

No. 21-2875

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

DYLAN BRANDT, ET AL.,
Plaintiffs-Appellees,

v.

LESLIE RUTLEDGE, ET AL.,
Defendants-Appellants,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
ARKANSAS,
No. 21-cv-450, HON. JAMES M. MOODY, JR., PRESIDING

**BRIEF OF *AMICUS CURIAE*, THE TREVOR PROJECT, INC. IN SUPPORT OF
PLAINTIFFS-APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, The Trevor Projects states it is a nonprofit 501(c)(3) organization. The Trevor Project has no corporate parent and is not owned in whole or in part by any publicly held corporation.

IDENTITY & INTEREST OF AMICUS CURIAE¹

The Trevor Project, Inc. (“The Trevor Project”) is the world’s largest suicide prevention and crisis intervention organization for lesbian, gay, bisexual, transgender, queer, and questioning (“LGBTQ”) young people. The Trevor Project offers the only accredited, free, and confidential phone, instant message, and text messaging crisis-intervention services for LGBTQ youth, which are used by thousands of youths each month. Through these services and national surveys, The Trevor Project also produces innovative research that brings new knowledge, with clinical implications, to issues affecting LGBTQ youth.

Amicus has a special interest in this litigation, as well as familiarity and knowledge of the significant benefits from transgender youth receiving gender-affirming medical care. Amicus is deeply concerned that reversal of the District Court’s order in this case will place adolescents at a substantially increased risk of suicide and negatively impact their mental health, risks that are strongly and consistently associated with experiencing disparate treatment based on gender identity. For these reasons, The Trevor Project has a substantial interest in this litigation.

¹ No party’s counsel authored this brief in whole or in part. No party, its counsel, or other person contributed money intended to fund the brief’s preparation or submission.

The authority of amicus to file this brief in support of Plaintiffs-Appellees' Petition is pursuant to FRAP 29(a)(3). Amicus has received the consent of all parties to file.

SUMMARY OF ARGUMENT

This Court should affirm the District Court's order granting Plaintiffs-Appellees' preliminary injunction and denying Defendants-Appellants' motion to dismiss. Arkansas' House Bill 1570, enacted as Act 626 on April 6, 2021 (hereafter the "Health Care Ban") denies transgender adolescents the ability to obtain the medical care they require. The Health Care Ban prohibits a physician from providing any "gender transition procedure" to individuals under eighteen, including puberty-delaying medication and gender-affirming hormone therapies. Since denying medical treatment will cause irreparable physical and mental harm to transgender youth, it is critical that the preliminary injunction on this law remain in place. Some treatments that are blocked by the Health Care Ban can only be administered during adolescence or are otherwise time-sensitive with regard to a patient's age. By denying access to consistent, continuous care for patients with a medical need, even for a short period of time, the Health Care Ban will result in patients experiencing severe harm.

Where medically indicated, access to pubertal suppression and hormone therapy has been demonstrated to provide critical improvements in the mental health of transgender youth. For those who want them, these treatments are associated with a 40% decrease in depression and suicidality, in a population at greatly increased risk for self-harm and mental health disparities.² Delaying medical interventions until the age of majority denies transgender youth and their medical providers the option of pubertal suppression altogether, which is a time-sensitive and medically necessary intervention for some minors with gender dysphoria. Denying or even temporarily pausing such treatment will force some youth with gender dysphoria to suffer through puberty that is incongruent with their gender identity.

When gender-affirming medical treatment is medically indicated for transgender youth but denied, there can be grave effects on their mental health, including an increased rate of suicidality. For many young people suffering with gender dysphoria, medical gender-affirming care is necessary. The myriad beneficial effects of gender-affirming medical treatment have been demonstrated through not only clinical research, but also The Trevor Project's own survey data and its daily experience in working with transgender youth. The Trevor Project

² Amy E. Green et al., *Association of Gender-Affirming Hormone Therapy With Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth*, *J. of Adolescent Health*, at 5 (2021).

hears from transgender youth every day whose experiences indicate how dangerous a policy like this would be for their mental health. In addition, since the passage of the Health Care Ban last April, there was a marked increase in the need for The Trevor Project’s services. It is critical that the Health Care Ban remains preliminarily enjoined pending final resolution of the law’s constitutionality, since any enforcement of the Health Care Ban, regardless of how temporary, will directly and significantly harm transgender youth. The Trevor Project therefore urges the Court to affirm the District Court’s order in favor of Plaintiffs-Appellees.

I. ENFORCEMENT OF THIS LAW DIRECTLY IMPACTS MENTAL HEALTH AND WELL BEING CAUSING IRREPARABLE HARM

Denial or disruption of gender-affirming medical care can cause physically irreparable harm to transgender youth, because once an individual reaches the age of majority, it can be too late for gonadotropin-releasing hormone analogs, or “puberty blockers” and/or for gender-affirming hormone treatments to be fully effective in reversing the effects of gender-incongruent puberty.³ For example, it is difficult to reverse testosterone’s effect on deepening the voice.⁴ Similarly, if a transgender girl being treated with puberty blockers is forced to temporarily discontinue use, endogenous puberty will resume—forcing her to go through

³ David C. Call, Mamatha Challa & Cynthia J. Telingator, *Providing Affirmative Care to Transgender and Gender Diverse Youth: Disparities, Interventions, and Outcomes*, 23 *Current Psychiatry Report* 1, 4 (2021).

⁴ *Id.*

gender-incongruent physiological changes, like the development of facial hair and gonadal growth, that can be both traumatic and impossible to reverse.⁵ Thus, affirming the District Court’s preliminary injunction is critical, since any disruption in care could cause transgender youth to experience unwanted, traumatic, and potentially permanent physical changes that would otherwise be preventable with appropriate treatment.

Hormonal intervention also leads to myriad mental health benefits. A clinical study of puberty suppression patients demonstrated that after an average of two years of pubertal suppression, the percentage of youth who had previously been experiencing behavioral problems dropped from 44% to 22%, and the percentage of those experiencing emotional problems dropped from 30% to 10%.⁶ Another clinical study on the use of gender-affirming hormone therapy found that, after one year on hormones, youth reported small improvements in anxiety symptoms, small-to-moderate improvements in depressive symptoms, and large improvements in body satisfaction.⁷ A third clinical study examined the effectiveness of gender-affirming hormones in improving psychological well-being among

⁵ Annelou L.C. de Vries et al., *Puberty Suppression in Adolescents With Gender Identity Disorder: a Prospective Follow-Up Study*, 8 J. Sexual Medicine 2276, 2277 (2011).

⁶ *Id.*

⁷ Laura E. Kuper et al., *Body Dissatisfaction and Mental Health Outcomes of Youth on Gender-Affirming Hormone Therapy*, 145 Pediatrics 1, 5–9 (2019).

transgender youth referred to a transgender health specialty clinic, and found large improvements in youth well-being after beginning treatment.⁸ Yet another longitudinal peer-reviewed study found improvements in depressive symptoms and quality of life among transgender young people when followed approximately 1.5 years after beginning either puberty suppression or gender-affirming hormone therapy.⁹ These studies were conducted with adolescents in the age range that would be impacted by the Health Care Ban. The research overwhelmingly shows that the denial or disruption of access to medical treatments from this law would cause these transgender youth harm.

Qualitative data collected by The Trevor Project in its 2021 Survey confirms that access to hormones and the achievement of the resulting physical changes stemming from hormone therapy are often key to transgender adolescents' positive feelings about their gender. In response to the question, "What are things that you do yourself that make you feel happy (or euphoric) about your gender?" respondents gave answers such as "Analyze what masculine features are emerging from my hormone therapy, hearing my own voice cracks," "Looking at my stomach and facial

⁸ Luke Allen et al., *Well-being and Suicidality Among Transgender Youth after Gender-affirming Hormones*, 7 *Clinical Practice in Pediatric Psychology* 302, 306 (2019).

⁹ Christal Achille et al., *Longitudinal Impact of Gender-affirming Endocrine Intervention on the Mental Health and Well-being of Transgender Youths: Preliminary Result*, *International Journal of Pediatric Endocrinology*, at 4 (2020).

hair that’s coming in,” and “Testosterone has done the most work to make me feel better about myself. My voice deepening and facial hair growing especially.”¹⁰ These responses highlight positive feelings that are unique to access to medical care.

Similarly, several adolescents reported feeling sad and gender-dysphoric when access to medical care was delayed or denied. In response to the question “What are things that others do that make you feel sad (or dysphoric) about your gender?” responses included “being too late with hormones to affect my voice,” “being denied to transition, denied hormones,” and “The state I live in has made it very difficult to get any kind of hormone treatment or surgery before turning 18 years old.”¹¹ The emphasis on medical intervention in particular makes it clear that any enforcement of the Health Care Ban would harm these individuals’ mental health.

II. ENFORCEMENT OF THIS LAW IMPACTS SUICIDALITY AND WILL CAUSE IRREPARABLE HARM

In addition to negatively impacting mental health in general, enforcement of the Health Care Ban could increase suicidality—the ultimate form of irreparable harm—in an already vulnerable population. Transgender youth are already at higher risk of suicide than their cisgender peers. According to The Trevor Project’s 2021

¹⁰ These qualitative responses are internal data that were gathered in the process of preparing The Trevor Project 2021 National Survey on LGBTQ Youth Mental Health, <https://www.thetrevorproject.org/wp-content/uploads/2021/05/The-Trevor-Project-National-Survey-Results-2021.pdf>.

¹¹ *Id.*

National Survey on LGBTQ Youth Mental Health, 52% of transgender and non-binary youth reported seriously considering suicide in the last year, and 20% made a suicide attempt.¹² This is compared to 32% of cisgender lesbian, gay, and bisexual youth considering suicide and 10% who made a suicide attempt.¹³

The Trevor Project regularly hears from transgender youth who seek out the organization's crisis intervention and suicide prevention services. Shortly after the passage of the Health Care Ban last April, there was a marked increase in the need for The Trevor Project's services, with local medical care providers reporting a cluster of suicide attempts among transgender patients.¹⁴ The Trevor Project served 30% more crisis contacts from April to November in 2021 compared to the same period in 2020, and the rate at which crisis contacts involved discussions of gender-affirming healthcare grew 60%. This increase includes youth from Arkansas specifically reaching out to talk about the Health Care Ban, including some reporting suicidal ideation when facing the prospect of waiting years to access medical treatment.

¹² The Trevor Project, *National Survey on LGBTQ Mental Health 2021*, <https://www.thetrevorproject.org/wp-content/uploads/2021/05/The-Trevor-Project-National-Survey-Results-2021.pdf>.

¹³ *Id.*

¹⁴ Anagha Srikanth, *Experts Worry About Spike In Teen Suicides After Arkansas Ban on Trans Medical Care: Report*, The Hill (April 20, 2021), <https://thehill.com/changing-america/well-being/mental-health/549257-experts-worry-about-spike-in-teen-suicides-after>

By contrast, access to medical gender-affirming care for transgender adolescents is empirically associated with *decreased* suicidality. A 2020 Trevor Project study found that gender-affirming hormone therapy led to almost a 40% decreased likelihood of attempting suicide in the past year among those aged 13–17.¹⁵ Another study found that approximately one year of gender-affirming hormone therapy for adolescents led to a 75% reduction in the level of suicidality.¹⁶ Yet another peer-reviewed study published in January 2022 found that transgender adults who had access to gender-affirming hormones between the ages of 14–17 had 60% lower odds of experiencing suicidal ideation in the previous year when compared to transgender people who wanted hormones but never had access to them.¹⁷ Critically, this study also found that access to gender-affirming hormone therapy during adolescence (ages 14–17) was associated with 30% lower odds of past-year suicidal ideation when compared to those who accessed such treatment as adults.¹⁸ Enforcement of the Health Care Ban would prevent Arkansas adolescents from obtaining gender-affirming hormone therapy and the corresponding benefits in suicide prevention.

¹⁵ See *supra* note 2.

¹⁶ See *supra* note 8.

¹⁷ Jack L. Turban et al., *Access to Gender-affirming Hormones During Adolescence and Mental Health Outcomes Among Transgender Adults*, 17 PLoS ONE 1, 10–11 (2022).

¹⁸ *Id.*

Puberty blockers, discussed above, are not only a time-sensitive treatment for the prevention of the physical impacts of gender-incongruent puberty—they also are vital in reducing suicidality among transgender youth. According to a 2020 study of the US Transgender Survey, transgender and nonbinary adults’ use of puberty blockers during adolescence is associated with significantly lower lifetime suicidal ideation compared to those who desired puberty blockers but did not receive them.¹⁹ This is true even controlling for adults who were receiving hormone therapy at the time of the study.²⁰ Thus, waiting for the age of majority to initiate gender-affirming medical treatment is not an adequate substitute for care in adolescence, and enforcement of the Health Care Ban risks increased rates of suicide for Arkansas’ transgender population. Moreover, since these medical treatments targeted by the Health Care Ban require continuous use to be effective, even a temporary pause in access for those who have already initiated treatment could lead to irreversible mental and physical harms.

¹⁹ Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation.*, 145 *Pediatrics* 1, at 5–6 (2020).

²⁰ *Id.* (control variable including current hormone treatment).

CONCLUSION

For the foregoing reasons, The Trevor Project respectfully requests that this Court affirm the District Court's order granting Plaintiffs-Appellees' preliminary injunction and denying Defendants-Appellants' motion to dismiss.

Respectfully submitted,

DATED: January 19, 2021

/s/ Shireen A. Barday

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation, as provided in Fed. R. App. P. 32(g), Fed. R. App. P. 29(b)(4), because, exclusive of the exempted portions of the petition, the petition contains fewer than 2141 words.

2. This brief complies with the type-face requirements, as provided in Fed. R. App. P. 32(a)(5), and the type-style requirements, as provided in Fed. R. App. P. 32(a)(6), because the brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

3. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

4. The electronic version of this amicus brief has been scanned for viruses and is virus-free.

Dated: January 19, 2021

/s/ Shireen A. Barday

Shireen A. Barday

Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on January 19, 2021. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: January 19, 2021

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February 02, 2022

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RE: 21-2875 Dylan Brandt, et al v. Leslie Rutledge, et al

Dear Counsel:

The amicus curiae brief of The Trevor Project, Inc. has been filed. If you have not already done so, please complete and file an Appearance form. You can access the Appearance Form at www.ca8.uscourts.gov/all-forms.

Please note that Federal Rule of Appellate Procedure 29(g) provides that an amicus may only present oral argument by leave of court. If you wish to present oral argument, you need to submit a motion. Please note that if permission to present oral argument is granted, the court's usual practice is that the time granted to the amicus will be deducted from the time allotted to the party the amicus supports. You may wish to discuss this with the other attorneys before you submit your motion.

Michael E. Gans
Clerk of Court

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