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Many new bans on medical care for transgender children are being challenged in courts

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Heard on Morning Edition



By Morgan Watkins

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Gender-affirming care bans are undergoing intense legal scrutiny and testing federal courts in new ways, setting up battles that may go all the way to the U.S. Supreme Court.

STEVE INSKEEP, HOST:

A very small portion of the population identifies as transgender, but a very large part of this country's political discussion touches on transgender issues. Twenty states have now banned some medical care for transgender children, and nearly half of those laws are being challenged in federal court. Here's Louisville Public Media's Morgan Watkins.

MORGAN WATKINS, BYLINE: Back in March, the Kentucky Legislature debated

whether to ban gender-affirming hormone therapy for minors. Here's Republican State Representative Jennifer Decker defending the plan.

(SOUNDBITE OF ARCHIVED RECORDING)

JENNIFER DECKER: I have great compassion for the children, parents and their families who are in this situation. However, ultimately, it is our obligation to protect children from irreparable harm.

WATKINS: The ban passed in Kentucky, and now the debate has shifted to the courts. That's true here and in other states with similar laws. A question at the heart of these lawsuits is, do bans on gender-affirming care violate the 14th Amendment of the U.S. Constitution?

ABIGAIL MONCRIEFF: So the problem with gender-affirming care is that it's never been challenged before. The question of do parents have a right to provide their children with gender-affirming care is a new question.

WATKINS: That's Abigail Moncrieff. She's co-director of Cleveland State University's Center for Health Law and Policy. Right now, almost all the lawsuits are in the early stages. But you can separate the rulings we've seen so far into two camps. The first camp says parents probably do have a right to get their kids gender-affirming care. Several district courts fall into that group. Moncrieff says they also argue...

MONCRIEFF: The medical care that's at issue is not unsafe or ineffective or quack medicine. Therefore, a statute interfering with a parent's right to make that choice on behalf of their child is unconstitutional.

WATKINS: Moncrieff says camp two argues gender-affirming care bans likely do not violate the 14th Amendment. It only has one member so far, the 6th Circuit Court of Appeals. Earlier this month, the 6th Circuit let Tennessee's ban temporarily take

effect. That prompted a district court judge to reinstate Kentucky's ban too. The appeals court warns against judges hamstringing legislatures. Here's how Moncrieff describes a main theme of the ruling.

MONCRIEFF: Courts should be extremely hesitant to create new constitutional rights that block the states from experimenting with legislative approaches.

WATKINS: The 6th Circuit also argues the bans likely do not discriminate against trans children based on sex. Moncrieff thinks other courts will join the 6th Circuit in camp two. There's a good chance you'll see a circuit split where appeals courts reach different conclusions about the law's constitutionality. That's one reason why she thinks the U.S. Supreme Court will weigh in on this issue eventually.

MONCRIEFF: I'm honestly not sure whether they'll jump in quickly or whether they'll wait for a little while to let the question percolate.

WATKINS: But kids' health care is on the line, says Bobbie Glass, a Kentucky educator and trans woman. She's watching the courts.

BOBBIE GLASS: And now we have a predominantly conservative Supreme Court, and their judgment is going to be really tested in all of this.

WATKINS: Glass says it's a relief to see district court judges criticize states' baseless medical arguments for prohibiting care for trans kids.

GLASS: Well, you know, it's like, gosh, maybe there is some hope that there's some sanity, because what you have is flawed theology, toxic religion running rampant over the Constitution.

WATKINS: And the legal system is changing, says Moncrieff, so it isn't obvious how the courts might rule.

MONCRIEFF: The Constitution is resting on shifting sands, and it's a little unclear how it's going to settle.

WATKINS: In the meantime, that uncertainty weighs on many transgender kids and their families.

For NPR News, I'm Morgan Watkins in Louisville.

(SOUNDBITE OF MUSIC)

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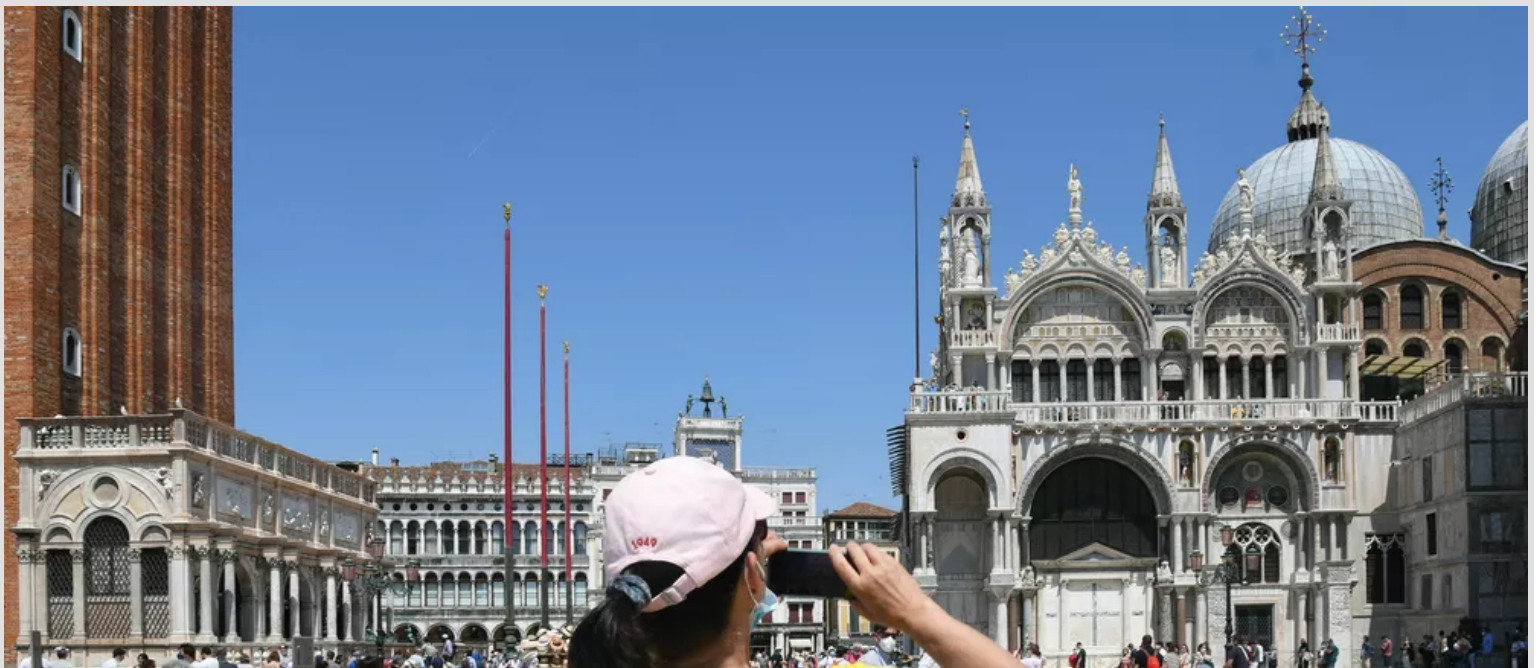
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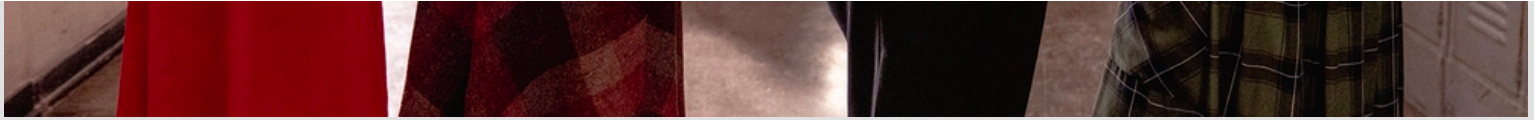
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