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13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

15 **OUR WATCH**, a California non-profit  
16 organization;

17 Plaintiff,

18 vs.

19 **ROB BONTA**, the attorney general of  
20 California;

21 Defendants.

Case No.: 2:23-CV-00422-DAD-DB

**PLAINTIFFS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT  
OF PLAINTIFFS OPPOSITION  
TO MOTION TO DISMISS  
SECOND AMENDED  
COMPLAINT**

22 Pursuant to Federal Rules of Evidence 201, Plaintiff Our Watch requests that  
23 this Court take judicial notice of the following official public document attached  
24 hereto:

25 **Exhibit 1:** A true and correct copy of the California Assembly Committee on  
26 Judiciary Analysis of SB 107, Issued June 8, 2022.

27 Plaintiff Our Watch respectfully submits that the document referenced above  
28 is proper for judicial notice as well as for consideration by this Court. District courts  
may take judicial notice of "a fact that is not subject to reasonable dispute because

**PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE**

1 it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be  
2 accurately and readily determined from sources whose accuracy cannot reasonably  
3 be questioned.” Federal Rules of Evidence 201(b). To this end, a court may take  
4 judicial notice “of court filings and other matters of public record,” *Reyn’s Pasta*  
5 *Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006), including  
6 “government documents available from reliable sources on the internet,” *California*  
7 *River Watch v. City of Vacaville*, No. 2:17-cv-00524-KJM-KJN, 2017 WL 3840265,  
8 at \*2 n.1 (E.D. Cal. Sept. 1, 2017).

9 Here, the attached exhibit is a public filing and publicly available record,  
10 which is a proper subject of judicial notice.

11  
12 Respectfully submitted,

13 ADVOCATES FOR FAITH &  
14 FREEDOM

15 Dated: September 26, 2023

16 By: /s/Bethany Onishenko  
17 Bethany Onishenko  
18 Attorney for Plaintiffs  
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# EXHIBIT “1”

Date of Hearing: June 8, 2022

ASSEMBLY COMMITTEE ON JUDICIARY

Mark Stone, Chair

SB 107 (Wiener) – As Amended June 1, 2022

**SENATE VOTE:** Not Relevant

**SUBJECT:** GENDER-AFFIRMING HEALTH CARE

**KEY ISSUE:** SHOULD CALIFORNIA ADOPT POLICIES THAT WOULD PROTECT TRANSGENDER YOUTH AND THEIR FAMILIES FROM OUT-OF-STATE LAWS THAT PROHIBIT GENDER-AFFIRMING HEALTHCARE AND SEEK TO CLASSIFY SUCH CARE AS CHILD ABUSE?

**SYNOPSIS**

*In recent months, a series of regressive transphobic laws and executive orders have been adopted in other states that target transgender youth, their parents, and their medical providers. This ambitious and sweeping measure seeks to enact several reforms to California law in an attempt to provide legal safeguards to these youths and their families. This bill enacts new prohibitions against the sharing of medical records regarding the receipt of gender-affirming care; prohibits the enforcement of out-of-state subpoenas seeking information regarding the receipt of gender-affirming medical care in California; revises the Uniform Child Custody Jurisdiction and Enforcement Act to provide California courts jurisdictional guidance on family law matters arising as a result of a minor receiving gender-affirming care; and makes several reforms to California's criminal laws regarding the enforcement of out-of-state criminal statutes related to gender-affirming health care. Although many of the reforms proposed by this bill are well within the authority of this state and are rooted in California's constitutional guarantee to the right of privacy, several provisions raise meaningful concerns in regards to their interaction with the United States Constitution, which are discussed in the analysis.*

*This bill is co-sponsored by Equality California and Planned Parenthood and is supported by a coalition of youth advocates, local governments, reproductive freedom advocates, and two state constitutional officers. Constitutional implementation issues aside, the supporters of this bill highlight the draconian and uncaring nature of the anti-transgender laws being passed in other states, and California's historic role as a national leader on LGBTQ issues. The proponents of this bill argue that transgender youth and their families that seek medical care in California should have their medical privacy rights protected and not be subjected to penalties for receiving care that is fully legal in this state. This bill is opposed by a coalition of primarily out-of-state anti-transgender organizations who argue that gender-affirming healthcare poses risks; and that this bill would make California complicit in violations of the laws of other states. Should this bill be approved by this Committee, it will be heard by the Assembly Committee on Public Safety, which will evaluate the Penal Code provisions of this measure in greater detail.*

**SUMMARY:** Enacts various safeguards against the enforcement of out-of-state anti-transgender laws to protect individuals seeking and providing gender affirming care in California. Specifically, **this bill:**

- 1) Defines “gender-affirming health care” to mean medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, the following:
  - a) Interventions to suppress the development of endogenous secondary sex characteristics;
  - b) Interventions to align the patient’s appearance or physical body with the patient’s gender identity; and
  - c) Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria, as defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition.
- 2) Prohibits a provider of health care, health care service plan, or contractor from releasing medical information related to a person or entity allowing a child to receive gender-affirming care in response to any civil action, including a foreign subpoena, based on another state’s law that authorizes a person to bring a civil action against a person or entity that allows a child to receive gender-affirming health care.
- 3) Prohibits a provider of health care, health care service plan, or contractor from releasing medical information to persons or entities who have requested that information and who are authorized by law to receive that information if the information is related to a person or entity allowing a child to receive gender-affirming care, and the information is being requested pursuant to another state’s law that authorizes a person to bring a civil action against a person or entity who allows a child to receive gender-affirming health care.
- 4) Prohibits the issuance of a subpoena by a California court, if such a request is based on a foreign subpoena that would require disclosure of medical information related to sensitive services or is based on a violation of another state’s laws that interfere with a person’s right to allow a child to receive gender-affirming health care.
- 5) Prohibits an authorized attorney, as specified, from issuing a subpoena if such a request is based on a foreign subpoena that would require disclosure of medical information related to sensitive services or is based on a violation of another state’s laws that interfere with a person’s right to allow a child to receive gender-affirming health care.
- 6) Provides that a family court of this state has jurisdiction to make an initial child custody determination if the presence of a child in this state is for the purpose of obtaining gender-affirming health care or gender-affirming mental health care.
- 7) Provides that a family court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse, or because the child has been unable to obtain gender-affirming health care or gender-affirming mental health care.
- 8) Provides that in a case where the provision of gender-affirming health care or gender-affirming mental health care to the child is at issue, a court of this state cannot determine that it is an inconvenient forum where the law or policy of the other state that may take

jurisdiction limits the ability of a parent to obtain gender-affirming health care or gender-affirming mental health care for their child.

- 9) Provides that, in making a determination regarding the jurisdiction of the family court, the court cannot consider as a factor weighing against the petitioner any taking of the child, or retention of the child after a visit or other temporary relinquishment of physical custody, from the person who has legal custody, if there is evidence that the taking or retention of the child was a result of domestic violence against the petitioner or for the purposes of obtaining gender-affirming health care or gender-affirming mental health care.
- 10) Prohibits the application of a law of another state that authorizes a state agency to remove a child from their parent or guardian based on the parent or guardian allowing their child to receive gender-affirming health care from being enforced or applied in a case pending in a court in this state.
- 11) Prohibits California law enforcement agencies from making or intentionally participating in the arrest of an individual pursuant to an out-of-state arrest warrant for violation of another state's law against receiving or allowing a child to receive gender-affirming health care.
- 12) Prohibits a provider of health care, a health care service plan, or a contractor of such entities from releasing medical information related to a person or entity allowing a child to receive gender-affirming care in response to any foreign subpoena that is based on a violation of another state's laws authorizing a criminal action against a person or entity that allows a child to receive gender-affirming health care.
- 13) Adopts a severability clause.

**EXISTING LAW:**

- 1) Provides, under the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const. art. I, sec. 1.)
- 2) Provides that all persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. (Civil Code Section 51 (b).)
- 3) Defines for the purposes of 2) sex to include, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth and that "Sex" also includes, but is not limited to, a person's gender which means sex, and includes a person's gender identity and gender expression and that "gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth. (Civil Code Section 51 (e)(5).)
- 4) Establishes the Transgender Wellness and Equity Fund in the State Treasury and tasks the Department of Public Health with using the fund to provide grants to create programs, or fund existing programs, focused on coordinating trans-inclusive health care for individuals

who identify as transgender, gender nonconforming, or intersex. (Health and Safety Code Section 150900.)

- 5) Provides that it is the policy of this state that, among other enumerated rights, all minors and nonminors in foster care are entitled to the following:
  - a) To be involved in the development of their case plan and plan for permanent placement, which includes, but is not limited to the development of case plan elements related to placement and gender affirming health care, with consideration of their gender identity;
  - b) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status;
  - c) To be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court or child welfare records;
  - d) To have caregivers and child welfare personnel who have received instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth in out-of-home care; and
  - e) To receive medical, dental, vision, and mental health services. (Welfare and Institutions Code Section 16001.9 (a).)
- 6) Requires the Department of Social Services, in consultation with the Department of Health Care Services and other stakeholders, to develop guidance and describe best practices to identify, coordinate, and support foster youth seeking access to gender affirming health care and gender affirming mental health care and incorporate current guidance on ensuring access to Medi-Cal services for transgender beneficiaries. (Welfare and Institutions Code Section 16010.2 (b)(2).)
- 7) Defines "gender affirming health care" to mean medically necessary health care that respects the gender identity of the patient, as experienced and defined by the patient, and may include, but is not limited to, the following:
  - a) Interventions to suppress the development of endogenous secondary sex characteristics;
  - b) Interventions to align the patient's appearance or physical body with the patient's gender identity; and
  - c) Interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria, as defined in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition. (Welfare and Institutions Code Section 16010.2 (b)(3)(A).)
- 8) Specifies, under the federal Health Insurance Portability and Accountability Act (HIPAA), privacy protections for patients' protected health information and generally provides that a covered entity, as defined (health plan, health care provider, and health care clearing house), may not use or disclose protected health information except as specified or as authorized by the patient in writing. (45 C.F.R. Sec. 164.500 *et seq.*)

- 9) Prohibits, under the California Medical Information Act, providers of health care, health care service plans, or contractors, as defined, from sharing medical information without the patient's written authorization, subject to certain exceptions. (Civil Code Section 56 *et seq.*)
- 10) Defines "sensitive services" as all health care services related to mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence, and includes services described in specified statutes, including the Reproductive Privacy Act. (Insurance Code Section 791.02.)
- 11) Enumerates, under the Insurance Information and Privacy Protection Act, requirements and steps insurers must take, to protect the confidentiality of an insured's medical information. (Insurance Code Section 791.29 *et seq.*)
- 12) Requires a health insurer to recognize the right of a protected individual to exclusively exercise rights regarding medical information related to sensitive services that the protected individual has received. (Insurance Code Section 791.29 (a)(2).)
- 13) Prohibits a health insurer from disclosing medical information related to sensitive health care services provided to a protected individual to the policyholder or any insureds other than the protected individual receiving care, absent written authorization of the protected individual receiving care. (Insurance Code Section 791.29 (a)(4).)
- 14) Provides that a court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States. (Code of Civil Procedure Section 410.10.)
- 15) Enumerates, under the Interstate and International Depositions and Discovery Act, the procedure for obtaining discovery in California for purposes of a case pending in a jurisdiction outside of California. (Code of Civil Procedure Section 2029.100 *et seq.*)
- 16) Provides that when a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court must stay or dismiss the action in whole or in part on any conditions that may be just. (Code of Civil Procedure Section 410.30.)
- 17) Permits a defendant, on or before the last day of their time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes:
  - a) To quash service of summons on the ground of lack of jurisdiction of the court over them;
  - b) To stay or dismiss the action on the ground of inconvenient forum; or
  - c) To dismiss the action for failure to prosecute the action in a timely manner, as specified. (Code of Civil Procedure Section 418.10.)
- 18) Establishes the Uniform Child Custody Jurisdiction and Enforcement Act and sets forth guidelines for California courts regarding the jurisdiction and disposition of family law and child custody matters involving parties in multiple states. (Family Code Section 3400 *et seq.*)

- 19) Provides that full faith and credit must be given in each state to the public acts, records, and judicial proceedings of every other state, and that the United States Congress may by general laws prescribe the manner in which such acts, records and proceedings must be proved, and the effect thereof. (U.S. Const. art. IV, sec. 1.)
- 20) Provides that records and judicial proceedings of any court of any such state, territory or possession, or copies thereof, must be proved or admitted in other courts within the United States and its territories and possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form, and that such acts, records and judicial proceedings or copies thereof, so authenticated, have the same full faith and credit in every court within the United States and its territories and possessions as they have by law or usage in the courts of such State, territory or possession from which they are taken. (28 U.S.C. Section 1738.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** In recent months, several states have taken action to prohibit transgender youth from accessing gender-affirming medical care. Such gender-affirming care can be essential to a minor's physical and emotional wellbeing. Nonetheless, as a result of these state actions, well-meaning parents of transgender minors in those states now face potential sanctions should they seek to assist their children to receive medical care. This bill seek to provide protections from these out of state laws to parents and children who utilize California-based care providers. In support of this bill, the author states:

SB 107 reduces the harm done to transgender youth and their families by making it clear that other state's laws that punish people for providing or receiving gender-affirming health care is contrary to the public policy of California.

SB 107 would prohibit the enforcement of a civil judgment against a person or entity who allows a child to receive gender-affirming health care. Similarly, this bill would also bar health care providers from complying with subpoenas requiring the disclosure of medical information related to gender-affirming health care that interferes with a person's right to allow a child to receive said care.

Lastly, SB 107 would prohibit law enforcement agencies from making, or intentionally participating in, the arrest of an individual pursuant to an out-of-state arrest warrant based on another state's law against receiving, or allowing a child to receive, gender-affirming health care.

***Recent actions taken in other states that target transgender youth and their families.*** Seeking political gain surrounding so called "culture war" issues, a number of states recently implemented laws or administrative policies aimed at transgender youth. As has been the case regarding several culture war-based ideas in recent years, the State of Texas was the first state to actively target transgender youth and their families. In February 2022, seven days before a contentious primary election, Texas Governor Greg Abbott ordered state child welfare officials to launch child abuse investigations into reports of transgender kids receiving gender-affirming care. (Dey & Harper, *Transgender Texas kids are terrified after governor orders that parents be investigated for child abuse*, The Texas Tribune (Feb. 28, 2022) available at: <https://www.texastribune.org/2022/02/28/texas-transgender-child-abuse/>.) The impacts of

Governor Abbott's order were immediate as one Dallas-area program assisting transgender youth formally stopped offering services shortly after the order. (*Ibid.*)

A month later, following Texas' example, Alabama Governor Kay Ivey signed several anti-transgender youth bills into law, including one that subjected doctors to ten years in prison for providing gender-affirming health care. (AL SB 184 (Shelnutt) Assigned Act No. 2022-289.) When signing the bill, Governor Ivey noted, "There are very real challenges facing our young people, especially with today's societal pressures and modern culture... I believe very strongly that if the Good Lord made you a boy, you are a boy, and if he made you a girl, you are a girl." (Lyman, *Gov. Kay Ivey signs bills targeting transgender youth in Alabama*, Montgomery Advisor (Apr. 8, 2022) available at:

<https://www.montgomeryadvertiser.com/story/news/2022/04/08/gov-kay-ivey-signs-bills-targeting-alabama-transgender-youth/9516134002/>.) Beyond Alabama and Texas, as of the date of the publication of this analysis, several other states, including Ohio, Kansas, Missouri, and Iowa, have bills pending before their legislatures targeting gender-affirming care for transgender youth. (<https://freedomforallamericans.org/legislative-tracker/anti-transgender-legislation/>.)

***This bill.*** Seeking to provide protection for transgender youth and their families who seek medical care in California from regressive out of state laws that target gender-affirming care for minors, this bill makes several modifications to California law. First, this bill prohibits health care providers and insurers from providing sensitive health records to persons seeking those records in response to out-of-state laws authorizing legal action against those receiving, or assisting a person in receiving, gender-affirming care. Second, this bill limits the ability of California courts to enforce subpoenas issued from out-of-state courts that seek medical records related to gender-affirming health care. This bill also modifies that provisions of the Family Code that codify the Uniform Child-Custody Jurisdiction and Enforcement Act to ensure that California courts can protect children and families from attempts by other states to enforce child abuse laws against families that simply come to California to receive gender-affirming care. Finally, this bill amends several sections of the Penal Code to ensure that California law enforcement are not forced to carry out other state's laws that criminalize the receipt, or provision of, gender-affirming health care. Given that this bill is also referred to the Assembly Committee on Public Safety, the remainder of this analysis will focus of the non-criminal and non-law enforcement aspects of this bill.

***The legal history of the Full Faith and Credit Clause of the United States Constitution.*** Article IV, Section 1 of the United States Constitution, generally referred to as the Full Faith and Credit Clause, requires every state to give full faith and credit to the public acts (statutes), records, and judicial proceedings of every other state. By refusing to recognize the law and judgments of another state, this bill potentially implicates the Full Faith and Credit Clause.

Several legal scholars have suggested that the Full Faith and Credit Clause was originally intended to ensure that statutes, records, and judgments from one state were merely accepted as in the proceedings of another state as evidence of the proof of their existence, especially in light of how the phrase was used in English common law. (Whitten, *Full Faith and Credit for Dummies* (2005) 38 Creighton L. Rev. 465.) However, in 1813, Justice Story had other ideas and opted to significantly strengthen the effect of the clause and the corresponding Congressional implementing statute. In ruling that the Circuit Court for the District of Columbia incorrectly refused to recognize a judgment debt from the State of New York, the Supreme Court ruled that, "[A] record duly authenticated shall have such faith and credit as it taken. If in such court it has

the faith and credit of evidence of the highest nature...it must have the same faith and credit in every other court,” and that “the constitution contemplated a power in Congress to give conclusive effect to such judgments.” (*Mills v. Duryee* (1813) 7 Cranch 481, 484-485.)

Despite the seemingly bright line put forward by Justice Story, in the 200 years since the *Mills* decision, three distinct tracks have developed in the jurisprudence of the Full Faith and Credit Clause. To this day, the strict application of res judicata generally applies to *determinative judicial proceedings*. As the Supreme Court reiterated, “for claim and issue preclusion purposes...the judgement of the rendering state gains nationwide force.” (*Baker v. General Motors Corp.* (1998) 522 U.S. 222, 233.)

However, the law has moved well away from the strict rule when it comes to *public acts or statutes*. In upholding the application of California law to settle a dispute of conflicting workers compensation statutes, the Supreme Court ruled, “A rigid and literal enforcement of the Full Faith and Credit Clause, without regard to the statute of the forum, would lead to the absurd result that wherever a conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own.” (*Alaska Packers Association v. Industrial Accident Commission* (1935) 294 U.S. 532, 547.) Thus, the law now acknowledges a preference to uphold the public policy of the forum state when a conflict of laws arises, recognizing that, “the Full Faith and Credit Clause is not an inexorable and unqualified command. It leaves some scope for state control within its borders...” (*Pink v. AAA Highway Express, Inc.* (1941) 314 U.S. 201,210.).

The Supreme Court has also begun to move away from the strict ruling of *Mills* as it pertains to *state records*. In determining the applicability of an equity decree in Michigan that prevented a former General Motors employee from testifying against the company, to a subpoena for testimony issues in Missouri, the Supreme Court held, “we simply recognize that just as the mechanisms for enforcing a judgment do not travel with the judgment itself for the purposes of Full Faith and Credit ... similarly the Michigan decree cannot determine the evidentiary issues in a lawsuit brought by parties who were not subject to the jurisdiction of the Michigan court.” (*Baker v. General Motors, supra*, 522 U.S. 222 at p. 239.) The handling of records has been further expanded by appellate courts in a manner that mixes the approach to judgments and public policy. In 2011, the Fifth Circuit upheld the Louisiana Department of Vital Records and Statistics refusal to amend the Louisiana birth certificate of a child who was legally adopted by a non-married gay couple in New York on the grounds that it violated Louisiana’s public policy. Building upon the notion that the manner of a judgment’s enforcement does not travel with the judgment, the court held, “obtaining a birth certificate falls in the heartland of enforcement, and therefore outside the Full Faith and Credit obligation of recognition.” (*Adar v. Smith* (5th Cir. 2011) 639 F.3d 146,160.) It should be noted that the Supreme Court appears to endorse this view at it denied certiorari in the *Adar* case.

Thus, when looking at the case law as a whole, legal scholars are beginning to argue that the Full Faith and Credit Clause applies differently to each aspect of the Clause. The jurisprudence would seem to indicate that public acts are subject to the public policy exemption, permitting states to generally apply local laws to cases in their jurisdiction; records are subject to recognition, but not clear enforcement; and judicial proceedings generally are required to be enforced. (Redpath, *Between Judgment and Law: Full Faith and Credit, Public Policy, and State Records* (2013) 62 Emory L.J. 639.)

***The Full Faith and Credit Clause and the validity of blocking subpoenas issued by foreign jurisdictions.*** This bill proposes to limit the ability of California courts to enforce subpoenas issued by out-of-state courts, seeking information about gender-affirming medical care. Because these subpoenas are judicial actions, such a limit likely implicates the provisions of the Full Faith and Credit Clause, most notably the provisions related to out-of-state judgments. As it pertains to judicial proceedings, dating back to 1813, the United States Supreme Court has generally held that one state must recognize and enforce the judicial determinations of another state. (*Mills v. Duryee* (1813) 7 Cranch 481, 484-485.) However, the United State Supreme Court has surmised that states are not necessarily required to enforce civil judgments rendered based on another state’s civil statute if the judgment is aimed at punishing a person for an offense against the “public justice” of that state. (*Huntington v Attrill* (1892) 146 U.S. 657, 673-674.) In other words, if another state’s civil laws are essentially criminal laws in disguise, or penal laws, the Supreme Court has suggested that if a civil statute was “intended as a punishment for doing any acts forbidden,” then another state may have the ability to refuse to enforce the judgment. (*Id.* at 664.) Although the Supreme Court has never deemed a state law to be a “penal statute” the Huntington decision was just the first of a series of cases in which the court did examine whether or not a statute was aimed at civilly punishing a party for violating the “public justice.” (See *Milwaukee County v. M. E. White Company* (1935) 296 U.S. 268.)

Unlike some of the restrictions on abortion access that have been enacted alongside the anti-transgender youth laws, the anti-transgender laws directly provide state officials with the authority to act. For example, the Texas child abuse order is designed to be carried out by that state’s child welfare officials. Because those laws do not deputize private individuals to enforce the “public justice,” it is unlikely that the “penal exemption” to the Full Faith and Credit Clause would permit California to outright ignore the judicial decisions of another state’s courts. Accordingly, the author may wish to consider amending the subpoena provisions of this bill to be limited to blocking subpoenas originating from foreign penal civil actions only. This is the approach this Committee adopted when approving AB 2091 (M. Bonta, 2022), related to abortion care, earlier this year. However, this approach may not be sufficient to protect transgender youth, their families, and their medical providers from the reach of out of state criminal laws or civil licensing laws. Accordingly, at this time, the Committee does not feel compelled to revise the existing proposal. *Nonetheless, as this bill advances the author and proponents of this measure may wish to consider a different approach to negating the worst impacts of out-of-state subpoenas.*

***This bill’s prohibition on private entities disclosing medical records is an appropriate use of legislative authority.*** In addition to restricting the ability for California courts to enforce subpoenas from out-of-state, this bill also seeks to prevent the medical records of transgender youth from being disclosed by healthcare providers and insurers in California. Existing California law, in conjunction with federal law, already significantly limits the ability for a healthcare provider or insurer to disclose sensitive medical information to third parties. Typically, medical records can only be disclosed pursuant to a court order or in furtherance of a legal or administrative investigation.

To ensure that out-of-state regulators cannot bully California insurers or healthcare providers into disclosing medical information regarding the provision of gender-affirming healthcare services, this bill explicitly prohibits such disclosures. The legal authority for this provision, like the existing laws regarding medical privacy, is rooted in the California Constitution’s guarantee

of the right to pursue and obtain privacy in one's personal affairs. Accordingly, these provisions should withstand legal review given the long-standing privacy rights afforded to Californians.

***This bill rightfully seeks to prevent California's family courts from being used as a tool to enforce other states anti-transgender laws to harm transgender youth.*** In addition to seeking to prevent California courts and healthcare providers from being utilized to obtain information regarding the provision of gender-affirming medical care in California, this bill also seeks to provide transgender youth and their families a refuge from the states passing these draconian laws. This bill would amend several provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act (Act) to grant California courts greater authority to protect transgender youth and their families. The Act's roots date back to 1968, although major updates were made in the late 1990s. (Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, Juvenile Justice Bulletin- The Uniform Child-Custody Jurisdiction and Enforcement Act (Dec. 2001).) The Act is generally designed to provide uniform rules for handling family law matters between states to ensure that parents involved in custody disputes cannot game one state against another in order to keep custody of a minor child. Generally, the Act seeks to ensure that the courts of the child's home state retain jurisdiction over family law matters, even if the child is moved to another state. However, certain exceptions apply, especially in cases of emergencies or when alleged abuse is involved.

This bill would expand upon the emergency provisions in California's codification of the Act to add cases in which a child is in California to obtain, or having previously obtained, gender-affirming healthcare to the list of instances in which California courts may retain jurisdiction over a family law matter. The bill then clarifies the provisions of the Act, as applied in California, to direct California courts to not apply the anti-transgender laws of other jurisdictions and instead apply California's more protective statutes. Unlike the provisions of this bill regarding subpoenas, this aspect of the bill is simply the Legislature determining which state's laws California courts should apply in family law matters involving gender-affirming care. As noted in the above discussion of the Full Faith and Credit Clause, such a choice of law decision is wholly within the authority of the Legislature. (*Alaska Packers Association v. Industrial Accident Commission*, *supra*, 294 U.S. 532.)

***Although the opposition correctly notes that gender-affirming healthcare is not without medical risks, such care does not rise to the level of child abuse and protects a youth's mental health.*** Several out-of-state organizations, including one that argues that "transgenderism" is in breach of article 5 of the United Nations Convention on eliminating discrimination against women and girls, have written in opposition to this measure, contending that gender-affirming healthcare is dangerous and may pose lifelong physical consequences. One of these organizations, International Partners for Ethical Care, even suggested that the Committee examine the YouTube and Reddit archives for testimonials about negative experiences with gender-affirming care, despite the fact that neither of these social media sites requires any fact checking or peer review of the information posted on the platforms.

This bill was not referred to the Assembly Committee on Health, which has significantly greater expertise in evaluating the merits of these claims than this Committee. Nonetheless, while there is little doubt that receiving gender-affirming healthcare is not without risk, very few if any medical procedures are without risk. Furthermore, the opposition fails to make a coherent argument that such care is tantamount to child abuse. In fact, the very nature of the care this bill seeks to protect--care that is administered after a patient provides informed consent, is

administered with parental consent, and is administered under the supervision of a trained medical professional—is designed to be support the health, mental health, and safety of trans youth. Indeed such involved care is typical of many health conditions facing minors, from asthma to sports injuries to childhood cancers. This Committee could find no legitimate scientific research describing gender-affirming care as child abuse as other states have sought to classify such treatment.

At the same time, providing appropriate medical and mental health care to transgender youth is critically important, given that, according to the American Academy of Pediatrics (AAP), “Adolescents and adults who identify as transgender have high rates of depression, anxiety, eating disorders, self-harm, and suicide.” (Jason Rafferty, COMMITTEE ON PSYCHOSOCIAL ASPECTS OF CHILD AND FAMILY HEALTH, COMMITTEE ON ADOLESCENCE, SECTION ON LESBIAN, GAY, BISEXUAL, AND TRANSGENDER HEALTH AND WELLNESS; Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents. *Pediatrics* October 2018; 142 (4): e20182162. 10.1542/peds.2018-2162, available at <https://doi.org/10.1542/peds.2018-2162>.) Gender-affirming care, on the other hand, offers many positive benefits to these youth, according to AAP:

Supportive involvement of parents and family is associated with better mental and physical health outcomes. Gender affirmation among adolescents with gender dysphoria often reduces the emphasis on gender in their lives, allowing them to attend to other developmental tasks, such as academic success, relationship building, and future-oriented planning. (*Ibid.*)

Therefore, the AAP has adopted a policy that directly conflicts with the basis for anti-transgender laws, such as those discussed above, finding, “Any discrimination based on gender identity or expression, real or perceived, is damaging to the socioemotional health of children, families, and society.” (*Ibid.*) Among other things, the AAP recommends, “that youth who identify as TGD [transgender and gender diverse] have access to comprehensive, gender-affirming, and developmentally appropriate health care that is provided in a safe and inclusive clinical space.” (*Ibid.*) This bill would align California law with the AAP’s policy statements about the benefit of offering gender-affirming medical care to transgender youth. Accordingly, it would appear to be well within the authority of this state to seek to protect transgender youth and the parents who love and support them from draconian out-of-state laws.

**ARGUMENTS IN SUPPORT:** This measure is co-sponsored by Equality California and Planned Parenthood and is supported by youth advocacy organizations, several local governments, and two state constitutional offices including the Lieutenant Governor. In support of this bill, Equality California notes:

Despite longstanding evidence demonstrating how anti-LGBTQ+ legislation inflicts measurable harm on the health and well-being of the LGBTQ+ community, hundreds of anti-LGBTQ+ bills have been proposed nationally in 2022, and roughly half of those bills target the transgender community. One proposal alleged that gender-affirming care for transgender youth constitutes child abuse and should be grounds to remove children from the parents who support and affirm them. Other states are attempting to classify the provision of gender-affirming health care as a crime warranting prison time and are threatening parents with criminal penalties if they attempt to travel to another state in order to secure life-saving gender-affirming care for their child. While attacks on the transgender community are not new, we are experiencing alarmingly blatant attempts to use legislation, policy, and political

rhetoric to restrict or eliminate the autonomy, freedom, and existence of transgender people across the country.

While anti-LGBTQ+ legislation inflicts measurable harm on our communities, it is important to remember that the reverse is also true – pro-equality policies are a boon to LGBTQ+ youth, who attempt suicide less often when they have access to LGBTQ+ and gender-affirming spaces at home, at school, with friends and family, and in their broader communities.<sup>6</sup> SB 107 will move the needle toward a California that is healthy, just, and fully equal for all LGBTQ+ people and for transgender youth in particular.

Additionally the California Coalition for Youth writes:

Research by Chapin Hall through the Voices of Youth Count found that LGBTQ youth had over twice the rate of early death among youth experiencing homelessness and more than double the risk of homelessness compared to non-LGBTQ peers. Further, transgender youth often face unique and more severe types of discrimination and trauma. The current attacks on our LGBTQ youth, and in particular transgender youth, is alarming to the California Coalition for Youth and our agency members and we support efforts such as SB 107 to ensure that young people can receive the gender affirming care and support that they need and deserve. California has always been a leader on civil rights issues, and we are supportive of the bill's statutory provisions to limit law enforcements participation in the arrest of an individual pursuant to an out-of-state arrest warrant for violation of another state's law against receiving or allowing a child to receive gender-affirming health care.

***ARGUMENTS IN OPPOSITION:*** This bill is opposed by several out-of-state anti-transgender organizations as well as the California Family Council. As the only wholly California-based opponent to this bill, the California Family Council writes:

Despite what the bill author says, there is no universal agreement within the medical community regarding the best way to provide healthcare to transgender-identified individuals. The governments and medical institutions of the United Kingdom, Sweden, and Finland have rejected prioritizing “gender-affirming” treatment in favor of an emphasis on mental health.

The vast majority of minors with gender dysphoria desist by adulthood if they are not transitioned and given puberty blockers and cross-sex hormones. Because of this, many doctors and medical professionals refuse to provide transitioning drugs and surgeries, especially on minors, knowing the long-term side effects and the lack of hard scientific evidence regarding the efficacy of “gender-affirming” treatments.

Additionally, as it relates to persons supposedly having regrets over receiving gender-affirming care, International Partners for Ethical Care argues:

Puberty is not a disease. Parents are legitimately concerned with the increase in children seeking and receiving “gender affirming care” with little to no mental health assessments. The increase of kids seeking treatment is 5000% over the past decade, and the number of pediatric gender clinics increased from 6 to over 200 during that time in the United States alone.

Regret and detransition is real. No, it's not 1% regret rate. Search detransitioners on YouTube to hear their stories. Search Reddit to see the almost 30,000 detransitioners. Listen to the young adults who fell prey to the affirmative model. "Gender affirming care" is simply gay conversion therapy at best, and eugenics, at worst.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Equality California (co-sponsor)  
Planned Parenthood Affiliates of California (co-sponsor)  
California Coalition for Youth  
California Department of Insurance  
City of Encinitas  
City of Long Beach  
Naral Pro-Choice California  
National Association of Social Workers, California Chapter  
Office of Lieutenant Governor Eleni Kounalakis

**Opposition**

California Family Council  
Family Watch International  
Our Duty  
Partners for Ethical Care  
Women's Declaration International

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