
IN THE COURT OF APPEALS
FOR THE THIRD DISTRICT OF TEXAS AT AUSTIN

GREG ABBOTT, in his official capacity as Governor of the State of Texas;
JAIME MASTERS, in her official capacity as Commissioner of the Texas
Department of Family and Protective Services; and TEXAS DEPARTMENT OF
FAMILY AND PROTECTIVE SERVICES,

Appellants,

v.

JANE DOE, individually and as parent and next friend of MARY DOE, a minor;
JOHN DOE, individually and as parent and next friend of MARY DOE, a minor;
and DR. MEGAN MOONEY,

Appellees.

On Appeal from the 201st Judicial District of Travis County, Texas
Cause No. D-1-GN-22-000977, Hon. Amy Clark Meachum

**BRIEF OF *AMICUS CURIAE* AMERICAN PROFESSIONAL SOCIETY ON
THE ABUSE OF CHILDREN AND EIGHT CHILD ADVOCACY
ORGANIZATIONS IN SUPPORT OF APPELLEES'
EMERGENCY MOTION FOR TEMPORARY INJUNCTIVE RELIEF**

Greg R. Wehrer
Texas Bar No. 24068592
Squire Patton Boggs (US) LLP
6200 Chase Tower
600 Travis Street,
Houston, Texas 77002
Phone: 713-546-5850
Fax: 713-546-5830
Email:
Greg.Wehrer@squirepb.com

Rafael M. Langer-Osuna,
Pro hac vice to be filed
Squire Patton Boggs (US) LLP
275 Battery Street, Suite 2600
San Francisco, California
94111
Phone: (415) 954-0200
Fax: (415) 393-9887
Email: rafael.langerosuna
@squirepb.com

Mary Kelly Persyn,
Pro hac vice to be filed
Persyn Law & Policy
912 Cole Street, PMB 124
San Francisco, California
94117
Phone: (628) 400-1254
Email:
marykelly@persynlaw.com

Counsel for Amici Curiae

LIST OF AMICI CURIAE

1. American Professional Society on the Abuse of Children
2. Children's Advocacy Institute
3. FUTURES
4. Social Current
5. The Kempe Center for the Prevention and Treatment of Child Abuse and Neglect at the University of Colorado
6. The Institute for Human Services
7. The National Association of Social Workers (NASW)
8. First Focus on Children
9. The National Foundation to End Child Abuse and Neglect (EndCAN)

INTERESTS OF THE *AMICI CURIAE*¹

Amici curiae are nonprofit organizations dedicated to furthering the care and protection of children.

The American Professional Society on the Abuse of Children (“APSAC”) is a national nonprofit organization focused on meeting the needs of professionals engaged in all aspects of services for maltreated children and their families. Its members are child-maltreatment professionals from all over the world. For over 35 years, it has been the leading organization on the standard of care for child abuse and neglect, and it disseminates information on state-of-the-art practices in all professional disciplines related to these issues.

The mission of APSAC is to improve society’s response to the abuse and neglect of its children. APSAC envisions a world where all maltreated or at-risk youth and their families have access to the highest level of professional commitment and service.

The Children’s Advocacy Institute (“CAI”), founded at the nonprofit University of San Diego School of Law in 1989, is an academic, research, and advocacy nonprofit organization working to improve outcomes for children and youth, with special emphasis on improving the child protection and foster care systems. In its academic component, CAI trains law students and attorneys to be

¹ No person other than amici curiae, their members, and their counsel contributed funding for this brief, and no party to the case participated in drafting the brief.

effective child advocates, while its research and advocacy, conducted through offices in San Diego, Sacramento, and Washington, D.C., leverage change for children and youth through impact litigation, regulatory, administrative and legislative advocacy, and public education.

FUTURES is a national nonprofit organization, based in San Francisco, that has worked for more than 35 years to prevent and end violence against women and children in the United States (U.S.) and around the world. FUTURES works to eliminate child abuse, domestic violence, sexual assault, and human trafficking through education and prevention campaigns, training and technical assistance to state agencies, public and private entities, including health care and state and local child protective systems, judges and court systems, colleges and universities, and global organizations. FUTURES advances promising policies and practices at the state and federal level that prevent violence and help adult and child survivors of abuse and violence heal and thrive. FUTURES staff are experts on child abuse, family violence prevention, sexual assault, and human trafficking and the services and supports necessary for children and women to heal from abuse, violence and trauma.

Social Current represents a network of 1,852 human/social service organizations and partners who serve nearly 70 million individuals. Its network offers and accredits the full array of services to support children, youth, and families engaged in the child welfare system including adoption, foster care placement,

behavioral health services, case management, family advocacy services, and more. Social Current advocates for and implements equitable solutions to society's toughest challenge, and works to ignite change for an equitable society where all people thrive.

The Kempe Center for the Prevention and Treatment of Child Abuse and Neglect at the University of Colorado is the first academic center in the United States dedicated to the research and treatment of child abuse and neglect. Founded in 1972, the Kempe Center is the home to approximately 80 experts in a variety of disciplines, including medicine, behavioral health, law, and social work, all of whom focus their research, teaching, and advocacy on the prevention and treatment of child abuse and neglect.

The Institute for Human Services has worked for more than four decades nationally and internationally to help child-serving organizations, primarily in the field of child protective services, design and navigate strategies that lead to the best possible outcomes for children and families at risk of, or experiencing child maltreatment. IHS professionals are content experts and thought leaders in the fields of child welfare and child maltreatment policy, practice, organizational development, and training.

The National Association of Social Workers (NASW), founded in 1955, is the largest association of professional social workers in the United States with 110,000

members in 55 chapters. Its Texas Chapter has over 5,000 members. NASW has worked to develop high standards of social work practice while unifying the social work profession. NASW promulgates professional policies, conducts research, publishes professional studies and books, provides continuing education and enforces the NASW Code of Ethics. In alignment with its mission to ensure the efficacy and quality of practicing social workers, NASW provides resources and develops policy statements on issues of importance to the social work profession. The NASW National Committee on Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning + Issues develops, reviews, and monitors programs of the Association that significantly affect LGBTQ+ individuals.

Consistent with those policy statements, NASW, including its Texas Chapter, is committed to advancing policies and practices that improve the status and well-being of all LGBTQ+ people. NASW strongly advocates for the availability of culturally appropriate, comprehensive health and mental health services for LGBTQ+ people across their life span. Nat'l Ass'n of Social Workers, *Social Work Speaks*, 211, 215-16 (11th ed. 2018-2020). NASW asserts that discrimination and prejudice directed against any individuals on the basis of gender identity or gender expression, whether actual or perceived, are damaging to the social, emotional, psychological, physical and economic well-being of the affected individuals, as well as society as a whole. NASW supports the open availability of comprehensive

health, psychological, and social support services for transgender people and their families that are respectful and inclusive, and provided by skilled, educated professionals who have been trained to work effectively with transgender people. *Id.* at 328. Furthermore, NASW supports children's rights to be treated with respect as individuals; to receive culturally responsive services; and to express their opinions about their lives and have those opinions considered. *Id.* at 38-39.

First Focus on Children is a 501(c)(3) nonprofit bipartisan children's advocacy organization. First Focus on Children is dedicated to ensuring children and families are a priority in federal policy and budget decisions. First Focus on Children works to improve the well-being and protect the rights of the next generation of America's leaders. The organization's advocacy is focused in the areas of child health, education, early childhood, family economics, child welfare, immigration, and child safety, in addition to tax and budget policies that lift children out of poverty. In all their advocacy, First Focus on Children's staff seek to increase investments in programs that support and protect our nation's most precious resource, our children.

The National Foundation to End Child Abuse and Neglect (EndCAN) is a 501(c)(3) non-profit foundation devoted to ending child abuse and neglect in the United States through prevention, advocacy, education, and research. EndCAN consists of 13 leading professionals as board members from across the nation, a distinguished chair and founder who has helped forge the field for over 53 years, and

a an expert in child trauma, attachment, and child development for a CEO. Collectively the organization's expertise outweighs the requirements for nearly any standard of expertise.

EndCAN works to enable adult survivors of child abuse to heal and acknowledge the health impacts childhood trauma have had on their mental and physical health. EndCAN also often speaks on the systemic abuse that is placed on children and families as a result of entities changing policy, classifications, definitions, and approach models to the care and wellbeing of those they serve.

SUMMARY

Gender-affirming care is not child abuse.

Amici are deeply concerned that the State of Texas wants to use the child protection system to prevent youth from receiving evidence-based treatment and supportive services while punishing both parents and medical professionals tending to their needs. Gender dysphoria is a medical condition acknowledged by every major medical professional society. The *amici* concur that denying treatment to youth with this condition would not be protecting children from abuse; to the contrary, it would itself constitute medical neglect inflicted by external legal systems—not parents or medical professionals. Further, we believe that interfering with a parent's ability to provide bona fide medical treatment for their child

constitutes emotional abuse as defined by both clinical standards and Texas State law. 40 Tex. Admin. Code § 707.787.

Creating a threat of a child protection investigation and the potential for the removal of a child terrifies both parents and children. This ill-considered initiative will divert resources away from serving the more than 200,000 legitimate child abuse and neglect cases referred to Texas DCF annually.

Efforts to use the child protection system to pursue an agenda that has no basis in medical or child welfare science is counter-productive at best; in reality it is already causing stress for innocent children and their parents, and unwarranted strain on the child protection services system.

Consequently, the *amici* strongly oppose recent attempts to criminalize and prohibit gender-affirming care as child abuse. *Amici* strongly disagree with the declaration by the Attorney General and the Directive from the Governor that gender-affirming health care constitutes child abuse under Texas law.

Transgender youth are at risk for negative physical and mental health and life outcomes. Research suggests that these negative outcomes are attributable to societal bias and discrimination rather than transgender identity itself. Recent research demonstrates that transgender youth who are affirmed in their identity experience lower levels of risk. Conversely, outlawing gender-affirming care will worsen outcomes for these youth.

Gender-affirming care is an important aspect of affirming the identity of, and mitigating the health risks to, transgender youth. Gender-affirming care has been defined as “health care that holistically attends to transgender people’s physical, mental, and social health needs and wellbeing while respectfully affirming their gender identity.” The World Professional Association for Transgender Health has established standards for gender-affirming care. The American Academy of Pediatrics has repeatedly elucidated the careful evaluation necessary to successful treatment of transgender and gender nonconforming youth along a continuum of care. This evaluation properly takes place in licensed behavioral health and medical settings, not the state legislature or the governor’s office.

Consequently, *amici* oppose the declarations by the Attorney General and Governor of Texas that gender-affirming health care constitutes child abuse under Texas law. Attorney General Paxton stated that gender non-conforming and transitioning youth may be victims of “Munchausen’s syndrome by proxy,” an outdated term that is now called medical child abuse, a felony in Texas. Medical child abuse includes situations where a parent intentionally makes their child sick and solicits unnecessary medical care in order to gain sympathy and attention. No evidence supports a connection between medical abuse and gender-affirming care. Governor Abbott directed the Department of Family and Protective Services to investigate all “instances” of gender transition. All mandated reporters in Texas,

including nurses, doctors, social workers, and teachers, are required to report such youth to the state or face criminal penalties. Governor Abbott's Directive is wrong and harmful.

The *amici*, the leading organization of professionals that actually study and treat child abuse, have significant expertise to offer the Court. They submit this brief to inform the Court about the standards of practice and care that apply for the protection and treatment of children, and to inform the Court that gender-affirming care, in itself, is not child abuse in any sense accepted by healthcare professionals.

The District Court's temporary injunction did more than protect the ability of the plaintiffs to care for their child. It also preserved, pending the litigation, the safety and health of many other children. Care providers throughout the State are at risk from Governor Abbott's lawless but terrifying edict; and one major hospital (Texas Children's Hospital) is known to have stopped providing gender-affirming treatments out of fear of the State's threats. *Amici curiae* urge the Court to preserve the *status quo*, from before Governor Abbott's irrational declaration, when care providers were able to safely provide such care, including gender-affirming treatments where appropriate, as called for by professional standards.

ARGUMENT

Amici respectfully submit that Governor Abbott's Directive creates - rather than prevents – conditions harmful to Texas children. The Directive should remain enjoined as to all Texans.

I. **Gender Dysphoria Is a Medical Condition That Requires Care.**

Gender dysphoria is a medical condition for which there are established standards of care. *See, e.g.*, Standards of Care for the Health of Transsexual, Transgender and Gender Non-Conforming People; World Professional Association for Transgender Health; 2012, pp 10-21, https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?t=1613669341; Jason Rafferty, Ensuring comprehensive care and support for transgender and gender-diverse children and adolescents; Pediatric Collections: LGBTQ+: Support and Care (Part 3: Caring for Transgender Children), 5–18, 3 (May 2021), <https://doi.org/10.1542/9781610025423-ensuring> (internal citations omitted).

Amici anticipate that briefing from the medical profession will establish this point clearly and this brief therefore incorporates that briefing by reference.

II. **Child Abuse Is An Established And Defined Concept That Includes Medical Neglect.**

The Texas Family Code states that child abuse and neglect include specific acts or omissions by a person responsible for a child's care, custody, or welfare. The

Code provides several important legal definitions of both abuse and neglect. Under Texas law, child abuse is defined to include: “mental or emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning;” “causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child’s growth, development, or psychological functioning;” and “physical injury that results in substantial harm to the child.” TEX. FAM. CODE§ 261.001(1).

Relevant definitions of “neglect” include leaving children in situations where they are exposed to substantial risk of harm and, importantly, “failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury...resulting in observable and material impairment to the growth, development, or functioning of the child.” TEX. FAM. CODE§ 261.001(4). As with most state law definitions of child abuse, the act or omission must result in injury and substantial harm to a child. “Medical neglect” is a separately defined category of child abuse. Failing to “seek, obtain, or follow through with medical care for a child,” where that medical care is necessary for “the growth, development, or functioning of the child,” is medical neglect in Texas. It is a crime under Texas law, and professionals charged with

mandatory reporting responsibilities must report it to state authorities. 40 TEX. ADMIN. CODE § 700.467.

III. The Attorney General Opinion Incorrectly Defines “Child Abuse” Under Texas Law By Ignoring the Existence of Gender Dysphoria.

Governor Abbott purported to rely on an opinion from the Attorney General concluding that gender-affirming care is child abuse. But that opinion was, itself, irrational. It was unmoored from the law and from reality.

The Attorney General opens his opinion by dismissing the possibility that gender-affirming care is medically necessary. He does so by distinguishing procedures for “children with a medically verifiable genetic disorder of sex development” or other disorders “as determined by a physician through genetic testing,” and by stating that “[t]his opinion does not address or apply to medically necessary procedures.” AG Op at 2. In doing so, the Attorney General ignores well-established standards of care, along with the professional opinion of the American Academy of Pediatrics and other medical professionals. *See generally* Endocrine Soc’y, *Transgender Health: An Endocrine Society Position Statement* (2020), <https://www.endocrine.org/advocacy/position-statements/transgender-health>; Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, 102(11) J. Clinical Endocrinology & Metabolism 3869 (Nov. 2017), <https://academic.oup.com/jcem/article/102/11/3869/4157558>; WPATH, Standards

of Care (7th Version), https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf (“WPATH Guidelines”). But the Attorney General’s dismissal of medically necessary “procedures,” a term he uses to sweep in a broad continuum of gender-affirming care, is necessary to his Opinion for another reason: to characterize gender-affirming care as child abuse, the Attorney General must first exclude gender-affirming care from the ambit of medically necessary health care. Under well-established standards of care, the Attorney General cannot do so.

By definition, care that is recommended and appropriate pursuant to standards of care that are widely agreed upon by professionals who treat child abuse cannot be child abuse. Gender dysphoria is real. See, Amici Brief of the American Academy of Pediatrics, pp. 7-8. And gender-affirming care to treat gender dysphoria is appropriate under the established standards of care and practice. *Id.* A purported legal opinion that declares otherwise, without acknowledging the vast consensus among medical, mental health, social-work, and healthcare professionals, is not a legitimate effort to interpret the law.

IV. By Mandating Medical Neglect, Governor Abbott’s Directive Causes the Harm It Purports to Prevent.

One day after Attorney General Paxton issued his Opinion, Governor Abbott attached it to his Directive, noting that the Opinion “confirmed” that gender-

affirming care “constitute[s] child abuse under existing Texas law.” Governor Abbott’s Directive instructs DFPS to classify gender-affirming medical treatments as child abuse under existing state law. Texas law requires DFPS to investigate reports of child abuse. *See* TEX. FAM. CODE § 261.301.

Governor Abbott’s Directive thus forces parents of transgender youth into an impossible dilemma. Under the Directive’s incorrect interpretation of Texas law, gender-affirming care is child abuse, regardless of the accepted standard of care. At the same time, because gender-affirming care is medically necessary for some youth diagnosed with gender dysphoria, parents must provide such care to their youth to avoid potentially criminal medical neglect.

This dilemma arises because the Directive pays no heed to medical reality. By declaring that an entire category of treatment is child abuse, without considering how the statute actually applies to such treatments, the Directive creates a very real likelihood that a treatment that is acceptable and proper, under any legitimate reading of the statute, will be, by the Governor’s fiat alone, treated as a criminal act. This possibility is not merely theoretical; it is the most likely situation for many cases in which Texas children are receiving gender-affirming treatments. As a leading organization in child maltreatment, APSAC has never defined gender-affirming care as child abuse or medical abuse. The Directive treats as criminal activities that are in fact permissible under Texas law. The standards of care widely accepted by

professionals recognize that gender-affirming treatment is good practice. A parent should have the right to arrange or seek the treatment that benefits their child's health and well-being. Healthcare providers must have the freedom to provide the best standard of care to their suffering patients.

The Directive has already had one egregiously harmful result. Earlier this month, Texas Children's Hospital announced that it is immediately halting gender-affirming medical care in order to protect patients and health care providers from "potential legal ramifications." *See* Washington Post, March 4, 2022 ("In Texas, the nation's largest children's hospital is halting gender-affirming care for trans youths.") Texas Children's Hospital has already had to make the choice the Governor has forced upon all parents of transgender and gender nonconforming youth in Texas: either avoid accusations of criminal liability for child abuse, under the Attorney General Opinion and the Directive; or avoid criminal liability for medical neglect, under the child abuse and neglect law of Texas as informed by established medical standards of care.

Rather than preventing child abuse, Governor Abbott's Directive causes real and immediate harm to Texas families.

CONCLUSION

For the foregoing reasons, the Court should grant the emergency motion, and allow the District Court's temporary injunction to remain in force.

DATED and FILED on March 18, 2022.

Respectfully submitted,

/s/ Greg R. Wehrer

Greg R. Wehrer
Texas State Bar No. 24068592
SQUIRE PATTON BOGGS (US) LLP
6200 Chase Tower
600 Travis Street
Houston, Texas 77002
Phone: 713-546-5850
Fax: 713-546-5830
Email: Greg.Wehrer@squirepb.com

Rafael M. Langer-Osuna, *Pro hac vice to be filed*

SQUIRE PATTON BOGGS (US) LLP
275 Battery Street, Suite 2600
San Francisco, California 94111
Phone: (415) 954-0200
Fax: (415) 393-9887
Email: rafael.langerosuna@squirepb.com

Mary Kelly Persyn, *Pro hac vice to be filed*

PERSYN LAW & POLICY
912 Cole Street, PMB 124
San Francisco, California 94117
Phone: (628) 400-1254
Email: marykelly@persynlaw.com

**ATTORNEYS FOR AMERICAN
PROFESSIONAL SOCIETY ON THE ABUSE**

**OF CHILDREN, CHILDREN'S ADVOCACY
INSTITUTE, AND FUTURES**

CERTIFICATE OF COMPLIANCE

Based on a word count in Microsoft Word 2016. This brief contains 3,273 words, excluding portions of the brief exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ Greg R. Wehrer

Greg R. Wehrer

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with the Texas Rules of Civil Procedure on the 18th day of March, 2022 on each of the following persons listed below by the means indicated:

VIA EFILETEXAS.GOV E-SERVICE:

Paul D. Castillo
Shelly L. Skeen
Nicholas “Guilly” Guillory
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
3500 Oak Lawn Ave., Unit 500
Dallas, Texas 75219

Omar Gonzalez-Pagan
M. Currey Cook
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, New York 10005-3919

Karen L. Loewy
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
1776 K Street, N.W., 8th Floor
Washington, DC 20006-2304

Camilla B. Taylor
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
65 E. Wacker Place, Suite 2000
Chicago, IL 60601-7245

Brian Klosterboer
Andre Segura
Savannah Kumar
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF TEXAS
5225 Katy Fwy., Suite 350
Houston, Texas 77007

Chase Strangio
James Esseks
Anjana Samant
Kath Xu
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004

Derek R. McDonald
Maddy R. Dwertman
David B. Goode
BAKER BOTTS L.L.P.
98 San Jacinto Boulevard, Suite 1500
Austin, Texas 78701-4078

Ryan G. Kercher
Courtney Corbello
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Brandt Thomas Roessler
BAKER BOTTS L.L.P.
30 Rockefeller Plaza
New York, New York 10112-4498

/s/ Greg R. Wehrer
Greg R. Wehrer