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North Dakota judge denies temporary halt to transgender health care ban for children

Three families and a pediatrician sued the state on Sept. 15, saying the ban harms transgender children and violates their civil rights by depriving them the right to make personal medical decisions.



Tate Dolney, center, a 12-year-old transgender boy, stands with his parents, Devon Dolney, left, and Robert Dolney Thursday, Sept. 14, 2023, at the North Dakota State Capitol in Bismarck while announcing a lawsuit that seeks to lift a ban on transgender and nonbinary health care for children. Contributed / Gender Justice



By **April Baumgarten**

Today at 5:38 PM

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In an order filed Monday, Nov. 13, Burleigh County Judge Jackson Lofgren denied a motion for a temporary restraining order against the ban signed into law earlier this year. The law was approved through House Bill 1254, which prohibits sex-reassignment surgeries for children. The law also makes it a crime for medical professionals to prescribe hormone treatment or puberty blockers to transgender minors.

North Dakota Gov. Doug Burgum signed the bill in April, and it became effective immediately.

[Three families and a pediatrician sued North Dakota](https://www.inforum.com/news/north-dakota/families-sue-to-repeal-north-dakotas-ban-on-transgender-nonbinary-health-care-for-children)<https://www.inforum.com/news/north-dakota/families-sue-to-repeal-north-dakotas-ban-on-transgender-nonbinary-health-care-for-children>) on Sept. 15, saying the ban harms transgender children and violates their civil rights by depriving them the right to make personal medical decisions.

The lawsuit asked that the law be declared void. Plaintiffs also asked for a temporary halt to the ban while the case goes through the courts.

A temporary restraining order would not be appropriate in this case, Lofgren said in his opinion. Attorneys for the families and doctor argued the plaintiffs will continue to be injured the longer the law remains in effect.

Lofgren said that argument loses strength since the lawsuit wasn't filed until five months after the law was placed on the books. Temporary restraining orders are supposed to maintain a status quo, and in this case, that is enforcing the transgender health care ban, Lofgren wrote.

Issuing a restraining order on a law that someone alleges is unconstitutional is "one of the most extreme reliefs," Lofgren said. Plaintiffs must prove "beyond a reasonable doubt" that the transgender health care ban violates Constitutional rights, he wrote.

“The plaintiffs argue the challenged statutes are subject to strict scrutiny,” Lofgren wrote. “However, this heightened scrutiny hinges upon inclusion in a protected class not previously recognized by the North Dakota Supreme Court or a new application of state constitutional principles.”

The lawsuit was brought against North Dakota Attorney General Drew Wrigley, who declined to comment on the case. State's attorneys in Burleigh, Cass and Stark counties were also named as defendants in the case since that's where the three families live. The state's attorneys no longer have to appear for hearings, according to court filings.

Gender Justice, which is representing the three families and Dr. Luis Casas, said in a statement that it was disappointed in the ruling but was confident the ban will ultimately be overturned.

"Kids in North Dakota who need the literally life-saving health care that this law denies them will continue to suffer harm as long as the law remains in effect," Brittany Stewart, a Gender Justice senior staff attorney, said in the statement.

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