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# The Politics of Gender Affirming Healthcare: A New Battleground for Morality Policy?

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**Table of Contents**

**Abstract**

Morality policy as a discipline saw its peak during the transformative years at the turn of the 21st century; however, there has been very little scholarship to follow new social policy issues that have arisen in the past two decades. Anti-transgender policy, specifically, can be considered under the morality policy scope following years of LGBTQ+ scholarship that fell under the morality policy umbrella. In 2023 alone, more than 200 pieces of anti-transgender legislation were introduced in state legislatures across the nation. A trend among the increasingly popular policy realm can be seen from gender affirming healthcare bans, where almost two dozen states have enacted the barring legislation. This essay provides background on what gender affirming healthcare is, and a qualitative research project on four comprehensive case studies conducted on the states of Arkansas, Texas, Tennessee, and Oklahoma – all states who passed gender affirming healthcare bans. In a contrasting case study, I present information on the state of Virginia, whose legislature unsuccessfully attempted to codify similar legislation. These case studies serve as evidence to my assertion that gender affirming healthcare bans, and anti-LGBTQ legislation more generally, can be considered morality policy.

*Keywords*: morality policy, anti-transgender legislation, social policy, gender affirming healthcare bans, case study

**The Politics of Gender Affirming Healthcare: A New Battleground for Morality Policy?**

In 2021, Arkansas introduced an Act to ban access to gender affirming healthcare for minors. Titled the "Arkansas SAFE Act," the measure prohibits transgender and gender diverse (TGD) individuals under the age of 18 from seeking or receiving critical medical care for gender dysphoria. This type of medical care utilizes a range of options for children and adults alike, including, but not limited to, hormone therapy, surgical procedures, and puberty blockers. While studies have revealed a myriad of benefits on gender affirming healthcare for TGD people, physicians most commonly highlight overall mental health improvements among patients who receive this category of medical care.

Gender affirming healthcare bans are not the first attack on the TGD population in recent years. In fact, an anti-transgender agenda has erupted in state and national politics for the past several years, targeting transgender athletes, restroom rights, access to proper education, and more. These policies have directly correlated with an overall deterioration in mental health for the TGD population. One study conducted in 2022 found that internet searches for "suicide" increased among states where anti-transgender legislation, like bathroom and gender affirming healthcare bans, passed (Cunningham, 2022). Furthermore, as anti-transgender legislation continually becomes more prevalent, the established health disparities the TGD population has been historically subjected to will only be further exasperated (Barbee, 2022).

Since Arkansas' SAFE Act was introduced, twenty-one states have followed suit passing similar legislation banning gender affirming healthcare where, according to the Movement Advancement Project, 36% of all transgender youth in the United States live. A study conducted in several of these states found that among the families of transgender youths, fears of increased depression, anxiety, and suicide have risen in response of gender affirming healthcare bans

(Abreu, 2022). Physicians and other healthcare professionals express similar concerns for their patients, as shown in one study that surveyed hundreds of physicians across the nation and found an overwhelming opposition toward such bans (Hughes, 2021).

Many of these state bills have been challenged in state and federal courts. In fact, in almost every state where a ban has been put into place, there has been a subsequent lawsuit filed against the gender affirming healthcare legislation. Incongruencies among court decisions have led to a rise of questions on constitutionality regarding these healthcare bans, questioning the rights of parents to seek medical care for their children, the rights of physicians to provide proper access to healthcare, and the rights of governments to regulate what types of healthcare are and are not available.

This more modern phenomenon of gender affirming healthcare legislation highlights a historical pattern in American politics. Anti-LGBTQ legislation and restrictive healthcare legislation have both been categorized as a policy category most commonly known as morality policy. Morality policy, as a discipline, was popular in political science in the 1990's and early 2000's; however, since this period, there has been little to no scholarship to sustain contemporary social and political issues like gender affirming healthcare, and more generally, anti-transgender legislation as a whole.

The purpose of this study is to situate gender affirming healthcare legislation as morality policy to bridge the gap between traditional and modern morality policy scholarship by analyzing four different states – Arkansas, Texas, Tennessee, and Oklahoma – that have banned gender affirming healthcare. For further analysis, a separate study was conducted on Virginia, a state legislature that attempted and failed three separate times to introduce similar barring legislation, to further support that this policy type can be considered morality policy.

# Literature Review

## What is Morality Policy?

Morality policy scholars differ on defining what morality policy truly is; however, most scholars do agree on one main fact: policies dealing with morality never have a general public consensus. As Mooney describes, codified law may present as right or wrong, for example, most people generally agree on the fact that murder is wrong; however, no such consensus occurs on issues like euthanasia, the death penalty, or abortion, all of which typically fall under the morality policy umbrella (Mooney, 2000). Scholars have also recognized that morality policy issues usually have two distinct sides, where one side has fundamentally different beliefs, known as first principles, in conflict with the other (Mooney, 2000).

Morality policy, while somewhat abstract in definition, can be characterized in a few distinct ways. The first being that morality policy is "technically simpler" than other policy classes. Carmines and Stimson describe two voting strategies in terms of policy: "hard-issue" and "easy-issue," (Carmines and Stimson, 1980). Hard-issue voting on policy involves "reasoned and thoughtful" calculation over sophisticated policy matters and require voters to have a conceptual understanding of the political implication of certain policies (Carmines and Stimson, 1980). Tax-reform, for example, can be seen more as a hard-issue. The average citizen does not have extensive, informed knowledge about taxation and economic issues, and while issues such as these are still voted on by the general public, bankers, analysists, and other economic professionals may be the only portion of the population making such informed votes. Easy issues, on the other hand, while still having technicalities, require less of a fundamental understanding of policy implications and virtually anyone may form an opinion in which they believe to be informed (Carmines and Stimson, 1980; Mooney, 2000). Morality policy falls

under the latter. Abortion and the death penalty do indeed have technical implications; however, any one person may form an opinion and vote over whether these issues are right or wrong, and often base that opinion on their own moral convictions.

A second characteristic of morality policy is that these issues are highly salient (Gormley, 1986; Mooney, 2000). Because of their influence on groups within a population, and those who support or oppose those groups, individuals tend to feel very strongly about the issue at hand. Using the example from above, tax reform is not an area where excitement about right or wrong is instilled. The death penalty, on the other hand, is generally more enticing to the average person, and causes more of the population to become involved in such policy matters (Mooney, 2000). The simplicity, or the "easiness" as the first characteristic of morality policy describes, of such policies allows this phenomenon to occur. These are issues that any average citizen can grasp, which in turn, increases desire among individuals to become more involved with such policies, even if that involves simply forming an opinion on the matter.

The final characteristic of morality policy is that they generally invoke high levels of citizen participation at all phases of policymaking due to their controversial nature (Mooney, 2000). Whether that be tuning in for debates, participating in rallies, or even just driving to the polls. These issues cause great motivation for involvement because they often intimidate a very fundamental aspect of human nature (Mooney, 2000).

In recent years, the political rally has become the most popular form of citizen participation in terms of morality policy. In the online sphere, an example can be made of the #MeToo movement, where, charged by female celebrities, women from across the globe shared their experiences with sexual assault and abuse on Twitter, now X, and other social media platforms. The Black Lives Matter movement – a response to racist police brutality – came to

fruition during a global pandemic, and while one might believe this would deter activism, rallies and protests never yielded. *Dobbs v. Jackson*, the landmark decision that overturned *Roe v. Wade*, caused an outcry where both sides of the moral spectrum protested outside of every city hall, courthouse, and capitol across the nation. All of these forms of protests came in response to exactly what Mooney describes: a threat to the very nature of what it means to be a woman or to be black. All individuals possess different characteristics that build their identities, thus, when such identities are threatened, the temptation to respond or participate to defend these issues grows.

**Framing and Morality Policy**

Morality policy scholars also point out that this policy class should be distinguished from other categories of public policy because of how these issues are framed, rather than their actual content (Mucciaroni, 2011). Morality policy primarily differs from non-morality policies in that those who frame moral issues focus on moral principles above instrumental considerations (Knill, 2013). Framing is an "active, processual phenomenon" that is used to reconstruct reality for a certain intended effect (Benford & Snow, 2000). Framing in a political sense is a strategy that involves how political actors choose to present issues and relies heavily on the judgement or choice of those actors (Iyengar, 1996). Framing has been an integral component of policymaking for decades, and arguably the most quintessential component of morality policy and is what has led scholars to categorize morality policy separately from other classes (Mucciaroni, et al., 2018).

Mucciaroni defines several frames often used involving morality policy. The broadest frame he describes is the "fully framed morality policy," where issues are classified as right and wrong a "preponderance of the time" (Mucciaroni, 2011). Abortion opponents for example,

frame the act as murder, arguing that life begins at conception. By framing the issue this way, it highlights a basic moral convention most people hold – murder is wrong – and distorting that convention to uphold their own: that all human life begins at conception, and it is wrong, or evil, no matter the circumstance. A narrower frame Mucciaroni defines is the "governmental morality frame," in which he describes the strategy of government officials to promote or demote morality issues in principles of justice, freedom, or equality – essential American ideals (Mucciaroni, 2011). Using abortion again as an example, proponents of choice typically highlight that bans or restrictions on abortion encroach on an individual's personal liberty to choose.

From the example used of abortion above, it is easy to see how framing can influence public opinion on issues such as these. Hence, why framing is understood to be such an important aspect of morality policy. Morality is personal and unique to each individual, which is what framing relies on: capitalizing on personal convictions to sway public opinion.

**The Gap in Morality Policy Literature and Discussion**

As I've discussed, it has been difficult for scholars to acutely define morality policy. Consequently, it can also be difficult to determine its history and origins. Again, there is no consensus among scholars that has determined the definite starting point of when morality policy came to be its own distinct policy class (Tavatolich & Smith, 2003). Literature discussing concepts of morality policy have dated back nearly a century; however, at the time of these writings' conceptions, there was no defined term to articulate what scholars were describing. The study of morality policy as a discipline is relatively modern, but the foundations set by years of scholarship, moral issues, and combating discourse are not to be overlooked when discussing the origins of morality policy.

When applying the characteristics Mooney describes of morality policy, there are many policy spheres that could be recognized as morality policy, dating back to the birth of the United States. The issue of slavery, obviously understood to be unethical now, was not necessarily seen in the same light in the founding years of our new nation. It was widely controversial and salient, erupting an entire Civil War, where politicians, farmers, and other citizens alike held strong opinions on the issues involved with slavery. Suffrage is another early example that could, under the considerations set out by Mooney and other morality policy scholars, be defined as morality policy. Widespread movements erupted from feminine outrage due to their status as a woman inhibiting their ability to participate in politics. National salience and participation in response to threat toward a group's fundamental identity? Under Mooney's definition, suffrage falls perfectly under morality policy. These issues, while dating back centuries, contain the characteristics scholars have determined to be morality policy and are important when discussing the history of the policy categorization.

The moral issues that morality policy defines are not new to American scholars, citizens, and politicians, if anything, they have served as structural building blocks to American politics and government. So why then, was this policy sphere so late to be defined? The origins of morality policy scholarship date back to the mid to late 20$^{th}$ century. Some consider Theodore Lowi's 1964 journal article, "The American business, public policy, case studies, and political theory," as the foundation of morality policy (Euchner, 2019). His discussion of distributive and redistributive policies versus regulatory policies stimulated several instances of scholarly discourse expanding on regulatory policies (Tatalovich & Smith, 2003). One scholar determined that policies dealing with moral considerations were a subcategory of Lowi's regulatory policy,

and from there, scholarship about this newfound category increased exponentially (Tatalovich & Smith, 2003).

The 1990's and early 2000's are largely accredited to be morality policy's time of influence. At this stage, Mooney, Meier, and other collaborators began releasing books of information about morality policy. Literature on morality policy was abundant and ever growing. Yet, while some literature has since been released, there is a glaringly apparent gap between what was regarded at the time, new literature, and discussion on how morality policy has since evolved. This is certainly a surprising anecdote now in 2024, where most consider the last decade to be some of the most polarizing and controversial political years the world has ever seen.

New and old morality policy issues have since come to the forefront of American policy. In 2015, *Obergefell v. Hodges* shocked the Gay Rights Movement by finally codifying same-sex marriage. Immigration issues, in 2016 from former President Donald Trump's highly salient presidential campaign and term in office, emerged as one of the hot topics of debate for several years between the right and the left. COVID-19, a global pandemic, instituted new debates over the morality of mask-wearing. *Dobbs v. Jackson* overturned Roe in 2022, rearing back old debates over the morality of choice or life. It is now where I pose the question: where is new morality policy literature evaluating these pivotal debates and why, in a seemingly abundant forum for discourse, has it become stagnant? Considering how the American political sphere has changed, it is my understanding, that this gap need filling.

**Gender Affirming Healthcare as Morality Policy?**

The LGBTQ+ community is not unfamiliar with discriminatory policies. The TGD population, more specifically, has faced jarring barriers to liberty and life just within the past

couple of years. Bathroom bills, the exclusion of transgender individuals in sports, and bans on LGBTQ+ education have all targeted this community by expounding on their differences to justify their exclusion (Levengood & Hadland, 2022; Park, 2021). Barriers to gender affirming healthcare just exacerbate this issue even more.

Controversial healthcare issues, like abortion, are not new territories in the sphere of morality policy. LGBTQ+ issues are also, clearly, not uncharted under the scope of morality policy and arguably, have become the primary target in recent years of morality policy legislation. Thus, gender affirming healthcare bans, a combination of the two, I argue, can fit perfectly underneath the morality policy umbrella.

Medical professionals have described gender affirming healthcare as a form of necessary medical treatment for transgender and gender diverse (TGD) individuals. To be transgender or to be gender-diverse is not understood to be a choice, rather, it is a fundamental aspect that constitutes their identity where medical treatment is often used as a means of reaching that identity (Keuroghlian et. al., 2022). A characteristic Mooney points out as a determinate of morality policy.

As the issue of abortion has highlighted, the politicization and criminalization of necessary healthcare can be dangerous and places the population it targets at high risk (Park, 2021). A study done by physician Diana Tordoff supports this notion. After surveying adolescents who had been treated both for depression and gender affirming care, she found in her results that those who received some form of gender affirming healthcare were 70% less likely to suffer with suicidal ideation, and 60% less likely to suffer from moderate or severe depression (Tordoff, 2022).

A more comprehensive survey done by The Trevor Project also highlights the importance of gender affirming care regarding mental health. The Trevor Project's 2022 annual survey resulted in almost 45,000 LGBTQ+ children and adolescents responding, and the results were jarring (The Trevor Project, 2022). According to the survey, 45% of LGBTQ youth seriously considered suicide last year, 73% experienced anxiety symptoms, 82% wished to seek mental health care, and 14% attempted suicide within the last year (The Trevor Project, 2022). Medical professionals have been quick to point out that barring access to such care could dramatically increase statistics like these, and they predict that the overall mental health of TGD individuals would effectively deteriorate as a result of these bans (Hughes, 2021).

## Methods

For this study, I began by analyzing each piece of state legislation in the twenty-two separate states that have adopted gender affirming healthcare bans. I initially began this project with the idea to do a comparative study on each state bill; however, after further consideration, I realized a more thorough qualitative analysis on just a few bills and the repercussions in each state would be more informative on the nature of how these bills fit into the morality policy category. After considering all the information I found in my initial search, I decided the best avenue for continuing would be through using a case study method of research.

### Case Study Methodology

The case study methodology is a qualitative form of study that includes an in-depth analysis of collected details over specific period of time (Evera, 1997). There are several different types of case study methodologies; however, I found a congruence study would be most beneficial for my line of research. Congruence procedures are an avenue of research that involves the researcher exploring case by case for congruencies and incongruencies between

values of the decided upon independent and dependent variables (Evera, 1997). For the purpose of this study, I will be focusing on the similarities and differences between the state legislatures that have passed gender affirming healthcare bans to highlight how and why bills such as these pass.

The data collected for the case studies on the selected states includes a myriad of items including court records, media and/or news surrounding the legislation, and the bill texts themselves. This study largely relied on gathering information from the respective state legislatures and recorded court documents to build qualitative and comprehensive studies on each state.

**Case Selection**

For my case selection, I focused on several different factors when deciding which states would be the best for my personal research purposes. One of the most important factors I considered during my selection was time. Many of the bills spent several months in their respective state legislatures before passage, and, like Arkansas, several state bills have been in place for several years. Time became an important factor for this particular study because more resources have become available as time has gone on, whether that be because of the time a bill spent in the state legislature, because of a bill's codification date, or because of their status in court proceedings.

Other important factors considered for the case selection were legal action and legislative barriers. Many of the pieces of legislation barring gender affirming healthcare have been challenged in court, and several bans saw earlier challenges in the state legislature from the use of the gubernatorial veto. Any legal action taken against state bills was a particularly important consideration for this study because the varying decisions made by courts contribute to the

overall discussion of morality policy. Below, Table 1.0 depicts legislative barriers and legal challenges state bills faced during and post-codification.

**Table 1.0: State Bill Legislative Barriers**

| States With GAC Bans | Governor Veto | Challenged in Court | Temporarily Blocked | Block Overruled | Challenged, But No Block Issued | Permanent Block |
|---|---|---|---|---|---|---|
| Alabama | | x | x | x | | |
| Arizona | | x | | | | |
| Arkansas | x | x | x | | | x |
| Florida | | x | | | | |
| Georgia | | x | x | x | | |
| Idaho | | x | x | | | |
| Indiana | | x | x | x | | |
| Iowa | | | | | | |
| Kentucky | x | x | x | x | | |
| Louisiana | x | x | | | | |
| Mississippi | | | | | | |
| Missouri | | x | | | x | |
| Montana | | x | x | | | |
| Nebraska | | x | | | x | |
| North Carolina | x | x | | | | |
| North Dakota | | x | | | x | |
| Oklahoma | | x | | | x | |
| South Dakota | | | | | | |
| Tennessee | | x | x | x | x | |
| Texas | | x | x | x | | |
| Utah | | | | | | |
| West Virginia | | | | | | |

a. Note: Data gathered from each respective state legislature's public web domains.

Considering these factors, I narrowed my study down to four separate states for thorough analysis: Arkansas, Texas, Tennessee, and Oklahoma. Arkansas' SAFE Act, being the first of its kind, constructs the basis of this study. Furthermore, the legal challenges against Arkansas' bill yielded interesting results, where both the state court and federal court blocked the ban yet has been placed back under the judicial microscope where it is now under en banc review. Texas was notable to include for two reasons: the state's size and the results of legal action. Texas is the largest state in population where a gender-affirming healthcare ban was adopted, consequently, impacting the largest number of transgender youths in one state. Moreover, the challenges to Texas' SB 14 never reached the federal level, as the Texas Supreme Court dismissed all action taken against the bill. Tennessee's SB 001 was important to highlight because it was the first state bill challenged in both state and federal court that yielded opposing decisions – at state district court, the ban was blocked, and the federal district court overruled the state court's decision. Finally, Oklahoma's ban was selected because it made providing gender affirming

healthcare a felony and became the first state where legal action to block the ban failed at both the state and federal courts, as of now.

## Case Studies

In this section, I will present the case studies I conducted on bills passed by Arkansas, Texas, Tennessee, and Oklahoma. For each state, I will provide a brief overview about the legislation enacted in that state, the bill's legislative history, a discussion of the bill's language by describing exactly what each bill prohibits, the legal action taken against the bill, media and/or press surrounding the legislation and subsequent lawsuits, and the final outcome post legal action if that legal action resulted in a temporary or permanent block on the legislation by federal judgement. Following Oklahoma's case study, I will present a contrasting case study highlighting Virginia, a state where gender affirming healthcare legislation was introduced on several occasions; however, failed to be codified into Virginia state law.

### Arkansas – HB1750

#### Overview

Arkansas was the first state to introduce a ban on gender affirming healthcare in 2021, titled the Save Adolescents from Experimentation (SAFE) Act. It has served as the basis for almost all legislation that has followed suit in other states, where many states have even adopted the same name as can be seen in the case of Missouri's SAFE Act. There have been many other construed titles but, in many respects, most state legislation is almost exactly modeled after Arkansas' with a few key differences.

#### Legislative History

The SAFE Act was introduced under House Bill 1570 in the 93rd General Assembly of the Arkansas state legislature (Arkansas State Legislature, HB 1570). The lead sponsors of the

bill were republican representative Robin Lundstrum of Elm Springs and republican senator Alan Clark of Lonsdale, but they had overwhelming support on the legislation with just under half of the members of the Arkansas House co-sponsoring and twenty of the thirty-five state senators (Arkansas State Legislature, HB 1570). In its final vote in the state legislature, HB 1570 passed in both branches of the Arkansas state legislature. The bill passed with a 70-to-22 vote in the House with a 28-to-7 vote in the Senate (Arkansas State Legislature, HB 1570). Arkansas Governor Hutchinson did attempt to veto the legislation early on in its legislative process; however, his veto was overruled by both the House and the Senate.

The bill only saw two amendments after its initial introduction. The first amendment was simply to add four representatives and a single senator as co-sponsors to the bill on March 3rd, 2021 (Arkansas State Legislature, HB 1570). The second amendment was voted on and adopted on March 8th, 2021, which added another two co-sponsors and replaced line 24 on page 9 (Arkansas State Legislature, HB 1570). The original line stated that insurance would not reimburse or provide funds to those who underwent some form of gender affirming healthcare, and the amendment specified the age limit to any "individual under eighteen," (Arkansas State Legislature, HB 1570). Due to the two amendments, and legislative procedures, the legislation was read a total of three times before it was passed to Governor Hutchinson, and eventually vetoed. After the House and Senate overrode his veto by a simple majority, the bill became Act 626 in the Arkansas Code.

**Bill Language**

Ten pages in total, Arkansas' SAFE Act includes a myriad of provisions regarding the ban on gender affirming healthcare. The bill specifically prohibits physicians and other healthcare professionals from providing any transition procedures for minors and bars physicians

from referring “any individual under eighteen years of age to any healthcare professional for gender transition procedures,” (Arkansas State Legislature, HB 1570). As per the legislation, gender transition procedures are, “any medical or surgical service… to alter or remove physical or anatomical characteristics or features that are typical for the individual’s biological sex,” or to “create physiological or anatomical characteristics that resemble a sex different from the individual’s biological sex” (Arkansas State Legislature, HB 1570). The listed procedures include but are not limited to surgical procedures like vaginoplasties or penectomies, reconstruction procedures, and more (Arkansas State Legislature, HB 1570).

Section 20-9-1503 prohibits the use of public funds for gender transition procedures. “Public funds” as described by the bill’s text means any “state, county, or local government monies… authorized or appropriated under state law or derived from any fund in which such moneys are deposited,” (Arkansas State Legislature, HB 1570). Specifically in this section, the bill prohibits public funds to be directly or indirectly used or distributed to any entity, organization, or individual that provides gender transition procedures to minors (Arkansas State Legislature, HB 1570). This provision primarily focuses on any form of healthcare provider funded by the state, barring any local or state funded hospital or clinic from providing gender affirming care.

The next section, 20-9-1504, discusses enforcement of the act. It lays out that physicians who partake in this form of healthcare, or one who refers an individual under eighteen to another physician for gender affirming care, is “subject to discipline by the appropriate licensing entity,” likely the Arkansas State Medical Board, or any “disciplinary review board with competent jurisdiction in this state” (Arkansas State Legislature, HB 1570). It also allows for minors to bring action, in their own name or through another, against their physicians or surgeons for

compensatory damages, declaratory relief, or "any other appropriate relief" (Arkansas State Legislature, HB 1570). Furthermore, this section of HB 1570 charges the Attorney General of Arkansas to "enforce compliance" (Arkansas State Legislature, HB 1570).

Finally, the bill prohibits the use of insurance for gender transition procedures for minors. The bill states that a health benefit plan, insurance policy, or any other healthcare coverage plan may not include reimbursement for gender transition procedures and does not require these plans to provide insurance coverage for such procedures (Arkansas State Legislature, HB 1570).

Notably, the bill specifically prohibits gender affirming healthcare only for transgender youth but leaves out "persons born with a medically verifiable disorder of sex development" (Arkansas State Legislature, HB 1570). This description includes those born with biological characteristics that are "irresolvably ambiguous" and provides context to include individuals who have "46 XX chromosomes with virilization, 46 XY chromosomes under virilization, or [have] both ovarian and testicular tissue," (Arkansas State Legislature, HB 1570).

In the preceding sections to the bill's prohibitions, the bill discusses the General Assembly's legislative findings. It explains that Arkansas has a compelling government interest due to several reasons. The first being that "only a small percentage of the American population experiences distress at identifying with their biological sex" and then goes on to explain that for the small percentage of children who do experience distress, "studies consistently demonstrate that the majority come to identify with their biological sex" at one point or another (Arkansas State Legislature, HB 1570). The bill's language attempts to discredit the mental health benefits of gender affirming healthcare by explaining that even those "who have undergone gender reassignment procedures, suicide rates, psychiatric morbidities, and mortality rates remain markedly elevated" (Arkansas State Legislature, HB 1570). The bill then goes onto list the

physical dangers of gender affirming healthcare to “biologically normal and functional body parts” and determines that there has been a “lack of study” done to prove these procedures are beneficial and/or necessary for transgender and gender diverse individuals (Arkansas State Legislature, HB 1570).

**Legal Action**

*Section I, Initial Complaint:* An initial complaint against the Arkansas Attorney General and the state of Arkansas was filed on May 25, 2021, by seven different families seeking declaratory and injunctive relief with the help of ACLU attorneys Jon Stryker and Slobodan Randjelovic, the ACLU of Arkansas, and the law firms of Sullivan & Cromwell LLP, Gill Ragon Owen, and Walas Law Firm (*Brandt v. Rutledge,* E.D. Ark., 2021). The plaintiffs of the case were: Dylan Brandt by and through his mother, Sabrina Jennen by and through her parents, Brooke Dennis by and through her parents, Parker Saxton by and through his father, Dr. Michele Hutchison on behalf of herself and her patients, and Dr. Kathryn Stambough on behalf of herself and her patients (*Brandt v. Rutledge,* E.D. Ark., 2021).

The minor plaintiffs alleged in their complaint that Act 626, formerly HB 1570, violated the Equal Protection Clause of the Fourteenth Amendment in that it discriminates against plaintiffs on the basis of sex and transgender status (*Brandt v. Rutledge,* E.D. Ark., 2021). The parents of the plaintiffs alleged that the Act also violated the Equal Protection Clause by barring them from their fundamental right of seeking and following medical advice for their children (*Brandt v. Rutledge,* E.D. Ark., 2021). The plaintiffs’ final claim comes from the physicians and involves referrals, alleging that by banning referrals, Act 626 violates their First Amendment rights in limiting what physicians can say and what families are able to hear (*Brandt v. Rutledge,* E.D. Ark., 2021).

The plaintiffs of the case initially sought a preliminary injunction before Act 626 could take effect; however, the state of Arkansas moved to dismiss the complaint (*Brandt v. Rutledge,* E.D. Ark., 2021). This motion, however, was denied and the Eastern District Court of Arkansas granted the Plaintiffs' motion for injunction, which temporarily blocked the ban in July of 2021 (*Brandt v. Rutledge*, E.D. Ark., 2021)

*Section II, Eastern District Court of Arkansas:* The lawsuit was originally filed in the United States District Court in the Eastern District of Arkansas where United States District Judge James M. Moody presided over the case. After hearing plaintiff, expert, and defendant testimony – and considering several Amicus Briefs filed – Judge Moody delivered his decision in favor of the Plaintiffs.

In his decision, Judge Moody declared that the Plaintiffs had constitutional standing regarding this matter. As he says, the evidence presented at trial undisputedly proved that the plaintiffs would suffer concrete and particularized injury were the ban to take effect (*Brandt v. Rutledge*, E.D. Ark., 2021). The Court held that each of the Plaintiffs – minors, parents, and physicians – would suffer injuries directly traceable to the SAFE Act, which confirmed their constitutional standing (*Brandt v. Rutledge*, E.D. Ark., 2021).

Regarding the Plaintiffs' Equal Protection claim, Judge Moody determined the rational basis test did not apply and that Act 626 deliberately discriminates on the basis of sex as it "determines whether [a] minor can receive certain types of medical care" (*Brandt v. Rutledge*, E.D. Ark., 2021). He makes an example, using the bill's language, to prove this. Judge Moody explains that according to Act 626, that as long as "enhancements" or "various aesthetic procedures" are used for the purpose of aligning an individual with their assigned sex, then such procedures are legal whereas for the opposite – an assigned male receiving facial feminization

surgery, for example – the act would be considered illegal (*Brandt v. Rutledge*, E.D. Ark., 2021). Using the example provided, Judge Moody proclaimed that the biological sex of minor patients served as the basis for what medical care is considered legal, which in and of itself subjected the act to heightened scrutiny (*Brandt v. Rutledge*, E.D. Ark., 2021). Furthermore, Judge Moody contends in his decision that the Act discriminates against transgender people directly (*Brandt v. Rutledge*, E.D. Ark., 2021).

On the Defendants' efficacy claims – the state's claim that there was lack of evidence of the efficacy of gender affirming healthcare – the Court determined that the evidence presented at trial by the Plaintiffs' expert witnesses proved that the "prohibited medical care improves the health and well-being of many adolescents with gender dysphoria," ultimately striking the claim down (*Brandt v. Rutledge*, E.D. Ark., 2021). Furthermore, Judge Moody highlighted the fact that the state's witnesses put no evidence forth that contested the Plaintiffs' expert witnesses, and even used one of the Defendant's expert statements as an example that supported gender affirming healthcare (*Brandt v. Rutledge*, E.D. Ark., 2021).

On the Defendants' risk and side effects claim, Judge Moody does not dispute the risks associated with certain forms of gender affirming healthcare in his decision; however, he does point out that the risks at hand are discussed extensively with patients and their families before such treatment plans are prescribed (*Brandt v. Rutledge*, E.D. Ark., 2021). Furthermore, he uses the same example provided previously for when cisgender minors use hormones to conform with their assigned sex, and how the side effects are also discussed with such patients (*Brandt v. Rutledge*, E.D. Ark., 2021). The Court's ultimate conclusion on the state's claims of risk determined that the state did not present sufficient evidence to prove that the ban on gender

affirming healthcare was justified by the risks laid out in the bill's text (*Brandt v. Rutledge*, E.D. Ark., 2021).

In a final discussion of the Defendants' claims, Judge Moody rejects the notions presented by the state that teenagers often desist gender dysphoria with age and that healthcare providers fail to provide proper evaluation for patients to make informed consent. For the former, Judge Moody used evidence presented by the Plaintiffs' expert witnesses to explain that there is a "broad consensus that once adolescents reach the early stages of puberty and [continue to] experience gender dysphoria, it is very unlikely" they will desist (*Brandt v. Rutledge*, E.D. Ark., 2021). On the claim that healthcare providers do not adequately inform their patients of the risks associated with gender affirming healthcare, Judge Moody contends that the State failed to provide evidence that "doctors in Arkansas negligently" provide gender affirming healthcare treatments (*Brandt v. Rutledge*, E.D. Ark., 2021).

Delivering a final constitutional analysis of his decision, Judge Moody determined that even if Act 626 passed the rational basis test under the Equal Protection Clause, it failed under due process. Parental rights, as he says in his analysis, fall under strict scrutiny review which, are infringed upon by Act 626 (*Brandt v. Rutledge*, E.D. Ark., 2021). Furthermore, he found the physician Plaintiffs' claims on freedom of speech to be sound in that Act 626 "effectively bans their ability to speak to patients about [gender affirming healthcare treatments] because the physician is not allowed to tell their patient where it is available" (*Brandt v. Rutledge*, E.D. Ark., 2021).

*Section III, Eighth Circuit Court of Appeals:* Following the dismissal and permanent enjoinment of Act 626 in the Eastern District, the state of Arkansas appealed to the Eighth Circuit of the United States Court of Appeals on September 7th, 2021. After a weeks-long trial,

the final decision of the Eighth Circuit revealed that plaintiffs prevailed on each of their claims and struck down Arkansas' SAFE Act permanently (*Brandt v. Rutledge,* 8th Cir., 2022).

In their decision, the Court evaluated the State's claims regarding the trial conducted in the Eastern District Court of Arkansas. On Appeal, the state of Arkansas argued that the Plaintiffs lacked standing, the Eastern District failed to consider the medical evidence submitted, the minor Plaintiffs would not suffer irreparable harm, and that the district court abused its discretion by granting a facial injunction (*Brandt v. Rutledge*, 8th Cir., 2022). The Eighth Circuit found "no clear error in the district court's weighing of the competing evidence" submitted at the first trial (*Brandt v. Rutledge*, 8th Cir., 2022). To each of these claims, the Eighth Circuit affirmed the district court's decisions and determined that the district court "did not abuse its discretion," therefore nullifying the state's appeal (*Brandt v. Rutledge*, 8th Cir., 2022).

This decision did not deter the state of Arkansas, and the Defendant-Appellee's ultimately filed a petition for an en banc rehearing in the Eighth Circuit in October of 2022. Five members of the Court voted to review and three did not, which ultimately sent the case back to the Eastern District Court of Arkansas (*Brandt v. Rutledge*, 8th Cir., 2023). At this stage, the district court permanently enjoined Arkansas' Act 626 (*Brandt v. Rutledge*, 8th Cir., 2023). Following decisions made in other state district courts and various Circuit courts, the state of Arkansas filed a second petition for an en banc rehearing in September of 2023. The state argued that conflicting decisions from other states within the Eighth Circuit's jurisdiction and conflicting decisions in other circuits should serve as enough evidence to grant the second petition, which proved to be a victory (*Brandt v. Rutledge*, 8th Cir., 2023). This is where the state of Brandt v. Rutledge lies now, where the Eighth Circuit further considers the case.

**Media and Press**

Because Arkansas' standing as the first state to pass legislation barring gender affirming healthcare, there was a multitude of media coverage nationwide documenting the bill's passage and subsequent lawsuit. Interest groups were primary actors in spreading media about Arkansas' SAFE Act. The ACLU, the Family Research Council, the Human Rights Campaign, and the Family Policy Alliance were all major interest groups following the legislation. Other national news outlets including the New York Times, CNN, AP News, Time Magazine, NPR, ABC, and more were also instrumental actors in spreading information about the legislation. And, perhaps most notably, were local Arkansan news outlets sharing information about HB 1570.

The *Arkansas Democrat-Gazette*, Arkansas' largest state-wide newspaper, followed HB 1570 closely from its initial introduction to the state legislature to the conclusion of *Brandt v. Rutledge*. After the legislation was announced, the *Arkansas Democrat-Gazette* reported on a large protest outside the state capitol of over 200 people, which was orchestrated by local health care providers (Herzog & Wickline, 2021).

Following that demonstration, *Gazette* reporters Rachel Herzog and Michael Wickline documented Governor Asa Hutchinson's press release following his veto on the bill and recounted several of Hutchinson's statements in a 2021 article release. Per the article, Hutchinson described the SAFE Act to be a "product of the cultural war in America" and "government overreach" (Herzog & Wickline, 2021). Expanding on the idea of government overreach, Hutchinson explained that the "state should not presume to jump in the middle of every medical, human, and ethical issue" (Herzog & Wickline, 2021). Following the governor's statements to the press, the *Gazette* reporters also documented a news conference held by the bill's primary sponsors, Representative Lundstrum and Senator Clark, "urging their legislative colleagues to override [Hutchinson's] decision" (Herzog & Wickline, 2021). The *Democrat-*

*Gazette* continued to follow the legislation closely, releasing articles when the veto was overridden, when *Brandt v. Rutledge* was filed, when the Act was blocked and subsequently appealed, and the Eighth Circuit Court's final decision. By the time the final decision was made, the *Gazette* and their local counterparts released dozens of articles following the bill.

Press releases and news media did not halt post-*Brandt v. Rutledge*. After the Eighth Circuit granted the state of Arkansas review, Arkansas' Attorney General Tim Griffin released a statement saying he was "very pleased" with the Court's decision to grant the state review so that his office could continue the fight against "dangerous medical experimentation" (Mobley, 2023). Furthermore, former governor Asa Hutchinson held firm in his decision to employ the gubernatorial veto against the Act during his presidential campaign. In an interview conducted by NBC, Hutchinson argued that the Arkansas SAFE Act was a misuse of government power, stating that gender affirming healthcare was a "sensitive issue" for parents to consider, not the government (Seward & Frankel, 2023).

**Texas – SB14**

**Overview**

Texas has a clear history of anti-transgender policy. Just one example can be seen from Texas Governor Greg Abbott's directive to issue sex change procedures and other forms of gender affirming healthcare as abusive (Abbott, 2022). In this directive, Governor Abbot charged the Texas Department of Family Services to investigate Texas families of transgender children, invading the privacy and well-being of hundreds across the state. Thus, after the issuance of this directive and other legislative attempts to victimize transgender Texans, the introduction and passage of Senate Bill 14 was expected. SB 14, signed into law on June 2nd, 2023, criminalizes several forms of gender affirming healthcare. This bill is particularly significant because Texas is

the largest state, therefore affecting the largest group of people, to enact a gender affirming healthcare ban.

**Legislative History**

SB 14's journey through the Texas state legislature was anything but smooth. After being introduced in the 88th legislative session, SB 14 faced a series of roadblocks on its path to codification. The legislation was filed on the 8th of March this year in the Texas Senate and was not signed into law until three months later (Texas State Legislature, SB 14). Senators Campbell, Bettencourt, Hall, Hughes, Kolkhorst, Middleton, Parker, Paxton, Perry, and Springer were all authors of the bill (Texas State Legislature, SB 14). The legislation had 15 co-sponsors from the Senate – almost exactly half of its makeup – and 80 co-sponsors from the Texas House of Representatives – 80 of the 85 current Republican representatives (Texas State Legislature, SB 14). Notably, every sponsor on the bill were registered Republicans.

The first vote on SB 14 was placed shortly after its initial filing, on March 29th, 2023, which suspended the regular order of business to be read a 2nd time (Texas State Legislature, SB 14). The votes approved the notion, which led to the introduction of the bill's first three floor amendments (Texas State Legislature, SB 14). The amendments involved adding a definition section to the bill's text, adding an exception to the bill for children already undergoing gender affirming healthcare, and replaced some of the wording expressed throughout the bill's text (Texas State Legislature, SB 14). Several days later, the final senate vote occurred on April 4th, which ultimately sent the bill on to the House for consideration (Texas State Legislature, SB 14).

The House officially received the bill from the Senate on April 5th and was read for the first time a week later on the thirteenth (Texas State Legislature, SB 14). After the initial reading, the bill was sent to committee to be considered, where it sat for almost two weeks (Texas State

Legislature, SB 14). Eventually, SB 14 was placed back on the calendar and read for a second time on May 2nd, where it was sent to committee again to sit for another three days (Texas State Legislature, SB 14). This procedure, of being reread and sent to committee, happened once more before a vote on the bill was finally made (Texas State Legislature, SB 14). The first vote was made on the amendments, where the first and third amendments failed, and the second passed (Texas State Legislature, SB 14). The House then continued to add amendments to the bill, where ultimately a total of nineteen were introduced. Eighteen of which failed, and finally, the nineteenth amendment prevailed on May 15th which sent the bill back to the senate (Texas State Legislature, SB 14). On the 17th, the Senate voted on the House's amendments and concurred with their additions (Texas State Legislature, SB 14). After both branches of the legislature signed off, SB 14 was sent to the governor where he eventually signed the bill into law on June 2nd to become effective on September 1st, 2023 (Texas State Legislature, SB 14).

**Bill Language**

Texas' SB 14 is eleven pages in total and sets out several restrictions on gender affirming healthcare options for minors. The bill begins by restricting child healthcare plans from providing coverage for procedures that intend to change the biological sex of a child (Texas State Legislature, SB 14). The bill then provides a series of definitions specifying who is restricted from providing or receiving gender affirming healthcare.

Section 161.702 lays out the types of procedures physicians are prohibited from providing to "certain" types of children that affirm a "child's perception of [their] sex if that perception is inconsistent with [their] biological sex" (Texas State Legislature, SB 14). These procedures include any form of "sterilization," listing vasectomies and vaginoplasties as examples (Texas State Legislature, SB 14). This section of SB 14 also prohibits physicians from

prescribing or administering puberty blockers, estrogen to males, and testosterone to females, and prohibits physicians from removing any "otherwise healthy" body parts or tissues (Texas State Legislature, SB 14).

The following section lays out an exception to children who, under the provision of a healthcare provider and the consent of the child's guardian, are born with medically verifiable genetic disorders of sex development (Texas State Legislature, SB 14). This includes children who have both ovarian and testicular tissue, 46 XX chromosomes with virilization, 46 XY chromosomes with undervirilization, or a child who does not have the "normal" sex chromosome structure as determined by a physician (Texas State Legislature, SB 14).

Another exception of SB 14 is laid out for children who had previously undergone certain gender affirming procedures. For children who had been prescribed some form of drug for gender transition before June 1st of 2023 and attended twelve or more sessions of mental health counseling prior to the prescription, the prohibitions did not apply immediately (Texas State Legislature, SB 14). The bill does, however, state that a child who does fall under this description must be "weaned off" their prescription over a period of time considered "safe," (Texas State Legislature, SB 14). The bill does not provide an explanation or specify what a safe period of time means in the eyes of the law. Furthermore, SB 14 states that children in this category may not switch or begin a new course or treatment specified previously by the bill after the effective date (Texas State Legislature, SB 14).

Section 161.704 prohibits the use of public funds for gender affirming healthcare (Texas State Legislature, SB 14). This includes the distribution of money to any "health care provider, medical school, hospital, physician, or any other entity, organization, or individual" that provides this form of healthcare to children (Texas State Legislature, SB 14). Section 161.705 further

expands on the preceding section by prohibiting the use of state healthcare plans for reimbursement (Texas State Legislature, SB 14). It goes onto explain that no Medicaid entity may provide reimbursement for children or health care providers for procedures or prescribed drugs before the bill was enacted (Texas State Legislature, SB 14).

The last few sections of the bill lay out the rules of enforcement. Section 161.706 establishes that the Texas Attorney General is responsible for enforcing the bill. It states that if the Attorney General has "reason to believe" that anyone has committed or is going to commit a violation of SB 14, they may bring action against the individual in the court of law where the violation occurred or was going to occur (Texas State Legislature, SB 14). If a physician or healthcare provider violates SB 14, the Texas Medical Board will revoke their license indefinitely without prospects for renewal (Texas State Legislature, SB 14).

**Legal Action**

*Section I, Initial Complaint:* Only a month after Governor Greg Abbott signed SB 14 into law, five Texas families, alongside several medical professionals and organizations, filed an injunction against the state and the attorney general attempting to stall the law from going into effect on September 1st ("Loe v. Texas").

The plaintiffs of the case include five families, who used pseudonyms to protect their identities, PFLAGG, the nation's oldest and largest organization for LGBTQ+ individuals and families, GLMA, a non-profit organization dedicated to ensuring health equity for the LGBTQ+ population, and three physician plaintiffs: Dr. Richard Ogden Roberts III, Dr. David L. Paul, and Dr. Patrick W. O'Malley (*Loe v. Texas,* Travis County District Court, 2023). The plaintiffs' legal team includes lawyers from the ACLU of Texas, the ACLU, Lambda Legal, the Transgender Legal Center, and the law firms of Scott Douglass & McConnico LLP and Arnold & Porter Kaye

Scholer LLP (*Loe v. Texas,* Travis County District Court, 2023). The defendants include the State of Texas, the Office of the Attorney General, the attorney general himself, the Texas Medical Board, and the Texas Health and Human Services Commission (*Loe v. Texas,* Travis County District Court, 2023).

The petition begins by providing medically informed background information on gender dysphoria and how it is often treated in different cases (*Loe v. Texas,* Travis County District Court, 2023). The brief then goes on to discuss the ban and highlights the perceived anti-transgender agenda the state of Texas holds by discussing the aforementioned directive to investigate families of transgender children and other attempts at anti-transgender legislation (*Loe v. Texas,* Travis County District Court, 2023). Then, the first round of plaintiff statements are made, in which the families and the physicians share their own opinion on how the ban would impact transgender children.

The organizations involved with the lawsuit also make statements before the petition goes into its next section about constitutional violations. Specifically, an emphasis on the Texas Constitution's guaranteed parental rights to give, withhold, and withdraw medical treatment for their children (*Loe v. Texas,* Travis County District Court, 2023). In the brief, a heavy discussion is made about how SB 14 violates these rights by "prohibiting, penalizing, and denying coverage for the provision of… medical treatment parents seek for their transgender children" (*Loe v. Texas,* Travis County District Court, 2023). It is also argued that SB 14 discriminates on the basis of sex and status. The ban, they argue, is discriminatory in several ways including the bill's explicitly gendered terms (*Loe v. Texas,* Travis County District Court, 2023). Citing a 2020 case from Clayton County, which states that if legislation on healthcare cannot be made "without using the words, man, woman, or sex," then it is discriminatory (*Loe v. Texas,* Travis County

District Court, 2023) The plaintiffs' legal team argues that because of the bill's language it is explicitly unconstitutional (*Loe v. Texas,* Travis County District Court, 2023). The brief continues to point out several ways in which the ban is unconstitutional, before mentioning how many gender affirming healthcare bans in other states have been legally struck down (*Loe v. Texas,* Travis County District Court, 2023). Which, they point out, had occurred unanimously in trial courts who had previously heard such cases at the time of petition (*Loe v. Texas,* Travis County District Court, 2023).

The remainder of the petition includes a declaration of what specifically the plaintiffs are petitioning for. First, is a declaratory judgement on the ban that recognizes the ban violates the Texas Constitution (*Loe v. Texas,* Travis County District Court, 2023). The second reason is that the ban violates the Due Course of Law Clause of the Texas Constitution by restricting fundamental parental rights (*Loe v. Texas,* Travis County District Court, 2023). The third reason being that the ban violates physicians' protection against "unwarranted, improper interference" with their medical practices (*Loe v. Texas,* Travis County District Court, 2023). The fourth and final reason is that the ban violates Texas' Equal Rights Amendment in discriminating against transgender people based on sex (*Loe v. Texas,* Travis County District Court, 2023).

*Section II, Travis County State District Court:* On July 12th, the Plaintiffs of the case filed their petition in the District Court of Travis County with over three-hundred pages worth of plaintiff testimony, expert testimony, and evidence gathered against the state of Texas (*Loe v. Texas,* Travis County District Court, 2023). The lawsuit spanned two days in the Travis County Court where judge Maria Hexsel heard the case. In court, she heard expert witnesses from both sides, plaintiff testimony, attorneys for the state, and more. The decision, made just days before

the ban was set to go into effect, temporarily blocked the gender affirming healthcare ban (*Loe v. Texas,* Travis County District Court, 2023).

In her decision, signed August 25, 2023, Judge Hexsel listed her constitutional findings. On the Plaintiffs' likelihood of success, the Court determined that the Act likely violated the Texas Constitution in barring parental rights to make decisions regarding their children's medical care (*Loe v. Texas,* Travis County District Court, 2023). Furthermore, Judge Hexsel found that the Act likely violated another section of the Texas Constitution by infringing on physicians' occupational freedom (*Loe v. Texas,* Travis County District Court, 2023). The Court also found that the act discriminated against transgender adolescents because of "their sex, sex stereotypes, and transgender status" (*Loe v. Texas,* Travis County District Court, 2023).

In the Court's findings on the likelihood of irreparable harm, Judge Hexsel stated in her decision that "it is clear" that permanent enjoinment of the Act would be the only way to prevent the Plaintiffs from suffering "probable, imminent, and irreparable injury" (*Loe v. Texas,* Travis County District Court, 2023). She lists several injuries the plaintiffs would suffer were the ban to take effect, including the loss of access to safe and necessary medical care, compromising the health and well-being of transgender adolescents, destabilizing the family unit, exacerbating health disparities, and more (*Loe v. Texas,* Travis County District Court, 2023).

*Section III, Texas Supreme Court:* Quickly after judge Hexsel's decision was made, the Texas Attorney General's office appealed the decision to the Texas Supreme Court. This filing, a Notice of Accelerated Interlocutory Appeal, counteracted the decision made in Travis County Court, therefore allowing the ban to take effect pending the Texas Supreme Court's decision ("Office of the Attorney General Files," 2023). The Plaintiffs of the case subsequently filed for emergency relief to reinstate the temporary block; however, the Supreme Court issued on August

31st that their request was denied ("Office of the Attorney General Files," 2023). This ultimately allowed SB 14 to continue to go into effect the following day, where now, transgender adolescents and children are currently being "weaned off" and barred from gender affirming healthcare. This is currently where Loe v. Texas sits in the judicial process – in effect and pending a final decision to be made by the Texas State Supreme Court.

**Media and Press**

Similarly, to Arkansas, the Texas state ban on gender affirming healthcare saw a multitude of national media coverage. Specifically, by interest groups like the ACLU and the Human Rights Campaign and by national news coverage platforms like ABC, CNN, NPR, and more. However, local news outlets followed the ban more thoroughly and meticulously.

Because SB 14's journey through the state legislature was so tumultuous, reporters closely documented its movements in both the Texas House and Senate. On SB 14's time in the House, one news report documented representative Tom Oliverson's reasoning for support for the bill, arguing gender dysphoria is better treated through counseling rather than "experimental medicine and surgery" (Rivera & Martínez-Beltrán, 2023). Another representative opposing the bill argued that the discourse used to support the bill in itself harmed LGBT youth (Rivera & Martínez-Beltrán, 2023). Furthermore, the Texas State Legislature's first openly LGBT member cited his own experience being a part of the queer community in argument against the bill stating that gender affirming healthcare is only one tool that prevents "people from harming themselves" and "hating themselves" (Rivera & Martínez-Beltrán, 2023).

*The Texas Tribune*, a similar platform to Arkansas' *Democrat-Gazette*, also closely followed the legislation from the very beginning. On March 20th, the *Tribune* released its first article on the ban where journalist Alex Nguyen reports on the bill's movement from its

introduction to committee and chronicled the early discourse surrounding the bill within the state legislature (Nguyen, 2023). Shortly after, on March 29th, Nguyen and two fellow *Tribune* journalists discussed the amendments addressed on the floor of the legislature, where an amendment was added to exclude children from the ban who were already receiving some form of treatment (Nguyen et. al., 2023). The *Tribune* continually chronicled the bill's legislative movements up to it ultimately being signed into law by Governor Abbott in early June.

The outlet then began following the lawsuit closely, releasing their first article the day the injunction was filed (Klibanoff & Melhado, 2023). Reporters for the *Tribune* spoke with families affected by the law, documented Judge Hexsel's decision, chronicled plaintiff speech, and more. Since their first article on SB 14, the *Texas Tribune* has since released nearly 20 articles following the ban.

**Tennessee – SB 001**

**Overview**

SB 001, named the Prohibition on Medical Procedures Performed on Minors Related to Sexual Procedures Act, was signed into law by Tennessee Governor Bill Lee in early March of 2023. While its journey through the state legislature went somewhat uninterrupted, SB 001 faced a series of roadblocks after its initial passage where similarly to Texas and Arkansas, the bill was temporarily blocked after a lawsuit was filed by interest groups. Like Texas however, the block was overruled in the following September by the U.S. 6th Circuit Court of Appeals, ultimately upholding the Tennessee ban on gender affirming healthcare for minors. Tennessee's ban on gender affirming healthcare is specifically significant because it is the first case in which a federal appeals court rejected a district court's decision – unlike Texas which was strictly within state jurisdiction – and it was paired with Kentucky's ban in almost every legal step, including,

the final federal opinion on whether to uphold the states' injunctions or not. Moreover, it is one of the first cases regarding gender affirming healthcare bans where a federal government entity – the Department of Justice – intervened with legal proceedings.

**Legislative History**

While SB 001 was filed in November of 2022, it wasn't introduced to the floor until January 10th of 2023, where it passed upon first consideration (Tennessee State Legislature, SB 001). The bill had thirteen total sponsors, all of whom are members of the republican party. It was read on the Senate floor a second time a day later where it moved to be put upon the Senate Health and Welfare Committee's agenda (Tennessee State Legislature, SB 001). In a vote of 8-1, the Senate committee recommended the bill for passage on February 1, 2023, where the Senate Calendar Committee then voted 7-2 to place the bill on the Regular Senate Calendar a few days later (Tennessee State Legislature, SB 001).

After being placed on the Senate Calendar, two amendments were proposed and voted on by the legislative body which eventually sent SB 001 to the House floor with a 26-6 vote (Tennessee State Legislature, SB 001). In the House, SB 001 saw three more amendments, where the final vote ultimately passed 77-16 on February 23, 2023 (Tennessee State Legislature, SB 001). Two amendments were introduced; however, were ultimately rejected. The first would have banned all cosmetic surgeries for minors, regardless of purpose, and the other would have strictly banned surgical procedures, but not other forms of gender-affirming medicine – like hormone therapy (Tennessee State Legislature, SB 001). After the amendments were heard and voted on, a week or so later, the bill was finally sent to the Governor, where he eventually signed the SB 001 into law to go into effect on July 1st of 2023 (Tennessee State Legislature, SB 001).

**Bill Language**

SB 001 begins by laying out the legislative findings regarding gender affirming healthcare. In their words, medical procedures that deal with sex hormones, removing sex organs, or otherwise change the appearance of a minor are harmful in that they enable minors to "identify with, or live as, a purported identity inconsistent with the minor's sex," (Tennessee State Legislature, SB 001). In other words, the specific medical care is harmful in and of itself by the nature of which it allows transgender and gender diverse children to live as they choose.

The bill then goes on to state that "when performed on a minor for such purposes," the treatment is considered experimental and the side effects have yet to be found fully known and "less invasive approaches are likely to result in better outcomes" (Tennessee State Legislature, SB 001). It also argues that these medical practices are performed without regard to "the risks and harms," to minors (Tennessee State Legislature, SB 001). Furthermore, the bill's text claims that gender affirming healthcare is abuse and makes an example out of Johns Hopkins' Dr. John Money, a known advocate for gender affirming healthcare for minors, who, in the eyes of the legislature, perpetrated the suicides of David and Brian Reimer (Tennessee State Legislature, SB 001).

More on the practices themselves, the legislature claims that the "supposed guidelines" surrounding gender affirming healthcare are unregulated and that "the same pharmaceutical companies that contributed to the opioid epidemic" have garnered profit from gender affirming healthcare (Tennessee State Legislature, SB 001). The bill also argues that physicians and doctors who provide these services are money grabbers and are not performing these services in the best interest of their patients (Tennessee State Legislature, SB 001). Moreover, the bill accuses physicians who provide such services as facilitating the spread of child pornography by posting "pictures of naked minors online to advertise such surgeries," and that those same

healthcare providers have “threatened [others] for conscientiously objecting” to such procedures (Tennessee State Legislature, SB 001).

The bill’s text proceeds by explaining why this bill is significant. It contends that the state has “a legitimate, substantial, and compelling interest” in the subject of gender affirming healthcare for five specific reasons: protecting minors from physical and/or emotional harm, protecting their ability to procreate in the future, promoting the dignity of minors, encouraging minors to appreciate their sex, and protecting the integrity of the medicine (Tennessee State Legislature, SB 001).

After stating the state’s interest in the matter, and specifying terms used in the remainder of the bill, the bill finally lists the prohibitions on gender affirming healthcare in Tennessee. The main specification the bill states is that any and all medical procedures that enable a minor to live as a purported identity or to treat purported discomfort of a minor’s sex is prohibited (Tennessee State Legislature, SB 001). This includes “surgically removing, modifying, altering, or entering into tissues, cavities, or organs of a human being” or “prescribing, administering, or dispensing any puberty blocker or hormone to a human being” (Tennessee State Legislature, SB 001).

The provisions of SB 001 exclude minors with congenital defect, disease, or physical injury, which specifies that gender dysphoria, gender identity disorder, and more do not apply (Tennessee State Legislature, SB 001). Like Texas, SB 001 also provides a phase out period for minor’s who were already receiving treatment prior to July 1st of 2023; however, the bill does require healthcare providers to provide certifiable evidence that stopping treatment would be harmful to their patient and does not allow physicians to administer any new types of treatment for gender dysphoria or gender incongruence (Tennessee State Legislature, SB 001).

The bill then states the cause of action minors and parents have under SB 001. It states that any minor or parent of a minor may bring action against a physician for compensatory damages, punitive damages, court costs, attorney fees, and other expenses (Tennessee State Legislature, SB 001). A parent cannot, however, bring action against a healthcare provider if they consented to the procedure at some point for their minor (Tennessee State Legislature, SB 001). SB 001 also allows minors themselves to bring actions against their healthcare provider or their parent, if that parent consented to "the violation on behalf of the minor" (Tennessee State Legislature, SB 001). Furthermore, SB 001 also allows parents of minors to bring wrongful death action against a physician or healthcare provider if the "minor's death is the result of the physical or emotional harm inflicted upon the minor" by the treatment (Tennessee State Legislature, SB 001).

SB 001 charges Tennessee's Attorney General with curating and implementing a plan regarding violations of the bill. This includes the ability of the Attorney General to bring action against healthcare providers, impose fines of up to $25,000 per violation, and even impose civil charges against healthcare providers (Tennessee State Legislature, SB 001). SB 001 also subjects the appropriate licensing parties, i.e., the medical board of Tennessee, to revoke physician licenses or suspend them (Tennessee State Legislature, SB 001).

**Legal Action**

*Section I, Initial Complaint:* The state of Tennessee faced severe legal backlash after the codification of SB 001. In a suit filed by three families, Memphis-based Dr. Susan Lacy, the ACLU, the ACLU of Tennessee, Lambda Legal, and Akin Gump Strauss Hauer & Feld LLP, the groups sued Jonathan Skrmetti, the Tennessee Attorney General, and several other Tennessean

government entities in the United States District Court of the Middle District of Tennessee on April 20th of 2023 (*L.W. v. Skrmetti*, M.D. Tenn., 2023).

In the forty-three-page complaint for declaratory and injunctive relief, the plaintiff families and the "provider plaintiff" are introduced as well as the defendants of the case (*L.W. v. Skrmetti*, M.D. Tenn., 2023). The plaintiffs then go into provide factual background including in-depth information on what the medical condition of gender dysphoria is as well as treatment options for various patient ideologies (*L.W. v. Skrmetti*, M.D. Tenn., 2023).

After providing general background information on what exactly SB 001 bans, the document proceeds with a discussion on how the bill was passed. In bringing up the two amendments described above in *Legislative History,* a discussion about generalized and highly stereotypical discourse made by proponents during legislative debate and highlighting the blatant disregard of the Tennessee General Assembly to consider provider testimony and transgender Tennesseans and their families, the plaintiffs argue that the ban was a ploy to promote a "robust discriminatory legislative agenda" (*L.W. v. Skrmetti*, M.D. Tenn., 2023). The plaintiffs also point out the fact that SB 001 discriminates on the basis of sex, as the use of hormone therapy and other forms of medicine falling under the gender-affirming healthcare umbrella is permitted on the condition that it is not being used "for treating purported discomfort or distress from a discordance between the minor's sex and asserted identity" (*L.W. v. Skrmetti*, M.D. Tenn., 2023). They argue that because certain gender affirming healthcare practices are allowed for minors without gender dysphoria, their point to "protect" minors is moot and imposes a "double standard" onto transgender children and adolescents (*L.W. v. Skrmetti*, M.D. Tenn., 2023).

Plaintiff testimony is discussed next, before the formal claims are made. The first count argues that the bill violates the Fourteenth Amendment's due process clause, the second claims

that the ban violates the right of parental autonomy guaranteed by the same due process clause, the third asserts that the ban is preempted by Section 1557 of the Affordable Care Act on behalf of the provider plaintiff, and the fourth claims the same violation of Section 1557 in that it discriminates against transgender patients by prohibiting their right to healthcare on the basis of sex (*L.W. v. Skrmetti*, M.D. Tenn., 2023).

*Section II, Middle District of Tennessee:* Five days after the initial complaint was filed, the United States Department of Justice filed for a Motion to Intervene on April 26, 2023, which was granted on May 16th, 2023 ("L.W. v. Skrmetti"). A flurry of legal action ensued where the Defendants, the State of Tennessee, filed for a Motion to Reset Briefing, which was ultimately denied ("L.W. v. Skrmetti"). Finally Judge Richardson issued his decision, where the injunction was "granted in part and denied in part" (*L.W. v. Skrmetti*, M.D. Tenn., 2023) The Court's primary findings were that the Plaintiffs demonstrated substantial likelihood of success on the merits for both their constitutional claims, the Plaintiffs would likely suffer immediate and irreparable harm, the balance of harms between the parties favors the Plaintiffs, and that public interest would not be harmed by injunctive relief (*L.W. v. Skrmetti*, M.D. Tenn., 2023). Which, ultimately enjoined the state of Tennessee on June 28th of 2023.

*Section III, Sixth Circuit Court of Appeals:* Just two days after Judge Eli Richardson made his decision in the Middle District Court of Tennessee, on June 30th, the Defendants filed an appeal in the Sixth Circuit Court of Appeals for an Emergency Motion of Stay of the issued preliminary injunction ("L.W. v. Skrmetti"). The issue was very time sensitive, as the law was set to go into place only one day later. In the appeal, the Defendants argue that the injunction could imbue "life-altering harm" on minors and urges the court to grant the motion "as soon as possible" (*L.W. v. Skrmetti*, 6th Cir., 2023). In their appeal, the Defendants make several claims

including that the "American medical establishment" has been "captured by activists" and that Judge Richardson's decision was "flagrantly wrong" (*L.W. v. Skrmetti*, 6th Cir., 2023).

Citing *Dobbs v. Jackson,* among other cases, the Defendants argue that they have a valid case for appeal but contend the grant of stay is a condition on which that appeal relies (*L.W. v. Skrmetti*, 6th Cir., 2023). In the "Argument" section of their Motion for Stay, the Defendants claim that the state of Tennessee will likely succeed on appeal, on the condition that the Act is likely constitutional for four different reasons: the Act equally protects minors of both sexes, transgender individuals are not a quasi-suspect class, parents lack a fundamental right to subject their children to such harmful procedures, and the Act survives any level of scrutiny under scientific debate (*L.W. v. Skrmetti*, 6th Cir., 2023). Another reason stated in the Argument that SB 001 is constitutional, and will succeed on appeal, is that the district court "could not enjoin enforcement statewide," citing Richardson's statements in his decision on private right of action and medical procedures (*L.W. v. Skrmetti*, 6th Cir., 2023). Finally, the Defendants argue that the appeal will succeed because the Plaintiffs were unable to "prove that a preliminary injunction was necessary to prevent their alleged harms" (*L.W. v. Skrmetti*, 6th Cir., 2023).

The Defendants also argue for stay in that they believe "Tennessee will suffer irreparable harm" without it, claiming that the injunction is preventing the state from being able to protect its minor subjects (*L.W. v. Skrmetti*, 6th Cir., 2023). Their final plea for stay argues that "Tennessee wins the balance of equities and public interest," arguing that the state "has an 'unquestionably important' interest… to protect children" (*L.W. v. Skrmetti*, 6th Cir., 2023).

In a response, the Plaintiffs of the case directly refute each claim made by the Defendants. In their "Argument" section, the plaintiffs refute the notion that the Defendants will succeed on appeal, because the "District Court correctly found that the ban is subject to

heightened scrutiny" and that the "ban likely cannot survive heightened scrutiny" (*L.W. v. Skrmetti*, 6th Cir., 2023). The Plaintiffs also argue that the Defendants' appeal will likely not survive the due process claims made by the Plaintiffs in the initial suit in the Middle District (*L.W. v. Skrmetti*, 6th Cir., 2023). Furthermore, The Plaintiffs contend that the "Defendants fail to satisfy the remaining stay factors" in that the Defendants "fail to show they will suffer irreparable harm…, the balance of harms weighs strongly against a stay…, [and] a stay would be contrary to the public interest" (*L.W. v. Skrmetti*, 6th Cir., 2023). To conclude their rebuttal, the Plaintiffs argue that the "Defendants are unlikely to succeed on their challenge to the injunction's scope," regarding the Defendants' claim on their interest in the matter (*L.W. v. Skrmetti*, 6th Cir., 2023).

A preliminary opinion was made by the Sixth Circuit judges shortly after the Motion for Stay and the Response was filed on July 8th ("L.W. v. Skrmetti"). Chief Judge Jeffery Sutton was joined by Judge Amul Thapar in several opinions. First, the Appeals judges found that there were two "merits-related problems" regarding the District Court's injunction, one relating to the scope and the other regarding the Plaintiffs' equal protection and due process challenges to the Act (*L.W. v. Skrmetti*, 6th Cir., 2023). Citing *Commonwealth v. Biden,* the Judges explain that the scope issue involves the nine plaintiffs of the case being unable to represent the entire Tennessee population (*L.W. v. Skrmetti*, 6th Cir., 2023). In *Commonwealth,* it was determined that "district courts 'should not issue relief that extends further than necessary to remedy the plaintiff's injury,'" thus, issuing relief to millions of Tennesseans is unlawful on the claims of nine plaintiffs.

On the second issue about equal protection and due process, Judges Sutton and Thapar contend that the Plaintiffs "do not argue the original fixed meaning of either the due process or

equal protection guarantee" of these claims, and "seek to extend constitutional guarantees to new territory," and that because the "States are engaged in these issues," the injunction in Tennessee "starts to grind these all-over-the-map gears to a halt" (*L.W. v. Skrmetti*, 6th Cir., 2023). Furthermore, the Judges state that while due process does extend the right of parents to some degree, "the Supreme Court cases recognizing this right to confine it to narrow fields, such as education, and visitation rights" (*L.W. v. Skrmetti*, 6th Cir., 2023). Moreover, regarding equal protection, Judges Sutton and Thapar state that "it's highly unlikely… that the plaintiffs could show the Act lacks a rational basis," claiming "the State plainly has authority, in truth a responsibility, to look after the health and safety of its children" (*L.W. v. Skrmetti*, 6th Cir., 2023).

Addressing the Plaintiffs' claim about other stay factors, Justices Sutton and Thapar claim that the stay factors "largely favor" the State despite their claims (*L.W. v. Skrmetti*, 6th Cir., 2023). Using the phasing out period protected under the Act, the Justices contend that this feature "lessens the harm to those minors who wish to continue treatment" (*L.W. v. Skrmetti*, 6th Cir., 2023). They do, however, see the predicament of those who wish to continue treatment after the phase out period is complete (*L.W. v. Skrmetti*, 6th Cir., 2023).

In her decision, Judge Helene White concurs with the majority that the scope of the injunction is too broad; however, she dissents on the fact that she finds the Act to be likely unconstitutional (*L.W. v. Skrmetti*, 6th Cir., 2023). Citing *Brandt v. Rutledge* and *Bostock v. Clayton County,* White sees the fact that a person who identifies as their assigned gender being allowed to receive hormone therapy, while transgender individuals seeking hormone therapy for identified gender are not, as highly discriminatory (*L.W. v. Skrmetti*, 6th Cir., 2023). She concurs with her jurists that the "district court abused its discretion in granting a statewide preliminary injunction," citing *Commonwealth v. Biden* as well (*L.W. v. Skrmetti*, 6th Cir., 2023).

After the preliminary opinion was filed, both the Defendants and the Plaintiffs filed briefs. The Defendants' nearly 100-page brief consisted of an overview of their findings, both during the legislative debate before passage and in the previous legal skirmishes in the District Court, and from the initial opinion hearing ("L.W. v. Skrmetti"). The Plaintiffs filed a similarly structured brief alongside the Intervenor (the Department of Justice); however, Amicus Briefs were also submitted by the following: the American Academy of Pediatrics et. al., California and 19 other States, Family Law and Constitutional Law Scholars, Biomedical Ethics and Public Health Scholars, Elliot Page et. al., GLBTQ Legal Advocates and Defenders et. al., Foreign Non-Profit Organizations, and several local governments ("L.W. v. Skrmetti").

In a final opinion, issued for both Tennessee's case and Kentucky's case, the 6th Circuit held firm with their preliminary opinions. Justices Sutton and Thapar together used many of their initial reasonings in issuing their opinion. In an overarching statement regarding the constitutionality of irreversible healthcare for minors, Chief Justice Sutton and Judge Thapar state that where the Constitution is neutral, like partisan issues by state, "legislatures have considerable discretion to regulate the matter" (*L.W. v. Skrmetti*, 6th Cir., 2023). In that statement alone, the judges contend that the question of gender affirming healthcare is yet to be a strict Constitutional matter, which should be left up to the states as long as it meets due process and equal protection requirements – which, in Tennessee's case, as they stated in their early opinion, it does.

In her dissent, Judge Helene White also uses similar reasoning to her preliminary opinion; however, this time around, she fully dissents with her fellow justices. Again, in an overarching statement in her conclusion on Tennessee's gender affirming healthcare ban, Judge White plainly states her opinion. She says the "laws tell minors that they cannot undergo medical

care because of the accidents of their births and their failure to conform to how society believes boys and girls should look and live" (*L.W. v. Skrmetti*, 6th Cir., 2023). Furthermore, she states that the law "further deprives the parents – those whom we otherwise recognize as best suited to further their minor children's interests – of their right to make medical decisions" for their children (*L.W. v. Skrmetti*, 6th Cir., 2023). In stating this, Judge White argues that the law infringes upon parental rights guaranteed by the constitution and discriminates explicitly on the basis of sex.

*Section IV, The Supreme Court of the United States:* Unlike *Brandt*, Tennessee was the first state where a federal appeals court dissented with a district court's opinion – which led L.W. v. Skrmetti to its current state: in the hands of the Supreme Court. On November 1st of 2023, the Plaintiffs filed a Petition for a Writ of Certiorari hoping for judicial review ("L.W. v. Skrmetti"). Five days later, the United States Department of Justice also filed for Writ ("L.W. v. Skrmetti").

In the Plaintiffs' petition, the documents plainly state the facts of the case: how and why they filed their initial suit, the Middle District of Tennessee's enjoinment of Tennessee, the facts and outcome of the Sixth Circuit's decision, and more. In their "Reasons for Granting the Petition," the Plaintiffs point out that the United States Courts of Appeals are divided – highlighting the incongruencies between *Brandt* and their own (*L.W. v. Skrmetti,* 23-466, U.S., 2023). They also argue for Supreme Court Review because the Sixth Circuit's ruling "dismissed decisions of this Court" referring to the rights of parents and the scrutiny standard involved in gender affirming healthcare bans set by *Bostock v. Clayton County* (*L.W. v. Skrmetti,* 23-466, U.S., 2023). The petition also argues that the Sixth Circuit's suspect classification of transgender individuals was erroneous in stating that being transgender does not classify one as "quasi-

suspect," as under the precedents set by the Supreme Court, the Plaintiffs argue, is true of transgender status (*L.W. v. Skrmetti,* 23-466, U.S., 2023).

In the United States' Department of Justice's petition for Writ, they list similar reasons for granting review. Alongside the Plaintiffs, the DOJ argues that SB 001 does warrant high scrutiny due to the classification of sex involved and because it implicitly discriminates against transgender individuals (*L.W. v. Skrmetti,* 23-477, U.S., 2023). According to their petition as well, because the Sixth Circuit concluded that rational-basis review applies to gender affirming healthcare, the appeals court did not consider if the ban could "survive heightened scrutiny" (*L.W. v. Skrmetti,* 23-477, U.S., 2023). The district court, like the Eighth Circuit, held that it would not and that the benefits of gender affirming healthcare outweigh the risks, disregarding the claim of the state of protecting minors (*L.W. v. Skrmetti,* 23-477, U.S., 2023). It is also argued in their petition that regardless of what decisions occur in other Circuit Courts, diverse decisions will continue to persist and will eventually "require this Court's resolution" due to the "volume and ongoing challenges to similar laws" in other states (*L.W. v. Skrmetti,* 23-477, U.S., 2023). The Department of Justice argues that delaying the inevitable will ultimately "prolong the uncertainty for minors and their families around the country" and continue to deny children of critical medical attention (*L.W. v. Skrmetti,* 23-477, U.S., 2023).

**Media and Press**

Like Arkansas and Texas, Tennessee's gender affirming healthcare ban also garnered national attention in the media. Most of the same news outlets that covered the bans in the former states followed closely along with SB 001, as can be seen in the likes of coverage on CNN and the Washington Post.

News stations throughout the Volunteer State also covered SB 001 thoroughly from its filing. Senate Majority Leader Jack Johnson, and SB 001's author, was the bills fiercest supporter. One article cited Johnson's 2022 tweet that stated he would "always stand up" for Tennessee kids and ensure their safety (Gainey, 2022). In another statement after SB 001 passed in both the House and Senate, Johnson asserted his bill was a "huge accomplishment," despite what "radicals" had to say against the legislation (Schemmel, 2023). House Speaker Cameron Sexton argued in support for the bill, stating that "a vast majority of Tennesseans" do not believe in the right to gender affirming healthcare, urging the House to pass the bill (Schemmel, 2023)

Opponents in the Tennessee state legislature and throughout the state also released strong discourse on SB 001. The Democratic Party Chair in the Tennessee legislature argued that bills like SB 001 ignite a "culture war," pinning Tennessean against Tennessean (Gainey, 2022). A mother to a transgender son and small business owner spoke out against SB 001 in a statement saying that the bill was forcing her to consider closing her business and moving away for her son to continue treatment (Herner, 2023). A Nashville doctor highlighted the state legislature's failure to consider expert opinion, stating that regulating medicine without expertise is dangerous (McDonald, 2023).

**Oklahoma – SB 613**

**Overview**

Oklahoma's SB 613 was first introduced on February 6th of 2023 and was signed into law only a couple of months later on the 1st of May by Governor Kevin Stitt (Oklahoma State Legislature, SB 613). The bill went relatively uncontested through its passage in the state legislature; however, both before and after its codification, SB 613 faced serious backlash from within and outside Oklahoma state lines. Before any legal action took place in the courtroom, the

Attorney General of Oklahoma agreed to a binding agreement which prevented enforcement of the law while court proceedings unraveled. In the preliminary lawsuit – *Poe et. al. v. Drummond et. al*. – filed by families, doctors, and interest groups together in an Oklahoma Northern District Court, Plaintiff's pled for a preliminary injunction, which, unlike all previous cases discussed, was denied. The Plaintiffs have filed an appeal in the Tenth Circuit Court of Appeals, but a decision has yet to be delivered. Because of this SB 613 is currently in affect and is affecting over 3,000 transgender youths living in Oklahoma who continue to wait for the Circuit Court's conclusion.

**Legislative History**

SB 613 was first read in the Oklahoma State Legislature in February of 2023 and was co-authored by 10 Republican Senators and 5 Republican Representatives (Oklahoma State Legislature, SB 613). The bill resoundingly passed its first vote in the senate – 40 to 8 – a week after its first reading, which sent it directly to the House where it was referred to the Public Health Committee and sat for almost two months (Oklahoma State Legislature, SB 613). In Committee, several amendments were added that created penalties on healthcare providers who provide gender affirming healthcare, namely license removal (Oklahoma State Legislature, SB 613). On the House floor, three amendments were proposed that mainly dealt with the procedural aspects of when the bill would go into effect, and established an "emergency," by changing the penalties of license removal of healthcare providers to committing a felony (Oklahoma State Legislature, SB 613). In its final reading, SB 613 passed the House floor with a vote of 73 to 18 (Oklahoma State Legislature, SB 613). After being returned to the Senate, the bill saw one more amendment before it was sent for Governor approval and was officially signed into Oklahoma law May 1, 2023 (Oklahoma State Legislature, SB 613).

**Bill Language**

SB 613 begins by defining gender affirming healthcare in the eyes of Oklahoma law, which includes any form of surgical procedures and hormone therapy (Oklahoma State Legislature, SB 613). It does not include mental health services, prescription drugs for depression and anxiety, drugs administered "specifically for the purpose of treating precocious puberty," and services for children born with ambiguous genitalia (Oklahoma State Legislature, SB 613). This section does include a phase out period though, stating that minors that receive any form of hormone therapy at the effective date may continue their care up until six months following the set date (Oklahoma State Legislature, SB 613).

The following subsection of SB 613 lays out the penalties to healthcare providers who knowingly provide any form of gender affirming healthcare listed previously. It states that the appropriate licensing board may penalize providers at "any time after the commission" of knowingly providing gender transition procedures to minors and makes those same physicians liable to felony charges (Oklahoma State Legislature, SB 613). This section also includes provisions for transgender children and their families to bring civil action against a healthcare provider as well and charges the Oklahoma Attorney General with enforcing SB 613 (Oklahoma State Legislature, SB 613).

Section 2 of SB 613 amends Oklahoma Statutes regarding medical care to include "knowingly providing gender transition procedures" as a form of illegal professional misconduct (Oklahoma State Legislature, SB 613). Sections 3, 4, and 5 follow suit in amending the code of physician assistants, nurses, and osteopathic practitioners respectively.

**Legal Action**

*Section I, Initial Complaint:* Only a day after Governor Stitt signed SB 613 into law, the Plaintiffs of the case – five transgender families and Dr. Shauna Lawlis – filed suit in the Northern District Court of Oklahoma (*Poe v. Drummond,* N.D. Okla., 2023). In the initial complaint, the Plaintiffs file for injunctive and declaratory relief against the Defendants (*Poe v. Drummond,* N.D. Okla., 2023). Shortly after its initial filing, the Plaintiffs and Defendants signed a joint agreement that halted the enforcement of any of SB 613's provisions pending the court's order (*Poe v. Drummond,* N.D. Okla., 2023). This agreement allowed those receiving care to continue to do so up until the final decision was made.

The initial complaint follows a very similar outline to the lawsuits filed in Arkansas, Texas, and Tennessee, where the Plaintiffs and Defendants are introduced, factual background on gender dysphoria is provided, a discussion of the bill's language and how it was passed is made, and a discussion of how the ban will impact the Plaintiffs of the case is presented (*Poe v. Drummond,* N.D. Okla., 2023).

Like Tennessee's lawsuit concerning gender affirming healthcare bans, the Oklahoma complaint also includes a discussion on Oklahoma's historic anti-transgender agenda in highlighting SB 3 – signed into law in 2022 – because the Plaintiffs of *Poe v. Drummond* filed suit against University Hospital Authority, a state agent that manages University Hospitals, which includes Oklahoma Children's Hospital, alongside the various other state agencies (*Poe v. Drummond,* N.D. Okla., 2023). The Plaintiffs also highlight fifteen other pieces of anti-transgender legislation introduced in the same session as SB 613, to serve as evidence to their claim on the Oklahoma State Legislature's overwhelming anti-transgender agenda (*Poe v. Drummond,* N.D. Okla., 2023).

Essentially, SB 3 enabled the state to withhold public funds from Oklahoma's Children's Hospital to prevent the hospital from providing gender affirming healthcare, and ultimately, the hospital complied. The provider Plaintiff, Dr. Lawlis, performed many gender-affirming healthcare related services prior to SB 3's passage, which according to her Plaintiff statement, caused her to have many "logistical difficulties," being forced to withdraw patient care before being able to relocate to a private clinic (*Poe v. Drummond,* N.D. Okla., 2023).

The Plaintiffs argue that both SB 613 and SB 3 discriminate on the basis of sex, pointing out that many of the services listed under SB 613 and SB 3 are legally available to minors without transgender status (*Poe v. Drummond,* N.D. Okla., 2023). It is also contended that both bills will cause irreparable harm to not only the Plaintiffs, but all Oklahoman transgender adolescents (*Poe v. Drummond,* N.D. Okla., 2023).

The claims for relief in *Poe v. Drummond* are similar to Arkansas, Texas, and Tennessee as well. The first claim calls on the Fourteenth Amendment's Equal Protection Clause on the ban, and the second does the same for SB 3's policy (*Poe v. Drummond,* N.D. Okla., 2023). The third claim involves the Due Process Clause of the Fourteenth Amendment regarding parental autonomy from SB 613's provisions, and the fourth argues that the Hospital Defendants violated Section 1557 of the Affordable Care Act (*Poe v. Drummond,* N.D. Okla., 2023).

*Section II, Northern District Court of Oklahoma:* Although the initial complaint was filed in a very timely manner, one day post SB 613's codification, the Northern District Court of Oklahoma did not deliver its decision until over five months later in October of 2023. United States District Judge John F. Heil III presided over the case and issued a somewhat surprising order. Straying from the trend of other District Court decisions, Judge Heil denied the Plaintiff's motion for preliminary injunction (*Poe v. Drummond,* N.D. Okla., 2023).

After an initial discussion about the facts of the case in his decision, Judge Heil proceeds with his analysis. In Section II of his analysis, Judge Heil determined that the Minor Plaintiffs and the Provider Plaintiff "made a prima facie showing of standing to assert a facial challenge to SB 613," meaning that they proved they do show enough evidentiary support to prove their standing in the matter (*Poe v. Drummond,* N.D. Okla., 2023). Section III includes a discussion of the Plaintiffs' injunction burden, where Judge Heil cites *L.W. v. Skrmetti* to highlight that the Plaintiffs of *Poe v. Drummond* do not meet the requirements necessary to grant a preliminary injunction in that they do not prove a historical analysis of the constitutional guarantees that they "seek to extend constitutional guarantees into new territory" (*Poe v. Drummond,* N.D. Okla., 2023).

Section IV of Judge Heil's ruling discusses the Plaintiffs' claim on Equal Protection (*Poe v. Drummond,* N.D. Okla., 2023). After establishing the requirements of Equal Protection violations, draws upon three conclusions that prove the Plaintiff's fail to meet the requirements. First, Judge Heil argues that because SB 613 only affects minors, the age classification does not prevent any and all individuals from receiving healthcare and contends that SB 613 demonstrates "precisely the type of age-based legislative decision that courts have long accepted" (*Poe v. Drummond,* N.D. Okla., 2023).

Second, he argues the Plaintiffs' claim of SB 613's discriminatory language is erroneous because the "gendered terms" they describe "reflects the nature of the procedure being regulated, not an intention to discriminate people of different sexes" and only uses said terms to "identify the procedures at issue" (*Poe v. Drummond,* N.D. Okla., 2023).

The final conclusion he draws upon relates to the Plaintiffs' claim that regardless if SB 613 discriminates on the basis of sex or not, it prominently discriminates against transgender

people because of status classification (*Poe v. Drummond,* N.D. Okla., 2023). Judge Heil determines that the Plaintiffs' claim about an overarching anti-transgender legislative agenda is false because many of the bills they alluded to being introduced in the same legislative session never reached a floor vote, and the Plaintiffs only explicitly cited two (*Poe v. Drummond,* N.D. Okla., 2023). He does say that the statute "does restrict a specific course of treatment that only transgender individuals would normally request;" however, Judge Heil did not find this convincing enough to render the statute discriminatory (*Poe v. Drummond,* N.D. Okla., 2023).

Section V of Judge Heil's analysis concerns the Parent Plaintiffs' Due Process claim. His primary discussion of the issue involves the Plaintiffs' and Defendants' distinction over what parental autonomy is: the right to seek vs. the right to choose (*Poe v. Drummond,* N.D. Okla., 2023). Citing *Parham v. J.R.,* Judge Heil determines that parents do "not at all have a fundamental right to direct a particular medical treatment for their child," arguing this fact does not support the due process claim made by the Parent Plaintiffs. Also citing a case on physician-assisted suicide, Judge Heil concluded that the Parents' claims to due process were a "vague generality," and the Defendants' framing of parental autonomy more correctly follows the decision of the cited case (*Poe v. Drummond,* N.D. Okla., 2023). Citing Skrmetti again, Judge Heil also contends that the state does not have a historical tradition in preventing governments from interfering with minor medical care in the absence or inability of parents (*Poe v. Drummond,* N.D. Okla., 2023).

In his sixth and final section of analysis, Judge Heil discusses rational basis review to determine the Plaintiffs' likelihood of success. He determines that although there is substantial scientific and political debate regarding gender affirming healthcare, continued legislative debate is crucial to uphold democratic values of debate regarding the morality of life-altering medical

intervention, saying the very existence of dissent about the issue proves "the Plaintiffs are unlikely to establish that there is no rational basis for the legislature's decision" (*Poe v. Drummond,* N.D. Okla., 2023).

Judge Heil also argues that it is "rational for the Oklahoma Legislature to regulate the Treatment Protocols for minors while the democratic process resolves ongoing questions of safety and efficacy" and has a heightened interest in "safeguarding minors" while doing so (*Poe v. Drummond,* N.D. Okla., 2023). He contends that there is "ample record evidence" to uphold SB 613 in that the state of Oklahoma has legitimate interest in regulating gender affirming healthcare. Highlighting four ways the treatment is problematic for minors – difference in diagnoses, difference in purpose and risks, difference in length of use, and difference in intent – Judge Heil finds that the medical care is unpredictable; thus, proving the state has interest in regulating care for minors (*Poe v. Drummond,* N.D. Okla., 2023).

Concluding his analysis of the Plaintiffs' constitutionality claims, Judge Heil points out that the Plaintiffs "failed to show a likelihood of success" on each one (*Poe v. Drummond,* N.D. Okla., 2023). He then orders the motion for preliminary injunction denied, ultimately kickstarting SB 316 into action by barring gender affirming healthcare for transgender Oklahoma adolescents (*Poe v. Drummond,* N.D. Okla., 2023).

*Section III, 10th Circuit Court of Appeals:* Unsurprisingly, following Judge Heil's decision, Plaintiffs quickly filed an appeal in the Tenth Circuit Court of Appeals. After filing a Motion to Expedite Briefing, the Plaintiffs briefed the court, and subsequently provided amicus briefs from the American Academy of Pediatrics et. al., the Biomedical Ethics and Public Health Scholars, California et. al., Conservative Legislators et. al., Elliot Page et. al., Foreign Non-Profit Organizations, GLAD et. al., and the United States Department of Justice ("Poe v. Drummond").

Following their response brief, several Amicus Briefs were also filed in support for the Defendants including the Family Research Council, Alabama et. al., the Alliance Defending Freedom, and the Do No Harm and Oklahoma Council of Public Affairs ("Poe v. Drummond"). The latest filing in the appeals court is dated December 29th of 2023 and has yet to see forward movement ("Poe v. Drummond"). This is where SB 613's fate remains, and if the Tenth Circuit follows suit of its predecessors – the Eighth and Sixth Circuits – *Poe v. Drummond* may have a final decision in a matter of months.

**Media and Press**

Like Arkansas, Texas, and Tennessee, Oklahoma's SB 613 saw national headlines pre and post codification from the likes of CNN, NPR, and more. Local coverage of SB 613 was also abundant. From local interest groups, newspapers, university newspapers, and local affiliates with national news, Oklahoma's ban on gender affirming healthcare and the accompanying lawsuit was extremely popular in local media.

The *OU Daily* – the University of Oklahoma's Student Newspaper – released several articles about SB 613's progression and on *Poe v. Drummond.* Although this could be attributed to the affiliation of SB 613 and SB 3, it is important to note that the *OU Daily* released nearly ten articles about SB 613, including reports when the bill was on both the House and Senate Floors, when Governor Stitt Signed it into law, and when the agreement between the parties of *Poe v. Drummond* was enacted that halted the effects of SB 613 while the Northern District considered the case (OU Daily).

Oklahoma Governor Kevin Stitt was very outspoken during SB 613's legislative journey. In one statement after its passage, Governor Stitt boldly stated that the law was "common sense" and asserted that in Oklahoma, they protect their kids, "plain and simple" (Pendergraff, 2023).

Another Oklahoma legislator contended that the gender affirming healthcare ban protects kids from a "dangerous ideology" that "lies" to children about the benefits of such healthcare (Pendergraff, 2023). Furthermore, this same legislator contended gender affirming healthcare practitioners only care about money, and not what is best for children (Pendergraff, 2023).

Opponents of the bill in the state legislature were also very outspoken with their discontent. Senator Julia Kirt stated that it's dangerous for legislators to decide what is medically appropriate, and that medicine should trump legislative opinion (Camper, 2023). Senate Minority Leader Kay Floyd employed similar arguments, asserting that healthcare decisions should be left to parents, asking the general body "Where do we stop? What other medical conditions are we going to interject the Legislature and lawmakers into" (Hoberock, 2023).

## The Interesting Case of Virginia

### Overview

In most of the state legislatures where gender affirming healthcare bans have been introduced, they passed with little to no opposition, whether that be because of the political makeup of the legislature or other outstanding reasons. In other state legislatures where a gender affirming healthcare ban was proposed and did not take effect, the effort was shot down immediately and not introduced again. The case of Virginia is interesting because there have been multiple attempts made by Virginia legislators to pass a gender affirming healthcare ban with no success. In the 2023 legislative session alone, three separate bills attempting to bar gender affirming healthcare – SB 791, SB 960, and SB 1203 – were introduced and ultimately tabled indefinitely.

### SB 791 – Virginia SAFE Act

The Virginia legislature's first attempt at passing a gender affirming healthcare ban followed Arkansas' original model closely, bearing the same name and many of the same provisions. Virginia's Save Adolescents from Experimentation Act was authored by Senator Amanda F. Chase and sponsored by House members Nicholas J. Freitas, Marie E. March, and Phillip A. Scott (Virginia State Legislature, SB 791). The bill, filed in November of 2022, was immediately referred to the Senate Committee on Education and Health (Virginia State Legislature, SB 791).

The proposed bill specifically prohibited physicians or healthcare professionals from providing or referring gender transition procedures to any individual under 18 years old (Virginia State Legislature, SB 791). "Gender transition procedures" are specified as any medical service that seeks to alter or remove "typical" biological sex characteristics and instill or create physiological sex characteristics different from an individual's biological sex (Virginia State Legislature, SB 791). Similarly to various other state bills barring gender affirming healthcare, the provisions of Virginia's SAFE Act excluded individuals with established sex development medical disorders (Virginia State Legislature, SB 791). Furthermore, Virginia's SB 791 also proposed barring the use of public funds for any such procedures and prohibits the use of medical insurance for gender affirming healthcare procedures and medications (Virginia State Legislature, SB 791). SB 791 charged the Attorney General's office with enforcement, and subjected medical professionals who violate the bill to review from the appropriate licensing boards within Virginia (Virginia State Legislature, SB 791).

After SB 791's referral to the Senate Committee, there was little to no action taken. The Committee on Education and Health voted 8-to-5 to pass the bill by indefinitely, which is a frequently used legislative tool used in the Virginia state legislature to reserve debate on the

legislation for later meetings ("Frequently Used Terms"). Because no action was taken on the bill in a later meeting, the bill died in committee.

**SB 960 – Youth Health Protection Act**

In their second attempt at passing gender affirming healthcare legislation, Virginia legislators proposed SB 960, the Youth Health Protection Act. Sponsored by Senators Mark J. Peake and Bryce E. Reeves, filed on January 6th of 2023, SB 960 expands upon the provisions introduced in SB 761 and created stronger penalties for violators (Virginia State Legislature, SB 960).

SB 960 sought to prohibit healthcare providers from providing sex change services in any form of sterilization including mastectomies, hysterectomies, and penectomies (Virginia State Legislature, SB 960). It also prohibited administering or prescribing any puberty blocking hormone drugs, administering testosterone to the female sex, and supplying estrogen to the male sex (Virginia State Legislature, SB 960). Like its predecessor, SB 761, this bill also excluded these provisions for individuals with medically identifiable sex development disorders if the decision to partake in such procedures was made in "good-faith" between parents and doctors (Virginia State Legislature, SB 960). Moreover, SB 960 prohibited the use of public funds for gender affirming healthcare procedures.

While SB 960 and SB 761 are similar in what they sought to restrict, SB 960 held a few harsher provisions that are important to highlight. Particularly, SB 960 required government employees – like teachers, guidance counselors, and other school personnel – to report to the parents and guardians of minors who experience symptoms of gender dysphoria or has expressed interest in medical treatment "in a manner incongruent with the minor's sex" (Virginia State Legislature, SB 960). Furthermore, SB 960 included a protection for these "whistleblowers,"

stating that no person shall be discriminated against for disclosure of such information (Virginia State Legislature, SB 960). Essentially, this inclusion was meant to protect those from legal action who must, under law, disclose a minor's identity were this law to take effect.

Like SB 761, SB 960 was also sent to the Senate Committee on Education and Health where it met a similar fate (Virginia State Legislature, SB 960). After being referred to committee, the Youth Health Protection Act was passed by indefinitely with a 10-to-5 vote to table (Virginia State Legislature, SB 960). No further action took place, effectively killing the bill in committee.

**SB 1203 – Children Deserve Help Not Harm Act**

In their third and final attempt, as of now, Virginia legislators brought forth SB 1203, the Children Deserve Help Not Harm Act. The bill, sponsored by Bryce E. Reeves, was filed in the Virginia state legislature on January 10th of 2023, just a few days following SB 960 (Virginia State Legislature, SB 1203). SB 1203 was meant to serve as a replacement of the original Act introduced in the legislature, SB 761.

Like in the two previous attempts made by Virginia legislators, SB 1203 sought to prohibit minors from receiving any form of gender affirming healthcare, healthcare professionals from providing gender affirming healthcare, and barred usage of public funds and insurance for gender affirming healthcare procedures (Virginia State Legislature, SB 1203). SB 1203 established the appropriate licensing agency and the Attorney General as the enforcers of the Act and allowed for civil action to be brought against physicians and healthcare providers who violate the act (Virginia State Legislature, SB 1203).

Once again, SB 1203 was referred to the Senate Committee on Education and Health after filing (Virginia State Legislature, SB 1203). While the Act was ultimately tabled, SB 1203

was incorporated by a 12-to-0 vote, instead of "passed by indefinitely" (Virginia State Legislature, SB 1203). According to the University of Virginia's guide to state legislative procedure, to "incorporate a bill" essentially combines one or more measures into one for consideration – meaning, for SB 1203, its fate was tied in with the previous two attempts of barring gender affirming healthcare ("Frequently Used Terms").

**Why Was Virginia Unsuccessful?**

In comparison to other states with gender affirming healthcare bans, Virginia – a member of the regional south – seems like a perfectly viable state to have adopted such legislation. While it cannot be determined exactly why the Virginia state legislature failed in several of its attempts to pass gender affirming healthcare legislation, there are a few important factors that could serve as to why each effort proved to be unsuccessful: the makeup of the legislature, the makeup of the Senate Committee on Education and Health, the 2023 political atmosphere, and Virginia's status as a blue state.

First, the political makeup of the state legislature, specifically the Senate, leaned more left in the 2023 legislative session. At the time, the Senate was comprised of twenty-two registered Democrat Senators and eighteen registered Republican Senators ("Senate of Virginia"). While the partisan split seems very small, in a relatively small Senate of only forty members, four votes can make an extreme difference.

Second, the Senate Committee on Education and Health was also left leaning. The nature of the legislature closely resembled the makeup of the Senate Committee on Education and Health, where Democrats held the majority ("Senate of Virginia"). While this would seem to be a healthy indicator as to why each bill failed in committee, the votes were not always so cut and dry. The first vote on Virginia's SAFE Act in committee does directly reflects the party

affiliation of the committee, with all eight "yeas" to table being Democratic members and all five "nays" being Republican members (Virginia State Legislature, SB 791). The votes on SB 960 though, was not a direct reflection of affiliation with one Republican Senator – Dunnavant – voting with the Democrats to table the bill indefinitely (Virginia State Legislature, SB 960). Furthermore, the vote to incorporate SB 1203, and ultimately table the bill indefinitely with the others, went unopposed in the Senate Committee on Education and Health (Virginia State Legislature, SB 1203).

Third, 2023 was an election year for the Virginia legislature. For the most part, partisanship held strong in the final Committee votes; however, the political atmosphere in Virginia during this session could have largely affected the outcome. With change on the horizon, it could be true that the members of the Senate Committee on Health and Education did not want to debate such a highly salient topic, as would be reflected from the final vote on SB 1203. Or the outcome could be a result of re-election concerns. It is a commonly studied phenomenon that re-election concerns can greatly affect political decision making. Dunnavant, the only Republican member of the Committee to vote "yea" on SB 960, was running for re-election in the 16$^{th}$ District of Virginia, which the *Virginia Mercury* described as a "high-stakes battle" in the 2023 general election (Moomaw, 2023). In a study conducted by Y. Stephen Chiu on re-election concerns, he found that incumbents who face difficult opponents in re-election are incentivized to condition their decisions on policy popularity (Chiu, 2002). Because of Virginia's general political affiliation being more Democratic, it could be true that Dunnavant attempted to please voters with her vote to table the gender affirming healthcare ban regardless of her party affiliation – although this strategy would have proved to be ineffective as she lost her incumbency.

Overall, the most likely reason the proposed gender affirming healthcare bans failed is likely due to Virginia's status as a blue state; however, its regional commonality with other states with codified laws against gender affirming healthcare cannot be overlooked. Although several non-southern states have banned gender affirming healthcare for minors, the regional affiliation with the south of such bans is important to note. The trend of adopting gender affirming healthcare bans quickly caught on throughout the south after Arkansas' SAFE Act passed. Since, every southern state besides Virginia has barred gender affirming healthcare for minors. While its status as being "blue" could be why the legislation continuously failed, Virginia's status as "southern" does not coincide with that reasoning. Moreover, no further attempts have been made, as of now, by GOP Virginian legislators to bar gender affirming healthcare in the 2024 legislative session. Whether they'll continue to attempt to implement the bans or not, only time will tell.

## Analysis

While the gender affirming healthcare bans in Arkansas, Texas, Tennessee, and Oklahoma varied from state to state, there were several trends these four states and their pieces of legislation shared. These patterns are important to highlight because they contribute to the overall morality policy discussion at hand and provide evidence as to how and why the barring legislation can be considered morality policy.

### Findings – Congruencies Between States

Arkansas, Texas, Tennessee, and Oklahoma are all members of the regional south. Historically, the American South has been dominated by a one-party majority. The "one-party" south most political scientists and historians point to highlight the political landscape during and post-Reconstruction; however, as Hayes and McKee suggest, events since the turn of the 21st

century have pointed back to the one-party dominance that has historically characterized the South (Hayes & McKee, 2009). Regionality is not the only factor that could contribute as to why these states passed similar legislation in barring gender affirming healthcare; however, the trend underscores that these states have historically had similar partisan loyalty, voting trends, and similar legislative makeups.

Expanding upon regional similarity, partisanship is another trend among these four states. Arkansas, Texas, Tennessee, and Oklahoma all have a Republican majority, in both their state legislatures and in their citizen populations. While anti-transgender legislation is not expressly a "Republican" policy type, the gender affirming healthcare bans in each of these states were authored, sponsored, and supported explicitly by Republican legislators. In Arkansas, only two Republican legislators – Representatives Hawks and Johnson – voted "nay" against HB 1570, where all other votes against the act belonged to Democrat legislators (Arkansas State Legislature, HB 1570). Similarly in Texas, only Democratic legislators voted "nay" against SB14, and all votes but one – Representative Dutton, a Democrat – for SB 14 belonged to Republican legislators (Texas State Legislature, SB 14). Like Texas, Tennessee had two outliers with Democratic Representatives Towns and Parkinson vote for SB 001; however, all votes against SB001 in both the House and the Senate belonged to Democrat legislators (Tennessee State Legislature, SB 001). In Oklahoma, all votes for SB613 belonged to Republican legislators and all votes against belonged to Democrat legislators (Oklahoma State Legislature, SB 613).

**The Anti-Transgender Policy Agenda and Morality Policy**

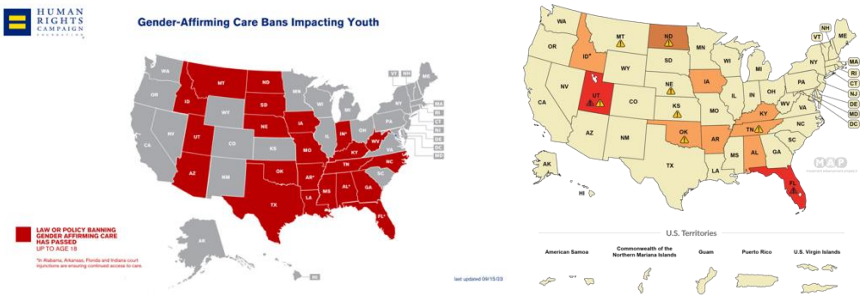
Policy attacks on gender affirming healthcare are only one policy type that contributes to a continually matriculating anti-transgender agenda throughout the United States. As many of the lawsuits pointed out, particularly Texas, states that enacted gender affirming healthcare bans

have been targeting the TGD population for the past several years. Below, I discuss two other increasingly popular anti-transgender legislation categories and how these pieces of legislation alongside gender affirming healthcare bans contribute to this agenda. Furthermore, I include a discussion as to how and why these particular states pass targeting legislation.

*Section I, Bathroom Bills:* Policies coined "bathroom bills" are bills where transgender and gender-diverse people are denied from using public bathrooms consistent with their identity (Levengood and Hadland, 2022). Many of these bills are primarily concerned with bathroom habits of TGD individuals in K-12 schools; however, many public entities, universities, and businesses have also adopted similar protocol in these instances (Movement Advancement Project). Bills such as these are a direct attack on TGD personal identity, an important characteristic Mooney describes of morality policy.

Bathroom bills are one of many policy spheres that have targeted the LGBTQ+ identity in recent years and have been subject to controversy dating back to 2013 (Horne, et. al., 2022). Below, Figure 1.0 represents a visual aid where states have enacted both gender affirming healthcare bans and bathroom bills.

**Figure 1.0: Map of Gender Affirming Healthcare Bans by State and Map of Bathroom Bills by State**

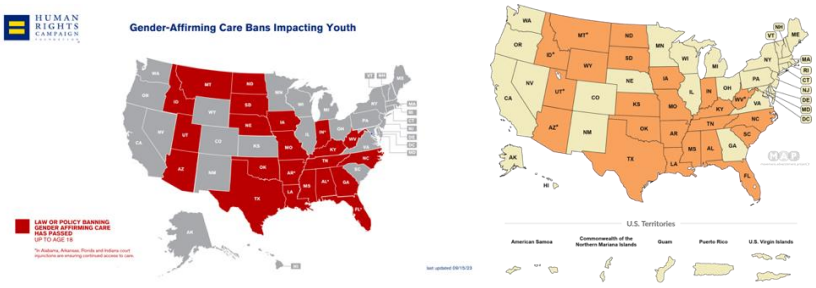


As can be seen from Figure 1.0, in every state where a bathroom bill has been put into place, gender affirming healthcare has also been banned. A glaringly obvious similarity in terms of predicting future discriminatory LGBTQ+ legislation from my perspective.

*Section II, Exclusion from Sports:* The exclusion of transgender men and women in sports has been strongly debated at all levels of the athletic domain: from the Olympics to the NCAA, dwindling all the way down to public school sports. In response to discourse, many states have positioned their view in opposition, by imposing bans on transgender individuals participating in K-12 sports.

Bills of this sort are also just another of many types of anti-transgender legislation that have reached popularity in the past few years, alongside the growth of bathroom bills. Figure 2.0 provides a visual comparison between states with enacted gender affirming healthcare bans and anti-trans youth in sports bills.

**Figure 2.0: Map of Gender Affirming Healthcare Bans vs. Map of Anti-Trans Youth in Sports Bills**




As can be seen from the Figure above, the map depicting adopted gender affirming healthcare bans is nearly identical, save Georgia, to the map depicting exclusionary bans on TGD individuals in athletics. According to the ACLU, bans on TGD athletes in sports were introduced starting in 2020, and by 2021, the figure nearly doubled (ACLU, 2021). Subsequently, bans on gender affirming healthcare evolved almost in direct tandem with the exclusionary legislation

against transgender athletes. While this could be considered a coincidence, there is a definite correlation between the rise in the anti-transgender legislative agenda.

**Framing and How Gender Affirming Healthcare Bans Pass**

The similarities between the legislation depicted by the maps may just be reduced to the political population of adopter states; however, a phenomenon psychology professor Ronnie-Janoff Bulman describes in her 2009 article may be better suited to help explain why anti-LGBTQ+ policies specifically are so polarizing and how they pass in primarily Republican state legislatures through the use of framing.

Janoff-Bulman categorizes political liberalism and political conservatism based on two motivational grounds. She argues, that the two primarily differ in that one, liberalism, aims to provide and the other, conservatism, aims to protect (Janoff-Bulman, 2009). She discusses how the liberal approach to morality type policy has more of a regulatory focus and highlights the potential positive outcomes or gains (Janoff-Bulman, 2009). On the contrary, the conservative approach tends to use avoidance techniques when approaching morality type policies, and regularly focuses on the potential negative outcomes of such policies (Janoff-Bulman, 2009).

When using Janoff-Bulman's analysis of the political liberalism and political conservatism frames, there is much more room for comprehension on the motivations of such legislation and how they pass. The anti-transgender legislation I've discussed – gender affirming healthcare bans, bathroom bills, and anti-trans sports bills – is seemingly meant to protect cisgendered individuals, while simultaneously, disregarding the population the policies target. For instance, bathroom bills are usually argued on the grounds that having the opposite sex in a restroom is more likely to cause harm, in the case of assault or sexual violence, than requiring TGD individuals to use a restroom they don't personally identify with. Allowing transgender

athletes in sports is supposedly unfair and potentially harmful to other athletes. Protection, in the cases of these policies, is the primary objective based upon moral convictions to preserve the population at large from harm.

As I pointed out above, these legislative areas, while protective of one population, disregard and dismiss the minority populations they target: TGD people. The bans on bathroom choice and participation in sports fails to protect them, only the population deemed in need of protection. Gender-affirming healthcare bans, from the political conservatist perspective, are seemingly protecting TGD children and adults from "mutilation" and harm; however, from the political liberal perspective, gender affirming healthcare is meant to provide comfort, acceptance, and care to TGD people and children. On both sides of the spectrum, the focus is clear. On the conservative side, the potential negatives of gender affirming care, for example if a child matures into adulthood and desists from their incongruent identity are that those individuals may struggle with possibly irreversible changes made to their bodies in adolescence. This particular "downside," is cited in several of the adopter states' legislation, for instance, the Arkansas' Save Adolescents From Experimentation and Virginia's Children Deserve Help Not Harm titles alone highlight this idea. Proponents of gender-affirming healthcare, primarily physicians, tend to underscore the overall mental health and well-being benefits gender affirming healthcare provides to the TGD population.

The struggle for dominance between the protective attitude of the political conservativism frame and the providing nature of the political liberalism frame is what makes these policy issues highly salient and controversial. Right-wing state legislatures pass such policies under the guise of protecting the population they deem in need of protection, while furthering the more traditional ideology they aim to uphold.

**Gender Affirming Healthcare Bans as Morality Policy**

Morality policy scholars characterize morality legislation in several distinct ways. For policy to be considered morality policy, legislation must be technically simple, invoke high levels of citizen participation, and fail to solicit general public consensus. From the evidence gathered from the five case studies conducted above, I confer that gender affirming healthcare bans, and anti-transgender legislation more generally, do fit within the morality policy scope.

To be considered "technically simple," a policy issue must be something any one person can comprehend. While gender affirming healthcare as a practice may be somewhat convoluted to the average person, the question at hand over whether it is morally acceptable for minors to receive is simple. Some, those on the political conservatist end, believe it is the right of the government to protect minors from potentially irreversible medical care, while others believe it is the right of the minors and parents to choose. Like other policy areas that tend to fall under morality policy, abortion for example, the issue lies in both choice and what the government should or should not exert control over. This paradigm is very simple, and a concept that any one individual can formulate an opinion on.

The salience condition regarded by morality policy scholars refers to public participation with policy types. Public participation can include any form of citizen protest, increased news coverage, an increase in public interest, and more. As the media/press sections of the case studies above suggest, public interest in gender affirming healthcare bans is abundant. Furthermore, in the four states studied that codified gender affirming healthcare bans, a form of protest occurred in response to each respective state bill. KATV reported on a public protest at the Arkansas State Capitol following HB1570's passage in the state legislature, providing footage of healthcare workers and transgender advocates ascending upon the capitol with signs reading "trans youth

matter to healthcare workers" and "we support trans youth," (KATV, 2021). Similar protests erupted in the other three states, sporting similar signage at the Texas State Capitol, Tennessee State Capitol, and the Oklahoma State Capitol (Rivera & Martínez-Beltrán, 2023; Cochrane, 2023; Taylor, 2023). Aside from public protests, the lawsuits themselves provide evidence to suggest the salience this issue holds in the populations these bans effect.

As the activity within state legislatures, protests, lawsuits, and subsequent court rulings highlighted, there is no public consensus on the morality of gender affirming healthcare bans. In Arkansas, the majority voted for the SAFE Act to be codified; however, former Governor Hutchinson vetoed it. In the legal proceedings following the overruled veto, the plaintiffs appeared to initially be victorious in *Brandt v. Rutledge* at both the state and federal levels, but its current status in en banc review highlights the conflict between members of the judicial system on the matter. Texas' gender affirming healthcare ban had somewhat of a smoother journey through the state legislature than Arkansas'; however, the conflicting decisions between the Texas Supreme Court and District Judge Hexsel further provide evidence to the dispute on gender affirming healthcare. Furthermore, Tennessee's ban was the first where a federal court dissented from the district court's ruling, and Oklahoma's ban was upheld in both district and federal court. Virginia failed three separate times to produce legislation barring gender affirming healthcare because its legislators continuously placed the issue on the backburner.

## Conclusion

There has been an obvious gap in morality policy scholarship since the turn of the 21st century. As social policy has continued to evolve, morality policy as a discipline has remained stagnant. While this phenomenon could potentially be explained by a loss of interest in political

science scholars, there has not been a loss in material. Arguably, in the past two decades, there has been even more development in the field of social policy since morality policy saw its peak.

This study aimed to bridge the gap from "traditional" morality policy to modern morality policy through the analyzation of gender affirming healthcare bans. Anti-LGBTQ+ policy is not a new category of the morality policy field; however, the emergence of new forms of healthcare, and subsequent policy, suggests that social policy is ever evolving. Gender affirming healthcare bans serve as just one example of modern issues that morality policy literature has failed to adopt. Even traditional morality issues, like abortion, continue to evolve year by year and morality policy scholarship has yet to conform.

The evidence gathered in this qualitative study supports that modern issues fit into the parameters set by vintage morality policy literature. Furthermore, this study serves as a modern interpretation of traditional studies on morality policy to highlight that this gap between new and old can be both bridged and improved upon. For future research, scholars should aim to improve upon morality policy scholarship by studying continually emerging morality issues. For example, a more comprehensive study on bathroom bills could further close the perforation between old and new LGBTQ+ morality policy scholarship. Moreover, new policy surrounding in vitro fertilization combines two traditional morality policy issues – reproductive rights and LGBTQ+ policy – which could serve as another case study for evolving morality policy literature and scholarship.

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