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Federal Court Blocks Enforcement of Idaho's Ban on Gender-Affirming Care for Minors

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Federal court blocks enforcement of Idaho's ban on gender-affirming care for minors

 By Arthur S. Leonard

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Judge B. Lynn Winmill of the US District Court for the District of Idaho put a hold on the state's legislation against trans youth.

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Ruling just days before Idaho's "Vulnerable Child Protection Act" was slated to go into effect on Jan. 1, Senior US District Judge B. Lynn Winmill issued a preliminary injunction on Dec. 26 in a lawsuit challenging the constitutionality of the law, referred to as HB 71. Under HB 71, any licensed health care professional who provides gender-affirming care to a minor can be convicted of a felony with a potential prison sentence of up to ten years. The practical effect of this law would make such treatment unavailable in the state.

Two transgender teenagers and their parents who live in Ada County, Idaho, sued Idaho Attorney General Raúl Labrador and Ada County Prosecuting Attorney Jan Bennetts, asking the court to declare the law unconstitutional and to order these defendants not to enforce it. They also sued the individual members of the Idaho Code Commission, the body that publishes the official code of Idaho statutes, seeking an order that the Commission not publish the law in the state code without a statement that its constitutionality was

under challenge. Judge Winmill determined that the Commissioners should be dismissed as defendants, but he rejected all procedural objections to the lawsuit by Labrador and Bennetts, finding that these officials were charged with enforcing the law and could be subjected to a pre-enforcement suit seeking to prevent it from going into effect.

Both of the teenage plaintiffs, who were assigned as male at birth but who feel themselves to be female, have been diagnosed with gender dysphoria and are receiving gender-affirming treatment, which the judge found had been beneficial to them. Furthermore, he found that if the law went into effect on January 1, they would either have to go out of state to continue treatment or to suffer the consequences of having their treatment discontinued, which would affect them adversely. Thus, he found, they clearly had “standing” to bring this lawsuit in federal court.

One of Judge Winmill’s essential findings, based on the allegations of the parties, was that the effect of HB 71 was to harm the well-being of transgender youth in Idaho, not to protect them. The court received five amicus briefs from numerous professional health care associations and learned societies, all agreeing that the treatments banned by HB 71 were safe and effective and necessary for the health of transgender minors with severe gender dysphoria.

The state countered with evidence of various countries in Europe that have adopted policies allegedly limiting or restricting gender-affirming care for minors. The judge explained that none of these countries had adopted an outright ban such as HB 71, and all of them allowed for some individual minors to receive gender-affirming care. Many of the cautions that these countries have suggested are incorporated into the standards and guidelines of the World Professional Association for Transgender Health (WPATH) and the Endocrine Society, which the judge recognizes as describing the standards of care followed by licensed health care professionals in the United States.

The plaintiffs’ legal theories are two: that by outlawing puberty blockers, cross-sex hormones, or surgical alteration for the purpose of affirming gender identity but not outlawing those treatments for other purposes, the state was denying transgender minors equal protection of the laws in violation of the 14th Amendment; and, that by effectively making such treatment unavailable to minors in Idaho, the state was violating the fundamental right of the parents of transgender minors to provide appropriate health care for their children as advised by their health care providers and thus protected by the due process clause of the 14th Amendment.

Judge Winmill endorsed both theories, finding that the plaintiffs were likely to succeed at trial, which is the key to awarding them pre-trial relief based on these preliminary findings. Idaho is within the jurisdiction of the Ninth Circuit Court of Appeals, which has rendered significant rulings underlying the judge’s conclusions. In the Ninth Circuit, laws that discriminate because of gender identity or transgender status are subjected to “heightened scrutiny,” which puts the burden on the state to show that the law serves an important state interest and that the discriminatory means employed by the state in HB 71 — barring particular treatments for transgender youth but allowing them for cisgender youth — are “substantially related” to the achievement of the state’s objective.

Winmill acknowledged the state’s argument that it was acting to “protect” minors from “harmful” treatments, but he found that the record in the case thus far did not support the argument, since the reputable medical associations all assert that these treatments are helpful rather than harmful, and that depriving transgender minors from accessing them would be harmful to them.

As to parental rights, the judge observed that the Supreme Court has issued several decisions supporting the rights of parents regarding health care decisions for their children. The state can intervene when it has demonstrated that such intervention is necessary to protect the minors from harm, but so far the record in this case does not show that this intervention by the state is necessary for that purpose, and that the state’s intervention is harmful to the minors.

“Parents should have the right to make the most fundamental decisions about how to care for their children,” wrote Judge Winmill. “As it turns out, case law applying the Fourteenth Amendment tracks with our intuition. Time and again, the cases illustrate that the Fourteenth Amendment’s primary role is to

protect disfavored minorities and preserve our fundamental rights from legislative overreach. That was true for newly freed slaves following the civil war. It was true in the 20th century for women, people of color, inter-racial couples, and individual seeking access to contraception. And it is no less true for transgender children and their parents in the 21st century.”

The judge was careful to note that a pre-trial decision is based on preliminary findings, and that the state’s opposition to the plaintiffs’ claims will eventually be tested at trial and could persuade the court to change its view. The purpose of a preliminary injunction in a case like this is to preserve the status quo (availability of gender-affirming care in Idaho) while the case is being litigated, where the plaintiffs have strong arguments about the unconstitutionality of the law and the likely harms of letting it go into effect.

Judge Winmill pointed out that with only one exception, every federal district court to consider the question has found it appropriate to issue preliminary relief to transgender plaintiffs challenging laws like HB 71. He pointedly rejected the conclusion of two federal courts of appeals that have overturned such preliminary relief, disputing their analysis of the equal protection and due process issues in the case, and noting that there are other courts of appeals that have upheld such preliminary relief as well. Furthermore, the Ninth Circuit Court of Appeals has yet to rule on such a case, so there is no binding precedent that would require him to reject the plaintiffs’ request for relief.

As a preface to his decision, he wrote that “it is important to briefly address a criticism common to court decisions that apply the Fourteenth Amendment to strike down legislative enactments. Critics say such decisions are anti-democratic and frustrate the will of the people as expressed by their elected legislature. And they are right. But that is precisely how our constitutional democracy is supposed to work. The authors of the Fourteenth Amendment fully understood and intended that the amendment would prevent state legislatures from passing laws that denied equal protection of the laws or invade the fundamental rights of the people.”

The plaintiffs, who are proceeding anonymously as Pam Poe and Jane Doe, are represented by attorneys from the ACLU’s national office and Idaho affiliate, pro bono attorneys from the national law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, and local counsel from Wrest Collective, Boise, Idaho.

Senior District Judge Barry Lynn Winmill was appointed to the court by President Bill Clinton in 1995. He is a former Chief Judge of the Idaho District Court. He is intimately familiar with transgender issues, having conducted a lengthy trial resulting in an order to the Idaho prison system to provide gender-affirming surgery for an incarcerated transgender woman. His ruling was upheld by the Ninth Circuit in the first federal appellate ruling to require a state prison system to provide gender confirmation surgery to an inmate.