

No. 23-492

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IN THE  
**Supreme Court of the United States**

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JANE DOE 1, ET AL.,  
*Petitioners,*

v.

COMMONWEALTH OF KENTUCKY EX REL. DANIEL  
CAMERON, ATTORNEY GENERAL OF THE  
COMMONWEALTH OF KENTUCKY,  
*Respondent.*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Sixth Circuit**

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**BRIEF OF TRANSPARENT AS *AMICUS*  
*CURIAE* IN SUPPORT OF PETITIONERS**

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

TransParent is a 501(c)(3) not-for-profit organization with a mission to bring compassionate support to parents and caregivers navigating complex issues that arise in raising transgender children. TransParent was founded in 2011, when a group of parents based in St. Louis, Missouri, started organizing monthly meetings to discuss their experiences raising transgender children. These parents met in hopes of finding connection, support, and community, and to share knowledge and resources. In 2013, TransParent invested in a website that allowed it to organize and provide professional resources regarding transgender care. Today, TransParent is a national organization with a growing and diverse membership. TransParent is comprised of eighteen chapters in thirteen states across the country, whose members gather in monthly meetings to exchange advice and resources, and to support one another's families. Hundreds more individual members in states across the country have attended TransParent's national monthly virtual meetings.

A fundamental objective of parents who join TransParent is to find ways to help their transgender children live happy, healthy, and productive lives.

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<sup>1</sup> Pursuant to Supreme Court Rule 37, *amicus curiae* TransParent states that no counsel for any party authored this brief in whole or in part, and no entity or person other than *amicus curiae* or its counsel made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, counsel for TransParent provided notice to counsel of record for all parties of TransParent's intent to file an amicus brief in support of Petitioners 10 days prior to the filing deadline.

For many of these children, gender-affirming medical care is necessary to achieve that goal. TransParent thus has a substantial interest in ensuring that transgender adolescents receive the medically necessary gender-affirming healthcare prescribed by their providers. The Petition ably discusses important constitutional issues implicated by gender-affirming medical care bans. TransParent submits this brief as *amicus curiae* to emphasize the significant harms and distress parents of transgender children experience from these laws—and the scope and urgency of what is at stake for families with transgender children. TransParent urges the Court to grant certiorari to provide much-needed clarity on this time-sensitive issue of national importance.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

Laws banning gender-affirming medical care, such as SB150,<sup>2</sup> have upended the lives of families across the country. Thousands of parents—including TransParent’s members—have transgender children, many of whom suffer from a serious medical condition called gender dysphoria.<sup>3</sup> For decades, parents of children diagnosed with gender dysphoria were able to do the same thing most parents do when their child has any medical need: work with their trusted healthcare providers to pursue a safe, effective, and recommended course of treatment. Today, as a result of laws like SB150, parents in many states across the country no longer have the ability to access medically necessary and evidence-based healthcare for their children in their home states.

In the wake of these bans, TransParent’s members and other parents of transgender youth find themselves facing impossible choices. They can remain in states that ban gender-affirming care and watch their children suffer the psychological agony, anxiety, and depression resulting from prolonged, inadequately treated gender dysphoria—which can lead to self-harm. If they have the means, they can travel with their children to see providers in states where gender-affirming care is still available—a process that must be repeated several times each year, and comes with

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<sup>2</sup> SB150 refers to Ky. S.B. 150 § 4 (2023).

<sup>3</sup> Gender dysphoria is a diagnosis that describes the clinical and mental distress a transgender person experiences as a result of the conflict between their birth sex and gender identity.



substantial costs, financial and otherwise. Or they can uproot their families (in many cases from the only homes they have ever known) to move to a state where their transgender child can appropriately receive the care they need. Myriad complex considerations factor into these incredibly difficult decisions, including the needs of siblings and other relatives, careers, finances, school choices, and community ties.

These choices are further complicated by the uncertain legal status of gender-affirming medical care bans. As challenges percolate in the lower courts, parents are stuck in a state of limbo. They are overwhelmed with the enormity of the decisions they face and confused by the ever-evolving patchwork of care that exists in this country. Understandably, they do not want—and may not be able—to quit their jobs and move their families to a new state without knowing whether care may ultimately be permitted in their home states.

Yet parents do not have the luxury of waiting. Neither do their children. As even more courts of appeals consider the same legal issues that have already been litigated and re-litigated for the past few years, parents must make time-sensitive choices about their children's medical care. For some, puberty can hit at any moment, and without gender-affirming medical care, their children's gender dysphoria could worsen: causing depression, anxiety, social isolation, and even suicidality. For others, puberty has already started, and once the bans take effect, they will either run out of medicine or lose the opportunity to start medication. Without access to medical treatments, their bod-

ies will continue to develop secondary sex characteristics incompatible with their gender identities—further exacerbating their psychological distress. For some, this outcome may be fatal. This Court’s intervention is urgently needed.

## ARGUMENT

### I. THE PETITION RAISES ISSUES OF SIGNIFICANT NATIONAL IMPORTANCE THAT WARRANT THIS COURT’S REVIEW

This case implicates issues that reach far beyond Kentucky. Nearly half of the states in this country—twenty-two at present—have passed bans similar to SB150. These bans have left thousands of parents to deal with the fallout of their children losing access to evidence-based treatments supported by every major medical organization in the country. But the harms of these bans are not cabined to the states that have passed them. Their impacts are felt by parents and families nationwide—even in states where gender-affirming care remains available, as providers are overwhelmed with an influx of out-of-state patients. This Court should intervene to provide much-needed guidance on this important and far-reaching national issue.

#### A. Gender-Affirming Medical Care Bans Negatively Impact Thousands Of Parents And Families Of Diverse Backgrounds Across The Nation

The legal fate of gender-affirming medical care bans will have seismic ramifications for parents and families across the country. As of 2022, more than 300,000 minors in the United States identified as

transgender. Jody L. Herman, Andrew R. Flores & Kathryn K. O’Neill, *Research That Matters: How Many Adults and Youth Identify as Transgender in the United States?*, UCLA School of Law Williams Institute, 1 (June 2022). Of the transgender youth population, 35.1 percent live in a state with a gender-affirming care ban. See Map: Attacks on Gender Affirming Care by State, Human Rights Campaign (Nov. 13, 2023).<sup>4</sup> A significant number of transgender minors have been diagnosed with gender dysphoria—at least 42,000 in 2021, and 121,000 since 2017.<sup>5</sup> Robin Respaut & Chad Terhune, *Putting Numbers on the Rise in Children Seeking Gender Care*, Reuters (Oct. 6, 2022).<sup>6</sup> These numbers capture the broad impact of the issues presented in this case: medical bans like SB150 have stripped thousands of parents, in more than twenty states, of the ability to pursue safe, effective, and medically necessary care for their children. The magnitude of the intrusion on parental rights is staggering.

TransParent’s experience confirms both the scope and the severity of the problem. As more and more states have passed gender-affirming medical care bans over the past few years, TransParent’s member-

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<sup>4</sup> <https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map>.

<sup>5</sup> These figures are likely underinclusive, as they only reflect individuals with diagnosed gender dysphoria whose medical treatments for gender dysphoria were covered by insurance and whose providers logged a gender dysphoria diagnosis.

<sup>6</sup> <https://www.reuters.com/investigates/special-report/usa-transyouth-data/>.

ship continues to increase daily. In-person local chapter meetings are taking place in packed rooms, with concerned parents frequently driving long distances to discuss what comes next for their transgender children. Local chapter leaders are receiving an influx of calls and emails from parents seeking guidance about how to access medical care for their kids. TransParent continues to add new chapters across the country to meet these growing needs.

Gender-affirming care bans have impacted a wide range of families across racial, socioeconomic, and geographic lines. Families with transgender children are as diverse as the United States itself. Transgender youth reside in all 50 states and the District of Columbia. Herman, Flores & O'Neill, *supra*. The population is not concentrated in particular states or regions. Indeed, the percentages of minors who identify as transgender are relatively consistent across geographic regions, representing between 1.25 percent and 1.82 percent of the overall youth population in the West, Midwest, South, and Northeast. *Id.* at 9-10. The racial and ethnic distribution of transgender youth largely mirrors the U.S. population at large. *Id.* at 1. And state-level Medicaid data shows that the percentage of minors diagnosed with gender dysphoria in the Medicaid population is consistent with the percentage of minors diagnosed under private insurance plans, illustrating the impact of the issue on families of varied economic means. *See* Respaut & Terhune, *supra*.

TransParent's membership reflects this diversity. TransParent currently has eighteen chapters in thir-

teen states across the country, including Texas, Oregon, Arizona, Missouri, Illinois, Indiana, Tennessee, Mississippi, Georgia, New York, and Florida. New chapters are in the process of being added in Massachusetts and the Pacific Northwest. The organization has hundreds more individual members in states without chapters who join TransParent's monthly virtual national parent meetings to discuss the challenges that accompany raising transgender children, particularly in the wake of gender-affirming care bans. Still more parents write and call TransParent's leadership seeking guidance and support in raising transgender children.

These parents come from all walks of life: urban and rural, rich and poor. They have different jobs, education levels, and religious beliefs, and span the political spectrum. But they seek out TransParent's support because they share a common goal shared by virtually all parents: to raise happy, healthy, and thriving kids in a safe environment. Laws like SB150 drastically impair their ability to do so.

### **B. The Impact Of Gender-Affirming Medical Care Bans Has Been Felt Even In States That Have Not Passed Them**

The harms inflicted by gender-affirming medical care bans are not confined to the twenty-two states that have passed them. Families across the country have been impacted, even in states that affirmatively protect access to such care.

Providers in states where gender-affirming care is still available have experienced an influx of out-of-state patients unable to obtain treatment closer to

home. See Bram Sable-Smith, et al., *Why Some People Are Choosing to Move to States That Protect Gender-Affirming Health Care*, CNN Health (June 23, 2023)<sup>7</sup>. The increased demand for services in states where they remain available has severely strained those resources; waitlists for initial appointments can be a year or longer. This backlog in turn makes it more difficult for even in-state patients to obtain the care they need. See *id.* (noting that California providers are reporting an influx of calls from out-of-state patients seeking care at California clinics, which is overwhelming the state’s existing infrastructure of care); see also Megan Messerly, *Health Care Access For Trans Youth is Crumbling – And Not Just in Red States*, Politico (Apr. 23, 2023)<sup>8</sup>. As the director of a Seattle, Washington children’s clinic that provides gender-affirming care recently put it, out-of-state bans “make [her] worried about how [in-state providers] can adequately meet the needs of patients and families both here in Washington who have been on our waiting list for many months, but also so many patients and families that are uprooting their lives to be able to continue care.” Messerly, *supra* (cleaned up).

Making matters worse, the patchwork of care created by state gender-affirming care bans is having a chilling effect on medicine. Many health care providers have become wary of providing gender-affirming care to out-of-state patients, even in states where it is

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<sup>7</sup> <https://www.cnn.com/2023/06/23/health/families-moving-for-transgender-health-care/index.html>.

<sup>8</sup> <https://www.politico.com/news/2023/04/23/docs-who-treat-trans-youth-under-attack-00093322>.

legal, for fear of inadvertently running afoul of other states' bans and facing professional sanctions. See Jim Salter & Geoff Mulvihill, *Some Providers are Halting Gender-Affirming Care for Minors, Even Where it Remains Legal*, PBS News Hour (Sept. 22, 2023).<sup>9</sup> This phenomenon is compounding the existing national shortage of care. Many of TransParent's members are living this reality; they are either struggling to get their children on a waitlist at an out-of-state clinic (if they have the resources to travel for care) or are having difficulty obtaining appointments with their in-state providers due to increased demand driven by gender-affirming care bans in other states.

Simply put, bans on gender-affirming care have a truly national impact, affecting many thousands of families both in and beyond the twenty-two states that have enacted them. The far-reaching impact of the issues presented in this case underscores the need for this Court's intervention.

## **II. THE COURT SHOULD GRANT REVIEW NOW TO CONSIDER THE EXCEEDINGLY IMPORTANT ISSUES PRESENTED IN THIS CASE, WHICH DIRECTLY IMPACT TIME-SENSITIVE CHOICES ABOUT ESSENTIAL MEDICAL CARE**

The issues presented in this case warrant the Court's attention now. Gender-affirming medical bans have forced parents in states across the country to make extraordinarily difficult, life-altering choices.

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<sup>9</sup> <https://www.pbs.org/newshour/nation/some-providers-are-halting-gender-affirming-care-for-minors-even-where-it-remains-legal>.

They can stay put, knowing their transgender children may suffer indefinitely without access to the only medical treatments that are proven to treat gender dysphoria safely and effectively. The harms of losing access to this essential medical care are well-documented in the Petition and were undisputed by the Sixth Circuit below. *See* Pet. 31 (describing the scientific consensus that untreated gender dysphoria leads to a higher risk of suicidality); Pet. App. 63a (“If untreated, gender dysphoria may result in severe anxiety and depression, eating disorders, substance-use issues, self-harm, and suicidality.”); *id.* at 65a (noting the “substantial body of evidence” showing that gender-affirming medical interventions significantly decrease the likelihood of those harms).

Alternatively, some parents could remain in their home states and travel with their children to obtain out-of-state care. This option, of course, comes with significant financial and logistical costs. Most gender-affirming care treatments require an average of at least three to four doctor’s visits per year. For many families, seeking care from an out-of-state provider thus involves parents taking repeated time away from work and either flying or driving long distances with their children to medical appointments. In addition to the obvious travel costs, parents may also be forced to pay out-of-pocket for the treatments due to their home-state insurers refusing to cover the costs.

Despite these significant costs, many of TransParent’s members who have the financial means have opted to travel out of state to access medical care for



their children. For them, the sacrifices are worthwhile to avoid the mental and physical agony their children would experience without medically indicated treatment. But for many of these families, travelling is not a sustainable long-term solution. Parents are worried about the compounded harms of frequent time spent away from work, school, and their loved ones. See Madeline Carlisle, *As Texas Targets Trans Youth, a Family Leaves in Search of a Better Future*, Time (July 14, 2014)<sup>10</sup> (documenting one couple’s hesitations about travelling or moving out of state for care because they do not want their kids to miss “the crucial social and emotional developmental years of high school and middle school”).

The reality for most parents is that travelling for out-of-state care is simply not an option. Many families live in geographic regions where most, if not all, neighboring states have passed medical bans. For instance, almost every state in the southeastern United States, with the exception of South Carolina, bans gender-affirming care for minors. See Map: Attacks on Gender Affirming Care by State, *supra*. Families living in places like Louisiana, Arkansas, and Alabama would have to travel across several states to access care. Travel costs alone could be prohibitive. And beyond travel costs, for many single parents, parents with jobs that lack remote work flexibility, and parents who are small-business owners, extended time away from work would have a crippling impact on their finances.

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<sup>10</sup> <https://time.com/6196617/trans-kids-texas-leave/>.

Finally, parents fortunate enough to be able to do so could make the difficult decision to permanently move their families to another state where gender-affirming care is currently available. Reports abound of parents taking this drastic measure—leaving their homes, schools, places of worship, and communities behind. *See, e.g.,* Carlisle, *supra* (profiling ten families leaving their home states due to gender-affirming care bans). Many have made the move simply to minimize the uncertainties. As one parent put it, “[b]ecause we don’t know what’s going to happen . . . it’s time to go. . . . I don’t want my child to have to live through another one of the years of ‘what ifs.’” *See* Kiara Alfonseca, *‘Genocidal’: Transgender People Begin to Flee States with Anti-LGBTQ Laws*, ABC News (June 11, 2023).<sup>11</sup>

Some TransParent members have already relocated their families once, only to have to consider moving yet again because their new state subsequently passed a gender-affirming care ban. Other TransParent members have even made the agonizing decision to split up their families, with one parent moving with their transgender child to a state where care is accessible, and the other remaining in their home state alone or with other children. *See* Sasha van Oldershausen, *‘I Don’t Want to Live in This State of Terror Anymore’: Some Families with Trans Children Are Leaving Texas*, Texas Monthly (July 24, 2023)<sup>12</sup> (profiling another family that chose to split up

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<sup>11</sup> <https://abcnews.go.com/US/genocidal-transgender-people-begin-flee-states-anti-lgbtq/story?id=99909913>.

<sup>12</sup> <https://www.texasmonthly.com/news-politics/trans-families-leaving-texas/>.

to obtain gender-affirming care for their transgender child, noting that the family could not afford for the father to move until he found a job in California).

For many other families, however, moving is not an option. Some simply lack the means to do so for “a litany of reasons including family obligations, job security, or the high cost of an out-of-state move.” See Carlisle, *supra*. “Then you have the economy – a lot of people are struggling with housing and don’t have the resources to pick up and move.” Marc Ramirez, *As State Laws Target Transgender Children, Families Flee and Become ‘Political Refugees,’* USA Today (Oct. 29, 2022).<sup>13</sup> Others are legally prohibited from moving with their children due to custody arrangements. See von Oldershausen, *supra*.

Additional complex factors are at play for families considering what to do next. There are other relatives to think about, parents’ careers and finances to consider, community ties that are difficult to leave behind, and the social and educational needs of their other children. See, e.g., *id.* (profiling a mother who wants to move with her transgender child to California, but does not want to leave behind her aging parents, for whom she is the primary caretaker); Alfonso, *supra* (highlighting a family who had to decide whether to spend nearly all of its savings to move).

While many families have already made the decision to move, others are awaiting the outcome of the

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<sup>13</sup> <https://www.usatoday.com/story/news/nation/2022/10/29/transgender-children-families-flee-states-restricting-rights/10547110002/>.

ongoing legal challenges to medical bans. *See* Carlisle, *supra* (describing parents’ uncertainty in whether “to stay and fight” or grapple with when and where to move, if possible). They are wrestling with what to do, reluctant to make such life-altering choices for their families before the legal status of gender-affirming care is settled. They have tried to alleviate their children’s suffering via psychotherapy and other means, but know that medical interventions are necessary. They live in a perpetual state of uncertainty and anxiety over their children’s wellbeing.

This Court’s guidance is needed to end this cycle of uncertainty. As explained in the Petition, this case squarely presents important questions regarding the constitutionality of gender-affirming medical care bans, and there is no need for the Court to await further proceedings in this case or further percolation in the lower courts before granting review to address those issues. *See* Pet. 31-32. And thousands of families across the country are urgently in need of clarity about whether gender-affirming care bans will be permitted to stand. Parents know that waiting too long to access gender-affirming healthcare can lead to dire, sometimes even fatal, health outcomes for their children. They need to make time-sensitive choices and start taking the financial and logistical steps to see those plans through. The longer this Court waits to weigh in on the constitutional issues implicated by gender-affirming care bans, the longer families across the country will remain stuck in a state of limbo.

TransParent urges the Court to grant the Petition so that parents can make the best decisions for their families with the confidence and finality they deserve.

**CONCLUSION**

For the foregoing reasons and those stated in the Petition, certiorari should be granted.

Respectfully submitted.

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