

THE NETWORKS: THE COORDINATED MOBILIZATION OF DOCTORS FOR BANS ON GENDER AFFIRMING HEALTHCARE FOR MINORS

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ABSTRACT

A key feature of the current anti-LGBTQ backlash is opposition to gender affirming medical care for minors. Anti-trans activists bring out physicians to argue that “science” shows that gender affirming care is dangerous and should be banned, particularly for vulnerable children. These physicians present themselves as neutral and unbiased, responding to organic concerns from lawmakers—but the truth is far different. This Note examines the hidden connections between these physicians and conservative lawmakers, contrasting what is said in public with the physicians’ comments behind the scenes. Through examination of emails, comparison of written testimony, and interviews with former collaborators, this Note reveals the true motivations behind these bans and shows why knowledge of these true motivations is important.

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* Lindsay Sergi: J.D. 2024, Georgetown University Law Center; B.S., Georgetown University. I am grateful to Professor Maxwell Bloche for his guidance while writing this Note. I am also thankful for the editors at *The Georgetown Journal of Gender and the Law* for their unwavering encouragement and editorial guidance. Finally, I am deeply grateful to my family, friends, and professors for their support and encouragement—I could not do this without all of you. © 2024, Lindsay Sergi.

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INTRODUCTION

Over the last several years, there has been popular support in the United States for legal protections for transgender people.¹ Along with this change in public perception has come a fierce backlash, with intensifying legislative efforts to restrict transgender rights.² One aspect of this legislative pushback has been an increase in legal efforts to restrict or ban access to gender affirming care, particularly for minors.³ While proponents of these bans portray them as organic efforts to address constituent concerns, they are anything but. Instead, these bans are the result of a careful, coordinated effort to push these bans in as many states as possible while taking steps to ensure that this coordination was not made public.⁴ Part I of this Note will lay out the background on gender affirming care. Part II examines the statistical increase in anti-transition legislation. Part III discusses the beginnings of this coordination in South Dakota and how it branched out into different states. Part IV discusses the signs that this coordination continues today. Part V concludes this Note by laying out why knowledge of this coordinated effort matters. This Note will also analyze this network of activists, lawyers, and medical professionals in order to better understand their goals, strategy, and use (or misuse) of science to support their campaign against gender affirming care.

I. BACKGROUND ON TRANSITION CARE

A transgender individual is someone who has a gender identity that differs from the sex assigned to them at birth.⁵ A meta-analysis from 2017 estimated the transgender population is about one-million adults in the US.⁶ Transgender individuals who choose to begin living according to their experienced gender identity and not the sex assigned to them at birth refer to this process as “transitioning.”⁷

1. See Kim Parker, Juliana Menasce Horowitz, & Anna Brown, *Americans' Complex Views on Gender Identity and Transgender Issues*, PEW RSCH. CTR. (Jun. 28, 2022), <https://perma.cc/M8K7-QSRR>.

2. See Molly Sprayregen, *Here Are All the Anti-Trans Bills That Have Become Law in 2023*, LGBTQ NATION (Mar. 14, 2023), <https://perma.cc/B6NQ-GP7X>; see also Daniel Trotta, *U.S. Republicans Target Transgender Youth Healthcare in Legislative Push*, REUTERS (Feb. 16, 2023), <https://perma.cc/X6ND-FNLD>.

3. Trotta, *supra* note 2.

4. Madison Pauly, *Inside the Secret Working Group That Helped Push Anti-Trans Laws Across the Country*, MOTHER JONES (Mar. 8, 2023), <https://perma.cc/34VY-XNET>.

5. *Frequently Asked Questions about Transgender People*, NAT'L CTR. FOR TRANSGENDER EQUALITY (July 9, 2016), <https://perma.cc/C4ZZ-LBGH>.

6. Esther L. Meerwijk, & Jae M. Sevelius, *Transgender Population Size in the United States: A Meta-Regression of Population-Based Probability Samples*, 107 AJPH e1, e1 (Feb. 2017), <https://perma.cc/6Z9X-BH7P>. A non-peer-reviewed study in 2022 by the same authors places the number closer to 1.3 million, or 0.5% of the US population overall. See Jonathan Allen, *New Study Estimates 1.6 Million in U.S. Identify as Transgender*, REUTERS (Jun. 10, 2022), <https://perma.cc/M6BQ-48DL>.

7. See *Frequently Asked Questions about Transgender People*, *supra* note 5.

The most common form of transitioning is social transitioning—which can include changing an individuals’ name, clothing, appearance, pronouns, and sex markers on identity documents.⁸ Many transgender people, but not all, also choose to undergo medical transitioning, most frequently called gender affirmation treatment. This Note will focus on legislative efforts around gender affirmation treatment as this has become a focus of much activity.⁹

Before any gender affirmation treatment occurs, a patient will first seek mental health treatment. A psychiatrist or other qualified medical professional may diagnose a transgender individual with gender dysphoria, which the DSM-5¹⁰ defines as:

[A] marked incongruence between one’s experienced/expressed gender and natal gender of at least 6 months in duration, as manifested by at least two of the following:

A. A marked incongruence between one’s experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics)

B. A strong desire to be rid of one’s primary and/or secondary sex characteristics because of a marked incongruence with one’s experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics)

C. A strong desire for the primary and/or secondary sex characteristics of the other gender

D. A strong desire to be of the other gender (or some alternative gender different from one’s designated gender)

E. A strong desire to be treated as the other gender (or some alternative gender different from one’s designated gender)

F. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one’s designated gender)”¹¹

The DSM-5 further notes that the condition is “associated with clinically significant distress or impairment in social, occupational, or other important areas of

8. *See id.*

9. Trotta, *supra* note 2.

10. DSM-5 is the abbreviation for the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. The DSM is the professional reference book on mental health conditions published by the American Psychiatric Association, with the Fifth Edition being the most current. AMERICAN PSYCHIATRIC ASSOCIATION PUBLISHING, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed., 2013) (hereinafter DSM-5).

11. DSM-5, *supra* note 10, at Gender Dysphoria.

functioning.”¹² Mere nonconformity with gender norms is not enough for a diagnosis of gender dysphoria—there needs to be actual discomfort relating to the identity.¹³ Nor is the transgender identity itself treated as a disease or condition—the gender dysphoria, while resulting from being transgender, is.¹⁴ Not all transgender individuals experience gender dysphoria, but this diagnosis is a prerequisite for seeking any type of gender affirmation treatment.¹⁵ Part of any treatment is gender affirming counseling, especially before and during any kind of gender affirmation treatment.¹⁶ It is important to note that while counseling is part of the standard of care for transgender individuals, gender identity change efforts (“GICE”),¹⁷ which seek to have the transgender person change their gender identity and expression in order to align with the sex assigned at birth, is not.¹⁸ The American Psychological Association, in recommending against GICE, notes that it is (a) unlikely to be successful and (b) comes with substantial mental health detriments.¹⁹ One 2020 study found that individuals that were exposed to change efforts, whether targeted at sexual orientation or gender identity, are more than twice as likely to attempt suicide.²⁰ As such, GICE is not only not recommended, but actively recommended against, by all major medical organizations, including the American Medical Association, the American Academy of Child & Adolescent Psychiatry, the American Psychological Association, and the American Psychiatric Association.²¹

Gender affirmation treatment can encompass many different things, but recent legislation has focused on prescription of puberty blockers, hormone therapy, and gender confirmation surgery.²² Puberty blockers are medications given to individuals before or shortly after the onset of puberty in order to temporarily delay puberty.²³ These medications are used to suppress the body’s release of sex hormones like estrogen or testosterone, thereby delaying the onset of the bodily

12. *Id.*

13. *Id.*

14. *See id.*

15. *See, e.g., Gender-Affirming Surgery (Top Surgery)*, DUKE HEALTH, <https://perma.cc/3V22-RLRU>. Some states have allowed self-attestation of gender dysphoria in order to change legal documents, but this has not been implemented in a medical context.

16. *Get the Facts on Gender Affirming Care*, HUMAN RTS. CAMPAIGN (Jul. 25, 2023), <https://perma.cc/LLV3-ER79>.

17. Also referred to colloquially as conversion therapy.

18. AM. PSYCH. ASS’N, APA RESOLUTION ON GENDER IDENTITY CHANGE EFFORTS, at 3–4 (Feb. 2021) (hereinafter GICE Resolution).

19. *Id.* at 2.

20. *Id.*

21. *Id.* at 3–4, *Sexual Orientation and Gender Identity Change Efforts (so-called “conversion therapy”)*, AM. MED. ASS’N, <https://perma.cc/UND5-J3C4>; AM. PSYCHIATRIC ASS’N, POSITION STATEMENT ON CONVERSION THERAPY AND LGBTQ PATIENTS (Dec. 2018), <https://perma.cc/2F9X-SAR3>; *Conversion Therapy*, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, <https://perma.cc/XDC3-QCEM>.

22. *See Trotta, supra* note 2.

23. *Puberty Blockers for Transgender and Gender-Diverse Youth*, MAYO CLINIC, <https://perma.cc/3CKB-AUXE> (hereinafter Pubertal Blockers).

changes caused by puberty.²⁴ When puberty blockers are stopped, puberty resumes as typical.²⁵ Puberty blockers have traditionally been used to treat precocious puberty, a condition in which a child's puberty begins much earlier than typical, by delaying puberty until the child is emotionally and socially ready to undergo it.²⁶ More recently, puberty blockers have been used off-label²⁷ to delay puberty in transgender children as a way to lessen the increased gender dysphoria that can occur during puberty.²⁸

Hormone therapy, typically called “feminizing”²⁹ or “masculinizing”³⁰ hormone therapy, involves taking hormone medication to artificially induce or maintain the types of bodily changes experienced during puberty.³¹ This includes taking testosterone for transgender men³² or a combination of testosterone-blocking medication and estrogen for transgender women,³³ though treatment regimens will vary based on a patient's medical history.³⁴ While some effects of hormone therapy will be reversed if an individual stops taking the medication, others, like breast development, are irreversible.³⁵ As such, transgender patients tend to remain on these medications for life to maintain their effects.

Gender confirmation surgery³⁶ may include facial reconstructive surgery³⁷ to masculinize or feminize facial features, chest or “top” surgery to either remove breasts or add to their appearance, and genital or “bottom” surgery to change genitalia.³⁸ When legislators refer to gender affirmation surgery in the context of banning such procedures, they are typically referring to either “top” or “bottom”

24. *See id.*

25. *See* Victoria Pelham, *Puberty Blockers: What You Should Know*, CEDARS-SINAI (Jan. 16, 2023) <https://perma.cc/G5YF-GULE>.

26. *See* Pelham, *supra* note 25.

27. Off-label prescription is the prescription of FDA-approved medications for indications other than those approved by the FDA. It is a common practice in medicine, with as many as twenty-one percent of all prescriptions in the United States prescribed for an off-label use. *See* Shariful A. Syed, Brigham A. Dixon, Eduardo Constantino, & Judith Regan, *The Law and Practice of Off-Label Prescribing and Physician Promotion*, J. AM. ACAD. PSYCHIATRY & L. ONLINE (Nov. 24, 2020), <https://perma.cc/U4SV-37TP>.

28. *See* Pelham, *supra* note 25.

29. *Feminizing Hormone Therapy*, MAYO CLINIC, <https://perma.cc/54WA-UYJN> (hereinafter *Feminizing Hormone Therapy*).

30. *Masculinizing Hormone Therapy*, MAYO CLINIC, <https://perma.cc/FT4Q-B3UW> (hereinafter *Masculinizing Hormone Therapy*).

31. *See* *Feminizing Hormone Therapy*, *supra* note 29; *see* *Masculinizing Hormone Therapy*, *supra* note 30.

32. *See* *Masculinizing Hormone Therapy*, *supra* note 30.

33. *See* *Feminizing Hormone Therapy*, *supra* note 29.

34. As an example of individual tailoring, individuals with a history of blood clots may not be prescribed estrogen due to increased risk of blood clots. *See id.*

35. *Id.*

36. Also referred to as gender affirmation surgery. It has also been previously referred to as sex reassignment surgery, but this terminology is now less common. *See* *Gender Affirmation (Confirmation) or Sex Reassignment Surgery*, CLEVELAND CLINIC, <https://perma.cc/F4ED-R3LV> (hereinafter *Gender Confirmation Surgery*).

37. This surgery has not been targeted as much in recent legislation versus the other types listed here.

38. *Gender Confirmation Surgery*, *supra* note 36.

surgery.³⁹ Before undergoing surgery, a patient will typically need to be over eighteen, and will need a clearance letter from a mental health professional stating that the patient (a) has a diagnosis of gender dysphoria, and (b) has been living in their gender identity for a certain period of time.⁴⁰ There may be additional prerequisites depending on state or health insurance requirements.⁴¹

Like all medicine, gender affirmation treatment depends heavily on the patient in question. Furthermore, treatment plans for transgender minors are not the same as treatment plans for adults. For instance, gender confirmation surgery is very rarely part of a treatment plan for minors, whereas it is more common for adults.⁴² In contrast, puberty blockers are not going to be part of an adult's treatment plan, as the patient would have already gone through puberty, thereby receiving no therapeutic benefit from puberty blockers.⁴³

II. THE LEGISLATION

In 2023, there was a much stronger legislative emphasis on curtailing LGBTQ rights compared to previous years. As of April 2023, more than 300 bills in thirty-three states have been introduced to limit LGBTQ rights broadly—more than double such bills in all of 2022.⁴⁴ The focus of the legislation also differs from previous years. Instead of focusing on aspects of social transition, the bills introduced in 2023 more frequently sought to limit or ban gender affirming healthcare.⁴⁵ Bills with this focus were introduced in twenty-seven states overall, and represent nearly one-third of anti-LGBTQ bills introduced nationwide as of March 2023.⁴⁶ As of May 2023, eighteen states have passed bans (either via legislation or administrative policy) on gender affirming care for minors.⁴⁷ Six states are considering bills that would limit or ban transition care for adults as well, with some seeking to ban care up until age twenty-six.⁴⁸

The most common approach to these bans is a legislative ban on physicians providing the procedures described above to minors for the purpose of

39. See, e.g., H.B. 1080, 98th Sess. (S.D. 2023).

40. See, e.g., *Gender-Affirming Surgery (Top Surgery)*, *supra* note 15.

41. See, e.g., S.B. 16, 2023 Gen. Sess. (Utah 2023) (requiring, among other things, that a healthcare provider additionally consider alternative medical treatment or behavioral interventions before providing a “hormonal transgender treatment to a minor.”).

42. See Trotta, *supra* note 2.

43. See *id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. These states are Texas, Arizona, Florida, Mississippi, Alabama, Tennessee, Arkansas, Iowa, South Dakota, Idaho, Montana, North Dakota, Missouri, West Virginia, Kentucky, Georgia, West Virginia, and Utah., *Map: Attacks on Gender Affirming Care by State*, HUMAN RTS. CAMPAIGN, <https://perma.cc/PS6K-RFHY>.

48. Texas and South Carolina are considering banning gender affirming care up until age twenty-six. Kansas, Oklahoma, and South Carolina are considering bans up until age twenty-one, and a Nebraska bill would include individuals aged eighteen. Azeen Ghorayshi, *What to Know About State Moves to Ban Transgender Health Care*, N.Y. TIMES, <https://perma.cc/4CVK-REQH>.

transitioning.⁴⁹ Some bills take additional steps, like requiring all physicians to stop providing such treatment for current patients within one year, effectively mandating that these patients detransition,⁵⁰ automatically revoking the medical licenses of physicians who provide such care to minors,⁵¹ or drastically expanding the malpractice liability of physicians providing gender affirming healthcare.⁵²

Some states have elected wholly novel approaches to banning gender affirming medical care. For example, Texas directed its Department of Family and Protective Services to investigate the families of transgender minors for child abuse.⁵³ Florida has removed Medicaid coverage for gender affirming healthcare,⁵⁴ and its Boards of Medicine and Osteopathic Medicine have passed rules prohibiting physicians from providing gender affirming care to new minor patients.⁵⁵ The rule, while not a law, functions similarly to a legislative ban, as a violation could lead to the revocation of a physician's license to practice.⁵⁶

While the approaches taken may differ, the intent behind these efforts is the same—to prevent individuals from accessing gender affirming healthcare. Proponents of these bans argue that medical science does not support this treatment and have proffered expert testimony to this effect.⁵⁷ They present these bills as a way to protect vulnerable children from a relatively new, irreversible form of medical treatment—but behind the scenes, these same proponents are telling a very different story about their motives.

III. THE TIP OF THE ICEBERG: THE NETWORK EXPOSED

In March 2023, Mother Jones broke the story. According to more than two thousand leaked emails released by a former collaborator (hereinafter “Shupe emails”), a secretive group has worked together behind the scenes to get transition bans passed across the country since 2019.⁵⁸ This group, referred to as the Network,

49. See, e.g., H.B. 1080, 98th Sess. (S.D. 2023).

50. See, e.g., *id.*

51. See, e.g., H.B. 1125, 2023 Reg. Sess. (Miss. 2023).

52. See, e.g., S.B. 16, 2023 Gen. Sess. (Utah 2023); H.B. 1125; SB199, 94th Gen. Assemb. Reg. Sess. (Ark. 2023).

53. J. David Goodman & Amanda Morris, *Texas Investigates Parents Over Care for Transgender Youth, Suit Says*, N.Y. TIMES, Mar. 2, 2022, at A17, <https://perma.cc/KUT5-XGBE>.

54. DIV. OF FLA. MEDICAID, GENERALLY ACCEPTED PROFESSIONAL MEDICAL STANDARDS DETERMINATION ON THE TREATMENT OF GENDER DYSPHORIA, STATE OF FLORIDA (July 2022) (hereinafter “Florida Report”), <https://perma.cc/V8EU-59U9>. This does not currently mandate that these doctors stop treating current patients, though current proposed legislation may take this step if enacted. Andrew Demillo & Hanna Schoenbaum, *Efforts to Restrict Trans Health Care Endure in 2024, With More Proposals Aimed At Adults*, ASSOC. PRESS (Jan. 11, 2024), <https://perma.cc/T26T-NFR6>.

55. FLA. ADMIN. CODE ANN. r. 64B8-9.019 (effective Mar. 16, 2023). These rules do provide an exception for minors already undergoing such treatment prior to enactment of the rules.

56. See *id.*

57. See Florida Report, *supra* note 54, at 1.

58. See Pauly, *supra* note 4.

includes state lawmakers, anti-LGBTQ activist groups, de-transitioners,⁵⁹ trans-exclusionary radical feminists,⁶⁰ and physicians working to advance conservative social ideals.⁶¹

One of the members was Elisa Rae Shupe, a transgender woman who was a “de-trans” activist at the time of the Network’s creation.⁶² She worked with the Network from its creation in August 2019 through March 2020.⁶³ After witnessing what she viewed as the destruction caused by the Network, she chose to give copies of thousands of emails detailing the group’s activities across the country to Mother Jones.⁶⁴ Ms. Shupe also shared these emails with the author of this Note. The Shupe emails reveal how a coordinated movement came together to push bills banning gender affirming healthcare nationwide, all while presenting the bills as part of a grassroots response to constituent concerns.

A. THE BEGINNING: SOUTH DAKOTA

South Dakota State Representative Fred Deutsch has been on the cutting edge of anti-transgender legislation before.⁶⁵ He was one of the first proponents of “bathroom bills,” or legislation designed to prevent transgender individuals from using public restrooms corresponding to their gender identity.⁶⁶ His efforts resulted in one of the first bathroom bills introduced in any state legislature in the country, though it was ultimately vetoed by the governor.⁶⁷

On May 2, 2019, Rep. Deutsch tweeted that he would be introducing legislation to make it a felony for physicians to follow the Endocrine Society’s gender

59. Detransitioners are transgender individuals who have chosen to reverse their social transition, medical transition, or both. According to a 2021 study, 0.2–0.3% of patients undergoing surgical transition regret their transition, with less than half of that group expressing regret because of “true gender-related regret.” Other reasons include social regret and medical regret related to adverse medical side effects. See Sasha Karan Narayan, Rayisa Hontscharuk, Sara Danker, Jess Guerriero, Angela Carter, Gaines Blasdel, Rachel Bluebond-Langner, Randi Ettner, Asa Radix, Loren Schecter & Jens Urs Berli, *Guiding the Conversation – Types of Regret After Gender-Affirming Surgery and Their Associated Etiologies*, 9 ANNALS TRANSLATIONAL MED. 605, 612–613 (2021).

60. A trans-exclusionary radical feminist is an individual who, while largely aligning with the broader feminist movement, “rejects the social and legal recognition of transgender women as women and who opposes their inclusion in or access to places, activities, protections, etc. that are reserved exclusively for women.” *Trans-Exclusionary Radical Feminist*, MERRIAM-WEBSTER, <https://perma.cc/4HLW-3E2Y>. This group is also colloquially referred to as “TERFs,” though the term is typically considered an insult. See *id.*

61. See *About*, AM. COLL. OF PEDIATRICIANS, <https://perma.cc/VH26-ACJQ> (hereinafter ACPeds Bio).

62. Ms. Shupe, a transgender woman, became involved in the de-trans movement because of the negative side effects she experienced undergoing gender affirmation hormone therapy. Because her gender affirmation care was, in her view, grossly mismanaged by the Veterans Affairs (“VA”) system, she became convinced that such care was dangerous overall. Zoom Interview with Elisa Rae Shupe (Apr. 7, 2023) (hereinafter Shupe Interview).

63. *Id.*

64. Ms. Shupe said that putting all of this information out there “was the only way to fix this [destruction being caused].” *Id.*

65. See Pauly, *supra* note 4.

66. See *id.*

67. See *id.*

transition guidelines.⁶⁸ By that point, he had already been working on such a bill for several months, having reached out to Ms. Shupe about the bill two months prior.⁶⁹ In August, Rep. Deutsch sent out an email titled “South Dakota legislation” to fifteen different collaborators, including Ms. Shupe, asking for feedback on his draft bill.⁷⁰ At this moment, the Network was brought together.

Members of the Network had a substantial impact on the final bill. For instance, one member of the group noted that the bill as written may confirm the “other side’s” perception that “there are other sexes.”⁷¹ In response, Rep. Deutsch rewrote that section of the bill to avoid such a consequence.⁷² Most consequentially, however, was the influence of the Network on changing the age under which an individual could not receive gender affirming healthcare.

The first version of the bill would have banned transition care for anyone under the age of sixteen, consistent with South Dakota law on other matters.⁷³ However, Network members pushed back on this, arguing that individuals between sixteen and eighteen should still be banned from gender affirming care.⁷⁴ One member pushed for the ban to extend up until age eighteen, though she noted that she believes that someone aged eighteen “is still too young to make such decisions, but the law leaves us no choice.”⁷⁵ As a result, the bill’s language was updated to ban gender affirming care for anyone under the age of eighteen.⁷⁶

The Network continued to be involved even after the bill’s introduction. Members brainstormed ways to respond to opposition to the bill. One email chain was dedicated to responding to ACLU opposition to the bill.⁷⁷ Group members collaborated on the most appropriate way to counter a cited study detailing the large decrease in suicidal thoughts in transgender youth whose families affirm

68. Fred Deutsch (@FredDeutsch), X (May 2, 2019, 10:06 AM), <https://perma.cc/7MVT-T5SQ>.

69. Twitter Direct Message from Fred Deutsch to Elisa Shupe (Mar. 23, 2019, 12:48 PM MT) (on file with author). While these messages are addressed to Ms. Shupe in the form of her deadname, the author will be replacing the deadname with Elisa Shupe in all citations.

70. Email From Fred Deutsch, S.D. State Rep., to Elisa Shupe, Vernadette Broyles, Jon Uhler, Lee Schoenbeck, Beck Law Grp., Dr. Michael Laidlaw, Jon Hansen, William Malone, Mary McAlister, Child & Parental Rts. Campaign, Richard Mast, Liberty Couns., Walt Heyer, Matt Sharp, Alliance Defending Freedom, Dr. Andre Van Mol, ACPeds, Chris Motz, Catholic Conference, Katherine Cave, Kelsey Coal., Dr. Michelle Cretella, ACPeds, Michael Biggs, & pamosa27@comcast.net (Aug. 17, 2019, 2:25 PM MST) (on file with author). For brevity’s sake, the author will be abbreviating the long list of recipients of Network emails to “Network Members” in future citations.

71. Email from Andre Van Mol, ACPeds, to Network Members (Aug. 17, 2019, 3:02 PM MST) (on file with author).

72. *Id.*

73. Email from Vernadette Broyles, Child & Parental Rts. Campaign, to Fred Deutsch, S.D. State Rep. (Aug. 19, 2019, 2:01 PM) (on file with author). This age minimum comports with South Dakota’s law on sexual consent, which is also sixteen.

74. *Id.*

75. *Id.*

76. H.B. 1057, 95th Leg. Sess. (S.D., 2020).

77. Email from Fred Deutsch, S.D. State Rep., to Network Members (Jan. 15, 2020, 11:37 AM MT) (on file with author).

their gender identity.⁷⁸ One group member mentioned that if this statistic was true, “why weren’t the 1950s a total blood bath for suicides if non-affirmation of everything is the fast train to offing oneself?”⁷⁹ They also collaborated on ways to push back on the claim that the bill was discriminatory, with one member saying that there “is no constitutional right to chemically and surgically mutilat[e] one’s healthy body.”⁸⁰

The final version of the bill was introduced in January 2020, but ultimately did not pass.⁸¹ However, its impact reverberated around the country because of the Network. Several Network members created a legislative packet, consisting of several handouts, a white paper, and a model bill.⁸² This packet was explicitly created in order to support “Vulnerable Child Protection Acts being introduced in our respective states.”⁸³ This packet made its way to lawmakers in other states, further strengthening their efforts to pass similar acts.⁸⁴

B. INFLUENCE EXPANDS OUT OF STATE

The creation of the legislative packet began a shift in the Network’s influence. Instead of solely working on the text of one bill, members began to spread a model version in other states. One member emailed the group on October 30, 2019, to mention that Georgia State Rep. Earhart was filing “our bill this legislative session in Georgia.”⁸⁵ The member praised Dr. Quentin Van Meter, another member of the Network, for making a favorable statement in support of the bill so quickly.⁸⁶ She also mentioned that Rep. Earhart was working with Rep. Deutsch on the Georgia bill.⁸⁷

78. *Id.*; *ACLU of South Dakota Opposes House Bill 1507*, ACLU (Jan. 16, 2020, 12:00 PM), <https://perma.cc/NEU7-J3HE>.

79. Email from Dr. Andre Van Mol, ACPeds, to Network Members (Jan. 16, 2020, 12:24 AM) (on file with author).

80. Email from Vernadette Broyles, Child & Parental Rts. Campaign, to Network Members (Jan. 21, 2020, 12:57 PM) (on file with author).

81. *See* H.B. 1057, 95th Leg. Sess. (S.D., 2020). However, Deutsch introduced a virtually identical bill in 2023, which was signed into law. *See* H.B. 1080, 98th Sess. (S.D. 2023).

82. Email from Vernadette Broyles, President & Gen. Couns., Child & Parental Rts. Campaign, to Network Members (Jan. 9, 2020, 12:19 PM) (on file with author); Email from Vernadette Broyles, President & Gen. Couns., Child & Parental Rts. Campaign, to Network Members (Oct. 30, 2019, 8:40 AM) (on file with author) (referring to model legislation filed in Georgia as “our bill”).

83. Email from Vernadette Broyles, President & Gen. Couns., Child & Parental Rts. Campaign, to Network Members (Jan. 9, 2020, 3:20 PM) (on file with author).

84. *Id.* (“Please share these with your legislators and feel free to disseminate them as widely as possible with allies.”); Email from Vernadette Broyles, President & Gen. Couns., Child & Parental Rts. Campaign, to Network Members (Jan. 14, 2020, 11:59 AM) (on file with author) (“Have asked my web developer about creating a private webpage to put these docs[.]”); Email from Vernadette Broyles, President & Gen. Couns., Child & Parental Rts. Campaign, to Network Members (Oct. 30, 2019, 8:40 AM) (on file with author) (referencing “our bill” being filed in the state of Georgia).

85. Email from Vernadette Broyles, President & Gen. Couns., Child & Parental Rts. Campaign, to Network Members (Oct. 30, 2019, 8:40 AM) (on file with author).

86. *Id.*

87. *Id.*

The Shupe emails also show that the Network collaborated on a version of Rep. Deutsch's bill in Florida. A member of Florida State Rep. Sabatini's staff reached out to a member of the Network asking for a list of scientific and medical experts to testify in support of the bill.⁸⁸ The Network provided that list, with one member mentioning that she sent along the names of various physicians and therapists to "the lobbyist at the FL Catholic Conference who is working w/ Rep. Sabatini."⁸⁹ Ms. Shupe recalled being asked to testify in favor of the bill, mentioning that she was asked on a Friday night to testify in Tallahassee that following Monday.⁹⁰ The bill ultimately did not pass.

The Network also collaborated on adjacent bills that, while not working to ban gender affirmation care for minors, were related to the effort. The group worked closely with Idaho State Rep. Julianne Young to pass the Idaho Vital Statistics Act, which severely limited the ability of individuals to change the sex marker on Idaho birth certificates.⁹¹ The bill itself does not mention that it is intended to prevent transgender individuals from changing this marker, but the email introducing Rep. Young to the working group explicitly states that the purpose of this bill was to reverse a court case striking down sex-based birth certificates in Idaho.⁹² That case appears to be *F.V. v. Jeppesen*, which was brought by Lambda Legal to challenge the state's automatic denial of requests from transgender individuals to change the sex marker on their birth certificate.⁹³ The Network assisted in various aspects of the bill, from substantive edits to the bill itself, to helping back up an assertion that biological sex is necessary information for research, to helping brainstorm counters to assertions made by opponents, to helping edit the language of the "legislative findings" section to remove references to the term "cisgender."⁹⁴ The Idaho legislation represents the group's first "win," with the legislation being signed into law that same year.⁹⁵

88. Email from Richard Mast, Senior Litig. Couns., Liberty Couns., to Network Members (Jan. 22, 2020, 1:08 PM) (on file with author).

89. Email from Dr. Michelle Cretella, Former Exec. Dir., ACPeds, to Network Members (Jan. 22, 2020, 5:24 PM) (on file with author).

90. See Shupe Interview, *supra* note 62.

91. H.B. 509, 65th Leg., 2nd Reg. Sess. (Idaho 2020); Email from Rep. Julianne Young, Rep., Idaho H.R., to Network Members (Feb. 10, 2020, 8:12 AM) (on file with author).

92. See H.B. 509, 65th Leg., 2nd Reg. Sess. (Idaho 2020); Email from Richard Mast, Senior Litig. Couns., Liberty Couns., to Network Members (Jan. 21, 2020, 10:34 AM) (on file with author).

93. See *F.V. v. Barron*, 286 F. Supp. 3d 1131 (D. Idaho 2018), *decision clarified sub nom.* *F.V. v. Jeppesen*, 466 F. Supp. 3d 1110 (D. Idaho 2020), and *decision clarified sub nom.* *F.V. v. Jeppesen*, 477 F. Supp. 3d 1144 (D. Idaho 2020).

94. Email from the Kelsey Coal. Org. Email, to Network Members (Feb. 4, 2020, 9:44 AM) (on file with author); Email from Richard Mast, Senior Litig. Couns., Liberty Couns., to Network Members (Feb. 5, 2020, 7:47 AM) (on file with author); Email from Rep. Julianne Young, Rep., Idaho H.R., to Network Members (Feb. 12, 2020, 1:59 PM) (on file with author) (requesting contact information for research specialists who could provide a statement regarding the value of information about biological sex for researchers); Email from Elisa Shupe to Network Members (Mar. 24, 2020, 6:54 PM) (on file with author) (sharing COVID-19 mortality data demonstrating higher incidence of mortality for men than women).

95. H.B. 509, 65th Leg., 2nd Reg. Sess. (Idaho 2020); 2020 Idaho Sess. Laws vol. 2, ch. 334.

It is important to note that the efforts of the Network are likely far greater than are reflected in the Shupe emails. Matt Sharp, an attorney for the Alliance Defending Freedom and a member of the Network, responded to a question about whether these emails were discoverable by noting that he has “tried to be careful about communicating with Dr. Deutsch via e-mail for that exact reason . . . Basically, I’m never going to write anything in an email that I would not want read in open court.”⁹⁶ According to Ms. Shupe, this meant that many of these collaborative efforts happened via phone call in order to avoid leaving a paper trail.⁹⁷

C. THE END OF THE SHUPE EMAILS

At this point, Ms. Shupe was in a personal crisis. Even while presenting herself as a detransitioner, she had never actually ceased her gender affirming medical treatment.⁹⁸ However, as part of her work with the de-trans movement, she had changed her gender markers on her identity documents back to her sex assigned at birth. As a result, the Department of Veterans Affairs (“VA”) informed her that they were discontinuing her hormone treatment.⁹⁹ This caused a subsequent mental health crisis resulting in her hospitalization.¹⁰⁰ This hospitalization, and the ensuing mental health treatment, caused Ms. Shupe to not only re-evaluate her identity, but also her position within the Network.¹⁰¹ As she put it, “who am I to tell others they can’t do this when I can’t stop it myself?”¹⁰² At this point, Ms. Shupe cut ties with the Network.

IV. BENEATH THE SURFACE: THE NETWORK’S CONTINUED INFLUENCE

Because Ms. Shupe ended her association with the Network in 2020, we do not have the same direct evidence to demonstrate that the Network is still working on various bans post-2020. However, there are clear signs that this group is still active. An examination of the medical experts testifying in favor of these bans reveals that the Network has not just continued its work, but expanded its role in shaping legislation, litigation, and policy.¹⁰³

A. FLORIDA

One of the most high-profile efforts to ban gender affirming healthcare comes from Florida. When lawmakers failed to pass a bill that would ban gender affirming healthcare for minors, the executive arm of the government intervened by

96. Email from Matt Sharp, Senior Couns., State Gov’t Rels. Nat’l Dir., ADF, to Elisa Shupe (Jan. 21, 2020, 12:55 PM) (on file with author).

97. Shupe Interview, *supra* note 62.

98. *Id.*

99. *Id.* Ms. Shupe, as a veteran, received her healthcare through the VA, including her gender affirming care.

100. *Id.*

101. *Id.*

102. *Id.*

103. See Pauly, *supra* note 4.

investigating whether the state should continue to provide coverage for such care through state-run insurance programs like Medicaid.¹⁰⁴ The State then published a report on June 2, 2022, which features expert testimony from physicians and other medical professionals advocating against the State's coverage of gender affirming care for minors.¹⁰⁵ These five attachments to the report (labeled in the report as Attachments C–F) constitute the scientific basis of the State's decision to discontinue coverage for such treatment.¹⁰⁶ Each attachment has its own authors, and constitutes these experts' testimony about the subject at hand. The State's publication of this report serves as an endorsement of these authors, and these authors in turn are used to provide a scientific justification for the State's decision.

None of the authors of the attachments disclose any conflicts of interest with respect to their work,¹⁰⁷ but these conflicts still exist. Two of the five authors of the attachments are part of the Network.¹⁰⁸ A third, while not known to be part of the group himself, is heavily involved in anti-transgender litigation across the country as an expert witness for the Alliance Defending Freedom (“ADF”), another Network member.¹⁰⁹ Examining the attachments reveals the undisclosed biases of these authors and demonstrates the continued influence of the Network.

1. Attachment D

Attachment D, titled “The Science of Gender Dysphoria and Transsexualism,” was written by Dr. James Cantor, a clinical psychologist.¹¹⁰ Dr. Cantor is a frequent expert witness in cases involving transgender minors, often testifying about the mental health of transgender patients.¹¹¹ Most recently, he was retained by the State of Alabama as an expert witness in a case challenging Alabama's ban on gender affirming care for minors.¹¹² He has also been retained in a West Virginia case in defense of a ban on transgender athletes in school sports.¹¹³

104. See Florida Report, *supra* note 54, at 2.

105. See *id.*

106. See *id.* at 2–3.

107. DR. MEREDITH McNAMARA, DR. HUSSEIN ABDUL-LATIF, DR. SUSAN D. BOULWARE, DR. REBECCA KAMODY, DR. LAURA KUPER, DR. CHRISTY OLEZESKI, DR. NATHALIE SZILAGYI & DR. ANNE L. ALSTOTT, A CRITICAL REVIEW OF THE JUNE 2022 FLORIDA MEDICAID REPORT ON THE MEDICAL TREATMENT OF GENDER DYSPHORIA 7 (July 8, 2022) (hereinafter “Yale Physicians Response”), <https://perma.cc/E3EN-SDD8>.

108. See Email from Dr. Quentin Van Meter, ACPeds, to Network Members (Jan. 21, 2020, 2:54 PM) (on file with author); see Email from Dr. Patrick Lappert, to Network Members (Jan. 16, 2020, 6:46 AM) (on file with author).

109. See Florida Report, *supra* note 54, Attachment D; see, e.g., Declaration of James M. Cantor, PhD., B.P.J. v. West Virginia State Bd. of Educ., 550 F. Supp. 3d 347 (S.D. W.Va. July 21, 2021) (No. 2:21-cv-00316) (hereinafter “B.P.J. Brief”); see also B.P.J. v. West Virginia State Board of Education, ALLIANCE DEFENDING FREEDOM, <https://perma.cc/HW66-CKH3>.

110. See Florida Report, *supra* note 54, Attachment D, at 1.

111. See *id.* at 2.

112. Expert Report of James Cantor, PhD., *Boe v. Marshall*, No. 2:22-cv-184, 2023 WL 3454575 (M.D. Ala. May 15, 2023).

113. B.P.J. Brief, *supra* note 109.

In both cases, Dr. Cantor is working alongside ADF, a conservative legal organization that aims to “protect religious freedom . . . and God’s design for marriage and family.”¹¹⁴ The ADF believes in the traditional, heterosexual definition of marriage,¹¹⁵ that gender affirming healthcare is not scientifically sound and thus harmful,¹¹⁶ and that non-heterosexual relationships should be illegal.¹¹⁷ As a result of these convictions, it advocates against LGBTQ rights both domestically and internationally.¹¹⁸ The ADF is also a member of the Network, both through its own attorneys and through ADF-affiliated attorneys.¹¹⁹

In both the Alabama and West Virginia cases, the ADF has taken the step of directly defending these bans alongside the respective state governments as a defendant-intervenor.¹²⁰ This action demonstrates an unusual level of coordination between the activist group and state governments, as they are essentially co-litigating these cases. The ADF’s expert witness in both cases is Dr. James Cantor.¹²¹ In the West Virginia case (hereinafter “*B.P.J.*”), a transgender student athlete is seeking to overturn a state ban on allowing her to compete as her identified gender.¹²² Dr. Cantor’s testimony was used by the State and the ADF to advocate for the ban, and his testimony in this case appears to have been paid for by the ADF.¹²³ Despite this, Attachment D states that “no potential conflict of interest was reported by the author.”¹²⁴

The nondisclosure of this work in Attachment D is particularly troubling, as Dr. Cantor’s written testimony in *B.P.J.* is nearly identical to Attachment D.¹²⁵

114. *Who We Are*, ALLIANCE DEFENDING FREEDOM, <https://perma.cc/7Y94-WRVZ>.

115. *Marriage is the Future*, ALLIANCE DEFENDING FREEDOM, <https://perma.cc/4MZH-GJEH>.

116. *ADF Assists Alabama’s Defense of Children*, ALLIANCE DEFENDING FREEDOM (Jan. 23, 2023), <https://perma.cc/VB4K-RGDV>.

117. Brief in Support of Respondent on Behalf of *Amici Curiae* Texas Physicians Resource Council, Christian Medical and Dental Associations and Catholic Medical Association, *Lawrence v. Texas*, 539 U.S. 558 (2003).

118. In the United States, the ADF has served as legal counsel for several plaintiffs seeking to refuse services to LGBTQ individuals, fire individuals for being LGBTQ, codify solely heterosexual marriage in California under Proposition 8, and overturn bans on providing conversion therapy to minors. *Masterpiece Cake Shop Ltd. v. Colorado C.R. Comm’n*, 138 S.Ct. 1719 (June 4, 2018); *303 Creative v. Elenis*, 143 S.Ct. 2298 (June 30, 2023); Brief for the Petitioner, *Bostock v. Clayton County*, 140 S.Ct. 1731 (June 15, 2020); *U.S. Supreme Court to Hear Prop. 8, DOMA Cases*, ALLIANCE DEFENDING FREEDOM (Dec. 7, 2012) <https://perma.cc/F39D-R2VY>; *Tingley v. Ferguson*, 47 F.4th 1055 (9th Cir. 2022).

119. See Email from Matt Sharp, *supra* note 96; see Email from Vernadette Broyles, *supra* note 80.

120. See *Boe v. Marshall*, No. 2:22-cv-184, 2023 WL 3454575 (M.D. Ala. May 15, 2023); see *B.P.J. v. West Virginia State Board of Education*, *supra* note 109.

121. See Expert Report of James M. Cantor, PhD, *B.P.J. v. West Virginia St. Bd. of Educ.*, Civ. Action No. 2:21-cv-00316 (S.D.W.V. 2022); Expert Report of James Cantor PhD, *Boe v. Marshall*, Civ. Action No. 2:22-cv-184 (M.D. Ala. 2023).

122. *B.P.J. v. West Virginia State Board of Education*, LAMBDA LEGAL, <https://perma.cc/W3W5-3QPH>.

123. See *B.P.J.* Brief, *supra* note 109; Defendant-Intervenor and the State of West Virginia’s Memorandum in Response to Plaintiff’s Motion to Exclude Expert Testimony of Dr. James M. Cantor, *B.P.J. v. West Virginia State Board of Education*, 550 F. Supp. 3d 347 (S.D.W. Va. July 21, 2021).

124. Florida Report, *supra* note 54, at Attachment D.

125. This comparison has also been noted by other parties, particularly the Yale Physicians in their Response to the Florida Report. Yale Physicians Response, *supra* note 107, at 8.

When Attachment D was compared to Dr. Cantor's *B.P.J.* testimony using NovusScan, the influence of the latter on the former is striking.¹²⁶ The only sections in Attachment D that were not flagged as a match to the *B.P.J.* written testimony were the "International Healthcare Consensus" section and half of the Suicide and Suicidality subsection of "Other Scientific Claims Asserted."¹²⁷ The rest of the substantive text¹²⁸ of Attachment D, representing twenty-six of thirty-one total pages, were virtually identical to the *B.P.J.* brief.¹²⁹

Given the timing of the two documents, with the *B.P.J.* brief executed on February 23, 2022, and the Florida Report dated May 17, 2022, it appears that the *B.P.J.* brief was likely written first.¹³⁰ While it is possible that Dr. Cantor independently chose to reuse his work for Attachment D, it is also possible that the ADF was involved in the creation of the Florida report. Due to the lack of adequate conflict-of-interest disclosure,¹³¹ there is no way to tell whether, or to what extent, Florida officials were aware that Dr. Cantor reused his testimony for the ADF in the creation of his report for the State.¹³²

2. Attachment E

Attachment E, or "Concerns about Affirmation of an Incongruent Gender in a Child or Adolescent," was written by Dr. Quentin Van Meter, a pediatric endocrinologist practicing in Atlanta, Georgia.¹³³ He is a frequent expert on the subject of transgender children, testifying both to legislative bodies and in court on the subject since 2017.¹³⁴ He has been retained as an expert witness on pediatric hormone treatment by parties opposed to such a practice, testifying on behalf of governmental entities¹³⁵ and individual parents in disputed

126. See NovusScan Report of Attachment D (on file with author) (hereinafter "Cantor NovusScan Report"). NovusScan is a software program intended to detect self-plagiarism by highlighting identical text between documents. The Cantor NovusScan Report compared Attachment D to Dr. Cantor's testimony in *B.P.J.* The intention of using this software is not to accuse Dr. Cantor of plagiarism, but rather to effectively demonstrate the uncredited bias in Attachment D by showing how similar it is to Dr. Cantor's *B.P.J.* testimony.

127. *Id.*

128. While the report flagged Attachment D's Biography and References sections as also being identical matches to the *B.P.J.* brief, the author does not consider that to be significant to this paper, and thus is excluding it from this analysis. *Id.*

129. See *id.* These pages do contain a few non-identical phrases, but never more than a full sentence.

130. See Florida Report, *supra* note 54, at Attachment D; See *B.P.J.* Brief, *supra* note 109.

131. While Attachment D does contain a conflict disclosure statement, it states that Dr. Cantor has no conflicts of interest. Given the information above, the author does not believe this to be adequate. See Florida Report, *supra* note 54, at Attachment D.

132. Yale Physicians Response, *supra* note 107.

133. Florida Report, *supra* note 54, at Attachment E.

134. See Stephen Caruso, *A Texas Judge Ruled this Doctor was Not an Expert. A Pennsylvania Republican Invited Him to Testify on Trans Health Care*, PA. CAP.-STAR (Sept. 15, 2020), <https://perma.cc/X64T-DDQJ> (noting Dr. Van Meter's testimony to the PA Legislature in 2020); See Carcaño v. McCrory, 203 F. Supp. 3d 615 (M.D.N.C. 2016).

135. Dana Kam, *Florida Runs Up Tab in Medicaid Transgender Case*, LAW.COM (Jan. 25, 2023), <https://perma.cc/L899-ULCX>.

custody cases.¹³⁶ He has also been retained as an expert witness on broader transgender civil rights issues—for instance, he was retained in 2020 in a lawsuit challenging Ohio’s refusal to change gender markers on birth certificates.¹³⁷ He is also involved in other anti-LGBTQ advocacy, particularly in opposition to bans on sexual orientation or gender identity change efforts.¹³⁸

As part of his advocacy, Dr. Van Meter was President of the American College of Pediatricians (“ACPeds”) until January 2023.¹³⁹ ACPeds (not to be confused with the American Academy of Pediatrics or AAP, the leading organization for U.S. pediatricians) is a small, socially conservative organization of pediatricians who split off from the AAP after the AAP endorsed adoption by same-sex couples.¹⁴⁰ Dr. Joseph Zanga, who founded ACPeds, described the organization as being founded on Judeo-Christian, traditional values.¹⁴¹ One of ACPeds’ most prominent positions is anti-LGBTQ advocacy,¹⁴² including opposition to gender affirmation treatment for pediatric patients.¹⁴³

Interestingly, Attachment E does not mention Dr. Van Meter’s affiliation with the organization. Dr. Van Meter not only continues to be involved with ACPeds leadership at a high level,¹⁴⁴ but also provided much of the testimony mentioned above while still President of ACPeds.¹⁴⁵ Additionally, he is one of three high-

136. See Caruso, *supra* note 134. The case was a divorce case in which the child was undergoing gender affirmation treatment, and while the father approved of the treatment, the mother sought to have the court discontinue the treatment. The mother sought to discontinue the treatment and retained Van Meter as an expert. The court disqualified Van Meter’s status as an expert, though the exact basis as to why is not known as the case is now sealed.

137. See Jake Zuckerman, *Conversion Therapy is a Discredited Practice. Ohio Hired its Advocate as an Expert Witness*, OHIO CAP. J. (Feb. 5, 2020), <https://perma.cc/EGT2-688C>.

138. See *id.*

139. Compare, *ACPeds Call on Organizations to Scrap Current Transgender Protocols Based on Newly Published Critique*, ACPEDS (Jan. 25, 2023), <https://perma.cc/3E4F-39W8> (stating that Dr. Van Meter is a past president in a press release dated January 23, 2023) with *ACPeds Submits Public Comment that Denounces Proposed HHS Gender Identity Rule that Radicalizes Medicine and Threatens Conscience Rights*, ACPEDS (Oct. 4, 2022), <https://perma.cc/674R-4WSC> (stating that Dr. Van Meter is the President of ACPeds in a letter dated October 4, 2022).

140. See *Extremist Group Info: American College of Pediatricians*, S. POVERTY L. CTR., <https://perma.cc/4KGA-C93F>.

141. See Bill Fancher & Jody Brown, *Pro-Life Pediatric Group Stands Contrary to Established American Academy of Pediatrics*, CATHOLIC EXCH. (July 30, 2003), <https://perma.cc/RKV5-9M8S>.

142. ACPeds, in addition to opposing adoption by same-sex couples, also advocated in favor of the Defense of Marriage Act (which codified marriage as solely being between one man and one woman) and continues to advocate for the availability of sexual orientation change efforts for minors. See *Defending Traditional Marriage*, ACPEDS, <https://perma.cc/3UWK-5Z95>; *Psychotherapy for Unwanted Homosexual Attraction Among Youth*, ACPEDS (Jan. 2016), <https://perma.cc/UB2M-HUDM>. The American Psychological Association strongly opposes such efforts, arguing that there is no discernable benefit and in fact substantial harm due to high increased rates of suicide attempts in individuals who undergo it. See GICE Resolution, *supra* note 18.

143. See *Gender Confusion and Transgender Identity*, ACPEDS, <https://perma.cc/3SMY-2HW2>.

144. See *ACPeds Call on Organizations to Scrap Current Transgender Protocols Based on Newly Published Critique*, ACPEDS (Jan. 25, 2023), <https://perma.cc/JZ6N-9EU8>.

145. See Florida Report, *supra* note 54, at E. Dr. Van Meter’s testimony is dated May 17, 2022. As mentioned *supra* note 136, Dr. Van Meter was President of ACPeds through October 4, 2022, and a

ranking leaders in ACPeds who was identified as part of Rep. Deutsch's Network, further supporting the argument that ACPeds is organizationally involved in said testimony.¹⁴⁶ While ordinarily, an individual's past leadership position does not prove broader organizational involvement, the combination of facts above suggest that this is the case.

This connection is further supported by the text of Dr. Van Meter's testimony in the Florida report, as it contains several identical passages to an ACPeds position paper.¹⁴⁷ Dr. Van Meter does not cite this paper in his written testimony, and he is not listed as an author of the paper.¹⁴⁸ The wholesale, uncited replication of portions of the ACPeds position paper in the Florida report, at best, suggests an undisclosed bias¹⁴⁹ within Dr. Van Meter's report, but may actually suggest undisclosed organizational involvement in this testimony.

This is further strengthened through comparing Attachment E of the Florida Report to Dr. Van Meter's *amicus curiae* brief in *Adams v. School Board of St. Johns County*, a case about a school's restriction of use of school bathrooms based on sex assigned at birth. Dr. Van Meter's brief was compared to Attachment E through NovusScan.¹⁵⁰ The first eight pages of Attachment E are nearly completely identical to Dr. Van Meter's section of the *amicus* brief, with whole pages highlighted as being exact copies of the previous testimony.¹⁵¹ This *amicus* brief, similar to Dr. Cantor's testimony in *B.P.J.*, was prepared by the ADF, suggesting that despite its appearance, Attachment E is not organic testimony.¹⁵²

letter from ACPeds to the Surgeon General lists him as the current president as far back as 2019. See *American College of Pediatricians Urges Surgeon General to Investigate Medical Transgendering of Children*, ACPEDS (July 24, 2019), <https://perma.cc/A2PJ-XVYA>.

146. The other two leaders are Dr. Michelle Cretella, former Executive Director, as well as Dr. Andre Van Mol, Co-Chair of ACPeds' Committee on Adolescent Sexuality. See Email from Dr. Michelle Cretella, *supra* note 89; see Email from Dr. Andre Van Mol, *supra* note 71.

147. Compare Florida Report, *supra* note 54, at Attachment E with Dr. Michelle Cretella, *Gender Dysphoria in Children*, AM. COLL. OF PEDIATRICIANS (Nov. 2018), <https://perma.cc/J2Z5-87Z4>. See also Yale Physician Response, *supra* note 107, at n.18.

148. See Cretella, *supra* note 147. However, the paper only lists one author, with Dr. Cretella designated as the "principal author." This suggests that there are other, unlisted contributors to the paper.

149. See Yale Physician Response, *supra* note 107, at 1. As noted by the Yale Physician Response, none of the experts cited in the Florida Medicaid report disclose conflicts of interest.

150. See discussion of NovusScan, *supra* note 126. As with its usage with respect to Dr. Cantor, the intention of utilizing NovusScan is not to accuse Dr. Van Meter of plagiarism, but rather to demonstrate the repurposing of paid testimony in the facially neutral Florida report.

151. NovusScan Report of Attachment E (on file with author) (hereinafter "Van Meter NovusScan Report").

152. Brief of Amicus Curiae Drs. Miriam Grossman, Michael Laidlaw, Quinten Van Meter, and Andre Van Mol Supporting Defendant-Appellant School Board of St. Johns County, Florida, *Adams v. Sch. Bd. of St. Johns Cnty., Fla.*, 3 F.4th 1299 (11th Cir. Dec. 27, 2018), (No. 18-13592), *reh'g en banc granted, opinion vacated*, 9 F.4th 1369 (11th Cir. 2021), and *on reh'g en banc sub nom. Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791 (11th Cir. 2022) (hereinafter "Van Meter Adams Brief"). Because this is an amicus brief, no conflicts of interest disclosure nor potential funding sources were disclosed.

3. Attachment F

Attachment F was written by Dr. Patrick Lappert, a retired plastic and reconstructive surgeon who practiced in Alabama.¹⁵³ Dr. Lappert's expert testimony focuses on the surgical aspects of gender affirmation treatment, arguing that he believes children cannot consent to gender affirmation surgery (nor, in his view, can their parents ethically consent for them).¹⁵⁴ He also believes that gender affirmation surgery is not medically necessary to treat gender dysphoria, and since, in his view, this surgery is solely cosmetic, it is thus unnecessary.¹⁵⁵

Like Dr. Cantor and Dr. Van Meter, Dr. Lappert has strong ties with the ADF. Prior to attending an ADF-sponsored conference, Dr. Lappert had not been published on gender affirmation treatment, nor had he lobbied for legislative action against such treatment.¹⁵⁶ After this conference, at which a speaker "lamented the 'poverty of [experts] who are willing to testify'" against gender affirmation treatment, Dr. Lappert began his advocacy for gender affirmation care bans.¹⁵⁷ Like Dr. Van Meter, Dr. Lappert was part of the Network.¹⁵⁸

Dr. Lappert has lobbied in Alabama, Arkansas, Texas, and Utah in favor of laws prohibiting doctors from offering gender affirmation treatment.¹⁵⁹ A federal judge in *Kadel v. Folwell*, a case challenging North Carolina for its exclusion of gender affirming care in state health insurance, found that Dr. Lappert's lobbying efforts was "evidence that calls Lappert's bias and reliability into serious question."¹⁶⁰ The Judge ultimately ruled on May 10, 2022, that while Dr. Lappert could testify on matters specifically related to gender affirmation surgery, he was not qualified to testify on gender dysphoria or any other mental health condition, the usage of any non-surgical treatments for gender dysphoria, or the reliability of any statistical studies of gender dysphoria.¹⁶¹ Attachment F, published on May 17, 2022, is Dr. Lappert's views on exactly that.¹⁶²

Attachment F does speak to some matters firmly within Dr. Lappert's realm of expertise. It speaks on the surgical risks associated with gender affirmation surgery, the standard of informed consent for similar surgeries, and Dr. Lappert's belief that gender affirmation surgery is not ethically equivalent to other surgical

153. Florida Report, *supra* note 54, at Appendix F.

154. *Id.* at Attachment F.

155. *Id.* at Attachment F. Dr. Lappert has stated in cross examination in other cases that his opinions are not in alignment with the consensus of most plastic surgeons. See Josie Lenora, *State Calls Additional Witnesses in Trial Challenging Arkansas' Transgender Care Ban*, KUAR (Nov. 29, 2022), <https://perma.cc/98Q5-ZPRR>.

156. *Kadel v. Folwell*, 620 F. Supp. 3d 339, 367–72 (M.D.N.C. 2022). The opinion does note that Dr. Lappert had spoken about gender dysphoria publicly before this conference.

157. *Id.*

158. See Email from Dr. Patrick Lappert, to Network Members (Jan. 16, 2020, 6:46 AM) (on file with author).

159. *Kadel*, 620 F. Supp. 3d at 367–72.

160. *Id.* at 368.

161. *Id.*

162. Florida Report, *supra* note 54, at attachment F.

procedures.¹⁶³ However, mixed in with this assessment is Dr. Lappert's analysis on whether gender affirmation treatment is effective in preventing suicide attempts, Dr. Lappert's assertion that there are statistical flaws in studies showing benefit in the mental health of transgender patients undergoing gender affirmation surgery, and Dr. Lappert's assertion that "cross-sex gender identity" tends to self-resolve.¹⁶⁴

As Judge Biggs notes in *Kadel*, Dr. Lappert is not a mental health professional, nor an endocrinologist, nor a statistician.¹⁶⁵ As such, these matters are not within his expertise, which is why the court ultimately excluded his testimony on these issues.¹⁶⁶ Attachment F, however, contains Dr. Lappert's testimony on all of the above, buried under headings that imply that the text below the heading is on surgical matters.¹⁶⁷

Despite his public role in lobbying for a specific viewpoint on issues similar to this, Dr. Lappert is presented as a neutral expert in Attachment F. Even though Dr. Lappert's expertise is not in the matters covered by his writing, he is still presented as such through the inclusion of this Attachment in the report. And even though Dr. Lappert's writing contains very little or no citations to back up his claims, his writing is still presented as scientifically sound through its inclusion in the Florida Report (serving as an endorsement by the State).

4. The Florida Report in General

Florida's financial records further confirm the likelihood of involvement of members of the Network in drafting the Report. The State's highest paid expert retained for the creation of the report is Dr. Andre Van Mol, a leader of ACPeds and one of the most active physicians in Deutsch's working group.¹⁶⁸ Dr. Van Mol and Dr. Van Meter have also been retained as experts for the State in the court case challenging Florida's exclusion of gender affirmation care from Medicaid coverage.¹⁶⁹

Furthermore, and perhaps most importantly, the State's standards for determinations of Medicaid coverage require the State to only consult "*published* reports and articles in the authoritative medical and scientific literature related to the health service (*published in peer-reviewed scientific literature* generally recognized by the relevant medical community or practitioner specialty

163. *Id.*

164. *Id.*

165. *Kadel v. Folwell*, 620 F. Supp. 3d 339, 367–72 (M.D.N.C. 2022).

166. *Id.*

167. Florida Report, *supra* note 54, at attachment F. For instance, Dr. Lappert's analysis on (in his opinion) methodologically deficient studies on the treatment of gender dysphoria is under the heading "Chest Masculinization in Natal Females is Not Ethically Equivalent to Mastectomies for Breast Cancer."

168. Kam, *supra* note 135. Dr. Van Mol, however, is not listed as an author in the report itself. See Florida Report, *supra* note 54.

169. Kam, *supra* note 135.

associations).”¹⁷⁰ None of the appendices in the report qualify under this standard, but they are the only evidence that the State used to make its Medicaid coverage determination.¹⁷¹ Nearly all of the listed authors of the Florida report are authors that have worked with or published for anti-transgender activist groups, and the clear one-sided representation of this report shows that only one viewpoint was meant to be raised in this report.¹⁷² Given the various ties between the experts retained in the creation of the Florida Report and the subsequent litigation therein, it stands to reason that the Network likely had a role in making sure that the report adequately represented its viewpoint.

B. ALABAMA

Alabama passed its ban on gender affirming healthcare for individuals under the age of nineteen in 2022.¹⁷³ The Alabama Vulnerable Child Compassion and Protection Act (“AVCCPA”) specifies that the ban on the prescription of puberty blockers and hormones, as well as various surgical procedures, only applies if these treatments are taken to “alter the appearance of or affirm the minor’s perception of his or her gender or sex, if that appearance or perception is inconsistent with the minor’s sex as defined in this act.”¹⁷⁴ While the AVCCPA was passed well after any of the Shupe emails were written, there are references to an earlier version of the bill in the Shupe emails. Margaret Clarke, of the Eagle Forum of Alabama, reached out to Ms. Shupe on February 10, 2020.¹⁷⁵ Ms. Clarke mentioned that she was “leading a coalition her [*sic*] in Alabama to adopt a bill similar to Rep. Fred Deutsch’s” and that Rep. Deutsch was coaching them in this effort.¹⁷⁶ Ms. Clarke, however, does not mention which lawmakers she was working with for this bill, so it is not possible to use the Shupe emails to directly link these earlier efforts with the AVCCPA.¹⁷⁷ However, the State’s subsequent litigation in defense of the AVCCPA shows that this connection exists and continues to the present day.

Plaintiffs in *Boe v. Marshall* challenged the constitutionality of the AVCCPA in federal court.¹⁷⁸ In an atypical step in litigation involving states, the ADF joined the case as defendant-intervenor, litigating alongside the Alabama

170. Yale Physicians Response, *supra* note 107, at 6 (citing Fla. Admin. Code Section 59G-1.035 (4)).

171. *Id.*

172. *Id.* at 7.

173. Alabama Vulnerable Child Compassion and Protection Act S.B. 184, 2022 Reg. Sess. (Ala. 2022) (hereinafter “AVCCPA”).

174. *Id.* at § 4.

175. Email from Margaret Clarke, Eagle Forum of Alabama, to Elisa Shupe (Feb. 10, 2020, 9:00 AM) (on file with author).

176. *Id.*

177. *Id.*

178. *See Boe v. Marshall*, No. 2:22-cv-18, 2023 WL 3454575 (M.D. Ala. May 15, 2023).

Attorney General's Office to defend the AVCCPA.¹⁷⁹ This represents an unusual level of involvement of a private activist organization in what is fundamentally a challenge to a state's legislative actions.

The identity of the expert witness for the State further supports the connection between the Network and the AVCCPA. Only one expert witness was called by the State in defense of the AVCCPA: Dr. James Cantor.¹⁸⁰ As mentioned above, Dr. Cantor has been heavily involved in anti-transgender efforts across the country, most notably in West Virginia and Florida. Combined with the ADF's involvement in similar legislation in other states through the Network, it is reasonable to see this as a sign that the ADF may have also had a hand in crafting the AVCCPA as well.

C. THE NETWORK LIVES ON

Alabama and Florida are by no means outliers when it comes to the Network's influence. By the end of 2023, legislation targeting LGBTQ rights nearly tripled nationwide since 2022.¹⁸¹ In particular, more than two-thirds of all healthcare related bills introduced in 2023 were aimed at blocking gender affirming healthcare for transgender youth, with 167 bills introduced on this specific topic.¹⁸² Nineteen legislative bans on gender affirming healthcare for minors passed in 2023—more than triple the number of similar bills passed in the preceding two years combined.¹⁸³ Furthermore, the statutory text of these bills are largely similar to each other, further signaling organizational involvement in their drafting.¹⁸⁴

The extensive involvement of Network members in the public-facing aspects of these bills also signals the involvement in the Network behind the scenes. When examining expert testimony, either given in support of the bills themselves or after the laws have been challenged in court, the same experts pop up again and again.¹⁸⁵ However, the majority of the bills passed in 2023 give no public-facing testimony in support of the bills, likely due to the abbreviated time frame of passage of many of them.¹⁸⁶ But the similarity of these bills coupled with the known effort of the Network suggests that the vast majority of these efforts were at least influenced by the Network.

179. See *id.*; *ADF Attorneys Join Alabama to Defend its Law Protecting Children from Harmful Medical Procedures*, ADF (Dec. 12, 2022), <https://perma.cc/F8WQ-QWFW>.

180. Expert Report of James Cantor, *supra* note 112.

181. Anette Choi, *Record Number of Anti-LGBTQ Bills Have Been Introduced This Year*, CNN (Jan. 22, 2024), <https://perma.cc/96FV-2775>.

182. *Id.*

183. *Id.*; *Bans on Best Practice Medical Care for Transgender Youth*, MOVEMENT ADVANCEMENT PROJECT, <https://perma.cc/AT7J-XPTW>.

184. Pauly, *supra* note 4.

185. See e.g. Aviva Stahl, *Four Controversial Doctors Helping Republicans Attack Trans Healthcare*, THE GUARDIAN (Jun. 9, 2023), <https://perma.cc/3BM6-XM9E>.

186. See Sprayregen, *supra* note 2 (showing that some bills have moved from introduction to passage in as little as a couple of weeks).

V. WHY THIS MATTERS

It is not unusual for activists to collaborate with lawmakers on model legislation. Indeed, it is standard practice for lobbying groups to provide model legislation to lawmakers in hopes of influencing their actions.¹⁸⁷ So why is this effort different?

First, a key hallmark of the anti-LGBTQ movement is to portray legislation targeting the community as a response to organic constituent concerns.¹⁸⁸ This portrayal has been so successful that one activist interviewed by Mother Jones noted that even legislators themselves are frequently unaware that these bills are being pushed by outside forces.¹⁸⁹ As a result, legislators are voting based on what they see as their constituents' wishes, when in fact the support for such bills comes from outside groups.

Second, the obfuscation of the Network has resulted in a distorted public perception of the motivation behind such bans. Publicly, proponents of such bills speak about the necessity of protecting children from irreversible surgical decisions that they (in the proponents' view) cannot consent to.¹⁹⁰ Regardless of the fact that such irreversible surgery is almost never performed on minors, the actions taken by proponents of these bans is logically inconsistent with this stated rationale. The area in which this is most evident is the increase in the proposed ages under which an individual cannot receive gender affirming healthcare. As noted above, the first version of the South Dakota bill would have only applied to individuals under the age of sixteen.¹⁹¹ In 2023, six states debated bans on gender affirming care for some adults, with two states proposing bans up to the age of twenty-six, ostensibly because the human brain does not finish development until that age.¹⁹² However, this purported lack of brain development is seemingly irrelevant to any other irreversible life decision that can be made at that age. As Ms. Shupe, a career military officer, noted, "I could've had my brains liquified in the Middle East [before age twenty-six]."¹⁹³ These advocates are not attempting to raise the age of consent for any of the other rights conferred at adulthood, whether it be consenting to other irreversible medical procedures, taking on massive quantities of student debt, entering into binding contracts, or enrolling in the military. As such, this stated motivation is at best questionable.

The Shupe emails reveal that much of the opposition to gender affirming healthcare for minors is in fact based on religious beliefs. For instance, the emails

187. The American Legislative Exchange Council (ALEC) is a particularly notable and influential group doing exactly this. See Nancy Scola, *Exposing ALEC: How Conservative-Backed State Laws Are All Connected*, ATLANTIC, (Apr. 14, 2012) <https://perma.cc/YR66-6XC2>.

188. See Pauly, *supra* note 4.

189. See *id.*

190. Maggie Astor, *G.O.P. State Lawmakers Push a Growing Wave of Anti-Transgender Bills*, N.Y. TIMES, Jan. 26, 2023, at A13, <https://perma.cc/C6B7-4VF4>.

191. Email from Vernadette Broyles, *supra* note 73.

192. Ghorayshi, *supra* note 48.

193. Shupe Interview, *supra* note 62.

on Florida's failed 2020 ban noted that one of the groups working closely with Rep. Sabatini on the bill was the Florida Catholic Conference.¹⁹⁴ Group members openly spoke about how they were "stoked for what God is doing in Georgia—including a stall to the trans activist agenda."¹⁹⁵ This is further reflected by stated values and mission statements of the organizations involved in the Network. ACPeds, for instance, was explicitly founded on Judeo-Christian values.¹⁹⁶ The ADF was similarly founded in order to "protect religious freedom . . . And God's design for marriage and family."¹⁹⁷ And though the ADF portrays itself as broadly advocating for religious freedom, its history and case selection suggest that above all, the ADF advocates for a particular type of evangelical Christianity.¹⁹⁸ Liberty Counsel, another member of Deutsch's working group, describes itself as "a Christian ministry that proclaims, advocates, supports, advances, and defends . . . the gospel."¹⁹⁹

Ms. Shupe, when asked what motivated the individuals working on these bans, immediately answered "religious extremism."²⁰⁰ She stated that it was practically impossible to be part of this effort without religion, noting that group members would send her Bibles and ask whether she was going to church regularly.²⁰¹ And while individuals are certainly permitted to act in accordance with their religious beliefs, proponents of these bans take care to conceal that religion, rather than science, is the true motivation behind their work. As a result, neither the public nor other legislators have all the information needed to make an informed decision on the bills.

Third, and perhaps most importantly, the false portrayal of these bans as efforts to protect children covers up the true goal of the Network: a complete ban on gender affirmation care, regardless of age. This can be seen through the slow "mission creep"²⁰² of ever-increasing age required to access said care, especially those that would ban gender affirming care for individuals who are, in every other legal

194. Email from Dr. Michelle Cretella, *supra* note 89.

195. Email from Vernadette Broyles, Child & Parental Rts. Campaign, to Network Members (Oct. 30, 2019, 8:40 AM) (on file with author).

196. Fancher & Brown, *supra* note 141.

197. *Who We Are*, *supra* note 114.

198. *Id.*; see Christine Hauser, *Tennessee Couple Says Adoption Agency Turned Them Away for Being Jewish*, N.Y. TIMES, Jan. 23, 2022, at A22, <https://perma.cc/H5DB-LEN9>. The ADF is the legal counsel for the Christian adoption agency in this case. While the ADF argues that this position is consistent with its religious freedom in defending the agency's right to turn away those who do not practice Christianity, the plaintiffs argue that this is also a form of perpetuating religious discrimination because they were turned away for being Jewish.

199. *About*, LIBERTY COUNS., <https://perma.cc/359J-ftp2>.

200. Shupe Interview, *supra* note 62.

201. *Id.*

202. Ms. Shupe stated in her interview that this "mission creep" was part of her motivation in leaking the emails in the first place. Her initial motivation for involvement with the Network was in fact to protect children from some of the negative health consequences she suffered as a result of mismanaged gender affirmation care. However, once she saw the ever-increasing ages required to access said care, she realized that the effort wouldn't stop at children. *Id.*

sense, adults. Terry Schilling, of the American Principles Project (“APP”), told the New York Times that the APP’s goal in backing these bans was to eventually eliminate gender affirming care entirely—the initial focus on children was just “going where the consensus is.”²⁰³

CONCLUSION

The recent surge in bans on gender affirming healthcare is no coincidence. Virtually identical bills have been introduced and passed nationwide—all kick-started by South Dakota Rep. Fred Deutsch’s working group. Expert witnesses funded by anti-LGBTQ groups in one case repurpose their testimony in another seemingly neutral proceeding without citation to the first effort.²⁰⁴ Others copy text from advocacy groups in facially neutral testimony.²⁰⁵ And these individuals work together to advance bans on gender affirming healthcare without mentioning the ties between them. Nor does the Network disclose that scientific evidence is not the driving motivation behind its work. Instead, members use scientific testimony to provide a public rationale for their actions, while their internal communications show that science is being manipulated to support pre-existing conclusions.²⁰⁶

The Shupe emails show that this secrecy is deliberate.²⁰⁷ Throughout the various edits and back and forth on his bill, South Dakota Representative Deutsch asked the members of the group to not share their efforts with media organizations.²⁰⁸ After all, “[t]he longer we can fly under the radar the better.”²⁰⁹

203. Astor, *supra* note 190.

204. See discussion about Attachment D, *supra* III.A.1.

205. See discussion about Attachment E, *supra* III.A.2.

206. One example is the claim that gender affirming healthcare should be banned before the age of 26 because the human brain does not fully develop until this age. According to Ms. Shupe, this proposition was first brought up not by the physicians in this group, but instead by trans-exclusionary radical feminists in the Network. Now, however, the physicians are publicly the face of this rationale. Shupe Interview, *supra* note 62.

207. Email from Fred Deutsch, S.D. State Rep., to Network Members (Aug. 17, 2019, 6:25 PM) (on file with author).

208. *Id.*

209. *Id.*