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March 3, 2022

Mr. Michael E. Gans  
Clerk of Court  
U.S. Court of Appeals for the Eighth Circuit  
Thomas F. Eagleton Courthouse  
111 South 10th Street  
St. Louis, MO. 63102

**Re: No. 21-2875, *Brandt v. Rutledge***

Dear Mr. Gans:

Under FRAP 28(j), Family Research Council notifies the Court of the Fifth Circuit’s order in *E.T. v. Paxton*, No. 21-51083, directing the American Academy of Pediatrics “to explain apparent contradictions between [its] brief” and both “AAP’s own website” and “the sources cited in [the brief’s] footnotes” about evidence for masking (Exhibit A).

AAP’s brief here similarly departs from its policy statements and even its district court brief, and a similar order is warranted. Gone is AAP’s claim that “[a] robust body of scientific evidence supports the efficacy of” gender transition drugs and surgeries for “young people.” R. Doc. 23, at 12–13 (“robust consensus”), 3 (“robust body of empirical evidence”). Now, AAP claims only that “[f]or transgender *adolescents with gender dysphoria*, there is a *growing* body of evidence that *indicates* the efficacy of” these interventions. Br. 24, 5 (“evidence that *suggests* the effectiveness”) (emphases added). Yet according to AAP’s policy statement, “[p]ubertal suppression is not without risks” and “[r]esearch on long-term risks...is currently limited.” FRC Br. 24.

Next, AAP below proclaimed that “puberty blocking treatment is fully reversible.” R. Doc. 23, at 17. Again, that contradicts its policy statement, to say nothing of the scientific evidence. FRC Br. 5–8. Now, AAP will say only that “their effects are generally reversible,” and AAP continues to deviate from its policy statement by claiming “exceedingly rare” risks. Br. 13.

Rather than admitting the lack of evidence, AAP hides behind WPATH’s Guidelines, arguing that youth “would not be provided medical interventions unless they met the rigorous criteria...under the Guidelines.” Br. 27–28, 14. Putting aside that below AAP supported puberty blockers at age *eight* (R. Doc. 23, at 10), AAP ignores that the Guidelines are optional, widely disregarded, and—according to their own authors—ideologically based. FRC Br. 21–24.

Finally, AAP's statement that "no studies" "support the proposition that adolescents with gender dysphoria will" de-transition is remarkably misleading, given that its own source highlights "the relative paucity of outcomes data." Br. 25–26 & n.81. AAP's implication that no gender dysphoric adolescent has *ever* de-transitioned is absurd. FRC Br. 9–10.

Sincerely,

*s/ Christopher Mills*

Christopher Mills  
Counsel for Family Research Council

Attachment

cc: All Counsel of Record via CM/ECF

***United States Court of Appeals***  
FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

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January 17, 2022

No. 21-51083 E.T. v. Paxton  
USDC No. 1:21-CV-717

Counsel:

The court has directed amici curiae the Texas Pediatric Society and the American Academy of Pediatrics ("AAP") to explain apparent contradictions between the brief filed on January 13 and the AAP's own website. Statements in the brief also appear to contradict the sources cited in its footnotes. These contradictions include but are not limited to the following:

- The brief (at 7) asserts: "Universal school masking policies substantially reduce the risk of death and serious illness among Texas's school-age population[.]" But the AAP's website says this: "Among states reporting, children were 0.00%-0.27% of all COVID-19 deaths, and 5 states reported zero child deaths. In states reporting, 0.00%-0.02% of all child COVID-19 cases resulted in death." <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/>.
- The brief asserts (at 3) that it is proven "beyond any doubt" that "masks do not harm children." But the AAP's website says this is an open question and that doctors cannot yet identify the long-term effects of masking on children. *Compare, e.g.,* Br. at 22 (asserting that "the scientific evidence squarely refutes" the "false premise that masks harm children"), *with* <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/> ("It is important to recognize there are immediate effects of the pandemic on children's health, but importantly we need to identify and address the long-

lasting impacts on the physical, mental, and social well-being of this generation of children and youth.”).

- The brief asserts (at 22 & n.49) the “scientific evidence squarely refutes” the concern that masking might “impede social speech and development.” But the sources cited for that proposition say it is unreasonable at this stage to declare scientific consensus. Compare Br. at 22 (masking “does not meaningfully impede social and speech development”), with AAP, *Do Masks Delay Speech and Language Development?*, <https://bit.ly/3B3c8GH> [cited at Br. 22 n.49] (“there is no known evidence that use of face masks interferes with speech and language development or social communication” and “there are no known studies that use of a face mask negatively impacts a child’s speech and language development”), and Ashley L. Ruba & Seth D. Pollack, *Children’s emotion inferences from masked faces: Implications for social interactions during COVID-19*, <https://bit.ly/2ZJk9Tv> [cited at Br. 22 n.49] (it is “uncertain” how children “infer emotions from facial configurations ... when part of the face is occluded by a mask,” and “there may be some loss of emotional information due to mask wearing”).

Amici shall file a response no later than 5:00 pm on Wednesday, January 19, 2022, to explain each statement in the brief that contradicts (1) sources cited in the amici brief and (2) information on the amici’s own websites.

Sincerely,

LYLE W. CAYCE, Clerk



By: Shirley M. Engelhardt, Deputy Clerk  
504-310-7631

cc:

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