

April 4, 2023

DELIVERED VIA EMAIL

Senate President Passidomo  
The Florida Capitol  
400 South Monroe Street  
Tallahassee, FL 32399

Re: ACLU of Florida Written Testimony in Opposition to SB 254/HB 1421,  
Banning Gender-Affirming Care



4343 W. Flagler St.  
Miami, FL  
(786) 363-2700  
aclufl.org

Kirk Bailey  
*Political Director*

Kara Gross  
*Legislative Director*

Dear Senate President Passidomo and Members of the Senate:

The ACLU of Florida is a nonpartisan organization whose mission is to protect, defend, strengthen, and promote the constitutional rights and civil liberties of all people in Florida. On behalf of our 180,000 members and supporters in Florida, we write in opposition to SB 254/HB 1421, and respectfully request that you vote “No” on this bill.

### **What This Bill Does**

- Prohibits parents from providing life-saving gender affirming care for children under the age of 18, including prescription medication, with only the potential for narrow exceptions for those already receiving care.
- For those over 18, imposes new onerous written consent procedures, and requires that all care (including prescription management) must be provided by an in-person physician.
- Requires certain licensed medical facilities to attest by July 1, 2023, that they do not provide care to minors and do not refer for such care.
- Makes it a felony in the third degree, punishable by up to five years in prison, for any health care provider to “willingly participate in” providing care to a minor, and makes it a misdemeanor to violate the written consent or in-person physician requirements.
- Creates an exception to the general rule that the courts will give full faith and credit to a custody decree from another state and purports to allow Florida courts to modify or vacate an out of state order to prevent a child from receiving gender affirming care.
- Allows a non-supportive parent seeking enforcement a child custody determination to obtain a warrant to take physical custody of the child from the parent who is supportive of their child receiving gender-affirming care, including prescription medication that is safe and supported by major medical associations.
- Bans state or local government funding for care (including for adults), including in employee health plans or Medicaid.



We echo the many comments and concerns raised in opposition by numerous LGBTQ and allied organizations, healthcare providers, medical associations, parents, and LGBTQ youth.

Below we have highlighted just a few of the many concerns with this bill.

**This Bill Is Contrary to the Medical Evidence and Experts and Harms Florida's Youth**

This bill serves no legitimate purpose and is harmful to minors. In order to protect Florida's youth who experience gender dysphoria – and are already feeling isolated and ostracized – from further harm, we urge you to ensure that parents are able to access the critical healthcare their children need, and that is recommended by every leading medical association.<sup>1</sup>

Banning care is contrary to the overwhelming evidence that demonstrates the positive health impacts of gender-affirming medical care for trans youth. If this bill goes into effect, youth who are not currently receiving gender-affirming care would not be able to access this healthcare, and it is unclear whether and under what circumstances those who are already receiving such care will be able to continue to receive care. Evidence-based studies show how critical gender-affirming medical care is for transgender youth, and prohibiting gender-affirming medical care for transgender adolescents may be life-threatening.

Care providers, doctors, and leading medical associations have been clear that gender-affirming medical care is safe, effective, evidence-based, and overwhelmingly leads to positive health outcomes for youth. Last year, more than three hundred Floridian health care professionals who work with transgender youth [published an open letter in the Tampa Bay Times condemning prohibitions on gender-affirming care](#). Guidance from the governor and surgeon general, the experts wrote, “misrepresents the weight of the evidence, does not allow for personalized patient and family-centered care, and would, if followed, lead to higher rates of youth depression and suicidality.” In order to protect Florida's youth, we urge the legislature not to prohibit evidence-based treatments that can help reduce the risk of youth depression and suicidality, among many other conditions.

Transgender minors are among the most vulnerable children in Florida. They are vulnerable to bullying by peers, harassment and abuse in schools, homelessness, family rejection and discrimination by government and private systems like health

---

<sup>1</sup> The nation's leading healthcare organizations support gender-affirming medical care for transgender people. These professional medical organizations represent more than one million healthcare providers, and include the American Academy of Pediatrics, American Medical Association, American College of Obstetricians and Gynecologists, Endocrine Society, and Pediatric Endocrine Society.



institutions, hospitals, police, and child welfare providers. When they, along with their parents, seek treatment from qualified medical professionals to meet a serious medical need, they are working to mitigate serious and life-threatening harms. The treatment that is provided every day in Florida by expert pediatricians, psychiatrists, endocrinologists, and other health professionals to transgender youth with gender dysphoria is evidence-based treatment that has been shown to significantly improve the health outcomes that transgender young people experience.

The bill would prohibit minors from accessing puberty blockers, hormone therapy, and gender-affirming surgeries (which are extremely rare in minors). The bill sponsor and supporters have inaccurately described these treatments for gender dysphoria as “experimental.” These are not “experimental” treatments and labeling them as such has consistently been shown to be incorrect and based on selective medical evidence from purported experts whose opinions have been explicitly rejected by numerous courts in other states. Numerous courts when presented with testimony from these purported experts have rejected their claims and ruled against states seeking to prohibit or preclude these treatments for gender dysphoria.

For example, the U.S. District Court for the Northern District of Alabama found that “the uncontradicted record evidence is that at least twenty-two major medical associations in the United States endorse transitioning medications as well-established, evidence-based treatments for gender dysphoria in minors,” and “the record shows that medical providers have used transitioning medications for decades to treat medical conditions other than gender dysphoria” Opinion and Order Granting Preliminary Injunction, *Ecknes-Tucker v. Marshall*, No. 22 Civ. 184, Docket No. 107, at 18 (N.D. Ala. May 13, 2022).

### **This Vague and Overly Broad Bill is Unconstitutional and Illegal**

Courts in Alabama, Arkansas and Texas have already enjoined laws barring gender-affirming care for minors. *See, e.g., Brandt v. Rutledge*, No. 4:21CV00450, 2021 WL 3292057 (E.D. Ark. Aug. 2, 2021) (enjoining Arkansas law banning gender-affirming health care for transgender minors finding plaintiffs likely to succeed on claims that law violated equal protection and first amendment rights of all plaintiffs and due process rights of parents of minor children); *Brandt v. Rutledge*, 47 F.4th 661, 671 (8th Cir. 2022) (holding that Arkansas law banning gender-affirming care subject to heightened scrutiny and affirming district court’s injunction based on evidence in the record); *Eknes-Tucker v. Marshall*, No. 2:22-CV-184-LCB, 2022 WL 1521889 (M.D. Ala. May 13, 2022) (preliminarily enjoining Alabama criminal ban on gender-affirming care for minors finding that the law likely violated the Due Process rights of parents, the Equal Protection rights of adolescents and was void for vagueness).

By allowing Florida courts to override out-of-state child custody decrees, the bill poses serious Full Faith and Credit concerns and is inconsistent with core family

law principles that must place the best interest of the child at the heart of all family court decision-making.

Finally, banning health insurance coverage for care that is best practice medical care, solely because it is for transgender people, violates the Affordable Care Act's sex discrimination provisions.

Passing unconstitutional bills that will be challenged in the courts is costly to taxpayers and a waste of state resources.

### **This Bill Infringes on Parental Rights**



Florida Statutes expressly prohibit the government from infringing on a parent's fundamental right to direct the upbringing, healthcare and mental health of their children. There has been significant touting on behalf of the governor with regard to the importance of so-called "parental rights," yet the bill is directly at odds with these fundamental rights.

Chapter 1014.02, Florida Statutes, provides that "it is a fundamental right of parents to direct the upbringing, education, and care of their minor children."

Similarly, Chapter 1014.03, further provides:

Infringement of parental rights.—The state, any of its political subdivisions, any other governmental entity, or any other institution may not infringe on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of his or her minor child without demonstrating that such action is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means. (Emphasis added.)

There has been no demonstration on behalf of the Legislature or the Boards of Medicine and Osteopathic Medicine that banning gender-affirming care is "reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means." Accordingly, we urge you to vote no on this bill.

**There is No Legitimate Rationale for Banning This Care- This is Evident as the Prohibited Treatments are Allowed for Minors Not Experiencing Gender Dysphoria**

There does not seem to be any reasonable or rational grounds for allowing some individuals to benefit from this healthcare and denying the same healthcare to others:

- Why are puberty blockers and hormone therapies allowed for minors who are not experiencing gender dysphoria yet being prohibited for minors who are experiencing gender dysphoria?
- What is the justification for the differential treatment?
- Are puberty blockers and hormone therapies safer for minors when used to treat precocious puberty and other conditions than they are when used to treat gender dysphoria?
- Why is a minor who is not experiencing gender dysphoria allowed to have chest surgery with their parent's consent yet a minor experiencing gender dysphoria is not allowed to have the same chest surgery with their parent's consent?
- What is the justification for the differential treatment?
- Is chest surgery safer for minors who are not experiencing gender dysphoria than it is for those who are experiencing gender dysphoria?



**Conclusion**

Instead of protecting vulnerable transgender and gender diverse children, this bill would deprive them of the medical care they need to thrive and become successful adults. It harms Florida's youth and their families.

For all the above reasons and more, we urge you to vote "No" on this dangerous bill. Please do not hesitate to contact me at [kgross@aclufl.org](mailto:kgross@aclufl.org) if you have any questions or would like any additional information.

Sincerely,

A handwritten signature in black ink that reads "Kara J. Gross".

Kara Gross  
Legislative Director &  
Senior Policy Counsel

Cc: Kirk Bailey, Political Director, ACLU FL