

The Far-Right Push to Outlaw Gender-Affirming Treatment for Minors

Alexa Sussmane*

I. INTRODUCTION	91
II. WHAT IS GENDER AFFIRMING TREATMENT?	94
III. THE INTRODUCTION OF ANTI-AFFIRMATION BILLS	97
IV. DIRECT IMPACT OF ANTI-AFFIRMATION BILLS	99
V. THE LAW SURROUNDING PARENTAL CONTROL OF MEDICAL TREATMENT	101
VI. THE USE OF BANS ON FEMALE GENITAL MUTILATION.....	102
VII. ANTI-CONVERSION THERAPY LAWS	105
VIII. THE CONGRESSIONAL PRAYER CAUCUS AND PROJECT BLITZ.....	107
IX. THE EXPRESSIVE INTENT OF ANTI-AFFIRMATION BILLS	110
X. CONCLUSION	114
XI. 2021 UPDATE.....	115
APPENDIX I: BILLS PROHIBITING GENDER-AFFIRMING TREATMENT BY STATE INTRODUCED IN 2020.....	116
APPENDIX II: BILLS PROHIBITING CONVERSION THERAPY BY STATE.....	118
APPENDIX III: BILLS PROHIBITING GENDER AFFIRMING TREATMENT BY STATE INTRODUCED IN 2021	120

I. INTRODUCTION

The past few years have been a time of high-profile gains towards greater protections and acceptance for transgender and gender non-conforming individuals within the United States. There have been legal victories, including greater anti-discrimination protection,¹ and a cultural shift towards greater acceptance. According to a survey of 1,100 Americans published in 2019, “[m]ore than six in ten (62%) Americans

* © 2021 Alexa Sussmane, Graduate of the Benjamin N. Cardozo School of Law, Class of 2021. The Author would like to thank her family— Nicole, Elaine, Ken, Jesse, and Devin— for their support. She would also like to thank Professor Ed Stein at Cardozo School of Law and the members of Volume 30 for their invaluable assistance and guidance.

1. *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020).

say they have become more supportive toward transgender rights compared to their views five years ago.”² However, along with this progress has come increasingly visible hostility. This same survey found that twenty-five percent of participants reported that they were more opposed to transgender rights than they had been five years before.³ This hostility has manifested in efforts to deny transgender and gender non-binary individuals’ access to opportunities (such as military service), public facilities (most notably public bathrooms) and to supportive care (medical care).

In the first three months of 2020, dozens of bills were proposed in state legislatures across the United States restricting the rights of transgender individuals.⁴ When asked about his support for an Idaho bill passed in March 2020 preventing individuals from changing the gender marker on their birth certificate, Republican State Senator and sponsor of the bill, Lee Heider said, “Boys are boys and girls are girls . . . No doctor, no judge, no Department of Health and Welfare is going to change that reality.”⁵ The fact is that life is not that simple and never has been. Intersex, gender non-conforming, and transgender individuals can be found throughout history.⁶ This reality has been harder to ignore as acceptance and visibility of transgender people has increased in recent years.

As part of an effort to ensure that transgender individuals are neither seen nor acknowledged, conservative state legislators have introduced bills to prevent transgender minors from receiving gender-affirming medical treatment (Anti-Affirmation Bills). Gender affirmation consists of providing support for a person who wants to live as their perceived gender identity, including social support, counseling, and medical treatment. Medical treatment may include delaying puberty (through medication) to allow a minor to explore their gender identity and prevent the irreversible

2. Daniel Greenberg, *America's Growing Support for Transgender Rights*, PUB. RELIGION RSCH. INST. (June 11, 2019), <http://www.ppri.org/research/americas-growing-support-for-transgender-rights/>.

3. *Id.*

4. Dan Levin, *A Clash Across America Over Transgender Rights*, NY TIMES (Mar. 12, 2020), <http://www.nytimes.com/2020/03/12/us/transgender-youth-legislation.html>.

5. Talya Minsberg, *'Boys Are Boys and Girls Are Girls': Idaho Is First State to Bar Some Transgender Athletes*, NY TIMES (Apr. 1, 2020), <http://www.nytimes.com/2020/04/01/sports/transgender-idaho-ban-sports.html>.

6. For a discussion on Albert Cashier, a transgender man who fought for the Union in the United States Civil War, see Adam Gabbatt, *What Trans Soldier Albert Cashier Can Teach Trump About Patriotism*, GUARDIAN (Aug. 22, 2017), <http://www.theguardian.com/us-news/2017/aug/22/donald-trump-transgender-military-ban-albert-cashier>. For a discussion of Hermaphroditus, the intersex Ancient Greek god, see Hermaphroditus, ENCYC. BRITANNICA <http://www.britannica.com/topic/Hermaphroditus> (last visited Apr. 24, 2020).

physical changes which result from puberty.⁷ For both minors over sixteen⁸ and adults, doctors may prescribe feminizing or masculinizing hormones or recommend surgery (for adults only) to reduce discordance between an individual's body and voice and their perceived gender identity.⁹ These treatments can be lifesaving, improving mental health outcomes and decreasing the risk of suicide.¹⁰ The Anti-Affirmation Bills have the potential to restrict access to this treatment by imposing professional sanctions and criminal penalties against the health-care providers who impart such care.

This Article will examine how far-right Christian organizations appropriate and distort the legal foundation laid by bans on sexual orientation and gender identity change therapy for minors (Anti-Conversion Therapy Laws). Anti-Conversion Therapy Laws protect those under the age of eighteen from harmful efforts to change their sexual orientation, gender presentation, and gender identity. These conversion efforts can be extreme, including electroconvulsive therapy.¹¹ Even treatment that is restricted to talk therapy can be dangerous as “therapists’ alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient.”¹² This is in direct contrast to affirming therapy, which supports people in living healthy lives without reinforcing societal prejudices.

7. Eli Coleman et al., *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People*, 13 INT’L J. TRANSGENDERISM 165, 177 (2011).

8. Joshua D. Safer, *Controversial Pubertal Blocker Legislation May Bring Unintended Consequences for Children*, HEALIO (Feb. 17, 2020), <http://www.healio.com/news/endocrinology/20200217/controversial-pubertal-blocker-legislation-may-bring-unintended-consequences-for-children>.

9. *Feminizing Hormone Therapy*, MAYO CLINIC, <http://www.mayoclinic.org/tests-procedures/feminizing-hormone-therapy/about/pac-20385096> (last visited Apr. 22, 2020) [hereinafter *Feminizing Hormone Therapy*]; *Masculinizing Hormone Therapy*, MAYO CLINIC, <http://www.mayoclinic.org/tests-procedures/masculinizing-hormone-therapy/about/pac-20385099> (last visited Apr. 22, 2020) [hereinafter *Masculinizing Hormone Therapy*]; Coleman et al., *supra* note 7, at 172; AM. PSYCH. ASS’N, GUIDELINES FOR PSYCHOLOGICAL PRACTICE WITH TRANSGENDER AND GENDER NONCONFORMING PEOPLE 842 (2015), <http://www.apa.org/practice/guidelines/transgender.pdf>.

10. JODY L. HERMAN ET AL., WILLIAMS INST., SUICIDE THOUGHTS AND ATTEMPTS AMONG TRANSGENDER ADULTS IN THE US: FINDINGS FROM THE 2015 U.S. TRANSGENDER SURVEY 31 (Sept. 2019), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Suicidality-Transgender-Sep-2019.pdf>.

11. H.B. 339 § 2, 2019 Gen. Sess. (Utah 2019).

12. S.B. 65, 149th Gen. Assemb. (Del. 2017-18) (quoting statement by The American Psychiatric Association).

The Anti-Affirmation Bills use the language of Anti-Conversion Therapy Laws and laws against female genital mutilation to harm transgender minors in three ways. First, the bills prevent transgender minors from receiving potentially lifesaving medical care. Second, the bills undermine existing protections contained within the Anti-Conversion Therapy Laws. Finally, the Anti-Affirmation bills confuse the national dialogue surrounding gender and gender affirming treatment (influencing attitudes towards transgender individuals).

II. WHAT IS GENDER AFFIRMING TREATMENT?

To understand the impact of the Anti-Affirmation Bills, it is necessary to assess the reality of gender-affirming treatment for minors. Merriam Webster defines “transgender” as “of, relating to, or being a person whose gender identity differs from the sex the person had or was identified as having at birth.”¹³ This term does not apply to all gender non-conforming individuals. “Variations in gender expression represent normal and expectable dimensions of human development. They are not considered to be pathological.”¹⁴ Gender affirming treatment is appropriate for individuals who have been diagnosed with gender dysphoria, which “is the feeling of discomfort or distress that might occur in people whose gender identity differs from their sex assigned at birth or sex-related physical characteristics . . . The term gender dysphoria focuses on one’s discomfort as the problem, rather than identity.”¹⁵

Under current medical standards, pre-pubescent minors do not receive any of the medications or procedures enumerated in the Anti-Affirmation Bills.¹⁶ However the Anti-Affirmation Bills prevent the treatment of adolescents as well as children. Conservative groups such as

13. *Transgender Definition*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/transgender> (last visited Apr. 22, 2020).

14. *AACAP Statement Responding to Efforts to Ban Evidence-Based Care for Transgender and Gender Diverse Youth*, AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY (Nov. 8, 2019), http://www.aacap.org/AACAP/Latest_News/AACAP_Statement_Responding_to_Efforts-to_ban_Evidence-Based_Care_for_Transgender_and_Gender_Diverse.aspx.

15. *Pubertal Blockers for Transgender and Gender Diverse Youth*, MAYO CLINIC, <http://www.mayoclinic.org/diseases-conditions/gender-dysphoria/in-depth/pubertal-blockers/art-20459075> (last visited Mar. 28, 2021)[hereinafter *Pubertal Blockers*].

16. “Under the SOC [standards of care], children do not receive any of the medical care identified within these bills, but mental health and social supports are provided to them along with their families.” *Statement in Response to Proposed Legislation Denying Evidence-Based Care for Transgender People Under 18 Years of Age and to Penalize Professionals Who Provide That Medical Care*, WORLD PRO. ASS’N FOR TRANSGENDER HEALTH, http://www.wpath.org/media/cms/Documents/Public%20Policies/2020/FINAL%20Joint%20Statement%20Opposing%20Anti%20Trans%20Legislation%20Jan%2028%202020.pdf?_t=1580243903 (last visited Mar. 28, 2021).

the Congressional Prayer Caucus Foundation (CPCF) have highlighted studies that show that most children who present gender non-conforming behavior are not diagnosed with gender dysphoria as adults.¹⁷ This is accurate but misleading as treatment recommended for adolescents is different from that recommended for children and the rate of persistence of gender dysphoria is much higher in adolescents than in pre-pubescent children. “Existing research suggests that between 12% and 50% of children diagnosed with gender dysphoria may persist in their identification with a gender different than sex assigned at birth into late adolescence and young adulthood.”¹⁸ In contrast, adolescents who are diagnosed with gender dysphoria and who do not receive gender-affirming care during adolescence are much more likely than children to experience gender dysphoria as adults. This was shown “in a follow-up study of 70 adolescents who were diagnosed with gender dysphoria and given puberty-suppressing hormones, all continued with actual sex reassignment, beginning with feminizing/masculinizing hormone therapy.”¹⁹

There are three stages of gender transition recognized by medical professionals, including “fully reversible interventions,” “partially reversible interventions,” and “irreversible interventions.”²⁰ For most minors under the age of sixteen,²¹ medical intervention is typically confined to the first category in the form of counseling and puberty suppressing hormones.²² It is not recommended that parents consider puberty suppressing treatment until adolescents have already begun experiencing puberty.²³

17. From the CPCF: “On page 455 of the DSM-5 under “Gender Dysphoria without a disorder of sex development” it states: ‘Rates of persistence of gender dysphoria from childhood into adolescence or adulthood vary. In natal males, persistence has ranged from 2.2% to 30%. In natal females, persistence has ranged from 12% to 50%.’” CONG. PRAYER CAUCUS FOUND., REPORT AND ANALYSIS ON RELIGIOUS FREEDOM MEASURES IMPACTING PRAYER AND FAITH IN AMERICA 53 (2018), <http://www.au.org/sites/default/files/2019-01/Project%20Blitz%20Playbook%202018-19.pdf> [hereinafter Report and Analysis on Religious Freedom]

18. K.D. Drummond et al., *A Follow-up Study of Girls with Gender Identity Disorder*, 44 DEVELOPMENTAL PSYCH. 34, 43-45 (2008); Coleman et al., *supra* note 7, at 172-73.

19. Coleman et al., *supra* note 7, at 172.

20. *Id.* at 176-77.

21. *Feminizing Hormone Therapy*, *supra* note 9; *Masculinizing Hormone Therapy*, *supra* note 9.

22. Coleman et al., *supra* note 7, at 176-77.

23. *Id.* at 177-78.

Even amongst transgender adolescents, puberty blockers are prescribed with care. According to the Mayo Clinic, “To begin using pubertal blockers, a child must: show a long-lasting and intense pattern of gender nonconformity or gender dysphoria; have gender dysphoria that began or worsened at the start of puberty; address any psychological, medical or social problems that could interfere with treatment; [and] provide informed consent.”²⁴ When all of these conditions are met, GnRH analogues (puberty suppressing hormones) may be prescribed to prevent the release of hormones associated with puberty, such as testosterone and estrogen. This can ameliorate some of the distress caused by the onset of puberty. “In those identified as male at birth, GnRH analogues decrease the growth of facial and body hair, prevent voice deepening, and limit the growth of genitalia. In those identified as female at birth, treatment limits or stops breast development and delays or stops menstruation.”²⁵ Once the minor stops taking puberty suppressing medication, puberty will resume.²⁶

Puberty suppressants have been safely used for decades. Prominent endocrinologist, Dr. Mitchell E. Geffner,²⁷ characterized the use of puberty suppressing medication as “safe and effective for children . . . [o]ne product has been around for almost 30 years . . . [and] [t]hey have a long track record of safety.”²⁸ While labeled as fully reversible in medical literature, puberty suppressing treatment is not without potential temporary side effects, including headaches along with more permanent effects such as decrease in future fertility.²⁹ The risks of this treatment, like those of any medical treatments, can be weighed against potential benefits.

Stage two of transition consists of partially reversible hormone treatment designed to masculinize or feminize the individual’s body. These hormones would not be prescribed to children. They may be considered for older adolescents and adults to reduce emotional distress by making the individual’s body more like that of their gender identity.³⁰ This treatment is not fully reversible and some changes, such as breast

24. *Pubertal Blockers*, *supra* note 15.

25. *Id.*; Coleman et al., *supra* note 7, at 172; AM. PSYCH. ASS’N, *supra* note 9, at 842.

26. *Id.*; Safer, *supra* note 8.

27. Dr. Mitchell Geffner “is the Ron Burkle Chair in the Center for Endocrinology, Diabetes & Metabolism at Child. Hosp. Los Angeles, and Professor of Pediatrics at the Keck School of Medicine of the University of Southern California.” *Biography of Mitchell Geffner, MD*, CHILDREN’S HOSPITAL L.A., <http://www.chla.org/profile/mitchell-geffner-md> (last accessed Mar. 28, 2021).

28. Safer, *supra* note 8.

29. *Pubertal Blockers*, *supra* note 15.

30. *Feminizing Hormone Therapy*, *supra* note 9; *Masculinizing Hormone Therapy*, *supra* note 9.

growth, may require reconstructive surgery to reverse if the individual chooses to de-transition.³¹ Certain changes, such as the deepening of the voice, may be permanent.³²

The final stage, consisting of irreversible interventions, is highlighted in the Anti-Affirmation Bills. Used to make the entire process of treating transgender minors seem extreme, genital surgery is presented as the inevitable outcome of any gender-affirming treatment. While chest surgery (“top surgery”) for an older adolescent transitioning from female to male may be appropriate under certain specific circumstances,³³ genital surgery (“bottom surgery”) is only available for patients who are legally adults, who have lived continuously in their desired gender role and who have undergone hormone treatment for at least twelve months.³⁴ Even among adults, a majority of transgender and gender non-binary individuals do not receive gender-affirming surgery.³⁵ In a 2015 survey conducted by the National Center for Transgender Equality, 27,715 adult respondents identifying as transgender or non-binary revealed that only one in four respondents had some form of gender affirmation surgery.³⁶ While some did not have the financial resources to undergo gender-affirming surgery, many chose not to undergo surgery. Between 24% and 35% of transgender men³⁷ and 22% of transgender women surveyed said that they did not want bottom surgery.³⁸

III. THE INTRODUCTION OF ANTI-AFFIRMATION BILLS

In the first three months of 2020, thirty-one bills restricting access to gender affirmation care were introduced in sixteen states. The Anti-Affirmation Bills prohibit the prescription of puberty blocking medication, feminizing or masculinizing hormones, and any type of surgical intervention. Twenty-four of these proposed laws explicitly prohibit gender-affirming medical treatment for minors while seven allow health-

31. Coleman et al., *supra* note 7, at 177.

32. *Id.*

33. *Id.*

34. *Id.* at 178-79.

35. JAMES ET AL., NAT’L CTR. FOR TRANSGENDER EQUAL., THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 100 (2016), <http://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

36. *Id.*

37. *Id.* at 101 fig.7.12.

38. *Id.* at 102 fig.7.14.

care providers to refuse to provide gender-affirming treatment.³⁹ The bill proposed in Utah requires additional study of gender-affirming treatments.⁴⁰ This discussion shall be limited to the bills that categorically prohibit gender-affirming treatment for those with an unambiguous gender at birth.

The Anti-Affirmation Bills vary in the consequences for health-care workers who provide the prohibited treatments. Eleven bills categorize providing such treatment as unethical conduct for which a health-care worker may be subject to professional sanctions—such as revocation of their license to practice⁴¹—while others categorize such treatment as a criminal offense.⁴² A few bills mandate significant jail time for medical professionals who provide gender-affirming treatment. For example, an introduced Iowa bill classifies providing gender-affirming treatment as a class B felony, which is “punishable by confinement for no more than 25 years.”⁴³ Illinois’s House Bill 3515 classifies providing gender-affirming medication or surgery as a class two felony punishable by four to fifteen years in prison⁴⁴—placing the crime in the same category as murder in the second degree.⁴⁵ With the exception of the bills in Mississippi⁴⁶ and Florida⁴⁷ which died in committee along with a withdrawn state bill in South Dakota, all of the proposed bills are either in committee or awaiting assignment to committee as of July 2020.

39. See *infra* Appendix I.

40. H.B. 449, 2019 Gen. Sess. (Utah 2019).

41. H.B. 20-1114, 2020 Reg. Sess. (Colo. 2020); H.B. 3515, 101st Gen. Assemb. (Ill. 2019); S.B. 2490, 2020 Reg. Sess. (Miss. 2020) (died in committee); H. 4716, 123rd Sess. (S.C. 2020); H.B. 1721, 101st Gen. Assemb., 2020 Reg. Sess. (Mo. 2020); S.B. 848, 101st Gen. Assemb., 2020 Reg. Sess. (Mo. 2020); H.B. 3515, 133rd Gen. Assemb., 2019-20 Reg. Sess. (Ohio 2020); S.B. 3515, 57th Leg., 2019-20 2nd. Reg. Sess. (Okla. 2020); H. 4716, 123rd Sess. (S.C. 2020).

42. H.B. 20-1114, 2020 Reg. Sess. (Colo. 2020); S.B. 1864, 2020 Reg. Sess. (Fla. 2020) (died in committee); H.B. 1365 2020 Reg. Session (Fla. 2020) (died in committee); H.B. 2272, 2020 Reg. Sess. (Idaho 2020); H.B. 3515, 101st Gen. Assemb. (Ill. 2019); H.B. 321, 2020 Reg. Sess. (Ky. 2020); H.B. 1721, 101st Gen. Assemb., 2020 Reg. Sess. (Mo. 2020); S.B. 848, 101st Gen. Assemb., 2020 Reg. Sess. (Mo. 2020); H.B. 513, 133rd Gen. Assemb., 2019-20 Reg. Sess. (Ohio 2020); H.B. 1057, 95th Leg. Sess., 2019-20 Reg. Sess. (S.D. 2020); H.B. 1060, 2019-20 Reg. Sess. (Ga. 2020).

43. S.F. 2213, 2019-20 Reg. Sess. (Iowa 2020).

44. H.B. 3515, 101st Gen. Assemb. (Ill. 2019).

45. 730 ILCS 5/5-4.5-30. Class 1 Felonies (2017).

46. S.B. 2490, 2020 Reg. Sess. (Miss. 2020) (died in committee).

47. S.B. 1864, 2020 Reg. Sess. (Fla. 2020) (died in committee).

IV. DIRECT IMPACT OF ANTI-AFFIRMATION BILLS

If passed, the Anti-Affirmation Bills will restrict access to essential medical care. As a representative for the World Professional Association for Transgender Health stated, “[s]ince transgender children, adolescents, or adults cannot be legislated out of existence, these bills seem to be a misguided attempt to prevent transgender people from coming forward for services they need in order to live healthy lives.”⁴⁸

Gender-affirming treatment has been proven to have a positive impact on the health and well-being of patients. “A meta-analysis of transgender adults and adolescents receiving hormone treatment found that 80% of adolescents and adults who receiving trans-affirmative care reported an improvement in their quality a life.”⁴⁹ A separate review of seventy-three studies found that those who received gender-affirming treatment had a decreased risk of drug and alcohol abuse, a decreased risk of suicide, and a higher reported quality of life.⁵⁰ Medical associations such as the American Psychiatric Society have explicitly condemned legislative efforts to limit care to minors.⁵¹ The American Academy of Child and Adolescent Psychiatry (AACAP) released a statement that it “supports the use of current evidence-based clinical care with minors. [It] strongly opposes any efforts—legal, legislative, and otherwise—to block access to these recognized interventions. Blocking access to timely care has been shown to increase youths’ risk for suicidal ideation and other negative mental health outcomes.”⁵²

The use of puberty suppressing medication specifically can be beneficial to both the short-term and long-term well-being of minors diagnosed with gender dysphoria. The use of puberty suppressing hormones gives minors more time to explore their gender identity⁵³ and may prevent the development of certain sex characteristics that may be

48. WORLD PRO. ASS’N FOR TRANSGENDER HEALTH, *supra* note 16.

49. AM. PSYCH. ASS’N, *supra* note 9; Mohammad Hassan Murad et al., *Hormonal Therapy and Sex Reassignment: A Systemic Review and Meta-Analysis of Quality of Life and Psychosocial Outcomes*, 72 CLINICAL ENDOCRINOLOGY, 214 (2010).

50. HERMAN ET AL., *supra* note 10, at 31.

51. AM. PSYCH. ASS’N, *supra* note 9, at 846.

52. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY, *supra* note 14.

53. “‘The people bringing these bills forward have been saying that puberty blockers are harmful.’ Vin Tangpricha, MD, Ph.D., FACE, professor of medicine in the division of endocrinology, diabetes and lipids at Emory University School of Medicine, program director of the Emory Endocrinology Fellowship Program, told Healio. ‘I just can’t understand that, because the puberty blockers, for many kids, buy time.’” Safer, *supra* note 8.

difficult or impossible to reverse if the minor undergoes uninterrupted puberty.⁵⁴ According to the Mayo Clinic “[f]or children who have gender dysphoria, suppressing puberty might: [i]mprove mental well-being, [r]educe depression and anxiety, [i]mprove social interactions and integration with other kids, [e]liminate the need for future surgeries, [and] [r]educe thoughts or actions related to self-harm.”⁵⁵ A recent study indicated that transgender adults who had access to puberty blockers during their adolescence had a lower risk of suicide than those who did not.⁵⁶ Restrictions on puberty suppressants risk putting transgender adolescents at a higher risk of suicide and generally harming their mental health outcomes.

If passed, the broad language of the Anti-Affirmation Bills will also reduce access to counseling and support services for transgender and gender non-conforming children. For example, the bills introduced in Tennessee prohibit “[s]exual identity change therapy” which is defined as “treatment that involves the use of hormone replacement, puberty blockers, *or other medical intervention* to change the sexual identity or physical appearance of a patient to a sexual identity or physical appearance that does not correspond to the anatomy and chromosomal makeup with which the patient was born.”⁵⁷ The term “other medical intervention” is broad enough to include counseling and other forms of support provided by medical professionals. This could have a chilling effect on those inclined to provide such services.

If passed, the Anti-Affirmation Bills may also have unintended consequences for children with endocrine disorders receiving treatment unrelated to their gender identity. This includes children with precocious puberty and certain growth disorders that are typically treated with GnRH analogues.⁵⁸ Precocious puberty is when a child experiences puberty before the age of eight in those assigned female at birth and nine in those assigned male at birth.⁵⁹ This condition is associated with short stature and social and emotional problems related to early development.⁶⁰ To quote

54. Coleman et al., *supra* note 7, at 177.

55. *Pubertal Blockers*, *supra* note 15.

56. WORLD PRO. ASS'N FOR TRANSGENDER HEALTH, *supra* note 16.

57. H.B. 2576, 111th Leg. Sess., 2019-20 Reg. Sess. (Tenn. 2020); S.B. 2215, 111th Leg. Sess., 2019-20 Reg. Sess. (Tenn. 2020) (emphasis added).

58. Safer, *supra* note 8.

59. *Precocious Puberty: Symptoms and Causes*, MAYO CLINIC, <http://www.mayoclinic.org/diseases-conditions/precocious-puberty/symptoms-causes/syc-20351811> (last visited July 6, 2020).

60. *Id.*

endocrinologist Mitchell E. Geffner, “[t]his could go well beyond transgender health, I see a lot of children with early puberty, sometimes, very early puberty. Without these drugs, you could have a 5-year-old who is menstruating, and they’ll end up 3 and a half feet tall.” For both transgender and cisgender minors, the Anti-Affirmation Bills would reduce the availability of treatments which may significantly improve their quality of life.

V. THE LAW SURROUNDING PARENTAL CONTROL OF MEDICAL TREATMENT

It is well established that parents have a protected interest in controlling the upbringing of their children. The Fourteenth Amendment states that no “state shall deprive any person of life, liberty, or property, without due process of law.”⁶¹ In 1923, the Supreme Court of the United States recognized in *Meyer v. Nebraska* that “the ‘liberty’ protected by the Due Process Clause includes the right of parents to ‘establish a home and bring up children’”⁶² This was reaffirmed nearly eight years later in *Troxel v. Granville*.⁶³ Parents’ interest in controlling the upbringing of their children has been interpreted as creating a barrier around the family that cannot be breached without a substantial government interest.⁶⁴ As the Supreme Court stated in *Prince v. Massachusetts*, “[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents . . . [a]nd it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.”⁶⁵ This recognition has led courts to give parents a great deal of deference in deciding what medical care is appropriate for their children.

However, parental control is not absolute. There are exceptions to this deference, such as when a parent is found to have committed abuse or neglect.⁶⁶ The state may also require that minors submit to certain procedures, even over the religious objections of parents. As Supreme Court Justice Rutledge stated in 1944, “[t]he right to practice religion freely does not include liberty to expose the community or the child to

61. U.S. CONST. amend. XIV, § I.

62. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (quoting *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923)).

63. *Troxel*, 530 U.S. at 65.

64. *Id.* at 65-66.

65. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

66. *Parham v. J.R.*, 442 U.S. 584, 602 (1979).

communicable disease or the latter to ill health or death.”⁶⁷ Accordingly, mandatory vaccination laws have recently been upheld in California and New York.⁶⁸ Courts have also mandated that children receive necessary medical care which “is required to prevent serious harm or a substantial risk of serious harm to the child’s physical or mental health or to the safety of others.”⁶⁹ Even in such cases, “court[s] and others have sought to treat the exercise of parental prerogative with great deference.”⁷⁰

Instances in which parents are prevented from choosing a specific treatment for their children are even rarer than those in which the court mandates that a child receive treatment. However, “[a] parent’s broad authority to make medical decisions for a child does not include the authority to consent to procedures or treatments that provide no health benefit to the child and pose a substantial risk of serious harm to the child’s health.”⁷¹ These treatments, including conversion therapy and female genital mutilation, tend to be widely condemned by the medical community. In contrast to these practices, gender affirmation treatment is supported by the medical community. In order to have the legal standing to pass restrictions on the medical care provided to transgender minors with parental consent, the drafters of the Anti-Affirmation Bills tried to create a connection between these widely condemned practices and the widely accepted practice of gender affirmation care.

VI. THE USE OF BANS ON FEMALE GENITAL MUTILATION

According to the World Health Organization, “[f]emale genital mutilation (FGM) involves the partial or total removal of external female genitalia or other injury to the female genital organs for non-medical reasons.”⁷² This is “often motivated by beliefs about what is considered acceptable sexual behavior. It aims to ensure premarital virginity and marital fidelity.”⁷³ This practice has no health benefits and can cause serious health problems including severe pain, fever, and even death.⁷⁴ The

67. *Prince*, 321 U.S. at 166-67).

68. *Phillips v. City of New York*, 775 F.3d 538 (2d Cir. 2015), *Brown v. Smith*, 235 Cal. Rptr. 3d 218 (Cal. Ct. App. 2018).

69. RESTATEMENT OF THE LAW, CHILDREN AND LAW § 2.30 (AM. LAW INST. PRELIMINARY DRAFT No. 1 2018).

70. *Custody of a Minor*, 379 N.E.2d 1053, 1062 (Mass. 1978).

71. RESTATEMENT OF THE LAW, CHILDREN AND LAW § 2.30 (AM. LAW INST. PRELIMINARY DRAFT No. 1 2018).

72. *Female Genital Mutilation*, WHO (Feb. 3, 2020), <http://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>.

73. *Id.*

74. *Id.*

American Medical Association (AMA) released a statement saying that it “(1) condemns the practice of female genital mutilation (FGM); (2) considers FGM a form of child abuse; (3) supports legislation to eliminate the performance of female genital mutilation . . .”⁷⁵ The United Nations has also recognized female genital mutilation as a violation of human rights.⁷⁶ This practice is a significant public health problem within the United States. It was estimated that “[a]pproximately 513,000 women and girls in the United States were at risk for FGM/C [female genital mutilation/circumcision] or its consequences in 2012, which was more than three times higher than the earlier estimate, based on 1990 data.”⁷⁷ To protect those at risk, thirty-five states and the District of Columbia have passed laws prohibiting female genital mutilation.⁷⁸

The drafters of the Anti-Affirmation Bills in Tennessee attempted to use laws prohibiting female genital mutilation to include gender-affirming treatment. The definition of female genital mutilation was amended to include “sexual identity change therapy,” which the bill defined as “a course of treatment that involves the use of hormone replacement, puberty blockers, or other medical intervention to change the sexual identity or physical appearance . . .” to one inconsistent with the individual’s gender assigned at birth.⁷⁹ This broadening of the definition of female genital mutilation downplays the harm caused by actual female genital mutilation by equating it with changing an individual’s gender presentation through non-invasive means. Expanding the concept of female genital mutilation to include puberty blockers and hormone replacement therapy and other medical procedures for transgender people also ignores the true purpose of bans of female genital mutilation. This purpose is to protect vulnerable female-bodied individuals from a procedure that does not improve an individual’s quality of life but rather enforces a specific notion of socially acceptable femininity.

75. *Expansion of AMA Policy on Female Genital Mutilation H-525.980*, AMA, <http://policysearch.ama-assn.org/policyfinder/detail/female%20genital%20mutilation?uri=%2FAMADoc%2FHOD.xml-0-4716.xml> (last visited Mar. 28, 2021).

76. U.N. Economic and Social Council, Commission on the Status of Women, U.N. Doc. No. E/CN.6/2008/L.2/REV.1, (2008).

77. Howard Goldberg et al., *Female Genital Mutilation/Cutting in the United States: Updated Estimates of Women and Girls at Risk, 2012*, 131 PUB. HEALTH REPS. 340, 340 <http://www.uscis.gov/sites/default/files/document/reports/fgmutilation.pdf>.

78. *US Laws Against FGM—State by State*, EQUAL NOW, http://www.equalitynow.org/us_laws_against_fgm_state_by_state (last visited Apr. 22, 2020).

79. H.B. 2576, 111th Leg. Sess., 2019-20 Reg. Sess. (Tenn. 2020), Section 39-15-401(g)(6); S.B. 2215, 111th Leg. Sess., 2019-20 Reg. Sess. (Tenn. 2020), Section 39-15-401(g)(6).

The identification of gender-affirming treatment in the Tennessee bills as “sexual identity change therapy”⁸⁰ also conflates gender affirmation with efforts to change a minor’s sexual orientation or gender identity, pushing the two terms together in order to describe an entirely different practice. This amalgamation confuses the issues surrounding efforts to protect individuals from persecution based on their sexual orientation, sex, and gender identity. These are distinct concepts. Sexual orientation is a part of an individual’s identity that involves “a person’s sexual and emotional attraction to another person and the behavior and/or social affiliation that may result from this attraction.”⁸¹ This is a separate concept from both sex and gender. Sexual orientation involves an individual’s relationships with others while both sex and gender are concerned with an individual’s status as male, female, intersex, or gender nonconforming. While sex and gender are related, the Anti-Affirmation Bills ignore that these are also independent concepts. By using the term “sexual change therapy” and by using the framework of female genital mutilation, the Tennessee Anti-Affirmation Bills obfuscate this distinction. Sex, as defined at birth, “refers to a person’s biological status and is typically categorized as male, female or intersex. There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs and external genitalia.”⁸² In contrast, gender identity refers to “[a] person’s deeply-felt, inherent sense of being a boy, a man, or male; a girl, a woman, or female; or an alternative gender (e.g., genderqueer, gender nonconforming, gender neutral).”⁸³ This may or may not be the same as an individual’s biological sex. Contrary to the assertion made by the drafters of the Tennessee bills, gender-affirming treatment is not “sexual identity change therapy.”⁸⁴ Gender-affirming treatments for minors do not involve changing a person’s sex or even the biological indicators of sex, such as exterior genitalia. It instead involves buying an individual more time to explore their gender identity and supporting them in their expression of that identity. Analogizing gender affirming treatment with female genital mutilation is not only inaccurate but also trivializes sex-based violence.

80. *Id.*

81. *Definitions Related to Sexual Orientation and Gender Diversity in APA Documents*, AM. PSYCH. ASS’N 6, <http://www.apa.org/pi/lgbt/resources/sexuality-definitions.pdf> (last visited July 27, 2020).

82. *Id.* at 5.

83. *Id.* at 4.

84. *Id.*

VII. ANTI-CONVERSION THERAPY LAWS

As of July 2020, sixty-one states and municipalities have passed bills prohibiting health-care providers, including doctors, psychologists, social workers, and counselors from attempting to change the sexual orientation, gender expression, or gender identity of anyone under the age of eighteen.⁸⁵ There are also proposed anti-conversion treatment bills in nineteen states which currently lack statewide bans.⁸⁶ Similar to female genital mutilation, the AMA “opposes, the use of ‘reparative’ or ‘conversion’ therapy for sexual orientation or gender identity . . . Evidence does not support the purported “efficacy” of . . . [sexual orientation change efforts] in changing sexual orientation. To the contrary, these practices may cause significant psychological distress.”⁸⁷

The Anti-Affirmation Bills are at least in part in reaction to the Anti-Conversion Therapy Laws, from which they pull much of their legal foundation. As discussed above, sexual orientation, sex, and gender identity are distinct concepts. However, there is a history of dangerous attempts to change both sexual orientation and gender identity. As such, a majority of the statewide Anti-Conversion Therapy Laws prohibit efforts to change either aspect of a minor’s identity. Of the nineteen states with bans on conversion therapy at the state level,⁸⁸ sixteen explicitly protect minors from changing their gender identity or sexual orientation.⁸⁹ The Anti-Conversion Therapy Laws in California, Illinois, and Maryland include transgender individuals in their discussion of the medical consensus surrounding conversion therapy but do not mention gender identity—only gender expression—in their definition of conversion

85. *50 Bills 50 States: Progress Map*, TREVOR PROJECT, <https://www.thetrevorproject.org/get-involved/trevor-advocacy/50-bills-50-states/progress-map/> (last visited Mar. 28, 2021); S.B. 1172, 2011-12 Reg. Sess. (Cal. 2012) (enacted).

86. TREVOR PROJECT, *supra* note 85.

87. *LGBTQ Change Efforts (So-called “Conversion Therapy”)*, AMA, <http://www.ama-assn.org/system/files/2019-12/conversion-therapy-issue-brief.pdf> (last visited Mar. 28, 2021).

88. *See infra* Appendix II.

89. H.B. 19-1129, 2019 Reg. Sess. (Colo. 2019) (enacted); H.B. 6695, 2017 Reg. Sess. (Conn. 2017) (enacted); S.B. 65, 149th Gen. Assemb. (Del. 2017-2018) (enacted); H.B. 166, 2019 Reg. Sess. (Haw. 2019) (enacted); H.B. 1190, 2018-19 Gen. Sess. (Mass. 2018) (enacted); H.P. 755, 2019 Reg. Sess. (Me. 2019) (enacted); S.B. 201, 2019 Reg. Sess. (Nev. 2019) (enacted); H.B. 587-FN, 2017 Reg. Sess. (N.H. 2018) (enacted) P.L. 2013, 215th Leg. Sess. (N.J. 2012) (enacted); S.B. 121, 2017th Reg. Sess. (N.M. 2017) (enacted); S.B. 1046, 2019-20 Reg. Sess. (N.Y. 2019) (enacted); O.R.S. 675.850, 2015 Leg. Sess. (Or. 2015); H.B. 339, 2019 Gen. Sess. (Utah 2019); H.B. 5277, 2017 Jan. Sess. (R.I. 2017) (enacted); S.B. 132, 2015-16 Reg. Sess. (Vt. 2015); S.B. 5722, 2018 Reg. Sess. (Wash 2019).

therapy as a prohibited practice.⁹⁰ The majority of the Anti-Conversion Therapy Laws prohibit attempting to change an individual's internal sense of their gender in addition to their gender expression.

While intended to protect minors, including transgender minors, from potentially harmful therapies, the Anti-Conversion Therapy Laws serve as an example as to how to restrict minor's access to medical treatment. Many of the Anti-Conversion Therapy Laws include the prohibited treatments within the definition of unprofessional conduct for health-care providers. For example, California's Conversion Therapy Bill—the second passed in that nation—and the pending bill in Utah both redefine unprofessional conduct to include conversion therapy.⁹¹ The Anti-Affirmation Bills in Colorado, Ohio, Oklahoma, Illinois, Missouri, and South Carolina similarly redefined unprofessional conduct, amending it to include gender-affirming treatment for minors.⁹² The Anti-Affirmation Bills in Mississippi and Kentucky went further, mandating the revocation of any professional license for health-care workers who provide gender affirming treatment.⁹³

Ohio's House Bill 513 copies language directly from Anti-Conversion Therapy Laws in an attempt to place gender identity affirmation in the same category as conversion therapy. This bill states that, "no mental health professional shall purposely attempt to change, reinforce, or affirm a minor's perception of the minor's own sexual attraction or sexual behaviors, or attempt to change, reinforce, or affirm a minor's gender identity."⁹⁴ Tennessee's House Bill 2576 and State Bill 2215 similarly attempt to conflate gender affirmation with conversion therapy.⁹⁵

The use of the legal foundation and language from the Anti-Conversion Therapy Laws not only provides a convenient legal framework for those intending to restrict care to transgender individuals,

90. S.B. 1172, 2011-12 Reg. Sess. (Cal. 2012) (enacted); H.B. 0217, 99th Gen. Assemb. (Ill. 2015) (enacted); S.B. 1028, 2018 Reg. Sess. (Md. 2018) (enacted).

91. S.B. 1172, 2011-12 Reg. Sess. (Cal. 2012) (enacted); H.B. 339, 2019 Gen. Sess. (Utah 2019).

92. H.B. 20-1114, 2020 Reg. Sess. (Colo. 2020); H.B. 513, 133rd Gen. Assemb., 2019-20 Reg. Sess. (Ohio 2020); S.B. 1819, 57th Leg., 2019-20 2nd. Reg. Sess. (Okla. 2020); H.B. 3515, 101st Gen. Assemb. (Ill. 2019); S.B. 848, 101st Gen. Assemb., 2020 Reg. Sess. (Mo. 2020); H.B. 1721, 101st Gen. Assemb., 2020 Reg. Sess. (Mo. 2020).

93. H.B. 321, 2020 Reg. Sess. (Ky. 2020); S.B. 2490, 2020 Reg. Sess. (Miss. 2020) (died in committee).

94. H.B. 513 § Sec. 5128.03. (A), 133rd Gen. Assemb., 2019-20 Reg. Sess. (Ohio 2020).

95. H.B. 2576, 111th Leg. Sess., 2019-20 Reg. Sess. (Tenn. 2020); S.B. 2215, 111th Leg. Sess., 2019-20 Reg. Sess. (Tenn. 2020).

but also undermines the Anti-Conversion Therapy Laws. Efforts to conflate the two types of laws makes it difficult for lawmakers to support future efforts to prohibit conversion therapy without worrying that the same law will be used to restrict access to medical treatment for transgender minors. It also forces those who would promote prohibiting attempts to change and individual's sexual orientation or gender identity to shift focus from the harmful practices prohibited in the Conversion Therapy Bills to a more nuanced discussion of gender affirming treatment. While this may be an important discussion, this shift has the potential to slow down the efforts to prohibit conversion therapy. These bills also remove gender affirmation from the realm of accepted medical practice and place it alongside practices rejected by the medical community.

VIII. THE CONGRESSIONAL PRAYER CAUCUS AND PROJECT BLITZ

Dozens of bills targeting the rights of transgender individuals were introduced within the first three months of 2020. These bills were part of a larger legislative agenda promoted by far-right Christian organizations. This agenda advocates for an image of the United States as they believe it should be: heteronormative, gender-conforming and, above all, in line with their specific notion of Christianity. The most influential of these groups, the Congressional Prayer Causes Foundation (CPCF), has described itself as an organization committed to “restoring Judeo-Christian principles to their rightful place.”⁹⁶

The CPCF has created a web of state and national legislators, lawyers, and organizers to support efforts in line with their beliefs. In a recording dated October 24, 2019 (the “Recording”), the CPCF’s director, Lea Carawan, claimed that the CPCF had over ninety members in the United States House of Representatives and Senate and over 950 members in thirty-eight state legislative prayer caucuses.⁹⁷ This is roughly thirteen percent of state legislators nationwide.⁹⁸ Legislative prayer caucuses

96. *About*, CONG. PRAYER CAUCUS FOUND., <http://cpcfoundation.com/about> (last visited Apr. 22, 2020).

97. AUDIO RECORDING: POL. RSCH. ASSOCS. (Oct. 24, 2019), <http://soundcloud.com/user-951886982/audio-10-24-19>; David Taylor, *Project Blitz: The Legislative Assault by Christian Nationalists to Reshape America*, GUARDIAN (June 4, 2018, 4:00 AM), <http://www.theguardian.com/world/2018/jun/04/project-blitz-the-legislative-assault-by-christian-nationalists-to-reshape-america#maincontent>.

98. The National Conference of State Legislatures estimates that as of March 31, 2020, there were 7,383 state legislatures in the United States. *State Partisan Composition*, NAT’L CONF.

function as local chapters of the CPCF and work to propose and promote state legislation. The CPCF also supports Prayer Impact Groups, networks of religious Christians who can be mobilized to support specific bills.⁹⁹

In addition to support, the CPCF, National Legal Foundation and WallBuilders Profamily Legislative Congress provide members with a playbook¹⁰⁰ (the “Playbook”). The Playbook includes model bills ranging from the “National Moto Display Act,” which promotes the inclusion of “In God We Trust” on public buildings and license plates,¹⁰¹ to a “Resolution Establishing Public Policy Favoring Reliance on and Maintenance of Birth Gender.”¹⁰² This initiative to promote far-right bills was formerly known as Project Blitz but has since been renamed Freedom for All after Project Blitz began to attract media attention.¹⁰³

While the CFPC has existed since 2005,¹⁰⁴ this initiative and the corresponding eruption of far-right bills at the state level began in 2016. The director of the CPCF, Lea Carawan, has described the Trump administration as more receptive to the types of bills proposed by the CPCF than any administration in the last thirty years.¹⁰⁵ According to Ms. Carawan, “the first year we rolled it out [2016] we had about an 800% increase in the passage of religious freedom legislation, 800% increase last year, and a 900% increase in 2019.”¹⁰⁶ In the 2017 to 2018 legislative session, sixty pieces of legislation were passed favorably within the CPCF’s vision of a Christian America. This is in comparison to six such bills that were passed in 2016.¹⁰⁷ The CPCF and affiliated organizations have accomplished this increase through a three-step plan that is intended to garner support and push through increasingly controversial bills.

The third and final step advocated by the CPCF is the promotion of what the CPCF calls “Religious Liberty Protection Legislation.”¹⁰⁸ The

STATE LEGIS. (Mar. 31, 2020), <http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx>

99. *Join the Movement in Your State*, CONG. PRAYER CAUCUS FOUND., <http://cpcfoundation.com/join-the-movement-in-your-state> (last visited Apr. 22, 2020).

100. The official title of the playbook is *Report and Analysis on Religious Freedom Measures Impacting Prayer and Faith in America*. The 2017 and 2018-2019 versions are available to the public through Americans United for the Separation of Church and State at <http://www.au.org/tags/project-blitz>.

101. REPORT AND ANALYSIS ON RELIGIOUS FREEDOM, *supra* note 17, at 11.

102. *Id.* at 49.

103. POL. RSCH. ASSOCS., *supra* note 97.

104. CONG. PRAYER CAUCUS FOUND., *supra* note 96.

105. Taylor, *supra* note 97.

106. POL. RSCH. ASSOCS., *supra* note 97.

107. REPORT AND ANALYSIS ON RELIGIOUS FREEDOM, *supra* note 17, at 4.

108. *Id.*

CPCF provides model bills that “define public policies of the state in favor of biblical values concerning marriage and sexuality. These provisions are supported by multiple facts about the enormous costs of homosexual intercourse and gender confusion . . .”¹⁰⁹ One model bill in this category is entitled “Resolution Establishing Public Policy Favoring Reliance on and Maintenance of Birth Gender” specifying that “the public policy of this state supports and encourages maintenance of the birth gender of its citizens.”¹¹⁰ While the bill does not specify how this should be accomplished, or suggest the restriction of gender affirming treatment, it does provide an ideological foundation from which lawmakers could craft bills such as those that restrict access to medical care.

It is clear from the similarities in the Anti-Affirmation Bills that guidance was provided beyond the Playbook, which states in its introduction, “[w]e stand with you and support your efforts in prayer and with resources. These resources include lawyers trained in the Constitution who can help you to draft legislative language and to defend the bills if challenged.”¹¹¹ This influence can be seen in language shared across multiple bills. Four of the Anti-Affirmation Bills across three states shared the title “Vulnerable Child Protection Act.”¹¹² This is in addition to the similarly titled “Alabama Vulnerable Child Compassion and Protection Act”¹¹³ and the “Youth Health Protection Act” in Illinois.¹¹⁴ The title of the Illinois Bill is particularly interesting as it directly echoes the title of the Anti-Conversion Therapy Law, the “Youth Mental Health Protection Act,” which was passed in the state four years before the introduction of the Anti-Affirmation Bill.¹¹⁵

The bills proposed in Alabama, Iowa, Georgia, Mississippi, and South Dakota contain the following language allowing for an exception in treating “[a]n individual born with external biological sex characteristics that are irresolvably ambiguous, including an individual born with 46 XX chromosomes with virilization, 46 XY chromosomes with under

109. *Id.* at 7.

110. *Id.* at 50.

111. *Id.* at 4.

112. H.B. 1060, 2019-20 Reg. Sess. (Ga. 2020); H.B. 513, 133rd Gen. Assemb., 2019-20 Reg. Sess. (Ohio 2020); S.B. 1864, 2020 Reg. Sess. (Fla. 2020) (died in committee); H.B. 1365 2020 Reg. Session (Fla. 2020) (died in committee).

113. S.B. 219, 2020, Reg. Sess. (Ala. 2020); H.B. 303, 2020, Reg. Sess. (Ala. 2020).

114. H.B. 3515, 101st Gen. Assemb. (Ill. 2019).

115. H.B. 0217, 99th Gen. Assemb. (Ill. 2015) (enacted).

virilization, or having both ovarian and testicular tissue.”¹¹⁶ Idaho’s bill contains similar, although not identical language.¹¹⁷ In addition to indicating a similar source, this caveat reveals that the drafters of the Anti-Affirmation Bills are not truly concerned with the safety of gender-affirming treatment. If hormone treatment or puberty suppressants were dangerous, then they would be prohibited for intersex children whose parents want to bring their appearance in line with their genetic sex.

IX. THE EXPRESSIVE INTENT OF ANTI-AFFIRMATION BILLS

The drafters of the Anti-Affirmation Bills are sending a message about the place of transgender and gender-nonconforming people in the United States, a message that will have an impact beyond those actually targeted by the proposed medical restrictions. These proposed laws, like the law in general, “reflect[] what, at any given point in time, society views as acceptable, ethically appropriate behavior.”¹¹⁸ Laws, particularly those that target a minority group, articulate what a society values and who it considers worthy of protection. The proponents of Anti-Conversion Therapy Laws “us[ed] the statutes to create a social norm against conversion therapy writ large.”¹¹⁹ The Anti-Conversion Therapy Laws project a message that sexual and gender identity variation is not an illness and that LGBTQ+ people deserve protection. Those who propose the Anti-Affirmation Bills are promoting the opposite message. By criminalizing or prohibiting efforts to support the expression of gender different from that assigned at birth, legislators are rejecting the idea that gender is variable, and that transgender and gender non-conforming individuals are worthy of support and acceptance.

The Anti-Affirmation Bills are part of a larger effort to change the narrative around both gender identity and sexual orientation. While none of the Anti-Affirmation Bills address sexual orientation explicitly, the CPCF has stated that part of the reason for the proposed legislation is to reframe the discussions surrounding both sexual orientation and gender identity and to dispute assertions made by proponents of Anti-Conversion Therapy Laws. In the Playbook, the CPCF states:

116. S.B. 219, 2020, Reg. Sess. (Ala. 2020); H.B. 303, 2020, Reg. Sess. (Ala. 2020); S.F. 2213, 2019-20 Reg. Sess. (Iowa 2020); S.B. 2490, 2020 Reg. Sess. (Miss. 2020) (died in committee); H.B. 1057, 95th Leg. Sess., 2019-20 Reg. Sess. (S.D. 2020).

117. H.F. 2272, 2020 Reg. Sess. (Idaho 2020), H.F. 1505, 2021 Reg. Sess. (Idaho 2021).

118. Charity Scott, *Why Law Pervades Medicine: An Essay on Ethics in Health Care*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 247, 247-48 (2000).

119. Marie-Amélie George, *Expressive Ends: Understanding Conversion Therapy Bans*, 68 ALA. L. REV. 793, 854 (2017).

Proposed and enacted legislation, relying on an alleged consensus of “scientific” opinion about homosexual and transgender status and “conversion” therapies, seeks to label as illegal any attempt to suggest or persuade that homosexual and transgender inclinations are undesirable or capable of change. It is based on the assumption that such inclinations and behaviors, when compared to heterosexual ones, are equally healthy outcomes to the individuals involved. None of these assumptions is accurate.¹²⁰

In the Playbook, the CPCF mimicked the language used in Anti-Conversion Therapy Laws to suggest that the acknowledgement of gender non-conformity results in negative outcomes for transgender minors. For example, the Anti-Conversion Therapy Laws in California and New Jersey include evidence from a systematic review by the American Psychological Association, which “concluded that sexual orientation change efforts can pose critical health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress . . .” and other negative health outcomes.¹²¹ It also suggests gender-affirming treatment is akin to conversion therapy. The Playbook cites the American College of Pediatricians’ contention that “[c]onditioning children into believing a lifetime of chemical and surgical impersonation of the opposite sex is normal and healthful is child abuse.”¹²² Illinois’s House Bill 3515, cites this same organization to support the idea that puberty suppression and hormone therapy should be considered child abuse.¹²³ While similarly named, the American Academy of Pediatrics is a well-respected medical association with 67,000 professional members.¹²⁴ The American College of Pediatricians is a group of only 200 members, which has been called out by the Southern Poverty Law Center as a source of false information used to support anti-LGBT legislation.¹²⁵

120. REPORT AND ANALYSIS ON RELIGIOUS FREEDOM, *supra* note 17, at 130.

121. S.B. 1172, 2011-12 Reg. Sess. (Cal. 2012) (enacted); S.B. 3371, 215th Leg. Sess. (N.J. 2012) (enacted).

122. REPORT AND ANALYSIS ON RELIGIOUS FREEDOM, *supra* note 17, at 136.

123. H.B. 3515, 101st Gen. Assemb. (Ill. 2019) (introduced) § 5, cl. 26.

124. *About the American Academy of Pediatrics*, AM. ACAD. PEDIATRICS, <http://www.healthychildren.org/English/Pages/About-AAP.aspx> (last visited May 21, 2021 at 10:31 PM).

125. For example, the American College of Pediatricians has been cited to support the long-disproven idea that homosexual men are more likely to sexually abuse children than heterosexual men. Ryan Lenz, *American College of Pediatricians Defames Gays and Lesbians in the Name of Protecting Children*, S. POVERTY L. CTR. INTEL. REP. (Mar. 1, 2012), <http://www.splcenter.org/>

Like Anti-Conversion Therapy Laws, the CPCF's Playbook uses statistics about transgender minors suffering from higher rates of substance abuse, mental health issues, and suicide.¹²⁶ Rather than promote greater acceptance, the CPCF highlights the high rate of suicide among transgender individuals to argue that identifying as transgender is unhealthy and should be discouraged.¹²⁷ This is in direct opposition to a study published in the *Journal of the American Academy of Pediatrics* that found puberty suppressing hormones decrease the risk of suicide in adults and improves long term mental health outcomes.¹²⁸ The CPCF supports most of its claims about transgender individuals with a single study¹²⁹ published in a journal with connections to a Christian think tank.¹³⁰

It is accepted by the medical community that gender is not a binary and that there are variations in gender presentation.¹³¹ As discussed above, most pre-pubescent children who exhibit gender non-conforming behavior do not develop gender dysphoria as adults.¹³² The CPCF uses this information to suggest "gender identity" does not exist as a concept distinct from biological sex.¹³³ Ignoring the distinction between gender identity in adolescents and pre-pubescent children, the CPCF claims that transgender minors do not exist.¹³⁴ This reasoning is reflected in the Anti-Affirmation Bills. Alabama State Bill 219 states that while some transgender children do exist, it is impossible to determine which children

fighting-hate/intelligence-report/2012/american-college-pediatricians-defames-gays-and-lesbians-name-protecting-children.

126. S.B. 1172 § 1(m), 2011-12 Reg. Sess. (Cal. 2012) (enacted); S.B. 3371 § 1(m), P.L. 2013, P.L. 2013, P.L. 2013, P.L. 2013, P.L. 2013, P.L. 2013, 215th Leg. Sess. (N.J. 2012) (enacted).

127. *Report and Analysis on Religious Freedom*, *supra* note 17, at 51.

128. See Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 PEDIATRICS 1-8 (2020).

129. Lawrence S. Mayer & Paul R. McHugh, *Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences*, 50 NEW ATLANTIS 4-143 (2016).

130. The New Atlantis is published by The Center for the Study of Technology and Society. This was founded by the Ethics and Public Policy Center which describes itself as "Washington, D.C.'s premier institute dedicated to applying the Judeo-Christian moral tradition to critical issues of public policy." *About*, NEW ATLANTIS, <http://www.thenewatlantis.com/about/our-publisher> (last visited Apr. 22, 2020); *About*, CTR. STUDY OF TECH. AND SOC'Y, <http://www.tecsoc.org/about/> (last visited Apr. 22, 2020); *About*, ETHICS AND PUB. POL'Y CTR., <http://eppc.org/> (last visited Apr. 22, 2020).

131. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY, *supra* note 14.

132. Coleman et al., *supra* note 7, at 172.

133. REPORT AND ANALYSIS ON RELIGIOUS FREEDOM, *supra* note 17, at 49.

134. *Id.*

will have gender dysphoria as adults.¹³⁵ The language of Illinois House Bill 3515 goes even further, plainly stating that “[O]ur central contention is that transgender children don’t exist.”¹³⁶

The introduction of the Anti-Affirmation Bills also has an impact on the public understanding of what gender affirming treatment for minors entails. The Anti-Affirmation Laws confuse gender identity, which is supported through gender affirmation care, and gender expression, which may change over the course of affirming treatment. A person’s gender identity is “[o]ne’s innermost concept of self as male, female, a blend of both or neither—individuals perceive themselves and what they call themselves.”¹³⁷ This is what is being supported through gender-affirming treatment. Gender expression is an individual’s “[e]xternal appearance of one’s gender identity, usually expressed through behavior, clothing, haircut or voice.”¹³⁸ By changing a person’s gender expression to be less discordant with their gender identity, treatments are affirming that identity, not changing it. This distinction is lost when gender-affirming care is discussed in the same breath as efforts to change an individual’s sexual orientation or gender identity.

The Anti-Affirmation Bills also cause confusion as to what treatment would be prescribed for minors. By criminalizing or prohibiting gender reassignment surgery and sterilization, the Anti-Affirmation Bills raise the specter of children, who may be uncertain of their gender identity, undergoing painful and permanent medical procedures. This image is discordant with the reality of gender-affirming treatment. The medical community has not suggested that young children undergo gender transition. Current guidelines state that parents should not encourage pre-pubescent children to fully change gender roles and instruct parents to make it clear that if a child chooses to change gender presentation, that child can choose to change back at any point.¹³⁹ An adolescent under the

135. “Studies have shown that a substantial majority of pre-pubescent children who claim a gender identity different from their biological sex will ultimately identify with their biological sex by young adulthood or sooner when supported through their natural puberty.” S.B. 219, 2020, Reg. Sess. (Ala. 2020).

136. H.B. 3515, 101st Gen. Assemb. (Ill. 2019).

137. *Sexual Orientation and Gender Identity Definitions*, HUM. RTS. CAMPAIGN, <http://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions> (last visited July 26, 2020).

138. *Id.*

139. Coleman et al., *supra* note 7, at 176.

age of eighteen would also not be subject to treatment such as sterilization or genital surgery.¹⁴⁰

X. CONCLUSION

The efforts of state legislatures to restrict minors' access to gender-affirming treatment are cruel and unnecessary. Transgender and gender nonconforming minors are some of the most vulnerable members of American society and are in desperate need of support and protection. According to a 2015 survey of 27,715 adult respondents who identified as transgender or non-binary:

“[m]ore than three-quarters (77%) of respondents who were out or perceived as transgender in K-12 had one or more negative experiences, such as being verbally harassed, being prohibited from dressing according to their gender identity, or being physically or sexually assaulted.”¹⁴¹

Twenty-four percent of respondents reported being physically attacked while they were in school because they were transgender.¹⁴² As one might anticipate for members of such a victimized group, transgender individuals are presently at an increased risk of suicide, drug and alcohol abuse, and other mental health issues.¹⁴³

The Anti-Affirmation Bills use the legal foundation laid by the Anti-Conversion Therapy Laws and laws against female genital mutilation to undermine the existing protections for transgender individuals and to influence the national discussion surrounding gender, sex, and sexual orientation. By doing this, the Anti-Affirmation Bills are undermining the health and well-being of transgender and gender non-conforming minors in three ways: (1) denying them access to treatment that could greatly improve their physical and emotional well-being; (2) undermining existing protections contained within the Anti-Conversion Therapy Laws; and (3) putting transgender minors at greater risk of social and family rejection.

The prohibited medical treatments, specifically puberty blockers, have also been found to improve mental health outcomes and lower the risk of suicide in transgender adolescents, particularly when combined with familial and social acceptance.¹⁴⁴ The Anti-Affirmation Bills

140. *Id.* at 178-79.

141. JAMES ET AL., *supra* note 35, at 132.

142. *Id.* at 133.

143. HERMAN ET AL., *supra* note 10, at 31.

144. WORLD PRO. ASS'N FOR TRANSGENDER HEALTH, *supra* note 16; Turban et al., *supra* note 128.

represent a dangerous attempt to prioritize political considerations over the well-being of transgender minors. By undermining Anti-Conversion Therapy Laws, the Anti-Affirmation Bills also put minors at risk of being subjected to attempts to change their gender identity, sexual orientation, or gender presentation. An increase in conversion therapy would have a devastating impact on transgender and gender nonconforming minors. Eighteen percent of respondents who had discussed their gender identity with a professional reported that that professional attempted to change their gender identity.¹⁴⁵

Undermining bans on conversion therapy would increase the already high level of psychological, social and physical distress experienced by transgender and gender non-binary minors. Finally, the Anti-Affirmation Bills spread a toxic narrative that being transgender is unhealthy and that affirming treatment is harmful. It is essential that the Anti-Affirmation bills be defeated and matched with a push to for greater protections for transgender minors and an effort to expand, rather than restrict, access to gender-affirming care.

XI. 2021 UPDATE

The bills discussed in this Article were not codified into law. They were introduced in the early days of the COVID-19 pandemic and most of them were abandoned, likely because there was no political capital to be gained in pushing through legislation that very few unaffected people would pay attention to in a time of national crisis. As hope emerges for an end to the worst of the pandemic in the United States, it has become obvious that the bills introduced in 2020 were simply an opening salvo in the long-term effort to marginalize transgender and gender non-binary individuals by stoking fears about transgender minors.

In the first four months of 2021, a total of thirty bills were introduced in state legislatures across seventeen states. Identical bills to those proposed in 2020 were reintroduced in seven states,¹⁴⁶ bills with a similar

145. JAMES ET AL., *supra* note 35, at 109.

146. S.B. 219, 2020, Reg. Sess. (Ala. 2020) (introduced) reintroduced as S.B. 10, 2021, Reg. Sess. (Ala. 2020) (introduced); H.B. 303, 2020, Reg. Sess. (Ala. 2020) (introduced) reintroduced as H.B. 1, 2021, Reg. Sess. (Ala. 2021) (introduced); H.B. 1365 2020 Reg. Session (Fla. 2020) (died in committee) reintroduced as H.B. 395 2021 Reg. Session (Fla. 2021) (introduced); H.B. 1060, 2019-20 Reg. Sess. (Ga. 2020) (introduced) reintroduced as H.B. 401, 2020-21 Reg. Sess. (Ga. 2021) (introduced); H.B. 321, 2020 Reg. Sess. (Ky. 2020) (introduced) reintroduced as H.B.

impact were introduced in four states,¹⁴⁷ and efforts to ban gender-affirming treatment for minors spread and nine states additional.¹⁴⁸ See Appendix III for a full list of legislation introduced in 2021. Like their predecessors, these anti-affirmation bills spread disinformation regarding transgender and gender nonconforming individuals and pose an immediate and long-term threat to the emotional and physical well-being of children across the United States.

APPENDIX I: BILLS PROHIBITING GENDER-AFFIRMING TREATMENT BY STATE INTRODUCED IN 2020

Alabama

S.B. 219, 2020, Reg. Sess. (Ala. 2020).

H.B. 303, 2020, Reg. Sess. (Ala. 2020).

Colorado

H.B. 20-1114, 2020 Reg. Sess.(Colo. 2020).

Florida

S.B. 1864, 2020 Reg. Sess. (Fla. 2020) (died in committee).

336, 2021 Reg. Sess. (Ky. 2021) (introduced); S.B. 842, 101st Gen. Assemb., 2020 Reg. Sess. (Mo. 2020) (introduced) reintroduced with minor changes as S.B. 442, 102nd Gen. Assemb., 2021 Reg. Sess. (Mo. 2021) (introduced).

146. S.B. 1819, 58th Leg., 2019-20 2nd. Reg. Sess. (Okla. 2020) (introduced) reintroduced as S.B. 583, 59th Leg., 2021 Reg. Sess. (Okla. 2021) (introduced). A new bill was also introduced as S.B. 676, 59th Leg., 2021 Reg. Sess. (Okla. 2021) (introduced); H.B. 2576, 111th Leg. Sess., 2019-20 Reg. Sess. (Tenn. 2020) (introduced) reintroduced as H.B. 578, 112th Leg. Sess., 2021 Reg. Sess. (Tenn. 2021) (introduced); S.B. 2215, 111th Leg. Sess., 2019-20 Reg. Sess. (Tenn. 2020) (introduced) reintroduced as S.B. 657, 112th Leg. Sess., 2021 Reg. Sess. (Tenn. 2021) (introduced).

147. H465 replaced by H.F. 1505, 2021 Reg. Sess. (Idaho 2021); H.F. 193, 2021 Reg. Sess. (Iowa 2021) (introduced); H.F. 327, 2021 Reg. Sess. (Iowa 2021) (introduced); H.F. 341, 2021 Reg. Sess. (Iowa 2021) (introduced); H. 4047, 124th Sess. (S.C. 2021) (introduced); H.B. 2171, 2021 Reg. Sess. (W. Va. 2021) (introduced)

148. S.B. 1511, 55th Legis. Sess., 1st Reg. Sess. 2021, (Ariz. 2021); H.B. 1570, Reg. Sess. 2021, 93rd Gen. Sess. (Ark. 2021) (Transmitted to the Governor's Office having overridden the Veto); S.B. 347, Reg. Sess. 2021, 93rd Gen. Sess. (Ark. 2021); H.B. 2210, 2021-22 Reg. Sess. (Kan. 2021) (introduced); S.B. 215, 2021-22 Reg. Sess. (Kan. 2021) (introduced); H.B. 113, Reg. Sess. 2021, 67th Leg. (Mont. 2021) (failed); H.B. 427, Reg. Sess. 2021, 67th Leg. (Mont. 2021) (introduced); H.B. 68, 2021 Reg. Sess. (N.H. 2021) (introduced); S.B. 442, 102nd Leg. Assemb., 2021 Reg. Sess. (N.D. 2021) (withdrawn); H.B. 4047, 124th Sess. (S.C. 2021) (introduced); S.B. 1646, 87th Leg. Sess.,(Tex. 2021) (introduced); S.B. 1311, 87th Leg. Sess.,(Tex. 2021) (introduced); H.B. 68, 87th Leg. Sess.,(Tex. 2021) (introduced); H.B. 4014, 87th Leg. Sess.,(Tex. 2021) (introduced); H.B. 1399, 87th Leg. Sess.,(Tex. 2021) (introduced); H.B. 2693, 87th Leg. Sess.,(Tex. 2021) (introduced).

H.B. 1365 2020 Reg. Session (Fla. 2020) (died in committee).

Georgia

H.B. 1060, 2019-20 Reg. Sess. (Ga. 2020).

Idaho

H.F. 2272, 2020 Reg. Sess. (Idaho 2020).

Iowa

H.F. 2272, 2020 Reg. Sess. (Iowa 2020).

S.F. 2213, 2020 Reg. Sess. (Iowa 2020).

Illinois

H.B. 3515, 101st Gen. Assemb. (Ill. 2019).

Kentucky

H.B. 321, 2020 Reg. Sess. (Ky. 2020).

Mississippi

S.B. 2490, 2020 Reg. Sess. (Miss. 2020) (died in committee).

Missouri

H.B. 1721, 101st Gen. Assemb., 2020 Reg. Sess. (Mo. 2020).

H.B. 2051, 101st Gen. Assemb., 2020 Reg. Sess. (Mo. 2020).

S.B. 848, 101st Gen. Assemb., 2020 Reg. Sess. (Mo. 2020).

S.B. 842, 101st Gen. Assemb., 2020 Reg. Sess. (Mo. 2020).

Ohio

H.B. 513, 133rd Gen. Assemb., 2019-20 Reg. Sess. (Ohio 2020).

Oklahoma

S.B. 1819, 57th Leg., 2019-20 2nd. Reg. Sess. (Okla. 2020).

South Carolina

H. 4716, 123rd Sess. (S.C. 2020).

South Dakota

H.B. 1057, 95th Leg. Sess., 2019-20 Reg. Sess. (S.D. 2020).

S.B. 93, 95th Leg. Sess., 2019-20 Reg. Sess. (S.D. 2020) (withdrawn).

Tennessee

H.B. 2576, 111th Leg. Sess., 2019-20 Reg. Sess. (Tenn. 2020).

S.B. 2215, 111th Leg. Sess., 2019-20 Reg. Sess. (Tenn. 2020).

West Virginia

H.B. 4609, 2019-20 Reg. Sess. (W. Va. 2020)

*Bill Mandating Increased Research**Utah*

H.B. 449, 2019 Gen. Sess. (Utah 2019).

*Bills Which Allow Health Care Workers to Refuse to Provide Gender Affirming Treatment**Iowa*

H.F. 2273, 2020 Reg. Sess. (Iowa 2019-20).

S.F. 2193, 2020 Reg. Sess. (Iowa 2019-20).

S.F. 2193, 2020 Reg. Sess. (Iowa 2019-20).

Indiana

S.B. 300, 2020 Reg. Sess. (Ind. 2020).

Kentucky

S.B. 90, 2020 Reg. Sess. (Ky. 2020).

Oklahoma

S.B. 1515, 57th Leg., 2019-20 2nd. Reg. Sess. (Okla. 2020).

South Dakota

S.B. 109, 95th Leg. Sess., 2019-20 Reg. Sess. (S.D. 2020).

APPENDIX II: BILLS PROHIBITING CONVERSION THERAPY BY STATE

California

S.B. 1172, 2011-12 Reg. Sess. (Cal. 2012).

Colorado

H.B. 19-1129, 2019 Reg. Sess. (Colo. 2019).

Connecticut

H.B. 6695, 2017 Reg. Sess. (Conn. 2017).

Delaware

S.B. 65, 149th Gen. Assemb. (Del. 2017-18).

Hawaii

H.B. 166, 2019 Reg. Sess. (Haw. 2019).

Illinois

H.B. 0217, 99th Gen. Assemb. (Ill. 2015).

Massachusetts

H.B. 1190, 2018-19 Gen. Sess. (Mass. 2018).

Maine

H.P. 755, 2019 Reg. Sess. (Me. 2019).

Maryland

S.B. 1028, 2018 Reg. Sess. (Md. 2018).

Nevada

S.B. 201, 2019 Reg. Sess. (Nev. 2019).

New Hampshire

H.B. 587-FN, 2017 Reg. Sess. (N.H. 2018).

New Jersey

P.L. 2013, 215th Leg. Sess. (N.J. 2012).

New Mexico

S.B. 121, 2017th Reg. Sess. (N.M. 2017).

New York

S.B. 1046, 2019-20 Reg. Sess. (N.Y. 2019).

Oregon

O.R.S. 675.850, 2015 Leg. Sess. (Or. 2015).

Rhode Island

H.B. 5277, 2017 Jan. Sess. (R.I. 2017).

Utah

H.B. 339, 2019 Gen. Sess. (Utah 2019).

Vermont

S.B. 132, 2015-16 Reg. Sess. (Vt. 2015).

Washington

S.B. 5722, 2018 Reg. Sess. (Wash. 2019).

APPENDIX III: BILLS PROHIBITING GENDER AFFIRMING TREATMENT BY
STATE INTRODUCED IN 2021

Alabama

S.B. 10, 2021, Reg. Sess. (Ala. 2020).

H.B. 1, 2021, Reg. Sess. (Ala. 2021).

Arizona

S.B. 1511, 55th Legis. Sess., 1st Reg. Sess. 2021, (Ariz.
2021)(introduced).

Arkansas

H.B. 1570, Reg. Sess. 2021, 93rd Gen. Sess. (Ark. 2021) (transmitted to
the Governor's office having overridden the veto).

S.B. 347, Reg. Sess. 2021, 93rd Gen. Sess. (Ark. 2021)(introduced).

Florida

H.B. 395 2021 Reg. Session (Fla. 2021) (introduced).

Georgia

H.B. 401, 2020-21 Reg. Sess. (Ga. 2021) (introduced).

Iowa

H.F. 193, 2021 Reg. Sess. (Iowa 2021) (introduced).

H.F. 327, 2021 Reg. Sess. (Iowa 2021) (introduced).

H.F. 341, 2021 Reg. Sess. (Iowa 2021) (introduced).

Kansas

H.B. 2210, 2021-22 Reg. Sess. (Kan. 2021) (introduced).

S.B. 215, 2021-22 Reg. Sess. (Kan. 2021) (introduced).

Kentucky

H.B. 336, 2021 Reg. Sess. (Ky. 2021) (introduced).

Montana

H.B. 113, Reg. Sess. 2021, 67th Leg. (Mont. 2021) (failed).

H.B. 427, Reg. Sess. 2021, 67th Leg. (Mont. 2021) (introduced).

Missouri

S.B. 442, 102nd Gen. Assemb., 2021 Reg. Sess. (Mo. 2021) (introduced).

New Hampshire

H.B. 68, 2021 Reg. Sess. (N.H. 2021) (introduced).

North Dakota

S.B. 442, 102nd Leg. Assemb., 2021 Reg. Sess. (N.D. 2021) (withdrawn).

Oklahoma

S.B. 583, 59th Leg., 2021 Reg. Sess. (Okla. 2021) (introduced).

S.B. 676, 59th Leg., 2021 Reg. Sess. (Okla. 2021) (introduced).

South Carolina

H.B. 4047, 124th Sess. (S.C. 2021) (introduced).

Tennessee

H.B. 578, 112th Leg. Sess., 2021 Reg. Sess. (Tenn. 2021) (introduced).

S.B. 657, 112th Leg. Sess., 2021 Reg. Sess. (Tenn. 2021) (introduced).

Texas

S.B. 1646, 87th Leg. Sess.,(Tex. 2021) (introduced).

S.B. 1311, 87th Leg. Sess.,(Tex. 2021) (introduced).

H.B. 68, 87th Leg. Sess.,(Tex. 2021) (introduced).

H.B. 4014, 87th Leg. Sess.,(Tex. 2021) (introduced).

H.B. 1399, 87th Leg. Sess.,(Tex. 2021) (introduced).

H.B. 2693, 87th Leg. Sess.,(Tex. 2021) (introduced).

West Virginia

H.B. 2171, 2021 Reg. Sess. (W. Va. 2021) (introduced).