
Nos. 23-16026 & No. 23-16030 consolidated
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HELEN DOE, parent and next friend of Jane Doe; et al.,

Plaintiffs-Appellees,

v.

THOMAS C. HORNE, in his official capacity as
State Superintendent of Public Instruction; et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Arizona

APPELLANT HORNE'S MOTION FOR JUDICIAL NOTICE

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Pursuant to Federal Rule of Civil Appellate Procedure (“FRAP”) 27 and Ninth Circuit Advisory Committee Note to Rule 27-1, Defendant-Appellant Thomas C. Horne (“Horne”), in his capacity as State Superintendent of Public Instruction, respectfully requests the Court to take judicial notice that on March 12, 2024 England’s National Health Service (“NHS”) reversed course and banned the use by government of puberty suppressing hormones (“PSH”) for children and young people as treatment for gender dysphoria because they are unsafe and ineffective.¹

During Horne’s March 14, 2024 oral argument regarding the issuance of a preliminary injunction in favor of Plaintiffs, counsel informed the Court that NHS had—just two days earlier—issued the following directive (the “NHS Policy Change”):

Commissioning Position: Puberty suppressing hormones (PSH) are not available as a routine commissioning treatment of children and young people who have gender incongruence / gender dysphoria.

Exhibit A (Clinical Policy, Puberty suppressing hormones (PSH) for children and young people who have gender incongruency / gender dysphoria) at first page.

The NHS policy change followed an extensive review of all the available published medical and scientific evidence:

What we have decided: NHS England has carefully considered the evidence review conducted by NIC (2020) and has identified and reviewed any further published evidence available to date. We have

¹ At oral argument, Horne’s counsel requested the Court to take judicial notice of the NHS Policy Change and the Court instructed counsel to file a motion in support.

concluded that **there is not enough evidence to support the safety or clinical effectiveness of PSH to make the treatment routinely available at this time.**

Exhibit A at second and third pages (emphasis added). Among other findings and directly relevant to the instant proceedings, NHS found that the use of a particular PSH known as Gonadotrophin Releasing Hormone Analogues (“GnRHa”) does not reduce lumbar or femoral bone density. *See NHS Clinical Priorities Advisory Group*, dated March 6, 2024, attached hereto as **Exhibit B**.

Horne respectfully requests that the Court take judicial notice of the fact that the NHS changed its policy regarding providing PSH to children and young people with gender dysphoria by deciding that “there is not enough evidence to support the safety or clinical effectiveness of PSH to make the treatment routinely available at this time.” Exhibit A at third page. In addition, Horne requests that the Court take judicial notice that the NHS has also determined that GnRHa does not reduce bone density, which further substantiates the extensive expert reports Horne (and the Legislative Leaders) presented showing that puberty blockers do not level the playing field in girls’ sports.

Rule 201(b) of the Federal Rules of Evidence provides that the Court may take judicial notice of “a fact that is not subject to reasonable dispute because it ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” The Court “may take judicial notice of ‘matters of public

record’.” *Lee v. City of Los Angeles*, 250 F.3d 668, 689-90 (9th Cir. 2001). The fact of the NHS Policy Change is a matter of public record because it is recorded in formal documents of the English government and is readily verifiable by reference to the NHS’s website (from which the attached documents were obtained)² and numerous media reports about the NHS Policy Change. Because the documents reference each other, and in the interest of completeness, Superintendent Horne has attached each document released by the NHS on March 12, 2024 in connection with the NHS Policy Change. *See Exhibits A – J.*

This Court routinely takes judicial notice of public declarations of government agencies, including in the health care context. *See Lotus Vaping Technologies, LLC v. U.S. Food & Drug Administration*, 73 F.4th 657 (9th Cir. 2023) (granting a motion for judicial notice of FDA deficiency letters, internal memoranda and press release relating to the health risks associated with e-cigarettes); *Bayview Hunters Point Community Advocates v. Metropolitan Transp. Com'n*, 366 F.3d 692, 702 n.5 (9th Cir. 2004) (granting motion for judicial notice of EPA proposed rule). Courts will also take judicial notice of documents readily available on government websites. Courts have often admitted records taken from websites maintained by government agencies. *See, e.g., L'Garde, Inc. v. Raytheon Space & Airborne Sys.*, 805 F.Supp.2d

² <https://www.england.nhs.uk/publication/clinical-policy-puberty-suppressing-hormones/>

932, 937-38 (C.D. Cal. 2011) (taking judicial notice of information on the secretary of state website); (*quoting United States ex rel. Dingle v. BioPort Corp.*, 270 F.Supp.2d 968, 972 (W.D. Mich. 2003) (noting that public records on a government website are generally not in dispute).

That the NHS has determined that it will no longer allow puberty blockers for gender dysphoria for young people because they are unreliable and unsafe is not in dispute. Similarly, the NHS's conclusion that bone density is not reduced by puberty blockers is not in dispute. As regards this lawsuit, the fact that the NHS is now precluding the use of PSHs as a treatment for children and young people further supports the reliability of the expert testimony presented in opposition to the preliminary injunction. It further underscores the reasonableness of Arizona's enactment of the Save Women's Sports Act to maintain the level playing field of Title IX and protect the health and safety of Arizona children. The NHS Policy Change shows the danger of allowing the preliminary injunction to stand as it merely incentivizes Arizona student athletes to take unproven, unreliable and potentially dangerous puberty blockers that are not scientifically proven to achieve the purported goal of leveling athletic performance.

RESPECTFULLY SUBMITTED this 4th day of April, 2024.

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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 Ninth Circuit using the appellate CM/ECF system on April 4, 2024.

In addition, a courtesy copy of the foregoing has been provided via email to the following counsel for Plaintiffs and other real parties in interest:

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