



First and Fourteenth

To: Minnesota State Legislature
From: L. Martin Nussbaum, esq.
Re: Minnesota HF 2607, the gender-affirming care health plan coverage mandate
Date: March 15, 2024

Our law firm has been asked to comment regarding HF 2607, a bill that requires employee health plans to cover gender-affirming care. Because of our experience in public law and the law affecting religious institutions, we have closely followed developments with regard to the science, conscience issues, and legislation related to gender transition. Gender transition issues have become more problematic given the epidemic of teenage girls identifying as transgender and the growing evidence that the “science” supporting gender transition is deeply flawed.

HF 2607 Would Burden Religious Exercise for Many. Many religious employers, including Catholic, Evangelical Christians, Orthodox Jews, and Muslims, believe that God created humans male and female and that this is no divine mistake. *See, e.g.*, Gen. 5:2 (“Male and female he created them”), Mt. 19:4 (“he who made them from the beginning made them male and female”), Quran 49:13 (“We have created you male and female”).

Transgender Medicine Is Not Settled. Its Practice Injures Many. Most religions also subscribe to the value at the core of the Hippocratic Oath: “first do no harm.” This principle looms large given the growing scientific evidence that, with regard to gender transition procedures, minors are incapable of giving informed consent,¹ and the risks of adverse outcomes are substantial.²

¹ Recently leaked documents reveal that even the medical professional working with the World Professional Association of Transgender Health (“WPATH”) “admit to the impossibility of getting proper informed consent for hormonal interventions from their young patients.” Mia Hughes, *The WPATH Files: Pseudoscientific Surgical and Hormonal Experiments on Children, Adolescents, and Vulnerable Adults*, Environmental Progress (March 5, 2024); *see also Bell v. Tavistock and Portman NHS Foundation Trust*, 2020 EWHC 3274 (Admin.) (Engl. 2020).

² Adverse outcomes include: (a) from genital surgery: a suicide rate nineteen times the general population, Cecilia Dhejne, *Long-term Follow-up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 6 PLoS ONE e16885 (2011); (b) from puberty blockers: adverse effects on social and emotional maturation and bone density, stunted maturation of genitals and reproductive organs, and impaired sexual functioning as an adult, Cecilia Dhejne, *Long-term Follow-up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden*, 6 PLoS ONE e16885 (2011); (c) from cross sex hormones: genital or vaginal atrophy, hair loss or gain, voice changes, impaired fertility, increased cardiovascular risks, and liver and metabolic changes, Stephen B. Levine, *Reconsidering Informed Consent for Trans-Identified Children, Adolescents, and Young Adults*,

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Religious Exemption from Morally-Controversial Legislation Is Consistent with the Finest Traditions of American and Minnesota law. It has long been the practice in Minnesota and elsewhere that legislators often provide religious exemption from morally controversial laws.³ They do so because religious liberty is most distinctive aspect of the American experiment. This is why James Madison called it the “lustre of our country.” In the First Amendment, the founders of our country forbade government action “prohibiting the free exercise” of religion. U.S. Const., amend. I. Minnesota’s founders went further.⁴ The preamble to the state constitution states that the people adopted Minnesota’s constitution because they were “grateful to God for our civil *and religious liberty*.” Then in article I, section 16, they stated that “[t]he right of every man to worship God according to the dictates of his own conscience shall never be infringed . . . *nor shall any control or interference with the rights of conscience be permitted . . .*” The Minnesota Legislature has, consistent with this high tradition, provided statutory religious exemptions.⁵

Why does religious freedom matter? It matters because the most distinctive aspect of the human condition is that every person is endowed with a conscience. As Aristotle taught long ago, conscience requires exercise. Exercise of conscience requires freedom. Without freedom to act according to one’s conscience, we cannot become a virtuous people. Benjamin Franklin recognized that “only a virtuous people are capable of freedom.

There’s more. Professor Elizabeth Clark has cited scores of studies showing that religious liberty promotes human flourishing.

Religion is extensively documented to have a positive effect on individuals’ well-being and health. This includes a sense of wellbeing, life satisfaction, mental health, and physical health levels, including lowered suicide rates and deaths of despair . . . Religiosity is correlated with reduced criminality [and] with lower recidivism rates and fewer disciplinary problems in prison. . . . The impact of religion in individuals is particularly noticeable in adolescents. Positive correlations with religiosity include physical and mental health, academic achievements, and community involvement.

48 J. Sex & Marital Therapy 706 (2022); *Gender-Affirming Hormone in Children and Adolescents*, BJM EBM Spotlight (Feb. 25, 2019).

³ See, e.g., George Washington’s January 29, 1777 letter to Pennsylvania Council of Safety calling for imposition of a draft so long as it exempted the “conscientiously scrupulous” like Amish and Mennonites.

⁴ See *State v. Hershberger*, 462 N.W.2d 393, 397 (Minn. 1990) (explaining that “Minnesotans are afforded greater protection for religious liberties against governmental action under the state constitution than under the first amendment of the federal constitution”).

⁵ See, e.g., Minn. Stat. §§ 363A.26 (religious organization exemption from Human Rights Act’s prohibition on religious discrimination); 253B.03 (protecting patient’s right to practice religion).

Frequent attenders at religious services engage in fewer risky behaviors such as illegal drug and alcohol use.

Religious beliefs can anchor and inspire communities, promote intergenerational norm transfer, and develop democratic values such as tolerance, reflective thinking, generosity, altruism, and law-abidingness. Religion and religious organizations also promote peacemaking through non-violent democratic movements, mediation . . . and shaping of transitional justice by religious actors. Faith-based associations also provide enormous support for humanitarian, educational, and medical care.

Elizabeth A. Clark, *The Impact of Religion and Religious Organizations*, 49 *BYU L. Rev.* 1, 5-6, 20 (2023).

The Re-Definition of “Medical Assistance” to Include Standards of Care Pronounced by Radicalized Medical Societies Will Only Hurt the Poor. Section 2 of HF2607 redefines “gender affirming care” as a subset of “medical assistance” provided for needy persons to include the “procedures and criteria . . . recognized by prevailing professional standards.” If the prevailing medical standards are those of medical societies like the World Professional Association of Transgender Health, the Endocrine Society, and the American Academy of Pediatrics, this provision incorporates pseudo-science and ideology into Minnesota law to the detriment of the poor.⁶

HF 2607 Will Trigger Two Types of Lawsuits Requiring the State to Incur Unnecessary Expense. If passed without religious exemption, conscientious religious employers are likely to sue the State for religious exemption as required by Minn. Const. art. 1, § 16 and U.S. Const., amend. I. In addition, there is a growing number of medical malpractice lawsuits being filed for facilitating pediatric gender transition due to the frequency of adverse outcomes from such procedures.⁷ Such lawsuits create unnecessary strife and expense.

⁶ See Leor Sapir, ‘Trust the Experts’ Is Not Enough: U.S. Medical Groups Get the Science Wrong on Pediatric ‘Gender Affirming’ Care, Manhattan Institute Memo (Winter 2022); Mia Hughes, *The WPATH Files: Pseudoscientific Surgical and Hormonal Experiments on Children, Adolescents, and Vulnerable Adults*, Environmental Progress (March 5, 2024); Leor Sapir, *The American Academy of Pediatrics’ Dubious Transgender Science*, Wall Street Journal (August 17, 2022).

⁷ See, e.g., the law firm, Campbell Miller Payne that specializes in “Justice for the Detransitioner Community,” here: <https://cmppllc.com/>, Dan Hart, ‘Only the Beginning’: Lawsuits from Detransitioners Are on the Rise, The Washington Stand (December 7, 2023).