

“Demons and Imps”: Misinformation and Religious Pseudoscience in State Anti-Transgender Laws

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ABSTRACT: In a hearing before the Florida House of Representatives, Rep. Webster Barnaby addressed transgender witnesses as “demons and imps who come and parade before us and pretend that you are part of this world.” Barnaby’s remarkably candid statement is an outlier because it reveals that religion—rather than sound science—underlies the new wave of anti-transgender laws that have been adopted by at least 20 states since 2021, with the vast majority enacted in 2023. In legislatures, courts, and agency hearings, proponents of anti-trans measures – in contrast to Barnaby – frame their arguments in scientific terms, contending that biology and medicine dictate exceptionalist treatment of transgender people.

In this Article, we make three contributions. First, we debunk these purported scientific claims, showing (with full citations to the scientific literature) that the core arguments for anti-trans laws rest on misinformation (defined as false information that could, with due diligence, be determined to be false) and religious pseudoscience (defined as statements that use scientific vocabulary but rest on religious tenets and defy sound science). We closely examine key state legal documents, including legislation, attorney general opinions, and administrative agency documents. Our analysis shows that the core and repeated “scientific” arguments in these documents defy sound science and rest, instead, on religious principles about the binary nature of sex and gender and the corruption of secular society.

Second, we show that the “playbook” of misinformation and pseudoscience that has long fueled anti-LGBTQIA+ and anti-abortion laws is now being deployed by conservative religious organizations to promote and defend anti-trans laws. Not all religious organizations oppose transgender and

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queer rights, and not all opposition to transgender rights is based in religion. Still, close-knit conservative Catholic and evangelical Protestant groups have been on the front lines of efforts to promote and defend anti-trans laws. Leaked documents and emails show how medical and legal groups united by religion collaborated to create purported “scientific” documents and identify purported “experts” to push anti-trans measures.

Third, we address the limitations of litigation in combatting anti-trans laws. Transgender plaintiffs challenging healthcare bans won decisive victories at the trial level, with federal and state courts in six jurisdictions forcefully rejecting the misinformation and purported “experts” put forward by the states. In the summer of 2023, however, subsequent decisions in federal appellate courts and state supreme courts overturned these decisions, with the higher courts giving credence to states’ pseudoscientific claims and sharply narrowing constitutional protections for transgender youth and their families. These decisions explicitly connected transgender rights to abortion rights and adopted the *Dobbs* approach of limiting constitutional protections based on nineteenth-century social conditions.

Litigation remains ongoing, and recent court decisions have addressed only preliminary injunctions based on limited factual records, so the plaintiffs may yet prevail in some cases. Even in the best case, however, litigation takes years—with harm accruing to transgender people in the meantime—and is vulnerable to gaming by states that are doubling down, enacting new anti-trans laws even as existing ones are struck down.

We conclude that litigation is a welcome but limited remedy and that additional legal and policy measures are worth exploring. These include the enactment of express protections for LGBTQIA+ people by Congress and federal agencies. More speculatively, we consider procedural protections that could be adopted at the state level as well as possibilities for private action by researchers and nonprofit organizations. Although there are no easy answers, this Article outlines a range of possible approaches, some of which would make it more difficult for states to target queer people and others of which would tackle the broader problem of misinformation and religious pseudoscience enacted into law. We also explore potential challenges under the Establishment Clause, which could prompt courts, legislatures, executives, and popular movements to reject pretextual secular claims when—as here—the underlying motivation and asserted “facts” are religious in nature and amount to the state adoption of religious doctrine.

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I. INTRODUCTION

In a hearing before the Florida House of Representatives, Rep. Webster Barnaby addressed transgender witnesses:

“You are mutants living among us on Planet Earth, Planet Earth, where God created men, male and women, female! ... [T]he Lord rebuke you Satan and all of your demons and imps that come parade before us. That’s right, I called you demons and imps who come and parade before us and pretend that you are part of this world.”¹

1. *Facility Requirements Based on Sex: Hearing on H.B. 1521 Before the H. Reg. Reform & Econ. Dev. Subcomm.*, 2023 Leg., 54th Sess. (Fla. Apr. 10, 2023) (statement of Rep. Webster Barnaby, Member, H. Commerce Comm., at 2:30:35 to 2:34:10), <https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=8804> [<https://perma.cc/5T6P-ZCPQ>]. Barnaby apologized later in the hearing. See Kiara Alfonseca, *Florida Republican Apologizes for Anti-transgender ‘Demons’ and ‘Mutants’ Comments*, ABC NEWS (April 11, 2023, 1:53 PM), <https://abcnews.go.com/US/florida-republican->

Barnaby's remarkably candid statement is an outlier in legislative debates that typically invoke facially secular and scientific arguments. Barnaby later apologized, but his outburst reveals an important truth: that religion—rather than sound science—underlies the new wave of anti-transgender laws that have been adopted by at least 20 states since 2021. In legislatures, courts, and agency hearings, proponents of anti-trans measures – in contrast to Barnaby – frame their arguments in scientific terms, contending that biology and medicine dictate exceptionalist treatment of transgender people.

In the past three years, an unprecedented wave of state legislation and executive action has targeted LGBTQIA+ (or, collectively, “queer”) people in the United States, with special virulence aimed at transgender, nonbinary, and gender-nonconforming (collectively, “transgender” or “trans”) people. At least 20 states have now deployed legislative, judicial, and executive power to marginalize and endanger the lives of trans people. See Table 1.

These anti-trans legal actions attack medical and social support for trans people—particularly, but not exclusively, trans children and teens. Health care prohibitions (“health care bans”) impose criminal and civil penalties on medical providers and parents who provide standard gender-affirming care to trans youth, which has been used successfully for decades and carries the approval of every major U.S. medical association. See Table 2. Bathroom bans, sports bans, and “don’t say gay or trans” laws make schools an unsafe place to be trans, while forcible outing laws prevent supportive school personnel from facilitating social transition.

Anti-trans laws illustrate a larger problem: the troubling prevalence of misinformation and religious pseudoscience in state legislation and executive actions. By “misinformation,” we mean claims (e.g., that gender-affirming health care poses enormous medical risks) that are unsupported by sound science and that could, with due diligence, be detected as false by state actors. State legislators can and do incorporate false findings of fact into bills. State executives can and do rely on misinformation and pseudoscience in attorneys general opinions and executive agency actions. We use the term “religious pseudoscience” to refer to the subset of misinformation that rests on religious beliefs and not sound science but is couched in seemingly scientific terms (e.g., that biology establishes that sex and gender are binary and immutable).

Some people assume that the culture wars only play out through social and legacy media and can safely be ignored. But, in this Article, we explore how

legal actors have relied upon, cited, and written anti-trans misinformation and religious pseudoscience into law while rejecting sound science.²

This is not a new strategy: the same “playbook” of misinformation and pseudoscience has long fueled anti-LGBTQIA+ and anti-abortion laws.³ Today, as in the twentieth century, anti-trans legal measures are fueled by conservative religious organizations, some of which frame their religious agendas in seemingly scientific terms in order to appeal to a broader audience. See Parts II and III. Legal organizations include Americans Defending Freedom and Liberty Counsel; medical organizations include the American College of Pediatricians (misleadingly named to evoke the authoritative American Academy of Pediatrics) and the Catholic Medical Association. Although the strategy of cloaking religion in scientific garb is a familiar one, it is important to document and call out the current, ongoing use of misinformation and religious pseudoscience by these institutional actors.

To focus our analysis, we provide a detailed examination of health care bans, which multiplied exponentially in 2023, to show how religious organizations successfully promoted and defended these laws with misinformation and religious pseudoscience. First, we show anti-trans laws are promoted by an organized set of right-wing Christian religious groups, some of which conceal their religious affiliations. Second, we demonstrate that the purported scientific experts and evidence offered in support of these laws rely on disinformation and religious pseudoscience, not scientific evidence. Anti-trans organizations and state actors frame their legal arguments in secular terms, as they must if they are to avoid Establishment Clause challenges. But the substance of their enactments—and, in some cases, the literal language of the laws—incorporates religious, rather than scientific, commitments.

2. We define sound science as the body of data, conclusions, and recommendations supported by rigorous, peer-reviewed research and clinical practice guidelines. Throughout this Article, we offer extensive citations to such materials as evidence for our own claims about sound science. See Tables 2 and 4 for an overview.

3. Indeed, current assaults on trans dignity are part of a broader attack on identity and bodily autonomy. It is no coincidence that many of the same states have simultaneously passed other anti-LGBTQIA+ measures and restrictive abortion laws, taking advantage of the Supreme Court’s 2022 decision in *Dobbs v. Jackson Women’s Health*, 597 U.S. 215 (2022). Indeed, the anti-abortion agenda is often portrayed as linked to anti-LGBTQIA+ laws: In Nebraska, anti-abortion and anti-trans laws were enacted in a single bill, and the original text of a Tennessee anti-trans law specifically targeted Planned Parenthood, finding that the organization is “responsible for killing tens of thousands of unborn children.” See L.B. 574, 2023 Leg., 180th Sess. (Neb. 2023); S.B. 1, 2023 Leg., 113th Sess., at 68-33-101 (l) (Tenn. 2023) (as introduced on Nov. 9, 2022). Statements by 2024 Presidential candidates suggest that, if elected, a Republican administration would limit health care for trans youth *and* extend those attacks to health care for trans adults. Alex Roarty, *It’s Trans Adults, Too: GOP Candidates Now Back Trans Medical Restrictions for all Ages*, MIAMI HERALD (July 14, 2023, 5:21 PM), <https://www.miamiherald.com/news/politics-government/article277322158.html>.

To reveal the religious pseudoscience and misinformation at work in the law, this Article examines these purported scientific claims, showing (with full citations to the scientific literature) that the core arguments for anti-trans laws rest on and religious pseudoscience. We undertake a close examination of key state legal documents (including legislation), attorney general opinions, and administrative agency documents. Our analysis shows that the core and repeated “scientific” arguments in these documents defy sound science and rest, instead, on religious principles about the binary nature of sex and gender and the corruption of secular society.

We also show that the “playbook” of misinformation and pseudoscience that has long fueled anti-LGBTQIA+ and anti-abortion laws is now being deployed by conservative religious organizations to promote and defend anti-trans laws. Close-knit conservative Catholic and evangelical Protestant groups have been on the front lines of efforts to promote and defend anti-trans laws. Leaked documents and emails show how medical and legal groups united by religion collaborated to create purported “scientific” documents and identify purported “experts” to push anti-trans measures.

Notably, the religious tenets we identify are not part of every religion but are instead drawn from conservative strains of Catholicism and fundamental Protestant teachings. Indeed, some religious traditions within and outside Christianity support transgender and LGBTQIA+ people. Thus, we do not claim that there is any necessary opposition between religion and LGBTQIA+ equality but, rather, that a narrow but politically potent strand of conservative Christianity has been weaponized to adopt legal measures targeting queer people.

It is common, of course, for religious and secular motivations to overlap, and such overlap is constitutionally permissible provided that there are genuine secular reasons for lawmaking.⁴ Laws prohibiting murder, for example, serve both religious ends and genuine secular purposes. Further, not every legal actor who supports anti-trans measures is necessarily acting in bad faith. Some legal authorities may be naïve consumers of anti-trans pseudoscience. Still, we show that legal actors could, with ordinary due diligence, take note of the actual medical evidence on gender-affirming care, as well as the public endorsements of such care by every relevant major medical organization.

Consistent with our findings, we show that trial courts have so far shown exceptional capacity to distinguish real science from misinformation. As of

4. *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (permitting the government to assist religion only if (1) the primary purpose of the assistance is secular, (2) the assistance must neither promote nor inhibit religion, and (3) there is no excessive entanglement between church and state); *see also McGowan v. Maryland*, 366 U.S. 420 (1961) (upholding Sunday “blue laws” because they served a secular purpose as well as a religious one).

July 2023, federal courts in six jurisdictions have temporarily or permanently enjoined health care bans (although a recent Sixth Circuit decision has reversed two of these decisions). A state court in Texas preliminarily enjoined enforcement of a governor's order directing child abuse investigations of parents who consent to gender-affirming care. See Table 3. Because the law treats preliminary injunctions as extraordinary remedies to be granted only when plaintiffs show a substantive likelihood of success on the merits plus irreparable harm, these injunctions are notable.⁵ For example, in *Brandt v. Rutledge*, a federal court permanently enjoined Arkansas's 2021 health care ban holding that the ban violated the Equal Protection Clause (because it discriminates on the basis of sex), the Due Process Clause (because it infringes parental rights to make health care decisions), and the First Amendment (because it penalizes physician speech). The court's lengthy opinion correctly and carefully describes the actual science of gender-affirming care and repeatedly criticizes the state's purported "expert" witnesses and the religious pseudoscience they offered to the court.⁶

As of this writing, however, the litigation landscape is unsettled and appears to be reversing the early victories for transgender plaintiffs. In the summer of 2023, state supreme courts and federal appellate courts have blocked lower court decisions enjoining healthcare bans. These decisions have given credence to misinformation and religious pseudoscience and have sharply narrowed constitutional protections for transgender people and their families. Drawing explicitly on the *Dobbs* decision, the Eleventh Circuit in August vacated the trial court's preliminary injunction against Alabama's criminal ban on gender-affirming healthcare for youth. The court adopted a skeptical view of parental rights to control their transgender children's health care, finding that the right to enable a gender transition was not "deeply rooted" in our nation's history and tradition and was not anticipated as of 1868 when the Fourteenth Amendment was adopted.⁷ The Eleventh Circuit also rejected the trial court's interpretations of constitutional and statutory protections against sex discrimination as extending to transgender people.⁸ Following the Eleventh Circuit decision, the district court judge who had preliminarily enjoined Georgia's ban stayed the injunction in September 2023 to accord with the circuit court's views.⁹

5. See, e.g., *L. W. by & through Williams v. Skrmetti*, 73 F.4th 408, 414–15 (6th Cir. 2023) (setting forth the standards for preliminary injunctions).

6. *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at *27–30 (E.D. Ark. Jun. 20, 2023).

7. *Eknes-Tucker v. Governor of Ala.*, 80 F.4th 1205, 1219–21 (11th Cir. 2023) (vacating preliminary injunction granted by trial court).

8. *Id.* at 1226–27.

9. *Koe v. Carlson*, No. 1:23-cv-02904, BL (N.D. Georgia September 5, 2023), ECF No. 119,

In two broadly similar decisions in the Sixth Circuit in July, the court invalidated the trial courts' preliminary injunction against Tennessee's and Kentucky's ban on gender-affirming care for youth.¹⁰ The court of appeals gave credence to the state's claim (which we debunk below) that the lack of FDA approval for medications used in gender transitions are experimental and adopted a narrow view of the Equal Protection Clause's protections for transgender people.¹¹ The Texas Supreme Court overturned a trial court's preliminary injunction in an August 2023 decision that permitted the state's ban on gender-affirming care for minors to take effect.¹²

Many of these decisions are preliminary, and litigation challenging healthcare bans is ongoing in at least ten states.¹³ What is clear is that litigation is a slow and uncertain remedy when states adopt laws based on misinformation and religious pseudoscience.

The lack of safeguards in state legislatures and executive agencies thus signals a bigger problem for democracy: state legislators have seemingly concluded that the political advantage of stoking the culture wars outweighs their duties to inquire into facts and to ensure that public laws reflect secular purposes that align with constitutional guarantees of basic rights.

Even if struck down, healthcare bans take time and, in the interim, deny necessary medical care and create painful uncertainty for transgender people.¹⁴ These laws also generate fear among medical providers. In several states, hospitals have voluntarily ended or limited gender-affirming care in response to pressure by legislators, even with injunctions in effect.¹⁵ In Tennessee, the state attorney general demanded—and Vanderbilt University provided—the medical records of transgender patients at the university's clinic, stoking fear of

https://www.bloomberglaw.com/public/desktop/document/KoetalvNoggleetalDocketNo123cv02904NDGaJun292023CourtDocket/4?doc_id=X52V560Q7LV81J91G4EGL2S74B6 [<https://perma.cc/YQG7-ZV2Q>].

10. See *L. W. by & through Williams v. Skrmetti*, 73 F.4th 408 (6th Cir. 2023); *Doe v. Thornbury*, 75 F.4th 655 (6th Cir. 2023).

11. *Skrmetti*, 73 F.4th at 415–21.

12. *Texas v. Loe*, No. 23-0697 (Tex. Aug. 31, 2023), <https://www.txcourts.gov/supreme/orders-opinions/2023/august/august-31-2023/> [<https://perma.cc/R6UF-2T5N>] (denying plaintiff-appellees motion for emergency relief).

13. Morgan Watkins, *Can States' Bans on Transgender Care Hold up in Court? We Break Down Arguments*, NPR (Jul. 28, 2023, 8:55 AM), <https://www.npr.org/2023/07/28/1190673042/trans-health-care-bans-gender-affirming-federal-supreme-court-kids-lawsuits> [<https://perma.cc/CC4M-5544>].

14. In Florida, for example, a 2022 Medicaid ban on gender-affirming care left thousands of teen and adult patients without access to care until June 2023, when a federal judge enjoined the ban permanently as unconstitutional. Gary Fineout, *Federal Judge Knocks Down Florida's Medicaid Ban on Gender-Affirming Treatment*, POLITICO (Jun. 21, 2023, 9:23 AM), <https://www.politico.com/news/2023/06/21/florida-gender-affirming-ban-00103067> [<https://perma.cc/4RWF-2D6F>].

15. See *infra* Part IV.

targeted persecution.¹⁶ Furthermore, in a dynamic reminiscent of resistance to racial integration after *Brown v. Board of Education*, some states are doubling down on anti-trans measures in the wake of court decisions. Florida has been particularly active in enacting a number of separate measures designed to block or limit gender-affirming care, some adopted shortly after adverse court rulings on earlier measures. The multiplication of laws means that challengers must continually file new cases or attempt to amend outstanding cases to encompass new measures.¹⁷

This dynamic legal landscape requires urgent attention: research shows that political and legal attacks on transgender people spur violence against them and burden their mental health.¹⁸ In a recent survey by researchers at Boston University, trans youth commented, *inter alia*, that “[t]hey are actively discriminating against us and taking our safe spaces, coping mechanisms, and ways of living happily from us. They are trying to kill us and make us fade away as if we never existed.”¹⁹

This Article proceeds in four parts. In Part II, we link current anti-trans efforts to the history of persecution of LGBTQIA+ people in the United States. Taking the long view, attacks on trans people reflect longstanding animus by conservative political and religious authorities toward queer people. In Part III, we analyze key legal sources to show how misinformation and pseudoscience have been incorporated into the laws banning gender-affirming healthcare. We also highlight that some courts, when presented with sound information, have been able to detect and reject misinformation and religious pseudoscience.

In Part IV, we show that the current wave of anti-trans laws did not arise from grassroots concern but from a coordinated strategy by conservative religious organizations, legislators, and purported anti-trans experts. Here, we make “grassroots” organizations distinct from “religious groups” in that much of anti-trans rhetoric is created within an institutional, organized fashion. While there are certainly individuals who are responsible for the dissemination of pseudoscience, we are interested in how a small handful of right-wing religious groups funds litigation, provides purported experts for testimony, and promulgates reams of anti-trans pseudoscience—while often hiding their religious affiliations and mission. In Part V, we conclude by analyzing the

16. Anisha Kohli, *Vanderbilt’s Decision to Turn Over Trans Patient Records to the State Sparks Backlash*, *Time* (June 23, 2023, 10:17 AM), <https://time.com/6289609/vanderbilt-transgender-records-patients-backlash/> [https://perma.cc/V52Q-VQ4R].

17. See *infra* Part IV.

18. Timothy Wang & Sean Cahill, *Antitransgender Political Backlash Threatens Health and Access to Care*, 108 AM. J. PUB. HEALTH 609 (2018).

19. Andrew Thurston, *How Will Anti-Trans Laws Impact Transgender and Gender-Diverse Youth Mental Health*, B.U. BRINK (March 24, 2023), <https://www.bu.edu/articles/2023/how-will-anti-trans-laws-impact-transgender-and-gender-diverse-youth-mental-health/> [https://perma.cc/3RCH-QB52].

limitations of litigation and court-ordered remedies in this context and by exploring legal and policy measures that could protect LGBTQIA+ rights and, more broadly, ensure that lawmakers act on correct information rather than misinformation and pseudoscience.

II. CONSERVATIVE RELIGIOUS ORGANIZATIONS AND TWENTIETH-CENTURY ANTI-LGBTQIA+ LAWS

The current situation is not new. It marks a new chapter in the long and shameful history of legal attacks on queer people, including now-unconstitutional prohibitions on sexual intimacy and the denial of marriage equality. Proponents of these historical measures also offered secular justifications for their passage, but then, as now, religion has often played a major role in garnering political support and structuring the law. In this Part, we offer a brief history of this messaging strategy by examining the work of some of its major exponents – actors who resurfaced in the current wave of anti-trans legal measures. We also propose that by cloaking religious argumentation in a veneer of scientific legitimacy, the right seeks to attract support for its anti-LGBTQIA+ message from a moderate mainstream that might otherwise be more skeptical of such bigotry.

Though attacks on the trans community—from state and national politicians, conservative activists, and individuals who target trans people for brutal acts of violence—have dramatically intensified in recent years,²⁰ hostility to the rights of LGBTQIA+ Americans more broadly is nothing new. Since at least the early 1980s, right-wing Christian groups have pushed back against attempts by queer activists to secure greater social acceptance and legal protections.²¹ Even as LGBTQIA+ Americans secured some important

20. See, e.g., Maggie Astor, *Transgender Americans Feel Under Siege as Political Vitriol Rises*, N.Y. TIMES (Dec. 10, 2022), <https://www.nytimes.com/2022/12/10/us/politics/anti-transgender-lgbtq-threats-attacks.html> (“Over the past couple of years, it has become routine for conservatives to liken transgender people and their allies to pedophiles, and to equate discussion of gender identity with ‘grooming’ children for sexual abuse—part of an intensifying push, reminiscent of campaigns against gay rights dating back to the 1970s, to turn increasing visibility of transgender Americans into a political wedge”); Madeleine Carlisle, *Anti-Trans Violence and Rhetoric Reached Record Highs Across America in 2021*, TIME (Dec. 30, 2021, 7:06 AM), <https://time.com/6131444/2021-anti-trans-violence/> [<https://perma.cc/3PFS-A9F6>] (describing 2021 as the “deadliest year for transgender and gender non-conforming people in the U.S. on record” and noting that the Human Rights Campaign has documented at least 50 murders of trans and gender non-conforming people in 2021 alone); *An Epidemic of Violence 2022*, HUM. RTS. CAMPAIGN, <https://reports.hrc.org/an-epidemic-of-violence-2022> [<https://perma.cc/NH2D-K7KA>] (last visited July 20, 2023) (reporting that in 2022, 145 anti-transgender bills were introduced across 34 states, and 17 were enacted across 13 states).

21. DIDI HERMAN, *THE ANTIGAY AGENDA: ORTHODOX VISION AND THE CHRISTIAN RIGHT* 61 (1997).

victories in the judicial²² and legislative realms,²³ the Christian right and their allies sought to frustrate and roll back those gains, promulgating narratives designed to stoke fear, animosity, and disgust against the queer community. Present-day slurs against LGBTQIA+ people as “groomers,” for example, harken back to earlier efforts to tar gay people as pedophiles and a moral threat to youth.²⁴

A key feature of anti-queer messaging has historically been its use of ostensibly secular, “scientific” language. “Scientific” evidence is used to paint queer people as a threat to themselves and others (particularly children) and to justify the suppression—via conversion therapy—of queer self-expression. Institutions and individuals alike weaponize pseudoscientific messaging against queer Americans.

One noteworthy proponent of this pseudoscientific strategy is Paul Cameron, a psychologist and former instructor at the University of Nebraska who, in 1982, founded the “Institute for the Scientific Study of Sexuality” (later the Family Research Institute) to bolster the religious right’s anti-LGBT claims with “scientific research.”²⁵

Cameron is notable for his influence. Over a decades-long career, Cameron has repeatedly held himself out as an expert on gay and lesbian issues. During the AIDS crisis in the 1980s, he published a series of pamphlets claiming, among other things, that gay people were more violent, and tended to molest,

22. See *Romer v. Evans*, 517 U.S. 620 (1996) (ban on anti-discrimination protections for gays and lesbians violates 14th Amendment’s Equal Protection Clause); *Lawrence v. Texas*, 539 U.S. 558 (2003) (anti-sodomy law violates the 14th Amendment’s Due Process Clause); *United States v. Windsor*, 570 U.S. 744 (2013) (Defense of Marriage Act’s definition of “marriage” as a “legal union between one man and one woman” deprives same-sex couples of equal protection guaranteed by the 5th Amendment); *Obergefell v. Hodges*, 576 U.S. 644 (2015) (14th Amendment requires states to issue marriage licenses to same-sex couples); *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020) (Title VII of the Civil Rights Act of 1964 prohibits employers from firing employees simply because they are gay or transgender).

23. Three especially significant victories at the federal level have been the 2009 Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which created a new category of sexual-orientation and gender-identity-based federal hate crimes; the 2010 repeal of “Don’t Ask, Don’t Tell,” a law that forbade gay and lesbian military servicemembers from disclosing their sexual orientation on pain of discharge; and 2022’s “Respect for Marriage Act,” which formally recognized same-sex couples for purposes of federal law. See Division E—Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, 123 Stat. 2835 (2009); Don’t Ask, Don’t Tell Repeal Act, Pub. L. No. 111-321, 124 Stat. 3515 (2010); Respect For Marriage Act, Pub. L. No. 117-228, 136 Stat. 2305 (2022).

24. Gillian Frank, “*The Civil Rights of Parents*”: *Race and Conservative Politics in Anita Bryant’s Campaign Against Gay Rights in 1970s Florida*, 22 J. HISTORY SEXUALITY 126 (2013).

25. Anthony Niedwiecki, *Save Our Children: Overcoming the Narrative that Gays and Lesbians are Harmful to Children*, 21 DUKE J. GENDER L. & POL’Y 125, 155 (2013); *Family Research Institute (FRI)*, LIBRARY OF CONGRESS WEB ARCHIVE, <https://www.loc.gov/item/lcwaN0006619/> [<https://perma.cc/HD64-5TR3>] (last visited Mar. 7, 2023).

rape, and murder children at higher rates, than the general population.²⁶ In subsequent years, he has—using his Family Research Institute as a vehicle—repeatedly published studies in pay-to-publish journals making similar claims.²⁷ In 1984, Cameron was retained as an expert witness by the state of Texas in a legal challenge to its anti-sodomy laws.²⁸ Eight years later, the Attorney General of Colorado hired him to act as an expert witness in defense of the state’s Amendment Two, which banned all judicial, executive, and legislative action designed to protect queer people from discrimination.²⁹ The Supreme Court later invalidated that amendment in *Romer v. Evans*.³⁰ In 2007, Cameron testified before the Colorado State Senate that gays and lesbians—according to his own studies—were more likely to drive drunk and molest children than heterosexuals.³¹

Cameron’s work was roundly discredited, with one researcher in his field saying she is “amazed that he is able to continue to be published.”³² His work was condemned by the American Sociological Association,³³ rebuked by the Nebraska Psychological Association,³⁴ and Cameron himself was expelled by the American Psychological Association.³⁵ Nevertheless, Cameron’s work has been highly influential in the religious right’s campaign against LGBTQIA+ equality, including in legal venues. His work was cited by the anti-gay Family Research Council in Congressional testimony against the 1994 Employment Non-Discrimination Act,³⁶ which died in committee. His work was also cited

26. Niedwiecki, *supra* note 25, at 155–56 (noting that Cameron has asserted that gay people are responsible for one-third of all child molestations and ten to twenty times more likely than heterosexuals to molest children).

27. Michael Kranish, *Beliefs Drive Research Agenda of New Think Tanks: Study on Gay Adoption Disputed by Specialists*, THE BOSTON GLOBE (Jul. 31, 2005), <https://plus.lexis.com/api/permalink/f71d9382-5d09-4bac-9416-e4a36a4b9972/?context=1530671> [<https://perma.cc/Y5W8-628N>].

28. Niedwiecki, *supra* note 25, at 157.

29. *Id.*

30. 517 U.S. 620 (1996).

31. *Paul Cameron*, SO. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/individual/paul-cameron> [<https://perma.cc/7AHD-AC6C>] (last visited Mar. 9, 2023).

32. Kranish, *supra* note 27 (quoting Dr. Ellen C. Perrin, author of a 2002 report that led the American Academy of Pediatrics to conclude that there was no meaningful difference between children raised by same-sex vs. heterosexual couples).

33. AM. SOCIO. ASS’N, Resolution of the Am. Socio. Ass’n Condemning Paul Cameron (Aug. 1985), <https://digital.library.unt.edu/ark:/67531/metadc786184/m1/1/> [<https://perma.cc/54K7-3ZQE>] (“[Cameron] has consistently misinterpreted and misrepresented sociological research on sexuality, homosexuality, and lesbianism”).

34. Kranish, *supra* note 27 (quoting a statement from the Nebraska Psychological Association saying that it “formally dissociates itself from the representations and interpretations of scientific literature offered by Dr. Paul Cameron.”).

35. Letter from Max Seigel, Pres. of the Am. Psych. Ass’n, to Paul Cameron (Dec. 2, 1983) (on file with LGB Psychology) (expelling Cameron for ethics violations).

36. *Employment Non-Discrimination Act: Hearing on S. 2238 Before the S. Comm. on Labor and Human Resources*, 103d Cong., S. Hrg. 103-703, at 92 (1994) (statement of Robert H. Knight, Director of Cultural Affairs, Family Research Council) (quoting a Cameron study of “6,400 obituaries in

by dissenters when the Massachusetts Supreme Judicial Court held that gays and lesbians had the right to marry in the state³⁷ and by the Eleventh Circuit in a 2004 decision upholding Florida's adoption ban for same-sex couples.³⁸

Though Cameron and his Family Research Institute have been recognized as among the most prominent producers of pseudoscientific research for the Christian right,³⁹ they are far from the only religious actors to weaponize "science" in furtherance of an anti-queer agenda. Several major nonprofit organizations with explicitly Christian missions have in recent years pursued the same strategy. For instance, the Witherspoon Institute—a Princeton, New Jersey-based nonprofit that organizes programming on what "the ancient and Judeo-Christian traditions can teach us about contemporary biomedical ethics, sexual morality, marriage and family"⁴⁰—was a driving force behind the so-called "New Family Structures Survey,"⁴¹ a 2012 study led by University of Texas sociologist Mark Regnerus that purported to show that children raised in same-sex households fared worse than those raised by heterosexual parents.⁴² The release of the study, which contradicted a wide body of sociological research and was severely criticized for methodological errors,⁴³ was cited by amici in *United States v. Windsor*⁴⁴ (a challenge to the constitutionality of the

homosexual publications" which asserted that "homosexuals typically have far shorter life spans than the general population.").

37. *Goodridge v. Dep't. of Public Health*, 798 N.E.2d 941, 999 n.26 (Mass. 2003) (Cordy, J., dissenting) (citing Cameron's research for the proposition that "children raised by homosexuals disproportionately experience emotional disturbance and sexual victimization").

38. *Lofton v. Sec'y of Dep't. of Children and Family Servs.*, 358 F.3d 804, 825 n.25 (11th Cir. 2004). The adoption ban was invalidated on state constitutional grounds in 2010. *See Fla. Dep't. of Children and Families v. Adoption of X.X.G.*, 45 So. 3d 79 (Fla. Dist. Ct. App. 2010).

39. HERMAN, *supra* note 21, at 77.

40. *For High School Students*, THE WITHERSPOON INSTITUTE, <https://winst.org/for-high-school-students/> [<https://perma.cc/Y8FN-74PS>] (last visited Mar. 11, 2023).

41. Mark Regnerus, *How Different are the Adult Children of Parents Who Have Same-Sex Relationships? Findings from the New Family Structures Survey*, 41 SOC. SCI. RSCH. 752, 755 (2012). A subsequent internal investigation conducted at Social Science Research found serious errors in the peer review process that led to the publication of Regnerus's study—including that three of the six peer reviewers were on the record opposing same-sex marriage. *See Tom Bartlett, Controversial Gay Parenting Study is Severely Flawed, Journal's Audit Finds*, CHRONICLE HIGHER EDUC. (Jul. 26, 2012), <https://www.chronicle.com/blogs/percolator/controversial-gay-parenting-study-is-severely-flawed-journals-audit-finds> [<https://perma.cc/VJ5A-4S48>].

42. Sofia Resnick, *Conservative Group Tries to Sway SCOTUS on Gay Marriage with Flawed Study*, SALON (Mar. 11, 2013, 10:10 PM), https://www.salon.com/2013/03/11/conservative_group_tries_to_sway_scotus_on_gay_marriage_with_flawed_study_partner/ [<https://perma.cc/A756-EA2T>]; *see also DeBoer v. Snyder*, 973 F. Supp. 2d 757, 766 (E.D. Mich. 2014) (finding that the New Family Structures Survey was "hastily concocted at the behest of a third-party funder, which . . . 'was confident that the traditional understanding of marriage will be vindicated by this study.'").

43. *See, e.g., Brief for Am. Socio. Ass'n as Amicus Curiae Supporting Respondents, Hollingsworth v. Perry*, 570 U.S. 693 (2013) (No. 12-144), 2013 WL 4737188, at *16–20 (outlining flaws in Regnerus study, including that it did not specifically study children born or adopted into same-sex families, but children whose parents at any time engaged in a "same-sex romantic relationship").

44. 570 U.S. 744 (2013).

Defense of Marriage Act) and *Hollingsworth v. Perry*⁴⁵ (which challenged California’s Proposition 8 banning gay marriage).⁴⁶

Another such organization is the American College of Pediatricians (a.k.a. AC Peds), which formed as a breakaway group from the American Academy of Pediatrics after the latter released a statement in 2002 stating that gay parents posed no risk to adopted children.⁴⁷ Despite its secular-sounding name, AC Peds (which has been classified by the Southern Poverty Law Center as a hate group)⁴⁸ has been described by its own founder, Joseph Zanga, as an organization with Judeo-Christian values that opposes abortion and same-sex adoption.⁴⁹ AC Peds is active in litigation around the country against LGBTQIA+ equality and reproductive rights, often as an amicus⁵⁰ and sometimes as a named party.⁵¹ For example, since 2019, AC Peds has been included in sixteen amicus briefs, five of which are included before the Supreme Court.⁵² Currently, AC Peds is named plaintiff in *Alliance for Hippocratic Medicine v. FDA*, an ongoing lawsuit to reverse FDA approval of mifepristone, an abortion medication. Co-plaintiffs include the Alliance for Hippocratic Medicine and the Christian Medical and Dental Association.⁵³

Furthermore, AC Peds published pseudoscientific resources for policymakers— on issues ranging from reproductive to gender-affirming

45. 570 U.S. 693 (2013).

46. See Resnick, *supra* note 42.

47. Jack Turban, *The American College of Pediatricians Is an Anti-LGBT Group*, PSYC. TODAY (May 8, 2017), <https://www.psychologytoday.com/us/blog/political-minds/201705/the-american-college-pediatricians-is-anti-lgbt-group> [https://perma.cc/BH35-ABNG].

48. *American College of Pediatricians*, SO. POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/group/american-college-pediatricians> [https://perma.cc/ZD23-N94X] (last visited Mar. 12, 2023) (describing AC Peds as a “fringe anti-LGBTQ hate group that masquerades as the premier U.S. association of pediatricians to push anti-LGBTQ junk science, primarily via far-right conservative media and filing amicus briefs.”).

49. Bill Fancher & Jody Brown, *Pro-Life Pediatric Group Stands Contrary to Established American Academy of Pediatrics*, CATHOLIC EXCHANGE (Jul. 30, 2003), <https://catholicexchange.com/pro-life-pediatric-group-stands-contrary-to-established-american-academy-of-pediatrics/> [https://perma.cc/2Z3W-ZTHU].

50. The many cases in which AC Peds has acted as an amicus include *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014) (challenge to Virginia’s same-sex marriage ban), *State ex rel. Kutil v. Blake*, 679 S.E.2d 310 (W.Va. 2009) (challenge to denial of foster placement with a same-sex couple), *Massachusetts v. U.S. Dep’t. of Health and Human Servs.*, 682 F.3d 1 (1st Cir. 2012) (challenge to Defense of Marriage Act’s denial of federal benefits to same-sex married couples), and *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243 (Fla. 2017) (challenge to Florida’s 24-hour waiting period for people seeking abortions).

51. See *Am. Coll. of Pediatricians v. Becerra*, No. 1:21-cv-195, 2022 WL 17084365 (E.D. Tenn. Nov. 18, 2022) (challenge to HHS rule interpreting “discrimination on the basis of sex” to encompass discrimination on the basis of gender identity).

52. *Amicus Briefs*, AM. COLL. OF PEDIATRICIANS, <https://acpeds.org/positions/amicus-briefs> [https://perma.cc/C3LN-CAXR] (last visited Oct. 16, 2023).

53. Emergency Motion for a Stay Pending Appeal, *Alliance for Hippocratic Medicine v. Food & Drug Admin.* No. 23-10362, 2023 WL 2913725 (5th Cir. April 12, 2023).

care.⁵⁴ Their earlier work challenged the American Psychological Association's assertion of the immutability of homosexual attraction among youth as "biased and scientifically unfounded" and a position that "puts youth at risk."⁵⁵ To do so, they argue that the APA's factsheets were "generated by political pressure."⁵⁶ Several of the medical sources cited deliberately misused the statements of physicians to support their claims.⁵⁷ This statement was used in support of their letter to 14,800 school superintendents endorsing reparative therapy, also known as conversion therapy.⁵⁸

AC Peds repeatedly characterizes queer identity as mutable, political, and harmful to children. Gender-affirming treatment, it contends, turns "children into hormone- and surgery-dependent experimentees"⁵⁹ and constitutes "the experimental abuse of our children."⁶⁰ Instead, they argue that "[s]ex is a dimorphic, innate trait defined in relation to an organism's biological role in reproduction."⁶¹ The growing support of gender-affirming care, they argue, "requires a dangerous dismissal of both science and medical ethics."⁶² Based on these views, AC Peds has pursued a sustained campaign promoting the supposed benefits of conversion therapy for queer youth.⁶³

The campaign—as well as the researchers involved—has been condemned by, for example, a researcher, who was the director of the National Institutes of Health, who accused AC Peds of distorting their work.⁶⁴ Despite these

54. *For Policymakers*, AM. COLL. OF PEDIATRICIANS, <https://acpeds.org/policy-makers> [<https://perma.cc/L2VH-SFRG>] (last visited Oct. 16, 2023); *Position Statements*, AM. COLL. OF PEDIATRICIANS, <https://acpeds.org/positions/position-statements> [<https://perma.cc/SC9T-UA9F>] (last visited Oct. 16, 2023).

55. *Perspectives in Medicine*, AM. COLL. OF PEDIATRICIANS, <https://acpeds.org/positions/perspectives-in-medicine> [<https://perma.cc/6WQN-B63H>] (last visited Oct. 16, 2023); Dale O'Leary et al., *A Response to the APA's "Factsheet."* https://ACPeds.org/assets/imported/Response_to_the_APA_Factsheet.pdf [<https://perma.cc/6RQS-4Y6C>] (last visited Oct. 16, 2023).

56. See O'Leary et al., *supra* note 55, at 3 (arguing that homosexuality is a political question).

57. See SO. POVERTY L. CTR., *supra* note 48.

58. *Id.*

59. Monique Robles, *Observations in a Gender Diversity Clinic*, 44 ETHICS & MED. 1, 3 (2019).

60. *Id.* at 3–4.

61. Michael Artigues & Michelle Cretella, *Sex is a Biological Trait of Medical Significance*, AM. COLL. OF PEDIATRICIANS, <https://acpeds.org/position-statements/sex-is-a-biological-trait-of-medical-significance> [<https://perma.cc/3M33-JWJ9>] (last visited Oct. 16, 2023). Importantly, this "statement" follows the structure of traditional scientific knowledge production (*i.e.*, providing an abstract and introduction) but is not published on a journal.

62. *Id.*

63. See, e.g., *Facts About Youth*, AM. COLL. OF PEDIATRICIANS, <http://factsaboutyouth.com/> [<https://perma.cc/8HNS-ZHTL>] (last visited Mar. 12, 2023).

64. *Statement from NIH Director Francis S. Collins, M.D., Ph.D., in Response to the American College of Pediatricians*, NAT'L INSTITUTES OF HEALTH, (Apr. 15, 2010), https://web.archive.org/web/20110727115017/http://www.nih.gov/about/director/04152010_statement_ACP.htm [<https://perma.cc/ZPQ3-3NJS>]; Nick Pinto, *University of Minnesota Professor's Research Hijacked*, CITY PAGES (May 26, 2010), <https://web.archive.org/web/20100601201941/http://www.citypages.com/>

statements, AC Peds continues to be referenced in the media and put forward as a source of expertise for policymakers. The AC Peds website trumpets mentions by news outlets, principally Christian and Catholic publications, as well as right-wing sites like *The Daily Caller* and *the Daily Wire*.⁶⁵ The group has also received exposure in more mainstream news outlets and in state legislatures. To take just a few examples, AC Peds official Michelle Cretella appeared on “Tucker Carlson Tonight” to claim that because “[s]ex is hard-wired from before birth” gender-affirming care is “child abuse”).⁶⁶ Another AC Peds official, Quentin Van Meter, was hired by the Ohio Department of Health to serve as an expert witness in a civil rights lawsuit against the state for refusing to change the sex on birth certificates of four transgender people⁶⁷ and provided testimony to the Alabama state legislature in favor of banning gender-affirming healthcare for children).⁶⁸

AC Peds, The Witherspoon Institute, Mark Regnerus, the Family Research Institute, and Paul Cameron are just a few exponents of the pseudoscientific messaging that the religious right has weaponized against queer Americans for decades.⁶⁹ Though a full accounting of the histories and strategies of the various right-wing actors to have pursued this strategy would be beyond the scope of this paper, these examples vividly illustrate a broader and well-

2010-05-26/news/university-of-minnesota-professor-s-research-hijacked/ [https://perma.cc/N38G-VNFX].

65. *In the media*, AM. COLL. OF PEDIATRICIANS, <https://acpeds.org/in-the-media> [https://perma.cc/L82H-YX9F] (last visited Nov. 12, 2023).

66. Brennan Suen, *Tucker Carlson Teams with Hate Group to Spread Junk Science About Transgender Kids*, MEDIA MATTERS (July 25, 2017, 2:48 PM), <https://www.mediamatters.org/tucker-carlson/tucker-carlson-teams-hate-group-spread-junk-science-about-transgender-kids> [https://perma.cc/A232-66Y2].

67. Jake Zuckerman, *Conversion Therapy is a Discredited Practice. Ohio Hired its Advocate as an Expert Witness*, OHIO CAPITAL J. (Feb. 5, 2020, 1:00 AM), <https://ohiocapitaljournal.com/2020/02/05/conversion-therapy-is-a-discredited-practice-ohio-hired-its-advocate-as-an-expert-witness/> [https://perma.cc/RDU8-TDNA].

68. See SO. POVERTY L. CTR., *supra* note 48. See also Cheryl Wetzstein, *Pediatricians Have a New Mission: Fight “Homophobia.”* WASH. TIMES. (June 24, 2013), <https://www.washingtontimes.com/news/2013/jun/24/pediatricians-set-new-policy-on-sexual-minorities/> [https://perma.cc/HP9F-BCH6] (quoting then-AC Peds president Den Trumbull’s endorsement of reparative therapy for LGBTQ teens); Kayla Gogarty, *Extreme anti-LGBTQ Groups Family Research Council and American College of Pediatricians Were on Capitol Hill Fighting the Equality Act*, MEDIA MATTERS (March 21, 2019, 12:15 PM), <https://www.mediamatters.org/family-research-council/extreme-anti-lgbtq-groups-family-research-council-and-american-college> (reporting on a 2019 address to members of Congress in which Cretella argued the alleged dangers of the Federal Equality Act); Chad Dorsett, *Rep. Ginny Ehrhart Announces Vulnerable Child Protection Act*, SKY 96.3 (Oct. 31, 2019), <https://sky963.com/rep-ginny-ehrhart-announces-vulnerable-child-protection-act/> [https://perma.cc/H6AQ-6WYE] (reporting on a 2019 press release from Georgia state Rep. Ginny Ehrhart quoting AC Peds president Quentin Van Meter, who stated that children need to be protected from “medical experimentation based on wishful social theory”).

69. See, e.g., HERMAN, *supra* note 21, at 73.

documented discourse.⁷⁰ On issues including adoption, conversion therapy, and LGBTQIA+ “criminality,” conservative Christian organizations have long sought to cast what are, at bottom, religious views about sexual morality, family structure, and abortion in a deceptively secular, “scientific” light.

What explains this messaging strategy? Nathaniel Klemp offers a persuasive answer in his article *Beyond God-Talk*,⁷¹ which analyzes the political practices of another right-wing religious group that has deployed scientific language against the queer community: Focus on the Family (“Focus”). Explaining that Focus—like AC Peds and Witherspoon—has purported to back up its arguments against gay marriage with objective sociological research, Klemp argues that such rhetoric is designed to appeal to a broader democratic coalition than the Christian conservative movement would otherwise command.⁷² By concealing its religious views behind supposedly scientific data, in other words, the Christian right aims to give its message the appearance of moderation, attracting those likely to be alienated by more overtly theological arguments.⁷³ Klemp’s view finds support in the work of the philosopher Sven Ove Hansson, who has described religious movements’ use of pseudoscience as a strategic adaptation to “modern societies where science is perceived as having more authority than what religion has.”⁷⁴

As the citation record of Cameron, The Witherspoon Institute, and others indicates, arguments that sound scientific—that on their face appear to be backed up by studies, figures, credentialed “experts”—can find a receptive audience in certain quarters of the judiciary, and among policymakers who lack the training necessary to evaluate them critically.⁷⁵ Though moderate on their

70. For more extensive accounts of the anti-LGBT religious right’s embrace of pseudoscience, see, e.g., HERMAN, *supra* note 21; ANTONY ALUMKAL, *PARANOID SCIENCE: THE CHRISTIAN RIGHT’S WAR ON REALITY* (2017); Gabby Bess, *Uncovering the Christian Think Tanks Behind the Bogus Studies on Gay Parenting*, VICE (Feb. 16, 2017, 10:45 AM), <https://www.vice.com/en/article/3k8qmw/uncovering-the-christian-think-tanks-behind-the-bogus-studies-on-gay-parenting> [<https://perma.cc/96F5-CMPR>].

71. Nathaniel J. Klemp, *Beyond God-Talk: Understanding the Christian Right from the Ground Up*, 39 *POLITY* 522 (2007).

72. *Id.* at 532–33.

73. *Id.* at 533.

74. Sven Ove Hansson, *Religion and Pseudoscience*, in *ENCYCLOPEDIA OF SCIENCES AND RELIGIONS* 1993 (Anne Runehov & Lluís Oviedo eds., 2013).

75. There is a disturbing parallel—a full accounting of which would be beyond the scope of this paper, but is a fruitful subject for further research—between the use of pseudoscientific rhetoric to support attacks on the trans community and the use of pseudoscience to prop up narratives of racial inferiority. For some helpful overviews of the history of the latter phenomenon, often referred to as “scientific racism,” see, e.g., William H. Tucker, *The Ideology of Racism: Misusing Science to Justify Racial Discrimination*, U.N. CHRONICLE, <https://www.un.org/en/chronicle/article/ideology-racism-misusing-science-justify-racial-discrimination> [<https://perma.cc/9QB8-ZN4Z>] (last visited Oct. 7, 2023); Rutledge M. Dennis, *Social Darwinism, Scientific Racism, and the Metaphysics of Race*, 64(3) *J. NEGRO EDUCATION* 243 (1995); John P. Jackson, Jr. & Nadine M. Weidman, *The Origins of Scientific Racism*, 50 *J. OF BLACKS IN HIGHER ED.* 66 (Winter 2005/2006). Comparing the two strands of rhetoric

face, such arguments have a long and pernicious history in anti-LGBTQIA+ activism. They have propped up decades of religiously-motivated attacks on the rights of queer people to marry, raise children, and live openly as their authentic selves.

Calling attention to the harms perpetuated by these actors is not meant to ignore the history of harm perpetuated by scientific and medical organizations against LGBTQ+ people. Medicine, in particular, has historically been complicit in the pathologization of queerness and labeling queer people as deviant.⁷⁶ It was not until 1973 that the American Psychological Association removed homosexuality from its list of mental disorders.⁷⁷

With time, however, science and medicine evolved and corrected not only the pathologization of queerness but also began to affirmatively support gender-affirming care. Anti-queer actors co-opt this evolution to argue that these changes are not due to advancements in medicine, but instead, to social and political pressure.⁷⁸ In 2022, Florida's health care agency, for example, attacked the credibility of the American Psychological Association, questioning "[w]hether the APA has shifted its terminology and criteria for gender identity issues due to emerging clinical data or cultural changes is another question."⁷⁹ This strategy continues in legal arguments today. For example, in one recent case, the attorneys general of fifteen states argued in an amicus brief that the evolution in the consensus on gender-affirming care is motivated by "politics, not science or the best interests of young people."⁸⁰ In another ongoing case, the state of Florida argued that "medical history is littered with . . . prominent physicians getting [medical science] wrong, often with disastrous consequences."⁸¹

powerfully illuminates the extent to which the invocation of objective, "scientific" authority can be used to justify the mistreatment of disfavored groups and maintain social hierarchies.

76. Emily Ward, *Pride is a State of Mind: The History of the Pathologisation of Queerness*, BRITISH ONLINE ARCHIVES (June 27, 2021), <https://microform.digital/boa/posts/category/articles/415/pride-is-a-state-of-mind-the-history-of-the-pathologisation-of-queerness> [https://perma.cc/LV5R-7CLZ].

77. Allison Turner, #FlashbackFriday – Today in 1973, the APA Removed Homosexuality from List of Mental Illnesses, HUM. RTS. CAMPAIGN (Dec. 15, 2017), <https://www.hrc.org/news/flashback-friday-today-in-1973-the-apa-removed-homosexuality-from-list-of-me> [https://perma.cc/7EM3-T35L].

78. DIV. OF FLA. MEDICAID, GENERALLY ACCEPTED PROFESSIONAL MEDICAL STANDARDS ON THE TREATMENT OF GENDER DYSPHORIA 6 (June 2, 2022), https://ahca.myflorida.com/content/download/4869/file/AHCA_GAPMS_June_2022_Report.pdf [https://perma.cc/ZJV4-JSMW].

79. *Id.* at 5–6.

80. Brief of the States of Ark. at 15, Alaska et al. as Amici Curiae Supporting Defendants-Appellants, *Eckes-Tucker v. Governor of Ala.*, 80 F.4th 1205 (11th Cir. 2023) (No. 22-11707).

81. Redacted Defendants' Response in Opposition to Motion for Preliminary Injunction and Incorporated Memorandum of Law at 14, *Dekker v. Marsteller*, No. 4:22-cv-00325-RH-MAF (N.D. Fla. Oct. 3, 2022), ECF No. 49.

III. MISINFORMATION AND RELIGIOUS PSEUDOSCIENCE WRITTEN INTO HEALTHCARE BANS

State actors who support health care bans frame their actions in secular terms and invoke purported scientific evidence, as they must if they are to avoid an obvious Establishment Clause problem. (To see the point, imagine the reception a state attorney general would receive if she argued, in federal court, that an anti-transgender law was enacted to enforce the will of God as dictated by the writings of the Vatican.)

But a closer examination shows that these purportedly secular and scientific arguments stand at odds with the actual scientific evidence. In this Part, we examine key legal documents, including the text of legislation, briefs, and administrative reports, and show that the core arguments used by state actors to justify these measures are actually grounded in misinformation and religious pseudoscience.

Although healthcare bans differ in their targets (youth or youth and adults), penalties (criminal and civil liability for medical providers and parents, as well as custody determinations), and form of enactment (legislative and executive actions), all have been deployed to deny gender-affirming care to trans people. As of 2023, an estimated 156,500 trans youth live in 32 states that have restricted or considered bans on access to gender-affirming care.⁸² Trans residents in these jurisdictions are left with just two choices: move or seek medication illegally.

We concentrate on healthcare bans because they illustrate clearly how state actors rely on misinformation and religious pseudoscience. We identify four sets of core and recurring arguments, which are repeated in most healthcare bans across jurisdictions. We show that these core arguments are not only unsupported by science but also map closely onto four religious tenets associated with conservative Christian beliefs:

- First, that sex and gender are binary and immutable;
- Second, that (accordingly) trans people are confused or deluded;
- Third, that secular authority, including science and medicine, is untrustworthy; and,
- Fourth, that secular society affirmatively pushes “gender ideology” on youth via social media and schools.

As noted above, these tenets are not part of every religion but rather are drawn from conservative strains of Catholicism and fundamental Protestant teachings. To illustrate the religious foundations of purported secular and

82. Elana Redfield et al., *Prohibiting Gender-Affirming Medical Care for Youth*, UCLA SCH. L. WILLIAMS INSTITUTE (March 2023), <https://williamsinstitute.law.ucla.edu/publications/bans-trans-youth-health-care/> [<https://perma.cc/8YVB-QUFF>].

scientific claims, we draw on materials from the Vatican and from conservative evangelical organizations. While the Vatican's views are authoritative for Catholics worldwide, there is no central authority for conservative Protestants. Instead, we draw on materials from Liberty University and the Southern Baptist Convention to illustrate conservative Protestant views. Both are well-known evangelical Christian organizations with a history of taking conservative political positions on political matters, especially cultural matters.⁸³

This Part begins with a brief overview of gender-affirming care and its scientific evidence base. We then examine the four tenets and show how misinformation and pseudoscience have been used to cast these as “scientific” or “common sense” claims. We conclude this Part by briefly describing how major court decisions have correctly rejected this misinformation and called out the religious pseudoscience and the experts promoting it.

Throughout this Part, we aim to briefly document the misinformation and pseudoscience that appears in statutes, briefs filed by state actors, and administrative agency filings. Our discussion of the scientific evidence is brief because the actual science of gender-affirming care has been deeply documented in the scientific literature and because we (and other researchers) have extensively debunked many of these arguments, with full scientific citations, in other work, which readers can consult.⁸⁴

83. Liberty University was founded in 1971 by Jerry Falwell, one of the leaders of the political Christian Right in the 1980s. *About Liberty*, LIBERTY UNIV., <https://www.liberty.edu/about/> [https://perma.cc/6KUE-3HNY] (last visited Dec. 4, 2023); *History of Liberty*, LIBERTY UNIV., <https://www.liberty.edu/about/history-of-liberty/> [https://perma.cc/86MX-WSJZ] (last visited Dec. 4, 2023). The university hosts conferences that feature right-wing speakers and views. *See, e.g.*, Logan Smith, *Sold-out Freedom Center Conference Brings in Top Conservative Influencers to Weigh in on Christians' role in Public Arena*, LIBERTY NEWS (Nov. 16, 2021) <https://www.liberty.edu/news/2021/11/16/sold-out-freedom-center-conference-brings-in-top-conservative-influencers-to-weigh-in-on-christians-role-in-the-public-arena/> [https://perma.cc/8459-RKYF] (describing a “Freedom Uncensored” event that “brought in conservative influencers” to “weigh in on social issues, politics, Marxism, and a multitude of other concerns facing Christians and the Church.” The Southern Baptist Convention is a body of more than 50,000 “like-minded local churches cooperating together to reach the world with the Good News of Jesus Christ.” *About the SBC*, SO. BAPTIST CONVENT, <https://www.sbc.net/about/> [https://perma.cc/N7P4-DBT2] (last visited Dec. 4, 2023). Their statement of faith includes the view that marriage is a lifelong covenant between a man and a woman and that wives must respect their husbands and serve as “helpers” by raising children. *Baptist Faith & Message 2000*, SO. BAPTIST CONVENT, <https://bfm.sbc.net/bfm2000/#xviii> [https://perma.cc/4HZ3-NNE8] (last visited Dec. 4, 2023). Their statement also treats “homosexuality” as a form of “sexual immorality” that must be opposed, along with adultery and pornography. *Id.* at Article XV. The SBC also announces an explicitly political mission: “Every Christian should seek to bring industry, government, and society as a whole under the sway of the principles of righteousness, truth, and brotherly love.” *Id.*

84. *See* Susan D. Boulware, et al., *Biased Science: The Texas and Alabama Measures Criminalizing Medical Treatment for Transgender Children and Adolescents Rely on Inaccurate and Misleading Scientific Claims*, YALE SCH. MED. (April 28, 2022), <https://medicine.yale.edu/lgbtqi/research/gender-affirming-care/biased-science/> [https://perma.cc/AA9J-NYMU] (hereinafter, “Boulware et al. (2022)”); Meredith McNamara, et al., *A Critical Review of the June 2022 Florida Medicaid Report on the Medical Treatment of Gender Dysphoria*, YALE SCH. MED. (July 8, 2022), <https://medicine.yale.edu/lgbtqi/research/gender-affirming-care/florida-medicaid/>

A. *The sound science of gender-affirming care*

Gender-affirming care is evidence-based medical treatment recommended by every relevant major medical organization and supported by at least 17 sound studies. See Tables 2 and 4. The purpose of gender-affirming care is to treat gender dysphoria, a condition recognized by psychiatric authorities as the distress caused by the discordance between one's gender identity and the sex assigned at birth.⁸⁵ Put another way, individuals who live in a manner that is physically and socially incongruent with their gender identity can experience clinically significant psychological distress. Left untreated, gender dysphoria can lead to depressed mood, suicidal ideation, and disordered eating, among other negative effects.⁸⁶

The leading guidelines for the medical treatment of transgender children and adolescents are published by the World Professional Association for Transgender Health (WPATH) and by the Endocrine Society.⁸⁷ See Table 2. Both sets of guidelines are based on reviews of the best available science conducted by panels of experts and independent, outside review.

In the early phases of treatment, gender-affirming care begins with social transition. When adolescence begins, physicians may prescribe puberty-pausing medications that delay the onset of distressing physical changes that

[<https://perma.cc/T433-BTT6>] (hereinafter, "McNamara et al. (2022)"); Meredith McNamara et al., *Protecting Transgender Health and Challenging Science Denialism in Policy*, 387 NEW ENG. J. MED. 1919 (2022); Christina Lepore et al., *Scientific Misinformation Is Criminalizing the Standard of Care for Transgender Youth*, 176 JAMA PEDIATRICS 965 (2022); Meredith McNamara et al., *Scientific Misinformation and Gender Affirming Care: Tools for Providers on the Front Lines*, 71 J. ADOLESCENT HEALTH 251 (2022); Katherine L. Kraschel et al., *Legislation restricting gender-affirming care for transgender youth: Politics eclipse healthcare*, 3 CELL REPS. MED. 1 (2022); Nicholas Meade et al., *Understanding and Addressing Disinformation in Gender-Affirming Health Care Bans*, TRANSGENDER HEALTH (2023).

85. *What is Gender Dysphoria?*, AM. PSYCHIATRIC ASS'N., <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria> [<https://perma.cc/PE48-WTVE>] (last visited July 20, 2023); AM. PSYCHIATRIC ASS'N., DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013).

86. See Sorbara, et al., *Mental Health and Timing of Gender-Affirming Care*, 146 PEDIATRICS (2020); Jody Herman et al., *Suicide Thoughts and Attempts Among Transgender Adults*, UCLA SCH. L. WILLIAMS INSTITUTE (Sept. 2019), <https://williamsinstitute.law.ucla.edu/publications/suicidality-transgender-adults/> [<https://perma.cc/8669-4Y4A>]; Jennifer S. Coelho, et al., *Eating Disorder Diagnoses and Symptom Presentation in Transgender Youth: A Scoping Review*, 21 CURRENT PSYCHIATRY REP. 107 (2019); Rebecca C. Kamody et al., *Disordered Eating Among Trans-Masculine Youth: Considerations Through a Developmental Lens*, 7 LGBT HEALTH 170 (2020); Isabelle Legroux & Bernard Cortet, *Factors Influencing Bone Loss in Anorexia Nervosa: Assessment and Therapeutic Options*, 5 RMD OPEN 1 (2019).

87. See E. Coleman, et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 INT'L J. OF TRANSGENDER HEALTH S1 (2022), <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644> [<https://perma.cc/4Y53-EHDV>] (hereinafter, "WPATH (2022)"); Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. CLINICAL ENDOCRINOLOGY METABOLISM 3869 (2017) (hereinafter, "Endocrine Society (2017)").

occur in puberty (e.g., facial hair in those assigned male at birth or breast development in those assigned female at birth). Using such a medication allows the young person to receive supportive psychological care, understand their identities, and clarify their care goals. Older adolescents and adults with gender dysphoria may be prescribed cross-sex hormones, with the goal of enabling physical development that is concordant with gender identity. At each stage, medical providers obtain the informed consent of patients and (in the case of youth) their parents. And at each stage, care is provided only when gender dysphoria is well documented, and treatment is medically appropriate. Gender-affirming surgeries typically are performed only on adults.

The scientific evidence shows that gender-affirming medical care is effective. At least 17 solid studies show that puberty blockers and hormones benefit patients with gender dysphoria, with benefits including improved well-being and psychosocial functioning and reduced suicidality. See Table 4. For these reasons, the American Medical Association, the American Academy of Pediatrics, the American Psychological Association, and the American Academy of Child and Adolescent Psychiatry, among many other national and state medical authorities, have endorsed gender-affirming care.⁸⁸

B. Misinformation and religious pseudoscience regarding gender-affirming care: four core claims

However, despite the scientific evidence and medical consensus, anti-trans legislation typically repeats a number of seemingly scientific claims about gender dysphoria and gender-affirming care. In other work, we and others have extensively debunked this misinformation.⁸⁹ Here, we show how four of these repeated claims – that sex and gender are binary and immutable; that trans people are confused or deluded; that secular authorities such as mainstream science and medicine are untrustworthy; and that society pushes “gender ideology” on youth via social media and schools – not only contradict sound scientific evidence but also map onto tenets of religious belief.

88. See Table 2; see also Alyson Sulaski Wyckoff, *AAP Continues to Support Care of Transgender Youth as More States Push Restrictions*, AM. ACAD. OF PEDIATRICS, (January 6, 2022), <https://publications.aap.org/aapnews/news/19021/AAP-continues-to-support-care-of-transgender> [<https://perma.cc/N84T-JMWD>]; *Criminalizing Gender Affirmative Care with Minors*, AM. PSYCH. ASS'N, <https://www.apa.org/pi/lgbt/gender-affirmative-care> (last visited July 20, 2023); AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, *AACAP Statement Opposing Actions in Texas Threatening the Health, Mental Health and Well-Being of Transgender and Gender Diverse Youth and Their Families* (March 1, 2022), https://www.aacap.org/AACAP/zLatest_News/AACAP_Statement_Opposing_Actions_in_Texas.aspx [<https://perma.cc/3PFN-RMZK>]; Amy Lynn Sorrel, *TMA Supports Evidence-Based Gender-Affirming Care in Lawsuit*, TEXAS MED. ASS'N (March 14, 2022), <https://www.texmed.org/TexasMedicineDetail.aspx?id=59040> [<https://perma.cc/GX7S-9EVN>].

89. See *supra* note 84.

We draw on statutes and legal briefs in Arkansas, Alabama, and Florida, along with a key administrative agency decision in Florida and an attorney general's opinion in Texas. We focus on these jurisdictions because, as the early initiators of healthcare bans in 2021 and 2022, they have produced the most extensive legal record to date. For each claim, we also draw on federal district court decisions in these jurisdictions to illustrate how trial courts, when provided with evidence by both sides, have consistently been able to distinguish real science from pseudoscience and, accordingly, have temporarily or permanently blocked such bans.

1. *Sex and gender are binary and immutable*

State health care bans often assert that biological sex is fixed and natural and that transgender identity is subjective and fleeting. The Alabama ban's statutory findings state, for example, that "[t]he sex of a person is the biological state of being female or male, based on sex organs, chromosomes, and endogenous hormone profiles, and is genetically encoded into a person at the moment of conception, and it cannot be changed."⁹⁰

The Arkansas ban's statutory language emphasizes that "biological sex" is defined by "naturally occurring" hormones and does not take into account "an individual's psychological, chosen, or subjective experience of gender."⁹¹ By contrast, the Alabama ban's findings imply that gender (if it departs from biological sex) may be imaginary: "The cause of the individual's *impression* of discordance between sex and identity is unknown, and the diagnosis is based exclusively on the individual's self-report of *feelings and beliefs*."⁹²

Indeed, Tennessee's 2023 statute defines transgender identity and gender dysphoria in frankly skeptical terms, prohibiting medical treatment:

- Enabling a minor to identify with, or live as, a *purported identity inconsistent with the minor's sex*; or

90. ALA. CODE § 26-26-2 (2023).

91. 2021 Arks. Act 626.

92. S.B. 184, 2022 Reg. Sess., § (3)(3) (Ala. 2022) (emphasis added); *see also* Letter from Ken Paxton, Tex. Att'y Gen., to Honorable Matt Krause, Chair, House Comm. On Gen. Investigating, at 1, 4 (Feb. 18, 2022), <https://texasattorneygeneral.gov/sites/default/files/global/KP-0401.pdf> [<https://perma.cc/LMB4-P77C>] (referring to medical treatments that "transition individuals with gender dysphoria to their *desired gender*"; and stating that "it is particularly unethical to radically intervene in the *normal physical development of a child* to 'affirm' a 'gender identity' *that is at odds with bodily sex*") (italics added); Redacted Defendants' Response in Opposition to Motion for Preliminary Injunction and Incorporated Memorandum of Law at 3, *Dekker v. Marsteller*, No. 4:22-cv-00325-RH-MAF (N.D. Fla. Oct. 3, 2022), ECF No. 49 (stating that "[n]o laboratory tests, imaging, biopsies, or other objective tests exist to diagnose someone with gender dysphoria. No biological markers establish gender dysphoria as an immutable condition. Gender identity and, by extension, gender dysphoria are psychological constructs.").

□ Treating *purported discomfort or distress* from a discordance between the minor's sex and asserted identity.⁹³

As a matter of logic, the laws' insistence on a sex binary and its biological immutability is odd because it is irrelevant to the evidence on gender-affirming care. (Both the binary and its immutability are also overstated as a matter of science.)⁹⁴ As noted above, gender-affirming medical treatment aims to address gender dysphoria, which arises from a difference between gender identity and sex assigned at birth. Nothing in the scientific literature denies the existence of physical sex characteristics or the influence of biology of physical development. Indeed, gender-affirming care at and after puberty is designed to alter physical characteristics to align with gender identity.

Curiously, then, the assertion of an immutable binary is thus not doing any logical work in the case against gender-affirming care; rather, it is signaling an allegiance to the religious idea that God created man and woman and assigned them gender roles that accord with their physical sex. For example, the Florida statutory health care ban defines sex as "either male or female based on the organization of the human body of such person for a specific reproductive role."⁹⁵ This maps neatly onto the AC Peds statement that "[h]uman sexuality is binary by design with the obvious purpose being the reproduction and flourishing of our species" and that gender "is a sociological and psychological concept; not an objective biological one."⁹⁶

The AC Peds statements, in turn, seems to reflect Catholic teaching. According to a Vatican document, "[I]t is from [their] sex that the human person receives the characteristics which, on the biological, psychological and spiritual levels, make that person a man or a woman, and thereby largely condition his or her progress towards maturity and insertion into society."⁹⁷

93. S.B. 1 § (a)(1), 2023 Leg., 113th Sess., at 68-33-101 (1) (Tenn. 2023) (emphasis added).

94. This is a large literature. For a recent review in a peer-reviewed journal, see Riska Ristori, et al., *Brain Sex Differences Related to Gender Identity Development: Genes or Hormones?* 21 INT'L J. MOL. SCI. 21123 (2020). For a sample of relevant studies documenting brain structures that align with gender identity, see, e.g., Florian Kurth, et al., *Brain Sex in Transgender Women Is Shifted towards Gender Identity*, 11 J. CLIN. MED. 1582 (2022); Milton Diamond, *Transsexuality Among Twins: Identity Concordance, Transition, Rearing, and Orientation*, 14 INT'L J. TRANS. 24 (2013); J.N. Zhou, et al., *A Sex Difference in the Human Brain and its Relation to Transsexuality*, 378 NATURE 68 (1995); Frank P. Kruijver, et al., *Male-to-female Transsexuals Have Female Neuron Numbers in a Limbic Nucleus*, 85 J CLIN ENDOCRINOL METAB. 2034 (2000); and Eileen Luders, et al., *Regional Gray Matter Variation in Male-to-female Transsexualism*. 36 NEUROIMAGE 893 (2009).

95. S.B. 254, 2023 Leg., 54th Sess. (Fla 2023).

96. AC PEDS, GENDER IDEOLOGY HARMS CHILDREN (2017), https://acpeds.org/assets/imported/9.14.17-Gender-Ideology-Harms-Children_updated-MC.pdf [<https://perma.cc/RZW8-DE4A>] (emphasis added).

97. CONGREGATION FOR CATH. EDU., "MALE AND FEMALE HE CREATED THEM": TOWARDS A PATH OF DIALOGUE ON THE QUESTION OF GENDER THEORY IN EDUCATION (2019), http://www.educatio.va/content/dam/cec/Documenti/19_0997_INGLESE.pdf (internal quotation marks omitted), citing CONGREGATION FOR THE DOCTRINE OF THE FAITH, PERSONA HUMANA, DECLARATION ON CERTAIN QUESTIONS CONCERNING SEXUAL ETHICS I (Dec. 29, 1975).

Some of the ADF's purported experts use words much like these when they are addressing religious audiences: Patrick Lappert, for instance, told a Catholic publication that

Transgenderism and the whole gender ideology business are inhuman, because they separate our souls from our bodies. They propose the essence of who we are has nothing to do with our body, contrary to revealed truth and to the revelation of Jesus Christ in his Incarnation. So this is not a small theological question. This is at the heart of our path to salvation.⁹⁸

Lappert also referred to gender affirmation surgery as "an intentional mutilation."⁹⁹

Indeed, the court in *Dekker v. Weida* detected just this kind of subtext. The court notes:

An unspoken suggestion running just below the surface in some of the proceedings that led to adoption of the rule and statute at issue—and just below the surface in the testimony of some of the defense experts and [state of Florida] consultants—is that transgender identity is not real, that it is made up... And so, for example, one of the defendants' experts, Dr. Paul Hruz, joined an amicus brief in another proceeding asserting transgender individuals have only a "false belief" in their gender identity—that they are maintaining a "charade" or "delusion."¹⁰⁰

Healthcare bans often also rely on assertions that transgender identity is malleable and fleeting. In *Dekker*, for example, the state of Florida claimed that, "[b]roadly speaking, most of those with gender dysphoria revert to their birth sex."¹⁰¹ The Arkansas ban's legislative findings assert that "[f]or the small percentage of children who are gender nonconforming or experience distress at identifying with their biological sex, studies consistently demonstrate that the majority come to identify with their biological sex in adolescence or adulthood, thereby rendering most physiological interventions unnecessary."¹⁰² Similar statements appear in state statutes and other state legal filings.¹⁰³

98. Gina Christian, *Transgender Interventions Pose Serious Medical Consequences for Minors, Says Surgeon*, THE TABLET (April 17, 2023), <https://thetablet.org/transgender-interventions-pose-serious-medical-consequences-for-minors-says-surgeon/> [<https://perma.cc/M5B4-4DQ6>].

99. Remote Videotaped Videoconference Deposition Testimony of: Patrick Lappert, M.D. at 60, *Kadel v. Folwell*, No. 1:19-cv-00272-LCB-LPA (M.D.N.C. Sep. 30, 2022), ECF No. 209-3.

100. *Dekker v. Weida*, No. 4:22cv325-RH-MAF, 2023 WL 4102243 at *2 (N.D. Fla. June 21, 2023).

101. Redacted Defendants' Response in Opposition to Motion for Preliminary Injunction and Incorporated Memorandum of Law at 27, *Dekker v. Marsteller*, No. 4:22-cv-00325-RH-MAF (N.D. Fla. Oct. 3, 2022), ECF No. 49.

102. H.B. 1570, 93rd Gen. Ass., Reg. Sess (Ark. 2021).

103. See Defendants' Response in Opposition to Plaintiff's Motion for Preliminary Injunction at 17, *Eknes-Tucker v. Ivey*, No. 2:22-cv-0184-LCB-SRW (M.D. Ala. May, 2 2022), ECF No. 74 ("If not given medical interventions to transition—and that is an important if—most children with [gender dysphoria] will grow up to identify as gay or lesbian and will not suffer from [gender dysphoria] as adults.").

This so-called “desistance” claim is potentially relevant to gender-affirming care for the reason that the Arkansas ban states. If it were the case that transgender people usually cease being transgender after a short period, one could argue that it would be prudent to hold off on major physical changes. One might oppose such an argument on the grounds of personal autonomy, but we need not delve further into the details, because the states’ claims are simply untrue. Repeated state assertions about the fleeting nature of trans identity are based on a misleading presentation of outdated studies.

Studies demonstrate that both prepubertal children and adolescents can express a transgender identity and experience gender dysphoria. Several older studies of prepubertal children used expansive criteria for gender nonconformity or gender incongruity (rather than stricter, modern criteria for gender dysphoria). Using these broad categories, the early studies often included, for instance, “tomboy” girls or “feminine” boys (who would not today be considered to have gender dysphoria). It is true that several of these studies found that the majority of prepubertal children did not identify as transgender in adolescence; many were gay or lesbian. However, even this older literature found that transgender *adolescents* continued to be trans and to experience gender dysphoria into adulthood. Thus, even these studies would suggest that gender-affirming care is sound because medical treatment begins only in adolescence, when gender identity has solidified.

More recent studies using the narrower, modern category of gender dysphoria suggest that even young transgender children continue to be transgender into adolescence and beyond.¹⁰⁴ 94% of prepubertal transgender children who socially transitioned continued to identify as trans after five years.¹⁰⁵ This study, importantly, studied prepubertal children who had chosen to make a full social transition (rather than, as in earlier studies, children observed to have gender nonconforming behaviors).

Given the nonexistent scientific foundations for “desistance” claims, why do state actors continue to repeat them? One explanation is that these statements, once again, signal a theological rather than scientific message. Biology, on this view, is immutable and God’s design, while human perceptions of discordant gender identity are untrue and unverifiable and at odds with God’s plan. According to the Vatican:

[T]he propositions of gender theory converge in the concept of ‘queer’, which refers to dimensions of sexuality that are *extremely fluid, flexible, and as it were, nomadic*. This culminates in the assertion of the *complete emancipation of the individual from any*

104. Kristina R. Olson et al., *Gender Identity Five Years After Social Transition*, PEDIATRICS (preprint, May 2022).

105. *Id.*

a priori given sexual definition and the disappearance of classifications seen as overly rigid.¹⁰⁶

Patrick Lappert, the ADF repeat witness, made a similar connection in an interview, stating that “changing a person’s sex is a lie and also a moral violation for a physician.”¹⁰⁷

Along similar lines, Liberty University, a well-known evangelical Christian college founded by Jerry Falwell,¹⁰⁸ includes “denial of birth sex by self-identification with a different gender” as one of a list of “sinful acts” that also includes “participation in devil worship, practice of the occult, astrology, fortune-telling, sorcery, or witchcraft.”¹⁰⁹ The Southern Baptist Convention, a Protestant evangelical sect that in 2023 voted to ban female pastors, also resolved that “the differences between men and women are complementary, determined at conception, immutable, rooted in God’s design, and most clearly revealed in bodily differences (Genesis 1:28; Psalm 100:3), not in self-defined and ultimately false notions of ‘gender identity.’”¹¹⁰

Trial courts have, to date, decisively rejected the states’ efforts to cast sex as binary, immutable, and determinative of gender. In *Dekker*, plaintiffs challenged Florida regulations and a later-enacted statute that imposed a blanket denial of Medicaid coverage for gender-affirming care for people of all ages on the grounds (according to the state) that such care is “experimental.”¹¹¹ The *Dekker* trial court opinion offers a scathing rejection of the state’s use of misinformation and religious pseudoscience. Leading with the heading, “Gender identity is real,” the court’s decision calls out “the elephant in the room:” “[A] n unspoken suggestion running just below the surface in

106. See CONGREGATION FOR CATH. EDU., *supra* note 97.

107. Lisa Bourne, *Plastic Surgeon: Sex-Change Operation “Utterly Unacceptable” and a Form of “Child Abuse,”* LIFESITE (Sept. 9, 2019, 6:42 PM), at <https://www.lifesitenews.com/news/plastic-surgeon-sex-change-operation-utterly-unacceptable-and-a-form-of-child-abuse/> [<https://perma.cc/M3T9-C3QK>].

108. The school’s mission statement says that “Liberty University is a distinctively Christian academic community,” and states that Liberty University will “[e]ncourage a commitment to the Christian life, one of personal integrity, sensitivity to the needs of others, social responsibility and active communication of the Christian faith, and, as it is lived out, a life that leads people to Jesus Christ as the Lord of the universe and their own personal Savior.” *Educational Philosophy & Mission Statement*, LIBERTY UNIV., <https://www.liberty.edu/about/purpose-and-mission-statement/> [<https://perma.cc/3AME-ZU9U>] (last visited June 20, 2023).

109. *Doctrinal Position*, LIBERTY UNIV., <https://www.liberty.edu/about/doctrinal-statement/> [<https://perma.cc/7EEG-XPBG>] (last visited July 20, 2023); see also *Baptist Faith & Message 2000*, SO. BAPTIST CONVENTION, <https://bfm.sbc.net/bfm2000/> [<https://perma.cc/SW4M-D7XE>] (last visited July 20, 2023) (“Man is the special creation of God, made in His own image. He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God’s creation.”).

110. *On Opposing “Gender Transitions,”* SO. BAPTIST CONVENTION, <https://www.sbc.net/resource-library/resolutions/on-opposing-gender-transitions/> [<https://perma.cc/FKW7-2Y49>] (last visited July 20, 2023) (emphasis added).

111. *Dekker v. Weida*, No. 4:22CV325-RH-MAF, 2023 WL 4102243 (N.D. Fla. June 21, 2023).

[administrative proceedings and at the trial] is that transgender identity is not real, that it is made up.¹¹²

The *Dekker* opinion goes on to call out the deliberate discrimination animating the state's actions:

[T]he State's disapproval of transgender status...was a substantial motivating factor in enactment of the challenged rule and statute. Discouraging individuals from pursuing their gender identities, when different from their natal sex, was also a substantial motivating factor.¹¹³

The opinion characterizes the “laundry list of purported [scientific] justifications for the statute and rules” as “largely pretextual”¹¹⁴ and found that the process leading to the adoption of the Medicaid ban was tainted by anti-trans bias. Florida's Medicaid agency retained purported “experts” known for their opposition to gender-affirming care, and “[t]he [administrative process] was, from the outset, a biased effort to justify a predetermined outcome, not a fair analysis of the evidence.”¹¹⁵ Even the agency's hearing on the proposed rule was not conducted in good faith: the “well-choreographed public hearing” was “an effort not to gather facts but to support the predetermined outcome.”¹¹⁶

2. *Trans people are confused or deluded*

State documents enacting or defending health care bans often state or imply that transgender people are mentally ill, confused, and unable to identify their own gender or consent to gender-affirming care. State statutes and legal briefs commonly offer three related types of “confusion” narratives.

The first line of argument is that transgender people are mentally ill. As the state of Alabama wrote:

Many, if not most, gender dysphoric children also suffer from “significant comorbid mental health disorders, have

112. *Id.* at *2. The court went on: “Any proponent of the challenged rule and statute should put up or shut up: do you acknowledge that there are individuals with actual gender identities opposite their natal sex, or do you not? Dog whistles ought not be tolerated.” *Id.* The court repeated many of these criticisms in *Doe v. Ladapo*, granting a preliminary injunction against a statutory health care ban and an administrative health ban adopted by the state's Board of Medicine. The judge had already engaged in full fact-finding in a substantively related case challenging Florida's administrative ban on Medicaid coverage for gender-affirming care and, thus, had the benefit of an extensive factual record. *See Doe v. Ladapo*, No. 4:23cv114-RH-MAF, 2023 WL 3833848 (N.D. Fla. June 6, 2023) (citing trial record in *Dekker v. Weida*, 2023 WL 4102243). The parties in *Doe* stipulated to the use of the factual record in *Dekker*.

113. *Dekker*, 2023 WL 4102243, at *14.

114. *Id.*

115. *Id.* at *4.

116. *Id.*

neurocognitive difficulties such as ADHD or autism[,] or have a history of trauma.”¹¹⁷

The implication is that trans children do not actually have gender dysphoria but rather some underlying mental illness that is misdiagnosed. The state of Florida made the asserted causal connection plain, writing that “[f]or those with gender dysphoria, regardless of age, there was a greater likelihood of comorbidities--some other affliction--being the root cause of distress and even suicide.”¹¹⁸ The Arkansas statute, similarly, includes in its findings of fact that “individuals struggling with distress at identifying with their biological sex often have already experienced psychopathology, which indicates these individuals should be encouraged to seek mental health services to address comorbidities and underlying causes of their distress before undertaking any hormonal or surgical intervention.”¹¹⁹ The scientific evidence shows that these claims are misleading. Studies do show that trans people, including youth, have higher rates of anxiety, depression, and other conditions than cisgender people. But it is facile to conclude, as the states do, that these conditions must, therefore, *cause* gender dysphoria.

Indeed, the scientific evidence strongly suggests that the direction of causation runs the other way. It is well-established that being transgender leads to mental health concerns because of the social stress and discrimination of being transgender in a society that is strongly oriented to cisgender identity.¹²⁰ Transgender individuals experience a great deal of discrimination, hostility, and physical violence.¹²¹ Accumulation of existential fear and threatening experiences can manifest as physical and mental conditions. Thus, one would expect—and studies confirm—that transgender people, on average, have worse physical and mental health than cisgender people.

117. Defendants’ Response in Opposition to Plaintiff’s Motion for Preliminary Injunction at 16, *Eckes-Tucker v. Ivey*, No. 2:22-cv-0184-LCB-SRW (M.D. Ala. May, 2 2022), ECF No. 74.

118. Redacted Defendants’ Response in Opposition to Motion for Preliminary Injunction and Incorporated Memorandum of Law at 5, *Dekker v. Marsteller*, No. 4:22-cv-00325-RH-MAF (N.D. Fla. Oct. 3, 2022), ECF No. 49. *See also* Defendants’ Motion for Summary Judgment and Memorandum of Law at 18, *Dekker v. Marsteller*, No. 4:22-cv-00325-RH-MAF (N.D. Fla. Oct. 3, 2022), ECF No. 49 (“those with gender dysphoria likely have mental health comorbidities—*anxiety disorders, ADHD, autism spectrum disorder, OCD, for example...*As such, it remains unclear whether hormone therapies and surgeries will resolve underlying mental-health concerns.”) (internal citations omitted).

119. 2021 Arks. Act 626 § 2(4).

120. Rylan J. Testa, et al., *Development of the Gender Minority Stress and Resilience Measure*, 2 *PSYCH. SEXUAL ORIENTATION & GENDER DIVERSITY* 65 (2015); Rylan J. Testa et al., *Suicidal Ideation in Transgender People: Gender Minority Stress and Interpersonal Theory Factors*, 126 *J. ABNORMAL PSYCH.* 125 (2017); Alexandria M. Delozier et al., *Health Disparities in Transgender and Gender Expansive Adolescents: A Topical Review from a Minority Stress Framework*, 45 *J. PEDIATRIC PSYCH.* 842 (2020); Jessica Hunter, et al., *Gender Minority Stress in Trans and Gender Diverse Adolescents and Young People*, 26 *CLINICAL CHILD PSYCH. & PSYCHIATRY* 1182 (2021).

121. *See, e.g.,* Rebecca L. Stotzer, *Violence Against Transgender People: A Review of United States Data*, 14 *AGGRESSION & VIOLENT BEHAVIOR* 170 (2009).

Further, the co-occurrence of psychological distress among people gender dysphoria does not support healthcare bans. Medical providers are aware, and the WPATH and Endocrine Society clinical practice guidelines recognize, that there is a higher prevalence of anxiety, depression and post-traumatic stress disorder among transgender youth than among cisgender youth. In response, the guidelines include a careful psychological assessment as part of the process for determining whether medical treatment for gender dysphoria is appropriate.¹²²

A second type of “confusion” narrative claims that trans people are incompetent to consent to informed consent. The Texas Attorney General, for example, states that “[c]hildren and adolescents are promised relief and asked to ‘consent’ to life-altering, irreversible treatment—and to do so in the midst of reported psychological distress, when they cannot weigh long-term risks the way adults do.”¹²³

But this claim is misleading and fatally flawed. The statement that “children” are asked to consent is false: under the law of every state, minors cannot generally consent to medical treatment and parental consent is required. Thus, gender-affirming care proceeds only if parental consent is obtained, the WPATH and Endocrine Society guidelines set out extensive informed-consent procedures that require extended conversations among parents, child, and medical providers. It is true that youth assent, in addition to parental consent, is required, and experts have established that youth can make complex medical decisions. Further, the literature specifically demonstrates that transgender youth with co-occurring mental health conditions can competently participate in decision-making.¹²⁴

A third variant of the “confusion” narrative asserts that youth with gender dysphoria should not be offered medical treatment but instead should only receive psychotherapy.¹²⁵ This position is likely a veiled nod to so-called

122. Endocrine Society (2017), *supra* note 87.

123. Letter from Ken Paxton, Tex. Att’y Gen., to Honorable Matt Krause, Chair, House Comm. On Gen. Investigating at 4 (Feb. 18, 2022), <https://texasattorneygeneral.gov/sites/default/files/global/KP-0401.pdf> [<https://perma.cc/LMB4-P77C>].

124. Lieke J. Vrouenraets et al., *Assessing Medical Decision-Making Competence in Transgender Youth*, 148 PEDIATRICS 1 (2021); Beth A. Clark & Alice Virani, “*This Wasn’t a Split-Second Decision*”: An Empirical Ethical Analysis of Transgender Youth Capacity, Rights, and Authority to Consent to Hormone Therapy, 18 J. BIOETHICAL INQUIRY 151-64 (2021); Megan S. O’Brien, *Critical Issues for Psychiatric Medication Shared Decision Making with Youth and Families*, 92 FAMILIES IN SOCIETY 310 (2011); Mary Ann McCabe, *Involving Children and Adolescents in Medical Decision Making: Developmental and Clinical Considerations*, 21 J. PEDIATRIC PSYCHOLOGY 505-16 (1996).

125. For example, the Florida Medicaid Division Report asks, “[S]hould conventional behavioral health services be utilized without proposing treatments that pose irreversible effects [i.e., drug therapies]? Would that approach not provide additional time to address underlying issues before introducing therapies that pose permanent effects (i.e., the watchful waiting approach)?” DIV.OF FLA. MEDICAID, *supra* note 78. The report misuses the term “watchful waiting” to describe the denial of medical care to adolescents with gender dysphoria, and the report miscites its own purported expert

“gender exploratory therapy,” also known as conversion therapy, which seeks to persuade trans people to identify with their biological sex.¹²⁶ But the Florida administrative agency document that asserts this proposition offers no solid evidence for denying gender-affirming care.¹²⁷ (Indeed, conversion therapy has been shown to be extremely harmful, has been denounced by every major medical association, and is banned in many states.)¹²⁸ The states of Arkansas and Florida unsuccessfully repeated the psychotherapy-only position in litigation.¹²⁹

Although the “confusion” narrative thus has no scientific support, it does resonate with Catholic theology. The Vatican underscores that identity should be based solely on one’s biological sex and that “the fictitious construct known as ‘gender neuter’ or ‘third gender’...obscur[es] the fact that a person’s [biological] sex is a structural determinant of male or female identity.”¹³⁰ Catholic teaching holds that the sex binary is the foundation of human identity, family, and society.¹³¹ Thus, transgenderism is at best confusion and at worst a rejection of God’s design.¹³²

report. *Id.* at 20. The Cantor document discusses “watchful waiting” meaning the denial of social transition to prepubertal children, not the denial of medical treatment to adolescents. JAMES M. CANTOR, REP. SUBMITTED TO THE FLA. AGENCY FOR HEALTHCARE ADMIN. 10-11 (2022).

126. See the anonymous report on the AC Peds website. Anonymous, *Psychotherapeutic and Behavioral Approaches to Treating Gender Dysphoria*, AM. COLL. OF PEDIATRICIANS, <https://acpeds.org/blog/psychotherapeutic-and-behavioral-approaches-to-treating-gender-dysphoria> [<https://perma.cc/L8KA-CHM2>] (last visited July 20, 2023).

127. See McNamara, et al. (2022), *supra* note 84, at 27–28.

128. See, e.g., Jack L. Turban et al., *Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults*, 77 JAMA PSYCHIATRY 68 (2020); Jack Drescher & Kenneth J. Zucker, *Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies)*, 157 AM. J. PSYCHIATRY 10, 1719 (2000); *The AACAP Policy on “Conversion Therapies.”* AM. ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY, (Feb. 2018), https://www.aacap.org/AACAP/Policy_Statements/2018/Conversion_Therapy.aspx [<https://perma.cc/94MJ-VRKK>]; Hilary Daniel & Renee Butkus, *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper From the American College of Physicians*, 163 ANNALS INTERNAL MED. 135 (2015); AM. ACADEMY OF PEDIATRICS, COMMITTEE ON ADOLESCENCE, *Homosexuality and Adolescence*, 92 Pediatrics 4, 631 (1993); *Advisory Committee on LGBTQ Issues*, AM. MED. ASS’N, <https://www.ama-assn.org/member-groups-sections/advisory-committee-lgbtq-issues> [<https://perma.cc/BQ23-A86Q>] (last visited July 20, 2023).

129. See *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at *3 (E.D. Ark. June 20, 2023) (finding that “efforts to change an individual’s gender identity can harm individuals by increasing feelings of shame and creating an expectation that change is possible when it is not, which can increase a sense of failure”) and *7 (“Psychotherapy can be important for individuals with gender dysphoria to address and alleviate other conditions such as depression and anxiety, but it does not alleviate the underlying distress due to the incongruence between a person’s gender identity and birth-assigned sex. There are no psychotherapeutic interventions that have been demonstrated to be effective at alleviating the gender dysphoria itself.”) (internal citations omitted).

130. CONGREGATION FOR CATH. EDU., *supra* note 97, at 13.

131. *Id.* at 19 (“The denial of this duality not only erases the vision of human beings as the fruit of an act of creation but creates the idea of the human person as a sort of abstraction who chooses for himself what his nature is to be....But if there is no pre-ordained duality of man and woman in creation,

“Confusion” is frequently invoked by AC Peds, with the group’s webpage headed “Gender Confusion and Transgender Identity.”¹³³ The AC Peds position statement on gender dysphoria recites that “[a] person’s belief that he is something or someone he is not is, at best, a sign of confused thinking; at worst, it is a delusion.”¹³⁴

Family Life, a conservative Protestant organization, also treats transgender identity as mistaken. Addressing the hypothetical story of Bryce, a transgender boy, the site advises, “we need to remember that God made them to be a man or a woman, with a male body or a female body, and so how they feel about themselves is not what God wants for them. Bryce is a girl, because God made her that way.”¹³⁵

“Confusion” morphs into sin in the Southern Baptist Convention’s 2023 resolution, which opposes “gender transition” as “a futile quest to change one’s sex and as a direct assault on God’s created order” and “call[s] on any members of the Southern Baptist Convention who are performing or actively supporting ‘gender transition’ interventions to immediately *repent* and refrain.”¹³⁶

One Florida House member made his religious views quite clear, calling transgender witnesses at a hearing “mutants” and “demons.” The federal court decisions in *Dekker* and *Doe v. Ladapo* took note of the exchange in finding that the state’s health care bans were animated by discriminatory intent: “There has long been, and still is, substantial bigotry directed at transgender individuals. Common experience confirms this, as does a Florida legislator’s remarkable reference to transgender witnesses at a committee hearing as ‘mutants’ and ‘demons.’”¹³⁷

then neither is the family any longer a reality established by creation. Likewise, the child has lost the place he had occupied hitherto and the dignity pertaining to him.”)

132. *Id.* at 18 (“The Holy Scripture reveals the wisdom of the Creator’s design, which “has assigned as a task to man his body, his masculinity and femininity; and that in masculinity and femininity he, in a way, assigned to him as a task his humanity, the dignity of the person, and also the clear sign of the interpersonal communion in which man fulfils himself through the authentic gift of himself.”).

133. *Gender Confusion and Transgender Identity*, AM. COLL. OF PEDIATRICIANS, <https://ACPeds.org/topics/sexuality-issues-of-youth/gender-confusion-and-transgender-identity> [<https://perma.cc/WV9J-UPD7>] (last visited July 20, 2023).

134. *Gender Dysphoria in Children*, AM. COLL. OF PEDIATRICIANS, <https://ACPeds.org/position-statements/gender-dysphoria-in-children> [<https://perma.cc/U6KC-M866>] (last visited July 20, 2023).

135. *Talking to Your Kids About Transgender Issues*, FAM. LIFE, <https://www.familylife.com/articles/topics/parenting/foundations/spiritual-development/talking-to-your-kids-about-transgender-issues/> [<https://perma.cc/PK23-8THR>] (last visited July 20, 2023).

136. *On Opposing “Gender Transitions,”* SO. BAPTIST CONVENTION, <https://www.sbc.net/resource-library/resolutions/on-opposing-gender-transitions/> [<https://perma.cc/FKW7-2Y49>] (emphasis added) (last visited July 20, 2023).

137. *Dekker v. Weida*, No. 4:22CV325-RH-MAF, 2023 WL 4102243, at *16 (N.D. Fla. June 21, 2023); *Doe v. Ladapo*, No. 4:23cv114-RH-MAF, 2023 WL 3833848, at *13 (N.D. Fla. June 6, 2023).

3. *Secular authority, including science and medicine, is untrustworthy*

As noted above, every major medical association has endorsed gender-affirming care, and care is provided according to longstanding (and updated) guidelines from WPATH and the Endocrine Society. See Table 2. In an effort to counter these facts, state health care bans often claim that the mainstream medical community is untrustworthy. These assertions—which, as a shorthand, we call the “victimization claim”—characterize doctors as predators, fueled by political ideology and a disregard for children’s well-being, who push impressionable youth into damaging medical procedures.

For example, the Alabama ban includes in its findings that “[s]ome in the medical community are aggressively pushing for interventions on minors that medically alter the child’s hormonal balance and remove healthy external and internal sex organs.”¹³⁸ The state of Florida attacks Plaintiffs’ experts’ characterization of WPATH as a “preeminent medical organization,” instead characterizing it as “an advocacy organization where non-medical experts can work on the standards”¹³⁹ and “an ‘echo-chamber’ that can’t ‘claim to speak for the medical profession.’”¹⁴⁰

In litigation, the state of Alabama described gender-affirming care as “unproven, sterilizing, and permanently scarring medical interventions pushed by ideological interest groups”¹⁴¹ and charged that “the American Medical Association and the American Academy of Pediatrics continue to follow the popular zeitgeist when it comes to unproven gender-affirming interventions.”¹⁴² The state of Florida went a step further, casting gender-affirming care as analogous to past discredited therapies including eugenics, lobotomies, opioids, and cigarettes.¹⁴³ “[M]edical history is littered with such groups and prominent physicians getting things wrong, often with disastrous consequences.”¹⁴⁴

The Texas Attorney General discusses the widespread harms of opioids as “an epidemic caused largely by pharmaceutical companies and medical

138. S.B. 184, 2022 Reg. Sess., § (2)(6) (Ala. 2022).

139. Defendants’ Motion for Summary Judgment and Memorandum of Law at 4, Dekker v. Marsteller, No. 4:22-cv-00325-RH-MAF (N.D. Fla. Oct. 3, 2022), ECF No. 120.

140. *Id.* at 20 (internal quotations omitted).

141. Defendants’ Response in Opposition to Plaintiff’s Motion for Preliminary Injunction at 7–8, Eknes-Tucker v. Ivey, No. 2:22-cv-0184-LCB-SRW (M.D. Ala. May, 2 2022), ECF No. 74.

142. *Id.* at 58.

143. Redacted Defendants’ Response in Opposition to Motion for Preliminary Injunction and Incorporated Memorandum of Law at 7–8, Dekker v. Marsteller, No. 4:22-cv-00325-RH-MAF (N.D. Fla. Oct. 3, 2022), ECF No. 49.

144. *Id.* at 14.

professionals”¹⁴⁵ to draw comparisons to gender-affirming care. An amicus brief filed by fifteen states in Alabama referred to “the rush by some practitioners to supply these vulnerable young people with life-altering drugs and surgical treatment.”¹⁴⁶ The states’ assertions are backed up only by anecdotal evidence, however.¹⁴⁷ Litigating states typically offer testimony by so-called “detransitioners”—people who received gender-affirming care and subsequently reverted back to living as the gender they were assigned at birth.¹⁴⁸ These testimonials present disturbing accounts of doctors and complicit parents rushing the affiants into treatment, making outlandish promises, and providing inadequate information about risks and benefits.¹⁴⁹

The state legal documents also marshal a grab bag of other sources for the victimization claim: opinion pieces;¹⁵⁰ policy positions by medical organizations that (the states contend) demonstrate the political motives underlying gender-affirming care;¹⁵¹ letters to the editors of scientific journals, including by doctors linked to right-wing medical organizations;¹⁵² articles

145. Letter from Ken Paxton, Tex. Att’y Gen., to Honorable Matt Krause, Chair, House Comm. On Gen. Investigating at 4 (Feb. 18, 2022), <https://texasattorneygeneral.gov/sites/default/files/global/KP-0401.pdf> [<https://perma.cc/LMB4-P77C>].

146. Brief of Arkansas, et al. as Amici Curiae Supporting Defendants at *1, *Eknesh-Tucker v. Ivey*, No. 2:22-cv-0184-LCB 2022 WL 19983530 (M.D. Ala. May 2, 2022) (hereinafter “Fifteen States Amicus”).

147. In support of their claim that youth are being rushed into treatment, the fifteen states cite two *Washington Post* opinion pieces, one by Edwards-Leeper and Anderson and another by a detransitioner; interviews with Anderson and WPATH President Marci Bowers published on the Substack of political commentator Bari Weiss; an *Economist* article reporting and opining on these interviews; and a quote from a former psychotherapist with the UK Gender Identity Development Service – included in an article on the website *Medscape* – who left her job because she felt that young people were being rushed into treatment. See Fifteen States Amicus, at 10 n.5; 8; 11 n.12; 13 n.17.

148. As the *New York Times* recently documented, a small group of activists have come to wield outside influence in legal and legislative fights over access to gender-affirming care across the country, becoming “fixtures” at hearings and rallies to voice their support for care bans. See Maggie Astor, *How a Few Stories of Regret Fuel the Push to Restrict Gender Transition Care*, N.Y. TIMES (May 16, 2023), <https://www.nytimes.com/2023/05/16/us/politics/transgender-care-detransitioners.html>.

149. See, e.g., Defendants’ Response in Opposition to Plaintiffs’ Motion for Preliminary Injunction at 54, *Eknesh-Tucker v. Ivey*, No. 2:22-cv-184-LCB (M.D. Ala. May 2, 2022), ECF No. 74 (quoting affidavit of Carol Freitas); Redacted Defendants’ Response in Opposition to Motion for Preliminary Injunction and Incorporated Memorandum of Law at 8, *Dekker v. Marsteller*, No. 4:22-cv-00325-RH-MAF (N.D. Fla. Oct. 3, 2022), ECF No. 49 (quoting affidavit of Chloe Cole); Defendants’ Combined Brief in Opposition to Plaintiffs’ Motion for Preliminary Injunction; and Reply in Support of Defendants’ Motion to Dismiss at 19, *Brandt v. Rutledge*, No. 4:21-cv-00450-JM (E.D. Ark. Jul. 9, 2021) (henceforth “Brandt Brief in Opposition to PI”), ECF No. 44 (citing detransitioner Laura Perry’s affidavit to assert that Perry’s gender dysphoria resulted from sexual abuse and from her mother wishing she was a boy).

150. See, e.g., Fifteen States Amicus, *supra* note 146, at 5 n.12.

151. *Id.* at 7–12.

152. See, e.g., Brandt Brief in Opposition to PI, at 27-28 n.89-93. One of the letters Arkansas cites in its brief is from Andre Van Mol, Co-Chair of the American College of Pediatricians’ (AC Peds) Committee on Adolescent Sexuality. See *About the Author, Andre Van Mol*, PUBLIC DISCOURSE: J. WITHERSPOON INST., <https://www.thepublicdiscourse.com/author/andre-van-mol/> [<https://perma.cc/A6AJ-TYJ5>] (last visited May 27, 2023). AC Peds has been classified by the Southern Poverty Law Center as a hate group. SO. POVERTY L. CTR., *supra* note 48.

about the history of forced sterilization against minority populations;¹⁵³ and TikTok videos of a surgeon talking about hormone treatments and surgery.¹⁵⁴

Trial courts have, to date, roundly rejected the victimization claim. In *Dekker*, for example, the District Court concluded: “[I]t is fanciful to believe that all the many medical associations who have endorsed gender-affirming care, or who have spoken out or joined an amicus brief supporting the plaintiffs in this litigation, have so readily sold their patients down the river.”¹⁵⁵

In *Brandt*, the District Court noted that:

The State argues that many doctors do not require mental health counseling before treatment and will let children get hormone therapy and permanently altering surgeries upon demand. The evidence at trial did not support the State’s argument. The State’s experts admitted that they have had no contact with any Arkansas doctors or information about how doctors in Arkansas treat minors with gender dysphoria.¹⁵⁶

The state’s purported expert, sociologist Mark Regnerus, claimed that the medical community’s support for gender-affirming care is grounded in “ideology rather than science,” but the court rejected that claim, finding that Regnerus “did not offer any support for his conclusion, and the Court finds that there is no evidence to support this assertion.”¹⁵⁷

In Florida, a federal district judge refused to credit the state’s account of avaricious and ideological doctors pushing care on children: “The overwhelming majority of doctors are dedicated professionals whose first goal is the safe and effective treatment of their patients. There is no reason to believe the doctors who adopted these standards were motivated by anything else.”¹⁵⁸ In Kentucky, the district court explicitly rejected the state’s claim that gender-affirming care is suspect because it is a huge “money maker” for providers. Noting that the cited authority was a video of one doctor making a claim about surgery (not drug treatment), the court concluded that the state “offers no evidence” that Kentucky doctors prescribe gender-affirming drugs “for financial gain as opposed to patients’ well-being.”¹⁵⁹

153. Letter from Ken Paxton, Tex. Att’y Gen., to Honorable Matt Krause, Chair, House Comm. On Gen. Investigating at 3 n.4 (Feb. 18, 2022), <https://texasattorneygeneral.gov/sites/default/files/global/KP-0401.pdf> [<https://perma.cc/LMB4-P77C>].

154. See Fifteen States Amicus, *supra* note 146, at 7 n.24.

155. *Dekker v. Weida*, No. 4:22CV325-RH-MAF, 2023 WL 4102243, at *17 (N.D. Fla. June 21, 2023).

156. *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at *35 (E.D. Ark. June 20, 2023).

157. *Id.* at *28.

158. *Dekker*, 2023 WL 4102243, at *17.

159. *Doe I v. Thornbury*, No. 3:23-cv-230-DJH, 2023 WL 4230481, at *9 (W.D. Ky. June 28, 2023).

Trial courts have also taken a skeptical view of detransitioner testimony. In Arkansas, the court noted that “[r]egret over a medical procedure is not unique to gender-affirming medical care and is common in medicine.”¹⁶⁰ Evaluating the testimony of the two witnesses offered by the state, the court found the “anecdote[es]” to be “irrelevant to the issues to be decided,” because the witnesses were not treated in Arkansas, transitioned as adults, “detransitioned as a result of a religious experience and ... continued to struggle with living consistently with their birth-assigned sex after deciding to detransition.”¹⁶¹

Once again, the victimization claim, as it appears in state legal documents, is framed in secular terms but sounds in a religious register. It maps onto an argument, often made by evangelical activists, that Christian communities are under threat from sinful cultural forces pressuring them to abandon the tenets of their faith. This sort of persecution narrative has long held sway in American evangelical life.¹⁶² Professor Elizabeth Castelli has noted, for example, that the Christian right increasingly “mobilize[d] the language of religious persecution to shut down political debate and critique,” characterizing any dissent as “an example of antireligious bigotry.”¹⁶³

For example, *Decision* magazine (“The Evangelical Voice for Today”) writes that “[t]he brokenness of the world explains why sinners will often deny the distinctions between male and female.... Christians guided by Scripture recognize that controversies and confusions over sex, marriage and other issues are part of what it means to live in a fallen world.”¹⁶⁴ Echoing these views, Patrick Lappert, one of the ADF’s repeat witnesses, made a presentation (to a religious audience) titled “Transgender Surgery & Christian Anthropology,” casting gender-affirming care as a challenge to the Biblical notion that men and women are created in the image of God.¹⁶⁵ In the presentation, Lappert claims

160. *Brandt*, 2023 WL 4073727, at *20.

161. *Id.* at *21. *See also* *Boe v. Marshall*, at 12–13 (opinion granting preliminary injunction) (recounting that the detransitioner witness completed hormone therapy as an adult and in Georgia not Alabama).

162. Writing in *The Atlantic* in 2014, Professor Alan Noble of Oklahoma Baptist University argued that the tension between evangelical values and American public policy and cultural mores—on issues like contraception, abortion, and same-sex marriage—had caused many believers to “see victimhood as part of their identity,” and to imagine their way of life as under existential threat. Alan Noble, *The Evangelical Persecution Complex*, *THE ATLANTIC* (Aug. 4, 2014), <https://www.theatlantic.com/national/archive/2014/08/the-evangelical-persecution-complex/375506/> [<https://perma.cc/JJ3F-U9D5>].

163. Elizabeth A. Castelli, *Persecution Complexes: Identity Politics and the “War on Christians,”* 18 *DIFFERENCES* 152, 154 (2007).

164. R. Albert Mohler, Jr., *The Transgender Challenge: An Evangelical Response*, *DECISION* (Jan. 1, 2017), <https://decisionmagazine.com/transgender-challenge-evangelical-response-2/> [<https://perma.cc/XSZ2-VNQR>].

165. *See* Ex. 15 of Plaintiffs’ Memorandum of Law in Support of Motion to Exclude Expert Testimony of Dr. Patrick W. Lappert at 4, *Kadel v. Folwell*, No. 1:19-cv-00272-LCB-LPA (M.D.N.C. Feb. 2, 2022), ECF No. 209-16 (“‘Male and Female He created them’ has been replaced by a confusion

the accessibility of gender-affirming interventions represents the “grooming [of] a generation,” following an anti-religious view of human behavior that views “man as merely a particularly complicated animal.”¹⁶⁶ Similarly, the Southern Baptist Convention in 2023 condemned “corporate medical services that promote harmful and often irreversible ‘gender transition’ experiments on vulnerable minors and young adults, exploiting them for the sake of profit.”¹⁶⁷

4. *Society pushes “gender ideology” on youth via social media and schools*

The fourth repeated claim, which we call the “social contagion” claim, is that transgender people have been recruited or hoodwinked by social media and peers. In Alabama, for example, the state asserted that “‘the majority of new patients with sex-gender discordance are not males with a long, stable history of gender dysphoria since early childhood—as they were for decades—but instead adolescent females with no documented long-term history of gender dysphoria.’ Some researchers have labeled the phenomenon Rapid Onset Gender Dysphoria.”¹⁶⁸ The brief goes on to claim that the majority of cases of gender dysphoria “appear to occur within clusters of peers and in association with increased social media use.”¹⁶⁹

More colorfully, the state of Florida offered the testimony of parent Katie Caterbury, who claims that doctors went behind her back to treat her “once healthy and happy daughter” with testosterone injections after the Gay-Straight Alliance at her child’s school “convinced [him]...that [he] was my son.”¹⁷⁰

The states’ cited source for their social contagion claims is a 2018 study by Lisa Littman, which claimed that social contagion, and specifically social media, had prompted a large increase in the number of transgender adolescents, many of them assigned female gender at birth. Littman termed this condition “rapid-onset gender dysphoria.”¹⁷¹

of exceptional cases”); 14 (gender-affirming care is an expression of the secular belief that humans can “modify the person in any way that ‘choice’ demands”).

166. *Id.* at 17, 22-24. A full recording of Dr. Lappert’s presentation is available at <https://vimeo.com/256410102>.

167. SO. BAPTIST CONVENTION, *supra* note 110.

168. Defendants’ Response in Opposition to Plaintiff’s Motion for Preliminary Injunction at 14, *Eknes-Tucker v. Ivey*, No. 2:22-cv-0184-LCB-SRW (M.D. Ala. May, 2 2022), ECF No. 74 (citation omitted).

169. *Id.*

170. Redacted Defendants’ Response in Opposition to Motion for Preliminary Injunction and Incorporated Memorandum of Law at 9, *Dekker v. Marstiller*, No. 4:22-cv-00325-RH-MAF (N.D. Fla. Oct. 3, 2022), ECF No. 49.

171. Lisa Littman, *Parent reports of adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria*, 16 PLOS ONE 1 (2018). Note that in a later correction, Littman softened this to a hypothesis requiring further research. See Lisa Littman, *Correction: Parent reports of*

The Littman hypothesis has, however, been discredited due to biases in the initial study, failures by other researchers to confirm the “rapid-onset” hypothesis, and contrary empirical evidence.¹⁷² Among other issues, the study relied on parent reports rather than clinical observation and recruited parents from anti-trans websites. The journal of publication required an extensive correction of the original study, and the American Psychological Association and a coalition of other psychological societies issued a statement supporting the elimination of “rapid onset” as a clinical and diagnostic category, “given the lack of rigorous empirical support for its existence.”¹⁷³ Recent research has failed to detect rapid onset dysphoria, further discrediting the social contagion hypothesis.¹⁷⁴

The lack of scientific foundation for the social contagion claim does not sap its power as a religious proposition. As noted above, conservative Christians have long asserted that secular society is undermining Godly values and practices. Along similar lines, the Vatican posits that secular educational curricula “reflect an anthropology opposed to faith and to right reason”¹⁷⁵ and decries the “ideology” of “gender theory,” which “leads to educational programmes [sic] and legislative enactments that promote a personal identity and emotional intimacy radically separated from the biological difference between male and female.”¹⁷⁶

A Liberty University event, for example, urged attendees to fight “against the transgender indoctrination of children.”¹⁷⁷ In 2023, the Southern Baptist Convention passed a resolution “oppos[ing] gender transitions,” asserting that “cultural change, the promotion of gender ideology, and social pressures [are leading] unprecedented numbers of adolescents and young adults are experiencing identity or body-related distress or asserting an identity at odds with their birth sex.”¹⁷⁸

Echoing these views, “gender ideology” is a favorite target of the expert witnesses called by states defending their health care bans. An amicus brief filed in one of ADF’s cases by AC Peds members Quentin van Meter and

adolescents and young adults perceived to show signs of a rapid onset of gender dysphoria, 19 PLOS ONE 1 (2019).

172. Boulware et al. (2022), *supra* note 84; McNamara et al. (2022), *supra* note 84.

173. CAAPS Position Statement on Rapid Onset Gender Dysphoria (ROGD), COAL. FOR THE ADVANCEMENT & APPLICATION OF PSYCH. SCI., (Jul. 26, 2021), <https://www.caaps.co/rogd-statement> [<https://perma.cc/4J3P-CDS6>].

174. Greta R. Bauer et al., *Do Clinical Data from Transgender Adolescents Support the Phenomenon of “Rapid-Onset Gender Dysphoria”?*, 243 PEDIATRICS 224, 224 (2022).

175. CONGREGATION FOR CATH. EDU, *supra* note 97, at 3 (internal quotation marks omitted).

176. *Id.*

177. Christian Fields, *Standing for Freedom Summit calls for Christians to impact culture*, LIBERTY NEWS (Nov. 5, 2022), <https://www.liberty.edu/news/2022/11/05/standing-for-freedom-summit-calls-for-christians-to-impact-culture/> [<https://perma.cc/3DWH-BN95>].

178. *On Opposing “Gender Transitions,” supra* note 110, at 1–2.

Andre van Mol (along with Miriam Grossman of Do No Harm) claims that “some number of gender-dysphoric children who would naturally come to peacefully accept their sex are prevented from doing so when gender affirming policies are imposed upon them by adults in their orbit who have bought into *gender identity ideology*.”¹⁷⁹

Nevertheless, trial courts have consistently given little or no weight to the states’ claims about rapid-onset gender dysphoria. In *Brandt*, the court credited the plaintiff’s expert and concluded that “If any adolescents are seeking care at gender clinics because of social influence, they would not meet the criteria of gender dysphoria or be considered for gender-affirming medical treatment unless they had a longstanding incongruent gender identity and clinically significant distress.”¹⁸⁰

IV. HOW RELIGIOUS ORGANIZATIONS DEPLOY MISINFORMATION AND PSEUDOSCIENCE TO PROMOTE ANTI-TRANS LEGAL MEASURES

In this Part, we show that the current wave of anti-trans legal measures was manufactured by religious organizations pursuing precisely the two-pronged strategy that Klemp’s work (described in Part II) identifies. The evidence in this part establishes that conservative religious organizations—often disguising their religious origins and agendas—have been key proponents of GAC bans and other anti-LGBTQIA measures. Their use of misinformation and pseudoscience, which we documented in Part III, is familiar and quite deliberate.

In the late twentieth and early twenty-first centuries, anti-LGBTQIA+ measures suffered major political and judicial defeats. Many states repealed their anti-sodomy laws, and in *Lawrence v. Texas*, the Supreme Court struck down such laws nationwide.¹⁸¹ By the early 2010s, a number of states had acted to permit same-sex marriage, and in *Obergefell v. Hodges*, the Supreme Court mandated marriage equality nationwide.¹⁸²

In the wake of these defeats, conservative Protestant and Catholic religious groups continued to whittle away at *Roe v. Wade* and (successfully) set the stage for the eventual overruling of *Roe*.¹⁸³ By the late 2010s, these organizations came up with a new target for energizing and unifying their

179. Brief of Dr. Miriam Grossman et. al, as Amici Curiae Supporting Defendant-Appellant at 21, *Adams v. School Board of St. John’s County*, 57 F.4th 79 (11th Cir. 2022) (No. 18-13592) (emphasis added).

180. *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at *4 (E.D. Ark. June 20, 2023).

181. 539 U.S. 558 (2003).

182. 576 U.S. 644 (2015).

183. *Dobbs*, 597 U.S. ____.

members and asserting political power: anti-trans measures.¹⁸⁴ These measures reflect a coordinated campaign by conservative religious-affiliated organizations rather than grassroots opposition to transgender rights.

Beginning in the late 2010s, right-wing Christian organizations began to marshal support for attacks on transgender people. One explicitly religious organization, the pro-life Family Policy Alliance, hosted a “boot camp” aimed at training state officials to promote and defend anti-trans legislation. According to an investigation by the publication *Insider*, the “Statesmen Academy” launched in 2016 to provide “pro-family legislators” with training necessary for “Christ-centered public service.” Alumni of the program included state legislators who went on to sponsor anti-trans health care and sports bans.¹⁸⁵ One alum reported that “[t]he Statesmen Academy was finally a place of Biblical training that I have been yearning for.”¹⁸⁶ At the same time, religious legal organizations like the Alliance Defending Freedom (ADF) and Liberty Counsel pivoted from opposing same-sex marriage to attacking transgender rights,¹⁸⁷ and medical professionals formed organizations to provide cover for these measures using pseudoscience.¹⁸⁸

The political, legal, and medical activists promoting anti-trans laws follow a two-pronged strategy. One prong is explicitly religious: some groups state outright that their goal is to use the law to implement right-wing Christian doctrine, which (in their view) denies the existence of transgender people. These groups often speak to their own members using explicitly religious appeals. Liberty Counsel, for example, states that it is “a Christian ministry that proclaims, advocates, supports, advances, and defends the good news that God in the person of Jesus Christ paid the penalty for our sins and offers forgiveness and eternal life to all who accept him as Lord and Savior. Every ministry and project of Liberty Counsel centers around and is based upon this good news, which is also referred to as the gospel.”¹⁸⁹ ADF is more circumspect but

184. Adam Nagourney & Jeremy W. Peters, *How a Campaign Against Transgender Rights Mobilized Conservatives*, N.Y. TIMES (April 16, 2023), <https://www.nytimes.com/2023/04/16/us/politics/transgender-conservative-campaign.html>.

185. Sarah Posner, *The Christian Nationalist Boot Camp Pushing Anti-trans Laws Across America*, INSIDER (Sept. 21, 2022 9:13 AM), <https://www.insider.com/christian-nationalist-trans-statesmen-academy-alabama-ohio-missouri-laws-2022-8> [<https://perma.cc/4B45-Q7SW>].

186. *Statesmen Academy About*, FAM. POL’Y FOUND., <https://familypolicyalliance.com/statesmen-academy/about/> [<https://perma.cc/T6Q8-Q6CU>] (last visited December 3, 2023) (quoting Minnesota state senator Mark Johnson: “I’ve been learning politics over the past year in the school of hard knocks. The Statesmen Academy was finally a place of Biblical training that I have been yearning for. Thank you so much for all you did and are doing in Christ’s name.”).

187. Nagourney & Peters, *supra* note 184.

188. Dell Cameron & Dhruv Mehrotra, *An Anti-Trans Doctor Group Leaked 10,000 Confidential Files*, WIRED (May 20, 2023, 3:53 PM), <https://www.wired.com/story/american-college-pediatricians-google-drive-leak/>.

189. *About Liberty Counsel*, LIBERTY COUNS., <https://lc.org/about> [<https://perma.cc/2TRK-5CKK>] (last visited July 20, 2023).

characterizes itself as “the world’s largest legal organization committed to protecting religious freedom, free speech, the sanctity of life, parental rights, and God’s design for marriage and family.”¹⁹⁰ Based on their anti-LGBTQIA+ views, Liberty Counsel, ADF, and AC Peds are all designated hate groups by the Southern Poverty Law Center.¹⁹¹

The second prong targets a wider audience, including legal authorities: here, the arguments take secular form, with proponents making arguments couched in scientific language and “common sense.” For example, AC Peds, introduced in Part II, is a small organization dedicated to pro-life and anti-LGBTQIA+ views and does not publicly state its religious orientation. However, a trove of leaked emails showed that the group attempted to “target Christian M.D.s,” and the group’s leaders are also members of the Catholic Medical Association (“CMA”), whose members pledge not to support medical treatment for gender dysphoria and to reject “policies that condition all persons with gender dysphoria to accept as normal a life of chemical and surgical impersonation of the opposite sex.”¹⁹² The CMA has joined AC Peds in lawsuits filed by the ADF to challenge civil-rights protections for transgender people.¹⁹³

This two-pronged strategy is effective politically, as Klemp predicted, because it appeals to both believers and non-believers. From a legal perspective, the key advantage of this strategy is that it permits defenders both to promote these laws as religious measures to religious and political audiences *and* to defend these laws as entirely secular. Notably, not all right-wing anti-trans groups are religious in origin, but they often have close ties to religious groups.¹⁹⁴ For example, “Do No Harm,” founded in 2022 by Stanley Goldfarb,

190. *Who We Are*, ALLIANCE DEFENDING FREEDOM, <https://adfllegal.org/about-us/who-we-are> [<https://perma.cc/L2L3-GJLD>] (last visited November 22, 2023).

191. *Liberty Counsel*, SO. POVERTY L. CENTER, <https://www.splcenter.org/fighting-hate/extremist-files/group/liberty-counsel> [<https://perma.cc/J4JN-PDDR>] (last visited July 20, 2023); *Alliance Defending Freedom*, SO. POVERTY L. CENTER, <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom> [<https://perma.cc/8YAD-AZAZ>] (last visited Nov. 22, 2023); *American College of Pediatricians*, SO. POVERTY L. CENTER, <https://www.splcenter.org/fighting-hate/extremist-files/group/american-college-pediatricians> [<https://perma.cc/7PX8-LFRK>] (last visited Nov. 22, 2023).

192. Madison Pauly, *Inside the Secret Working Group That Helped Push Anti-Trans Laws Across the Country*, MOTHER JONES (Mar. 8, 2023), <https://www.motherjones.com/politics/2023/03/anti-trans-transgender-health-care-ban-legislation-bill-minors-children-lgbtq/> [<https://perma.cc/FL6N-RNSC>]; CATH. MED. ASS’N, *Resolution 8-13* (2017), <https://www.cathmed.org/programs-resources/health-care-policy/resolutions/familysexual-education/> [<https://perma.cc/BWZ6-QWY8>] (last visited July 20, 2023).

193. CATH. MED. ASS’N, *Catholic Medical Association Joins Alliance Defending Freedom in Lawsuit Challenging Biden Transgender Mandate* (Aug. 26, 2021), <https://www.cathmed.org/resources/catholic-medical-association-joins-alliance-defending-freedom-in-lawsuit-challenging-biden-transgender-mandate/> [<https://perma.cc/9PLU-W4A3>].

194. For another example, see Heron Greenesmith, *A Room of Their Own*, POL. RSCH. ASSOCS. (July 14, 2020), <https://politicalresearch.org/2020/07/14/room-their-own> [<https://perma.cc/BWP6-33MT>] (stating anti-trans group Women’s Liberation Front received funding from the ADF).

aims to “protect healthcare from a radical, divisive, and discriminatory ideology.” Their initial projects targeted diversity initiatives in medicine, and the group has since become a major political force in anti-trans health care bans, providing model bills adopted by Montana and other states. Miriam Grossman, a senior fellow of “Do No Harm,” who identified herself as a psychiatric consultant with AC Peds,¹⁹⁵ has co-authored amicus briefs and commentaries with AC Peds members and worked with AC Peds members and Catholic Medical Association members to assist the state of Florida in defending its Medicaid ban on gender-affirming care.¹⁹⁶

In the following, we provide examples of the organizations and purported experts whose publications and testimony have furnished pseudoscience in support of anti-trans legal measures. We also show that both the organizations and their experts have deep ties to religious groups and have stated (at least privately) that their anti-trans views are grounded in religious belief.

A. A closer look at the American College of Pediatricians

AC Peds, introduced in Part II, has in recent years become a major player in the push to restrict access to gender-affirming care, deploying the same pseudoscientific playbook it previously used to advocate against abortion and same-sex equality. In this Subpart, we scrutinize AC Peds’s public messaging strategy on gender-affirming care, and its behind-the-scenes collaboration with Christian legal actors to promote anti-trans measures.

The mission statement on the AC Peds website is bland: “Enabling all children to reach their optimal physical and emotional health and well-being.” Both the name and mission of the organization are misleading, however. A non-expert might mistake the group for the American Academy of Pediatrics (“AAP”), which is a pediatric professional organization in the United States, with nearly 70,000 members.¹⁹⁷ The AAP was founded in 1930 and sponsors a

195. Trumbull et al., *Puberty is Not a Disorder*, 135 PEDIATRICS (2015).

196. *About Us, DO NO HARM*, <https://donoharmmedicine.org/about/> [<https://perma.cc/U6XL-UTG2>] (last visited July 20, 2023) (listing Dr. Miriam Grossman as a senior fellow). For involvement in anti-trans legislation, see Jeff McMillan & Kimberlee Kruesi, *Meet the Influential New Player on Transgender Health Bills*, AP NEWS (May 20, 2023, 6:08 PM) <https://apnews.com/article/transgender-bills-lobbying-do-no-harm-94f56059d24608d724eb78fefecf4e09> [<https://perma.cc/KHP4-PSRQ>]; Jeff McMillan, Kavish Harjai & Kimbelee Kruesi, *Many Transgender Health Bills Came from a Handful of Far-right Interest Groups*, AP FINDS, AP NEWS (MAY 20, 2023, 9:24 AM) <https://apnews.com/article/transgender-health-model-legislation-5cc4a7cb4ab69150f670d06fd0f361ab> [<https://perma.cc/QQ2E-R2AM>]. See also Brief for Dr. Miriam Grossman et al. as Amici Curiae Supporting Petitioners, *Doe v. Boyertown Area School District*, 139 S. Ct. 2636 (2019) (No. 18-658) (amicus brief in locker room case); Plaintiffs’ Notice of Filing Trial Exhibits, Exhibit 307, Email from Miriam Grossman 7/10/2022, *Dekker v. Weida*, No. 4:22CV325-RH-MAF, ECF No. 183-9 (emails among Grossman, van Meter, van Mol, and Florida officials after Grossman’s participation in administrative agency rulemaking hearing).

197. *About the AAP*, AM. ACADEMY OF PEDIATRICS, <https://www.aap.org/en/about-the-aap/> [<https://perma.cc/89CJ-F6EB>] (last visited July 20, 2023).

host of scientific enterprises. It publishes *Pediatrics*, a leading peer-reviewed medical journal, holds conferences for members, and commissions scientific literature reviews that support standards of care for various medical conditions, including the treatment of youth with gender dysphoria.¹⁹⁸

By contrast, AC Peds was founded in 2002 and apparently has approximately 700 members.¹⁹⁹ The group's website consists primarily of policy statements and other materials opposing abortion, gender-affirming care, and marriage equality and promoting conversion therapy to combat "unwanted homosexual attraction among youth."²⁰⁰ The group does not publish a journal.

The public face of AC Peds, as reflected on its website, is primarily secular, although there are allusions to conservative Christian beliefs. For example, the site's list of topics includes the statements that "[e]very human life is precious and worthy of protection from conception to natural death," which is an allusion to the group's opposition to abortion and death-with-dignity laws. The site also asserts that "[a] family, formed and nurtured within the secure environment of a loving marriage between a man and a woman, is the optimal childrearing setting,"²⁰¹ flagging the group's opposition to LGBTQIA+ identity, relationships, and marriage.

The AC Peds website content under the heading "Gender Confusion and Transgender Identity" states that medical treatments for gender dysphoria are based on "an unscientific gender ideology."²⁰² The group's position statement on gender dysphoria does not mention religion explicitly but again contains dog whistles. For instance, the statement recites that "The debate over how to treat children with [gender dysphoria] is primarily an ethical dispute," that "[m]edicine does not occur in a moral vacuum" and that transgender children are "impersonat[ing] the opposite sex."²⁰³

The pseudoscientific appearance of the AC Peds website is deliberate. An investigation by *Mother Jones* based on AC Peds internal documents found that

198. *Pediatrics* is published by the AAP. See *Publications*, AM. ACADEMY OF PEDIATRICS, <https://publications.aap.org/pediatrics> [<https://perma.cc/C63Z-9YJX>] (last visited July 20, 2023). AAP clinical practice guidelines and policy statements address a range of topics in pediatric medicine, including the treatment of ADD/ADHD, bronchiolitis, Type 2 diabetes, HIV prevention, breast feeding, and sleep-related infant deaths. See *Pediatric Clinical Practice Guidelines & Policies*, AM. ACADEMY OF PEDIATRICS, https://publications.aap.org/aapbooks/book/738/Pediatric-Clinical-Practice-Guidelines-amp?_ga=2.109796741.1095773555.1686942662-134273173.1686942662 [<https://perma.cc/EW42-5EMG>] (last visited July 20, 2023).

199. Cameron & Mehrotra, *supra* note 188.

200. *Topics*, AM. COLL. OF PEDIATRICIANS, <https://ACPeds.org/topics> [<https://perma.cc/2HVQ-SRFE>] (last visited July 20, 2023); *Psychotherapy for Unwanted Homosexual Attraction Among Youth*, AM. COLL. OF PEDIATRICIANS, <https://ACPeds.org/position-statements/psychotherapy-for-unwanted-homosexual-attraction-among-youth> [<https://perma.cc/QBF4-ETD3>] (last visited July 20, 2023).

201. *Topics*, AM. COLL. OF PEDIATRICIANS, <https://ACPeds.org/topics> [<https://perma.cc/2HVQ-SRFE>] (last visited July 20, 2023).

202. AM. COLL. OF PEDIATRICIANS, *supra* note 133.

203. AM. COLL. OF PEDIATRICIANS, *supra* note 134.

“[a]ccording to an agenda for the spring 2018 board meeting, an ADF attorney had recently told AC Peds (sic) that ‘it was best that [AC Peds] was not religiously affiliated in order to provide maximum benefit for our message.’”²⁰⁴

Although the AC Peds website presents the group’s position statements as based on scientific evidence, a trove of leaked documents shows that they were crafted with a purpose: to support the ADF and Liberty Counsel in challenging civil rights protections for transgender individuals. In 2023, *Wired* obtained access to 10,000 documents left on a public Google drive (and later removed), and other journalists and organizations examined them. These documents showed that the ADF and AC Peds began collaborating in 2014 “to shore up anti-trans policy efforts and legal arguments with bespoke research.”²⁰⁵ An investigation by *Mother Jones* also documented the collaboration among AC Peds, ADF, and state legislators in South Dakota, Utah, Florida, and Alabama.²⁰⁶

B. *The Alliance Defending Freedom’s stable of “expert” witnesses*

“Most of the State’s expert witnesses...were unqualified to offer relevant expert testimony and offered unreliable testimony. Their opinions regarding gender-affirming medical care for adolescents with gender dysphoria are grounded in ideology rather than science....

*It is clear from listening to the testimony that Professor Mark Regnerus, Dr. Paul Hruz, and Dr. Lappert were testifying more from a religious doctrinal standpoint rather than that required of experts by Daubert.”*²⁰⁷

AC Peds and Catholic Medical Association members have repeatedly testified as purported experts, often in cases brought by ADF, to support health care bans and other anti-trans measures.²⁰⁸ These purported experts typically

204. Madison Pauly & Emma Rindlisbacher, *A Massive Leak Spotlights the Extremism of an Anti-Trans Medical Group*, MOTHER JONES (May 17, 2023), <https://www.motherjones.com/politics/2023/05/anti-trans-american-college-pediatrics-leak-michelle-cretella-abortion/> [<https://perma.cc/FK4E-A7Z5>].

205. R.G. Cravens, *Documents Reveal ADF Requested Anti-Trans Research from American College of Pediatricians*, SO. POVERTY L. CENTER (June 5, 2023), <https://www.splcenter.org/hatewatch/2023/06/05/documents-reveal-adf-requested-anti-trans-research-american-college-pediatricians> [<https://perma.cc/5N39-XY3Y>].

206. Madison Pauly, *Inside the Secret Working Group That Helped Push Anti-Trans Laws Across the Country*, MOTHER JONES (March 8, 2023), <https://www.motherjones.com/politics/2023/03/anti-trans-transgender-health-care-ban-legislation-bill-minors-children-lgbtq/> [<https://perma.cc/MD26-TCSX>].

207. *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at *29-30 (E.D. Ark. June 20, 2023).

208. David Cary Hart, *Alliance Defending Freedom Developed Stable of Anti-LGBT “Expert” Witnesses*, SO. POVERTY L. CENTER (Dec. 13, 2017), <https://www.splcenter.org/hatewatch/2017/12/13/alliance-defending-freedom-developed-stable-anti-lgbt-expert-witnesses> [<https://perma.cc/5NJ3->

present only secular arguments in such contexts: they are careful to present their case in scientific language, with citations to (seemingly) scientific publications. But in other contexts, these individuals make it clear that their anti-trans views are grounded primarily in religion, and the courts have called out the ideological and religious basis for their opinions, as in the quotes from *Brandt* above.²⁰⁹ This Subpart highlights several of the most prominent witnesses who have testified in defense of care restrictions and other anti-trans policies, the religious bases of their views, and the persistent rejection of their testimony by federal courts.

Some of the most frequent repeat witnesses include AC Peds past president Quentin van Meter, AC Peds official and Catholic Medical Association member Paul Hruz, Catholic Medical Association member Patrick Lappert, and sociologist Mark Regnerus, whose earlier work opposed marriage equality. All were recruited to become expert witnesses in a 2017 ADF conference that asked for volunteers to oppose transgender rights and inclusion.²¹⁰ The testimony of all four has been viewed skeptically by multiple courts and excluded under *Daubert* in some instances.

Van Meter's proffered expert testimony was excluded entirely in a divorce case,²¹¹ and he has advocated conversion therapy. In one deposition, van Meter

GZMM] (discussing Paul Hruz, an AC Peds member); Aviva Stahl, *Four Controversial Doctors Helping Republicans Attack Trans Healthcare*, THE GUARDIAN (June 9, 2023, 3:00 PM) <https://www.theguardian.com/society/2023/jun/09/doctor-republican-trans-gender-affirming-minor-healthcare-lgbtq-rights> [https://perma.cc/X5WJ-4GJD] (discussing Lappert, van Meter, Hruz, and Laidlaw).

209. Alejandra Caraballo provides additional examples of purported anti-trans experts with limited qualifications, some of whose testimony has been disqualified in court. See Alejandra Caraballo, *The Anti-Transgender Medical Expert Industry*, 50 J. L. MED ETHICS. 687, 689 (2022) (discussing Stephen B. Levine, Paul McHugh, and Michael Laidlaw).

210. See *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at *29 (E.D. Ark. June 20, 2023) ("Like Professor Mark Regnerus and Dr. Paul Hruz, Dr. Lappert was recruited by the Alliance Defending Freedom ("ADF") at a seminar held in Arizona. The meeting was held to gather witnesses trained in various fields that would be willing to testify in favor of laws passed that limit transgender care. The ADF . . . is not a scientific organization, but a Christian-based legal advocacy group."). See also Deps. of Lappert, and Hruz in *Brandt*, 2023 WL 4073727 and *Kadel v. Folwell*, No. 1:19CV272, 2022 WL 2106270 (M.D. N.C. June 10, 2022). Both Hruz and Lappert belong to the Catholic Medical Association, which adopted a resolution stating that the organization "and its members reject all policies that condition all persons with gender dysphoria to accept as normal a life of chemical and surgical impersonation of the opposite sex." CATH. MED. ASS'N, *Resolution 8-13*, <https://www.cathmed.org/programs-resources/health-care-policy/resolutions/familysexual-education/> [https://perma.cc/Q5K3-X2B7] (last visited June 20, 2023). See also Molly Redden, *Inside the Cottage Industry of 'Experts' Paid to Defend Anti-Trans Laws*, HUFFPOST (Sept. 15, 2023, 5:45 AM), https://www.huffpost.com/entry/paid-experts-defending-anti-trans-law_n_65021a7ee4b01df7c3b6d513 [https://perma.cc/72HS-Y2PD] (explaining how Van Meter has been recruited to appear in cases regarding gender affirming care).

211. See Stephen Caruso, *A Texas judge ruled that this doctor was not an expert. A Pennsylvanian Republican invited him to testify on trans health care*, PENN. CAP.-STAR (Sept. 15, 2020, 7:24 AM), <https://www.penncapital-star.com/government-politics/a-texas-judge-ruled-this-doctor-was-not-an-expert-a-pennsylvania-republican-invited-him-to-testify-on-trans-health-care/>

stated that his opposition to gender-affirming care and his medical practice are “impossible to separate” from his “religious faith.”²¹² The Fourth Circuit opinion in *Grimm v. Gloucester County School Board* noted that van Meter is an outlier in disagreeing with conventional standards of care for gender dysphoria and in treating “transgender youth by encouraging them to live in accordance with their sex assigned at birth.” The court observed that “one can always find a doctor who disagrees with mainstream medical professional organizations on a particular issue.”²¹³

Paul Hruz is an endocrinologist and another frequent ADF witness.²¹⁴ In *Kadel v. Folwell*, the judge excluded much of his testimony, noting that Hruz is not a psychiatrist, psychologist, or mental healthcare professional [and] has never diagnosed a patient with gender dysphoria, treated gender dysphoria, treated a transgender patient, conducted any original research about gender dysphoria diagnosis or its causes, or published any scientific, peer-reviewed literature on gender dysphoria.²¹⁵

In the Florida case that struck down a Medicaid ban, the court castigated the state for offering Hruz as an “expert” witness. The court called out Hruz for asserting that “transgender individuals have only a ‘false belief’ in their gender identity—that they are maintaining a ‘charade’ or ‘delusion.’”²¹⁶ The opinion also recounted that at trial, “Hruz fended and parried questions and generally testified as a deeply biased advocate, not as an expert sharing relevant evidence-based information and opinions.”²¹⁷

Similarly, the court in *Brandt* made a scathing critique of the pseudoscience offered by the State, writing that “[m]ost of the State’s expert witnesses” (including Regnerus, Lappert, and Hruz) “were unqualified to offer relevant expert testimony and offered unreliable testimony. Their opinions regarding gender-affirming medical care for adolescents with gender dysphoria

[<https://perma.cc/77AJ-WJMG>] (reporting that van Meter was disqualified as an expert in a Texas divorce case, now sealed).

212. See Plaintiffs’ Memorandum of Law in Support of Motion to Exclude Expert Testimony of Dr. Quentin Van Meter at 27, *Dekker v. Weida*, No. 4:22CV325-RH-MAF (N.D. Fla. Apr. 7, 2023), 2023 WL 3723964, ECF No. 144.

213. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 596 n.3 (4th Cir. 2020), *as amended* (Aug. 28, 2020).

214. *Fellows of the National Catholic Bioethics Center*, NAT. CATH. BIOETHICS CENTER, <https://www.ncbcenter.org/our-fellows> [<https://perma.cc/E6PL-5QCW>] (last visited July 20, 2023).

215. *Kadel v. Folwell*, No. 1:19CV272, 2022 WL 2106270, at *9 (M.D.N.C. June 10, 2022), *order corrected and superseded*, 620 F. Supp. 3d 339 (M.D.N.C. 2022). The judge also referred to evidence that Hruz once “told a fellow doctor that he had ‘a significant problem with the entire issue’ and ‘whole idea of transgender.’” *Id.*

216. *Dekker v. Weida*, No. 4:22CV325-RH-MAF, 2023 WL 4102243, at *2 (N.D. Fla. June 21, 2023).

217. *Id.* at *2 n.8.

are grounded in ideology rather than science.”²¹⁸ The *Brandt* court also called out the role of ADF in recruiting Regnerus, Hruz, and Lappert:

The ADF is not a scientific organization, but a Christian-based legal advocacy group...While there is nothing nefarious about an organization recruiting witnesses to testify for their cause, it is clear from listening to the testimony that [Regnerus, Hruz, and Lappert] were testifying more from a religious doctrinal standpoint rather than that required of experts by *Daubert*.²¹⁹

And in *L.W. v. Skrmetti*, the district court that granted a preliminary injunction against Tennessee’s health care ban treated Hruz’s testimony as “minimally persuasive,” given that he has never diagnosed or treated a minor with gender dysphoria.²²⁰

The testimony of a third frequent ADF expert, Patrick Lappert, was disqualified as an expert in a recent federal court decision in North Carolina.²²¹ Lappert, a retired plastic surgeon, opined on matters outside his scope of practice and has not provided hormonal treatments to any transgender patients.²²² During one deposition, Lappert said that being transgender requires “delusional thinking” and that gender-affirming care is a “form of mutilation.”²²³ In an interview with a Catholic newspaper, Lappert said that “[t]ransgenderism and the whole gender ideology business are inhuman, because they separate our souls from our bodies.” He continued, “[w]e have to protect our children from this great evil that’s been unleashed into their lives.”²²⁴

In *Brandt*, the court noted that Lappert “has no training or professional experience in mental health or gender dysphoria and has never provided gender-affirming surgery. He acknowledges that he is not an expert in the

218. *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at *20 (E.D. Ark. June 20, 2023).

219. *Id.* at *29.

220. *L.W. by & through Williams v. Skrmetti*, No. 3:23-CV-00376, 2023 WL 4232308, at *20 (M.D. Tenn. June 28, 2023), *rev'd and remanded*, 83 F.4th 460 (6th Cir. 2023).

221. *Kadel v. Folwell*, No. 1:19CV272, 2022 WL 2106270, at *13 (M.D.N.C. June 10, 2022), *order corrected and superseded*, 620 F. Supp. 3d 339 (M.D.N.C. 2022). The judge ruled that Lappert was not qualified to “render opinions about the diagnosis of gender dysphoria, its possible causes, the efficacy of the DSM, the efficacy of puberty blocking medication or hormone treatments, the appropriate standard of informed consent for mental health professionals or endocrinologists, or any opinion on the non-surgical treatments.” Lappert was also disqualified from opining on “the efficacy of randomized clinical trials, cohort studies, or other longitudinal, epidemiological, or statistical studies of gender dysphoria.” *Id.*

222. *See Stahl*, *supra* note 208.

223. *Id.*

224. Gina Christian, *Transgender Interventions Pose Serious Medical Consequences for Minors, Says Surgeon*, THE TABLET (April 17, 2023), <https://thetablet.org/transgender-interventions-pose-serious-medical-consequences-for-minors-says-surgeon/> [<https://perma.cc/GY7U-CYM7>].

treatment of gender dysphoria.” The court concluded that Lappert “does not meet the requirements under *Daubert* to give opinions relevant to this case.”²²⁵

In *Dekker*, the court also discounted Lappert’s and Hruz’s testimony (as well as statements by state employees and consultants) for “dog whistles” signaling the view that transgender identity is invalid: Lappert, the court noted, had “said in a radio interview that gender-affirming care is a ‘lie,’ a ‘moral violation, a ‘huge evil,’ and ‘diabolical.’”²²⁶

Mark Regnerus, another frequent ADF witness, has also had his testimony discredited in court. In *Brandt*, the district court gave “no weight” to his testimony, noting that “Professor Regnerus, a sociologist whose work has focused on sexual relationship behavior and religion, has no training or experience related to the fields of medicine or mental health care, or the treatment of gender dysphoria.”²²⁷ Indeed, writes the judge, Regnerus, a sociologist, “has no training or experience related to the fields of medicine or mental health care, or the treatment of gender dysphoria.”²²⁸ In a footnote, the court pointed out that Regnerus’s past testimony opposing marriage equality had several times been questioned by courts and other experts.²²⁹

Despite the repeated negative treatment of their testimony by courts, many of the same purported experts have been centrally involved in health care bans enacted via administrative action. In June 2022, the state of Florida produced a lengthy report, full of misinformation,²³⁰ which expressly included portions written by van Meter and Lappert.²³¹ Discovery in a lawsuit subsequently revealed that the state had paid substantial sums to van Meter, Lappert, and AC Peds member Andre van Mol for their role in the administrative process. (Lappert was also paid more later for testifying in a court case challenging the Medicaid ban.)²³²

225. *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at *29 (E.D. Ark. June 20, 2023).

226. *Dekker v. Weida*, No. 4:22CV325-RH-MAF, 2023 WL 4102243, at *2 (N.D. Fla. June 21, 2023).

227. *Brandt*, 2023 WL 4073727, at *28 (E.D. Ark. June 20, 2023) (“The Court does not credit the testimony of Professor Regnerus and gives it no weight because the Court finds that he lacks the qualifications to offer his opinions and failed to support them.”).

228. *Id.*

229. *Id.* at *28 n.11.

230. See McNamara et. al (2022), *supra* note 84.

231. FLA. AGENCY FOR HEALTH CARE ADMIN. (AHCA), DIV. OF FLA. MEDICAID, AGENCY FOR HEALTH CARE ADMIN., GENERALLY ACCEPTED PRO. MED. STANDARDS DETERMINATION ON THE TREATMENT OF GENDER DYSPHORIA 3 (June 2022), https://www.ahca.myflorida.com/letkidsbekids/docs/AHCA_GAPMS_June_2022_Report.pdf [<https://perma.cc/U9MQ-7FRJ>].

232. Dara Kam, *Florida Runs up Tab in Medicaid Transgender Case*, WINK NEWS (Jan. 24, 2023), <https://winknews.com/2023/01/24/florida-runs-up-tab-in-medicaid-transgender-case/> [<https://perma.cc/F5UA-W8HZ>].

V. THE LIMITS OF LITIGATION: THE NEED FOR NEW LEGAL SOLUTIONS TO
COMBAT ANTI-LGBTQIA+ LEGISLATION AND STATES' RELIANCE ON
MISINFORMATION AND PSEUDOSCIENCE

The current status of litigation over healthcare bans is unsettled. On the hopeful side, six federal district courts (and one state trial court) in red states have so far been able and willing to block—at least temporarily, and sometimes permanently—legislation based on scientific misinformation and religious pseudoscience.²³³ Adversarial litigation and the *Daubert* standard have, so far, held up at the trial level despite organized efforts by religious groups and their allies to target the LGBTQIA+ community.

These initial victories, however, have been overshadowed by appellate rulings in the Sixth and Eleventh Circuits, which narrowed the scope of constitutional protections for parents and for transgender people.²³⁴ The content of these opinions is primarily legal, not factual, as one would expect for an appellate court. But by lowering the standard of review to rational basis from heightened or intermediate scrutiny, both courts have signaled their willingness to uphold health care bans based on even flimsy evidence by the state. And both courts seemed ready to embrace misinformation put forward by the states, despite the repudiation of those claims by the trial courts.

The appellate opinions also signal sympathy for the states by using hostile language and familiar dog whistles for anti-trans views. In the Eleventh Circuit, a transgender girl, plaintiff Allison Poe, is unnamed and instead described as “a biological male who identifies as a female.”²³⁵ That appeals court also repeated the testimony of the state’s witnesses, without noting that the District Court gave the testimony “very little weight.”²³⁶ And the court cited the declarations of witnesses like van Meter without acknowledging challenges to their expertise in this and other cases.²³⁷ In the Sixth Circuit, the court terms the health care bans a “vexing and novel topic of medical debate”²³⁸ and bats away the fact that more than 20 major medical societies support gender-affirming care.²³⁹

233. See *Brandt* (Arkansas), *Eknes-Tucker* (Alabama), *Dekker and Doe v. Ladapo* (both Florida), *Koe v. Noggle* (Georgia), *Skrmetti* (Tennessee), and *Doe v. Thornbury* (Kentucky). For the Texas trial decision, see *PFLAG v. Abbott*.

234. See *Eknes-Tucker v. Governor of Alabama*, 80 F.4th 1205, (11th Cir. 2023); *L. W. by & through Williams v. Skrmetti*, 73 F.4th 408, 415 (6th Cir. 2023).

235. *Eknes-Tucker v. Governor of Alabama*, 80 F.4th 1205, 1215 (11th Cir. 2023).

236. *Eknes-Tucker v. Marshall*, 603 F. Supp. 3d 1131, 1142–42 (M.D. Ala. 2022).

237. See *supra* notes 212-14 and accompanying text.

238. *L. W. by & through Williams v. Skrmetti*, 73 F.4th 408, 415 (6th Cir. 2023).

239. *Id.* at 416. (“At all events, the medical and regulatory authorities are not of one mind about using hormone therapy to treat gender dysphoria. Else, the FDA would by now have approved the use of these drugs for these purposes. That has not happened, however, giving us considerable pause about constitutionalizing an answer they have not given or, best we can tell, even finally studied.”). The FDA

Procedurally, all of the appellate decisions so far are preliminary decisions because they address only preliminary injunctions granted by trial courts. Substantively, the legal pronouncements in these decisions will shape trial proceedings, because trial judges in these circuits can no longer rely on constitutional protections for parents and for transgender people to gain heightened or intermediate scrutiny. Several lines of argument remain open to plaintiffs, however. These include the argument that bans on gender-affirming care fail to meet even a rational basis test: indeed, the district court in *Dekker v. Weida* held just that, in a decision that has not yet undergone appellate review.²⁴⁰

With litigation ongoing in more than ten states, there are likely to be further victories and defeats. The Seventh Circuit has signaled a more open view on transgender rights (in a bathroom ban case),²⁴¹ and there may be a sufficient circuit split brewing to invite Supreme Court review.

Regardless of the outcomes in these cases, there is a deeper problem for American democracy here, because litigation—even in the best scenarios—is an imperfect check on the use of misinformation by legislatures and state executives. Litigation takes time and resources, and even injunctions do not necessarily counteract the full effects of anti-LGBTQIA+ laws, for several reasons.

First, delay imposes real human costs. Anti-trans health care bans have denied necessary medical care to and created painful uncertainty for transgender people. In Florida, for example, a 2022 Medicaid ban on gender-affirming care (which was not preliminarily enjoined) left thousands of teen and adult patients without access to care until June 2023, when a federal judge enjoined the ban permanently as unconstitutional.²⁴²

Second, state lawmakers have managed to deploy political pressure outside formal legal channels with harmful effect. Trans patients can be turned away when medical providers decide that the political climate and legal uncertainty make it too risky to provide care. In Texas, one of the state's largest gender clinics shut down in 2021 after pressure from the governor's office; the clinic remained closed to new patients even after a state court in 2022 preliminarily

“lack of approval” argument described in *Skrimetti* is frank misinformation, as we have documented and as the District Court in *Dekker* recognized. See Boulware, et al. (2022), *supra* note 84, at 23–24; Dekker v. Weida, No. 4:22CV325-RH-MAF, 2023 WL 4102243, at *14 (N.D. Fla. June 21, 2023).

240. *Dekker*, 2023 WL 4102243 at *14 (N.D. Fla. June 21, 2023) (“The State of Florida’s decision to ban payment for GnRH agonists and cross-sex hormones for transgender individuals is not rationally related to a legitimate state interest.”).

241. See A.C. by M.C. v. Metro. Sch. Dist. of Martinsville, 75 F.4th 760 (7th Cir. 2023).

242. *Dekker v. Weida*, No. 4:22CV325-RH-MAF, 2023 WL 4102243, at *5 (N.D. Fla. June 21, 2023).

enjoined the state's 2022 health care ban.²⁴³ In Arkansas, the state's only gender clinic refused to see any new patients during the two years of litigation, leaving large numbers of trans youth without access to care in their home states. This was despite a preliminary injunction blocking Arkansas's 2021 health care ban: the University of Arkansas gender clinic explained to patients' families that "the change was due to concern that [the Arkansas health care ban] might go into effect in the near future and disrupt patients' care."²⁴⁴

Third, preliminary injunctions may not offer effective legal protections to nonparties. In Florida, for example, the judge in *Doe v. Ladapo* limited the preliminary injunction to named plaintiffs.²⁴⁵ While nonparties could invoke the court's decision in pursuing their own care, the state could force patients to take formal legal action on their own—something that is costly and difficult for most patients.

Fourth, litigation is also a slow and partial remedy when states enact multiple health care bans that must be challenged separately. In Florida, for example, a federal judge has, as of July 2023, temporarily enjoined a state health care ban and permanently enjoined a Medicaid ban.²⁴⁶ Thus, the status of gender-affirming care in that state will be settled only after the second case proceeds to trial and final decision.

Fifth, the impact of piece-by-piece litigation is especially limited when states react to adverse court decisions by pursuing new routes to deny gender-affirming care. In Florida, the legislation enacting a health care ban for youth also contained a number of new attacks on gender-affirming care. Although a federal court preliminarily enjoined the health care ban in early June 2023, other provisions of the law remain in effect, including rules that require adult patients seeking gender-affirming care to be treated by physicians in person. These requirements effectively limit access for patients who would otherwise be treated by nurse practitioners or by telehealth.²⁴⁷ In late June 2023, the state's medical boards continued to draft "informed consent" documents and

243. *Abbott v. Doe*, No. 03-22-00107-CV, 2022 WL 710093 (Tex. App. Mar. 9, 2022) (preliminarily enjoining efforts by the state to initiate child abuse investigations of parents who consent to gender-affirming care); see also Azeen Ghorayshi, *Texas Youth Gender Clinic Closed Last Year Under Political Pressure*, N.Y. TIMES (March 8, 2022), <https://www.nytimes.com/2022/03/08/health/texas-transgender-clinic-geneccis-abbott.html> (describing the political pressures leading to the closure of GENECCIS).

244. *Brandt v. Rutledge*, No. 4:21CV00450 JM, 2023 WL 4073727, at *9 (E.D. Ark. June 20, 2023).

245. *Doe v. Ladapo*, No. 4:23CV114-RH-MAF, 2023 WL 3833848, at *17 (N.D. Fla. June 6, 2023).

246. See *Ladapo*, 2023 WL 3833848; *Dekker v. Weida*, 2023 WL 4102243.

247. Committee Substitute for Senate Bill No. 654, ch. 2023-90, § 5 (2023), <http://laws.flrules.org/2023/90> [<https://perma.cc/UB5V-MB7T>].

enacted administrative rules that permitted physicians to renew existing prescriptions in the meantime only if dosage did not change.²⁴⁸

These dynamics are reminiscent of states' efforts to circumvent other civil rights protections. Before the decision in *Dobbs*, states spent decades devising experimental anti-abortion laws, pushing the constitutional limits established by courts.²⁴⁹ Similarly, Southern states after *Brown v. Board of Education* attempted to circumvent racial integration mandates in numerous ways.²⁵⁰

In light of these limitations, federal and state policy makers and private actors should consider new measures to combat anti-LGBTQIA+ legislation and the use of misinformation and pseudoscience in legal measures. Below are four broad avenues worth exploring. While we do not fully analyze each one, we offer preliminary observations on advantages and disadvantages.

First, federal legislation and regulations could enact protections for LGBTQIA+ people that would pre-empt state attempts to target them. The proposed Equality Act, for example, would include express protections for sexual orientation and gender identity in employment, housing, health care, and public accommodations.²⁵¹ Even without legislation, regulations could adopt stronger protections based on existing laws, including Title IX and the Affordable Care Act; the Education Department and the Department of Health and Human Services have both proposed regulations that would protect transgender students and patients.²⁵²

Second, states might adopt procedural rules to weed out misinformation and pseudoscience in legislation. While it is unlikely that the same politicians who vote for anti-LGBTQIA+ laws would willingly limit their own discretion, it is worth exploring whether states could establish fact-checking bodies that would opine publicly on the factual foundations of legislation. These bodies

248. *Agenda, Rule No. 64B8ER23-3*, FLA. DEPT. OF HEALTH, BOARD OF MEDICINE AND FLA. BDS. OF MED. & OSTEOPATHIC MED. 1, (June 23, 2023), https://ww10.doh.state.fl.us/pub/medicine/Agenda_Info/Public_Information/Agendas/2023/June/06232023_JRL_Agenda.pdf.

249. *See, e.g., Planned Parenthood v. Casey*, 506 U.S. 833, 833 (1992) (upholding some Pennsylvania abortion restrictions).

250. *See* Sonya Ramsey, *The Troubled History of American Education After the Brown Decision*, THE AMERICAN HISTORIAN, <https://www.oah.org/tah/february-3/the-troubled-history-of-american-education-after-the-brown-decision/> [https://perma.cc/7YAM-EDLS] (last visited July 20, 2023).

251. *See* H.R.5, 117th Cong. (as passed by House, Feb. 25, 2021).

252. U.S. DEP'T OF HEATH & HUM. SERVS., *HHS Issues Proposed Rule to Advance Non-discrimination in Health and Human Service Programs for LGBTQI+ Community* (July 11, 2023), <https://www.hhs.gov/about/news/2023/07/11/hhs-issues-proposed-rule-advance-non-discrimination-health-human-service-programs-lgbtqi-community.html> [https://perma.cc/6KH8-YQ6T]; *see also HHS Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy*, U.S. DEP'T OF HEATH & HUM. SERVS. (March 2, 2022), <https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf> [https://perma.cc/PVE9-KR22], *stayed by* Texas v. EEOC, et. al., 633 F.Supp.3d 824 (N.D. Tex. 2022); *FACT SHEET: U.S. Department of Education's Proposed Change to its Title IX Regulations on Students' Eligibility for Athletic Teams*, U.S. DEP'T OF EDUC., (April 6, 2023), <https://www.ed.gov/news/press-releases/fact-sheet-us-department-educations-proposed-change-its-title-ix-regulations-students-eligibility-athletic-teams>[https://perma.cc/SUC8-XLTM].

might have preclusive power or merely an advisory status, but mandated, standard, public reports could put pressure on state legal actors to conform their actions to the facts. By analogy, the Congress and Treasury produce authoritative revenue estimates for tax legislation in order to establish how much legislation will cost; the existence of different estimators serving different branches of government (the legislative and the executive) produces a useful separation-of-powers constraint. The impact of these analyses is amplified by procedural budget rules which limit revenue losses due to tax cuts. In addition, bodies such as the Government Accountability Office (GAO) and Inspectors General Offices at the federal level, and Legislative Auditors' Offices at the state level could still provide models for independent oversight of lawmakers' activities.²⁵³ The Congressional Research Service (CRS) also has an excellent track record of providing impartial and expert research.

All these institutions are limited, of course. Nominally independent agencies can become politicized, and separation-of-powers checks atrophy when the legislature and executive are held by the same party. Nevertheless, institutions like the Joint Committee on Taxation, CRS, and the GAO have retained a high degree of professionalism and impartiality.

Third, given the slim political chances that states will restrain their own use of misinformation and pseudoscience, there is a potential role for private actors, including medical organizations, to adopt systematic review processes that can publicly call out the use of falsehoods in legal action. Early efforts of this variety are underway: the American Academy of Pediatrics, the American Medical Association, and a large number of other mainstream medical organizations have been active in filing amicus briefs and publicly calling out the scientific claims made in defense of health care bans.²⁵⁴ Individual doctors and groups of researchers have also published materials that debunk the misuse of science in health care bans.²⁵⁵ The National Institutes of Science and Medicine have not yet used their considerable academic authority to weigh in on anti-trans legislation, but they could do so. The National Institutes are well-known for commissioning experts to summarize scientific research.

Another route might create alliances between mainstream scientific and medical organizations and pro-trans figures from a variety of religious faiths. Already, anti-trans initiatives in various states have met with pushback from

253. See generally, *What GAO Does*, U.S. GOVT. ACCOUNTABILITY OFF., <https://www.gao.gov/about/what-gao-does> [<https://perma.cc/N3NX-UZR2>] (last visited Oct. 6, 2023); *Our History*, LA. LEGIS. AUDITOR, <https://lla.la.gov/about/our-history> [<https://perma.cc/PX7V-CRBW>] (last visited Oct. 6, 2023); *Statutory Authority*, MINN. LEGISLATURE OFF. OF THE LEGIS. AUDITOR, <https://www.auditor.leg.state.mn.us/statu.htm> [<https://perma.cc/PF54-8GPP>] (last visited Oct. 6, 2023); U.S. DEP'T OF HEALTH & HUM. SERVS., OFF. OF THE INSPECTOR GEN., *Statement of Organization, Functions, and Delegation of Authority*, 83 Fed. Reg. 55553, 55553-56 (Nov. 6, 2018).

254. See Table 2.

255. See Table 4.

coalitions of progressive faith leaders who have emphasized that their religions teach them to accept others and celebrate human differences.²⁵⁶ Indeed, the first named plaintiff in the challenge to Alabama’s healthcare ban is a minister, Paul Eknes-Tucker. By collaborating with LGBTQIA+-affirming faith coalitions, private scientific and medical actors could avoid ceding the moral authority of religious argumentation to the religious right, instead contesting faith-based anti-trans arguments on their own terms.

Finally, the continuing prevalence of religious pseudoscience should motivate scrutiny of anti-LGBTQIA+ legislation under the Establishment Clause.²⁵⁷ It would be patently unconstitutional for legislation to provide expressly that citizens must abide by God’s dictates to live in accordance with their God-given genitals at birth.²⁵⁸ But, as we have documented, the proponents of anti-trans laws are savvy enough to avoid this mistake: they instead cloak the religious motivations for these laws in the guise of science and put forward only secular-seeming justifications in court. Thus, under the canonical rule of *Lemon*, the defenders of these laws are resting on the proposition that the laws serve permissible secular ends.²⁵⁹ At some point, however, a plaintiff may assert, and a court may be willing to entertain, the claim that these rationales are pretextual, based on the kind of evidence we provide here.

In *Webster v. Reproductive Health Services*, the Supreme Court upheld a Missouri statute regulating abortion, finding that the law promoted a number of reasonable state purposes, including protecting potential human life.²⁶⁰ Writing in dissent (in part), Justice Stevens argued that there was “no secular purpose” for the legislative declarations that “life begins at conception and that conception occurs at fertilization.” That proposition, Stevens argued, reflected

256. See, e.g., Ariana Eunjung Cha, ‘Our State is at War with our Family’: Clergy with Trans Kids Fight Back, *THE WASH. POST* (Feb. 28, 2023, 2:18 PM), <https://www.washingtonpost.com/health/2023/02/28/missouri-transgender-bills/> [<https://perma.cc/P794-WY7W>]; WIS. FAITH VOICES FOR JUSTICE, *Faith Leaders Support for Transgender Equality*, WISPOLITICS (Oct. 4, 2023), <https://www.wispolitics.com/2023/wisconsin-faith-voices-for-justice-faith-leaders-support-for-transgender-equality/> [<https://perma.cc/F5U8-PFV4>].

257. Here, a critical distinction is between (a) laws that cover the entire populace and are explicitly justified by religious belief, and (b) laws that authorize an exemption from some law based on religious belief. The former violates the Establishment Clause, while the latter may (depending on the facts) be permissible or even mandated under the Free Exercise Clause.

258. See, e.g., *Stone v. Graham*, 449 U.S. 39, 42 (1980) (discussing display of Ten Commandments in classrooms); *Wallace v. Jaffree*, 472 U.S. 38, 38 (1985) (striking down a moment of silence in schools based on legislative history showing religious motivation); *Edwards v. Aguillard*, 482 U.S. 577, 577 (1987) (striking down a ban on the teaching of evolution).

259. In *Kennedy v. Bremerton School District*, the Court took a dismissive view of *Lemon* in the context of prayer by a school football coach. But that case involves whether a public institution (there, a school) may prohibit an individual’s religious activity—it did not consider whether the state itself may, through its laws, enact religious precepts without any secular foundation. See *Kennedy v. Bremerton School District*, 597 U.S. ____ (2022).

260. 492 U.S. 490, 495 (1989).

a “theological position” and not a scientific one and, thus, should make that portion of the preamble “invalid under the Establishment Clause.”²⁶¹ Importantly, Stevens noted that his conclusions about the Establishment Clause were informed by “the fact that the intensely divisive character of much of the national debate over the abortion issue reflects the deeply held religious convictions of many participants in the debate.”²⁶²

Stevens’s 1989 analysis, while not binding precedent, would apply forcefully to present anti-LGBTQIA+ legislation. As we have shown, religious organizations and theological commitments are driving these laws. Although defenders of health care bans, for instance, frame their arguments in secular and scientific terms, their commitments—as we have shown—are fundamentally theological and not scientific.²⁶³

In the wake of *Dobbs*, Establishment Clause arguments about abortion laws have re-entered legal discourse. Religious groups have challenged abortion restrictions in Florida and Missouri, for example, on the grounds that the laws elevate one set of religious beliefs at the expense of other religious beliefs.²⁶⁴ In Missouri, for example, legislators made numerous statements suggesting that a restrictive abortion law was motivated by religious belief.²⁶⁵

At the moment, legal challenges to anti-LGBTQIA+ laws have prevailed on other grounds. As we have seen, judges have enjoined the health care bans on equal protection, due process, and free speech grounds, and there is a risk that a Supreme Court hostile to Establishment Clause claims might ultimately rule against a challenge made on this basis. Still, the Establishment Clause could provide additional constitutional weight, and appropriately so, since these measures, as we have detailed, originate in religious commitments and not scientific fact.

Further, as many constitutional scholars have urged, the Constitution should inform not only litigation but also Congressional and Executive deliberations and popular political movements.²⁶⁶ Legislators and agency officials can and should point out the Establishment Clause problem inherent in

261. *Webster*, 492 U.S. at 566–68.

262. *Id.* at 571.

263. See generally Linda Greenhouse, *Let's Not Forget the Establishment Clause*, N.Y. TIMES (May 23, 2019), <https://www.nytimes.com/2019/05/23/opinion/abortion-supreme-court-religion.html>.

264. See Complaint at 2, *Generation to Generation, Inc. v. DeSantis*, No. 2022 CA 000980, 2022 WL 23882392 (Fla. Cir. Ct. June 16, 2022) (arguing that Florida’s abortion ban violates the state constitution’s Establishment Clause). The case was later dismissed for inadequate pleading.

265. See Complaint at 7, *Blackmon v. Missouri*, No. 2322-CC00120 (Mo. Cir. Ct. Jan. 19, 2023) (giving examples of legislators’ statements, including “as a Catholic I do believe life begins at conception and that is built into our legislative findings.”).

266. See Ernest A. Young, *Constitutionalism Outside the Courts*, in OXFORD HANDBOOK ON THE U.S. CONST. 846, 861 (Mark Graber et al. eds., 2015); LARRY KRAMER, *THE PEOPLE THEMSELVES* 8 (2004); Mark V. Tushnet, *The Constitution Outside the Courts: A Preliminary Inquiry*, 26 VAL. U. L. REV. 437, 439 (1992).

adopting religious views into law. They can use their pulpit and their power not only to challenge misinformation but also to point out and criticize the religious content of anti-trans lawmaking.

Misinformation and religious pseudoscience pose a growing threat to the integrity of the legal system, and they threaten not only the lives of LGBTQ people but those of others as well. Abortion bans based on misinformation are now a fact of life across red America, and there are early signals that misinformation will be deployed to challenge constitutional rights to contraception and marriage equality. We need new institutions that can unmask misinformation and the religious and unscientific foundations of these attacks on fundamental rights.

APPENDIX

Table 1. An overview of U.S. state anti-trans legal measures.*

Type of legal restriction	Number of states	Targets
Health care bans	22 ²⁶⁷	Medical care for transgender people with gender dysphoria
Bathroom bans	24 ²⁶⁸	Use of bathrooms aligned with gender identity (rather than sex assigned at birth)
Sports bans	9 ²⁶⁹	Participation in school sports aligned with gender identity (rather than sex assigned at birth)
“Don’t Say Gay” laws	14 ²⁷⁰	Curriculum mentions of LGBTQIA+ people and issues
Drag bans	2 ²⁷¹	Drag performances

* Note that the table includes only state-level legislation and executive action. It does not include local actions (e.g., bathroom bans adopted by

267. *Map: Attacks on Gender Affirming Care by State*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map> [https://perma.cc/B2R6-CE2L] (last visited June 22, 2023).

268. *Bans on Transgender Youth Participation in Sports*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/youth/sports_participation_bans [https://perma.cc/65B8-KYYK] (last visited June 22, 2023).

269. *Bans on Transgender People Using Bathrooms and Facilities According to their Gender Identity*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/nondiscrimination/bathroom_bans [https://perma.cc/N2FC-VMK6] (last visited July 20, 2023).

270. *LGBTQ Curricular Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/curricular_laws [https://perma.cc/4LP7-5CBB] (last visited July 20, 2023).

271. *Restrictions on Drag Performances*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/criminaljustice/drag_restrictions [https://perma.cc/5EBK-PZBJ] (last visited July 20, 2023).

schools or school boards) or aggressive interpretations of existing laws (e.g., attempts to regulate drag performances as “adult” entertainment).

Table 2. Clinical practice guidelines for gender-affirming healthcare

Medical Claim	Endorsed by the Following Medical Assocs.
Authoritative guidelines for medical treatment of gender dysphoria based on comprehensive reviews of scientific evidence.	World Professional Association for Transgender Health (WPATH) Standards of Care (2022); ²⁷² Endocrine Society Clinical Practice Guidelines (2017) ²⁷³
Treatment for gender dysphoria after the onset of adolescence may include, when medically appropriate, puberty suppression and cross-sex hormones.	World Professional Association for Transgender Health (WPATH) Standards of Care (2022); ²⁷⁴ Endocrine Society Clinical Practice Guidelines (2017); ²⁷⁵ American Academy of Pediatrics (2018); ²⁷⁶ American Psychological Association Guidelines for Psychological Practice with Transgender and Gender Nonconforming People (2015); ²⁷⁷ American Academy of Child and Adolescent Psychiatry (2011); ²⁷⁸ American Medical Association, American College of Obstetricians and Gynecologists, and 18 additional medical societies (2022) ²⁷⁹

272. WORLD PRO. ASS'N FOR TRANSGENDER HEALTH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, 23 INT. J. OF TRANSGENDER HEALTH S1 (2022), <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644>.

273. Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. CLINICAL ENDOCRINOLOGY METABOLISM 3869 (2017).

274. WORLD PRO. ASS'N FOR TRANSGENDER HEALTH, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, 23 INT. J. OF TRANSGENDER HEALTH S1 (2022), <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644>.

275. See Hembree et al., *supra* note 273.

276. Jason Rafferty et. al, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 PEDIATRICS 1 (2018).

277. AM. PSYCH. ASS'N, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70 AM. PSYCHOLOGIST 832 (2015).

278. Stewart L. Adelson, *Practice Parameter on Gay, Lesbian, or Bisexual Sexual Orientation, Gender Nonconformity, and Gender Discordance in Children and Adolescents*, 51 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 957 (2012).

279. Brief for American Academy of Pediatrics and Additional National and State Medical and Mental Health Organizations as Amici Curiae Supporting Plaintiffs, *Eknes-Tucker v. Ivey*, No. 2:22-cv-0184-LCB-SRW, 2022 WL 19983530 (M.D. Ala. May 3, 2022) (later redesignated *Eknes-Tucker v. Abbott*).

Care should be individualized following a thorough psychosocial assessment and consultation with a multi-disciplinary medical team.	All.
Care should be individualized following a thorough psychosocial assessment and consultation with a multi-disciplinary medical team.	All.

Table 3. Judicial injunctions against state bans on gender-affirming medical care

State	Parties	Terms of ban	Judicial ruling	Date	Level of judicial challenge
Alabama	Boe v. Marshall ²⁸⁰	SB 184 Statute imposing felony penalties if treatment provided to a minor	Preliminary injunction	2022	Federal
Arkansas	Brandt v. Rutledge ²⁸¹	HB 1570 Statute imposing loss of licensure on medical providers treating minors	Preliminary injunction followed by permanent injunction	2021, 2023	Federal
Florida	Dekker v. Weida ²⁸²	Fla. Admin. Code R. 59G-1.050(7)	Permanent injunction	2023	Federal

280. Formerly *Eknes-Tucker v. Marshall*, 603 F. Supp. 3d 1131, 1139 (M.D. Ala. 2022) (granting preliminary injunction), *vacated sub nom.* *Eknes-Tucker v. Governor of Alabama*, 80 F.4th 1205 (11th Cir. 2023).

281. *Brandt v. Rutledge*, 551 F.Supp.3d 882 (E.D. Ark. 2021).

282. *Dekker v. Weida*, No. 4:22CV325-RH-MAF, 2023 WL 4102243 (N.D. Fla. June 21, 2023).

		State agency denial of Medicaid coverage for all ages			
	Dekker v. Weida ²⁸³	CSSB 254 State statute	Permanent injunction	2023	Federal
	Doe v. Ladapo ²⁸⁴	Fla. Admin. Code R.64B8-0.019(1)(b); Fla. Admin. Code R. 64B15-14.014(1)(b) State Board of Medicine penalties on physicians providing care to minors	Preliminary injunction	2023	Federal
	Doe v. Ladapo ²⁸⁵	CSSB 254 State statute	Preliminary injunction	2023	Federal
Indiana	K.C. v. Medical Licensing Board of Indiana ²⁸⁶	SEA 480 Statute	Preliminary injunction	2023	Federal

283. *Id.*

284. Doe v. Ladapo, No. 4:23CV114-RH-MAF, 2023 WL 3833848 (N.D. Fla. June 6, 2023).

285. *Id.*

286. K.C. v. Med. Licensing Bd. of Ind., No. 1:23-cv-00595-JPH-KMB, 2023 WL 4054086 (S.D. Ind. June 16, 2023).

Kentucky	Doe v. Thornbury ²⁸⁷	SB 150 Statute imposing loss of licensure and per se malpractice liability	Preliminary injunction granted by District Court but stayed pending appeal to the Sixth Circuit	2023	Federal
Tennessee	L.W. v. Skrmetti ²⁸⁸	SB 1 ²⁸⁹ Statute imposing loss of licensure and civil fines for treatment of minors	Preliminary injunction granted by District Court but stayed pending appeal to the Sixth Circuit	2023	Federal
Texas	PFLAG v. Abbott ²⁹⁰	Feb. 22, 2022 Letter from Gov. Greg Abbott to Jaime Masters, Commissioner of TX Dep't of Family and Protective Servs.; Texas AG Opinion KP-0401 State	Preliminary injunction	2022	State

287. Doe 1 v. Thornbury, No. 3:23-cv-230-DJH, 2023 WL 4230481 (W.D. Ky. June 28, 2023).

288. L.W. v Skrmetti, No. 3:23-cv-00376, 2023 WL 4232308 (M.D. Tenn. June 28, 2023).

289. S.B. 1, 2023 Leg., 113th Sess. (Tenn. 2023).

290. The Texas court has issued three preliminary injunctions against the state of Texas. For the most recent preliminary injunction (which recounts the procedural history), see PFLAG v. Abbott, No. D-1-GN-22-002569, 2022 WL 4549009 (Tex. Dist. Sept. 16, 2022) (order granting temporary injunction).

		executive directive ordering (pursuant to AG Opinion) investigation by TX Department of Family and Protective Services into parents consenting to treatment of minors			
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Table 4: Original, peer-reviewed research studies demonstrating the benefits of gender-affirming care (GAC) for transgender youth (in chronological order)

Study	Outcomes
De Vries, et al. (2011) ²⁹¹	Behavioral and emotional problems and depressive symptoms decreased; general functioning improved; feelings of anxiety and anger did not change; gender dysphoria and body satisfaction did not change; all participants progressed to cross-sex hormone treatment.
De Vries, et al. (2014) ²⁹²	Gender dysphoria and psychological functioning improved. Well-being was similar to or better than cisgender age-matched controls.
Costa, et al. (2015) ²⁹³	Adolescents with gender dysphoria who received puberty suppression had significantly better psychosocial functioning after 1 year of puberty suppression than with just

291. Annalou L.C. deVries et al., *Puberty Suppression in Adolescents with Gender Identity Disorder: A Prospective Follow-Up Study*, 8 J. SEX. MED. 2276 (2011).

292. Annalou L.C. deVries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 PEDIATRICS 696 (2014).

293. Rosalia Costa et al., *Psychological Support, Puberty Suppression, and Psychosocial Functioning in Adolescents with Gender Dysphoria*, 12 J. SEX. MED. 2206 (2014).

	psychotherapy.
Allen, et al. (2019) ²⁹⁴	Improvement in general well-being and decreased suicidality.
Kaltiala, et al. (2020) ²⁹⁵	Decreased need for psychiatric treatment of depression, anxiety, suicidality and self-harm.
van der Miesen, et al. (2020) ²⁹⁶	Transgender adolescents receiving puberty suppression had fewer emotional and behavioral problems than newly referred patients and had similar or fewer problems than their same-age cisgender peers.
Achille, et al. (2020). ²⁹⁷	Mean depression scores and suicidal ideation decreased, quality of life scores improved over time.
de Lara, et al (2020) ²⁹⁸	At baseline, trans adolescents had worse measures of mental health than the cisgender control adolescents. The transgender adolescents in the study who received gender affirming hormones had statistically significant improvements in anxiety and depression.
Kuper, et al. (2020) ²⁹⁹	Large improvement in body dissatisfaction, small to moderate improvement in depression and anxiety
Sorbara, et al. (2020) ³⁰⁰	Late pubertal stage and older age at onset of GAC were found to be associated with worse mental health among youth, with outcomes including greater depression, self-harm,

294. Luke R. Allen et al., *Well-Being and Suicidality Among Transgender Youth After Gender-Affirming Hormones*, 7 *CLINICAL PRAC. PEDIATRIC PSYCH.* 302 (2019).

295. Riittakerttu Kaltiala et al., *Adolescent Development and Psychosocial Functioning After Starting Cross-Sex Hormones for Gender Dysphoria*, 74 *J. NORDIC PSYCHIATRY* 1 (2020).

296. Anna I.R. van der Miesen et al., *Psychological Functioning in Transgender Adolescents Before and After Gender-Affirmative Care Compared With Cisgender General Population Peers*, 66 *J. ADOLESCENT HEALTH* 699 (2020).

297. Christal Achille et al., *Longitudinal Impact of Gender-Affirming Endocrine Intervention on the Mental Health and Well-Being of Transgender Youths: Preliminary Results*, 2020 *J. INT'L PEDIATRIC ENDOCRINOLOGY* 1 (2020).

298. Diego López de Lara et al., *Evaluación psicosocial en adolescentes transgénero* [Psychosocial assessment in transgender adolescents], 93 *ANALES DE PEDIATRÍA* 41 (2020) (Sp.).

299. Laura E. Kuper et al., *Body Dissatisfaction and Mental Health Outcomes of Youth on Gender-Affirming Hormone Therapy*, 145 *PEDIATRICS* 1 (2020).

300. Julia C. Sorbara et al., *Mental Health and Timing of Gender-Affirming Care*, 146 *PEDIATRICS* 1 (2020).

	suicide and suicide attempts, and psychoactive medication.
Turban, et al. (2020) ³⁰¹	Access to pubertal suppression was associated with a lower odds of lifetime suicidal ideation.
Carmichael, et al. (2021) ³⁰²	Overall patient experience of changes on puberty blockers was positive, based on qualitative interviews.
Grannis, et al. (2021) ³⁰³	Those receiving testosterone had lower scores in generalized anxiety, social anxiety, depression, and body image dissatisfaction compared to those not receiving hormones.
Green, et al. (2021) ³⁰⁴	Access to gender-affirming hormones was associated with lower odds of recent depression and suicide attempts compared to those who desired but did not access gender-affirming hormones.
Turban, et al. (2022) ³⁰⁵	Accessing GAC was associated with lower odds of past-year suicidal ideation and past year severe psychological distress. Access to GAC during adolescence was associated with a lower odds of these same adverse mental health outcomes when compared to those not accessing gender-affirming hormones until adulthood.
Tordoff, et al. (2022) ³⁰⁶	Lower odds of depression and suicidality GAC, when compared to those who did not.
Chen, et al. (2023) ³⁰⁷	Appearance congruence, positive affect, and

301. Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 PEDIATRICS 1 (2020).

302. Polly Carmichael et al., *Short-Term Outcomes of Pubertal Suppression in a Selected Cohort of 12 to 15 Year Old Young People with Persistent Gender Dysphoria in the UK*, 16 PLOS ONE 1 (2021).

303. Connor Grannis et al., *Testosterone Treatment, Internalizing Symptoms, and Body Image Dissatisfaction in Transgender Boys*, 132 PSYCHONEUROENDOCRINOLOGY 1 (2021).

304. Amy E. Green et al., *Association of Gender-Affirming Hormone Therapy with Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth*, 70 J. ADOLESCENT HEALTH 643 (2022).

305. Jack L. Turban et al., *Access to Gender-Affirming Hormones During Adolescence and Mental Health Outcomes Among Transgender Adults*, 17 PLOS ONE 1 (2022).

306. Diana M. Tordoff et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, 5 JAMA NETWORK OPEN 1 (2022).

	life satisfaction increased, and depression and anxiety symptoms decreased. Appearance congruence correlated positively with increases in positive affect and life satisfaction and decreases in depression and anxiety symptoms.
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307. Diane Chen et al., *Psychosocial Functioning in Transgender Adolescent After 2 Years of Hormones*, 388 NEW ENG. J. MED. 240 (2023).