

Gender Identity Freedom with California as Safe Haven v. Texas-Style Prosecution

Elisa Reiter and Daniel Pollack | January 5, 2023



On Dec. 30, 2022, the Texas Supreme Court denied *mandamus* in *In Re Jeff Younger*. The underlying case involves twin boys, one of whom exhibited confusion about his gender. Said differently, one of the twins identified as female, rather than male. The boys' mother, Anne Georgulas, a pediatrician, was recently allowed to relocate anywhere in the United States with the parties' children. The mother chose California. The father asserted that the mother's move to California was predicated on the mother's desire to facilitate "medical 'transitioning'" of the parties' son.

Three months following the move to California, the father sought an emergency order mandating the family's return to Texas.

The Texas Supreme Court denied Younger's *pro se mandamus*, noting that he already has a district court order in place that prohibits the boys' mother from undertaking a medical transition of their son. Further, the father contends that the boy expresses no gender confusion while in father's care. By contrast, the mother contends that their son self-identifies as female, and prefers to be addressed as "Luna."

Over a year ago, in October 2021, with the mother's consent, an order was entered providing, in pertinent part: "...neither parent may treat a child with hormonal suppression therapy, puberty blockers, and/or transgender reassignment surgery (if any) without the consent of the parents or court order." The father contended that the mother's move to California was in reliance on California Senate Bill 107, which prohibits "the enforcement of an order based on another state's law authorizing a child to be removed from their parent or guardian based on that parent or guardian allowing their child to receive gender-affirming health care or gender-affirming mental health care."

In Texas, Attorney General Ken Paxton seeks to criminalize conduct that may be described as gender affirming health care, characterizing such actions as child abuse.

On New Year's Eve, the Texas Supreme Court dismissed Younger's *mandamus*, characterizing the relief sought as belated and unnecessary. The Texas Supreme Court criticizes Younger for not seeing his children in over a year, and further, for filing a *pro se*

mandamus when such complicated issues were presented. Justices Jimmy Blacklock and Evan Young note in a concurring opinion that:

This Court cannot intervene based on tenuous speculation about what other courts might do in the future at the request of a party who may never ask...The only court to have acted so far has preserved Father's right to withhold consent to gender-transition therapy for his son. That right is enforceable in California, where Mother lacks the legal authority to consent to such therapy for the child, both before and after SB 107.

Justices Blacklock and Young add that if Dr. Georgulas seeks to modify the Texas district court's order, seeking to allow "Luna" to begin gender transition without obtaining the written consent of the child's father, then Younger would be in the position to seek immediate appellate review.

Why is California viewed as a refuge for trans children? California State Senator Scott Wiener (D-San Francisco) presented Senate Bill 107, signed into law by Gov. Gavin Newsom, which seeks to:

protect trans kids and their families if they flee to California from Alabama, Texas, Idaho or any other state criminalizing the parents of trans kids for allowing them to receive gender-affirming care. If these parents and their kids come to California, the legislation will help protect them from having their kids taken away from them or from being criminally prosecuted for supporting their trans kids' access to healthcare.

The component parts of the California legislation, which are effective as of January 1, 2023, are described as follows by Sen. Wiener's office as follows:

1) It prohibits the enforcement of a law of another state that authorizes a state agency to remove a child from their parent or guardian based on the parent or guardian allowing their child to receive gender-affirming health care. The bill would prevent California's law enforcement from cooperating with any individual or out-of-state agency regarding the provision of lawful gender-affirming health care performed in this state. As a result, families will be able to come to California to avoid having their trans children taken away from them.

2) It bars compliance in California with any out-of-state subpoena seeking health or other related information about people who come to California to receive gender-affirming care, if the subpoena relates to efforts to criminalize individuals or remove children from their homes for having received gender-affirming care. Some states are considering legislation that would extend their criminal prohibitions even to residents who travel out of state to receive gender-affirming health care.

3) It prohibits law enforcement participation in the arrest or extradition of an individual that criminalizes allowing a person to receive or provide gender-affirming health care where that conduct is lawful in California and to the fullest extent permitted by federal law. It will declare that it is California's public policy that any out-of-state criminal arrest warrant for someone based on violating another state's law against receiving gender-affirming care is the lowest priority for law enforcement in California.

Gov. Abbott, Lieutenant Gov. Dan Patrick, and Attorney General Ken Paxton were re-elected to their respective positions in November 2022. Will they change their minds and give gender affirming treatment to trans youth in light of this holding in *In Re Younger*? Stay tuned.

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