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 United States District Court
for the District of Colorado
Case No. 1:24-cv-02439-RMR-NRN

AMICI CURIAE BRIEF OF FLORIDA, 20 OTHER STATES, AND THE ARIZONA LEGISLATURE IN SUPPORT OF APPELLANTS

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INTEREST OF *AMICI CURIAE*

Amici States are interested in promoting the health and welfare of their citizens. To this end, Amici States regulate the interventions that may be performed on children and adolescents experiencing gender dysphoria. These regulations, however, are often challenged on the assertion that so-called "gender affirming care" leads to positive mental health outcomes for children and adolescents. The district court assumed as much in dismissing Appellants' complaint. And such rulings are often cited as persuasive or binding authority by plaintiffs challenging Amici States' regulation of pediatric sex interventions. Amici States are therefore interested in ensuring that this Court is aware that there is no credible evidence linking sex interventions, including "social transition," to positive mental health outcomes for children and adolescents.

ARGUMENT

After making the legal determination that rational basis review applies to Appellants' First Amendment claims, the district court proceeded to the question of whether the overnight accommodations provisions in Appellees' Transgender Students Policy ("Policy") are rationally related to a legitimate governmental interest. Finding the Policy rationally

related to the protection of students' psychological wellbeing, the district court dismissed the complaint under Rule 12(b)(6). This finding is inconsistent with this Court's precedent on the Rule 12(b)(6) standard and the current body of knowledge on pediatric gender dysphoria.[1]

I. The District Court Disparately Applied this Court's Precedent on the Rule 12(b)(6) Standard.

The district court's order unfairly denied Appellants—Christian parents and children holding traditional views about human sexuality—the benefit of this Court's precedent on the Rule 12(b)(6) standard.

In this Circuit, the rational basis standard, though defendant-friendly, "cannot defeat the plaintiff's benefit of the broad Rule 12(b)(6) standard." *Brown v. Zavaras*, 63 F.3d 967, 971 (10th Cir. 1995) (quoting *Wroblewski v. City of Washburn*, 965 F.2d 452, 459 (7th Cir. 1992)). As explained in *Brown v. Zavaras*:

> The rational basis standard requires the government to win if any set of facts reasonably may be conceived to justify its classification; the Rule 12(b)(6) standard requires the plaintiff to prevail if relief could be granted under any set of facts that could be proved consistent with the allegations. . . . The latter standard is procedural, and simply allows the plaintiff to

[1] Appellants argue for more demanding scrutiny than rational basis review. Opening Brief of Appellants, ECF 16 at 32–38. This brief argues that the district court's order was premature under this Court's precedent regardless of the applicable level of scrutiny.

> progress beyond the pleadings and obtain discovery, while the rational basis standard is the substantive burden that the plaintiff will ultimately have to meet to prevail on [the constitutional] claim.

Id. (quoting *Wrobleski*, 965 F.2d at 459–60). Under this standard, rational basis cases should proceed to fact-finding unless plaintiffs' claims are disproven by their own allegations. *See Wroblewski*, 965 F.2d at 460 ("A rational basis for the City's policy . . . is directly supported by the allegations in the complaint.").

Take this Court's opinion in *Dias v. City & County of Denver*. The plaintiffs there argued that a city ordinance banning ownership of pit bulls violated the Due Process Clause of the Fourteenth Amendment. 567 F.3d 1169, 1172 (10th Cir. 2009). The city moved to dismiss under Rule 12(b)(6). *Id.* at 1175. Concluding the ordinance did not burden a fundamental liberty interest and was rationally related to a legitimate governmental interest, the district court granted the motion. *Id.* at 1176.

This Court unanimously reversed. No one contested that the city had a "legitimate interest in animal control." *Id.* at 1183. However, "the plaintiffs ha[d] alleged that the means by which Denver [] chose[] to pursue that interest [were] irrational." *Id.* Specifically, the plaintiffs "contend[ed] that there [was] a lack of evidence that pit bulls as a breed pose

a threat to public safety or constitute a public nuisance, and thus, that it [wa]s irrational for Denver to enact a breed-specific prohibition." *Id.* Plaintiffs further argued "that although pit bull bans sustained twenty years [prior] may have been justified by the then-existing body of knowledge, the state of science in 2009 [was] such that the bans [were] no longer rational." *Id.* Therefore, the Court found that, "[w]ithout drawing factual inferences against the plaintiffs, the district court could not conclude at this early stage in the case that the Ordinance was rational as a matter of law." *Id.* at 1184. This Court continues to cite *Dias* as good law. *See, e.g., Griffith v. El Paso Cnty.*, 129 F.4th 790, 815 (10th Cir. 2025) ("[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" (quoting *Dias*, 567 F.3d at 1178)).

The resemblance between *Dias* and the case at hand is striking. As in *Dias*, Appellants challenged the action of a political subdivision under the federal constitution. As in *Dias*, Appellees moved to dismiss under Rule 12(b)(6). As in *Dias*, the district court granted the motion based on its determination that the action was rationally related to a legitimate state interest. As in *Dias*, no facts alleged by Appellants support a

rational basis for the challenged action.

Consistent with *Dias*, this Court must reverse. The district court found the Policy rationally related to Appellees' legitimate interest in protecting gender dysphoric students' "psychological well-being."[2] But the question of whether rooming students based on gender identity *without exception* leads to more positive mental health outcomes for gender dysphoric students than rooming students based on gender identity *with reasonable accommodations for students who, due to their faith or sense of privacy, wish not to room with members of the opposite sex*—as well as the more fundamental question of whether it is rational to treat a child's gender dysphoria by creating a gender delusion—is no less fact-intensive than the question of whether pit bulls pose more danger than other dog breeds.

To be clear, Amici States' description of this Court's precedent regarding the relationship between rational basis review and the Rule 12(b)(6) standard should not be construed as an endorsement of that

[2] Appellants' Appx., ECF 17 at 700–701. The district court also found that the Policy "eliminat[es] discrimination on the basis of sex and transgender status." *Id.* As explained by Appellants, the Policy does no such thing. Opening Brief of Appellants at 38.

precedent. But so long as this Court adheres to that precedent, it must do so evenhandedly, ensuring that Christians with traditional views about human sexuality are not treated as second-class plaintiffs.

II. The District Court's Determination Is Inconsistent with the Current Body of Knowledge on Pediatric Gender Dysphoria.

The district court did not cite any medical research for its finding that the Policy, as applied to Appellants, is rationally related to protecting the psychological wellbeing of gender dysphoric students. Rather, the court relied on a pair of sister circuit opinions.[3] However, those cases were decided on an obsolete "body of knowledge." *Dias*, 567 F.3d at 1183.

The past two years have seen a seismic shift in the "state of science" on pediatric gender dysphoria. *Id.* Research on the phenomenon was previously "dominated" by guidelines developed by the World Professional Organization for Transgender Health (WPATH).[4] WPATH began publishing its "Standards of Care for the Health of Transexual People"

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[3] Appellants' Appx. at 700–702 (citing *Doe by and through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3rd Cir. 2018) and *Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020)).

[4] Jo Taylor et al., *Clinical guidelines for children and adolescents experiencing gender dysphoria or incongruence: a systematic review of guideline quality (part 1)*, 109 Arch. Dis. Child s65, s71 (2024).

("Standards of Care" or "SOC") in 1979.[5] While the fifth version addressed adolescents, "assum[ing] a gender role consistent with [the child's] identity"—that is, "attend[ing] school using a name and clothing opposite to his or her sex of assignment"—was not presented as a treatment until the SOC-6 were published in 2001.[6] The SOC-7, published in 2011, raised the option of "social transition" before puberty and warned that refusing timely intervention could "prolong gender dysphoria."[7]

Pediatric gender dysphoria diagnoses began to skyrocket in the early 2020s. States responded. Arkansas passed the first ban on pediatric sex interventions in 2021, with Alabama and Arizona close behind.[8] In April 2022, Florida's Department of Health issued guidance on treating gender dysphoria for children and adolescents. The Department of

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[5] *History and Purpose*, WPATH, https://wpath.org/publications/soc8/soc8-history/.

[6] Walter Meyer III et al., *Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders, Sixth Version*, 13 J. of Psych. & Human Sex 1, 12–13 (2001).

[7] Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7*, 13 Int. J. Transgenderism 165, 176, 178 (2011).

[8] *See* Lindsey Dawson & Jennifer Kates, *Policy Tracker: Youth Access to Gender Affirming Care and State Policy Restrictions*, KFF https://www.kff.org/lgbtq/gender-affirming-care-policy-tracker/ (last accessed Nov. 25, 2025).

Health concluded that, "[d]ue to the lack of conclusive evidence, and the potential for long-term, irreversible effects, . . . [s]ocial gender transition should not be a treatment option for children or adolescents."[9] Based on this guidance, Florida's Agency for Health Care Administration (AHCA) directed the Florida Medicaid program to evaluate whether "gender-affirming care" was consistent with generally accepted professional medical standards. AHCA's final report cited research warning that the majority of cases of childhood onset gender dysphoria desist before adulthood.[10] Thus, "early social transition may increase the likelihood that gender dysphoria will persist."[11]

The Florida Legislature codified the Department of Health's

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[9] *Treatment of Gender Dysphoria for Children and Adolescents*, Fla. Dep't. of Health (Apr. 20, 2022), https://www.floridahealth.gov/_documents/newsroom/press-releases/2022/04/20220420-gender-dysphoria-guidance.pdf.

[10] *See Florida Medicaid Generally Accepted Professional Medical Standards Determination on the Treatment of Gender* Dysphoria, Fla. Agency for Health Care Admin. 14–15 (June 2022) (citing Thomas D. Steensma, *Factors Associated with Desistence and Persistence of Childhood Gender Dysphoria*, 52 J. of Am. Acad. Child & Adolescent Psych 582 (2013)).

[11] James S. Morandini et al., *Is Social Gender Transition Associated with Mental Health Status in Children and Adolescents with Gender Dysphoria?*, 52 Arch. Sex Behav. 1045, 1057 (2023).

recommendations by enacting SB 254 in 2023.[12] By the end of that year, 19 States restricted sex interventions on minors.[13]

WPATH, nonetheless, doubled down. In September 2022, WPATH published an eighth version of the Standards of Care. "Social transition," according to the SOC-8, "can be extremely beneficial" as "[s]ocial transition and gender identity disclosure can . . . reduc[e] gender dysphoria and enhance[e] psychosocial adjustment and well-being."[14] The SOC-8 encourage social transition as early as possible.[15] In fact, the SOC-8 endorse puberty blockers, cross-sex hormones, and breast and genital surgeries (except phalloplasty) as treatments for minors, all without age limit.[16] Relying heavily on the SOC-8, courts enjoined bans on pediatric sex interventions in several States, including Florida.[17]

The tide turned in 2024. Great Britian's National Health Service

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[12] Ch. 2023-90 Fla. Laws (codified at § 456.52(1), Fla. Stat.).

[13] Dawson & Kates, *supra* note 8.

[14] Eli Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 Int. J. Transgender Health s1, s39, s77 (2022).

[15] *See id.* at s45–47

[16] *See, e.g.*, *id.* at s64, s130.

[17] *Dekker v. Weida*, 679 F. Supp. 3d 1271, 1284, 1299 (N.D. Fla. 2023) (calling WPATH's guidelines "the widely accepted standard of care").

(NHS), noticing the surge in pediatric gender dysphoria, called for an independent review "of gender identity services for children and young people."[18] NHS asked Dr. Hillary Cass, a well-respected pediatrician and senior clinician, to oversee the review. NHS also commissioned a series of studies from the University of York.

The "Cass Review," published in April 2024, is widely regarded as one of "the most comprehensive, evidence-based reviews of a medical service from the long history of such independent investigations" in the United Kingdom.[19] With respect to "social transitioning," Dr. Cass stated that "it is important to view [social transition] as an active intervention because it may have significant effects on the child or young person in terms of their psychological functioning and longer-term outcomes."[20] Her report found "no clear evidence that social transition in childhood has *any*" positive mental health outcomes.[21]

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[18] *Treatment of Gender Dysphoria*, Nat'l. Health Serv., https://www.nhs.uk/conditions/gender-dysphoria/treatment/ (last accessed Nov. 25, 2025).

[19] C. Ronny Cheung et al., *Gender medicine and the Cass Review*, 110 Arch. Dis. Child. 1, 2 (2024).

[20] Hillary Cass, *Independent review of gender identity services for children and young people*, Nat'l. Health Serv. 158 (Apr. 2024).

[21] *Id.* at 31 (emphasis added).

To explain the divergence between her findings and those of WPATH, Dr. Cass presented the results of the University of York's appraisal of existing guidelines. Using the Appraisal of Guidelines for REsearch & Evaluation II instrument, the University of York found that the WPATH Standards of Care "lack developmental rigour" and should not be relied upon by healthcare providers.[22] Specifically, the University of York concluded that the guidelines "have not followed the international standards for guideline development" and "described insufficient evidence about the risks and benefits of medical treatment in adolescents, particularly in relation to long-term outcomes. Despite this, [they] then went on to cite this same evidence to recommend medical treatments."[23]

Just as the Cass Review was exposing the SOC-8 as methodologically bankrupt, revelations from internal leaks and litigation discovery exposed the developmental shortcomings as *intentional*. In March 2024, hundreds of WPATH's internal documents and communications were

[22] *Id.* at 27–28 (citing Taylor, *supra* note 4, at s65).
[23] *Id.* at 130.

leaked by an anonymous source.[24] At the same time, the State of Alabama was pulling back the curtain on the SOC-8 through discovery in a case challenging the State's pediatric sex intervention ban.[25]

The leaks and discovery demolished the credibility of the SOC-8. First, they proved that the SOC-8 were commissioned as a means to WPATH's ideological and financial ends. Communications show that the new standards were created to "strengthen [sex intervention advocates'] position in court."[26] As one member put it: "[W]e need[] a tool for our attorneys to use in defending access to care."[27] Others thought "the main argument" for new recommendations was "access/insurance."[28]

Second, the leaked and subpoenaed documents showed that WPATH lied about conflicts of interest. While publicly claiming to comply with recommendations on guideline development from the World Health Organization and the National Academies of Medicine, privately WPATH

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[24] Mia Hughes, *The WPATH Files*, Environmental Progress (Mar. 4, 2024), https://environmentalprogress.org/big-news/wpath-files.

[25] Brief of Alabama as Amicus Curiae Supporting State Respondents, *U.S. v. Skrmetti*, No. 23-477, 2024 WL 4525181 (Oct. 15, 2024) (summarizing documents discovered in *Boe v. Marshall*, 2:22-cv-184 (M.D. Ala.)) ("Brief of Alabama").

[26] Brief of Alabama at *11.

[27] *Id.* at *13.

[28] *Id.* at *18.

knew that "most participants in the SOC-8 process had financial and/or nonfinancial conflicts of interest."[29]

Third, the unearthed communications revealed that WPATH did not follow its professed methodology. The "only evidence [WPATH] had" for its recommendations on children and adolescents came from its "Delphi process"—an internal voting system that purported to establish medical consensus by polling SOC-8 revision committee members.[30] The Delphi process generated the following age minimums: 14 for cross-sex hormones; 15 for mastectomy; 16 for breast augmentation and facial surgery; 17 for metoidioplasty, orchiectomy, vaginoplasty, hysterectomy and fronto-orbital remodeling; and 18 for phalloplasty.[31]

Before publishing, WPATH sent a "completed" draft to Admiral Rachel Levine, then-Assistant Secretary for Health at the U.S. Department of Health and Human Services (HHS).[32] After reviewing the draft, Levine's office contacted WPATH with the concern that "specific minimum ages for treatment," "under 18, will result in devastating legislation for

[29] *Id.* at *27.
[30] *Id.* at *21.
[31] *Id.* at *16–17.
[32] *Id.* at *15.

trans care."[33] Meetings ensued, where Levine and his chief of staff argued that "ages (mainly for surgery) will affect access" and demanded their removal.[34] WPATH initially told Levine that it could not remove the Delphi-approved age minimums.[35] However, days before the SOC-8 were to be published, the American Academy of Pediatrics (AAP) threatened to oppose the SOC-8 if WPATH did not remove the age minimums.[36] As AAP was "a MAJOR organization," and "it would be a major challenge for WPATH" if AAP opposed the SOC-8, WPATH yielded.[37]

There is much more. The leaks and discovery also revealed, for instance, that WPATH suppressed studies it commissioned from Johns Hopkins University.[38] But these examples are sufficient to show that WPATH can no longer be regarded as a legitimate source of information.

HHS said as much earlier this month, when it published "a peer-reviewed study of the medical dangers posed to children from attempts

[33] *Id.* at *17.
[34] *Id.* at *18.
[35] *Id.* at *19.
[36] *Id.*
[37] *Id.* at *20.
[38] *Id.* at *23–34.

to change their biological sex."[39] Based on the Cass Review, the internal leaks, and the Alabama discovery, the HHS Review concluded that the SOC-8 are neither credible nor evidence-based.[40] Instead, they "steer[ed] findings to align with predetermined agendas rather than allowing an independent, evidence-driven process."[41]

As for social transitioning, the HHS Review found no credible evidence linking social transition to positive mental health outcomes for children or adolescents.[42] On the other hand, the HHS Review notes that gender dysphoria's "natural course . . . appears to tend toward resolution absent medical and/or social transition interventions," yet "studies suggest that early social transition is associated with a high rate of persistence of [gender dysphoria]."[43]

CONCLUSION

This Court should reverse the district court's order.

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[39] *HHS Releases Peer-Reviewed Report Discrediting Pediatric Sex-Rejecting Procedures*, HHS (Nov. 19, 2025).

[40] *Treatment for Pediatric Gender Dysphoria Review of Evidence and Best Practices*, HHS 172 (Nov. 19, 2025), https://opa.hhs.gov/sites/default/files/2025-11/gender-dysphoria-report.pdf.

[41] *Id.* at 172.

[42] *Id.* at 89.

[43] *Id.* at 23, 94.

November 26, 2025

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CERTIFICATE OF COMPLIANCE

1. This amicus brief complies with Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f) and Tenth Circuit Rule 32(B), it contains 2,928 words.

2. This amicus brief also complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 29 and 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface in 14-point Century Schoolbook font using Microsoft Word.

/s/ Samuel F. Elliott
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CERTIFICATE OF SERVICE

I certify that on November 26, 2025, I electronically filed this amicus brief with the Clerk of Court using the Court's CM/ECF system, which will send a notice of docketing activity to all parties who are registered through CM/ECF.

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