE, at 639.

gender choices<sup>85</sup> and the Oxford English Dictionary including “gender-fluid” in its lexicon.<sup>86</sup> However, popular culture’s embrace of an unscientific, agenda-driven artificial social construct that denies reality does not justify adopting that social construct as public policy. While popular culture, pop-philosophy and poetry can embrace emerging trends, law and public policy must be founded on logic, reason and precision. *See Obergefell v. Hodges*, 135 S. Ct. 2584, 2630 (2015) (Scalia, J., dissenting); *Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587, 633 (2007) (Scalia, J. concurring). This Court should not condone the adoption of an ideologically driven denial of reality wholly unsubstantiated by science.

### **III. REDEFINING “SEX” TO INCLUDE “GENDER IDENTITY” IS INIMICAL TO CHILDREN’S HEALTH AND WELFARE.**

Interpreting Title IX to include “gender identity,” and particularly, to compel districts to permit access to sex-separate facilities based solely on “perceived” gender conflicts the statute’s purpose to “provide a safe and nondiscriminatory environment for *all* students.”<sup>87</sup> Moreover, advocacy for recognition of “transgender” children fosters experimental, life-changing medical protocols that

---

<sup>85</sup> Rhiannon Williams, *Facebook's 71 gender options come to UK users*, THE TELEGRAPH (June 27, 2014), <http://www.telegraph.co.uk/technology/facebook/10930654/Facebooks-71-gender-options-come-to-UK-users.html>.

<sup>86</sup> OXFORD ENGLISH DICTIONARY, North American version, <https://en.oxforddictionaries.com/definition/us/gender-fluid>.

<sup>87</sup> OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION, SEXUAL HARASSMENT: IT’S NOT ACADEMIC, 10 (2008), <http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>.

do not comply with the dictates of medical ethics. Most importantly, such advocacy sanctions an agenda-driven ideology that threatens the physical, mental and emotional well-being of children.

**A. Adding “Gender Identity” As Part of “Sex Discrimination” Would Mean Sanctioning The Administration Of Irreversible, Harmful, Life-Changing Procedures to Children Without Informed Consent.**

Despite studies showing that 80 to 95 percent of children who report dissonance between their perceived gender and biological sex find that their perceived gender and biological sex correspond by late adolescence, medical protocols for “transgender” children are calling for earlier intervention with puberty-suppressing drugs and cross-sex hormones.<sup>88</sup> These protocols create irreversible sterility and other life-changing effects to which the children, as minors with immature brains, are unable to give informed consent.<sup>89</sup> Nor can their parents give “informed” consent to such protocols as the long-term consequences of these early interventions are unknown.<sup>90</sup>

There is not a single large, randomized, controlled study that documents the alleged benefits and potential harms to gender-dysphoric children from pubertal suppression and decades of cross-sex hormone use. Nor is there a single long-term, large, randomized,

---

<sup>88</sup> Cretella, *Gender Dysphoria*, at 6; P.T. Cohen-Kettenis, *et. al.*, *The treatment of adolescent transsexuals: changing insights*, 5 J SEXUAL MED., 1892–97 (2008).

<sup>89</sup> Cretella, *Gender Dysphoria*, at 6-7.

<sup>90</sup> *Id.*

controlled study that compares the outcomes of various toxic synthetic steroids.<sup>91</sup>

Nevertheless, gender clinics encourage treatments that will suppress puberty “to allow the gender dysphoric child time to explore gender identity free from the emotional distress triggered by the onset of secondary sex characteristics.”<sup>92</sup> These treatments will condemn unknown numbers of children to sterility.<sup>93</sup> In addition, use of puberty-suppressing drugs means that the children will never develop sperm or eggs.<sup>94</sup> Consequently, they would not even have the chance to harvest and preserve eggs or sperm for future use in assisted reproduction, an option some are given who go through puberty and then begin cross-sex hormones.<sup>95</sup>

Furthermore, neuroscience has documented that children’s brains are cognitively immature until *the early to mid-twenties*.<sup>96</sup> Scientists can digitally map how the brain develops, and have found that the portions of the brain that permit processing of complex concepts, such as “gender identity,” evaluating risk and making informed decisions are the last to mature, usually not until the early

---

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 7.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Mary Beckman, *Crime, Culpability and the Adolescent Brain*, 305 SCIENCE 596 (July 30, 2004); *See also*, Jay N Giedd, *et. al.*, *The Teen Brain: Insights from Neuroimaging*, 42 JOURNAL OF ADOLESCENT HEALTH 335–43 (2008).



twenties.<sup>97</sup> This means that children are not only legally, but cognitively incapable of giving informed consent to these treatments. Informed consent is a fundamental ethical requirement, particularly when, as is true for these early interventions, the treatment is irreversible and life-changing.<sup>98</sup> The Nuremberg Code, developed in response to the human experimentation atrocities in Nazi Germany and still relied on in human research, states:

The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved, as to enable him to make an understanding and enlightened decision. This latter element requires that, before the acceptance of an affirmative decision by the experimental subject, there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person, which may possibly come from his participation in the experiment.<sup>99</sup>

Children are not legally capable of giving consent. Even if it could be assumed, *arguendo*, that parents can consent on behalf of their children, they still cannot give informed consent because the hazards and the effects upon children's

---

<sup>97</sup> *Id.* See also, Jay N. Giedd *et al.*, *Brain Development during Childhood and Adolescence: A Longitudinal MRI Study*, 2 NATURE NEUROSCIENCE 861–63 (October 1999).

<sup>98</sup> Cretella, *Gender Dysphoria*, at 7.

<sup>99</sup> OFFICE FOR HUMAN RESEARCH PROTECTIONS U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *Nuremberg Code*, Section 1 (2016), <https://history.nih.gov/research/downloads/nuremberg.pdf>.

health have not been scientifically determined and therefore cannot be known prior to treatment. Including gender identity in the definition of “sex” for purposes of Title IX for elementary and secondary students would sanction human experimentation and involuntary sterilization of children wholly bereft of informed consent. Such disregard for the health and safety of children as well as the rule of law should not be given any effect by this Court.

**B. Adding “Gender Identity” As Part of “Sex Discrimination” Would Endanger Children’s Mental And Emotional Health And Create Unsafe School Environments.**

Injecting the confusion and conflict of gender identity into the educational environment will assault and reshape the plasticity of undeveloped young brains with undefined, discordant concepts such as “gender identity” and “gender expression” in conflict with biological reality.<sup>100</sup> Children first recognize the physical differences between boys and girls when they are toddlers.<sup>101</sup> Child development research has shown that by age three children can answer the question of whether they are a boy or a girl correctly 75 percent of the time.<sup>102</sup> It is an important part of children’s secure, cognitive development to categorize people as male or female in order to understand and define social relationships.<sup>103</sup> It is

---

<sup>100</sup> Beckman at 596.

<sup>101</sup> Alice Sterling Honig, *Psychosexual Development in Infants and Young Children: Implications for Caregivers*, 55 *YOUNG CHILDREN* 70, 73 (2000).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 74.

critical for young children to rely on their natural understanding of each other's sexual role in order to feel generally confident as they face the difficult process of maturing.<sup>104</sup>

Replacing the concrete, objective and accurate understandings of “male” and “female” with the undefined concept of “gender identity” would deny young children the ability to develop a baseline from which to order their social relationships. Without a foundation, children will become confused and anxious as they will not know how to interact with others. This will be exacerbated by requirements that schools use names and pronouns that the “transgender” student prefers, even if they do not correspond to the student's physical characteristics. Children who are just learning to differentiate between boys and girls will be instructed that they must ignore what they know and adopt a fictional pronoun, leaving their immature brains hopelessly confused.

Psychiatrists have discussed the potentially traumatic consequences of instructing children to deny biological reality.<sup>105</sup>

The mere fact that teachers and administrators will have to explain to kindergarten and first grade students that they might see girls in the boys' restroom, or boys in the girls' locker room, but that those really aren't kids of the gender they appear to be, could do harm to their own

---

<sup>104</sup> *Id.*

<sup>105</sup> Keith Ablow, M.D., *All wrong in California, girls can use urinals in the boys' restroom*, Fox News, January 14, 2014, <http://www.foxnews.com/opinion/2014/01/14/allwrongincaliforniagirlscanuseurinalsinboysrestroom.html>.

developing sense of security by falsely claiming their gender is fluid, that it well might change for them, too, and that they should be on the lookout for signs that they want to switch.<sup>106</sup>

Telling third grade or seventh grade or tenth grade children, adolescents or teenagers that this issue is settled to such an extent that they should feel comfortable with females walking in and seeing them urinating or pulling their pants down to change into football gear is a lie that can steal their ability to trust adults, shake their faith in any form of reality, traumatize them by shaming them and kindle waves of completely unnecessary anxiety related to whether they should be doing some sort of emotional inventory to determine whether they're really going to turn into men, once and for all, or find out they've been suppressing the truth that they're actually women. I don't see anything but toxicity from the notion of a person with female anatomy feeling free to use the urinal in the boys' rest room while a boy stands next to her and uses one, too....

[S]haking the certain knowledge in boys and girls of whether they can count on not being seen naked by the opposite gender, not to mention whether they are themselves actually the gender they thought they were, is a powerful, devious and pathological way to weaken them by making them question their sense of safety, security and certainty about anything and everything.<sup>107</sup>

In other words, instead of being safe, secure places where children can learn about themselves and others, schools will become places of anxiety and confusion. Students will be told that they should disregard their physical and psychological makeup and *what their parents tell them* and embrace the idea that “gender” is an “identity” that incorporates not only physical appearance, but also “a person’s

---

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

internal, deeply felt sense of being either male or female.”<sup>108</sup> Empirical studies and scientific advancements have demonstrated that efforts to “redefine” gender and disassociate it from biological sex create a traumatic environment that is more harmful to students than is an environment in which biological sex remains the standard.<sup>109</sup>

A 2004 U.S. Department of Education study found that 9.6 percent of students in grades 8 to 11 reported “unwanted” educator sexual misconduct.<sup>110</sup> That means that more than 4.5 million students were subject to sexual misconduct by a school employee sometime between kindergarten and 12th grade.<sup>111</sup> A survey released in early 2015 found 781 reports of teacher-student sexual misconduct in the media throughout the nation in 2014.<sup>112</sup> Such misconduct would only increase if sex-separate access to private facilities is exchanged for access based on “perceived” internal sense of gender.

---

<sup>108</sup> Samantha Levy, *Trans-Forming Notions of Equal Protection: The Gender Identity Class*, 12 TEMP. POL. & CIV. RTS. L. REV. 141, 143 (2002).

<sup>109</sup> See Walt Heyer, *Public School LGBT Programs Don't Just Trample Parental Rights. They Also Put Kids at Risk*. PUBLIC DISCOURSE, June 13, 2015, <http://www.thepublicdiscourse.com/2015/06/15118/>.

<sup>110</sup> OFFICE OF THE UNDER SECRETARY, U.S. DEPARTMENT OF EDUCATION, EDUCATOR SEXUAL MISCONDUCT: A SYNTHESIS OF EXISTING LITERATURE, 17-18 (2004) (Dr. Charol Shakeshaft, ed.).

<sup>111</sup> *Id.* at 18.

<sup>112</sup> Ashley Collman, *From coaches sleeping with athletes to substitutes sexting with 15-year-olds: Alabama tops list of states with highest rate of teachers busted for sex with students ...an average of two a month*, UK DAILY MAIL, January 15, 2015, <http://www.dailymail.co.uk/news/article-2912155/Alabama-s-shame-s-named-state-highest-rate-teacher-student-sex-cases-nation.html#ixzz3m1fTLgh4>.

Adopting “gender identity” policies to require access to private spaces on the basis of self-proclaimed perceptions of gender will provide sexual predators with easier access to potential victims. Sexual predators will be able to enter the private spaces of opposite sex students without detection. A male sexual predator will need only tell school personnel that he “identifies as a female” (or vice versa) and must be granted access to the female restroom, locker room or shower. Predators will be able to access their victims with impunity, since anyone complaining about “a boy in the girls’ restroom” will be met with charges of discrimination. Rather than facilitating a safe environment for all students, these changes would foster a more dangerous environment for students who are targeted by sexual predators.

### **CONCLUSION**

Interpreting Title IX to include discrimination on the basis of “gender identity” is wholly unsupported by science and based on fraudulent research built on records of criminal serial child sexual abuse. It sanctions procedures that are inimical to the health and well-being of children and safe learning environments.

For these reasons, this Court should uphold Petitioners' policy restricting access to sex-specific facilities based on biological sex.

Dated: May 15, 2017.

Mathew D. Staver  
Anita L. Staver  
Horatio G. Mihet  
LIBERTY COUNSEL  
PO Box 540774  
Orlando, FL 327854  
(407) 875-1776

/s/ Mary E. McAlister  
LIBERTY COUNSEL  
PO Box 11108  
Lynchburg, VA 24506  
(407) 875-1776  
[court@lc.org](mailto:court@lc.org)

**CERTIFICATE OF COMPLIANCE WITH  
FEDERAL RULE OF APPELLATE PROCEDURE 32(a)(7)(C)**

I hereby certify that this brief complies with the type-face and volume limitations set forth in Federal Rule of Appellate Procedure 32(a)(7). The brief contains 6,483 words.

/s/ Mary E. McAlister  
Mary E. McAlister



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically on May 15, 2017 via the Court's CM/ECF system.

Service will be effectuated upon all parties and counsel of record via the Court's electronic notification system.

/s/ Mary E. McAlister  
Mary E. McAlister