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March 11, 2022

### VIA CM/ECF

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: Response to FRAP 28(j) Letter in *Brandt v. Rutledge* (No. 21-2875)**

Dear Mr. Gans:

American Academy of Pediatrics (“AAP”) submits this response to non-party Family Research Council’s (“FRC”) letter dated March 3, 2022, which is procedurally inappropriate and substantively baseless.

FRAP 28(j) provides that “a party” to an appeal may submit a letter regarding “pertinent and significant authorities.” FRC is not a party to this appeal, and the purported “authority” it cites is a *letter* from the Clerk of the Fifth Circuit regarding an unrelated appeal about school masking. The Court should reject at the threshold FRC’s attempt to use FRAP 28(j) as a vehicle for non-parties to raise frivolous challenges to other non-parties’ submissions.

In all events, FRC’s labored efforts to find supposed inconsistencies in the *amicus* brief submitted by AAP and 20 other organizations (“Br.”) is unavailing. For example, there is no inconsistency between the growing evidence indicating the efficacy of gender affirming care and the observation in AAP’s 2018 policy statement that such care is “not without risk.” Efficacious medical care often includes some risk.

Similarly, the brief’s observation that the use of puberty blockers involves “exceedingly rare” risks when provided under supervision is consistent with the policy statement, which acknowledges such risks. Furthermore, evidence that postdates the 2018 policy statement further indicates that pubertal suppression has exceedingly rare risks. Br. at n.38.<sup>1</sup>

Next, FRC claims that the brief’s statement that there is a lack of evidence that adolescents with gender dysphoria will eventually de-transition is misleading because the evidence on this issue is limited. Again, there is no inconsistency; AAP is not aware of *any*

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<sup>1</sup> Nor are statements on the reversibility of puberty blockers inconsistent: in general puberty blockers are fully reversible.

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published studies indicating that adolescents with gender dysphoria will eventually come to identify with their sex assigned at birth whether they receive treatment or not.

Finally, and abandoning all pretense that FRC's letter is motivated by anything but disagreement with the *merits* of the brief, FRC accuses AAP of "hiding" behind WPATH Guidelines. Citing to its own brief, FRC insists those guidelines are "widely disregarded." AAP strongly disagrees, as discussed in its brief. Br. at 15–19.

Sincerely,



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D. Jean Veta  
Counsel for AAP

cc (via ECF notification):

All counsel of record