

Legislative Testimony

In Opposition of HB 2791

House Committee on Health and Human Services

February 29, 2024

Committee Chair and Members of the Committee:

I appreciate the opportunity to present testimony here today on behalf of the American Civil Liberties Union of Kansas. I'm D.C. Hiebert, a lawyer, and the LGBTQ+ legal fellow with the ACLU of Kansas. We are a nonpartisan, non-profit organization that works to preserve and strengthen the civil rights and liberties of every person in our state.

The ACLU of Kansas stands strongly opposed to HB 2791 and urges you to not vote this bill out of committee. Not only does HB 2791 violate the state and federal constitutional rights of Kansas children, parents, therapists, doctors, teachers, and other state employees—it poses an unprecedented threat to Kansas families. By effectively banning the *only* evidence-based healthcare options available for Kansas youth experiencing gender dysphoria, HB 2791 far exceeds the appropriate government regulation of medicine and threatens Kansas parents' ability to access the nationally recommended best-practice healthcare for their children.

HB 2791 essentially bans all gender-affirming healthcare for Kansans under 18 years old by threatening providers with strict liability lawsuits and licensure implications—far exceeding the appropriate government regulation of medicine. But the bill doesn't stop there—it goes on to ban providers or facilities that receive state funding from supporting the social transition or medical transition of transgender youth and prevents state employees from supporting trans youth who may need to socially or medically transition.

This bill places politicians' feelings and unsubstantiated fears above the expert medical advice of hundreds of thousands of medical professionals, and strips families of their ability to make informed healthcare decisions. That is why every major medical association—including the American Medical Association¹, the American Academy of Pediatrics², and the American Academy of Child and Adolescent Psychiatry³—opposes bills like HB 2791 and instead support access to the healthcare this bill seeks to ban.

¹ See, e.g., *AMA reinforces opposition to restrictions on transgender medical care*, THE AMERICAN MEDICAL ASSOCIATION (June 15, 2021), <https://www.ama-assn.org/press-center/press-releases/ama-reinforces-opposition-restrictionstransgender-medical-care>.

² *Ensuring Comprehensive Care and Support for Transgender and Gender Diverse Children and Adolescents*, THE AMERICAN ACADEMY OF PEDIATRICS (Oct. 1, 2018) (reaffirmed Aug. 2023), <https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for?autologincheck=redirected>

³ *AACAP Statement Responding to Efforts to Ban Evidence-Based Care for Transgender and Gender Diverse Youth*, AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY (Nov. 8, 2019), https://www.aacap.org/AACAP/Latest_News/AACAP_Statement_Responding_to_Efforts-to_ban_Evidence-Based_Care_for_Transgender_and_Gender_Diverse.aspx

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The logo for the American Civil Liberties Union of Kansas. It features the letters "ACLU" in a large, bold, blue sans-serif font. Below "ACLU", the word "Kansas" is written in a smaller, red sans-serif font.

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In fact, the American Medical Association said legislation such as HB 2791 “**represents a dangerous governmental intrusion into the practice of medicine**” and that such bills “**will be detrimental to the health of transgender children across the country.**”⁴

In addition to opposition from leaders in the medical community, courts across the country have recognized that bills like HB 2791 violate the First Amendment, equal protection, and due process rights of adolescents, their parents, and their medical providers. The Eighth Circuit and district courts in Indiana, Montana, Texas, and Florida have all stopped similar laws from taking effect because of these asserted constitutional issues.⁵ HB 2791 clearly discriminates on the basis of sex and transgender status and infringes upon the fundamental rights of Kansas parents—rights that many Kansas politicians have vehemently defended in other contexts. This discrimination means HB 2791 triggers the highest levels of constitutional scrutiny, and the state of Kansas will ultimately carry the burden of proving this bill advances compelling government interests.

But this is a high burden—as **nearly every state that has attempted to defend these bills in court has lost**. What those states have succeeded in doing is charging enormous legal fees to taxpayers. The legal challenge of a similar Arkansas bill has accumulated well over \$3 million in litigation expenses and attorney’s fees. In Kansas, the Attorney General’s office is already involved in ongoing litigation⁶ regarding a discriminatory anti-transgender bill passed last session, at the expense of Kansas taxpayers. We urge you not to support this unconstitutional bill that will likely create more costly litigation for the state and its already understaffed⁷ Attorney General’s office.

This bill sets a terrifying precedent by taking away parents’ rights to make decisions about their children’s medical care. It was not long ago that Kansans made it very clear that they do not want politicians infringing on their right to determine what healthcare is best for them. This bill flies in the face of the will of the people and violates Kansans’ constitutional right to personal autonomy—a **right the Kansas Supreme Court has said “includes the ability to control one’s own body, to assert bodily integrity, and to exercise self-determination.”**⁸

⁴ *AMA reinforces opposition to restrictions on transgender medical care*, THE AMERICAN MEDICAL ASSOCIATION (June 15, 2021), <https://www.ama-assn.org/press-center/press-releases/ama-reinforces-opposition-restrictionstransgender-medical-care>

⁵ See, e.g., *Brandt v. Rutledge*, 47 F.4th 661, 671 (8th Cir. 2022); *K.C. v. Individual Members of Med. Licensing Bd. of Indiana*, No. 123CV00595JPHKMB, 2023 WL 4054086 (S.D. Ind. June 16, 2023); *van Garderen v. State of Montana*, No. DV-23-541 (Montana 4th Judicial Dist. Ct., Missoula County) (Sept. 27, 2023); *Lazaro Loe v. State of Texas*, No. D-1-GN-23-003616 (Dist. Ct. of Travis County, Texas, 201st Judicial District) (Aug. 25, 2023); *Doe v. Ladapo*, No. 4:23CV114-RH-MAF, 2023 WL 3833848 (N.D. Fla. June 6, 2023).

⁶ See, <https://www.aclu.org/cases/kansas-v-harper>.

⁷ See, <https://www.cjonline.com/story/news/politics/government/2024/01/31/staff-struggles-continue-kansas-attorney-general-kris-kobach-despite-more-money/72396314007/>.

⁸ See, *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 646 (2019).

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In addition to these clear constitutional violations, we also urge you to think about what HB 2791 would mean for the Kansas medical profession. This bill would threaten Kansas medical providers with civil liability and license revocation for simply providing their patients with nationally recommended, best practice healthcare—care that many of these providers have been safely administering for years in our state without issue. We should be supporting the medical professionals practicing in our state, not antagonizing them with laws that impede their ability to effectively do their jobs.

You may not understand what it means to be transgender. You may think that it's best to try and stop young people from growing into transgender adults. But even if that instinct is coming from a genuine place of care, passing a bill like HB 2791 does nothing to address those alleged concerns. It will not prevent transgender kids from being who they are. The only thing a bill like HB 2791 does is unequivocally harm transgender youth and violate Kansans' constitutional rights.

I do not mean this in an abstract sense. If HB 2791 becomes law, people will die. Families will suffer. The practice of medicine will be compromised—not just for transgender young people, but for everyone in Kansas. **HB 2791 would set a precedent that medical providers should not give you the best medical care available, but instead give you the medical care politicians decide you should have access to.** It would mean Kansas medical providers cannot do their jobs and would cause the public to lose faith in the quality of medical care they are being given.

While I am sharing this testimony as a constitutional lawyer with the ACLU of Kansas, I am also sharing this testimony as a lifelong Kansan and a transgender person. The very care that HB 2791 seeks to ban is the reason I am alive, living a joyful and fulfilling life. It is the reason I graduated from a Kansas college and am now a licensed attorney with a law degree from the University of Kansas. Gender-affirming healthcare has allowed me to become the person I am today and gave me the confidence to advocate for my fellow Kansans' rights.

I love Kansas and am proud to call it my home. I know countless other trans people in the state that feel the same way. But bills like HB 2791 tell us that our state doesn't love us back. People will not stop being transgender because Kansas bans this care or punishes its medical providers. Trans people will still exist in Kansas and in every state in our country, just as they always have. Please don't make it harder for these young Kansans to live their dreams and contribute to our state, their families, and their communities. We urge you to oppose HB 2791.

Thank you.

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