No. 19-127

IN THE
# Supreme Court of the United States

ANMARIE CALGARO,

*Petitioner*,

v.

ST. LOUIS COUNTY, MINNESOTA, ET AL.,

*Respondents*.

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

## BRIEF OF *AMICUS CURIAE* FOUNDATION FOR MORAL LAW IN SUPPORT OF PETITIONER

JOHN A. EIDSMOE
FOUNDATION FOR MORAL LAW
One Dexter Avenue
Montgomery, AL 36104
(334) 262-1245
eidsmoeja@juno.com

Counsel for *Amicus Curiae*

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page**

**Cases**

**Constitutions, Statutes, and Regulations**



**Other Authority**

## STATEMENT OF IDENTITY AND INTERESTS OF AMICUS CURIAE[1]

*Amicus Curiae* Foundation for Moral Law ("the Foundation") is a national public interest organization based in Montgomery, Alabama, dedicated to religious liberty, defense of the traditional family, and the strict interpretation of the Constitution as written and intended by its Framers. The Foundation has an interest in this case because performing sex-change treatment upon an unemancipated minor without parental consent is an egregious violation of parental rights and undermines the traditional family.

## SUMMARY OF THE ARGUMENT

> *Michael Colin Gallagher: Everybody in this room is smart, and everybody was just doing their job, and Teresa Perrone is dead. Who do I see about that?*
>
> *James A. Wells, Assistant U.S. Attorney General: Ain't nobody to see. I wish there was....*

---

[1] Pursuant to Rule 37.6, no party or party's counsel authored this brief in whole or in part or contributed money that was intended to fund its preparation or submission and no person other than the *Amicus Curiae,* its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief. All parties have received timely notice of *Amicus's* intent to submit this brief, and *Amicus* has requested consent from all parties. All parties have consented to the filing of this brief.

*Absence of Malice* (Columbia Pictures 1981).

Sometimes a movie line captures a truth that others miss. The St. Louis County officials, the Park Nicollet and Fairview Health Services officials, and the St. Louis County school officials are all smart people, and they were all "just doing their jobs." But in the process of doing their jobs, the hospital officials provided the minor child, E.J.K.,[2] with transgender treatment that will affect the child and the child's relationship with the mother for life, the social services placed the child on welfare, and the public schools refused to disclose the child's records -- all while E.J.K. is not legally emancipated and without the mother's knowledge or consent. Who does Ms. Calgaro see about that?

The District Court and the Eighth Circuit both answer, "Ain't nobody to see."

They virtually acknowledge that E.J.K. was not legally emancipated and that Ms. Calgaro's parental rights were violated, but, partly because they

---

[2] The Verified Complaint refers to the child as J.D.K., initials representing the masculine name given to the child at birth. The Eighth Circuit opinion and the Petition for Certiorari refer to the child as E.J.K., initials representing the feminine name chosen by the child. Out of respect for the Court and in accordance with the Petition, *Amicus* will refer to the child as E.J.K. However, despite using the feminine initials or pronouns, *Amicus* does not concede that E.J.K. is the child's correct name or that the child is now of the female sex. *Amicus* notes that according to p. 7 of Ms. Calgaro's Petition for Certiorari, E.J.K. applied unsuccessfully for a name change in Minnesota district court.

misconstrued Ms. Calgaro's claim, they seem to think nobody is legally responsible for this violation and therefore nothing can be done.

This violates the basic legal maxim that for every wrong the law provides a remedy (*Ubi jus ibi remedium*). *Leo Feist v. Young*, 138 F.2d 972, 974 (7th Cir. 1943).

In short, Respondents have:

* Attempted to change E.J.K. from a boy into a girl;

* Given him/her welfare payments so he can live apart from his mother;

* Withheld E.J.K.'s school records;

* Not given notice of any of this to Ms. Calgaro nor asked for her consent;

* Effectively deprived Ms. Calgaro of her parental rights without the slightest evidence that she is anything other than a loving and conscientious mother.

Taken cumulatively, these violations are so egregious -- effectively depriving this mother of her child -- that her case cries out for appellate review.

## ARGUMENT

## I. The lower courts erred in finding that Calgaro did not state a plausible claim for relief.

The United States District Court for District of Minnesota dismissed the case with prejudice under Fed. R. Civ. P. 12(b)(6), stating that the plaintiff's complaint did not contain sufficient facts to state a plausible claim for relief under 42 U.S.C. § 1983.

The district court's conclusion was based upon a complete misinterpretation of Ms. Calgaro's complaint. The district court understood Ms. Calgaro as saying the Respondents had emancipated E.J.K., and the court said that is not a plausible claim for relief because Respondents lacked legal authority to emancipate E.J.K. and could not have done so.

But that is not at all what Ms. Calgaro said in her complaint. Her complaint claimed that Respondents had assumed based on a letter from the Mid-Minnesota Legal Aid clinic that E.J.K. had already been emancipated. Acting on that wrong assumption, the hospital provided E.J.K. with transgender treatment that fundamentally transformed E.J.K. and also transformed E.J.K.'s relationship with Ms. Calgaro. Acting on the same wrong assumption, the St. Louis County Health and Human Services provided E.J.K. with welfare payments that enabled him to live independently of his mother, thereby depriving Ms. Calgaro of a relationship with her child and the right to decide where her child resides. Acting on the same wrong assumption, school officials refused to provide Ms. Calgaro with E.J.K.'s

school records, thereby depriving her of the right to know about her child's educational progress and the right to make decisions concerning her child's education.

Ms. Calgaro did not mean that Respondents had emancipated E.J.K. Rather, she meant that Respondents had wrongly assumed E.J.K. had already been emancipated, and therefore they treated E.J.K. as an emancipated person and thereby deprived Ms. Calgaro of her fundamental rights as a parent. Misunderstanding Ms. Calgaro's claim, the district court wrongly concluded that she had not stated a cause of action and therefore dismissed her claim. Because the district court's decision dismissing the case was based on a clearly erroneous understanding or finding of fact and therefore an erroneous application of law to the facts, the district court's decision was an abuse of discretion.

Ms. Calgaro's complaint states in pertinent part:

> [H]er minor child J.D.K. received, and continues to receive, major elective medical services provided by Park Nicollet — and paid by St. Louis County – for a sex change without her consent or court order of emancipation. Similarly, Fairview prescribes narcotics to J.D.K. without her consent and without a court order. As with the St. Louis School District, Park Nicollet and Fairview Health Services did not provide Ms.

> Calgaro notice or a hearing that resulted in the loss of her parental rights.

*Plaintiff's Verified Complaint for Declaratory Relief and Judgment*, at 3 (Nov. 16, 2016).

Elsewhere in the complaint, Ms. Calgaro used such terms as "Park Nicollet's and Fairview's determination of emancipation" (p. 2), "decision Park Nicollet officials made concluding J.D.K., Ms. Calgaro's minor child, was emancipated under Minnesota Statute § 144.341" (p. 7), "decision School District officials made concluding J.D.K. Ms. Calgaro's minor child, was emancipated" (p.8), "medical service provider's determination of 'emancipation'" (p. 12), "no statute that allows the principal of a school to make an emancipation decision for a minor" (p. 33), "before the principal determined J.D.K. as emancipated" (p.33), "after a school principal's emancipation determination" (p. 33, three lines after previous quotation), "A decision that has the legal effect of granting a minor child emancipation, effectively terminating parental rights of the child's parent(s), requires notice to the parent(s)" (p. 37), "School District's and the principal of Cherry School determinations of emancipation of J.D.K." (p. 39), "Defendants' determinations of emancipation under state law" (p. 41), "when Defendants treated J.D.K. as emancipated without a court order" (p. 45), "deemed emancipated by Defendants without Ms. Calgaro's consent" (p. 46), and others. Clearly, Ms. Calgaro did not mean Respondents had performed the legal act of emancipating E.J.K; she meant that they had

assumed E.J.K. had already been emancipated and therefore treated the child in a way that violated Ms. Calgaro's parental rights.

Federal Rule of Civil Procedure Rule 8(e) provides that "Pleadings must be construed so as to do justice." In *Baker v. Warner,* 231 U.S. 588, 592 (1913), this Court held that in construing motions to arrest judgment, "courts liberally construe the pleadings, giving the plaintiff the benefit of every implication that can be drawn therefrom in his favor. Sentences and paragraphs may be transposed. The allegations in one part of the complaint may be aided by those in another, and if, taken together, they show the existence of facts constituting a good cause of action, defectively set forth or improperly arranged, the motion in arrest will be denied." See also, *Erickson v. Pardus,* 551 U.S. 89, 93 (2007) (The pleading need only "give the defendant fair notice of what the ... claim is and the grounds upon which it rests.") *See also* A. Benjamin Spencer, *Understanding Pleading Doctrine*, 108 Mich. L. Rev. 1 (2009).

Ms. Calgaro's pleadings were sufficiently clear so that neither the court nor the opposing parties should have had any difficulty understanding what she meant, in what ways she claimed to have been wronged, and what relief she sought. If there was any uncertainty about her meaning, treating the motion to dismiss as a motion for more definite statement would have been the appropriate remedy.[3]

---

[3] Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1376, at 597-98 (2nd ed. 1990); *Fleming v.*

Construed as Ms. Calgaro intended it, the complaint contained sufficient facts to state a plausible claim that her fundamental right to upbringing of her child has been violated by the defendants refusing to provide Ms. Calgaro with her child's governmental and school records and providing general government assistance and medical assistance to J.D.K. without her consent or any notice. Therefore, the district court's dismissal should be reversed because it is based on a clearly erroneous conclusion of fact and an improper application of law to the fact.

## II. The lower courts erred in finding that Calgaro's claim was moot.

This present case is not moot, even though E.J.K. is no longer a minor. The United States Court of Appeals for Eighth Circuit Court held that Ms. Calgaro's claims for declaratory and injunctive relief are moot because E.J.K. has turned eighteen years old and ceased to be a minor under Minnesota law. *See* Minn. Stat. § 645.451, subdiv. 2.

Normally, a case becomes moot when the issues have ceased to exist after filing the lawsuit, making it impossible for the court to provide effectual relief. *Alexander v. Yale University*, 631 F.2d 178, 183 (2nd Cir. 1980). However, there is an exception when disputes are capable of repetition, yet evading review. *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498,

---

*AT&T Information Services, Inc.,* 878 F.2d 1472, 1473 (D.C. Cir. 1989); *Marx v. Gumbinner,* 855 F.2d 783, 792 (11th Cir. 1988).

515 (1911). This exception applies when there is a reasonable expectation that the plaintiff will be subject to the alleged action again. *Murphy v. Hunt*, 455 U.S. 478, 482 (1982). An example of the exception is pregnancy because gestation period is shorter than the litigation period, and termination of pregnancy would make the case moot, making it difficult for pregnancy litigation to survive the litigation stages. *Roe v. Wade*, 410 U.S. 113, 125 (1973).

Cases like this one, in which a child wants to change sexes over a parent's objection and in which the child may falsely claim to be emancipated, are most likely to arise when the child is close to the age of majority and will likely reach the age of majority before litigation can be completed, are similar to the pregnancy litigation discussed in *Roe v. Wade* -- the window of time for action is likely to expire before litigation can be completed. The exception should apply to this case because there is a reasonable expectation that Ms. Calgaro or other persons similarly situated will face similar situations. The likelihood that Ms. Calgaro could face similar problems is enhanced by the fact that she has three other children who are minors, that these children have observed the crisis of their older sibling that these children may be in contact with E.J.K. and may be influenced by her, and that those who influenced E.J.K.'s decision to become transgender may influence these younger siblings as well. Just as in *Roe*, the dispute is capable of repetition, where the defendants may violate her parental rights to her remaining minor children. The fact that it would

involve children other than E.J.K. is not determinative because in *Roe*, the prospective pregnancy involved new children also. Unless Ms. Calgaro's dispute is resolved within a limited period of time before her remaining children turn eighteen years old, the case would evade review, rarely surviving the litigation stages.

Also, Ms. Calgaro's case should survive a mootness challenge because she is seeking nominal damages. *Carey v. Piphus*, 435 U.S. 247, 254 (1978); *Buckhannon Board & Care Home, Inc. v. West Virginia Dep't of Health and Human Resources*, 532 U.S. 598 (2001). Ms. Calgaro's claims are not moot, and the court erred by dismissing them.

## III. Ms. Calgaro has a constitutionally protected fundamental right to direct the upbringing of her child under the Fourteenth Amendment to the United States Constitution.

God in His infinite wisdom placed children under the care, custody, and control of their parents. *Genesis* 4:1, *Exodus* 20:12; *Psalm* 127:3; *Ephesians* 6:1-4. According to *Deuteronomy* 28, children are one of the greatest blessings that God bestows upon those who obey Him (vv. 4, 11), but one of the most severe curses He pronounces upon those who disobey is that: Thy sons and thy daughters shall be given to another people, and thy eyes shall look, and fail with longing for them all the day long: and there shall be no might in thy hand" (v. 32).

Our Declaration of Independence recognizes "liberty" as an unalienable right endowed by God, and this Court has repeatedly and uniformly held that this liberty includes the right to beget and raise children. In 1925, this Court recognized "the liberty of parents and guardians to direct the upbringing and education of children under their control." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925); *accord Meyer v. Nebraska*, 262 U.S. 390 (1923). *See also Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (upholding "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (stating that the "primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"). In addition to recognizing the fundamental liberty interest of parents, the Court reiterated that parental rights "undeniably warrant[] deference and, absent a powerful countervailing interest, protection." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). The Court also stated that "all [] parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody." *Id.* at 658.

In support of this proposition, the Foundation offers for the edification of the Court the following historical analysis excerpted from the special writing of Alabama Supreme Court Justice (now Chief Justice) Parker in *Ex parte E.R.G. and D.W.G.*, 73 So. 3d 634 (Ala. 2011):

The family was the first of all human institutions. One man and one woman came together in covenant before God, and they, with the children God gave them, became the first human social structure. As William Blackstone wrote, "single families ... formed the first natural society," becoming "the first though imperfect rudiments of civil or political society." 1 William Blackstone, *Commentaries on the Law of England* *47 (1765).

....

In the century before American independence, prominent legal scholars discussed the rights and responsibilities of parents in their writings on the law. For example, Hugo Grotius, often considered the founder of modern international law, affirmed the authority of parents to make decisions regarding their own children. John Locke, whose works formed an essential part of the intellectual foundation for the American quest for liberty, stated that "parents have a sort of rule and jurisdiction over [their children]," a right that "arises from that duty which is incumbent on them, to take care of their off-spring."

....

> Post-revolutionary American law continued to respect the rights of parents. Chancellor Kent, for example, discussing the liability of parents for the contracts of their children, stated that "[w]hat is necessary for the child is left to the discretion of the parent; ... there must be a clear omission of duty ... before a third person can interfere...." 2 James Kent, *Commentaries on American Law* *192-93 (1826).
>
> ...
>
> Thomas Rutherforth, a lecturer and author whose works were noted for their influence on the development of American law, argued that "since nature cannot be supposed to prescribe a duty to the parents without granting them the means, which are necessary for the discharge of such duty; it follows, that nature has given the parents all the authority, which is necessary for bringing up the child in a proper manner."

*Ex parte E.R.G.*, 73 So. 3d at 650-54 (Parker, J., concurring specially) (footnotes omitted).

## IV. Defendants violated Ms. Calgaro's fundamental rights.

**a. Defendants acted under the color of state laws.**

Under 42 U.S.C. § 1983, any person who deprives another's rights secured by the Constitution and federal laws, while acting under color of any statute, regulation, or custom of any State, is liable to the party injured at law. One requirement is that the conduct causing the deprivation of a federal right must be fairly attributable to the State. *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 937 (1982). A private party acts under color of state law when they are a "willful participant in joint activity with the state." *Magee v. Trustees of Hamline Univ., Minn.*, 747 F.3d 532, 536 (8th Cir. 2014).

According to *Monell*, local government bodies like St. Louis County or St. Louis School District "may not be sued under § 1983 for an injury inflicted solely by its employees or agents," *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 694 (1978), unless the injury resulted from execution of a government's policy or custom. *Id.* at 694. Governmental custom need not have "received formal approval through the body's official decisionmaking channels." *Id.* at 691. Custom may be a well settled practice that has the force of law. *Id.* An example of government custom is the municipality's failure to train its employees, when the failure constitutes a deliberate indifference to the person whose rights were violated. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 389 (1989).

In the present case, the defendants hold up their hands in the face of an egregious violation of Ms. Calgaro's parental rights and say, "Not our fault! Ain't nobody to see." But the Defendants have acted negligently and must be held accountable for their negligence. Surely the intent of Sec. 1983 is not that local governments may avoid liability for abuses simply by leaving important decisions in the unfettered discretion of untrained personnel.

St. Louis County and St. Louis School District were both well aware that instances would arise of young persons claiming to have been emancipated, young persons wanting welfare support, young persons wanting medical treatment including treatment that their parents may find objectionable, and young persons wanting to keep their school records from their parents. St. Louis County and St. Louis School District were both well aware that health and human services directors, school principals, and other officials would be faced with such cases and would have to make decisions in such cases. St. Louis County and St. Louis School District therefore had a duty to formulate policies for officials to follow when such cases arose and to train officials in those policies. These policies could have required officials to refer such cases to higher authorities such as county and school district attorneys, or they could have educated officials as to the meaning of emancipation and the means of becoming emancipated. Had they done so, Director Mirsch, Principal Johnson, and other officials would have recognized that a letter from a legal aid clinic was not sufficient to emancipate E.J.K. Director Mirsch and

the County would then not have provided the financial aid that enabled E.J.K. to obtain sex reassignment treatment from Fairview and Park Nicollett, the County and the School District would not have withheld E.J.K.'s records from Ms. Calgaro, and the injuries to Ms. Calgaro and the violations of her parental rights would have been averted. The County's and the District's willful refusal or failure to develop policies for such situations and to instruct their personnel in such policies, is the proximate cause of the injuries to Ms. Calgaro and the violations of her parental rights. By refusing or failing to develop such policies and instruct their personnel, Defendants have willfully left such decisions in the hands of untrained persons. Director Mirsch, Principal Johnson, and other officials therefore acted under a state or local policy that left such decisions in the hands of untrained persons. The County and the District are liable for the abuses, injuries, and violations that resulted from this policy.

The medical providers, Fairview and Park Nicollet, also acted under color of state laws because they were "willful participant[s] in joint activity with the state." They willfully made their choices to provide life-changing medical service to E.J.K. without his mother's consent and to deny her request for her son's medical records, where Minn. Stats. 144.341 and 144.346 merely allowed but did not mandate them. In addition, irrespective of Ms. Calgaro's objection, they performed a public function of determining E.J.K. emancipated based on the letter, a task traditionally exclusively reserved to the states, and performed a major medical service on him

funded by government assistance. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 352 (1974). Therefore, either under the joint action test or the public function test, Fairview and Park Nicollet may be held liable for violating Ms. Calgaro's constitutional rights.

**b. Arranging for J.D.K. to undergo dangerous and unproven transgender treatment without Ms. Calgaro's knowledge or consent is a particularly egregious violation of her Fourteenth Amendment Due Process rights.**

If a doctor had performed emergency heart surgery upon J.D.K. after J.D.K. had gone into sudden cardiac arrest without a parent nearby, that operation would have been a justifiable exception to the normal requirement of parental consent.

If a doctor had performed necessary but non-emergency knee surgery to enable J.D.K. to walk or run better, that operation would have required parental consent.

If a doctor or other person had pierced J.D.K.'s ears, such a minor non-emergency non-essential procedure would also have required parental consent.

But that is not what happened here.

In this case, without parental consent or even parental notification, Defendants arranged and paid for sex-change treatment that was not only non-emergency and non-essential, but is extremely controversial and in the sincere belief of many including Ms. Calgaro, egregiously wrong.[4]

The Foundation presents the evidence below, not to express animus toward transgender persons, but to demonstrate that Ms. Calgaro and others have solid reasons for objecting to sex-change operations. Even surgical alteration of one's sexual organs does not and cannot change the basic DNA with which a person was born. "It is physiologically impossible to change a person's sex, since the sex of each individual is encoded in the genes—XX if female, XY if male. Surgery can only create the *appearance* of the other sex."[5] Dr. George Burou, a surgeon who has performed over 700 sexual reassignment surgeries, stated, "I don't change men into women. I transform

---

[4] Defendants contend that under Minnesota Statute § 144.341, medical service providers may provide services without parental consent to "any minor who is living separate and apart from parents or legal guardian ... and managing personal financial affairs." Even if this Court were to conclude that this statute as interpreted by Defendants does not violate Ms. Calgaro's parental rights when applied to routine medical services, it clearly does violate Ms. Calgaro's parental rights when applied to a procedure as controversial and permanently life-altering as a sex-change operation. By outwardly changing E.J.K. from a boy into a girl, Defendants have clearly altered the parent-child relationship between this mother and her child.

[5] Richard P. Fitzgibbons, M.D., et al., *The Psychopathology of "Sex Reassignment" Surgery*, Nat'l Catholic Bioethics Q. (April 2009), at 118.

male genitals into genitals that have a female aspect. All the rest is in the patient's mind."[6]

Advocates of the illusion that a person may change one's sex do not want to acknowledge that some who act on those thoughts later have regrets or unpleasant results. They often cite a Swedish study that found that only 2.2 percent of such persons suffered from sex change regret.[7]

Other studies, however, show that the percentage who experience regret is much higher. The *Guardian*,

---

[6] Quoted in Janice C. Raymond, *The Transsexual Empire* 10 (1979).

[7] *See* Cecilia Dhejne, et al., *An Analysis of All Applications for Sex Reassignment Surgery in Sweden, 1960-2010: Prevalence, Incidence, and Regrets*, Arch. Sex. Behav. 43(8), May 2014. One commentator observes: "This study shows a 'regret rate' of 2.2%. However what are they actually measuring? What they are actually measuring is the rate of 'legal detransition.' They measure what percentage of people who undergo a legal name and gender change then undergo a second legal name and gender change. They don't measure people who have regrets but don't detransition legally, or don't detransition at all. It is also possible to detransition and not regret the original transition." The author continues: "Because I transitioned 20 years ago, I know many MTF (male-to-female) transitioners that were in my cohort or even 5-10 years before. What I see is concerning. I am the only one of them that has detransitioned, and most of them would not say they regret their transition and continue to go by feminine pronouns and feminine names. In terms of life outcomes, I would say economically they are mostly doing well. However, socially they are struggling. Most of them are alone. I see a lot of social anxiety, people being unwilling to leave the house. In addition, they still continue to deal with dysphoria and have emotional difficulties." TWT, *'Regret Rates' Are Not the Sole Measure of Outcomes*, ThirdWayTrans.com (June 29, 2015), https://goo.gl/ICDyT6.

after reviewing one hundred studies of persons who rejected their birth sex, concluded that 20% of such persons regretted their actions, and that many remain severely distressed and even suicidal.[8] As early as 1979 Dr. Charles Ihlenfeld, who had administered hormone therapy to about 500 such persons, said simply: "There is too much unhappiness among people who have had the surgery. Too many of them end as suicides."[9]

While accepting an ESPY Award for exceptional athletic performance in 2015, Bruce/Caitlyn Jenner told the audience that 41 percent of persons who attempt to become the opposite sex also attempt suicide.[10]

Consider other evidence:

> - A Swedish study of all 324 persons who had been sex-reassigned between 1973-2003 found that "[p]ersons with transsexualism, after sex-reassignment, have considerably higher risks for mortality, suicidal behaviour, and psychiatric

[8] Cited in Walt Heyer, *Transgender Regret Is Real Even if the Media Tell You Otherwise*, TheFederalist.com (Aug. 19, 2015), https://goo.gl/JBgdMX.

[9] *Id.*

[10] *Id.*

morbidity than the general population."[11]

- A 2009 study conducted by the Case Western Reserve University Department of Psychiatry concluded that "90 percent of these diverse [transgendered] patients had at least one other significant form of psychopathology."[12]

- A 2003 Dutch survey of board-certified Dutch psychiatrists concluded that, of 359 patients treated for cross-gender identification, 61 percent had other psychiatric disorders and illnesses, notably personality, mood, dissociative, and psychotic disorders.[13]

- In 2013 the University of Louisville conducted a study of 351 individuals who sought to be the opposite sex and found that the rates of depression and anxiety "far surpass the rates of

---

[11] Cecilia Dhejne et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, PLOS/ONE, (Feb. 22, 2011), *available at* https://goo.gl/tr4ibw/.

[12] *Id.*

[13] *Id.*

> those for the general population."[14]

The 2015 Report of the U.S. Transgender Survey revealed disturbing patterns of mistreatment and discrimination and startling disparities between transgender people in the survey and the US. population when it comes to the most basic elements of life, such as finding a job, having a place to live, accessing medical care, and enjoying the support of family and community. Survey respondents also experienced harassment and violence at alarmingly high rates.[15]

Survey respondents reported that 10 percent experienced family violence because of their gender presentation, 54 percent were verbally harassed in school, 24 percent were physically attacked in school, 13 percent were sexually assaulted in school, and 17 percent left school because of this treatment. Thirty percent reported having been fired, denied a promotion, or otherwise mistreated at work because of their gender identity. Twenty-nine percent were living in poverty, compared to 14 percent of the general population. Fifteen percent were unemployed, compared with 5 percent of the general population. Thirty percent have experienced homelessness; 39 percent have experienced serious psychological distress during the previous month compared to 5 percent of the population; and 40 percent have attempted suicide during their

---

[14] *Id.*

[15] *The Report of the 2015 Transgender Survey*, National Center for Gender Equality (2016), at 4.

lifetime—nearly nine times the attempted suicide rate in the general population (4.6 percent). 1.4 percent reported living with HIV, compared with only 0.3 percent of the general population.[16] Twenty percent have participated in the "underground economy" for income at some time, including "sex work, drug sales, and other currently criminalized work," nine percent during the past year.[17]

These tragic consequences appear to accompany the desire to be the opposite sex and reflect the general discomfort of the public with behavior the American Psychiatric Association until very recently considered the manifestation of a mental disorder.

The 2015 U.S. Transgender Survey results should be approached with some degree of caution. Although the number of respondents (27,715) is impressive, one may question whether those who volunteer to participate in an online survey are representative of the target population as a whole. Those persons who actively reject their birth sex experience violence, suicide, and other problems on a level disproportionate to the general population does not necessarily mean that their attempts at gender re-identification are the cause of their troubles. Theoretically, it is possible that those persons would have experienced problems regardless of their attempts to imitate the opposite sex. The Survey seems to reflect the belief of many of its participants that society's attitudes toward such persons, rather than their own behavior, are the cause of their

[16] *Id.* at 4-6.
[17] *Id.* at 158.

problem. But even though the cause-and-effect relationships may be disputed, the correlation between trangenderism and this host of problems is a legitimate cause for concern.

The fact remains: Parents who object to their children receiving sex-change operations have solid moral, medical, and scientific reasons for their objections. At least as much as with other forms of non-essential non-emergency surgery, and more so because of the moral issues and long-range consequences of transgender surgery, their objections should be respected and honored rather than denigrated and circumvented.

Clearly, Minnesota has no compelling interest that required circumventing Ms. Calgaro's parental rights to provide J.D.K. with so-called transgender surgery. It is difficult to find any type of state interest, much less a compelling one, that could justify Minnesota's actions in denying Ms. Calgaro the fundamental right of a parent to participate in critical decisions affecting her child. Even the Jehovah's Witnesses cases, in which parental rights were overridden, involved essential emergency life-saving measures. *See, e.g.*, *Jehovah's Witnesses in the State of Washington v. King County Hospital*, 278 F. Supp. 488 (W.D. Wash. 1967). None of those factors are present here.

If this were simply routine non-essential non-emergency treatment performed without the mother's consent, even then it would be a violation of Ms. Calgaro's parental rights. Because of the

controversial nature of transgender treatment and its potential effects, it is an even more egregious violation of her parental rights. Not only will this treatment radically change E.J.K.'s life; it will also radically and perhaps permanently change the mother/son relationship between Ms. Calgaro and E.J.K., as well as the relationship of E.J.K. with her siblings.

## CONCLUSION

The harm in this case extends not only to the mother's right to bring up her child as she sees fit, but also to denial of the biological reality that God created each of us to be either male or female. *Genesis* 1:27. Promotion of the transgender delusion by state officials consigns children in their care to a lifetime of misery that often terminates in suicide. In their zeal to satisfy the child's misguided impulse, Defendants have denied the natural relation of child to parent, as well as the natural gender that God has bestowed upon the child, and have engaged in actions that in other times and circumstances would be considered not child protection but child abuse.

If this case is not reversed, no limits will exist on what state officials may do. If the Defendants can facilitate the mutilation of the bodies of children, ignore parental authority, and defy the laws of nature and of nature's God, they can do anything. "[A]nd now nothing will be restrained from them, which they have imagined to do." *Genesis* 11:6.

The lower courts' refusal to grant relief flies in the face of settled law and precedent and perpetuates an

egregious injustice that cries out for reversal. This Court should grant Ms. Calgaro's petition for certiorari.

Respectfully submitted,

JOHN A. EIDSMOE
FOUNDATION FOR MORAL LAW
One Dexter Avenue
Montgomery, AL 36104
(334) 262-1245
eidsmoeja@juno.com
Counsel for *Amicus Curiae*