No. 24-11996

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JANE DOE, ET AL,
Plaintiffs-Appellees,

v.

SURGEON GENERAL, STATE OF FLORIDA, ET AL, *j0-cv14-RH-MAF*

BRIEF OF *AMICI CURIAE* AMERICAN ACADEMY OF PED
AND ADDITIONAL NATIONAL AND STATE MEDICAL
MENTAL HEALTH ORGANIZATIONS IN SUPPORT
PLAINTIFFS-APPELLEES AND AFFIRMANCE

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Per Eleventh Circuit Rule 26.1-2(c), *Amici* certify that the CIP contained herein is complete.

Date: October 9, 2024

s/ Cortlin H. Lannin
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TABLE OF CITATIONS

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Cases

STATEMENT OF INTEREST OF *AMICI CURIAE*

STATEMENT OF THE ISSUE

Whether the district court correctly enjoined Defendants-Appellants from enforcing Rules 64B8-9.019 and 64B15-14.014 of the Florida Administrative Code.

SUMMARY OF ARGUMENT

Rules 64B8-9.019 and 64B15-

the innate sense of oneself as being a particular gender) and sex assigned at birth.[5] If not treated, or treated improperly, gender dysphoria can result in debilitating anxiety, depression, and self-harm, and is associated with suicidality. As such, the effective treatment of gender dysphoria saves lives.

The medical community, including the respected professional organizations participating here as *amici*, widely recognizes that the appropriate protocol for treating gender dysphoria in transgender adolescents is "gender-affirming care."[6] Gender-affirming care is care that supports an individual with gender dysphoria as they explore their gender identity—in contrast with efforts to change the individual's gender identity to match their sex assigned at birth,

to align their physiology with their gender identity. Empirical evidence indicates that gender-affirming care, including the prescription of puberty blockers and hormone therapy to carefully evaluated patients who meet diagnostic criteria, can alleviate clinically significant distress and lead to significant improvements in the

adolescents with gender dysphoria by denying crucial care to those who need it.

I. Understanding Gender Identity and Gender Dysphoria.

Gender identity refers to a person's deep internal sense of belonging to a particular gender.[9] Most people are "cisgender:" meaning they have a gender identity that aligns with their sex assigned at birth.[10] However, transgender people have a gender identity that does not align with their sex assigned at birth.[11] In the United States, approximately 1.6 million individuals identify as transgender.[12] Of these individuals, approximately 10% are teenagers aged 13 to 17.[13] Individuals often start to understand their gender identity during prepubertal childhood and adolescence.

Today, there is an increasing acceptance of being transgender as a normal variation of human identity.[14] However, many transgender people suffer from

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[9] AAP Policy Statement, *supra* note 5, at 2 tbl.1.

[10] *See* Am. Psychological Ass'n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70(9) AMERICAN PSYCHOLOGIST 832, 861–862 (2015), https://www.apa.org/practice/guidelines/transgender.pdf.

[11] *See id.* at 863.

[12] *See* Jody L. Herman et al., *How Many Adults and Youth Identify as Transgender in the United States?*, Williams Inst., at 2 (June 2022), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf.

[13] *See id.* at 3.

[14] James L. Madara, *AMA to States: Stop Interfering in Healthcare of Transgender Children*, Am. Med. Ass'n (Apr. 26, 2021), https://www.ama-assn.org/press-center/press-r7 Tc -0.0078.2 (M).145 0.00Artifact Tc Attached [/Bottom 22

gender dysphoria, a serious medical condition in which the patient experiences significant distress that can lead to "impairment in peer and/or family relationships, school performance, or other aspects of their life."[15] Gender dysphoria is a formal diagnosis under the American Psychiatric Association's Diagnostic and Statistical Manual (DSM-5-TR).[16]

If untreated or inadequately treated, gender dysphoria may lead to depression, anxiety, self-harm, and suicidality.[17] In contrast, with treatment, transgender adolescents with gender dysphoria can mature into thriving adults.[18]

II. The Widely Accepted Guidelines for Treating Adolescents with Gender Dysphoria Provide for Gender-Affirming Medical Care When Indicated.

The widely accepted view of the professional medical community is that gender-affirming care is the appropriate treatment for gender dysphoria and that, for

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see also Am. Psychological Ass'n, *APA Resolution on Gender Identity Change Efforts*, 4 (Feb. 2021), https://www.apa.org/about/policy/resolution-gender-identity-change-efforts.pdf.

[15] AAP Policy Statement, *supra* note 5, at 5.

[16] *See* Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders: DSM-5-TR* at 512–13 (2022); *see also* World Health Org., International Classification of Diseases, Eleventh Revision (ICD-11) (2019/2021) ("Gender incongruence is characterised by a marked and persistent incongruence between an individual's experienced gender and the assigned sex. Gender variant behaviour (a)3.6l12.1 (h9c

some adolescents, puberty blockers and hormone therapy are necessary.[19] Gender-affirming care greatly reduces the negative physical and mental health consequences that result when gender dysphoria is untreated.[20]

A. The Gender Dysphoria Treatment Guidelines Include Thorough Mental Health Assessments and, for Some Adolescents, Gender-Affirming Medical Care.

The treatment protocols for gender dysphoria are laid out in established, evidence-based clinical guidelines: (i) the Endocrine Society Clinical Practice Guideline for Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons, and (ii) the WPATH Standards of Care for the Health of Transgender and Gender Diverse People (together, the "Guidelines").[21] The Guidelines have been developed by expert clinicians and researchers who have worked with patients with gender dysphoria for many years.

The Guidelines provide that all youth with gender dysphoria should be evaluated, diagnosed, and treated by a qualified health care professional ("HCP").[22]

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[19] *See, e.g.*, Endocrine Soc'y, *Transgender Health: An Endocrine Society Position Statement* (2020), https://www.endocrine.org/advocacy/position-statements/transgender-health.

[20] *See id.*

[21] Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, 102(11) J. CLINICAL ENDOCRINOLOGY & METABOLISM 3869 (Nov. 2017) ("ES Guidelines"), https://academic.oup.com/jcem/article/102/11/3869/4157558; WPATH, *Standards of Care for the Health of Transgender and Gender Diverse People* (8thVersion) ("WPATH Guidelines"), https://www.tandfonline.com/doi/pdf/10.1080/ 26895269.2022.2100644.

[22] *See infra* Section II.A.2.

Further, the Guidelines provide that each patient

caregiver(s).[29]

3. In Certain Circumstances, the Guidelines Provide for the Use of Gender-Affirming Medical Care to Treat Adolescents With Gender Dysphoria.

For youth with gender dysphoria that continues into adolescence—after the onset of puberty—the Guidelines provide that, in addition to mental health care, gender-affirming medical care may be indicated. Before an adolescent may receive any gender-affirming medical care for treating gender dysphoria, a qualified HCP must make a determination that such medical care is indicated. The Guidelines collectively provide that, before prescribing puberty blockers, the HCP must determine that: (1) the adolescent meets the diagnostic criteria of gender dysphoria or gender incongruence according to an established taxonomy;[30] (2) the adolescent has demonstrated a sustained and persistent pattern of gender nonconformity or gender dysphoria; (3) the adolescent has demonstrated the emotional and cognitive maturity required to provide informed consent for treatment; (4) any coexisting psychological, medical, or social problems that could interfere with diagnosis, treatment, or the adolescent's ability to consent have been addressed; (5) the adolescent has been informed of the reproductive effects of treatment in the context of their stage in pubertal development and discussed fertility preservation options;

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[29] *Id.*

[30] ES Guidelines, *supra* note 21, at 3876; WPATH Guidelines, *supra* note 21, at S47, S48.

and (6) the adolescent has reached Tanner stage 2 of puberty to initiate pubertal suppression.[31] Further, a pediatric endocrinologist or other clinician experienced in pubertal assessment must (7) agree with the indication for treatment, (8) confirm the patient has started puberty, and (9) confirm that there are no medical contraindications.[32]

If all the above criteria are met, and the patient and their parents provide informed consent, gonadotropin-releasing hormone (GnRH) analogues, or "puberty blockers," may be offered beginning at the onset of puberty.

be informed of the potential effects and side effects and give their informed consent.[43] Although some of the changes caused by hormone therapy become irreversible after those secondary sex characteristics are fully developed, others are partially reversible if the patient discontinues use of the hormones.[44]

The Guidelines contemplate that the prescription of puberty blockers and/or hormone therapy be coupled with education on the safe use of such medications and close monitoring to mitigate any potential risks.[45] Decisions regarding the appropriate treatment for each patient with gender dysphoria are made in consultation with the patient, their parents, and the medical and mental health care team. There is "no one-size-fits-all approach to this kind of care."[46]

B. The Guidelines for Treating Gender Dysphoria Were Developed Through a Robust and Transparent Process, Employing the Same Scientific Rigor That Underpins Other Medical Guidelines.

The Guidelines are the product of careful and robust deliberation following the same types of processes—and subject to the same types of rigorous requirements—as other guidelines promulgated by *amici* and other medical organizations.

For example, the ES Guidelines were developed following a 26-step, 26-

[43] *See id*.

guidelines went through rigorous review and were publicly available for discussion and debate, receiving a total of 2,688 comments.[53] There were 119 authors ultimately involved in the final draft, including feedback from experts in the field as well as from transgender individuals and their families.[54]

C. Scientific Evidence Indicates the Effectiveness of Treating Gender Dysphoria According to the Guidelines.

Multiple studies indicate that adolescents with gender dysphoria who receive

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therapy to treat adolescents with gender dysphoria.[57] These studies find positive mental health outcomes for those adolescents who received puberty blockers or

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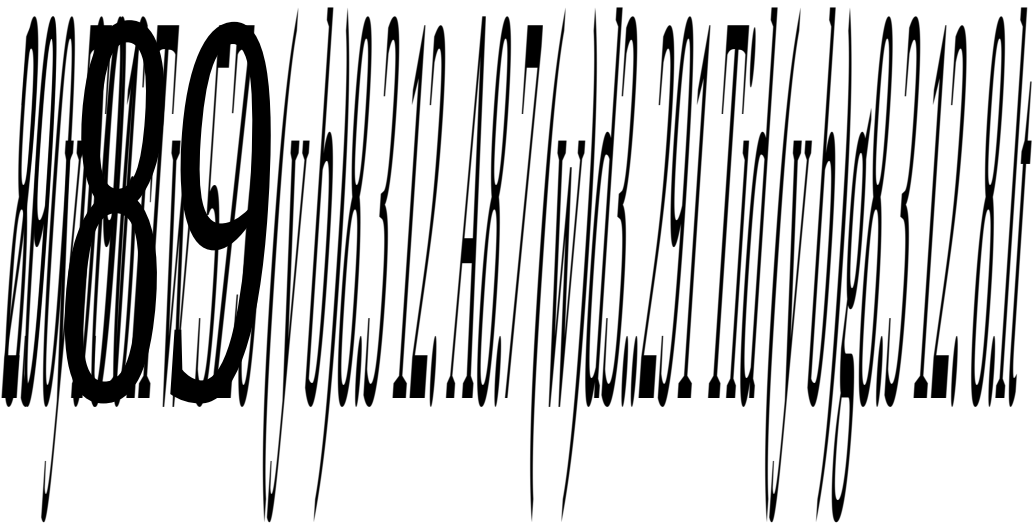
pubmed.ncbi.nlm.nih.gov/25201798; Laura E. Kuper, et al., *Body Dissatisfaction and Mental Health Outcomes of Youth on Gender-Affirming Hormone Therapy*, 145(4) PEDIATRICS e20193006 (2020), https://pubmed.ncbi.nlm .nih.gov/32220906; Jack L. Turban et al., *Pubertal Suppression For Transgender Youth And Risk of Suicidal Ideation*, 145(2) PEDIATRICS e20191725 (2020), https:// www.ncbi.nlm.nih.gov/pmc/articles/PMC7073269; Anna I.R. van der Miesen, *Psychological Functioning in Transgender Adolescents Before and After Gender-Affirmative Care Compared With Cisgender General Population Peers*, 66(6) J. ADOLESCENT HEALTH 699–704 (2020); Diana M. Tordoff et al., *Access to Gender-Affirming Hormone Therapy in Adolescents and Young Adults with Gender Dysphoria: A Qualitative Study*, 3(8) JAMA NETWORK OPEN e205131 (2020), https://pubmed.ncbi.nlm.nih.gov/32437572/.

hormone therapy, including statistically significant reductions in anxiety, depression, and suicidal ideation.[58]

For example, a longitudinal study of nearly 50 transgender adolescents found that suicidality was decreased by a statistically significant degree after receiving gender-affirming hormone treatment.[59] A study published in January 2023, following 315 participants age 12 to 20 who received gender-affirming hormone treatment, found that the treatment was associated with decreased symptoms of depression and anxiety.[60e] Additionally, a 2020 study analyzed survey data from 89 transgender adults who had access to puberty blockers5 (s)9.3 (lt)8 thaty.rA rwc.-0.007 Tw 9



Further, a prospective two-year follow-up study of adolescents with gender dysphoria published in 2011 found that treatment with puberty blockers was associated with decreased depression and improved overall functioning.[64] A six-year follow-up study of 55 individuals from the 2011 study found that subsequent treatment with hormone therapy followed by surgery in adulthood was associated with a statistically significant decrease in depression and anxiety.[65] "Remarkably, this study demonstrated that these transgender adolescents and young adults had a sense of well-being that was equivalent or superior to that seen in age-matched controls from the general population."[66]

As clinicians and scientific researchers, *amici* always welcome more research, including on this crucial topic. However, the available data indicate that the gender-affirming medical care prohibited by the Healthcare Ban is effective for the treatment of gender dysphoria.

III. The State Relies on Factually Inaccurate Claims and Ignores the Recommendations of the Medical Community.

On October 28, 2022, the Boards held a workshop open to the public to discuss

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[64] *See* Vries, *Puberty Suppression in Adolescents with Gender Identity Disorder*, *supra* note 56.
[65] Vries, *Young Adult Psychological Outcome After Puberty Suppression And Gender Reassignment*, *supra* note 56.
[66] Stephen M. Rosenthal, *Challenges in the Care of Transgender and Gender-Diverse Youth: An Endocrinologist's View*, 17(10) NATURE R

the proposed development of the Healthcare Ban. The workshop included a discussion of the Division of Florida Medicaid's "Generally Accepted Professional Medical Standards Determination on the Treatment of Gender Dysphoria" (the "GAPMS Report").[67] The GAPMS Report asserts that puberty blockers, gender-affirming hormone therapy, and gender-affirming surgeries are not consistent with professional medical standards and that there is insufficient evidence that these interventions are safe and effective.[68] The State similarly posits in its appellate brief that the evidence upon which the Guidelines rely is unreliable.[69] However, these assertions are premised on speculative and discredited claims about gender dysphoria and mischaracterizations of the Guidelines and scientific research regarding these gender-affirming medical interventions.

A. There is No Evidence That Gender Dysphoria C5 (4Tal Tw (.)Tj 5 45 (4Tal -0.5 Tw

from websites that promote the belief that "social contagion" causes transgender identity.[74] The survey, which

new etiologic phenomenon of rapid onset gender dysphoria during adolescence."

detransitions—the definition of which varies from study to study[87]—must do so because they have come to identify with their sex assigned at birth. This ignores other, more common reported factors that contribute to a person's choice to detransition, such as pressure from parents and discrimination.[88]

In addition, while the percentage of adolescents seeking gender-affirming care has increased, that percentage remains very low—only 1.8% of high-school students identify as transgender.[89] Further, research supports that this increase in adolescents seeking care is very likely the result of reduced social stigma and expanded care options.[90]

C. There Is No Accepted Protocol of "Watchful Waiting" for Adolescents with Gender Dysphoria.

Based on its unsupported claim that many adolescents with gender dysphoria will eventually come to identify as their sex assigned at birth, the GAPMS Report

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[87] Michael S. Irwig, *Detransition Among Transgender and Gender-Diverse People—An Increasing and Increasingly Complex Phenomenon*, J. CLINICAL ENDOCRINOLOGY & METABOLISM 1, 1 (June 2022), https://pubmed.ncbi.nlm.nih.gov/35678284 ("Detransition refers to the stopping or reversal of transitioning which could be social (gender presentation, pronouns), medical (hormone therapy), surgical, or legal.").

[88] *See id.* (discussing "largest study to look at detransition").

[89] *See* Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students–19 States and Large Urban School Districts, 2017*, HHS/CDC, 68 MORBIDITY & MORTALITY WKLY. REP. 67, 68 (2019), https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf.

[90] *See* Boulware, *supra* note 75, at 20.

questions the medical necessity of puberty blockers and hormone therapy for adolescents and suggests that a "watchful waiting" approach may be more appropriate. In this regard, some practitioners use a "watchful waiting" approach for *prepubertal* children with gender dysphoria, which involves waiting until the patient reaches adolescence before considering social transition.[91] However, "watchful waiting" is not recommended for adolescents with gender dysphoria.[92] It can cause immense harm by denying these patients the evidence-based treatments that could alleviate their distress, and forcing them to experience full endogenous puberty, resulting in physical changes that may be reversed—if at all—only

Section II.C above.

In criticizing the studies supporting gender-affirming medical care, the State refers to "high-quality" vs. "low-quality" studies under the GRADE system and the presence (or lack thereof) of randomized controlled trials ("RCTs").[95] Under the GRADE system,

especially in the pediatric context.[98] In those instances, as here, clinicians rely on the best evidence possible and clinical experience to provide treatment for their patients. The evidence supporting gender-affirming medical care is consistent with the type of evidence relied on in other clinical practices throughout the medical community.[99]

IV. The Healthcare Ban Would Irreparably Harm Many Adolescents with Gender Dysphoria By Denying Them the Treatment They Need..

to preserve their health. Clinicians who are members of the relevant *amici* associations have witnessed the benefits of this treatment as well as the harm that results when such treatment is denied or delayed.

As discussed above, research shows that adolescents

CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the type-volume limitations set forth in FRAP 32(a)(7)(B)(i). This brief contains 6,480 words, including all headings, footnotes, and quotations, and excluding the parts of the response exempted under FRAP 32(f).

2. In addition, this brief complies with the typeface and type style requirements of FRAP 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Cortlin H. Lannin
Cortlin H. Lannin

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

/s/ Cortlin H. Lannin
Cortlin H. Lannin