**No. 25-1341**

# In the United States Court of Appeals for the Tenth Circuit

JOSEPH AND SERENA WAILES, *et al.*,

*Plaintiffs-Appellants*,

v.

JEFFERSON COUNTY PUBLIC SCHOOLS AND JEFFERSON COUNTY PUBLIC SCHOOLS BOARD OF EDUCATION,

*Defendants-Appellees*.

On Appeal from the U.S. District Court for the District of Colorado, No. 1:24-cv-02439-RMR, Hon. Regina M. Rodriguez, District Judge

## BRIEF OF DO NO HARM, INC. AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS

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# TABLE OF CONTENTS

**Page**

# TABLE OF AUTHORITIES

**Cases** **Page(s)**



**Other Authorities**

## INTEREST OF *AMICUS CURIAE*

Do No Harm, Inc., is a nonprofit membership organization that includes over 50,000 physicians, nurses, medical students, patients, and policymakers. Do No Harm is committed to ensuring that the practice of medicine is driven by scientific evidence rather than ideology. In recent years, the endorsement of biology-denying medicine, euphemistically known as "gender affirming care," has become more common. Do No Harm has developed a database demonstrating that nearly 14,000 minors were subject to biology-denying interventions in the United States between 2019 and 2023. *See* Press Release, Do No Harm, Do No Harm Launches First National Database Exposing the Child Trans Industry (Oct. 8, 2024), https://perma.cc/JW24-3J6V.

There is no reliable evidence that "gender affirming care" has any benefit. This lack of evidence extends to so-called "social transitioning," which often consists of actions taken to "live as" the opposite sex—such as using facilities reserved for members of the opposite sex. Because part of Do No Harm's mission is to ensure that courts have a proper understanding of the lack of evidence for these medical interventions, Do No Harm submits this brief[1] for the Court's consideration.

[1] All parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

## INTRODUCTION

Scientific facts do not change with the shifting winds of cultural ideology. Human beings, like every other mammal, are divided into two sexes—male and female. This binary division is based not on outdated stereotypes but rather biological realities. And that division has consequences—both medically and socially. Gender identity, in contrast, is a *psychological* concept. It refers to an individual's perception of himself or herself. And it can be determined only by asking an individual about it.

Some people may experience a perceived inconsistency between their sex and their gender identity. This perception can lead to psychological distress, which may be clinically diagnosed as "gender dysphoria." Practitioners of so-called "gender affirming care" advocate treating this distress by "socially transitioning" (changing pronouns, dress, and the facilities one uses), "medically transitioning" (using puberty blockers and cross-sex hormones), and "surgically transitioning" (surgically removing sex organs and replacing them with tissue designed to replicate sex organs of the opposite sex).

There is no reliable evidence that any of these interventions help treat gender dysphoria. Under the principles of evidence-based medicine, the most reliable form of medical evidence is a "systematic review." And with respect to socially transitioning—which would include staying in rooms reserved for members of the

opposite sex—the leading systematic review has concluded there is no reliable evidence for the proposition that a social transition will help a minor struggling with gender dysphoria. Indeed, there is serious concern that a social transition could *worsen* a minor's gender dysphoria and thus increase the likelihood that the minor will go on to take more intrusive interventions, such as puberty blockers, cross-sex hormones, and surgeries.

The district court's decision and Appellees' (Jeffco's) arguments below in support of that decision rest on serious scientific errors. First, the district court essentially outsourced its analysis to a host of ideologically motivated medical interest groups by grounding its analysis in an amicus brief filed *seven years ago*. Second, Jeffco relied on a declaration submitted by Dr. Jack Turban, who has repeatedly demonstrated a disregard for basic principles of medical evidence in his unwavering commitment to "gender affirming care." The district court's decision is wrong, and Jeffco has no scientific foundation for its argument that this decision should be affirmed. The Court should reverse.

## ARGUMENT

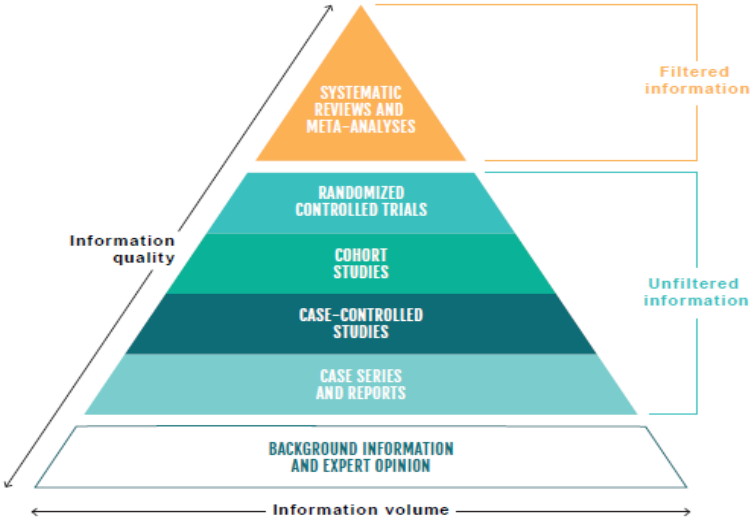
### I. There Is No Reliable Evidence That A "Social Transition" Improves Mental Health.

The highest form of medical evidence is a "systematic review," which is a structured research process permitting a full assessment of all the evidence on a given topic. Here, the leading systematic reviews on the topic of social transitioning

have concluded there is no reliable evidence to show that it has any benefit. Moreover, there is serious concern that a social transition could *worsen* a minor's gender dysphoria and thus increase the likelihood of the minor seeking out even more intrusive and dangerous interventions such as puberty blockers, cross-sex hormones, and surgery. Jeffco thus has no reliable evidence to support its contention that its policy serves to protect the mental health of minors.

### A. Under The Principles Of Evidence-Based Medicine, Systematic Reviews Are The Highest Form Of Medical Evidence.

The principles of evidence-based medicine guide clinicians in determining whether particular medical evidence is reliable. *See* Gordon Guyatt et al., *Users' Guides to the Medical Literature: Essentials of Evidence-Based Clinical Practice* 10, JAMAEVIDENCE (3d ed. 2015), https://perma.cc/H46Z-NKEC ("Evidence-Based Medicine User Guide") (Evidence-based medicine "provides guidance to decide whether evidence is more or less trustworthy."). One principle of evidence-based medicine is the hierarchy of medical evidence with "systematic reviews" at the top. *See Independent Review of Gender Identity Services for Children and Young People: Final Report* at 55 fig. 5, NAT'L HEALTH SERV. ENG. (Apr. 2024) ("Cass Review").




*See id.*; *see also* Evidence-Based Medicine User Guide at 15 fig. 2-3.

As the pyramid shows, the following types of medical evidence are arranged in descending order of reliability—with the most reliable form (systematic reviews) at the top and the least reliable (clinical experience) at the bottom. "When searching for evidence to answer a clinical question," then, "it is preferable to seek a systematic review." Evidence-Based Medicine User Guide at 274.

A systematic review involves the "identification, selection, appraisal, and summary of primary studies that address a focused clinical question using methods to reduce the likelihood of bias." *Id.* at 484. The process of conducting a systematic review begins with formulating the relevant question to be researched and identifying selection criteria for relevant studies. *See id.* at 274-75. Then "reviewers will conduct a comprehensive search of the literature in all relevant medical databases, which typically yields a large number of potentially relevant titles and

abstracts." *Id*. "They then apply the selection criteria to the titles and abstracts, arriving at a smaller number of articles that they retrieve." *Id.* at 275.

"Having completed the culling process, the reviewers assess the risk of bias of the individual studies and abstract data from each study." *Id.* This stage of the systematic review process—assessing individual studies for bias—is a critical part of understanding the evidence base for a particular intervention. As a general matter, "bias" in this context means a study's results are a "deviation from the underlying truth because of a feature of the design or conduct of a research study." *Id.* at 422. If the data comes from studies with a high risk of bias, then the data is less reliable. And "[e]ven if the results of different studies are consistent, determining their risk of bias is still important" because "[c]onsistent results are less compelling if they come from studies with a high risk of bias." *Id.* at 283. The end result of a systematic review is a study of studies—a comprehensive look at the evidence on a given question that accounts for the reliability of the studies forming the evidence base.

### B. Systematic Reviews Have Determined There Is No Reliable Evidence That A "Social Transition" Improves Mental Health.

As the U.S. Department of Health and Human Services recently explained, there are two systematic reviews "evaluating the impact of social transition." U.S. DEP'T OF HEALTH & HUM. SERVS., TREATMENT FOR PEDIATRIC GENDER DYSPHORIA: REVIEW OF EVIDENCE AND BEST PRACTICES at 89, (Nov. 19, 2025), https://perma.cc/42SB-BH3S ("HHS Report"). "The results" of these two systematic

reviews show "that the impact of social transition on long-term [gender dysphoria], psychological outcomes and well-being, and future treatment decisions such as hormones or surgeries remains poorly understood." *Id.*

One of the systematic reviews identified by HHS was conducted in support of the Cass Review, which was commissioned by the U.K.'s National Health Service. As part of that process, researchers from York University conducted a series of systematic reviews for questions related to the treatment of gender dysphoria in minors. One of those reviews assessed the reliability of the evidence on outcomes for social transition of minors. *See* Ruth Hall et al., *Impact of Social Transition in Relation to Gender for Children and Adolescents: A Systematic Review*, 109 ARCHIVES DISEASE CHILDHOOD s12 (2024), https://perma.cc/BM3V-C7NE ("Hall Review"). This review analyzed 11 existing studies regarding the outcomes for minors exposed to a social transition. *Id.* at s13. The researchers then used a validated instrument to assess the quality of these studies and synthesized the data across the studies. *Id.*

The researchers concluded that the practice of "socially transitioning" a minor was *not* supported by the evidence. Specifically, they stated that there "is limited, low-quality evidence on the impact of social transition for children and adolescents experiencing gender dysphoria/incongruence." *Id.* at s17. And the researchers therefore warned that healthcare professionals "should acknowledge the lack of

robust evidence of the benefits or harms of social transition when working with children, adolescents and their families." *Id.*

Further, the researchers noted that socially transitioning can potentially alter a child's understanding of his or her sex and thus *worsen* gender dysphoria. They explained that socially transitioning is "seen as a significant intervention which may alter the course of gender development with medical and surgical interventions being sought by children whose gender dysphoria/incongruence might not have otherwise persisted beyond puberty." *Id.* at s12-s13. "The concern then is that if children undergo an early social transition they may find it difficult to socially revert to their former gender." *Id.* at s17. "By extension, some children may also then unnecessarily pursue medical and surgical interventions, so raising concerns about iatrogenic harm"—*i.e.*, the phenomenon of treatment worsening a patient's condition. In sum, no reliable evidence suggests that socially transitioning a minor will improve the minor's gender dysphoria, and some evidence suggests a social transition may actually *worsen* it.

Because there is no reliable evidence that a "social transition" improves the mental health of minors, Jeffco has no scientific basis for its policy. While Jeffco asserted below that it "has a compelling interest in avoiding the real and meaningful harms to its transgender students that Plaintiffs' policy would create," App.164, that

assertion is supported by no reliable evidence as demonstrated by the systematic reviews discussed above.

## II. The Court Should Not Permit Ideologically Motivated "Experts" Or Medical Interest Groups To Set The Constitutional Standard.

Below, both the district court and Jeffco relied on flawed and unsound evidence. First, the district court's tailoring analysis rested almost exclusively on a Third Circuit decision that, in turn, rested on a seven-year old amicus brief submitted by politicized medical interest groups. Jeffco, for its part, relied on a declaration that contained a flawed scientific analysis, which is little surprise given that its author, Dr. Jack Turban, has a history of ignoring the scientific evidence in his apparent quest to ensure that any child who wants a gender transition will get one.

### A. The Court Below Outsourced Its Analysis To Politicized Medical Interest Groups.

The district court's tailoring analysis essentially parroted material from a Third Circuit opinion in 2018. *See* App.701-02 (quoting at length *Doe ex rel. Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 528-29 (3d Cir. 2018)). The scientific findings in that opinion, in turn, relied on an amicus brief submitted by a host of medical organizations. *See Boyertown*, 897 F.3d at 523 & nn. 16-17 (citing Br. for *Amici Curiae* American Academy of Pediatrics, American Medical Association, et al. at 17-18 ("Medical Interest Group Br.")). As an initial matter, as the Supreme Court has explained, "the position of the American Medical Association" and other

medical interest groups may be relevant to a "legislative committee," but it does not "shed light on the meaning of the Constitution." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 272-73 (2022) (cleaned up). Moreover, the groups that filed that brief—which the Third Circuit and the district court essentially accepted as determining the constitutional standard—are groups whose decisions are driven by ideology, not science. Indeed, the Medical Interest Group *Amici* relied on by the Third Circuit—and thus the court below—consist almost entirely of repeat players who issue public policy statements on issue after issue that bear no relation to their purported expertise. Name a hot-button social issue, and they have issued formal positions on it.

a. Critical Race Theory? Check. *See Anti-Racism Resource Library*, AM. ACAD. OF CHILD & ADOLESCENT PSYCH. (Nov. 2024), https://perma.cc/Y5B6-RXNF; *Call for Papers on the Impacts of Structural and Social Determinants of Health, Including Multiple Forms of Racism and Minoritization, in Child and Adolescent Mental Health*, J. AM. ACAD. OF CHILD & ADOLESCENT PSYCH. (2023), https://perma.cc/NP4C-37EE (calling for papers on "micro-aggressions" and "multiple forms of racism"); Am. Acad. of Pediatrics Bd. of Dirs., *Truth, Reconciliation, and Transformation: Continuing on the Path to Equity*, 146 PEDIATRICS 449, 449, 451 (2020), https://perma.cc/BYW5-XU9V (reiterating organization's belief that "racism [i]s a core social determinant of health and a driver

of health inequities" and stating its commitment to combatting "structural and systemic anti-Black racism" through its "equity agenda").

b. Gun Control? Check. *See American Academy of Nursing's Statement: Firearm Safety and Violence Prevention*, Am. Acad. of Nursing (Nov. 17, 2022), https://perma.cc/4BNS-UZDE; *Policy Statement on Children and Guns*, AM. ACAD OF CHILD & ADOLESCENT PSYCH. (Oct. 28, 2000), https://perma.cc/CWJ9-9UYU; Scott C. Denne et al., *Funding for Gun Violence Research: The Importance of Sustained Advocacy By Academic Pediatricians*, 87 PEDIATRIC RSCH. 800 (2020), https://perma.cc/9YRD-3VPN (from the Association of Medical School Pediatric Department Chairs and other groups); Robert M. McClean et al., *Firearm-Related Injury and Death in the United States: A Call to Action From the Nation's Leading Physician and Public Health Professional Organizations*, 171 ANNALS OF INTERNAL MED. (2019), https://perma.cc/562U-C8LM (from the American Academy of Pediatrics and other groups); Letter from Susan Bostwick, President, Acad. Pediatric Ass'n, et al., to Stephanie Murphy, Representative, House of Representatives (Apr. 2, 2018), https://perma.cc/VCQ6-QYE6 (from the Association of Medical School Pediatric Department Chairs and other groups); Letter from AANS/CNS Joint Section on Neurotrauma & Critical Care et al., to Patty Murray, Chair, U.S. Senate

Comm. on Appropriations, et al. (June 3, 2024), https://perma.cc/ALU6-P8R3 (from the Pediatric Endocrine Society and other groups).

c. Immigration? Check. *See* Letter from the Am. Pediatric Ass'n et al., to Kristi Noem, U.S. Sec'y Dep't of Homeland Sec. (Mar. 25, 2025), https://perma.cc/H29Z-8U66 (stating the position of the American Academy of Pediatrics and other groups as to whether particular detention procedures are "necessary"); *AACAP Calls for Swift Congressional Passage of the "Dream Act"*, AM. ACAD. OF CHILD & ADOLESCENT PSYCH. (May 21, 2018), https://perma.cc/UH27-S6A3; *AACAP Statement on DACA Rescission*, AM. ACAD. OF CHILD & ADOLESCENT PSYCH. (Sep. 2017), https://perma.cc/XGS5-7D39; Press Release, Acad. Pediatric Ass'n et al., Leading Pediatric Medical Organizations Respond to Recent Executive Orders Impacting Immigrants and Refugees (Feb. 14, 2017), https://perma.cc/J29C-EVZ9 (offering, in part, a policy position on border defenses from the American Academy of Pediatrics, the Association of Medical School Department Chairs, and other groups).

d. Climate Change? Check. *See Climate Change and Climate Distress in Youth*, AM. ACAD. OF CHILD & ADOLESCENT PSYCH. (Mar. 2024), https://perma.cc/T4C3-EBNX; Jianghong Liu et al., *Policy Brief on Climate Change and Mental Health/Well-Being,* 68 NURSING OUTLOOK 517 (2020), https://perma.cc/C2CU-9NAN (from American Academy of Nursing); Samantha

Ahdoot et al., *Climate Change and Children's Health: Building a Healthy Future for Every Child*, 153 PEDIATRICS 75 (2024), https://perma.cc/5KLL-LMWJ; Maya Earls, *Major Medical Groups Release Call to Action on Climate Change*, SCI. AM. (June 25, 2019), https://perma.cc/FVL5-GGQM (signed by the American Academy of Pediatrics and other groups).

e. Affirmative Action? Check. *See* Letter from Am. Coll. of Physicians et al., to John Kennedy, U.S. Senator, and Eric Schmitt, U.S. Senator (Apr. 16, 2024), https://perma.cc/3NHQ-ZWQG (American Academy of Pediatrics and other groups arguing for "considering race and ethnicity" in selecting a student body); Br. for the Ass'n of Am. Med. Colls. et al. as *Amici Curiae* Supporting Respondents, *Students For Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, Nos. 20-1199, 21-707, 2022 WL 3036400 (U.S. July 28, 2022) (joined by the American Medical Association, the American Academy of Pediatrics, and other groups).

f. Nuclear Weapons? Remarkably, yes. The American Medical Association has issued its position on "the development, testing, production, stockpiling, transfer, deployment, threat and use of nuclear weapons." *See AMA Urges Elimination of Nuclear Weapons*, AM. MED. ASS'N (Nov. 18, 2015), https://perma.cc/TX5G-H24A. Almost unbelievably, the AMA is not the only *amicus* to set forth its nuclear proliferation policy. Indeed, members of the American Academy of Pediatrics have even promulgated their view on "the pediatrician's role"

in "taking a stand against nuclear proliferation." Thomas B. Newman, *Taking a Stand Against Nuclear Proliferation: The Pediatrician's Role*, 121 PEDIATRICS e1430, e1430 (2008), https://perma.cc/9Q58-TVGT (cleaned up).

This Court should not permit these medical interest groups to set the constitutional standard. "[I]f our history has taught us anything, it has taught us to beware of elites . . . bearing theories." *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 267 (2023) (Thomas, J., concurring) (lamenting the nation's history of racial discrimination based on social theories advanced by their proponents); *see also Dobbs*, 597 U.S. at 272-73 (criticizing reliance on "the position of the American Medical Association" when determining "the meaning of the Constitution" (quotations omitted)); *L.W. v. Skrmetti*, 83 F.4th 460, 479 (6th Cir. 2023) ("[E]xpert consensus, whether in the medical profession or elsewhere, is not the North Star of substantive due process, lest judges become spectators rather than referees in construing our Constitution."); *Otto v. City of Boca Raton*, 981 F.3d 854, 859 (11th Cir. 2020) (explaining that "institutional positions [of medical associations] cannot define the boundaries of constitutional rights"); Ian Kingsbury et al., *What Rank-and-File Physicians Think About DEI and Pediatric "Gender-Affirming Care": Evidence from Florida*, DO NO HARM (Nov. 2025), https://perma.cc/4VM8-4KSX (demonstrating that medical groups such as the AMA and AAP take positions that are at odds with their membership). *Amicus* Do No Harm

does not need to overstate the point: medical interest groups, like all other interest groups, are of course entitled to take policy positions on any range of topics—including those beyond the groups' expertise (such as nuclear armament). But given the track record of the Medical Interest Group *Amici* cited by the Third Circuit and thus subsequently relied upon by the district court, *see* App.701-02, it is hard to take seriously the proposition that those *amici* came forward to offer their humble opinion regarding the "science" and then returned to their clinics. Rather, their *modus operandi* appears to be reaching a policy decision first and then backfilling the science to achieve their preferred policy outcome.

Therefore, this Court should not hesitate to say what the law is irrespective of what politically motivated medical interest groups insist—no matter how many of them line up to add their name to yet another recycled brief. Under the correct application of the Constitution and Supreme Court precedent, Jeffco's policy does not satisfy strict scrutiny.

### B. Jeffco's Expert Below, Dr. Jack Turban, Submitted A Characteristically Flawed Declaration.

Below, Jeffco relied on the declaration of Dr. Jack Turban—a serial expert in favor of gender transitions for kids. Dr. Turban is "regularly criticized for producing deeply flawed research." Leor Sapir, *The Deposition of Jack Turban: One of America's Leading Gender Clinicians Proves That He Doesn't Understand Evidence-Based Medicine*, CITY J. (Nov. 13, 2023), https://perma.cc/DGW4-8BWD;

*see also* Leor Sapir, *The Distortions in Jack Turban's Psychology Today Article on 'Gender Affirming Care,'* CITY J. (Oct. 7, 2022), https://perma.cc/AM2J-4SEA. His research failings could arguably be the product of his remarkable view that a minor's gender identity is a "transcendent feeling" that cannot be put into words.

Last year, Turban authored a New York Times op-ed to explain to the Times' readership that "[t]he most basic part of gender identity" is an individual's "transcendent sense of gender." Jack Turban, *I'm a Psychiatrist. Here's How I Talk to Transgender Youth and Their Families About Gender Identity*, N.Y. TIMES (July 8, 2024), https://perma.cc/EQ69-T44X. He elaborated: "In a way that goes beyond language, people often just *feel* male or female, and some more strongly than others." *Id.* (emphasis in original). And although Turban believes "it's hard to describe this transcendent feeling in words," he stressed that minors can express this feeling in other ways. *Id.* For example, he explained that some of his "young patients draw themselves as a certain gender and have a 'wow, this is me' feeling." *Id.*

The declaration of Dr. Turban that Jeffco relied on below is just as weak as his pop-psychology pseudoscience in the New York Times editorial pages. His primary conclusion was that "[a]ny policy that risks 'outing' (i.e., revealing a student's transgender status) a student against their will thus carries the risk of increased bullying and downstream adverse mental health outcomes including anxiety, depression, and suicidal ideation." App.260. As an initial matter, no Plaintiff

is asking Jeffco to "out" anyone; they are merely asking to be placed in a room with children of the same sex. Jeffco could easily offer this exception for the Plaintiffs without revealing any student's "transgender status" or any student's request for an exception from its policy of housing students based on "gender identity."

Separately, the studies that Dr. Turban relied on to refute this straw man are equally flawed. For example, eight of the nine "studies" that Dr. Turban relies on for the proposition that Jeffco's policy will protect students' mental health are based solely on *online surveys*. *See* App.259-63 & nn.5-19. That is as unscientific as it sounds. Indeed, surveys do not even appear on the pyramid of evidence because this type of "research" is subject to numerous potential biases as to make it wholly unreliable. These surveys certainly do not undercut the finding of systematic reviews that there is no reliable evidence showing that social transition results in improved mental health.

Dr. Turban's reliance on a 2019 *Pediatrics* study is illustrative. App.261-62 (citing Gabriel R. Murchison et al., *School Restroom and Locker Room Restrictions and Sexual Assault Risk Among Transgender Youth*, 143 PEDIATRICS 1 (Mar. 5, 2019), https://perma.cc/AB38-PB4E). He cites this article for the proposition that "trans-inclusive school facility policies . . . are associated with lower rates of sexual assault victimization against transgender students." *Id.* The study relied on data from an anonymous survey in which participants "were recruited through social media

posts and were offered Human Rights Campaign-branded wristbands" in return for participating. Murchison, *supra*, at 2.

On its face, this design suffers from serious risk of bias. Most notably, the survey is subject to bias from the "good subject effect," which is bias resulting from a participant's desire to be helpful by confirming the researcher's hypothesis. *See* Austin Lee Nichols & Jon K. Maner, *The Good-Subject Effect: Investigating Participant Demand Characteristics*, 135 J. Gen. Psych. 151 (2008), https://perma.cc/K2TV-D9AW. Given that participants' engagement in the survey was based in part on receiving "Human Rights Campaign [HRC]-branded wristbands," Murchison, *supra*, at 2, it is highly likely the participants supported the HRC's mission and thus would desire to answer the questions in a way that would be helpful to the organization—leading to the "good subject effect." And for an organization that (among other things) hosts a map to indicate so-called "Anti-Transgender Bathroom Bans,"[2] it is fairly obvious that linking "lower rates of sexual assault victimization" to "trans-inclusive school facility policies" would further HRC's mission.

Finally, Dr. Turban's cherry-picked studies fail to account for all the relevant evidence. For example, Dr. Turban highlights a study that suggests that "transgender

[2] *See Anti-Transgender Bathroom Bans*, HUM. RTS. CAMPAIGN (Nov. 14, 2024), https://perma.cc/NEM9-A5E5.

students" experience "double the rate of bullying experienced by cisgender students." App.259. But a study conducted by Finland's National Institute for Health and Welfare found that, while students identifying as transgender reported higher rates of being bullied, the data *also* demonstrated that "transgender identity was generally associated with *perpetrating bullying* and that the association was *stronger* than that of transgender identity and being bullied." *See* Elias Heino et al., *Transgender Identity Is Associated with Bullying Involvement Among Finnish Adolescents*, 11 FRONTIERS IN PSYCH. 1, 8 (2021), https://perma.cc/V3YD-N6BN (emphases added). Thus, although there was an association between transgender students *being* bullied, there was a *stronger* association between transgender students *perpetrating bullying*. Dr. Turban made no mention of this data in his declaration below.

In sum, Jeffco cannot rehab the district court's errors by citing the Turban declaration. That declaration—of a piece with Dr. Turban's broader work—ignores evidence contrary to his conclusions, makes unsupported inferences from the existing data, and relies primarily on internet surveys, which are not a recognized form of reliable medical evidence. No reliable medical evidence supports Jeffco's policy.

## CONCLUSION

For these reasons, the Court should reverse the decision below.

Dated: November 26, 2025

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This document complies with the type volume limit of FED. R. APP. P. 32(G) because it contains 4,156 words, excluding the parts of the motion exempted by FED. R. APP. P. 32(f).

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Dated: November 26, 2025

*/s/ David H. Thompson*
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