

July 27, 2023

The Honorable Mike Johnson  
Chair, Subcommittee on the Constitution and Limited Government  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Mary Gay Scanlon  
Ranking Member, Subcommittee on the Constitution and Limited Government  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515



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**Anthony D. Romero**  
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**Deborah N. Archer**  
President

**Re: Hearing “The Dangers and Due Process Violations of Gender-Affirming Care for Children”**

Dear Chairman Johnson, Ranking Member Scanlon, and Members of the Subcommittee,

The American Civil Liberties Union (ACLU) strongly rejects the framing of this hearing on gender-affirming care for transgender youth. Gender-affirming care is neither dangerous nor a Due Process violation. To the contrary, gender-affirming care is safe, effective, life-saving health care. This view is shared by every leading medical and mental health organization in the United States, including the American Medical Association, the American Psychological Association, and the American Academy of Pediatrics. Medical and mental health treatment for transgender people is always guided by evidence-based clinical guidelines and always based on the individual needs of each person.

The ACLU has an extensive history and strong record of defending the Due Process rights of parents who are being threatened by state coercion for unjust and unconstitutional reasons. Through litigation and advocacy, we and our nationwide affiliate network have and do fight for the right of parents to guide the medical care of their children, retain custody of their children when threatened with discriminatory enforcement of the law, and provide for their families without being discriminated against by their employer because of their identity as a parent. Indeed, the ACLU works every day to protect parents and their children from these and many more of the risks that threaten parental rights and family integrity.

The health care of transgender youth, however, is simply not one of them. Indeed, that very same system has historically been targeted at transgender people and their families for blatantly discriminatory reasons, a reality made all the worse by recent efforts in Texas and Florida to threaten to remove all transgender youth from the custody of parents who love them. Half a dozen federal courts have now found bans on gender-affirming care for transgender

youth violate the Due Process rights of parents, forcing them to co-parent with the government and injecting politicians between parents and their children.

The framing of this hearing ignores the above realities and replaces them with fiction. Transgender people, including transgender youth, in consultation with their doctors and (for youth) with the guidance of their families, have a fundamental right to access age-appropriate gender-affirming care. It is for this reason that, to date, federal courts have overwhelmingly upheld the legal right to access gender-affirming care, striking down state-level bans on this care for youth as violating the U.S. Constitution.

### Equal Protection

The Equal Protection Clause of the Fourteenth Amendment protects individuals and groups from discrimination by the government. Banning gender-affirming care for transgender adolescents does significant harm by denying them medically necessary care and insurance coverage for such care because of their transgender status. Under the Equal Protection Clause, government discrimination based on sex, including discrimination based on stereotypes associated with a person's sex assigned at birth, is presumptively unconstitutional and requires the government to provide a strong justification for its discrimination. The same is true for government discrimination based on transgender status.

Banning gender-affirming care for adolescents does nothing to protect their health or well-being. To the contrary, banning this care gravely threatens the health and well-being of adolescents with gender dysphoria by denying them access to life-saving care. Banning medically necessary care for transgender youth is based on generalized fears, negative attitudes, stereotypes, and moral disapproval of transgender people that are not legitimate bases for unequal treatment under any level of scrutiny under the Equal Protection Clause.

### Due Process

The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. That fundamental right of parental autonomy includes the right of parents to seek and to follow medical advice to protect the health and well-being of their children. Parents' fundamental right to seek and follow medical advice is at its strongest point when the parents, their child, and that child's doctor all agree on an appropriate course of medical treatment.

Banning well-accepted medical treatments for adolescents with gender dysphoria stands directly at odds with parents' fundamental right to make decisions concerning the care of their children. Half a dozen federal courts have found bans on this care violate the Due Process rights of parents with transgender youth, including a District Court in Arkansas which struck down that state's ban on gender-affirming care, finding the law would "take away these parents' fundamental right to provide healthcare for their children and give that right to the Arkansas Legislature."<sup>1</sup>

Such bans force families across the country to co-parent with politicians acting neither in the best interests of their children nor out of concern for their constitutional rights. Indeed, authorities under the

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<sup>1</sup> <https://www.aclu.org/cases/brandt-et-al-v-rutledge-et-al?document=brandt-v-rutledge-eighth-circuit-court-panel-preliminary-injunction-ruling>

direction of Texas Governor Greg Abbott have gone so far as to threaten the removal of transgender youth from their parents' custody and a law signed by Florida Governor Ron DeSantis earlier this year would likewise threaten family integrity strictly and solely based on the transgender identity of their child.

### The First Amendment's Free Speech Protections

The First Amendment's guarantee of the freedom of speech applies to states through the Fourteenth Amendment. Speech that is restricted through state-level bans on gender-affirming care for transgender adolescents is fully protected by the Free Speech Clause of the First Amendment.

Doctors have a First Amendment right to refer patients for medically accepted treatments for gender dysphoria. Likewise, transgender youth and their parents have a First Amendment right to hear their doctors' medical recommendations, including their referrals to other health care providers. Banning gender-affirming care for transgender youth violates the First Amendment because it impermissibly restricts what physicians and other health care providers can say about medically accepted treatment for gender dysphoria.

Gender-affirming care will always look different for every transgender person, making it all the more critical for these deeply personal health care decisions to be made by patients in consultation with their doctors and families. **Government should never place itself between patients, families, and doctors.**

In the United States, medical care for those under the age of 18 is only provided with parental consent outside of a few exceptional circumstances (e.g. youth in out-of-home care). Treatment is provided only once a young person, their parents or guardians, and doctors all agree that it is medically necessary, and with fully informed consent. Banning gender-affirming care for transgender adolescents prevents parents from consenting to medically necessary treatment on behalf of their children.

### A Parent's Perspective

Too often, the voices of the parents of transgender children are missing from these debates. Politicians do not know more about medical care than doctors nor do they care about children more than a child's parents or guardians. With our statement for this hearing, we wanted to uplift the voice of one such parent, to make sure that this critically important perspective was not absent, as is so often the case. This is his first-person narrative in full:

*My name is Donnie Ray Saxton. I live in Vilonia, Arkansas with my three kids, including my son Parker. At 13, Parker was two years into traditional therapy, losing ground, anti-social, and self-harming when he came out to me as transgender in a last ditch shot at survival. I didn't understand, much less agree with, the thought that gender dysphoria was a real condition, but I did know and understand that he was my child, my responsibility, and a huge piece of me that warranted my attention and discretion. So...I learned. I studied and did my research and, together, we started moving forward with the process of finding him the support and the health care that we prayed would see him through.*

*Our state passed the country's first ban on gender-affirming care for trans youth just as Parker was starting to get that care. News about the ban set Parker back into that deep, dark place he'd been. I started sleeping on the couch outside of his bedroom to be as close as I could to him, because I was afraid Parker would hurt himself. Fortunately, the law got put on hold by a federal court, and Parker was*

*able to start on testosterone at last. It has made a world of difference. He is a new person, a complete turnaround from the broken, depressed, anxious shell that he was before testosterone. Not only did he survive, but today he is a thriving young adult with hopes, dreams, and aspirations that I never could have imagined for him. Politicians have no business interfering with the medical decisions doctors and parents make together to keep young people like my son alive and thriving. Families like mine need this health care to be left to the experts to keep our children safe and whole.*



Pictured: Donnie Ray Saxton and his son, Parker

### Conclusion

Transgender youth deserve the support and care necessary to give them the same chance to thrive as their peers. Gender-affirming care - far from being “dangerous” or a “Due Process violation” - is a critical part of helping transgender youth succeed in school, establish healthy relationships with their friends and family, and live authentically as themselves. That is something that no politician has the right to take away. Gender-affirming care is safe, effective, necessary, and life-saving, and decisions about it must properly remain with patients in consultations with their doctors and families. **The ACLU strongly opposes any effort to criminalize or otherwise ban coverage of this essential health care for transgender people.**

Sincerely,

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National Political Director

Christopher E. Anders  
Federal Policy Director

Ian S. Thompson  
Senior Legislative Advocate

Cc: Subcommittee on the Constitution and Limited Government