

Nos. 23-5600/23-5609

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH

L.W., ET AL,
Plaintiffs-Appellees,

v.

JONATHAN SKRMETTI, ET AL,
Defendants-Appellants

On Appeal from the United States District Court for the
Middle District of Tennessee
Case No: 3:23-cv-00376

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

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici curiae are the American Academy of Pediatrics, the Academic Pediatric Association, the

Amici are professional medical and

INTRODUCTION

On March 23, 2023, the Tennessee Governor signed S.B. 1 and, on March 29, 2023, S. B. 150 became law when the Kentucky Legislature voted to overturn the Kentucky Governor's veto of this law (collectively, these laws are referred to as the "Healthcare Bans"). Both laws prohibit healthcare providers from providing patients under 18 with critical, medically necessary, evidence-based treatments for gender dysphoria.² Denying such evidence-based medical care to adolescents who meet the requisite medical criteria puts them at risk of serious physical and mental health complications.

patient's life.⁴ If not treated, or treated improperly, gender dysphoria can result in debilitating anxiety, depression, and self-harm, and is associated with higher rates of suicide. As such, the effective treatment of gender dysphoria saves lives.

The widely accepted recommendation of the medical community, including that of the respected professional organizations participating here as *amici*, is that the standard of care for treating gender dysphoria is “gender-affirming care.”⁵ 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, which are known to be ineffective and harmful.⁶ For adolescents with persistent gender dysphoria that worsens with the onset of puberty, gender-affirming care may include medical interventions to align their physiology with their gender identity.

interventions provided to carefully evaluated patients who meet diagnostic criteria, can alleviate clinically significant distress and lead to significant

I. Understanding Gender Identity and Gender Dysphoria.

A person's gender identity is a person's deep internal sense of belonging to a particular gender.⁸ Most people have a gender identity that aligns with their sex assigned at birth.⁹ However, transgender people have a gender identity that does not align with their sex assigned at birth.¹⁰ In the United States, it is estimated that approximately 1.4 million individuals are transgender.¹¹ Of these individuals, approximately 10% are teenagers aged 13 to 17.¹² Individuals often start to understand their gender identity during prepubertal childhood and adolescence.

Today, there is an increasing understanding that being transgender is a normal variation of human identity.¹³ However, many transgender people suffer from

⁸ AAP Policy Statement, *supra* note 4, at 2 tbl.1.

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

¹⁰ See *id.* at 863.

¹¹ See Jody L. Herman et al., *Ages of Individuals Who Identify as Transgender in the United States*, Williams Inst., at 2 (Jan. 2017), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Age-Trans-Individuals-Jan-2017.pdf>.

¹² See *id.* at 3.

¹³ 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-releases/ama-states-stop-interfering-health-care-transgender-children>; 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>.

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.”¹⁴ Gender dysphoria is a formal diagnosis under the American Psychiatric Association’s Diagnostic and Statistical Manual (DSM-5-TR).¹⁵

Adolescents with gender dysphoria are not expected to identify later as their sex assigned at birth.¹⁶ Instead, “[l]ongitudinal studies have indicated that the emergence or worsening of gender dysphoria with pubertal onset is associated with a very high likelihood of being a transgender adult.”¹⁷

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and young adults reported having engaged in self-harm during the preceding 12 months, and over 75% reported symptoms of generalized anxiety disorder in the preceding two weeks.¹⁹ Even more troubling, more than 50% of this population reported having seriously considered attempting suicide,²⁰ and more than one in three transgender adolescents reported having attempted suicide in the preceding 12 months.²¹

II. The Widely Accepted Guidelines for Treating Adolescents with Gender Dysphoria Provide for Medical Interventions 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 some adolescents, gender-affirming medical interventions are necessary.²² This care

(2018), <https://pubmed.ncbi.nlm.nih.gov/30095668>.

¹⁹ See Amit Paley, *The Trevor Project 2020 National Survey*, at 1, <https://www.thetrevorproject.org/wp-content/uploads/2020/07/The-Trevor-Project-National-Survey-Results-2020.pdf>.

²⁰ See *id.* at 2.

²¹ See

greatly reduces the negative physical and mental health consequences that result when gender dysphoria is untreated.²³

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

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 Transsexual, Transgender, and Gender-Nonconforming People (together, the “Guidelines”).²⁴ 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”). Further, the Guidelines provide that each patient who receives gender-affirming care should receive only evidence-based, medically necessary, and appropriate

²³ *See id.*

²⁴ Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, 102(11) J., 1 y T72 160.9 (t)8. CLINICAL , ENDOCRINOLOGY , *et*, *THE*

Endocrine Soc’y Guidelines”),

interventions that are tailored to the patient's individual needs.

1. A Robust Diagnostic Assessment Is Required Before Medical Interventions Are Provided.

According to the Guidelines, gender-affirming care for adolescents begins with a thorough evaluation by a HCP who: (1) is licensed by their statutory body and holds a master's degree or equivalent in a relevant clinical field; (2) has expertise and received theoretical and evidence-based training in child, adolescent, and family mental health; (3) has expertise and received training in gender identity

diagnostic profile, and unique needs

gender incongruence according to the World Health Organization's International Classification of Diseases or other taxonomy;³¹ (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; and (6) the adolescent has reached Tanner stage 2 of puberty to initiate pubertal suppression.³² 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) agree with the indication for treatment, (10) confirm the patient has started puberty, and (11) confirm the patient has started puberty.

hormone therapy be coupled with education on the safe use of such medications and close monitoring to mitigate any potential risks.⁴⁶ Decisions regarding the appropriate treatment for each patient with gender dysphoria are made in consultation with the patient, their parents or guardians, and the medical and mental health care team. There is “no one-size-fits-all approach to this kind of care.”⁴⁷

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 Endocrine Society’s Guidelines were developed following a 26-step, 26-month drafting, comment, and review process.⁴⁸ The Endocrine Society imposes strict evidentiary requirements based on the internationally recognized Grading of Recommendations Assessment, Development and Evaluation (GRADE) system.⁴⁹ That GRADE assessment is then reviewed, re-

again by multiple, independent groups of professionals.⁵⁰ Revls.

investigated the use of hormone therapy to treat adolescents with gender dysphoria.

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

between lack of access to gender-affirming care and lifetime suicide risk, banning such care can put patients' lives at risk.

CONCLUSION

For the foregoing reasons, the district courts' decisions granting the preliminary injunctions should be affirmed.

Dated: August 10, 2023

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2023, I electroBDC /TT(0th)gh