

STATE ACTIONS TO BAN GENDER-AFFIRMING CARE FOR MINORS AND THE WAYS FORWARD

ALI LIBERTELLA*

INTRODUCTION

As of October 2023, twenty-one states have passed laws that ban medically necessary gender-affirming care to minors.¹ This Note will discuss the actions of three such states—Texas, Florida, and Arkansas—in 2022.² These state actions demonstrate three different ways in which states have restricted access to medically necessary gender-affirming care. To move forward, lawyers and advocates must continue to litigate against these bans, state legislatures should enact sanctuary statutes protecting trans youths' access to gender-affirming care, and the U.S. Food & Drug Administration (FDA) should make medications—including puberty blockers and hormones—available on-label and across state lines through Telehealth. It is important to recognize that disapproving parents pose insurmountable barrier to minors' self-realization, exploration of their genders, and access to care. There is abundant legal scholarship on parental consent in this context and analogous ones, such as the mature minor doctrine that concerns minors accessing abortion and reproductive care like birth control. However, this Note focuses solely on situations in which transgender youths' parents support their children's identities and allow them to receive gender-affirming care. When a state has a ban on gender-affirming care, parents' consent would not matter in the face of such a ban, unless the family is financially able and willing to move to a state allowing access to such care.³

© 2024 Libertella. This is an open access article distributed under the terms of the Creative Commons Attribution License, which permits the user to copy, distribute, and transmit the work provided that the original author(s) and source are credited.

* J.D. 2024, Columbia Law School; B.A. 2021, New York University. With special thanks to Professor Josh Gupta-Kagan for his expert guidance as I researched and wrote this Note and to the editorial staff of the *Columbia Journal of Gender & Law* for their wonderful comments and for preparing my piece for publication.

1 *Bans on Best Practice Medical Care for Transgender Youth*, MOVEMENT ADVANCEMENT PROJECT (Oct. 18, 2023), www.mapresearch.org/equality-maps/healthcare/youth_medical_care_bans [https://perma.cc/GA4L-AVKH].

2 This Note was written between 2022 and 2023.

3 See Olivia Yarvis, *With a 'Feeling of Betrayal,' One Family Flees Texas in Search of Safer Climate for*

It is especially urgent and necessary to further academic scholarship and rigorous journalism on the topic of gender-affirming care because current conversations are rife with misinformation. Indeed, substantial amounts of the rhetoric of opponents of gender-affirming care for transgender minors is based on blatant misinformation.⁴ The public and the people in power must be educated on the results of scientific studies of gender-affirming care and what those results mean for the safety of this care. Moreover, journalists must be more responsible when writing about topics with real life consequences as harsh as that of access to necessary care.⁵ A November 2022 *New York Times* article⁶ surveying the debate on the safety of gender-affirming care for minors is an example of mainstream, irresponsible journalism on this topic. The World Professional Association for Transgender Health (WPATH) criticizes the article's careless journalism, explaining that this article “furthers the atmosphere of misinformation and subjectivity that has grown to surround the area of gender-affirming medical interventions for transgender youth” and “supports inaccurate narratives that puberty blocking medicines are conclusively harmful to long-term bone density or other health outcomes, and that transition reversal and transition regret is a common outcome for these treatments.”⁷ The spread of misinformation through such irresponsible journalism will incentivize politicians to further restrict access to this care. Accurate, informed narratives are needed in this area.

Their Transgender Daughter, THE TEX. TRIB. (Aug. 22, 2022), <https://www.texastribune.org/2022/08/22/family-with-transgender-daughter-flees-texas/#:~:text=Watch%3A%20With%20a%20%E2%80%9Cfeeling%20of,such%20family%20to%20leave%20home> [https://perma.cc/VT24-5BFW] (telling the story of a family in Texas with a transgender child who moved out of the state in response to Governor Abbott's directive).

4 See *infra* notes 7, 20–39 and accompanying text.

5 Kaiyti Duffy, *Recent Anti-Trans Articles Miss the Point of Gender-Affirming Care*, TEEN VOGUE (Nov. 29, 2022), <https://www.teenvogue.com/story/recent-anti-trans-articles-miss-the-point-of-gender-affirming-care> [https://perma.cc/4RZH-W7Y2]; Audrey McCabe, *Print and Online Outlets Failed to Connect Club Q Shooting to Long Standing Anti-LGBTQ Hate*, MEDIA MATTERS (Nov. 23, 2022), <https://www.mediamatters.org/cnn/print-and-online-outlets-failed-connect-club-q-shooting-long-standing-anti-lgbtq-hate> [https://perma.cc/G49U-HTS8].

6 Megan Twohey & Christina Jewett, *They Paused Puberty, But Is There a Cost?*, N.Y. TIMES (Nov. 14, 2022), <https://www.nytimes.com/2022/11/14/health/puberty-blockers-transgender.html> [https://perma.cc/J6A3-9WHP].

7 USPATH Board & WPATH Executive Committee, *USPATH and WPATH Respond to NY Times Article "They Paused Puberty, But Is There a Cost?"*, U.S. PRO. ASSOC. FOR TRANSGENDER HEALTH & WORLD PRO. ASSOC. FOR TRANSGENDER HEALTH (Nov. 14, 2022), <https://www.wpath.org/media/cms/Documents/Public%20Policies/2022/USPATHWPATH%20Statement%20re%20Nov%2014%202022%20NYT%20Article%20Nov%2022%202022.pdf?t=1669173834> [https://perma.cc/7N77-5RWJ].

This Note proceeds in three parts. Part One will define the relevant terms, describe the populations affected, and lay out the parties involved in regulating and influencing access to gender-affirming care. Part Two will describe respective state actions restricting this care in Arkansas, Texas, and Florida. Arkansas's Act 626 of 2021 banned all gender-affirming care for transgender people under 18 years old.⁸ In June 2023, an Arkansas district court judge struck down Act 626 as unconstitutional.⁹ In Texas, a technically non-binding directive by Governor Greg Abbott to the Department of Family and Protective Services (DFPS) instructed child welfare agents to investigate families suspected of affirming their transgender youths' identities.¹⁰ These investigations, and any investigations of Texas families that belong to PFLAG (an organization supporting families with LGBTQ+ members), have also been enjoined by the court.¹¹ Ultimately, Texas banned gender-affirming care for minors in September 2023.¹² In February 2023, Florida's State Board of Medicine and the State Board of Osteopathic Medicine confirmed a rule that prohibits any gender-affirming care for minors, even in clinical trial settings.¹³ Florida is the only state so far that has used its medical board to confirm a rule prohibiting such care. This Note focuses on only these three states' actions, which use distinctively different methods of banning the care and exert particularly prominent influence at the time of writing this Note.

Part Three will outline potential ways forward, each with a varying degree of viability for the near future. States may look to the abortion context, particularly involving

8 ARK. CODE ANN. § 20-9-1502 (West 2023).

9 *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727 (E.D. Ark. June 20, 2023) (this decision is currently on appeal in the Eighth Circuit).

10 Letter from Greg Abbott, Governor of Texas, to Jaime Masters, Comm'r of Fam. and Protective Services (Feb. 22, 2022), <https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf> [<https://perma.cc/6L3X-CEAJ>] [hereinafter Abbott Letter].

11 Temporary Restraining Order for Plaintiffs, *PFLAG v. Abbott*, No. D-1-GN-22-002569 (Tex. Dist. Ct. June 10, 2022), <https://www.aclu.org/cases/pflag-v-abbott?document=pflag-v-abbott-temporary-restraining-order> [<https://perma.cc/5TWY-APVW>] [hereinafter PFLAG TRO]; Order Granting PFLAG Inc.'s and Plaintiffs Briggles' Application for Temporary Injunction, *PFLAG v. Abbott*, No. D-1-GN-22-002569 (Tex. Dist. Ct. Sept. 16, 2022), <https://www.aclu.org/cases/pflag-v-abbott?document=pflag-v-abbott-order-granting-pflag-incs-and-plaintiffs-briggles-application> [<https://perma.cc/G9KQ-FP3C>] [hereinafter PFLAG Temporary Injunction].

12 *Court Cases: Loe v. Texas*, ACLU, <https://www.aclu.org/cases/loe-v-texas> [<https://perma.cc/47B6-4WHK>].

13 Amanda D'Ambrosio, *Florida Medical Boards Ban Gender-Affirming Care for Kids*, MEDPAGE TODAY (Nov. 7, 2022), <http://www.medpagetoday.com/special-reports/features/101624> [<https://perma.cc/3MHJ-NMC9>].

regulations on the abortion medication Mifepristone, for creative ways to protect access to gender-affirming medical care. Following California and New York in providing sanctuary to minors with consenting parents from states banning the care could be helpful. On a national scale, federal actions would likely be more effective in preventing opponents of transgender rights from proposing bills and taking other actions to ban such care in the first place. Therefore, the FDA should declare the medications prescribed to minors as puberty blockers on-label to delay puberty in gender-diverse youth.¹⁴ The federal Transgender Bill of Rights should be amended and passed to minimize pushback as much as possible.¹⁵ The scientific and medical communities should continue supporting gender-affirming care for minors while conducting more research to further disprove that such care is as dangerous or experimental as its opponents say. Public policy-oriented solutions include widespread education of the general public, and especially parents, on what gender identity is, what gender-affirming care for minors is, and what the care's benefits are.¹⁶ Providers in states that allow gender-affirming care, like puberty blocking medication and hormones, should make these medications available to minors via Telehealth and delivery services. Planned Parenthood should be more holistic and offer gender-affirming care in addition to abortion services. Facing state perpetuated violence and attacks on bodily autonomy, transgender and gender nonconforming people should continue to share stories of joy and thriving.¹⁷

14 Cf. Merrick B. Garland, *Attorney General Merrick B. Garland Statement on Supreme Court Ruling in Dobbs v. Jackson Women's Health Organization*, U.S. DEP'T OF JUST. (June 24, 2022), <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-statement-supreme-court-ruling-dobbs-v-jackson-women-s> [<https://perma.cc/3KXL-7NR9>] ("We stand ready to work with other arms of the federal government that seek to use their lawful authorities to protect and preserve access to reproductive care. In particular, the FDA has approved the use of the medication Mifepristone. States may not ban Mifepristone based on disagreement with the FDA's expert judgment about its safety and efficacy."). But see Marco Rubio, *Same Left That Freaks Out Over Ivermectin Wants to Pump Kids Full of Transgender Hormones*, THE FEDERALIST (May 26, 2022), <https://thefederalist.com/2022/05/26/same-left-that-freaks-out-over-ivermectin-wants-to-pump-kids-full-of-transgender-hormones/> [<https://perma.cc/U8B7-PCJ5>] (criticizing promotion of puberty blockers partly because they are off label).

15 See *infra* Part III.A.1.

16 See Deanna Adkins et al., *Supporting & Caring for Transgender Children*, HUM. RTS. CAMPAIGN (Sept. 2016), <https://www.hrc.org/resources/supporting-caring-for-transgender-children> [<https://perma.cc/8YCX-RGW6>] (listing resources on caring for transgender children); Jason Rafferty, *Gender Diverse and Transgender Children*, HEALTHYCHILDREN.ORG (June 8, 2022), <https://www.healthychildren.org/English/ages-stages/gradeschool/Pages/Gender-Diverse-Transgender-Children.aspx> [<https://perma.cc/M8W6-YLL7>] (a guide for parents trying to learn about their trans children, published by the American Academy of Pediatrics).

17 See Chase Strangio, *No One Can Take Away My Joy*, THE NATION (Nov. 25, 2022), https://www.thenation.com/article/society/colorado-shootings-trans-joy/?utm_campaign=SproutSocial&utm_content=thenation&utm_medium=social&utm_source=twitter [<https://perma.cc/3LEM-DHVR>].

This Note does not explicitly discuss current legal strategies in its suggested solutions. At the time of writing this Note, some state laws banning gender-affirming care are being successfully challenged in court, only to await appeal or a new state law or policy banning gender-affirming care. This is to say, existing bans are being successfully challenged through litigation, spearheaded especially by Chase Strangio at the American Civil Liberties Organization (ACLU). Such notable litigation strategies include the Equal Protection Clause argument that won the day in the Eighth Circuit’s injunction of Arkansas’s Act 626.¹⁸ This Note seeks to explore ways to protect trans youths’ access to care to supplement such successful litigation strategies. Even though some bans are being preliminarily enjoined or completely enjoined, other bans continue to proliferate around the country.¹⁹ Through this Note, I hope to find ways to bolster trans minors’ access to care beyond reactionary litigation. I hope to experience a country where these bans are no longer proposed in the first place.

I. Background

Transgender *identities* are not new; there are records of transgender people who have existed across all cultures throughout history.²⁰ The American Psychological Association defines transgender as “an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth.”²¹ Transgender persons are not all adults; transgender youths exist.²² Transgender youths are those individuals under the age of eighteen who identify as transgender.²³ According to statistics from the Williams Institute, 300,000 minors ages thirteen years and older identify as transgender in the United States, and 1.3 million

¹⁸ See *infra* notes 94–104 and accompanying text.

¹⁹ See *Legislative Tracker: Anti-Transgender Legislation*, FREEDOM FOR ALL AMs. (2022), <https://freedomforallamericans.org/legislative-tracker/anti-transgender-legislation/> [https://perma.cc/HML6-Y5B5].

²⁰ HRC Foundation, *Seven Things About Transgender People That You Didn’t Know*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/seven-things-about-transgender-people-that-you-didnt-know> [https://perma.cc/FT45-UJNP].

²¹ *What Does Transgender Mean?*, AM. PSYCH. ASS’N. (June 6, 2023), <https://www.apa.org/topics/lgbtq/transgender> [https://perma.cc/K6AF-MHVT].

²² Sam Levin, *Trans Kids Are Not New: A Historian on the Long Record of Youth Transitioning in America*, THE GUARDIAN (Apr. 1, 2021), <https://www.theguardian.com/us-news/2021/apr/01/trans-children-history-jules-gill-peterson-interview> [https://perma.cc/FU4V-2ZPA].

²³ *Get the Facts About Trans Youth Infographic*, MOVEMENT ADVANCEMENT PROJECT <https://www.lgbtmap.org/file/Advancing%20Acceptance%20Infographic%20FINAL.pdf> [https://perma.cc/52QX-KJ9C].

American adults identify as transgender.²⁴ The Pew Center identified that 1.6% of adults in the United States are transgender.²⁵ Crucial research and surveys on the demographics of transgender people in the United States are ongoing. One such important demographic survey is the U.S. Trans Survey of 2022, which focused on transgender people ages sixteen and older and was open from October 19 to December 5, 2022.²⁶ The results from this survey are crucial in informing advocacy efforts going forward. In a video celebrating the closure of the survey, after tens of thousands of trans people responded, the study’s director Josie Caballero remarks, “with our record-breaking number of respondents, we have made this dataset the largest dataset of trans people in U.S. history.”²⁷

Transgender youth are not “confused” about their gender identity.²⁸ The supporters of banning gender-affirming care for transgender youth often argue that the youths’ transgender identification may be a fleeting choice or a sign of a deeper mental health issue that should be treated first.²⁹ Studies have shown, however, that transgender adolescents

²⁴ Jody L. Herman et al., *How Many Adults and Youth Identify as Transgender in the United States?*, WILLIAMS INST. (June 2022), <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/> [https://perma.cc/45PM-66TE].

²⁵ Anna Brown et al., *The Experiences, Challenges, and Hopes of Transgender and Nonbinary U.S. Adults*, PEW RSCH. CTR. (June 7, 2022), <https://www.pewresearch.org/social-trends/2022/06/07/the-experiences-challenges-and-hopes-of-transgender-and-nonbinary-u-s-adults/> [https://perma.cc/K6QQ-P82V].

²⁶ *2022 U.S. Trans Survey*, USTRANSSURV.ORG, <https://www.ustranssurvey.org/> [https://perma.cc/89LC-EBRY] (“The U.S. Trans Survey is the largest survey of trans people, by trans people, in the United States. The USTS documents the lives and experiences of trans and nonbinary people ages 16+ in the U.S. and U.S. territories. USTS reports have been a vital resource, including the reports on the experiences of people of color and reports by state. More than ever, it’s important to ensure that trans voices will shape the future.”).

²⁷ *Id.*

²⁸ “What I wish people would talk about more is not just the direct impacts of this legislation . . . but just the conversations we have about these things have a substantial impact,” said Dr Jack Turban . . . “Hearing politicians say you’re actually confused, you shouldn’t be offered your medical care, your medical care should be taken away from you hurts your mental health.” Carrie Richgels et al., *Policy Brief: State Bills Restricting Access of Transgender Youth to Health Care, School Facilities, and School Athletics Threaten Health and Well Being*, THE FENWAY INST., 2021, at 22, <https://fenwayhealth.org/wp-content/uploads/Anti-trans-legislation-policy-brief-FINAL.pdf> [https://perma.cc/QL7C-V4KW].

²⁹ A.R. Legis. Assemb. Act 626. Reg. Sess. 2021–22, *Save Adolescents From Experimentation Act* (2021) (stating that “individuals struggling with distress at identifying with their biological sex often have already experienced psychopathology, which indicates these individuals should be encouraged to seek mental health services to address comorbidities and underlying causes of their distress”).

have a particularly stable sense of gender identity.³⁰ A 2022 Princeton study showed that “retransitions are infrequent. More commonly, transgender youth who socially transitioned at early ages continued to identify that way.”³¹ Inflated, fabricated rates of “retransition,” or more colloquially called “detransition,” are used by state legislatures to inflame and garner public support for these bans.³² In Florida, Governor Ron DeSantis cited one statistic that around 80% of trans youth will detransition.³³ This is a false statistic, and a review of the study cited by DeSantis described its flawed methodology.³⁴ Although some number of transgender youth will “detransition” at some point in the future, use of any statistics of detransition to cast doubt on the efficacy of gender-affirming care for minors is misleading; one cannot discount the effect of social pressures and discrimination on one’s decision to present as a certain gender.³⁵

30 Christina Roberts, *Persistence of Transgender Gender Identity Among Children and Adolescents*, 150 PEDIATRICS, Aug. 2022, at 2, <https://publications.aap.org/pediatrics/article/150/2/e2022057693/187006/Persistence-of-Transgender-Gender-Identity-Among?autologincheck=redirected> [https://perma.cc/XY92-CFMW] (describing “the persistence of gender identity during the first 5 years of enrollment in a cohort of transgender children who completed a social transition before age 12. . . . The high persistence rates in this prospective study confirm previous findings and suggest that regret after starting gender-affirming treatment should be an uncommon event”).

31 Kristina R. Olson et al., *Gender Identity 5 Years After Social Transition*, 150 PEDIATRICS, Aug. 2022, at 1, <https://publications.aap.org/pediatrics/article/150/2/e2021056082/186992/Gender-Identity-5-Years-After-Social-Transition> [https://perma.cc/UYK7-WUXS].

32 *Detransition Facts and Statistics 2022: Exploding the Myths Around Detransitioning*, GENDERGP (June 21, 2021), <https://www.gendergp.com/detransition-facts/> [https://perma.cc/R3RE-F8P5] (“Detransition is when a person who has already transitioned returns to live as the gender assigned by their birth sex.”).

33 Brynn Tannehill, *The End of the Desistance Myth*, HUFFPOST (Jan. 1, 2016), https://www.huffpost.com/entry/the-end-of-the-desistance_b_8903690 [https://perma.cc/2T93-CY3P] (noting that the study cited by Ron DeSantis was flawed because, among other things, it did not discriminate between young people with gender dysphoria, young people who socially but not medically transitioned, and young people simply exploring gender diversity).

34 Susan D. Boulware et al., *Biased Science: The Texas and Alabama Measures Criminalizing Medical Treatment for Transgender Children and Adolescents Rely on Inaccurate and Misleading Scientific Claims*, YALE L. SCH. (Apr. 28, 2022) (public law research paper forthcoming), https://medicine.yale.edu/lgbtqi/research/gender-affirming-care/report%20on%20the%20science%20of%20gender-affirming%20care%20final%20April%2028%202022_442952_55174_v1.pdf [https://perma.cc/B6FZ-PV95] (noting the bias of statistics produced by the Society for Evidence-Based Gender Medicine regarding “desistance” and cited by multiple lawmakers, and pointing instead to evidence that adolescents with gender dysphoria rarely find that their dysphoria resolves without treatment).

35 *Detransition Facts and Statistics 2022: Exploding the Myths Around Detransitioning*, GENDERGP, (June 21, 2021), <https://www.gendergp.com/detransition-facts/> [https://perma.cc/WX63-8TTS] (“Detransition is a loaded term Some people may even detransition due to the negative effects of conversion therapy.”).

Transgender youth are on the latest front of America’s culture wars.³⁶ Acknowledging that trans youth have always existed helps to dispel the persistent myth that they are a new phenomenon, a product of social contagion, or both.³⁷ The past several years have been devastating in terms of anti-trans legislation and bills in the United States.³⁸ This recent anti-trans legislative backlash is not unique to the United States. Gender nonconformity has become a politically divisive concept all around the world.³⁹

A. What Transitioning May Entail

The 2015 U.S. Transgender Survey reported that about 25% of trans or gender nonconforming people seek some form of gender confirmation surgery.⁴⁰ But before considering any medical intervention, psychological or physical, many transgender people choose to “socially transition.”⁴¹ Social transition might include changing one’s pronouns, clothing styles, and bathrooms or other gendered social spaces. Transgender people also may seek out gender-affirming psychological care.⁴² Any access to medical

36 Brian Joseph, *Culture Wars Continue With Transgender Issues*, LEXISNEXIS (June 2, 2022), <https://www.lexisnexis.com/community/insights/legal/capitol-journal/b/state-net/posts/culture-wars-continue-with-transgender-issues> [https://perma.cc/784D-P6H3].

37 See Jack L. Turban et al., *Sex Assigned at Birth Ratio Among Transgender and Gender Diverse Adolescents in the United States*, 150 PEDIATRICS, Aug. 2022, at 50, 53 (using data from Youth Risk Behavior Survey to explore “rapid-onset gender dysphoria” (ROGD), positing that young people begin to identify as transgender for the first time as adolescents rather than as prepubertal children and that this identification and subsequent gender dysphoria is the result of social contagion. Concluding that “the sex assigned at birth ratio of TGD adolescents in the United States does not appear to favor AFAB adolescents and should not be used to argue against the provision of gender-affirming medical care for TGD adolescents.”).

38 *Legislative Tracker: Anti-Transgender Legislation*, supra note 19.

39 Judith Butler, *Why is the Idea of ‘Gender’ Provoking Backlash the World Over?*, THE GUARDIAN (Oct. 23, 2021), <https://www.theguardian.com/us-news/commentisfree/2021/oct/23/judith-butler-gender-ideology-backlash> [https://perma.cc/MQ6B-YH3G].

40 SANDY E. JAMES ET AL., THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY, 176 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> [https://perma.cc/8MRL-4VF6].

41 *Social Transition*, TRANSWHAT? (Nov. 2017), <https://transwhat.org/transition/socialtrans.html> [https://perma.cc/4BRN-JV5L].

42 Mere Abrams, *I Needed More Than the Average Therapist Offered—Here’s What I Found*, HEALTHLINE (Mar. 16, 2020), <https://www.healthline.com/health/transgender/gender-therapy#questioning> [https://perma.cc/D3KF-DLNJ].

gender-affirming care beyond psychotherapy requires a psychiatric diagnosis of gender dysphoria.⁴³

To further affirm a minor adolescent's gender identity, a family, together with their physician, may choose to begin medical interventions. This might include medication called "puberty blockers" to stop the further progression of puberty of the unwanted sex, followed by a prescription of hormonal treatment which corresponds with the adolescent's gender identity. The earliest surgical intervention is not allowed until the minor is at least seventeen, with consent of their parents, and is usually "top surgery," the removal of breast tissue to make the chest appear more masculine.⁴⁴

When a transgender child begins puberty, they may be prescribed puberty blockers to pause the child's progression into later stages of puberty of the sex they were assigned at birth.⁴⁵ Puberty blockers are gonadotropin-releasing hormone (GnRH) analogues⁴⁶ prescribed as part of a holistic treatment of a minor's gender dysphoria diagnosis. Puberty blockers do not cause permanent or irreversible changes to the body.⁴⁷ Mayo Clinic explains that, in simple terms, for "those identified as male at birth, GnRH analogues decrease the

43 *Gender Dysphoria Diagnosis*, AM. PSYCH. ASS'N, <https://www.psychiatry.org/psychiatrists/diversity/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis> [https://perma.cc/5577-A2CN].

44 See Helen Santoro, *The Myth That Fuels the Panic Over Surgery for Trans Teenagers*, SLATE (Oct. 11, 2022), <https://slate.com/technology/2022/10/top-surgery-teens-gender-affirming-care-hurdles.html> [https://perma.cc/CD7P-XGBP]; *About Top Surgery*, STANFORD MEDICINE CHILDREN'S HEALTH, <https://www.stanfordchildrens.org/en/service/gender/about-top-surgery> [https://perma.cc/BT26-3WNB] (describing top surgery).

45 Mayo Clinic Staff, *Pubertal Blockers for Transgender and Gender-Diverse Youth*, MAYO CLINIC (June 18, 2022), <https://www.mayoclinic.org/diseases-conditions/gender-dysphoria/in-depth/pubertal-blockers/art-20459075> [https://perma.cc/2VSF-3FZ4].

46 See Alexandra Benisek, *What Are Puberty Blockers?*, WEBMD (Dec. 16, 2022), <https://www.webmd.com/children/what-are-puberty-blockers> [https://perma.cc/3QCB-9F3F] ("These drugs suppress your child's sex hormones (testosterone and estrogen) during puberty."); *Gender-Affirming Hormone Therapy Improves Body Dissatisfaction in Youth*, CLEVELAND CLINIC (May 29, 2020), <https://consultqd.clevelandclinic.org/gender-affirming-hormone-therapy-improves-body-dissatisfaction-in-youth/> [https://perma.cc/AFU6-74ML] ("We can consider prescribing pubertal suppression via gonadotropin-releasing hormone for our younger patients who have reached Tanner Stage 2 and have a diagnosis of gender dysphoria from a mental health provider. As far as we are aware, the puberty blocking effects are entirely reversible. If a patient wants to stop, they can, and then would proceed through their body's physiological puberty.").

47 See Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, J. CLINICAL ENDOCRINOLOGY AND METABOLISM (2017).

growth of facial and body hair, prevent voice deepening, and limit the growth of genitalia. In those identified as female at birth, treatment limits or stops breast development and stops menstruation."⁴⁸

After taking puberty blockers to suppress the progression of the puberty associated with the child's assigned sex at birth, the minor, together with their family and physician, may choose to pursue gender-affirming hormone treatment.⁴⁹ Hormone treatment differs from puberty blockers. In hormone treatment, actual hormones are taken in order to effect changes normally brought on by the gender those hormones are associated with. Gender-affirming hormone therapy (GAHT) is "the primary medical intervention sought by transgender people. Such treatment allows the acquisition of secondary sex characteristics more aligned with an individual's gender identity."⁵⁰ This is the first time over the course of anyone's gender-affirming transition that some irreversible changes may occur.⁵¹ The Endocrine Society guidelines state that most adolescents have reached mental maturity by age sixteen, and can thus give the informed consent necessary to receive this type of hormone therapy at that time.⁵² While more research into the health outcomes of trans

48 Mayo Clinic Staff, *supra* note 45.

49 *Gender-Affirming Hormones*, TEMPLE HEALTH (2023), <https://www.templehealth.org/services/treatments/gender-affirming-hormones> [https://perma.cc/R8TY-YTJV] ("Gender-affirming hormones are used to alter someone's physical appearance to more closely align their physical body with their gender identity.").

50 Madeleine B. Deutsch, *Overview of Gender-Affirming Treatments and Procedures*, UCSF TRANSGENDER CARE, (June 17, 2016), <https://transcare.ucsf.edu/guidelines/overview#:~:text=Gender%2Daffirming%20hormone%20therapy%20is,with%20an%20individual's%20gender%20identity> [https://perma.cc/26R4-9DHX].

51 *Masculinizing Hormone Therapy*, MAYO CLINIC (2023), <https://www.mayoclinic.org/tests-procedures/masculinizing-hormone-therapy/about/pac-20385099#:~:text=Some%20of%20the%20physical%20changes,facial%20hair%2C%20cannot%20be%20reversed> [https://perma.cc/649Y-CJ46] ("Some of the physical changes caused by masculinizing hormone therapy can be reversed if you stop taking testosterone. Others, such as a deeper voice, a larger clitoris, scalp hair loss, and increased body and facial hair, cannot be reversed."); *Feminizing Hormone Therapy*, MAYO CLINIC (2023), <https://www.mayoclinic.org/tests-procedures/feminizing-hormone-therapy/about/pac-20385096> [https://perma.cc/3SRG-DSCF] ("Some of the physical changes caused by feminizing hormone therapy can be reversed if you stop taking it. Others, such as breast development, cannot be reversed").

52 Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/ Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. CLIN. ENDOCRINOL. METAB. (Nov. 2017) 3869, 3870–3871 ("Clinicians may add gender-affirming hormones after a multidisciplinary team has confirmed the persistence of gender dysphoria/gender incongruence and sufficient mental capacity to give informed consent to this partially irreversible treatment. Most adolescents have this capacity by age 16 years old. We recognize that there may be compelling reasons to initiate sex hormone treatment prior to age 16 years, although there is

youth communities will deepen knowledge of the effects of GAHT, existing studies have demonstrated positive outcomes for trans people who received gender-affirming hormone therapy. For example, research demonstrates the positive effects of GAHT on transgender adults' mood and behavioral health.⁵³

B. Challenges Transgender People Face in the United States

Transgender people in the United States face a great amount of adversity in intersectional ways.⁵⁴ “Transmisogynoir” is one concept that elucidates the impact of intersectionality on trans adversity:

Transmisogynoir, a term coined by writer Trudy as the specific oppression of Black trans feminine people where anti-Blackness, cissexism, and misogyny form a unique system of oppression . . . The concept is grounded in the theory of intersectionality, which analyzes how various social identities such as race, gender, class, and sexual orientation interrelate in systems of oppression.⁵⁵

There are material consequences to queerness and transness in America, including increased poverty rates.⁵⁶ Homelessness is also common; according to the 2015 U.S. Trans Survey, nearly one in three trans people have reported being unhoused at some point in

minimal published experience treating prior to 13.5 to 14 years of age.”).

53 Hillary B. Nguyen et al., *Gender-Affirming Hormone Use in Transgender Individuals: Impact on Behavioral Health and Cognition*, 20 CURRENT PSYCHIATRY REP. 110 (2018) (“Overall, this review demonstrates that GAHT generally has positive effects at multiple levels on mood and behavioral health of transgender and gender dysphoric individuals.”).

54 See LeAnne Roberts et al., *Black & LGBTQ+: At the Intersection of Race, Sexual Orientation & Identity*, AM. MED. ASS'N (June 24, 2021), <https://www.ama-assn.org/delivering-care/population-care/black-lgbtq-intersection-race-sexual-orientation-identity> [<https://perma.cc/FJ4R-CLGY>] (discussing the intersectionality of being LGBTQ+ and Black).

55 Nyla Foster et al., *Black Trans Women and Black Trans Femmes: Leading & Living Fiercely*, TRANSGENDER L. CTR. (2023), <https://transgenderlawcenter.org/black-trans-women-black-trans-femmes-leading-living-fiercely> [<https://perma.cc/87FV-LWKR>].

56 M. V. Lee Badgett et al., *LGBT Poverty in the United States*, WILLIAMS INST. (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf> [<https://perma.cc/3VUJ-GNEM>] (“LGBT people collectively have a poverty rate of 21.6%, which is much higher than the rate for cisgender straight people of 15.7%. Among LGBT people, transgender people have especially high rates of poverty—29.4%.”).

their lives.⁵⁷ Trans youth sometimes attribute being unhoused to the fact that their families do not accept their identities.⁵⁸

C. Mental Health Impacts

Transgender people disproportionately suffer from mental health issues, which are exacerbated by social stigma.⁵⁹ Transgender youth in particular disproportionately suffer from negative mental health outcomes, including depression and suicidality rates two to three times higher than the cisgender population.⁶⁰ Importantly, research also dispels the idea that “simply being transgender is the cause of poor health outcomes.”⁶¹ A Dutch study on psychological outcomes in transgender young adults found that after gender reassignment, transgender young adults' well-being was similar to or better than the well-being of young adults of the same age in the general population.⁶² The study focused on young adults who had received puberty blockers during adolescence. These young adults were assessed before the start of puberty suppression—at around thirteen years old—when they started receiving hormonal therapy—at around seventeen years old—and at least one year after gender-reassignment surgery, at around twenty-one years old.⁶³ Moreover, an

57 See James, *supra* note 40, at 176, 178.

58 Sarah Gilbert & Danielle Hubley, *Trans Experiences of Homelessness: Disparities, Discrimination, and Solutions*, P'SHIP FOR STRONG CMTYS. (2020), <https://www.pschousing.org/blog/trans-experiences-homelessness-disparities-discrimination-and-solutions> [<https://perma.cc/TMJ9-4BMZ>] (“Sadly, many trans adolescents and young adults face homelessness when family rejects them and kicks them out of the home after they come out about their gender identity. I've worked with several people who struggled with finding consistent housing after their parents told them they no longer were welcome in their home once they learned they identified as transgender. This puts people in a devastating situation wherein they have to make the difficult choice of living a lie to maintain housing, or living as their authentic selves, and end up living in their car, couch surfing, or being at a shelter.”).

59 Walter O. Bockting et al., *Stigma, Mental Health and Resilience in an Online Sample of the US Transgender Population*, 103 AM. J. PUB. HEALTH 943, 943 (2013) (Finding that “[transgender] respondents had a high prevalence of clinical depression (44.1%), anxiety (33.2%), and somatization (27.5%). Social stigma was positively associated with psychological distress.”).

60 Daniel Shumer, *Health Disparities Facing Transgender and Gender Nonconforming Youth are Not Inevitable*, 141 PEDIATRICS, Mar. 2018, at 1.

61 *Id.*

62 Annelou L.C. de Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 PEDIATRICS, Oct. 2014, at 696.

63 *Id.*

American study found that transgender children who had socially transitioned (i.e., were living as the gender not assigned to them at birth) and were supported in their gender identity had “developmentally normative levels of depression and only minimal elevations in anxiety, suggesting that psychopathology is not inevitable within this group.”⁶⁴ A larger study of 375 youth, including 148 transgender youth participants, demonstrated that “many socially transitioned transgender youth experience levels of anxiety and depression in the normative range and equal to or only slightly higher than siblings and cisgender peers.”⁶⁵

Further, state legislative bans themselves have negative impacts on transgender youth.⁶⁶ A 2022 survey of parents of transgender youth found five themes arising from their responses on how federal, state, and local laws and bills have impacted their children, including depression and suicidal ideation/risk of suicide, anxiety, increased gender dysphoria, decreased safety and increased stigma, and lack of access to medical care.⁶⁷ The parents who responded to this study also provided feedback directed to legislators and policy makers. They emphasized that transgender youth health is not a political issue and suggested that legislators decriminalize gender-affirming medical care, decrease discrimination and violence against transgender people, and become educated on transgender healthcare issues.⁶⁸

II. States Denying Transgender Youth Access to Gender-Affirming Care

Several states across the country are creating a legal battleground for transgender and queer people, especially transgender youth. States have taken various approaches to deny

64 Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137 PEDIATRICS, Mar. 2016, at 1.

65 Dominic J. Gibson et al., *Evaluation of Anxiety and Depression in a Community Sample of Transgender Youth*, JAMA NETWORK OPEN, Apr. 7, 2021, at 3, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2778206> [<https://perma.cc/69K7-KSPV>].

66 See Catherine Schaefer et al., *Discriminatory Transgender Health Bills Have Critical Consequences for Youth*, CHILD TRENDS, (Apr. 21, 2022), <https://www.childtrends.org/publications/discriminatory-transgender-health-bills-have-critical-consequences-for-youth> [<https://perma.cc/8Z8W-M7RX>] (Describing how banning care, criminalizing adults like physicians who provide it, and investigating families with parents who allow it, harm transgender youth. Recommending that policies should ensure access to appropriate gender-affirming care and create supportive environments for transgender youth.)

67 Roberto L. Abreu et al., *Impact of Gender-Affirming Care Bans on Transgender and Gender Diverse Youth: Parental Figures' Perspective*, 36 J. FAM. PSYCHOL. 643, 643 (2022).

68 *Id.* at 648.

this care.⁶⁹ Some states, like Arkansas in 2021 and now Utah in 2023, attempt to ban care for minors through state legislative bans.⁷⁰ Other states attempt to ban such care through directives or orders. For example, a 2022 directive from Texas Governor Abbott instructed mandated reporters to inform child protective services of a minor’s trans status and initiate DFPS child welfare investigations on the basis of this information.⁷¹ By declaring gender-affirming care to be child abuse, Texas runs the risk of pulling many more families into the regulatory ambit of the family regulation system, a system that already treats queer children worse than their peers.⁷² Finally, some states have approached gender-affirming care bans through Medical Board or Department of Health regulations. The Florida Department of Health’s guidance intends to ban even *social transition*, the completely nonmedical process by which transgender youth live outwardly in accordance with their gender identity, such as by wearing affirming clothing or using preferred pronouns.⁷³

69 See Keith J. Conron et al., *Prohibiting Gender-Affirming Health Care for Youth*, WILLIAMS INST. (Mar. 2022), <https://williamsinstitute.law.ucla.edu/publications/bans-trans-youth-health-care/> [perma.cc/Q2LS-TSY8] (“As of March 2022, 15 states have restricted access to gender-affirming care or are currently considering laws that would do so. The bills carry severe penalties for health care providers, and sometimes families, who provide or seek out gender-affirming care for minors. This study estimates the number of transgender youth at risk of losing access to gender-affirming care under these bills.”).

70 See, e.g., Boram Kim, *Utah Governor Signs SB 16 into Law, Banning Gender-Affirming Procedures on Minors*, STATE OF REFORM, Jan. 30, 2023, <https://stateofreform.com/news/2023/01/utah-governor-signs-sb-16-into-law-banning-gender-affirming-procedures-on-minors/#:~:text=Health%20Policy%20Conference,Utah%20Governor%20signs%20SB%2016%20into%20law,gender%20Affirming%20procedures%20on%20minors&text=Utah%20Gov.,on%20hormonal%20treatment%20for%20minors> [<https://perma.cc/6C82-QLYK>] (reporting that Utah Governor Spencer Cox signed S.B. 16 into law in January 2023. S.B. 16 bans gender-affirming care for anyone under eighteen and is similar to the laws that have been enjoined by courts in Arkansas and Alabama).

71 Abbott Letter, *supra* note 10 (opening with the statement, “Consistent with our correspondence in August 2021, the Office of the Attorney General (OAG) has now confirmed in the enclosed opinion that a number of so-called “sex change” procedures constitute child abuse under existing Texas law. Because the Texas Department of Family and Protective Services (“DFPS”) is responsible for protecting children from abuse, I hereby direct your agency to conduct a prompt and thorough investigation of any reported instances of these abusive procedures in the State of Texas.”).

72 Dorothy Roberts, *The Child Welfare System Already Hurts Trans Kids. Texas Made It a Nightmare*, WASH. POST (Mar. 3, 2022), <https://www.washingtonpost.com/outlook/2022/03/03/texas-trans-youth-welfare/> [perma.cc/R2Q6-ZN4Y].

73 Press Release, Florida Department of Health, *Treatment of Gender Dysphoria for Children and Adolescents* (Apr. 20, 2022), <https://www.floridahealth.gov/documents/newsroom/press-releases/2022/04/20220420-gender-dysphoria-guidance.pdf> [<https://perma.cc/D8PF-5HSC>] (presenting guidance, and listing that “social gender transition” should not be a treatment option for children or adolescents).

Legislative action concerning transgender youth extends beyond the elimination of gender-affirming care for trans minors. There has been a resurgence in “bathroom bills,”⁷⁴ which seek to prevent trans youth from using the public restroom that corresponds with their gender identity, and “sports bills,”⁷⁵ which seek to prevent transgender youth athletes, mainly transgender girls and women, from participating in the sports team corresponding with their gender.

A. Texas Attorney General Opinion

Texas serves a case study of states banning gender-affirming care using official opinions and directives. In February 2022, Texas Attorney General Ken Paxton issued an official attorney general opinion⁷⁶ in which he declared that certain gender-affirming medical procedures, if given to minors, fall within the definition of child abuse under the Texas Family Code. The summary states Paxton’s aim succinctly: “each of the ‘sex change’ procedures and treatments enumerated above, when performed on children, can legally constitute child abuse under several provisions of chapter 261 of the Texas Family Code.”⁷⁷

A few days after the issuance of Paxton’s opinion, Texas Governor Abbott issued a directive to the Texas DFPS, affirming the attorney general’s definition of child abuse as including these “sex change” procedures.⁷⁸ Abbott further directed DFPS to investigate families suspected to be supportive of their transgender children—supportive meaning

74 See Press Release, Oklahoma Senate, Bullard’s Bill Signed to Protect Boys’ and Girls’ Bathrooms in Public Schools, (May 27, 2022), <https://oksenate.gov/press-releases/bullards-bill-signed-protect-boys-and-girls-bathrooms-public-schools?back=/press-releases> [perma.cc/S4K8-MFAA] (describing Oklahoma Governor Kevin Stitt signing a bathroom bill, SB 615, into law mandating schools to “require every multiple occupancy restroom or changing room to be designated for the exclusive use of the male or female sex”).

75 *Equality Maps: Bans on Transgender Youth Participation in Sports*, MOVEMENT ADVOC. PROJECT (Feb. 2023), https://www.lgbtmap.org/equality-maps/sports_participation_bans [perma.cc/2RKF-WG3W] (mapping out the state patchwork of bills banning trans youth athletes from playing on the team of their gender, showing that eighteen states now have blanket bans against transgender students from participating in sports consistent with their gender identity). See also H.B. 25, 87th Leg., R.S. (Tex. 2021) <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=873&Bill=HB25> [perma.cc/B6HH-9FB4] (signed into law by Governor Abbott and “requiring public school students to compete in interscholastic competitions based on biological sex”).

76 Att’y. Gen Ken Paxton, Opinion No. KP-0401 1, 2 (Feb. 18, 2022).

77 *Id.* at 13.

78 Abbott Letter, *supra* note 10.

potentially allowing them to receive gender-affirming care—as potential child abusers.⁷⁹ The directive by the Governor to the Commissioner of the DFPS opens: “[Because the agency is] responsible for protecting children from abuse, I hereby direct your agency to conduct a prompt and thorough investigation of any reported instances of these abusive procedures in the state of Texas.”⁸⁰

Although neither Paxton’s opinion nor Abbott’s directive were legally binding on courts or DFPS, they still have a significant effect. This is in large part because, in Texas, anyone who suspects child abuse is mandated by law to immediately report it.⁸¹ The day after Abbott’s directive was released, a DFPS employee in Austin was assigned to investigate two families suspected to have transgender children receiving gender-affirming care.⁸² The employee was himself transgender. By August 2022, Texas DFPS had investigated eleven families for providing gender-affirming care to their children in Texas.⁸³ Although DFPS and Texas Family Courts have not removed any children from their families as a result of this directive, it is widely recognized that involvement with, and being surveilled by, state authorities like child protective services is highly traumatic for families, especially families with marginalized members.⁸⁴

The ACLU filed two separate cases against Abbott’s directive: *PFLAG v. Abbott* and *Doe v. Abbott*.⁸⁵ The Court enjoined DFPS investigations of specific families under

79 *Id.*

80 *Id.*

81 TEX. FAM. CODE §261.101.

82 Casey Parks, *He Came Out as Trans. Then Texas Had Him Investigate Parents of Trans Kids*, WASH. POST (Sept. 23, 2022), <https://www.washingtonpost.com/dc-md-va/2022/09/23/texas-transgender-child-abuse-investigations/> [perma.cc/SF8H-GT6B].

83 Will DuPree, *8 Child Abuse Investigations Involving Texas Families with Trans Children Closed, No Kids Removed*, KXAN (Aug. 23, 2022), <https://www.kxan.com/news/texas/8-child-abuse-investigations-involving-texas-families-with-trans-children-closed-no-kids-removed/> [perma.cc/L77E-RKHN].

84 See Courtney G. Joslin & Catherine Sakimura, *Fractured Families: LGBTQ People and the Family Regulation System*, 13 CAL. L. REV. 78 (Nov. 2022), <https://www.californialawreview.org/online/fractured-families-lgbtq-people-and-the-family-regulation-system/> [https://perma.cc/4VVY-Q49D].

85 Petition for Plaintiff at 1, *PFLAG v. Abbott*, No. D-1-GN-22-002569 (Tex. Dist. Ct. June 8, 2022), <https://www.aclu.org/cases/pflag-v-abbott?document=pflag-v-abbott-petition> [https://perma.cc/4K75-MMM5]; Petition for Plaintiff at 1, *Doe v. Abbott*, No. D-1-GN-22-000977 (Tex. Dist. Ct. Mar. 1, 2022), <https://www.aclu.org/cases/doe-v-abbott?document=Plaintiffs-Petition-and-Application-for-Temporary-Restraining-Order-Temporary-Injunction-Permanent-Injunction-and-Request-for-Declaratory-Relief> [https://perma.cc/2VZR-

active investigation and investigations into any families who were members of PFLAG in Texas.⁸⁶ These were not total victories, as they say nothing about families not involved in the lawsuits who are not members of PFLAG, and thus can still potentially be investigated going forward. In *PFLAG v. Abbott*, the injunctions are still in effect, though the state is appealing them.⁸⁷ *Doe v. Abbott* remains on appeal in the Third Circuit.⁸⁸

In June 2023, Governor Greg Abbott signed SB 14 into law, banning gender-affirming care for transgender youth.⁸⁹ The ban was immediately challenged in court by the ACLU in *Loe v. Texas*, and a temporary injunction was issued.⁹⁰ The court held that the ban likely violated the parental rights of the parents of trans children under the Texas Constitution.⁹¹ However, the plaintiff's request for emergency relief was denied, and the bill went into effect on September 1, 2023.⁹² As of December 2023, the lawsuit is still ongoing.⁹³

B. Arkansas's Act 626

Arkansas's actions tell the most straightforward story of attempts to ban gender-affirming care for transgender minors. Arkansas was the first state in the United States to pass a bill to outright ban gender-affirming medical care for minors—Act 626 of 2021, titled “Save Adolescents from Experimentation Act.”⁹⁴ Act 626 prohibits a healthcare professional

U3J9].

86 PFLAG TRO, *supra* note 11; PFLAG Temporary Injunction, *supra* note 11.

87 *Court Cases: PFLAG v. Abbott*, ACLU, <https://www.aclu.org/cases/pflag-v-abbott#summary> [<https://perma.cc/V4PY-FC7C>].

88 *Court Cases: Doe v. Abbott*, ACLU, <https://www.aclu.org/cases/doe-v-abbott#summary> [<https://perma.cc/N2X5-CMLF>].

89 S.B. 14, 88th Leg., 2023 Gen. Sess. (Tex. 2023).

90 Temporary Injunction Order for Plaintiffs at 2, *Loe v. Texas*, No. D-1-GN-23-003616 (Tex. Dist. Ct. Aug. 25, 2023), <https://www.aclu.org/cases/loe-v-texas?document=Temporary-Injunction-Order> [<https://perma.cc/9LBA-U5VV>] [hereinafter *Loe v. Texas* Temporary Injunction].

91 *Id.*

92 *Court Cases: Loe v. Texas*, *supra* note 12.

93 *Id.*

94 ARK. CODE ANN. § 20-9-1502 (West 2023); see Daniel Breen, *First in the nation gender-affirming care ban struck down in Arkansas*, NPR (June 20, 2023) <https://www.npr.org/2023/06/20/1183344228/arkansas-2021-gender-affirming-care-ban-transgender-blocked#:~:text=Arkansas%20became%20the%20first%20>

from “provid[ing] gender transition procedures to any individual under eighteen (18) years of age” or “refer[ring] any individual under eighteen (18) years of age to any healthcare professional for gender transition procedures.”⁹⁵ Arkansas Governor Hutchinson vetoed then-bill House Bill 1570; his veto was then overridden by the legislature, and Act 626 became law in Arkansas.⁹⁶ The ACLU promptly filed suit in *Brandt v. Rutledge*. A district court in Arkansas entered a preliminary injunction on Act 626,⁹⁷ and the Eighth Circuit affirmed.⁹⁸

The preliminary injunction in *Brandt* was decided on Equal Protection grounds.⁹⁹ Because exactly the same treatments legally provided to cisgender minors were banned from being prescribed to transgender minors, Act 626 violated the equal protection rights of transgender minors.¹⁰⁰ The court also based its injunction on the due process clause of the Fourteenth Amendment, as parents have legally recognized constitutional rights to the “care, custody and control of their children.”¹⁰¹ These rights include decisions on medical care.¹⁰² In the court's reasoning, Act 626 thus violated equal protection grounds, as it would have prevented parents from making medical decisions for their children. In June 2023, the Arkansas district court issued its final decision, permanently enjoining Act 626.¹⁰³ As of December 2023, the case is on appeal in the Eighth Circuit.¹⁰⁴

state,passed%20Act%20626%20in%202021. [<https://perma.cc/R4WH-E2TE>].

95 Ark. Code Ann. § 20-9-1502 (West 2023).

96 Greg Mercer, *First, Do No Harm: Prioritizing Patients over Politics in the Battle over Gender-Affirming Care*, 39 GA. ST. U. L. REV. 479, 497 (2023).

97 *Brandt v. Rutledge*, 551 F. Supp. 3d 882, 894 (E.D. Ark. 2021).

98 *Brandt v. Rutledge*, 47 F.4th 661, 667 (8th Cir. 2022).

99 *Brandt v. Rutledge*, 551 F. Supp. 3d at 894.

100 *Id.* at 891.

101 *Id.* at 892 (citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000)).

102 *Id.* at 892 (citing *Kanuszewski v. Mich. Dep't of Health and Human Serv's*, 927 F.3d 396, 419 (6th Cir. 2019)).

103 *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at *1 (E.D. Ark. June 20, 2023).

104 *Court Cases: Brandt et al v. Rutledge et al*, ACLU (Nov. 27, 2023), <https://www.aclu.org/cases/brandt-et-al-v-rutledge-et-al> [<https://perma.cc/S365-SDCF>].

C. Florida's Medical Board

Florida presents a unique case study and an illuminating example of the dangerous creativity of those leading the anti-trans movement. On November 4, 2022, the Florida Board of Medicine—a governmental organization ensuring that physicians meet requirements for safe practice—and the Florida Board of Osteopathic Medicine approved rules which would prohibit physicians from providing transgender minors with puberty blockers and hormones.¹⁰⁵ The rules were first proposed in a petition pushed by the State Surgeon General Joseph Ladapo and Governor Ron DeSantis.¹⁰⁶ A public hearing on the proposed rules was held in Florida on February 10, 2023.¹⁰⁷ As confirmed by the Florida Board of Medicine in February 2023, Florida's policy fully prohibits the use of puberty blockers for transgender minors, even in clinical trial settings.¹⁰⁸

Florida's seems to be the most pernicious route to banning gender-affirming care. While Texas attempted to encroach on parental rights with directives from its Attorney General and Governor, and Arkansas attacked equal protection with a direct legislative ban, Florida has passed a medical board policy, which is fully out of touch with the power dynamics and bigotry involved in the regulation of gender-affirming care. Since this is a medical board-approved policy and not a state law, physicians who violate it face censure and fines, and could even lose their medical license in Florida.¹⁰⁹ Due to the rules' status as a policy approved by state medical boards, rather than a state law, they are more likely to be

105 D'Ambrosio, *supra* note 13.

106 Dara Kam, *Medical Boards Vote to Block Treatments for Transgender Minors*, WUSF (Nov. 5, 2022), <http://www.wusf.org/health-news-florida/2022-11-05/boards-block-treatments-for-transgender-minors> [https://perma.cc/QC8S-J8GB].

107 Stephanie Colombini, *A Public Hearing Is Scheduled for Proposals to Restrict Gender-Affirming Care for Minors in Florida*, WUSF (Jan. 9, 2023), <http://www.wusf.org/health-news-florida/2023-01-09/public-hearing-scheduled-for-proposals-to-restrict-gender-affirming-care-for-minors-in-florida> [https://perma.cc/W6B7-W8TC].

108 Romy Ellenbogen & Sam Ogozalek, *Florida to Ban Care for Transgender Youth — Even in Clinical Trials*, TAMPA BAY TIMES (Feb. 10, 2023), <http://www.tampabay.com/news/health/2023/02/10/transgender-youth-gender-affirming-care-banned-florida-clinical-trials> [https://perma.cc/HVD6-NUFJ].

109 *What Happens to the Healthcare Practitioner as a Result of a Complaint*, FLA. BOARD OF MED., <http://flboardofmedicine.gov/help-center/what-happens-to-the-healthcare-practitioner-as-a-result-of-a-complaint> [https://perma.cc/A35T-QJ65].

implemented and more difficult to challenge in court, posing a greater risk to transgender youth.¹¹⁰

In May 2023, Governor Ron DeSantis signed Senate Bill 254, titled “Treatments for Sex Reassignment” into law, which criminalizes doctors who provide gender-affirming care to transgender youth and also limits transgender adults' access to such care.¹¹¹ A group of Florida families with transgender children filed suit in response. The following month, a federal judge issued a preliminary injunction halting enforcement of the ban for just these three families, allowing the plaintiffs to continue receiving puberty blockers and hormones.¹¹² In its order granting the preliminary injunction, the district court cited the Eighth Circuit's decision in *Brandt v. Rutledge*, stating that Florida's ban is likely unconstitutional on equal protection grounds.¹¹³ As of October 2023, the case is ongoing; the preliminary injunction is currently on appeal in the Eleventh Circuit.¹¹⁴

D. The Influence of State Bans Across the Country

As of October 2023, at least twenty-one states have enacted laws restricting gender-affirming care for minors.¹¹⁵ For example, in January 2023, Utah enacted a bill banning such care for transgender youth.¹¹⁶ Likewise, in September 2023, Missouri's legislature enacted a ban on gender-affirming care for minors.¹¹⁷ As soon as the law took effect, doctors ceased

110 See Associated Press, *Florida Boards of Medicine Confirm Ban on Gender-Affirming Care for Transgender Youth*, WUSF (Feb. 10, 2023), <http://www.wusf.org/health-news-florida/2023-02-10/florida-boards-of-medicine-confirm-ban-on-gender-affirming-care-for-transgender-youth> [https://perma.cc/CG2V-TQ5R].

111 See Press Release, Ron DeSantis, Governor, Florida Governor's Office, Governor Ron DeSantis Signs Sweeping Legislation to Protect the Innocence of Florida's Children (May 17, 2023), <http://www.flgov.com/2023/05/17/governor-ron-desantis-signs-sweeping-legislation-to-protect-the-innocence-of-floridas-children> [https://perma.cc/LA85-L99F].

112 Doe v. Ladapo, No. 4:23cv114-RH-MAF, 2023 WL 3833848, at *17 (N.D. Fla. June 6, 2023).

113 *Id.* at *7–*9.

114 *Doe v. Ladapo Case Summary*, CIVIL RIGHTS LITIGATION CLEARINGHOUSE (Dec. 2, 2023), https://clearinghouse.net/case/44118/?docket_page=3#docket [https://perma.cc/5GJJ-9T5U].

115 See *Equality Maps*, *supra* note 75.

116 S.B. 16, 2023 Gen. Sess. (Utah 2023).

117 S.B. 49, 102nd Gen. Assemb., Reg. Sess. (Mo. 2023).

providing such care to avoid repercussions under the statute.¹¹⁸ Arguably, state legislative actions banning gender-affirming care for transgender youth, such as Act 626 in Arkansas, will not permanently eliminate access to this care because they are inevitably challenged in court and often raise constitutional issues.¹¹⁹

While some bills denying gender-affirming care have later been enjoined in court, such as Act 626 in Arkansas,¹²⁰ this does not eliminate the likelihood of similar legislation being passed in the future, nor does it mean the effects of these bills will not emerge in ways that are more difficult to challenge. These bans and looming future bans cause considerable distress for transgender youth in these states who seek gender-affirming care, making them “feel under attack.”¹²¹

Florida’s ban differs because it is not a state law, but rather a standard of care adopted by two state medical boards composed of licensed medical professionals. Since it may be harder to accept that a coalition of doctors can be politically motivated, even though Medical Boards are state governmental agencies, some may mistake Florida’s ban to be a neutral scientific effort to protect minors from the ostensible dangers of gender-affirming care. This is simply a more pernicious route to the same outcome of denying transgender youth’s access to potentially life-saving care. It will be important to watch and see if other states are influenced by Florida’s approach.

E. Opposition to State Action

Governor Abbott’s directive in Texas faced significant opposition, including from Xavier Becerra, the United States Secretary of the Department of Health and Human

118 *Id.*

119 H.B. 1570, 93d Gen. Assemb., Reg. Sess. (Ark. 2021) (referred to as “Act 626”).

120 The District Court’s decision in *Brandt v. Rutledge* is on appeal in the Eighth Circuit. See *Court Cases: Brandt et al v. Rutledge et al*, *supra* note 104.

121 Orion Rummler, *How Utah’s New Ban on Gender-Affirming Care for Minors is Affecting Trans Teens in the State*, THE 19TH (Feb. 2, 2023), <https://19thnews.org/2023/02/utah-trans-youth-care-ban-signed> [<https://perma.cc/7FLJ-3MKP>] (noting that six of a Utah mental health therapist’s transgender teenaged clients reported experiencing suicidal ideation in the same week, caused by the state moving forward with a bill to ban gender-affirming care for minors).

Services.¹²² The ACLU also filed two separate lawsuits against Governor Abbott.¹²³ Dr. Michelle Forcier, a renowned pediatrician and author of a textbook on pediatric gender identity, released a guide for fellow pediatricians and medical professionals who are committed to protecting access to gender-affirming care for minors.¹²⁴

Several states have proactively responded to restrictions on gender-affirming healthcare. California’s Governor Gavin Newsom signed a bill into law making California the first sanctuary state for transgender minors.¹²⁵ New York’s Governor Kathy Hochul signed a similar bill into law in June 2023.¹²⁶ While establishing sanctuary states is not a perfect solution, given issues with accessibility and travel, any state action that safeguards the rights of transgender youth—either within or beyond its borders—is a positive step forward.

Even if gender-affirming care is protected, this is not enough to ensure access. The

122 U.S. Dep’t of Health and Hum. Servs. Press Office, *Statement by HHS Secretary Xavier Becerra Reaffirming HHS Support and Protection for LGBTQI+ Children and Youth*, U.S. DEP’T OF HEALTH AND HUM. SERVS. (Mar. 2, 2022), <https://www.hhs.gov/about/news/2022/03/02/statement-hhs-secretary-xavier-becerra-reaffirming-hhs-support-and-protection-for-lgbtqi-children-and-youth.html> [<https://perma.cc/G5CQ-XRML>].

123 Petition for Plaintiff at 1, PFLAG v. Abbott, *supra* note 85; Petition for Plaintiff at 1, Doe v. Abbott, *supra* note 85.

124 See Jason R. Rafferty, Abigail A. Donaldson & Michelle Forcier, *Primary Care Considerations for Transgender and Gender-Diverse Youth*, 41(9) PEDIATRICS IN REVIEW 437 (2020).

125 *Senator Wiener’s Historic Bill to Provide Refuge for Trans Kids and Their Families Signed into Law*, <https://sd11.senate.ca.gov/news/20220930-senator-wiener%E2%80%99s-historic-bill-provide-refuge-trans-kids-and-their-families-signed-law> [<https://perma.cc/L5BR-4ZDZ>] (“Governor Gavin Newsom signed into law Senator Scott Wiener (D-San Francisco)’s legislation to provide refuge for trans kids and their families, Senate Bill 107. It will take effect on January 1, 2023. SB 107 will protect trans kids and their families if they flee to California from Alabama, Texas, Idaho or any other state criminalizing the parents of trans kids for allowing them to receive gender-affirming care. If these parents and their kids come to California, the legislation will help protect them from having their kids taken away from them or from being criminally prosecuted for supporting their trans kids’ access to healthcare.”); Lesley McClurg, *California Becomes First Sanctuary State for Transgender Youth Seeking Medical Care*, KQED, (Oct. 18, 2022), <https://www.kqed.org/news/11929233/california-becomes-first-sanctuary-state-for-transgender-youth-seeking-medical-care> [<https://perma.cc/ZAM6-3BGR>] (“California is the first state in the nation to create a sanctuary for transgender youth seeking gender-affirming medical care. Gov. Gavin Newsom signed a new law in September that ensures transgender kids from elsewhere can safely access hormones or puberty blockers here. The legislation also shields families from child abuse investigations or from being criminally prosecuted for seeking gender-affirming care.”).

126 Act of January 20, 2023, 2023–24 N.Y. Laws.

ability of transgender minors to access gender-affirming medical care hinges on the state in which they reside. Even if gender-affirming care is not banned in their state, their access then depends on their financial situation and health insurance policies. Although it is illegal to deny coverage for “medically necessary”¹²⁷ procedures, private insurance companies often deny coverage for transgender individuals’ gender-affirming procedures.¹²⁸ Medicare, however, does cover medically necessary gender-affirming care.¹²⁹

III. A Way Forward

Conservative lawmakers, governors, and medical boards continue to restrict or eliminate transgender minors’ access to gender-affirming care. On the one hand, Republicans demand fortification of parental rights to protect children from drag queens, homosexuality, and critical race theory.¹³⁰ On the other hand, they support the denial of any parental right to work with qualified physicians so that trans children can be provided with gender-affirming medical care.

The well-established constitutional rights of parents to the care, custody, and control of their children are grounded in the Due Process clause of the Fourteenth Amendment.¹³¹

127 *Understanding Health Care Bills: What is Medical Necessity?*, NAT’L ASS’N OF INS. COMM’RS, <https://content.naic.org/sites/default/files/consumer-health-insurance-what-is-medical-necessity.pdf> [<https://perma.cc/AK4L-F48S>] (defining medical necessity).

128 *Know Your Rights Health Care*, NAT’L CTR FOR TRANSGENDER EQUALITY (Oct. 2021), <https://transequality.org/know-your-rights/health-care> [<https://perma.cc/G4H7-35ZX>] (“It is illegal for most private insurance plans to deny coverage for medically necessary transition-related care. Your private insurance plan *should* provide coverage for the care that you need. However, many transgender people continue to face discriminatory denials.”).

129 *Know Your Rights Medicare*, NAT’L CTR FOR TRANSGENDER EQUALITY, <https://transequality.org/know-your-rights/medicare> [<https://perma.cc/X86H-857X>] (“For many years, Medicare did not cover transition-related surgery due to a decades-old policy that categorized such treatment as ‘experimental.’ That exclusion was eliminated in 2014, and there is now no national exclusion for transition-related health care under Medicare.”). See also Anna Kirkland et al., *Health Insurance Rights and Access to Health Care for Trans People: The Social Construction of Medical Necessity*, 55 *LAW & SOC’Y REV.* 539, 540 (Dec. 6, 2021) (explaining the process by which a health insurer will authorize a treatment as necessary or cosmetic, noting importantly that “the indeterminacy created by the power of health insurers to determine coverage sits uneasily with expanded healthcare rights on the basis of gender identity.”)

130 Nicholas Serafin, *The “Parental Rights” Lie at the Heart of GOP Efforts to Target LGBTQ Youth*, *SLATE*, (Nov. 1, 2022), <https://slate.com/news-and-politics/2022/11/parental-rights-gop-lgbtq-youth-lies.html> [<https://perma.cc/R8RS-HMNR>].

131 See *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925); *Prince*

The landmark Supreme Court cases *Meyer v. Nebraska* and *Pierce v. Soc’y of Sisters* gave parents the right to decide the location and content of their children’s education.¹³² In line with these decisions, the Supreme Court held in *Troxel v. Granville* that the “interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court.”¹³³

Academic articles have already suggested the winning legal arguments against state bills banning gender-affirming care: namely, that such bans violate the Equal Protection Clause of the Fourteenth Amendment and the doctrine of parental rights based in the Due Process Clause.¹³⁴ If parents have the right to the custody and care of their children, this right should encompass the right to work together with the child and their physician to make medical decisions on such care. Following this line of reasoning, the court in *Loe v. Texas*—which granted a temporary injunction to the three families affected by the state ban in Texas—held that Texas’s ban likely violates Article I, Section 19 of the Texas Constitution concerning parental rights.¹³⁵ In finding that the Act likely violates the Texas Constitution by infringing upon the parents’ fundamental rights to the care, custody, and control of their children, the *Loe v. Texas* court stated that this right includes the right to consent to medical care for their children and “to seek and follow medical advice to protect the health and wellbeing of their minor children.”¹³⁶

v. Massachusetts, 321 U.S. 158 (1944); *Troxel v. Granville*, 530 U.S. 57, 65–66 (2000) (“It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.”).

132 See *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925).

133 *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

134 See, e.g., *Outlawing Trans Youth: State Legislatures and the Battle over Gender-Affirming Healthcare for Minors*, 34 *HARV. L. REV.* 2163, 2178–79 (2021) (arguing that bills banning gender-affirming care for minors are unconstitutional because they violate the parental rights that are grounded in the Due Process Clause and violate the Equal Protection Clause); Beck Sigman, *Keeping Trans Kids Safe: The Constitutionality of Prohibiting Access to Puberty Blockers*, 71 *AM. U. L. REV. F.* 173, 173 (2021) (arguing that state legislative bans on trans minors’ access to puberty blockers, specifically Arkansas’s Act 626, are “unconstitutional under Fourteenth Amendment jurisprudence for two reasons. First, transgender individuals should be considered a quasi-suspect classification under Fourteenth Amendment Equal Protection Clause jurisprudence. Second, access to gender-affirming healthcare invokes the fundamental liberty interest in bodily autonomy under the Fourteenth Amendment Due Process Clause. Act 626 ultimately fails intermediate scrutiny analysis because it is not narrowly tailored to meet an important state interest.”).

135 *Loe v. Texas* Temporary Injunction, *supra* note 90, at 2–3.

136 *Id.*

Because state bills banning gender-affirming care for transgender minors do not ban the same exact care for cisgender minors, these bans violate the Equal Protection Clause. For example, the medication used as a puberty blocker for transgender minors is also used to treat cisgender children who start puberty at a young age; puberty blockers are approved by the FDA for this purpose.¹³⁷ No legislative action on gender-affirming care for minors has tried to ban the actual medicine being used, only its use in affirming the gender of trans minors. Thus, the use of the medication for cisgender children experiencing early onset puberty is left untouched. State bills banning gender-affirming care interfere with parents' abilities to rear their children how they please, thereby interfering in their constitutional due process right to the care, custody, and control of their children. A parent who supports their transgender child's identity may consult with a doctor to consider possible medical interventions, such as puberty blockers. State laws banning all gender-affirming medical care for trans youth would prevent a parent from providing this care to their child.

Even as judges in some states rule that bans against trans youth's access to gender-affirming care are unconstitutional, efforts against transgender youth's access to such care continue in other states. Plaintiffs in existing cases have argued that bills which discriminate against transgender minors by denying them the exact health care that is allowed to cisgender minors violate the Equal Protection Clause of the Fourteenth Amendment, and that in preventing parents from providing their children with medical care recommended by their physician, these bills also violate constitutional parental rights. In *Brandt v. Rutledge*, the Eighth Circuit ruled that the district court did not abuse their discretion in issuing their preliminary injunction of Arkansas's Act 626 on equal protection grounds.¹³⁸ However, legislators and state authorities seeking to eliminate this care have not been swayed, as new measures continue to arise to ban gender-affirming care for transgender youth.¹³⁹

In Texas, Attorney General Ken Paxton's opinion that "sex change procedures" for

¹³⁷ *Puberty Blockers*, CHILDREN'S HOSPITAL SAINT LOUIS, <https://web.archive.org/web/20230307100120/https://www.stlouischildrens.org/conditions-treatments/transgender-center/puberty-blockers> (discussing the safety of puberty blockers).

¹³⁸ *Brandt v. Rutledge*, 47 F.4th 661, 667, 671 (8th Cir. 2022) (upholding the District Court's preliminary injunction). The District Court has released its final ruling, which is currently on appeal. *See Court Cases: Brandt et al v. Rutledge et al*, *supra* note 104.

¹³⁹ *See 2023 Anti-Trans Legislation, Track Trans Legislation (2023)*, <https://www.tracktranslegislation.com/> [<https://perma.cc/VK3R-5F6K>] (illustrating that eighteen states have signed anti-trans legislation into law and four states have anti-trans bills pending).

minors¹⁴⁰ were child abuse under Texas law is not legally binding. Nonetheless, such opinions are "highly persuasive and are entitled to great weight."¹⁴¹ Texas Governor Abbott then issued a directive to the Texas DFPS to investigate families suspected of supporting their transgender children by allowing them to receive gender-affirming care.¹⁴² The ACLU challenged this directive in two court cases: *Doe v. Abbott*,¹⁴³ which was filed on behalf of particular families who had already been subject to an investigation in Texas state court, and *PFLAG v. Abbott*,¹⁴⁴ which was filed on behalf of all members of PFLAG who would have been subject to an investigation due to their membership in this LGBTQ+ advocacy group. In *Doe v. Abbott*, the Travis County district court enjoined DFPS from following the directive and investigating the specific families involved but did not extend the injunction to other families similarly situated because the statewide injunction was put on hold while the state appealed the decision.¹⁴⁵ *PFLAG v. Abbott* expanded the injunction to "cover[] all Texas families who are members of PFLAG national," thus preventing their investigation by DFPS.¹⁴⁶ In the 88th Legislative Session, however, Texas legislators

¹⁴⁰ Texas Att'y Gen., Opinion Letter on Whether Certain Medical Procedures Performed on Children Constitute Child Abuse (Feb. 18, 2022), No. KP-0401, reprinted at <https://texasattorneygeneral.gov/sites/default/files/global/KP-0401.pdf> [<https://perma.cc/NT7V-Z34T>].

¹⁴¹ About Attorney General Opinions, Ken Paxton, Att'y Gen. of Texas, <https://www2.texasattorneygeneral.gov/opinion/about-attorney-general-opinions#:~:text=Attorney%20general%20opinions%20cannot%20create,what%20the%20law%20should%20say> [<https://perma.cc/8UXH-SX67>] ("Attorney general opinions cannot create new provisions in the law or correct unintended, undesirable effects of the law. Attorney general opinions do not necessarily reflect the attorney general's personal views, nor does the attorney general in any way 'rule' on what the law should say . . . Courts have stated that attorney general opinions are highly persuasive and are entitled to great weight; however, the ultimate determination of a law's applicability, meaning or constitutionality is left to the courts.").

¹⁴² Abbott Letter, *supra* note 10.

¹⁴³ *See* Petition for Plaintiff at 1, *Doe v. Abbott*, *supra* note 85; *see also Court Cases: Doe v. Abbott*, *supra* note 88.

¹⁴⁴ *See* Petition for Plaintiff at 1, *PFLAG v. Abbott*, *supra* note 85; *see also Court Cases: PFLAG v. Abbott*, *supra* note 87.

¹⁴⁵ Order Granting Plaintiffs' Application for Temporary Injunction, *Doe v. Abbott*, No. D-1-GN-22-000977 (Tex. Dist. Ct. Mar. 12, 2022), <https://www.aclu.org/cases/doe-v-abbott?document=Order-Granting-Plaintiffs-Application-for-Temporary-Injunction> [<https://perma.cc/FG4A-DB6P>]; *See also Court Cases: Doe v. Abbott*, *supra* note 88.

¹⁴⁶ Press Release, ACLU, *Texas Court Expands Injunction Blocking State from Targeting Families of Trans Youth Who Are Members of PFLAG National* (Sept. 16, 2022), <https://www.aclu.org/press-releases/texas-court-expands-injunction-blocking-state-targeting-families-trans-youth-who-are> [<https://perma.cc/942Q-BSHF>].

continued their efforts to ban gender-affirming care for minors.¹⁴⁷ For example, in February 2023, Republican Representative Bryan Slaton sponsored House Bill 42¹⁴⁸ to amend the family code definition of abuse to include allowing a child to receive gender-affirming medical care.¹⁴⁹

Florida's sole statewide policy concerning gender-affirming medical care for trans youth is a medical board decision, not a state law. The historic right-wing political makeup of the Florida Board of Medicine and Governor Ron DeSantis's new appointees indicate the Board's subscription to a political agenda that opposes gender-affirming care.¹⁵⁰ Florida's medical board has proposed and approved rules that could skirt lawsuits challenging the state for violating the Equal Protection Clause.¹⁵¹ The resulting actions of Florida's policy, which in effect would result in a ban of gender-affirming care for minors, may constitute discrimination against transgender youth and thus violate their constitutional rights to equal protection under law, or simply represent a state medical board regulating licensed health care providers' practice of medicine. In response to these state actions, both the state and federal governments, as well as the medical professional community, can work to protect access to gender-affirming care.

A. Federal Solutions

1. The Transgender Bill of Rights

The Federal Transgender Bill of Rights,¹⁵² introduced as a Senate Resolution in March

147 See Texas Observer Staff, *Catastrophe #88: The Texas Legislature Returns For A Brutal Year*, TEXAS OBSERVER (Jan. 9, 2023), <https://www.texasobserver.org/texas-legislature-preview-2023/> [<https://perma.cc/Z4NV-4M45>].

148 H.B. 42, 88th Leg. Reg. Sess. (Tex. 2023).

149 *Id.*

150 See Christine Jordan Sexton, *Ron DeSantis is Reshaping Florida's Medical Boards*, FLORIDA POLITICS (Dec. 30, 2022), <https://floridapolitics.com/archives/578266-gov-desantis-is-reshaping-floridas-medical-boards/> [<https://perma.cc/9RNM-3ZD6>] (discussing the anti-trans strategy indicated by DeSantis's appointments); see also Oriana González, *Politicians Turn to Medical Boards to Ban Gender-Affirming Care*, AXIOS (Nov. 4, 2022), <https://www.axios.com/2022/11/04/state-medical-board-florida-transgender-health-care> [<https://perma.cc/J8U4-F3CX>] (describing the agenda of recently added members of the Florida Board of Medicine).

151 See González, *Politicians Turn to Medical Boards to Ban Gender-Affirming Care*.

152 H.R. Res.1209, S. 2D, 117th Cong. (2022) (reintroduced as a Senate Resolution in 2023 by Sen. Markey and Rep. Jayapal).

2023, includes an unprecedented level of suggested protections for transgender people in the United States. For example, the resolution would fully codify the *Bostock* decision by amending Title VII,¹⁵³ recognize the universal right to bodily autonomy and ethical health care by “eliminating unnecessary governmental restrictions on the provision of and access to gender-affirming medical care and counseling for transgender and non-binary adults, adolescents and children,”¹⁵⁴ and codify *Roe v. Wade*.¹⁵⁵

The Biden Administration must act concretely to truly protect the rights of transgender youth across the country. Some initial steps have been taken, but more must be done. Thus far, Biden has released an Executive Order in June 2022, titled “Executive Order on Advancing Equity for LGBTQI+ Individuals.”¹⁵⁶ In the Executive Order, Biden “asks the federal health and education departments to expand access to gender-affirming medical care and find new ways to counter a flurry of bills passed in U.S. states.”¹⁵⁷ Section 7 of the Executive Order the directs the Secretary of HHS to “promote expanded access to comprehensive health care for LGBTQI+ individuals, including by working with states on expanding access to gender-affirming care.”¹⁵⁸ Despite the general positive sentiment of the Section 7, more must be done to safeguard access to health care, as state bans on gender-affirming care show no signs of slowing.¹⁵⁹ In a new Executive Order, President Biden should release explicit and specific guidance for the FDA to certify puberty blocking

153 H.R. Res. 1209 1(b), S. 2D, 117th Cong. (2022) (fully codifying *Bostock* by “amending Title VII . . . to explicitly clarify that employers may not discriminate on the basis of actual or perceived gender identity or sex characteristics”); see also *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020) (holding that Title VII’s ban on sex discrimination includes discrimination based on sexual orientation and transgender status).

154 H.R. Res. 1209 1(c)(ii), S. 2D, 117th Cong. (2022).

155 *Outlawing Trans Youth*, *supra* note 134.

156 Exec. Order on Advancing Equality for LGBTQI+ Individuals No. 14075, 87 Fed. Reg. 118 (June 21, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/15/executive-order-on-advancing-equality-for-lesbian-gay-bisexual-transgender-queer-and-intersex-individuals/> [<https://perma.cc/MSQ9-2HBF>] (“The Secretary of HHS shall: promote expanded access to comprehensive health care for LGBTQI+ individuals, including by working with States on expanding access to gender-affirming care.”).

157 Trevor Hunnicutt, *Biden Targets Conversion Therapy, Transgender Bans in Pride Month Order*, REUTERS (June 15, 2022), <https://www.reuters.com/world/us/biden-pride-order-aims-conversion-therapy-transgender-bans-2022-06-15/> [<https://perma.cc/26CY-JDQQ>].

158 Exec. Order on Advancing Equality for LGBTQI+ Individuals No. 14075, *supra* note 156.

159 *2023 Anti-Trans Legislation*, *supra* note 139.

medications for transgender youth as on-label use.¹⁶⁰ This would eliminate criticism concerning “off-label” medication use, which is currently fuel to the anti-trans legislator’s fire.¹⁶¹

Additionally, Congress should codify the right to access gender-affirming care for all transgender people, both minors and adults. In its current form, the Transgender Bill of Rights is not likely to gain the bipartisan support needed to pass anytime soon. Any federal measure which is at all likely to succeed in protecting transgender minor’s access to gender-affirming health care should be more narrowly focused to increase the chance of potential passage. Lastly, grounding the tenets of the Transgender Bill of Rights in scientific evidence through more research will help diminish fearmongering about the dangers of hormone treatment for transgender youth.

2. FDA Regulation

The FDA must act to make the medications currently prescribed as puberty blockers for transgender youth on-label for this purpose.¹⁶² If the FDA makes an expert judgment that certain medications are safe and effective for delaying puberty and treating gender dysphoria in transgender youth, then states may be preempted from banning Leuprolide, a medication commonly used as a puberty blocker for transgender youth, for that purpose.¹⁶³

An analogy to medication abortion by Mifepristone is in order. Post-*Dobbs*, Attorney

160 *Presidential Administration and FDA Guidance: A New Hope*, 2021 U. ILL. L. REV. (ONLINE: BIDEN 100 DAYS) 179 (discussing the powers of effectuating public policy through Executive Orders as guidance to the FDA).

161 See Akousa Mireku, *Legal Challenges Put Off Label Use of Gender-affirming Care Drugs in Jeopardy*, PHARM. TECH. (Mar. 16, 2023), <https://www.pharmaceutical-technology.com/features/legal-challenges-put-off-label-use-of-gender-affirming-care-drugs-in-jeopardy/> [<https://perma.cc/F8WG-EGX4>].

162 See generally *Understanding Unapproved Use of Approved Drugs “Off Label”*, Fed. Drug Ass’n (Feb. 5, 2018), <https://www.fda.gov/patients/learn-about-expanded-access-and-other-treatment-options/understanding-unapproved-use-approved-drugs-label> [<https://perma.cc/CY48-XZBA>] (noting that “when you are prescribed a drug for its approved use, you can be sure that the FDA has conducted a careful evaluation of its benefits and risks for that use, the decision to use the drug is supported by strong scientific data, and there is approved drug labeling for healthcare providers on how to use the drug safely and effectively for that use”).

163 See *What is Preemption, and How Does it Apply to a Defective Drug or Medical Device Case?*, GRAY AND WHITE (Feb. 23, 2016), <https://www.grayandwhitelaw.com/faqs/how-the-preemption-doctrine-applies-to-fda-regulations.cfm> [<https://perma.cc/D5VH-25JL>] (“The preemption doctrine has evolved over the years to include federal agency regulations and to mean that all federal laws, including regulations not passed by Congress but rather established by federal agencies, preempt all state laws.”).

General Merrick B. Garland publicly asserted the Biden Administration’s commitment to “protect and advance reproductive freedom,” declaring “states may not ban mifepristone based on disagreement with the FDA’s expert judgment about its safety and efficacy.”¹⁶⁴ Scholars have suggested the federal government act simply in the medication abortion context after *Dobbs* was decided, “attempting to use federal laws to preempt state bans.”¹⁶⁵ In this context, federal approval of Mifepristone, “based on [the FDA’s] expert determination that it is safe and effective,” would preempt state laws that ban its access “based on a state’s contrary conclusion about the drug’s safety and effectiveness.”¹⁶⁶

Similarly, in the context of protecting access to gender-affirming care for transgender youth, the federal government can work to promote access to puberty blockers by making them on-label and then continually advocating for their safety and efficacy for this purpose. By doing so, the federal government can preempt new state bans on gender-affirming care for minors. This is complicated by the ongoing litigation regarding Mifepristone. *Alliance for Hippocratic Medicine v. FDA* might result in Mifepristone being taken off shelves across the country.¹⁶⁷ This decision is now stayed, but if allowed to go through by the Supreme Court, would have devastating consequences for medication abortion access. This kind of litigation outcome is less likely to occur in the gender-affirming care context because the medications used as puberty blockers and as cross-sex hormones are widely accepted in their use, on-label, in caring for cisgender patients.

A disanalogy between Mifepristone and puberty blockers is that puberty blockers are off-label treatments for gender dysphoria, while Mifepristone is an on-label medication abortion. That puberty blockers are “off-label” for the purpose of treating gender dysphoria in transgender youth does *not* mean that they are unsafe or ineffective for this purpose. Medications are often prescribed for off-label use for both adults and minors; “pediatricians

164 Rachel L. Sher, *FDA Preemption: Implications of Dobbs Decision for Uniform Access to FDA-Approved Drugs in the U.S.*, MANATT (Aug. 8, 2022), <https://www.manatt.com/insights/newsletters/health-highlights/fda-preemption-implications-of-dobbs-decision-for> [<https://perma.cc/C7KU-KH7B>] (“Garland’s statement is premised on the doctrine that federal law overrides or ‘preempts’ inconsistent state law. In other words, the FDA’s decision to approve mifepristone based on its expert determination that it is safe and effective is a federal action that preempts state laws that would ban or prevent access to the drug based on a state’s contrary conclusion about the drug’s safety and effectiveness.”)

165 David S. Cohen et al., *The New Abortion Battleground*, 123 COLUM. L. REV. 1, 1 (2023).

166 Sher, *supra* note 164.

167 *Alliance for Hippocratic Medicine v. FDA*, 78 F.4th 210 (5th Cir. 2023).

prescribe off-label drugs in 20% of patient visits.”¹⁶⁸ If the FDA makes an expert judgment on the safety and efficacy of medications like Leuprolide, declares such medication on-label *for the purpose* of preventing the progression of puberty in transgender minors, and declares cross-sex hormones as on-label for treating gender dysphoria, states would be preempted from banning prescription of these medications.¹⁶⁹

If the FDA does judge these medications on-label for transgender youth now, while states continue to ban the medications, the FDA’s expert judgment would still be effective in sending a message on the safety and efficacy of these treatments. This would make it that much more difficult for opponents of gender-affirming care to argue against their use. It would become more difficult, if not impossible, to portray the treatment of trans minors with hormone blockers as experimental if the FDA approves them as a safe treatment for gender dysphoria.

B. State Solutions

State governors and legislatures should continue to proactively protect the rights of the transgender youth who are citizens of their own states and should also follow in the footsteps of sanctuary states like California and New York. In October 2022, California became the first sanctuary state for transgender youth seeking gender-affirming care.¹⁷⁰ Directly responding to Governor Abbott’s directive to DFPS in Texas, California’s law would “prohibit the enforcement of an order based on another state’s law authorizing a child to be removed from their parent or guardian based on that parent or guardian allowing their

168 Boulware, *supra* note 34, at 24 (citing Hoon D. Taylor et al., *Trends in Off-Label Drug Use in Ambulatory Settings: 2006–2015*, AM. ACADEMY OF PEDIATRICS (Oct. 2019)).

169 See James M. Beck, *Federal Preemption of State Attempts to Ban FDA Approved Abortion Drugs After Dobbs*, DRUG & DEVICE L., (June 28, 2022), <https://www.druganddevicelawblog.com/2022/06/federal-preemption-of-state-attempts-to-ban-fda-approved-abortion-drugs-after-dobbs.html> [<https://perma.cc/895V-8PE9>] (“However, one state’s attempt to prohibit doctors in that state from prescribing an FDA-approved opioid did produce interesting precedent . . . Massachusetts was enjoined in *Zogenix, Inc. v. Patrick* . . . The state . . . first tried an outright ban . . . with the governor ‘empower[ing]’ the public health department ‘to immediately prohibit the prescribing and dispensing of’ the plaintiff manufacturer’s drug. *Zogenix I*, 2014 WL 1454696, at *1–2. *The ban was preempted.*”) (emphasis added).

170 McClurg, *supra* note 125 (discussing that when Governor Newsom signed the bill into law, he declared, “In California we believe in equality and acceptance. We believe that no one should be prosecuted or persecuted for getting the care they need – including gender-affirming care. Parents know what’s best for their kids, and they should be able to make decisions around the health of their children without fear. We must take a stand for parental choice.”).

child to receive gender-affirming health care or gender-affirming mental health care.”¹⁷¹ In effect, this means that families from states that prohibit access gender-affirming care or have penalties for accessing such care can access that same treatment in California and be shielded from the laws of their home state.

Sanctuary state laws should not be discouraged, but they cannot be the only solution. The abortion landscape makes clear that legality does not equal access. Families in states that ban this care may not be financially able to repeatedly travel to a sanctuary state so their child can receive gender-affirming care, which is a continuing progression of treatments. Sanctuary states also do not solve the separate issue of access itself. In many states, it is not easy to find gender-affirming care even if it is not illegal, and places that offer such care usually have extremely long waitlists.¹⁷²

1. Medical Solutions

As illustrated by the issues presented regarding sanctuary states, any solution must work to increase the overall accessibility of such care. Puberty blockers and hormone treatments ought to be made available via Telehealth services and delivery. Title X should be protected and expanded so that all Planned Parenthood clinics will offer gender-affirming care and so that Planned Parenthoods may remain open and open more locations.¹⁷³

Telehealth is preferable to many patients—especially those seeking gender-affirming care, which may not be available near their place of residence—due to decreased costs and travel time. Telehealth has already been implemented to supply medications to

171 S.B. 107, 2021–2022 Reg. Sess. (Cal. 2022).

172 See *Map: Comprehensive Care Programs for Gender-Expansive Children and Adolescents*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/interactive-map-clinical-care-programs-for-gender-nonconforming-childr> (displaying an interactive map of states with laws or policies banning gender-affirming care of trans people ages eighteen or younger).

173 See Ruth Dawson, *What Federal Policymakers Must do to Restore and Strengthen Title X Family Planning Program*, 24 GUTTMACHER POL’Y REV. 22, 26–27 (2021), https://www.guttmacher.org/sites/default/files/article_files/gpr2402221.pdf [<https://perma.cc/MFB8-NUDU>] (“In response to patient need, traditional Title X providers are increasingly providing services such as talk therapy for anxiety and depression and gender-affirming hormone therapy for transgender patients . . . In the long term, Congress should revisit the underlying Title X statute and reframe the program from ‘family planning’ to ‘sexual and reproductive health.’ This would center patient autonomy, equity and inclusivity and more accurately reflect how the program fits into patients’ lives. Congress should also clarify in statute what services providers must offer if they accept Title X funds, and which additional services may be covered by these funds to meet patients’ needs.”)

transgender adults during the COVID-19 pandemic.¹⁷⁴ Moreover, a service review of the Gender Multispecialty Service at Boston Children’s Hospital found clear benefits of providing gender-affirming care to youth and adults over Telehealth during the COVID-19 pandemic.¹⁷⁵

Telehealth can potentially benefit transgender youth and adults who may not have the resources to travel out of or even within state to access care.¹⁷⁶ This can also be beneficial if Telehealth is used for gender-affirming mental health services, as was argued in the article “Telehealth is Key to Trans Health Care,” which also suggested that “[w]ell-resourced hospitals and insurers could allocate funds to families affected by bans on gender-affirming care, including covering the costs of traveling to health care facilities in states where the full spectrum of gender-affirming care is available.”¹⁷⁷

A 2021 survey shows that transgender youth are interested in having access to gender-

174 Danielle E. Apple et al., *Acceptability of Telehealth for Gender-Affirming Care in Transgender and Gender Diverse Youth and Their Caregivers*, 7 *TRANSGENER HEALTH* 159, 159 (2021).

175 Kerry McGregor et al., *Providing Essential Gender-Affirming Telehealth Services to Transgender Youth During COVID-19: A Service Review*, 29(2) *J TELEMED TELE CARE* 147, 149-150 (2023).

176 See Ole-Petter R. Hamnvik et al., *Telemedicine and Inequities in Health Care Access: The Example of Transgender Health*, 7 *TRANSGENER HEALTH* 113, 113 (2022) (finding that “[t]he increased access to telemedicine may have benefits beyond the reduction in contagious risk, especially for vulnerable populations. By breaking down some of the common barriers to care for vulnerable populations, the broad implementation of telemedicine may help reduce some inequities in health care access, but telemedicine does raise other challenges that need to be considered and addressed. One vulnerable group that can benefit from telemedicine is transgender and gender nonbinary (TGNB) individuals, who have less access to both gender-affirming and general medical care due to the consequences of stigma, discrimination, and marginalization. Telemedicine allows TGNB individuals to access clinical expertise even if it is not available locally, and without the expense of travel and without the concern for exposure to discrimination and mistreatment.”).

177 Dallas Ducar & Scott Hadland, *Telehealth is Key to Trans Health Care*, *SCI. AM.* (Aug. 12, 2022), <https://www.scientificamerican.com/article/telehealth-is-key-to-trans-health-care/> [<https://perma.cc/ZFF4-PQPZ>] (noting that “hospitals in states with bans on gender-affirming care should widen the scope of support services beyond their walls. Transgender youth and families with financial resources can travel out of state to receive needed care, leaving lower-income families disproportionately vulnerable to the consequences of treatment bans. Many hospital systems recognize that by supporting so-called social determinants of health—housing, income, food, education and employment—they improve the health of their neighbors. Well-resourced hospitals and insurers could allocate funds to families affected by bans on gender-affirming care, including covering the costs of traveling to health care facilities in states where the full spectrum of gender-affirming care is available. Many employers’ health plans have already begun to do this for other types of medical care that have been politicized, like abortion.”).

affirming care over telemedicine services.¹⁷⁸ It has been found that “direct-to-consumer telemedicine services that provide gender-affirming hormone therapy appear to follow evidence-based guidelines and charge about the same as brick-and-mortar medical centers.”¹⁷⁹ Planned Parenthood North Central States offers Telehealth hormones that must be picked up in person at the pharmacy.¹⁸⁰

Complications that may arise with Telehealth providing gender-affirming care will depend on the laws of separate states, if it indeed becomes illegal to receive gender-affirming care in the state where the transgender child resides.¹⁸¹ Telehealth raises issues regarding the licensing of health care providers. States are the deciders of cross-state licensing.¹⁸² Telehealth is considered to be rendered at the physical location of the patient, and not of the

178 Gina M. Sequeira et al., *Brief, Transgender Youths’ Perspectives on Telehealth for Delivery of Gender-Affirming Care*, 68 *J. ADOLESCENT HEALTH* 1207, 1209 (2021).

179 Mary Chris Jaklevik, *DTC Telemedicine Expands Access to Gender-Affirming Therapy*, *MEDSCAPE* (Oct. 27, 2022), <https://www.medscape.com/viewarticle/983144?reg=1> [<https://perma.cc/4HAC-N6HR>].

180 *Gender Affirming Hormone Therapy: Patient Handbook*, *PLANNED PARENTHOOD NORTH CENTRAL STATES*, at 9 (Aug. 2022), https://www.plannedparenthood.org/uploads/filer_public/f9/36/f9363309-3b58-47e8-b6e6-f7421f7b4172/gaht_health_care_handbook_web.pdf [<https://perma.cc/9HKT-BDQ8>].

181 Cf. Farah Yousry, *Telemedicine abortions just got more complicated for health providers*, *NPR* (Sept. 26, 2022), <https://www.npr.org/sections/health-shots/2022/09/26/1124360971/telemedicine-abortion-medication-ban> [<https://perma.cc/88KV-9SPY>]; Laurie Sobel et al., *The Intersection of State and Federal Policies on Access to Medication Abortion Via Telehealth*, *KFF* (Feb. 07, 2022), <https://www.kff.org/womens-health-policy/issue-brief/the-intersection-of-state-and-federal-policies-on-access-to-medication-abortion-via-telehealth/> [<https://perma.cc/QTA4-GXU8>]; Brian Lee, *Telehealth Bill Would Allow Doctors to Provide Abortion Counsel to Out-of-State Patients*, *NEW YORK L. J.* (Sept. 2, 2022) <https://www.law.com/newyorklawjournal/2022/09/02/telehealth-bill-would-allow-doctors-to-provide-abortion-counsel-to-out-of-state-patients/?sreturn=20221110164724> [<https://perma.cc/DV5W-5J55>] (describing interstate shield law in New York to protect providers of abortion to out of state patients); Claire Marblestone, *Medication Abortion, Telemedicine, and Dobbs—Key Considerations for Healthcare Providers*, *LEXISNEXIS* (Sept. 28, 2022), <https://www.lexisnexis.com/community/insights/legal/practical-guidance-journal/b/pa/posts/medication-abortion-telemedicine-and-dobbs-key-considerations-for-healthcare-providers> [<https://perma.cc/W6C7-3JX9>].

182 *Cross State Licensing*, *CCHP*, <https://www.cchpca.org/topic/cross-state-licensing-professional-requirements/#:~:text=The%20Commissioner%20of%20Public%20Health,to%20patients%20in%20this%20state> [<https://perma.cc/5J4F-KGB3>] (illustrating an interactive map of the United States and individual states’ cross-state licensing Telehealth rules).

physician.¹⁸³ The provider will typically need to be licensed in the state where the patient is located.¹⁸⁴ This varies by state.

Connecticut has a statute which allows the Commissioner of Public Health to issue an order “authorizing telehealth providers who are not licensed, certified or registered to practice in this state to provide telehealth services to patients in this state.”¹⁸⁵ Following Connecticut’s model in this context would likely present its own problems, as states banning gender-affirming care for minor residents of their own states probably do not allow cross-state telemedicine for this purpose. The states where the physicians providing cross-state care are located could pass their own affirmative laws, protecting their physicians from out of state prosecutions, as scholars have suggested in the abortion context.¹⁸⁶

In the U.S. Senate, democrats have introduced such an affirmative bill in the abortion context. The Let Doctors Provide Reproductive Health Care Act, introduced in August 2022, aims to protect physicians who provide abortion care to patients from states with abortion restrictions.¹⁸⁷ Just as with gender-affirming care, the politics of abortion care make this bill unlikely to pass any time soon. In the gender-affirming care context, individual states could pass their own laws to protect physicians located within their state lines from civil action by other states that may have banned gender-affirming care.¹⁸⁸

Another way to increase access to gender-affirming care for minors would be to expand the purview of Planned Parenthood clinics to provide more holistic treatment

183 *Id.*

184 *Id.* (“A few states have licenses or telehealth specific exceptions that allow an out-of-state provider to render services via telemedicine in a state where they are not located, or allow a clinician to provide services via telehealth in a state if certain conditions are met . . . Still other states have laws that don’t specifically address telehealth and/or telemedicine licensing, but make allowances for practicing in contiguous states, or in certain situations where a temporary license might be issued provided the specific state’s licensing conditions are met.”).

185 CONN. GEN. STAT. § 19a-906a (2023).

186 *See* David S. Cohen et al., *supra* note 165, at 1 (“Some states will pass laws creating civil or criminal liability for out-of-state abortion travel while others will pass laws insulating their providers from out-of-state prosecutions.”).

187 Let Doctors Provide Reproductive Health Care Act, S. 1297, 118th Cong. (2023).

188 *See* Assemb. B. 1666, 2021–2022 Reg. Sess. (Cal. 2022) (acting as a “shield” to protect physicians who provide abortions from lawsuits filed according to the laws of the states which ban abortions); *see also* Cohen, *supra* note 165, at 43.

plans, including gender-affirming care services to minors.¹⁸⁹ Planned Parenthood is often the sole place that offers gender-affirming care outside of major cities.¹⁹⁰ The director of policy for the National Center for Transgender Equality told *The Guardian* that “[Planned Parenthood is] one of the most important providers of trans healthcare in the country” and that “their clinics are some of the few transgender healthcare providers located outside major cities.”¹⁹¹

Increasing the number of Planned Parenthood clinics offering gender-affirming care is crucial because transgender people may be hesitant to seek such care from other healthcare providers, who may be less likely to be trans affirming. Transgender people have reported that they have avoided routine medical care due to fear of harassment from their healthcare providers and have also endured negative experiences with healthcare providers.¹⁹²

CONCLUSION

Texas, Florida, and Arkansas demonstrate three different ways in which states attempted to restrict access to gender-affirming care for transgender youth in 2022. As these state efforts appear to be mutating into more evil and pernicious forms that are backed by state medical boards, as seen in the case of Florida, the responses to these efforts must also evolve.

This Note argues that, first and foremost, the federal government must codify protections for all transgender people’s access to gender-affirming care in accordance with what is appropriate for their age and accepted standards of care. Further, solutions must include making gender-affirming medications on-label for the purpose of treating

189 *See* Alec Schemmel, *Planned Parenthood Offering Transgender Hormone Therapy to Minors Across the Country*, KATV (July 13, 2022), <https://katv.com/news/nation-world/planned-parenthood-giving-transgender-hormone-therapy-to-minors-across-the-country> [<https://perma.cc/BU2L-A756>] (“Planned Parenthood is providing children as young as 16 with ‘gender-affirming hormone services’ . . . In other [Planned Parenthood] sectors, like Western Pennsylvania and Nashville, patients must be 18 or older to receive hormone therapy.”).

190 Molly Redden, *How Defunding Planned Parenthood Could Wipe out Trans Healthcare*, THE GUARDIAN (Mar. 2, 2017), <https://www.theguardian.com/society/2017/mar/02/transgender-healthcare-planned-parenthood-funding> [<https://perma.cc/ZPY7-ANX4>].

191 *Id.*

192 James, *supra* note 40, at 93, 96 (finding that twenty-three percent of respondents reported fear of harassment and thirty-three percent reported negative experiences with healthcare providers).

transgender minors. Existing scientific research confirming the safety of gender-affirming care must be widely disseminated so ideological opponents cannot successfully argue that such care is dangerous or experimental. In the face of so many legal and political attacks, transgender children must be supported, loved, and protected.