



Written by [James Murphy](#) on July 10, 2023

Fed Judge Allows Tennessee Law Banning Trans Surgery for Minors to Stand

On Saturday, a three-judge panel of the U.S. Court of Appeals for the Sixth Circuit ruled that a Tennessee law protecting children from so-called gender affirming care could begin to take effect. Previously, a lower court had issued an injunction against large portions of the law, believing that it was unconstitutional and discriminatory on the basis of sex.

Originally signed by Governor Bill Lee in March, the law prohibits healthcare providers “from prescribing a course of treatment that involves hormone treatment for gender dysphoria or gender incongruent prepubertal minors.” The law also bans “gender reassignment” surgeries on those under 18 years of age.



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The author of the [decision](#), Sixth Circuit Chief Judge Jeffrey Sutton, a George W. Bush appointee, issued a stay of the lower court’s injunction against the law, believing that the State of Tennessee would likely be successful in its appeal of the lower court’s decision.

“If the injunction remains in place during the appeal, Tennessee will suffer irreparable harm from its inability to enforce the will of its legislature, to further the public-health considerations undergirding the law, and to avoid irreversible health risks to its children,” Sutton wrote.

“As for harm to others, the Act’s continuing care exception permits the challengers to continue their existing treatments until March 31, 2024. That feature of the law lessens the harm to those minors who wish to continue receiving treatment,” Sutton added.

Sutton and the majority found that the lower court’s injunction went too far.

“The court’s injunction prohibits Tennessee from enforcing the law against the nine challengers in this case and against the other seven million residents of the Volunteer State. But absent a properly certified class action, why would nine residents represent seven million?” Sutton asked. “Does the nature of the federal judicial power or for that matter Article III permit such sweeping relief?”

“Federal courts may not issue advisory opinions or address statutes ‘in the abstract,’” Sutton declared. “They instead must operate in a party-specific and injury-focused manner. A court order that goes beyond the injuries of a particular plaintiff to enjoin government action against nonparties exceeds the norms of judicial power.”

In an opinion that concurred in part and dissented in part, Senior Judge Helene N. White claimed that the new law was probably unconstitutional under the Equal Protection Clause.

“Tennessee’s law likely discriminates against Plaintiffs on the basis of sex in violation of the Equal



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Protection Clause, thus triggering intermediate scrutiny,” White wrote.

But White agreed that the injunction should have been more narrowly focused.

“However, I agree that the district court abused its discretion in granting a statewide preliminary injunction.... I would uphold the stay as it applies to Plaintiffs and also Vanderbilt University Medical Center,” White conceded.

The American Civil Liberties Union (ACLU) — which, along with Lambda Legal and law firm Akin Gump Strauss Hauer & Feld LLP, is handling the case for a group of “transgender” minors and their parents — was, predictably, outraged by the decision.

“This ruling is beyond disappointing and a heartbreaking development for thousands of transgender youth, their doctors, and their families,” said a joint statement from the ACLU, Lambda Legal, and Akin Gump Strauss Hauer & Feld. “As we and our clients consider our next steps, we want all the transgender youth of Tennessee to know this fight is far from over and we will continue to challenge this law until it is permanently defeated and Tennessee is made a safer place to raise every family.”

Tennessee Attorney General Jonathan Skrmetti, on the other hand, lauded the decision as a “big win” for the state.

“The case is far from over, but this is a big win. The court of appeals lifted the injunction, meaning the law can be fully enforced, and recognized that Tennessee is likely to win the constitutional argument and the case,” said Skrmetti.

Several states, including Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Mississippi, South Dakota, Idaho, Utah, and West Virginia, have joined Tennessee in prohibiting these dangerous elective procedures on children.

Skrmetti is right; there is a long way to go before this transgender barbarism against children is properly halted in the United States. And the vicious transgender lobby along with the ACLU and its partners will fight for these dangerous procedures every step of the way.



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