



AMERICAN CIVIL LIBERTIES UNION OF UTAH
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Friday, January 27, 2023

Dear Governor Spencer Cox:

We urge you to veto S.B.16, a bill that would single out medically-supported treatment for gender dysphoria for prohibition. Last year you spoke about how important it is to act on the side of “kindness, mercy, and compassion.” We echo the concerns and commitments you raised to give transgender youth in Utah a chance to live. This bill will undermine those commitments. The ACLU of Utah is deeply concerned about the damaging and potentially catastrophic effects this law will have on people’s lives and medical care, and the grave violations of people’s constitutional rights it will cause.

S.B.16 effectively bans medical treatment for individuals under 18 years of age diagnosed with gender dysphoria after the law's effective date, including puberty suppression or gender-affirming hormone therapy. It also allows medical malpractice suits based on retroactively withdrawn consent.

This bill bans access to life-saving medical care. By cutting off medical treatment supported by every major medical association in the United States, the bill compromises the health and well-being of adolescents with gender dysphoria. It ties the hands of doctors and parents by restricting access to the only evidence-based treatment available for this serious medical condition and impedes their ability to fulfill their professional obligations.

The bill is riddled with numerous constitutional issues. It violates the equal protection rights of transgender adolescents and the due process rights of their parents. This bill clearly discriminates on the basis of sex and transgender status. The bill also infringes upon the substantive due process rights of parents to direct the care, custody, and control of their minor children, which includes the right to follow medical guidelines for treatment.

It cannot be ignored that multiple courts have enjoined similar laws finding that they violate equal protection and due process. In *Brandt v. Rutledge*, No. 4:21CV00450, 2021 WL 3292057 (E.D. Ark. Aug. 2, 2021), the court enjoined an Arkansas law banning gender-affirming health care for transgender minors, finding that the plaintiffs were likely to succeed on claims that law violated equal protection rights of adolescents and due process rights of parents of minor children. This injunction was affirmed on appeal by the Eighth Circuit in *Brandt v. Rutledge*, 47 F.4th 661, 671 (8th Cir. 2022), and rehearing en banc was denied by the full court. In *Eknes-Tucker v. Marshall*, No. 2:22-CV-184-LCB, 2022 WL 1521889 (M.D. Ala. May 13, 2022), the court preliminarily enjoined an Alabama criminal ban on gender-affirming care for minors, finding that the law likely violated the due process rights of parents, the equal protection rights of adolescents and was void for vagueness.

As we have stated loudly and repeatedly during the Legislative Session, healthcare decisions should be between the patient, their parents or guardians, and their individual medical professionals on the patient's care team, not politicians. Because S.B. 16 will compromise critical health care and violate the constitutional rights of Utah families, you should veto it.

Sincerely,

A handwritten signature in black ink, appearing to read "John Mejia".

John Mejia, *Legal Director* ACLU of Utah

CC:

Lt. Governor Deidre Henderson
Jennifer Napier-Pearce
Neil Abercrombie