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Judge Blocks Indiana Law Against Care for Trans Minors

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BY ARTHUR S. LEONARD

Earlier this year Indiana Governor Eric Holcomb signed into law Senate Enrolled Act 480 (SEA 480), which, effective July 1, 2023, would prohibit health care practitioners from providing gender-affirming procedures to minors and from “aiding or abetting” another health care provider in providing such care to minors.

The procedures covered by the law are puberty blockers, cross-sex hormones, and surgical alteration, and “aiding and abetting” would include assisting in treatment or making referrals. These procedures are not subject to the legal prohibition unless they are performed for the purpose of gender transition.

If the law went into effect, doctors would risk loss of their licenses if they provided gender-affirming care or helped minors to find health care providers in other states who would provide such care. The statute authorizes any individual to sue, although the normal means of enforcement would be proceedings by the medical licensing board.

Four transgender minors, their parents, and a doctor who provides gender-affirming care to minors, Catherine Bast, filed a federal lawsuit against the members of the Medical Licensing Board of Indiana, which is authorized to enforce SEA 480, as well as the attorney general of Indiana and the official in charge of the state's Medicaid program. The plaintiffs seek to certify a class action on behalf of themselves and similarly situated individuals to have SEA 480 declared unconstitutional and to get an injunction against its enforcement. On filing suit, they sought a preliminary injunction to prevent the law from going into effect on July 1 while the case proceeds to a final judgment.

The plaintiffs and the defendants agreed that gender-affirming surgery is not practiced on minors in Indiana, so the court found that the plaintiffs did not have standing to attack that part of the statutory ban.

However, US District Judge James Patrick Hanlon, who was appointed by President Trump in 2018, found that



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A Trump-appointed judge ruled against an anti-trans health bill signed by Governor Eric Holcomb of Indiana.

the plaintiffs have shown “some likelihood of success” on their equal protection and free speech claims. He issued a preliminary injunction on June 16 that will block any enforcement of the law (except as to surgery) until the court issues a final ruling on the merits of the case. Hanlon's ruling was consistent with similar awards of preliminary relief against laws banning gender-affirming care for minors in Alabama and Arkansas.

Shortly after the lawsuit was filed by the American Civil Liberties Union (ACLU), the defendants filed a motion to “stay briefing” on the plaintiffs' motion for class certification until after Judge Hanlon ruled on the motion for preliminary injunction. Clearly, they anticipated that a preliminary injunction would be issued and they wanted to delay class certification so they could argue that such an injunction should be limited to the four plaintiffs and not apply to any other transgender minors or health care providers other than Dr. Bast.

On May 5, Judge Hanlon issued an order in response to the defendants' motion to delay briefing on. He pointed out that Seventh Circuit precedent allows him to issue class-wide preliminary relief as a matter of the court's equitable powers when the fa-

cial unconstitutionality of a statute is at issue, even if a class action has not been formally certified. His June 16 order blocks enforcement of SEA 480 as to puberty blockers and hormones and the aiding and abetting provision against any person, not just the named plaintiffs.

The court's decision to award preliminary relief to the plaintiffs was not a ruling on the ultimate merits of their claim that the law is unconstitutional, but winning this relief is an important step, because if the statute goes into effect, minors seeking gender-affirming care would have to go out of state to get it, and those already receiving puberty blockers or cross-sex hormones would have to be weaned off their medication by the end of 2023. Their doctors would be placing their licenses at risk by assisting them.

Judge Hanlon accepted the plaintiffs' argument that SEA 480 discriminates against transgender minors on the basis of their sex, thus subjecting the law to heightened scrutiny. This means there is a presumption of unconstitutionality, the burden is on the state to show that the challenged law “serves important governmental objectives, and that the discriminatory means employed are substantially related to the achievement of those ob-

jectives.”

The defendants argued that the purpose of the law was to protect minors from being subject to “experimental” procedures that could cause irreparable harm to them. They contended that “the prohibited treatments are unsafe and their effectiveness is unproven.” The plaintiffs countered that “there's no important government interest to justify prohibiting ‘safe, effective, and medically necessary treatment for the health and well-being of adolescents suffering from gender dysphoria.’”

“Certainly,” wrote Judge Hanlon, “the proffered state interests are legitimate.” However, he continued, “But heightened scrutiny requires a ‘close means-end fit,’ so it's not enough for the State's interest to justify some regulation of gender transition procedures for minors. Instead, the State's interests must justify SEA 480's prohibition of gender transition procedures for minors. SEA 480's scope is broad.” Indiana had decided to ban the procedures outright, however, not just to regulate them.

While acknowledging the defendant's evidence of various risks attendant on these procedures, wrote Judge Hanlon, “Nevertheless, Plaintiffs argue that these ‘concerns are based on mischaracterizations and distortions about the diagnosis and treatment of gender dysphoria. Maybe Plaintiff will be able to prove that's true at a trial where Defendants' experts are subject to cross-examination on the strength of their opinions,” he continued. “But based on the paper record available here, the Court find that Defendants have designated some evidence in support of their position. Even so, heightened scrutiny requires more — the regulation must have an ‘exceedingly persuasive justification,’ and a ‘close means-end fit.’ In other words, the State's specific means (SEA 480's broad ban) must fit its ‘ends’ (protecting minors and regulating the medical profession).”

In this case, the plaintiffs have presented evidence of the harms to transgender minors if they don't get gender-affirming care, which are substantial: “prolonging of their dysphoria, and causing additional distress and health risks.