

No. 18-107

IN THE
Supreme Court of the United States

R.G. & G.R. HARRIS FUNERAL HOMES, INC.,
Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION and
AIMEE STEPHENS,
Respondents.

*On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit*

**BRIEF OF WALT HEYER, JAMIE SHUPE, LINDA
SEILER, HACSI HORVATH, CLIFTON FRANCIS
BURLEIGH, JR., LAURA PERRY, JEFFREY
JOHNSTON, JEFFREY MCCALL AND KATHY
GRACE DUNCAN AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

Amicus Walt Heyer is a man who was diagnosed with gender dysphoria, took hormones and underwent surgery to adopt the physical appearance of the opposite sex, and lived for eight years appearing to be a woman. But those steps did not resolve his problems and he attempted suicide. He was diagnosed with dissociative disorder and was able to resolve his gender dysphoria through psychotherapy to effectively treat the dissociative disorder. His feelings of wanting to be the opposite sex went away, and he was able to return to living with a male appearance and be happy.

Amicus Jamie (“James”) Shupe became America’s first person to secure legal recognition of a non-binary transgender identity when an Oregon judge ruled that Mr. Shupe's sex is non-binary. Mr. Shupe's non-binary gender transition became the driver for over a dozen states to adopt an X marker in addition to male and female on driver licenses. The non-binary gender identity transition was the second gender identity transition for Mr. Shupe. He first identified as a transgender woman and had legal recognition as female despite being biologically male.

¹ Parties to this case received timely notice of the intent to file this brief and consented to its filing. *Amici* state that no counsel for a party authored this brief in whole or in part, and no persons other than the *amici* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

Doctors authored numerous gender identity transition letters for Mr. Shupe despite him being rated as 100% disabled for severe mental health issues by the Department of Veterans Affairs. Originally led to believe he was suffering from gender dysphoria, Mr. Shupe has since been diagnosed with a paraphilic sexual disorder. Regretting the two gender identity transitions that did not improve his mental health as promised by physicians, Mr. Shupe has reclaimed his male identity.

Publicly acknowledging that he is male and that his sex changes were a legal fiction has led to Mr. Shupe being shamed by the LGBTQ community for his beliefs that sex is binary and that those who struggle with gender identity issues need therapy and compassion, not to identify as a third gender.

Amicus Hacsí Horvath is a male who identified as a transgender female for over 12 years. Mr. Horvath is an expert in clinical epidemiology and researcher at USC and now warns people of the risks and dangers associated with sex-reassignment surgery.

Amicus Clifton Francis (“Billy”) Burleigh, Jr. had reassignment surgery to identify as a transgender female. Mr. Burleigh decided to detransition 7 years later because he believes the surgery was a bad decision.

Amicus Laura Perry received hormone treatment and undergone a double mastectomy. Ms. Perry later became depressed and suicidal. Ms. Perry was asked to create a website for her mom’s new Bible study group and since then discovered God.

Amicus Jeffrey Johnston transitioned from male to identifying as female for over 20 years. Mr. Johnston realized God did not want him to identify as a female, and he transitioned back to identifying as male.

Amicus Jeffrey McCall identified as gay from the age of 15 to the age of 27. Mr. McCall adopted a female identity from age 27 to 29. He found faith in God and now advocates. He is the founder of Freedom March – a march to celebrate people leaving the LGBTQ community due to the transformative power of the Holy Spirit.

Amicus Kathy Grace Duncan transitioned from female to identifying as male for 11 years. Her mother was abused by her father, and her father adored her little brother. She believed that women were weak and, therefore, desired to be a man. She took hormones and had a double-mastectomy. After developing faith in Christ, she experienced healing and found the courage to live as God created her.

Amicus Linda Seiler did not experience attraction to males for most of her life, and she contemplated sex reassignment surgery as early as the fourth grade. But ultimately, Ms. Seiler never took hormones or had reassignment surgery. She continued to experience the urge to transition even after finding salvation in Christ. Pastors and fellow Christians led her through the process of healing, and she became a campus pastor at a church.

Amici have a particular interest in the outcome of the instant case because of their own experiences.

Amicus Walt Heyer is particularly interested because he informally mentors people who regret attempting to identify as a person of the opposite sex. Such people typically attempt to do so by doing things such as adopting a different name consistent with the opposite sex and using the corresponding pronouns, wearing clothing and hairstyles typically associated with the opposite sex, using sex-segregated spaces and engaging in sex-segregated activities that correspond to the opposite sex, and/or by changing their appearance to that of the opposite sex through surgery and/or hormones. Mr. Heyer encouraged individuals who identified as or desired to identify as the opposite sex to share their personal stories in this brief. Walt Heyer, James Shupe, Linda Seiler, Hacsí Horvath, Billy Burleigh, Laura Perry, Jeffrey Johnston, Jeffrey McCall and Kathy Grace Duncan have all seen firsthand the harm that can come from encouraging people down that path. This brief is submitted to illustrate these points to the Court and demonstrate why this Court should reverse the judgment below.

SUMMARY OF ARGUMENT

Amici make the point in this brief that sex is binary, and the definition of “sex”, particularly as defined in Section 703 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2, refers to male and female as grounded in biology—it is binary, fixed at conception, and objectively verifiable. Differences exist between males and females at conception at the biochemical and cellular levels and result directly from the defining genotypic difference between male and female mammals: an XY (male) sex chromosome

constitution versus an XX (female) sex chromosome constitution. Every cell of a male is male, and every cell of a female is female. The distinction between the two sexes is not limited to the appearance of external genitalia or determined exclusively thereby.

People suffering from gender identity issues (such as those who call themselves “transgender”) may or may not conform to stereotypes consistent with their sex. Conformance or nonconformance with sex stereotypes is incidental to their false belief that they really are a different sex than their biology dictates and/or that there is something wrong or discordant with their bodies that needs to be or needed to be changed and/or corrected. Treating some people differently than others in an employment setting because they are suffering from gender identity issues is not discrimination based on “sex” as used in 42 U.S.C. § 2000e-2 or based on sex stereotyping.

In this case the Sixth Circuit equated (1) treating some people differently than others in an employment setting (discrimination) because they are suffering from gender identity issues and (2) treating some people differently than others in an employment setting because of their sex. Doing so requires employers to treat people suffering from gender identity issues as if they really were persons of the opposite sex or there really were something wrong or discordant with their bodies. Doing so requires employers to affirm dysphoria.

Affirming the dysphoria in people suffering from gender identity issues as if they really were persons of the opposite sex only serves to lead those that are

suffering with such issues away from finding the serenity and wholeness of being at peace with their bodies and identities. Forcing employers to affirm the denial of reality is not required by Title VII and is more likely to cause harm than good.

ARGUMENT

Forcing employers to affirm the denial of reality is not required by Title VII and is more likely to cause harm than good. This Court should reverse the judgment below because treating some people differently than others in an employment setting because they are suffering from gender identity issues is not discrimination based on “sex” as used in 42 U.S.C. § 2000e-2 or based on sex stereotyping.

I. *Amici* Walt Heyer, Jamie Shupe, Hacs Horvath, Clifton Francis Burleigh, Jr., Laura Perry, Jeffrey Johnston, Jeffrey McCall, Kathy Grace Duncan, and Linda Seiler’s personal backgrounds bring a valuable perspective to this case.

Amicus Walt Heyer’s personal background brings a valuable perspective to this case. Mr. Heyer is a male who started his transgender journey in 1944 at 4 years of age. That is when his desire to become female first took hold. He brings over 70 years of personal life experience to the discussion of transgenderism. He underwent surgery to appear as female and presented himself publicly as the opposite sex for eight years, only to see firsthand it was not the proper treatment for gender dysphoria. Instead of helping, it inflicted great harm.

Mr. Heyer's view of the transgender experience comes from the perspective of having lived his life as a someone who wanted to be the opposite sex and underwent surgery and hormones in pursuit of that, bolstered by relevant education, employment, and mentoring of other people who, like Mr. Heyer, regret surgical alteration and having presented as a person of the opposite sex.

Mr. Heyer studied at UC Santa Cruz in the late 1980s and completed the course requirements for a certificate in psychology and pharmacology, working to become a counselor. He interned as a counselor to drug dependent individuals in San Jose, California, earning over 1500 hours of supervised counseling experience.

He was employed at a Santa Monica hospital near Los Angeles in the lockdown psychiatric unit. As part of his internship, he earned another 800 hours of supervised counseling experience as a counselor to the dual diagnosed psychiatric patients in the hospital who needed 24-hour care. Later, he became the Director of Care/Counseling Ministries in Indian Wells, California at a church of over 3,000 regular attendees and served in that position for 3½ years. Thirteen years ago, he launched a website to reach out to those who regret having undergone a surgery to appear as the opposite sex and want to live in conformity with their biological sex.

Mr. Heyer's story of restoration gives much needed hope to individuals contemplating suicide and provides a roadmap back to living life in conformity with their biological sex. Mr. Heyer has authored six

books² and has been interviewed for television, radio and print media around the world. Hundreds of thousands of people visit his website www.sexchangeregret.com each year. He is considered a leading authority by many on the subject of transgender ideology. His blog and books all serve to help individuals return to the gender they lost and to help third parties' understanding.

For more than ten years Mr. Heyer has informally mentored and assisted scores of persons identifying as transgender who regret changing their appearance to that of the opposite sex. He encourages those who contact him who have gender dysphoria to seek psychological and psychiatric assessment for other disorders that are also present, which is the case in a majority of those who desire to identify as persons of the opposite sex.

Over seventy years ago, at four years of age, Mr. Heyer was drawn to cross-dressing for reasons that were unknown to him. His grandmother encouraged him and she enjoyed their secret times of playing

² *A Transgender's Faith* – Walt Heyer's autobiography.

Trans Life Survivors – Emails from 30 people who turned away from the transgender life, the latest research and a special section on children.

Paper Genders – the history of failed attempts to resolve psychiatric or psychological disorders with surgery.

Gender, Lies and Suicide – The tragedy of transgender suicide, with personal stories and research data.

Perfected with Love –Walt Heyer's story gives insight into how to show God's love to a transgender person.

Kid Dakota and the Secret at Grandma's House – a novel based on Walt Heyer's life.

dress-up. He liked how he felt dressed like a little girl and liked how his grandmother fawned over him. The desire to not only cross-dress but to actually become a female took root and grew stronger every day. From that onset in 1944, the persistent unrelenting desire never went away for even a day.

His grandmother made him a full-length purple chiffon evening dress to wear in those secret play times. Her excitement of seeing him in that handmade dress was affirmation to him that he should have been born a girl and made the feelings to want to change into a girl even stronger. Mr. Heyer started dreaming as if he were already a little girl.

Those feelings never went away. Mr. Heyer kept his feelings inside and did not share his desire for a female identity with his older brother or talk about his feelings with his parents. He lived his life as a boy outside and as the girl in the purple dress inside. He preferred keeping secret that he wanted to become a female someday. No one would know to ask him uncomfortable questions like why he felt that way or how his feelings started.

High school was a great time and he did typical boy activities: football team, car club, dating girls. Like most transgender individuals, Mr. Heyer has known over the last 35 years that he was not homosexual. He just wanted to become a female. Transgenderism for Mr. Heyer was not a sexual issue but rather a strong desire to express publicly his female feelings about a female identity. In his secret world, Mr. Heyer even took on a female name. Throughout his childhood, high school and college

years, he continued the secret cross-dressing he enjoyed so much.

Eventually Mr. Heyer got engaged and told his future wife about his cross-dressing and his early childhood. She was undaunted by the idea, and they married in 1962. By 1968, they had two kids and Mr. Heyer's career was unfolding in incredible ways.

After some specialized education in printed circuitry and electrical drafting, Mr. Heyer became an associate design engineer working for NASA. Later, in the automotive manufacturing business, Mr. Heyer quickly worked his way up to the executive level. Yet the desire to cross-dress and become female never went away, even for one day.

By the time he was in his thirties in the 1970s, Mr. Heyer started to hear about individuals who were presenting as the opposite sex. They said they had a strong desire, just like he did, and there was a name for it: gender identity disorder (the forerunner of what is now called gender dysphoria). At the cross-dressing bars in San Francisco that he frequented, people were talking about a doctor who would administer cross-sex gender hormones. Mr. Heyer wanted to fulfill the dream that started at his grandmother's house when he was four years old—to become a girl.

Mr. Heyer needed to find out if he had gender identity disorder and scheduled an appointment with a leading expert, Dr. Paul Walker, Ph.D., the distinguished chairperson and one of the original authors of the Harry Benjamin International Standards of Care, the same standards published

today by the successor organization, World Professional Association for Transgender Health (WPATH).

The WPATH organization is so focused on advocacy that they have lost their way in caring for the long-term health and welfare of the transgender population. WPATH has failed to set effective, sound standards for diagnosing co-existing psychiatric and psychological disorders that lead to regret and too many suicides among transgender people.

Dr. Walker diagnosed Mr. Heyer with gender identity disorder and provided an approval letter that said Mr. Heyer was someone who would benefit from hormone therapy and so-called “gender reassignment” surgery. Mr. Heyer started hormone therapy at the direction of Dr. Walker. Mr. Heyer waited more than two years, then returned to see Dr. Walker again to see if he had changed his diagnosis of Mr. Heyer.

Dr. Walker was steadfast in his diagnosis and the need for Mr. Heyer to be treated with hormones and so-called “gender reassignment” surgery. Dr. Walker prepared an updated letter, again approving Mr. Heyer for surgery to appear female.

Mr. Heyer looked forward to finally having resolution to his life-long desire to be female and he scheduled the surgery. As a result, Mr. Heyer’s wife filed for divorce. Mr. Heyer went ahead with the surgery in the hands of the world-renowned Dr. Stanley Biber, who over his lifetime performed over 4,000 such surgeries. Surgery for males to appear

female consists of removing the testicles while retaining the penis, but surgically inverting the penis into a pouch to create the appearance of female genitalia. Mr. Heyer changed his name to Laura Jensen.

Mr. Heyer presented as female for nearly 8 years while living in San Francisco and working for the federal government at the FDIC and the US Postal Service. Mr. Heyer then began studying psychology at the University of Santa Cruz. He wanted to better understand addictive behaviors and wanted to learn how he could help other people who were struggling from difficult childhoods.

There were happy times when he first presented as a female. Yet, as the years passed, Mr. Heyer's gender dysphoria re-emerged. Mr. Heyer became concerned and depressed because the surgery had introduced a huge life change. Mr. Heyer was switching between Laura and Walt every few days. He was even more confused than he had been before his change to Laura. Mr. Heyer consulted a psychologist who told him to "give it time." Eight years seemed like enough time to Mr. Heyer. But the counselor, a specialist in gender dysphoria, told Mr. Heyer that adapting to Laura would take time, even years.

A new awareness came while Mr. Heyer was employed in a psychiatric unit. A staff psychiatrist pulled him aside to ask Mr. Heyer questions about his childhood. After a few days of talking with Mr. Heyer, he suggested that Mr. Heyer might have a previously undiagnosed and untreated disorder. At his

suggestion Mr. Heyer spent time with a psychologist who could assess whether or not Mr. Heyer had a co-existing disorder, and if so, what it was.

That was a turning point for Mr. Heyer. He was taken aback when he learned from the psychologists that people who identified as the opposite sex could have additional undiagnosed and untreated disorders such as depression, anxiety, bipolar disorder, obsessive-compulsive disorder, dissociative disorder, schizophrenia and body dysmorphic disorder.

With the knowledge that he had been suffering all his life from a co-existing disorder in addition to gender dysphoria, Mr. Heyer underwent psychotherapy. There Mr. Heyer learned that engaging in cross-dressing at a young age for a two-year period most likely was a contributing factor of his dissociative disorder.

Dissociative disorder is an extreme coping mechanism, usually a result of, but not limited to, sexual abuse, emotional trauma, physical harm, abandonment, broken homes, and deep personal loss. Dissociative disorders are a survival mode, a way to cope. The person dissociates from who he really is and attempts to become someone he is not. The person's identity splits into fragmented identities who do not feel the pain of the past. They are all parts of the original person. In Mr. Heyer's case, Laura was a fragment identity who had the reassignment surgery. There were other fragments: Andrea, Crystal and Nicole were female; JJ and Jimmy were male. To heal, Mr. Heyer would need psychological treatment to re-integrate the fragmented identities.

The stunning moment for Mr. Heyer came when a psychologist told him that the treatment he had undergone for gender dysphoria—hormone therapy and surgery to appear as the opposite sex—would make re-integration of the identities extremely difficult. This was because he had a body that was fashioned to look like Laura, but according to the additional diagnosis of dissociative disorder, Mr. Heyer needed to reintegrate all the fragments into the surgically mutilated male body of Walt.

Because Dr. Walker only focused his attention and diagnosis on gender dysphoria (a correct diagnosis), he failed to take the next step; exploring the existence of co-existing disorders that might also be causing Mr. Heyer's gender distress. Dissociative disorder often mimics gender dysphoria and as a result is overlooked and undiagnosed. It was clear that his co-existing psychological disorder should have been treated prior to any hormones or gender surgery. Hope of living a happy life was fading away. Mr. Heyer attempted suicide because he was so distressed. A change of gender identity did not resolve the problems that started in his early childhood.

It took a long time, and restoration was extremely difficult. Mr. Heyer was in counseling for years, sometimes meeting every day. But he was finally able to put his gender dysphoria to rest through psychotherapy that effectively treated the co-existing dissociative disorder. When the dissociative disorder and the childhood pain that had led to it were treated, the feelings of wanting to be a girl went away. It was then that Mr. Heyer was able to return to living with a male appearance and achieve the serenity and

happiness he had always wanted. Mr. Heyer's feelings of wanting to be the opposite sex went away, and he was able to return to living with a male appearance and be happy.

Mr. Heyer now informally mentors people who have also come to regret attempting to identify as a person of the opposite sex, such as by adopting a different name consistent with the opposite sex and using the corresponding pronouns, wearing clothing and hairstyles typically associated with the opposite sex, using sex-segregated spaces and engaging in sex-segregated activities that correspond to the opposite sex, and/or by changing their appearance to that of the opposite sex through makeup, clothing, surgery and/or hormones. Mr. Heyer has seen firsthand the harm that can come from encouraging people down that path. Every person Mr. Heyer has mentored has concluded that they were not born with transgenderism. Transgenderism is a learned behavior, a social ideology, not an innate condition from birth. Mr. Heyer has seen too much unhappiness and regret over the years from hormone therapy and surgeries.

Amicus Jamie ("James") Shupe's personal background brings a valuable perspective to this case as well. Mr. Shupe is a male who convinced himself that he was a woman "during a severe mental health crisis." In early 2013, he visited a licensed nurse practitioner seeking a hormone prescription. He even threatened that he would purchase the hormones from the internet if the nurse practitioner did not prescribe them to him. Without ever meeting Mr. Shupe prior to the visit, the nurse practitioner

prescribed 2 mg of oral estrogen and 200 mg of Spironolactone to him. Mr. Shupe emphasizes that the nurse practitioner failed to consider that he suffers from chronic post-traumatic stress disorder (“PTSD”) from serving in the military for 18 years. All of his doctors agreed that he suffered from PTSD, and some of his doctors believed that he had bipolar disorder and possibly borderline personality disorder.

Mr. Shupe emphasizes that transgender activism is what led the nurse practitioner to prescribe the hormones to him so quickly, fearing the consequences if she rejected his wishes. Since then, Mr. Shupe began his transition journey to identify as a female, pointing out that only one therapist attempted to stop him from transitioning. “Professional stigmatism against ‘conversion therapy’ had made it impossible for the therapist to question my motives for wanting to change my sex,” Mr. Shupe explains.

Mr. Shupe was sexually abused as a child by a male relative, and his parents severely beat him. He was exposed to so much violence and thus, he struggles to mentally process his horrific experiences. He claims that medical professionals ignored his past and continued to feed into his belief of having gender dysphoria, and he wishes that someone would have ordered intensive therapy for him. He states that, “The diagnostic code in my records at the VA should read Transvestic Disorder.” Rather, the medical community caused him further harm.

Three years later, Mr. Shupe came to the realization that he was never supposed to transition to identifying as a female. Following this realization,

he became the first person in the country to be legally recognized as non-binary. This led to fame within the LGBT community. However, when Mr. Shupe spoke out about his true thoughts on gender identity disorders, the LGBT community stopped helping him, and he says that “the media retreated with them.”

Another point that Mr. Shupe makes is that the New York-based Transgender Legal Defense & Education Fund gave him a new name when he wished to not be named after his uncle who molested him. Reflecting back on this moment, Mr. Shupe wishes they would have given him therapy for that, not a new name.

Mr. Shupe argues that his gender transitions were the result of his mental confusion and that he should have been treated with therapy rather than fictional identities. “I should have been treated. Instead, at every step, doctors, judges, and advocacy groups indulged my fiction,” quotes Mr. Shupe.

In 2019, Mr. Shupe reverted to identifying as a male, consistent with his biology. He emphasizes that sex is binary and that there is no third gender. Mr. Shupe claims that his wife, daughter, and American taxpayers are the victims of transgender activism.

Amicus Hacsí Horvath’s personal background brings a valuable perspective to this case as well. Mr. Horvath is a Lecturer in the Department of Epidemiology and Biostatistics at the University of California, San Francisco (“UCSF”) and is an expert in clinical epidemiology. For 13 years, Mr. Horvath identified as a female, taking medical measures to do

so. He stopped taking estrogen in 2013 for health reasons and claims this brought him back to his senses. Mr. Horvath then discontinued any effort to identify as a female.

He claims to carry a lot of anger towards transgenderism and its enablers, particularly because he experienced firsthand the harm that it brings. He states, “I am far angrier that thousands of young people are being irreversibly altered and sterilized as they are inducted into a drug-dependent and medically-maimed lifestyle.” Mr. Horvath says that his strong feelings about transgenderism can be found on social media platforms such as Twitter, blogs, and other online sources.

Amicus Clifton Francis (“Billy”) Burleigh Jr.’s biography is brief, however, his personal background still brings a valuable perspective to this case. Mr. Burleigh was one of the many who contacted Mr. Heyer, regretting the decision to transition. Initially, when Mr. Burleigh first transitioned to identifying as a female, he was excited. Unfortunately, soon after the transition he felt discomfort identifying as a female, and states that, “I was better off as I was before the surgery, before the hormone treatment.”

After six years of identifying as a woman, Mr. Burleigh started maturing in his relationship with Jesus and, as a result, learned the truth – that he was not female -- and a desire grew in his heart to transition back to identifying as male. After seven years of identifying as a female, Mr. Burleigh underwent surgery to revert back to identifying as male.

Amicus Laura Perry's personal background brings a valuable perspective to this case as well. Ms. Perry desired to be a male early in her childhood. She felt that her mother did not love her, and that her mother only loved her brother. Ms. Perry's mother lost two boys before Ms. Perry was born, and she believed that "maybe mom wishes one of my brothers was still alive instead of me."

At age 8, Ms. Perry was molested by her friend's brother. She claims that even though it happened only once, she became addicted to sex. She became jealous of males because she believed they were more powerful than females and developed anger towards God because he created her as a female.

In 2007, Ms. Perry was addicted to sex and pornography, and she began her transition to identifying as a male. She sought hormones for the transition, but a letter from her psychologist was required first. Her psychologist pointed out that Ms. Perry's relationship with her mother was a serious problem, but Ms. Perry just reacted with anger and refused to discuss the relationship. Thereafter, the psychologist gave Ms. Perry the required letter so she could seek hormone therapy. Ms. Perry said, "I'm so sad looking back ... she didn't try to counsel me."

Ms. Perry enjoyed the transition process at first, and she entered into a relationship with another transgender individual. They attended LGBT events together but stopped when the members of the community developed hatred for her partner who was conservative. They viewed her partner as a "traitor." Ms. Perry and her partner also claim that "we thought

these people are the most depressed people in the world,” referring to the LGBT community. Soon after, Ms. Perry became aware of the fact that changing sex is not biologically possible, and that sex is binary.

Amicus Jeffrey Johnston’s personal background brings a valuable perspective to this case as well. Mr. Johnston is from Maine and previously identified as “Janelle.” At age 9, Mr. Johnston was raped by one of his father’s employees, and thereafter, he became sexually confused. The rapes continued for two more years.

At the age of 17, Mr. Johnston moved to Portland, Maine, where he was exposed to transgender individuals. Mr. Johnston discusses his desire to transition in the documentary "TranZformed," claiming that he was supposed to be a female. Mr. Johnston stated that "when you're that young and you're being raped that's all you know about sex. That's all I knew about sex." Tragically enough, Mr. Johnston could not escape rape. While he was living in Portland, Mr. Johnston was raped again by four men, which intensified the gender confusion.

At the age of 18 he began hormone treatments. This is when Johnston adopted the name, “Janelle.” Eventually, Mr. Johnston underwent surgery to receive breast implants. He also got a nose job and silicone injections in his lips and cheeks. Mr. Johnston then moved to Boston, Massachusetts and became a stripper. Mr. Johnston states, "It's not something I'm proud of but I did [it] for over 20-something years.” He also pointed out that drugs, alcohol and prostitution accompanied that lifestyle. He lived this lifestyle from

the age of 19 to the age of 41, and he was addicted to crack cocaine, powder cocaine, OxyContin, heroin, and methadone, with daily visits to a methadone clinic.

One day, Mr. Johnston admitted himself to a hospital after being pushed down a flight of stairs. He said that he was “gnarled and twisted up” at the bottom of the stairs, however, supernatural force came over his body and he no longer felt pain. Mr. Johnston believes that God saved him in that moment. While in the emergency room after he admitted himself, he had an encounter with a man and a woman, who he claims to be angels.

He claims that the woman asked if he knew Jesus, and these voices continued for a week. After continuing to hear these voices, Mr. Johnston, watched the Christian TV Channel to learn about Jesus. After doing so, and asking God to help him, he said a prayer and claims he spoke with God through a vision and that God told him that the transgender lifestyle was not his true identity. Mr. Johnston believes God healed him and brought him to the realization that he was never supposed to have transitioned to identifying as a female.

Amicus Jeffrey McCall’s personal background brings a valuable perspective to this case as well. When Mr. McCall was 12 years old, he started having homosexual thoughts. When he was 15, he had his first sexual encounter with a male, and by the age of 18, he was living in an LGBTQ community in Nashville, Tennessee. He dated many different men and started experimenting with hard drugs. He had a

job at a club, and he put his identity in being a homosexual male.

His lifestyle became so destructive that he decided to move to Georgia and go back to school. He thought if he left the drugs and partying, people would not see the turmoil going on inside him. It worked, and he did so well in school that everyone on the outside thought he was fine. But inside, he was destitute.

During his last semester as an undergraduate, he met a professor who had been through a lot of the same things that he had been through growing up. But unlike Mr. McCall, she was happy. She was full of life, peace, and joy. She talked to Mr. McCall about Jesus and the way that He changed her life.

Mr. McCall started to live a transgender life as a woman, believing it would give him a new view on the world. Mr. McCall did an interview with ABC News to push trans rights in his city. He thought he was going to find happiness.

But he was not happy, and he started drinking heavily. He became very promiscuous, dating a different man every day. He began to think about killing himself. Authorities at his school found out, and he had to spend four days in mental health facilities. His professors and doctors treated him as Scarlet, the woman he was trying to be.

Eventually, Mr. McCall was diagnosed by a psychiatrist with gender dysphoria, which allowed him to begin pursuing sexual reassignment surgeries.

He thought his life was progressing and that once he had the surgeries he would finally be happy.

But his life got progressively worse. He had quit drugs and tried changing things on the outside, but he was still destitute inside. Finally, he decided he wanted to change inwardly and live in relationship with Jesus, who he had heard about all his life but never knew personally. Mr. McCall took all of his things from his life as Scarlet and threw them in a dumpster. He made a video to post publicly about cutting ties with his past.

From that time, he began to break through the unhappiness and lack of purpose that he had always felt. His life has changed so much since leaving behind his fake identity as Scarlet. He now has peace and joy and much more satisfaction in his new lifestyle than he did in the one he was living before. All the suicidal thoughts that came from not knowing his identity have left. He realized he is fine just the way he was created—as Jeffrey and that he does not have to try to become something he was not born to be. He feels comfortable in his own skin.

Amicus Kathy Grace Duncan's personal background brings a valuable perspective to this case. Ms. Duncan grew up in Hillsboro, Oregon, and at the age of four, she experienced the desire to identify as a male. Her father abused her mother both verbally and emotionally. Ms. Duncan adopted the belief that women are vulnerable and hated, and she did not want to be treated as such. She had a younger brother whom her dad adored, and she believed men were superior.

At the age of 19, Ms. Duncan began the transition to identifying as male. She was prescribed hormones and had a double-mastectomy. Ms. Duncan hung out regularly with a pastor, and then the Lord began healing her of “dad issues” by bringing a “spiritual dad” named Gary into her life to mentor her. Ms. Duncan eventually told Gary her secret. Ms. Duncan then believed that God was leading her back to her true female identity.

Ms. Duncan identified as transgender for 11 years, and she moved from Vancouver, Washington to Sherwood, Oregon, when she decided she wanted to identify as a woman again. Ms. Duncan became involved with the Portland Fellowship, a ministry that helps people with unwanted same sex attractions. God revealed to Ms. Duncan the lies that accompany the transgender lifestyle, and that the lack of nurturing from her parents most likely led to Ms. Duncan’s gender identity issues.

Ms. Duncan stopped taking the hormones, and several months later, she began menstruating again at the age of 30. She went through electrolysis and laser for facial hair removal. Finally, she consulted the Lord about replacing her breasts and went through breast reconstruction surgery. Ms. Duncan’s skin began returning to normal, and she felt a wholeness that she never felt before. Ms. Duncan gained attraction towards men, and she believes that God is the reason for this. She desires to be married one day, but she is content with her life as it is.

Lastly, *Amicus* Linda Seiler’s personal background brings a valuable perspective to this case

as well. Linda Seiler is a campus pastor, and throughout much of her lifetime, she struggled with gender identity disorders. Ms. Seiler claims that she was never attracted to males, and in early childhood she desired to identify as a male. Ms. Seiler believes that gender confusion and same-sex attraction can be the result of some breakdowns within a child's relationship with his or her parents.

When Ms. Seiler was born, she was underweight and placed in an incubator, and thus, she did not spend her first few days bonding with her mother. For that reason, along with other reasons such as childhood experiences, Ms. Seiler wished to be a male. In the back of her mind, she always thought that her desires were not valid, however, these desires did not escape her mind. She prayed for relief from this confusion, but she found herself still attracted to females and wanting to become a male.

Ms. Seiler never had sex-reassignment surgery, however, she believes she made the transition in her mind. During her final year of college in 1994, Ms. Seiler revealed her secret to the Campus Crusade for Christ director at the University of Illinois, and he informed her that he would relieve her from this confusion. Several years later, when Ms. Seiler joined Crossroads Campus Church as a teacher, the pastors, Russell and Nancy Trahan, helped Ms. Seiler through her dark moments. They mentored her to form boundaries with females, and they also helped Ms. Seiler embrace her female body.

Ms. Seiler still struggled with confusion, and was introduced to Dale Crall in 2002 who agreed to help

her with her troubles. He advised Ms. Seiler to seek healing from a prayer counselor at Elijah House in Coeur d' Alene, Idaho. She was then exposed to the appropriate emotional healing that changed her life. Ms. Seiler's journey lasted nearly 11 years, and finally, she believes that her gender confusion has disappeared.

Ms. Seiler seeks to share her story because of the abundant amount of transgender debates that are occurring throughout our nation. Ms. Seiler believes that gender confusion is a form of brokenness and those struggling with gender confusion need love and support.

II. Treating some people differently than others in an employment setting because they are suffering from gender identity issues is not discrimination based on "sex" as used in 42 U.S.C. § 2000e-2 or based on sex stereotyping.

Treating some people differently than others in an employment setting because they are suffering from gender identity issues is not discrimination based on "sex" as used in 42 U.S.C. § 2000e-2 or based on sex stereotyping, and finding otherwise would only harm those whom such a finding is intended to benefit. Sex is binary, and the definition of "sex", particularly as defined in Section 703, refers to male and female as grounded in biology—it is binary, fixed at conception, and objectively verifiable.

Differences exist between males and females at conception at the biochemical and cellular levels and

result directly from the defining genotypic difference between male and female mammals: an XY (male) sex chromosome constitution versus an XX (female) sex chromosome constitution. Every cell of a male is male, and every cell of a female is female. The distinction between the two sexes is not limited to the appearance of external genitalia or determined exclusively thereby.

The Sixth Circuit in this case accepted the EEOC and intervenor Stephens' argument that "transgender discrimination is based on the non-conformance of an individual's gender identity and appearance with sex-based norms or expectations"; therefore, 'discrimination because of an individual's transgender status is always based on gender-stereotypes: the stereotype that individuals will conform their appearance and behavior—whether their dress, the name they use, or other ways they present themselves—to the sex assigned them at birth.'" See EEOC v. R.G., 884 F.3d 560, 575 (6th Cir. 2018) (quoting Appellant and Intervenor Briefs).

Ironically, it is a stereotypical assumption that people suffering from gender identity issues (such as those who call themselves "transgender") always decline to conform to stereotypes consistent with their sex. Such people may or may not choose to outwardly conform to stereotypes consistent with their sex. Conformance or nonconformance with sex stereotypes is merely incidental to their false belief that they really are a different sex than their biology dictates and/or that there is something wrong or discordant with their bodies that needs to be or needed to be changed and/or corrected.

In this case the Sixth Circuit effectively equated (1) treating some people differently than others in an employment setting (discrimination) because they are suffering from gender identity issues and (2) treating some people differently than others in an employment setting because of their sex. Doing so effectively requires employers to treat people suffering from gender identity issues as if they really were persons of the opposite sex or there really were something wrong or discordant with their bodies. Doing so requires employers to affirm dysphoria.

Affirming the dysphoria in people suffering from gender identity issues as if they really were persons of the opposite sex only serves to lead those who are suffering with such issues away from finding the serenity and wholeness of being at peace with their bodies and identities. Notwithstanding the arguments of the American Medical Association (AMA) and the American Psychiatric Association (APA), forcing employers to affirm the denial of reality is not required by Title VII and is more likely to cause harm than good.

Amici do not claim to know the best treatment for gender identity issues for everyone. But seeking to align one's mind with reality has always been the preferred method for treating dysphorias, such as anorexia, xenomelia (the feeling that one or more limbs do not belong), or transdisability (believing one has a physical disability that does not actually exist). No one would ever address an anorexic person's needs by providing a low-calorie diet, diet pills and stomach stapling. Moreover, one of the most comprehensive scientific studies tracking individuals who underwent

sex-reassignment surgery revealed that (1) the rate of psychiatric hospitalization was approximately three times higher for postoperative individuals than a control group; (2) mortality rates and rates of criminal conviction also increased; (3) suicide attempts were almost five times more likely than before surgery; and (4) the likelihood of suicide following surgery was 19 times higher than the control group, adjusted for prior psychiatric illness. Cecilia Dhejne *et al.*, *Long-term follow-up of transsexual persons undergoing sex reassignment surgery* (Feb. 22, 2011), <https://bit.ly/2xl6HDr>.

The proponents of gender identity theory tell parents, schools, medical professionals, and all other members of society that they must support and affirm one's transgender journey to prevent the person from attempting suicide. However, it is an open question scientifically whether supporting a one's desire to appear as the opposite sex adds stress rather than reducing it. *Amici* argue this approach undeniably made things worse in their cases. Pretending that a person actually is a person of the opposite sex is not likely to benefit anyone and is more likely to cause harm. The risk that gender-affirmation treatments might ultimately harm, rather than help, troubled students cannot be dismissed without evidence.

People are encouraged, affirmed and assisted in "coming out" as transgendered, often without one word about the dangers of that path. Today, the politically correct response expected from adults, especially parents, is to affirm children and adults in their desired gender. But affirmation gives people false hope that they can really become a different sex. It is a lie—a lie

told with compassionate motives, but a lie nonetheless. Lying is not compassion.

Lying to people hurts them. For a vulnerable person, pursuing a dream that is physically impossible to achieve can lead to depression, and depression is the leading cause of attempted suicide. This may help explain some of the startling suicide rates among those identifying as transgender.

It is important to tell people the truth and stop pretending. We need to stop pretending that doctors have scientific backing for their recommendations for individuals with gender dysphoria. The truth is that no one can predict whether a gender-dysphoric person will feel the same way years later.

Kristina Olson, a research psychologist at the University of Washington, puts it this way: “We just don’t have definitive data one way or another.” Bigad Shaban, *et al.*, *Transgender Kids Could Get Hormone Therapy at Earlier Ages*, (September 13, 2017), <https://www.nbcbayarea.com/investigations/Transgender-Kids-Eligible-for-Earlier-Medical-Intervention-Under-New-Guidelines-423082734.html>. That is why Olson is leading a study of 300 trans children that will track outcomes over 20 years, “to be able to, hopefully, answer which children should or should not transition,” she said. In other words, we simply do not know right now, yet parents and children are herded in one direction as if we do. J. Michael Bailey, Ph.D., professor of Psychology at Northwestern University, and Ray Blanchard, Ph.D. explain that “There is no persuasive evidence that gender transition reduces gender dysphoric children’s likelihood of killing themselves.” J.

Michael Baily, Ph.D. *et al.*, *Suicide or transition: The only options for gender dysphoric kids?*, (September 8, 2017), <https://4thwavenow.com/2017/09/08/suicide-or-transition-the-only-options-for-gender-dysphoric-kids/comment-page-1/>.

Some people desire to identify as the opposite sex to escape the pain of a traumatic event or a perceived abandonment or loss. They subconsciously want to dissociate from who they are and become someone else. Appearing as the opposite sex promises a fresh start, free from the past. Like many psychological coping mechanisms, however, appearing as the opposite sex and having that affirmed provides only a temporary reprieve.

The documentary, “Tranzformed” explores the journeys of 15 individuals who eventually walked out of the transgender life. “Tranzformed” provides transgendered people a voice to share in their own words, with authenticity and emotion, how they came to the decision to change genders and why they changed back. The film made the point clearly: people who identify as the opposite sex have deep emotional pain and need true compassion.

There is an explosion of people with gender identity issues. This emerging group of people with gender identity issues are suffering from emotional, psychological, or social identity discomfort far deeper than new pronouns can rectify. Courts should not ignore that fact.

Doctors admit they do not know who will remain gender-dysphoric long term, yet they condone gender

identity change, socially and medically, for youths and adults. This is abuse. Walt Heyer knows this from his own life. It is abuse to tell a person he or she can select a gender and truly become the opposite sex. It is a false hope. Such a suggestion is factually a lie, a lie with life-long destructive ramifications.

The effect of such “affirmation” is the destruction of core identity. It plants the notion inside the minds of people that the essence of who they are is wrong. They are not someone to be loved or embraced, but eradicated. Affirming someone as the opposite sex reinforces the deep discomfort already undermining his or her identity. Overwhelmed by the weight of these messages cloaked as “affirmation” and a lack of attention to the real issues driving their desire to switch gender appearances, many attempt suicide. By engaging in what they call “affirmation,” well-meaning people are complicit in turning psyches against themselves and people who identify as transgender against the factual truth of who they really are. Thoughts of hating oneself and one’s body are “affirmed” through “transition.”

The proponents of gender identity theory claim that gender transition, whether social, medical, or both, is the answer that will solve all of the problems of those who suffer from gender dysphoria. Yet, studies show that two-thirds of people with gender dysphoria also have other co-existing psychological disorders, which if treated, could ease or eliminate the gender distress without the need for social gender transition, surgery or cross-sex hormones. Meybodi A Mazaheri *et al.*, *Psychiatric Axis I Comorbidities among Patients with Gender Dysphoria*, (August 11,

2014),
<https://www.ncbi.nlm.nih.gov/pubmed/25180172>;
 Joost A. Campo, *et al.*, *Psychiatric Comorbidity of Gender Identity Disorders: A Survey Among Dutch Psychiatrists*, *American Journal of Psychiatry* 160(7): 1332-6 (August 2003)
https://www.researchgate.net/publication/10686328_Psychiatric_Comorbidity_of_Gender_Identity_Disorders_A_Survey_Among_Dutch_Psychiatrists.

The proponents of gender identity theory claim that people with gender dysphoria are born that way—that the transgender brain is wired that way from birth. But no definitive evidence has been found to support that belief. An article in *Scientific American* that begins by saying that “Imaging studies and other research suggest that there is a biological basis for transgender identity” concludes with the following contradictory statement: “But given the variety of transgender people and the variation in the brains of men and women generally, it will be a long time, if ever, before a doctor can do a brain scan on a child and say, ‘Yes, this child is trans.’” Francine Russo, *Is There Something Unique about the Transgender Brain?*, (January 1, 2016), <https://www.scientificamerican.com/article/is-there-something-unique-about-the-transgender-brain/>.

Psychiatrist Richard Corradi, professor of psychiatry at Case Western Reserve University School of Medicine, Cleveland, Ohio, calls transgenderism a “contagion of mass delusion.” Richard B. Corradi, *Psychiatry Professor: ‘Transgenderism’ Is Mass Hysteria Similar To 1980s-Era Junk Science*, (November 17, 2016), <https://thefederalist.com/2016/11/17/psychiatry->

[professor-transgenderism-mass-hysteria-similar-1980s-era-junk-science/](#).

Ironically, individuals are robbed of their personal identity and become anonymous members of the gender identity community—the “transgendered.” Rather than the individual assessments and personalized psychotherapy that the sufficiently distressed should receive, the remedy is one-size-fits-all. A transgender person can become any gender he or she chooses, or be no gender at all. They can call themselves any names they choose, take hormones, and have their sex surgically “reassigned.” All this is with the credulous support of people and institutions who have succumbed to the contagion of a cultural delusion.

Id.

Based on the experiences of the *Amici* and the experiences relayed to them by many others, for people who identify as transgender, true reality is found in what is called “de-transitioning,” which involves coming to terms with and accepting one’s sex. Indulging the transgender concept will harm those whom it is intended to benefit.

CONCLUSION

Amici urges this honorable Court to reverse the judgment of the United States Court of Appeals for the Sixth Circuit and to correct the lower court's misinterpretation of what constitutes discrimination because of an individual's "sex" as used in Section 703 of the Civil Rights Act of 1964.

Respectfully submitted,

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