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The Faulty Case against Arkansas's Law Limiting Gender Treatments for Minors

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By **CHRISTOPHER MILLS**
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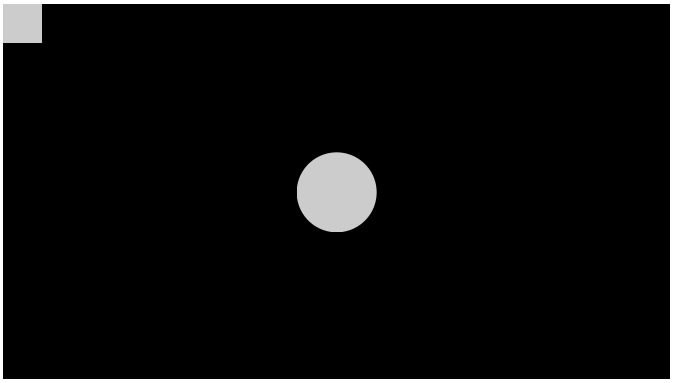
In *Brandt v. Rutledge*, the Eighth Circuit is now considering whether to reconsider en banc a panel decision upholding the lower court's preliminary injunction of Arkansas's SAFE Act, which would protect children from sterilizing gender-transition drugs and surgeries. In enjoining the law, the district court relied on claims by the American Academy of Pediatrics, the American Medical Association, the World Professional Association for Transgender Health, and other interest groups (collectively, "AAP") that "a robust body of scientific evidence supports the efficacy of" these interventions for "young people." AAP repeatedly made this claim, touting a "robust consensus" and a "robust body of empirical evidence." This claim became the foundation of the district court's analysis, which cited a single source — AAP's brief — to come to the remarkable conclusion that "the *only* effective treatment for individuals at risk of or suffering from gender dysphoria is to provide" sterilizing interventions (emphasis added). This conclusion, in turn, became the primary "factual finding" that the Eighth Circuit panel relied on, echoing the district court's statement (from AAP) that sterilizing transition interventions are "supported by medical evidence that has been subject to rigorous study."



But AAP's claim of robust evidence has always been false. How do we know? After Arkansas and its amici showed that nearly everyone — other than ideologically captured medical-interest groups in the U.S. — recognizes the paucity of reliable evidence about sterilizing interventions in minors, AAP quietly deleted *every claim* about a "robust body of empirical evidence" from the brief it later filed in the Eighth Circuit. Though the Family Research Council pointed out AAP's about-face in court filings, the panel ignored it and AAP refused to explain it, instead retreating to meaningless and still incorrect claims about "a growing body of evidence that indicates the efficacy of" sterilizing children. AAP's "growing body" is a

handful of slipshod studies that failed to control for relevant variables or to reach statistically or clinically significant results (as explained here, here, and here, without response from AAP). Regardless, AAP has implicitly conceded that the district court's AAP-derived conclusion — that a robust body of empirical studies proves that sterilizing interventions are the "only" treatment for gender dysphoria in children — is wrong.

So what does the science actually tell us about using sterilizing interventions on children to transition their gender? To the extent that the available evidence allows any conclusions, official medical authorities — not private interest groups with financial and ideological commitments — have concluded that "for adolescents with gender incongruence," "the risks of puberty suppressing treatment with [blockers] and gender-affirming hormonal treatment currently outweigh the possible benefits" (Sweden). England's National Health Service concluded that there is "limited evidence for the effectiveness and safety of gender-affirming hormones in children and adolescents" and the "long-term safety profile" is "largely unknown." France's Académie Nationale de Médecine likewise concluded that research "is still too rare" and "great medical caution must be taken." Finland, Australia, and New Zealand agree. The World Professional Association for Transgender Health (WPATH), in its own new Standards of Care — which nonetheless approve chest and genital *surgeries* to transition children regardless of age — says that because "the number of studies" about adolescent treatment "is still low," "a systematic review regarding outcomes of treatment in adolescents is not possible."

The reason to wait for medical interventions — and the reason that the SAFE Act passes any level of constitutional scrutiny — is that the consequences of "gender-affirming care" for a minor are drastic. As evidence before the district court showed, children who take puberty blockers and then cross-sex hormones — the near-universal transitioning pathway — "are expected to become sterile." As a result of the district court's injunction, Arkansas children will be permanently and profoundly altered in their ability to engage in intimate relationships and prevented from ever having children of their own.

AAP waves all this away as solvable by consent. Putting aside the impossibility of asking an eleven-year-old girl in psychological pain to meaningfully consent to giving away her reproductive abilities, AAP would not tell the truth about medical knowledge in this case, claiming a nonexistent "robust body of scientific evidence." Why should anyone expect its doctors — subject to AAP's oversight and with "big money maker" interventions at stake — to tell a little girl and her family what the AAP will not even say in court? As one recent article in a scientific journal explained, "the implications of administering a treatment with irreversible, life-changing consequences based on evidence that has an official designation of 'very low certainty'" are "rarely discussed with the patients," much less the "risks to fertility, bone, and cardiovascular health."

Given the building evidence of harms to children, combined with the lack of any long-term studies demonstrating the safety and effectiveness of these sterilizing interventions, Arkansas's SAFE Act is necessary to protect children. And en banc review by the Eighth Circuit is necessary to prevent constitutional law from being outsourced to ideological medical groups peddling false claims. (Such groups once uniformly promoted eugenic sterilization, opioids, and smoking, among much else.) WPATH removed minimum-age guidelines for transition surgeries from its own standards via a technical "correction" on the ground that surgeons performing genital surgeries on children might otherwise be subject to malpractice lawsuits. Why bother with the difficult work of addressing underlying mental-health issues through psychosocial support — an approach that many countries mandate but AAP assures "is not recommended" — when the prospect of profitable genital surgeries on vulnerable children, without threat of lawsuits, awaits?

This is not evidence-based medicine. It is evidence-free, ideological medicine. And our children are the victims.

Note: Christopher Mills represents the Family Research Council as amicus curiae in Brandt v. Rutledge. *FRC's brief in support of the rehearing is here.*

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