Kansas House Bill 2071
House Committee on Health and Human Services

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Alliance Defending Freedom is the nation's leading nonprofit legal organization that advocates for religious liberty, free speech, life, and marriage and the family. We regularly analyze proposed laws and their effect on constitutional freedoms. ADF currently serves as co-counsel with the State of Alabama defending its law that protects children from dangerous puberty blockers, cross-sex hormones, and sterilizing surgeries.

Children who experience discomfort with their biological sex deserve to be treated with dignity and respect, and they need access to compassionate, effective mental health care. But activists and profit-driven gender clinics have deceived children and parents alike into believing that unnatural, life-altering, and even permanently sterilizing puberty blockers, hormones, and surgeries are the solution to their struggle.

HB 2071 would protect children and parents by giving them legal recourse when a child is harmed by experimental "gender transition" drugs and surgeries.

We must be clear: the experimental gender-transition procedures—including puberty blockers and hormones—pushed on our children are often irreversible. They prevent healthy puberty, radically alter the child's hormonal balance, interfere with a child's mental and emotional development, and may even remove healthy body parts.

Such drugs and surgeries are not only dangerous, but they are also experimental and unproven. In fact, multiple long-term studies show that when young children who experience gender dysphoria are allowed to mature naturally, most of them—over 90 percent according to some sources—grow out of their dysphoria.

And there is a growing movement of "detransitioners" who have come to realize—after undergoing puberty blockers, hormone treatments, and more—that they were lied to and that their medical gender transition was a devastating mistake. Many are now bravely speaking out about the damage caused by being rushed into these drugs and surgeries without understanding the consequences.

Our laws have long protected children from things that society has determined are harmful or that a child lacks the maturity and experience to handle. If a child lacks the maturity to sign a contract, vote, purchase alcohol or tobacco, or even get a tattoo, how can they be mature enough to consent to experimental, irreversible medical procedures that can lead to permanent sterilization?

States have a "compelling interest in protecting the physical and psychological wellbeing of minors."[1] As a result, Kansas "may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences."[2]

Human experience has repeatedly proven that "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them."[3]

Kansas further has the authority to regulate the medical field, authority that is even stronger "in areas where there is medical and scientific uncertainty."[4] As the U.S. Supreme Court recently explained, "health and welfare laws" are "entitled to a strong presumption of validity" and will be upheld so long as the legislature simply has a rational basis—like protecting children from damaging, sterilizing medical procedures.[5]

When regulating experimental gender transition procedures—where the science is rapidly shifting as more and more countries are reversing course and advising against the efficacy and ethics of these treatments—the Kansas legislature has broad discretion as it examines the best available evidence and sets policy to protect the health and safety of children.

Many organizations have systematically reviewed the available evidence supporting the use of hormonal intervention to treat gender-dysphoric children and concluded it has very low quality. Last year, the Cass Review, which was commissioned by England's National Health Service, issued its final report where it systematically reviewed all of the evidence about gender transition procedures for children, and concluded that it was based on poor research.[6] As a result, England's National Health Service, along with health authorities in Sweden and Finland, have stopped using puberty blockers and hormones to treat gender-dysphoric youth outside of controlled research setting.

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[1] *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989).
[2] *Bellotti v. Baird*, 443 U.S. 622, 635 (1979).
[3] *Id*.
[4] *Gonzales v. Carhart*, 550 U.S. 124, 157, 163 (2007) (recognizing that states have "a significant role to play in regulating the medical profession").
[5] *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022).
[6] Cass, H. (2024). *Independent review of gender identity services for children and young people: Final report*. https://cass.independent-review.uk/home/publications/final-report/.

These are the same countries that pioneered these experimental procedures. Yet they are finding that these drugs and surgeries are not helping kids. They hurt them. And that is why we must learn from their mistakes, NOT repeat them.

Based on this evidence, 26 states have enacted laws that protect children from puberty blockers, cross-sex hormones, or sterilizing, experimental "gender transition" surgeries. Instead, they are prioritizing counseling and therapy for children expressing distress over their biological sex. Such counseling is fully permitted under this bill and avoids the dangerous risk of drugs and surgeries.

And these laws are being upheld and allowed to go into effect by federal courts. The U.S. Court of Appeals for the 6th Circuit reversed an injunction against Tennessee's and Kentucky's laws, allowing them to take effect.

The court held that nothing in the U.S. Constitution prevents states from passing laws that protect children from gender transition procedures. The court recognized that "[t]here is a long tradition of permitting state governments to regulate medical treatments for adults and children" and that "[s]tates may regulate or ban medical technologies they deem unsafe."[7] Both Kentucky and Tennessee "offered considerable evidence about the risks of these treatments and the flaws in existing research"—from "diminished bone density, infertility, and sexual dysfunction" to "breast and uterine cancer" in females and diseases that affect the heart and brain functions of males.

The court noted that "no one disputes that these treatments carry risks or that the evidence supporting their use is far from conclusive."[8] The court determined that "[a]t bottom, the challengers simply disagree with the States' assessment of the risks and the right response to those risks. That does not suffice to invalidate a democratically enacted law."[9]

The 11th Circuit reached a similar conclusion and upheld Alabama's law. It recognized that "states have a compelling interest in protecting children from drugs, particularly those for which there is uncertainty regarding benefits, recent surges in use, and irreversible effects."[10]

The court rejected the argument that there is a "right to treat [one's] children with transitioning medications."[11]

Notably, both appellate court decisions confirmed that "parents do not have a constitutional right to obtain reasonably banned treatments for their children." The 6th Circuit warned that "[i]f parents could veto legislative and regulatory policies

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[7] *L. W. by & through Williams v. Skrmetti*, 83 F.4th 460, 474 (6th Cir. 2023).
[8] *Id*.
[9] *Id*. at 491.
[10] *Eknes-Tucker v. Governor of Alabama*, 80 F.4th 1205, 1225 (11th Cir. 2023).
[11] *Id*. at 1226.

about drugs and surgeries permitted for children, every such regulation—there must be thousands—would come with a springing easement: It would be good law until one parent in the country opposed it."[12]

The 11th Circuit similarly concluded that "those decisions applying the fundamental parental right in the context of medical decision-making do not establish that parents have a derivative fundamental right to obtain a particular medical treatment for their children."[13] Rather, "states properly may limit the authority of parents where 'it appears that parental decisions will jeopardize the health or safety of the child….'"[14]

Following these decisions, courts in Georgia, Oklahoma, Florida, and other states ruled in favor of their laws protecting children from gender transition drugs and surgeries.

And in April 2024, in a challenge to Idaho's law, the U.S. Supreme Court ruled to narrow a lower court's order to apply only to the challengers and allow Idaho to otherwise enforce its law that protects children from harmful and experimental drugs and procedures.[15]

Denying the truth that every person is either male or female hurts real people, especially vulnerable children. Science and common sense tell us that children are not mature enough to properly evaluate the serious, lifelong ramifications when making important medical decisions. And the decision to undergo dangerous, experimental, and likely sterilizing gender transition procedures is no exception. Laws like HB 2071 are constitutionally sound and protect children from being pushed toward life-altering, sterilizing surgeries and drugs that cause permanent harm.

Cordially,

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[12] *L. W. by & through Williams v. Skrmetti*, 83 F.4th 460, 475 (6th Cir. 2023).
[13] *Eknes-Tucker v. Governor of Alabama*, 80 F.4th 1205, 1224 (11th Cir. 2023).
[14] *Id.*
[15] *Labrador v. Poe*, No. 23A763, 601 U.S. _____, 144 S. Ct. 921 (2024), *available at* https://www.supremecourt.gov/opinions/23pdf/23a763_nmip.pdf.