

Legislative Testimony

In Opposition of HB 2792

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. Hiegert, 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 2792 and urges you to not vote this bill out of committee. Not only does HB 2792 violate the state and federal constitutional rights of Kansas children and their parents, but it imposes a single guideline upon *all types* of licensed medical professionals providing “transgender care services” to *any* transgender person in Kansas—whether a minor or not.

HB 2792 bans transgender youth from receiving various types of gender-affirming surgeries by threatening physicians who may provide such care with licensure revocation or penalties. Notably, the bill does not ban the same types of surgeries for cisgender or intersex minors—it singles out transgender minors for different treatment. The bill goes on to mandate that every healthcare provider who provides “transgender care services”—from therapists to physicians—must do so in accordance with the guidance outlined in the Endocrine Society’s 2017 clinical practice guidelines.

This is extremely concerning for a myriad of reasons. Namely, it is beyond government overreach for legislators to select and codify medical guidelines into law—as the medical field requires specific knowledge and expertise, and clinical practice standards vary greatly across each of these fields of practice (from therapists to psychiatrists to pediatric doctors to OBGYNs to endocrinologists). We cannot expect legislators to understand these medical intricacies enough to uniformly dictate how *all* medical professionals should provide “transgender care services”—nor should we. This issue should be left to the medical professionals themselves, who have the skills and training to understand the accepted practice guidelines and standards of care in their chosen field, and who are able to mold their practices to comport with those evolving guidelines and standards.

Instead of entrusting Kansas medical professionals to do their jobs in accordance with best practice medical standards, HB 2792 selects one specific set of practice guidelines and forces all healthcare providers to comply with them. We want to make clear—we support ensuring that gender-affirming care, like all healthcare, is provided consistent with contemporary medical guidelines. But we do not support a legislative mandate specifying a certain standard fixed in time across every medical field.

Codifying such specific guidelines into law is unnecessarily restrictive—as the guidelines may grow outdated or change, requiring legislation to update them and bringing continual disruptions to healthcare providers who offer this care. For example, clinical guidelines are often updated or amended, as the 2017

www.aclukansas.org

913-490-4100

Post Office Box 13048

Overland Park, KS 66282

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clinical guidelines included in HB 2792 were on two separate occasions.¹ Codifying practice guidelines into law hinders the ability of medical professionals to advance treatment consistent with science and stay up to date on best practices as they develop and change in their field. By codifying specific fixed guidelines, providers risk liability for either providing care that is inconsistent with state law *or* inconsistent with the current standards of care owed to their patients.

This bill strips families of their ability to make informed healthcare decisions for their children and forces Kansas healthcare professionals to comply with a single guideline that may not be written for their field of practice or may contradict their field's ethical requirements. The American Medical Association has called legislation similar to HB 2792 “**a dangerous governmental intrusion into the practice of medicine.**”²

In addition to opposition from leaders in the medical community, courts across the country have recognized that bills like HB 2792 violate the equal protection and due process rights of adolescents, their parents, and their medical providers. The Eighth Circuit and trial courts in Indiana, Montana, Texas, and Florida have all stopped similar laws from taking effect because of these asserted constitutional issues.³ HB 2792 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 2792 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.

We urge you not to support this unconstitutional bill that will likely create more costly litigation for the state and its already understaffed⁴ 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**

¹ See, e.g., <https://academic.oup.com/jcem/article/102/11/3869/4157558?login=false> (noting corrections were published in July 2018 and February 2018).

² *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>

³ 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).

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said “includes the ability to control one’s own body, to assert bodily integrity, and to exercise self-determination.”⁵

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 2792 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 2792 does is harm Kansas families and violate Kansans’ constitutional rights.

HB 2792 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. Accessing gender-affirming care 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 care 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 2792 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 2792.

Thank you.

D.C. Hiegert (they/he)
LGBTQ+ Legal Fellow

⁵ See, *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 646 (2019).