September 26, 2025

To: Chairman Andrew N. Ferguson
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

From: The undersigned State Attorneys General

Re: *Request for Public Comment Regarding "Gender-Affirming Care" for Minors*

INTRODUCTION

On July 28, 2025, the Federal Trade Commission (FTC) issued a Request for Public Comment Regarding "Gender-Affirming Care" for Minors (hereinafter, "RFI") "to better understand how consumers may have been exposed to false or unsupported claims about 'gender-affirming care' (GAC), especially as it relates to minors, and to gauge the harms consumers may be experiencing."[1] Specifically, in light of the purported "debate" around the safety and efficacy of gender-affirming care, "the FTC seeks to evaluate whether consumers (in particular, minors) have been harmed by GAC and whether medical professionals or others may have violated Sections 5 and 12 [15 U.S.C. §§ 45 and 52] of the FTC Act by failing to disclose material risks associated with GAC or making false or unsubstantiated claims about the benefits or effectiveness of GAC."[2]

In response to this RFI, the signatory State Attorneys General below ("States") submit the following information for consideration by the FTC. As State Attorneys General, our offices are well-versed in enforcing state laws barring deceptive and fraudulent conduct. Indeed, we are consumer protection officers for our respective States. This comment is based on our expertise in consumer protection law, particularly as related to the advertising aspects of the practice of medicine, and our experience working alongside the FTC to enforce state and federal consumer protection laws in a variety of contexts.

As explained further herein, our States' experience is that gender-affirming care, which is supported by every major medical association as medically necessary treatment for gender dysphoria, is based on rigorous standards of care and has significant benefits for adolescents and their families. The FTC oversteps its bounds in requesting the information in its RFI and seeking to regulate the practice of medicine, which is squarely a police power reserved to the States. The Tenth Amendment reserves for the States all rights and powers "not delegated to the United States."[3] Commonly referred to as "traditional state police powers," the rights and powers of the

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[1] Fed. Trade Comm'n, *Request for Public Comment Regarding "Gender-Affirming Care" for Minors*, at 1 (July 28, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/GAC-RFI-FINAL.pdf.

[2] *Id*. at 2.

[3] U.S. Const. amend. X.

States include the protection of the health, safety, and welfare of state citizens.[4] Such powers entail the authority to regulate the practice of medicine. States regulate the practice of medicine by defining the scope and contours of medical practice and requiring medical licenses for practitioners. Our States have robust regulatory and licensing agencies that protect our citizens by exercising this authority. States also play a key role in setting the standard for informed consent in medical care. Courts have long upheld a broad set of "state medical practice laws against constitutional challenges, making clear that states are generally authorized to legislate in the medical practice area."[5]

The FTC's attempts to intimidate and to interfere in the lawful and protected care of transgender individuals and their families is unauthorized, unprecedented, and deeply troubling. The FTC should abandon this line of inquiry.

A. Factual Background

Transgender and gender-diverse (TGD) people "have existed across time, cultures, and socioeconomic/ethnic groups."[6] Their stories have often been relegated to the margins, if not the black holes, of history, and they have been persistently targeted as convenient political scapegoats, and subjected to de facto and de jure discrimination and state violence.[7] Despite this, over the course of the 20th and 21st centuries, TGD people have increasingly been accepted into mainstream society; and in tandem with advances in civil rights and in modern medicine, TGD people have had increasing access to healthcare designed to treat their unique medical needs.

More recently, TGD communities—and particularly TGD youth—have once again been targeted by a wave of discriminatory laws and policies, and the healthcare designed to meet their medical needs—called "gender-affirming care"—has come under increasing attack. Indeed, the FTC's RFI follows a raft of executive orders (EOs)—and federal agency actions implementing those EOs—that seek to eliminate gender-affirming care for people under 19 and to otherwise target TGD individuals for discrimination. These EOs deny the very existence of TGD individuals, attempt to banish them from public life, and seek to refuse them medically necessary healthcare. These goals are overt. The President of the United States has stated that it is the official policy of the United States to recognize only two sexes, that gender is immutable, and that federal agencies

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[4] *See Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985) ("The States traditionally have had great latitude under their police powers to legislate as 'to the protection of the lives, limbs, health, comfort, and quiet of all persons.'" (quoting *Slaughter-House Cases*, 83 U.S. 36, 62 (1872))).

[5] Patricia J. Zettler, *Toward Coherent Federal Oversight of Medicine*, 52 San Diego. L. Rev. 427, 448 (2015).

[6] Carolyn Wolf-Gould et al., *A History of Transgender Medicine in the United States* 1 (2025), https://www.jstor.org/stable/jj.24440883.

[7] *See, e.g.*, Liz Tracey, *90 Years On: The Destruction of the Institute of Sexual Science*, JStor Daily (May 31, 2023), https://daily.jstor.org/90-years-on-the-destruction-of-the-institute-of-sexual-science/ (describing the destruction of the first medical center dedicated to the provision of gender affirming care by the Nazi party as an "early organized spectacle of [its] power").

must act to end federal funding of "Gender Ideology."[8] President Trump has specifically referred to gender-affirming care as "chemical and surgical mutilation," and characterized licensed medical providers as promoting "the radical and false claim that adults can change a child's sex."[9] Federal agencies and officials have rushed to carry out these orders. The U.S. Attorney General has not minced words that she will use the Department of Justice to "bring [] an end" to gender-affirming care for transgender adolescents and young adults,[10] and the Administration has publicly claimed victory when their campaign of intimidation has resulted in hospitals and providers ceasing to provide this care.[11] The cumulative, and intended, result of these actions has been to create an atmosphere of fear and intimidation for TGD individuals, their families and caregivers, and the medical professionals who seek only to provide necessary, lawful care to their patients. The FTC's RFI is the latest front in this escalating campaign of deliberate intimidation.

Such political attacks cannot find justification in science or law. Gender-affirming care in the United States has developed over years of rigorous research and clinical practice and is an established and robust field of medical practice. Practitioners who provide this essential, evidence-based, life-saving medical care should not be targeted for baseless investigation by government actors merely because they treat one of society's most marginalized groups.

1. Patients report overwhelmingly positive results from accessing gender-affirming care.

TGD identities, as they are primarily understood in the United States, can be essentially described as a variance between the gender identity an individual might be assumed to have based on sex assigned at birth and the gender identity an individual actually experiences. Neither gender nor sex exist solely on a male/female binary but instead can encompass a range of identities and biological variations.[12]

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[8] Executive Order No. 14,168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, 90 Fed. Reg. 8615 (Jan. 20, 2025).

[9] Executive Order No. 14,187, *Protecting Children from Chemical and Surgical Mutilation*, 90 Fed. Reg. 8,771 (Jan. 28, 2025).

[10] Pamela Bondi, Att'y Gen., *Memorandum on Preventing the Mutilation of American Children*, (Apr. 22, 2025), https://www.justice.gov/ag/media/1402396/dl?inline.

[11] *See* White House, *President Trump Promised to End Child Sexual Mutilation — and He Delivered* (July 25, 2025), https://www.whitehouse.gov/articles/2025/07/president-trump-promised-to-end-child-sexual-mutilation-and-he-delivered/ (listing hospitals across the country that have stopped providing gender-affirming care to adolescents).

[12] *See* U.S. Dep't of Health & Human Servs., *Advancing Health Equity for Intersex Individuals* 3 (Jan. 2025), available at https://interactadvocates.org/wp-content/uploads/2025/01/intersex-health-equity-report.pdf (discussing "sex characteristics," i.e., physical traits related to reproduction and naturally occurring variations of sex characteristics).

Individuals who experience incongruence between their gender identity and their physical characteristics may experience serious mental distress, defined as "gender dysphoria."[13] Left untreated, gender dysphoria can substantially affect quality of life, including causing "symptoms of depression and anxiety, substance use disorders, a negative sense of well-being and poor self-esteem, and an increased risk of self-harm and suicidality."[14] The experience of gender dysphoria is exacerbated by social marginalization and ostracization. It is thus unsurprising that the TGD population experiences disproportionate rates of suicidality.[15] Nearly 42% of TGD adults report attempting suicide—significantly higher than that of other populations.[16] Gender-affirming care, in particular the delivery of hormonal therapies, has been shown to dramatically improve mental health outcomes for TGD individuals.[17]

And indeed, patients who are able to access gender-affirming care generally report very high levels of satisfaction with the care and positive impacts on their mental and physical health. As one father publicly described the impact of gender-affirming care for his daughter: "Before she came out as trans, we were having incredible behavioral issues, and she was just not herself and depressed. … Coming out really started her journey to flourishing as a person. We've seen her flower and mature and be happy."[18] A mother of a transgender boy in California explained, "I

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[13] *See* Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 512-14 (5th ed., text rev. 2022).

[14] Garima Garg et al., *Gender Dysphoria*, StatPearls (July 11, 2023), https://www.ncbi.nlm.nih.gov/books/NBK532313/.

[15] Jeremy D. Kidd et al., *Prevalence of Substance Use and Mental Health Problems Among Transgender and Cisgender U.S. Adults: Results from a National Probability Sample*, 326 Psychiatry Research 115339 (Aug. 2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10528335/pdf/nihms-1915951.pdf.

[16] *Id*. *See also* Lucas Shelemy et al., *Systematic Review of Prospective Adult Mental Health Outcomes Following Affirmative Interventions for Gender Dysphoria*, 26 Intl. J. Transgender Health 480, 480 (Apr. 3, 2024), https://www.tandfonline.com/doi/10.1080/26895269.2024.2333525.

[17] *Id.*; Giuliana Grossi, *Suicide Risk Reduces 73% in Transgender, Nonbinary Youths with Gender-Affirming Care*, HCPLive (Mar. 9, 2022), https://www.hcplive.com/view/suicide-risk-reduces-73-transgender-nonbinary-youths-gender-affirming-care (citing Diana M. Tordoff et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, Pediatrics (Feb. 25, 2022), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789423; Daniel Jackson, *Suicide-Related Outcomes Following Gender-Affirming Treatment: A Review*, Cureus (Mar. 20, 2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10027312/ (concluding that the majority of reviewed studies "indicated a reduction in suicidality following gender-affirming treatment" but acknowledging "a need for continued research").

[18] Anya Kamentz, *'It Shouldn't Be Happening Here': Parents of Trans Children in NYC Are Outraged as Hospitals Quietly Shift their Approach to Gender-affirming Care*, N.Y. Mag. (Feb. 4, 2025), https://www.thecut.com/article/parents-react-nyc-hospitals-denying-gender-affirming-care.html.

honestly don't know how he would be doing without the blockers, or if he would even still be here. I believe the blockers have not only saved his life but helped him thrive in who he is."[19] Likewise, the father of a transgender son in Texas stated: "Gender affirming care has saved my child's life. Before transitioning he was suicidal and depressed and had to go in patient and do multiple intensive outpatient [] programs. Him being able to medically transition at the age of 16 has saved his life. From a mental health perspective, he is now doing incredibly well and is a full-time college student living on campus. 3 years ago he was struggling just to survive."[20]

Because gender-affirming care is such critical treatment for many TGD people, rates of satisfaction with the care are high, and rates of regret are low. One study reported that 0.6% of transgender women and 0.3% of transgender men experienced regret.[21] Another study documented only twelve cases of detransition and, of these, only two cases of regret, in a retrospective case note review of 175 adult patients at a UK gender identity clinic (a regret rate of approximately 1.1%).[22] A third study documented "very high" levels of satisfaction and a regret rate of 0.04%.[23] These rates are much lower than the reported rates of regret for, for example, gastric bypass surgery (5.1%), getting tattoos (16%), having children (7%), ventral hernia repair surgery (11%), and diverticulitis surgery (which removes a portion of the colon) (32%).[24] And according to testimony by providers of gender-affirming care in a recent challenge to the Trump Administration's attempts

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[19] Kacie M. Kidd et al., *"Difficult to Find, Stressful to Navigate": Parents' Experiences Accessing Affirming Care for Gender-Diverse Youth*, 10 LGBT Health 496, 499 (2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10552142/.

[20] *Id.*

[21] Chantal M. Wiepjes et al., *The Amsterdam Cohort of Gender Dysphoria Study (1972-2015): Trends in Prevalence, Treatment, and Regrets*. 15 J of Sexual Med. 582, 585 (Apr. 2018) https://academic.oup.com/jsm/article-abstract/15/4/582/6980345. This study analyzes all individuals who presented to the clinic, whether they presented as minors or adults. Regret was assessed in individuals who had undergone gender-affirming surgery that included removal of the gonads. This surgery was only performed on adults. *Id.* at 584.

[22] R. Hall et al., *Access to Care and Frequency of Detransition Among a Cohort Discharged by a UK National Adult Gender Identity Clinic: Retrospective Case-Note Review* 5, BJPsych Open (2021), https://www.cambridge.org/core/services/aop-cambridge-core/content/view/3F5AC1315A49813922AAD76D9E28F5CB/S205647242101022Xa.pdf/access-to-care-and-frequency-of-detransition-among-a-cohort-discharged-by-a-uk-national-adult-gender-identity-clinic-retrospective-case-note-review.pdf.

[23] Kristina R. Olson et al., *Levels of Satisfaction and Regret with Gender-Affirming Medical Care in Adolescence*, 178 JAMA Pediatrics 1354-1361 (Oct. 2024), https://pubmed.ncbi.nlm.nih.gov/39432272/.

[24] Sarah M. Thornton et al., *A Systematic Review of Patient Regret After Surgery—A Common Phenomenon in Many Specialties but Rare Within Gender-Affirmation Surgery*, 234 Am. J. of Surgery, 68-73 (2024), https://pubmed.ncbi.nlm.nih.gov/38688814/.

to end or limit gender-affirming care,[25] many providers have never had a patient regret gender-affirming care.[26] Indeed, many patients regret not starting earlier.[27]

Recent testimony from patients and their families in the same litigation supports scientific findings and clinical experience about the efficacy and necessity of gender-affirming care. In written testimony, parent witnesses explain that their children often endured extended and debilitating periods of depression, self-hatred, hopelessness, anxiety, self-harm, and suicidality before families seek gender-affirming care.[28] L.L., a Seattle-area teen, would, for years, "rot in [] bed" all day, with no friends, struggling even to shower in a body he "hated."[29] S.F., a teen in southwest Washington, spent days "curled up in the fetal position on the floor," with his mother feeling helpless to do anything but sit and share his pain.[30] Some adolescents showered in a bathing

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[25] *See Washington v. Trump*, No. 2:25-cv-244 (W.D. Wash.), docket available at https://www.courtlistener.com/docket/69620657/parties/state-of-washington-v-trump/. These declarations are being submitted to the FTC in an appendix to this letter. Due to size restraints, the appendix is being submitted in several volumes.

[26] Physician Plaintiff 3 Decl., Appendix Vol. 3 at 220-221 ¶ 26 ("Out of the approximately 200 transgender and gender-diverse patients I have treated, I have never had a patient who regretted pursuing puberty-blocking medications or hormone replacement therapy. Instead, my patients express an overwhelming sense of relief and happiness."); E.K. Decl., Appendix Vol. 2 at 92 ¶ 22; H.L. Decl., Appendix Vol. 2 at 110 ¶ 14 ("I have never heard a kid express regret from choosing to receive gender-affirming care."); Stanfield Decl., Appendix Vol. 4 at 294 ¶ 10; C.L. Decl., Appendix Vol. 1 at 63 ¶ 10; Marie Doe Decl., Appendix Vol. 3 at 190 ¶ 12 ("Over my 15 years providing gender-affirming care to hundreds of patients, I have never had a patient seek to de-transition, or express regret over their decision to medically transition."); Z.C-L. ¶ 12; Kaefer Decl., Appendix Vol. 2 at 154 ¶ 12 ("I have never worked with a transgender or non-binary patient under 19 years old—or any patient otherwise—who has elected to stop receiving gender-affirming medical care or who has regretted undergoing such care. I have cared for at least 100 such patients."), ¶ 13; Oyster Decl., Appendix Vol. 3 at 211 ¶ 16.

[27] Z.C-L. Decl., Appendix Vol. 4 at 331 ¶ 12; Piper Decl., Appendix Vol. at 228 ¶ 13; Jansen Decl., Appendix Vol. 2 at 121 ¶ 7.

[28] N.M. Decl., Appendix Vol. at 203-205 ¶¶ 5, 7, 11; S.B. Decl., Appendix Vol. 3 at 261-262 ¶¶ 7, 9-11; A. Johnson Decl., Appendix Vol. 2 at 124 ¶ 8; Seaton ¶¶7-9; E.C. Decl., Appendix Vol. 2 at 78 ¶ 5; Ullom Decl., Appendix Vol. 4 at 307-308 ¶ 6; K.S. Decl., Appendix Vol. 2 at 146 ¶ 5; K.C.C. Decl., Appendix Vol. 2 at 128 ¶ 6; Dare Decl., Appendix Vol. 2 at 137-138 ¶ 20; L.L. Decl., Appendix Vol. 2 at 162 ¶¶ 8, 9; M.B. Decl., Appendix Vol. 3 at 165 ¶ 5; R.D. Decl., Appendix Vol. 3 at 238 ¶ 6; S.S. Decl., Appendix Vol. 4 at 273-274 ¶¶ 6, 9; S.O. Decl., Appendix Vol. 4 at 285 ¶ 7; S.F. Decl., Appendix Vol. 4 at 265 ¶ 6; S.N. Decl., Appendix Vol. 4 at 270 ¶¶ 4-6; V.S. Decl., Appendix Vol. 4 at 314 ¶¶ 4-5; Jansen Decl., Appendix Vol. 2 at 120-121 ¶ 5; Provider B.M. Decl., Appendix Vol. 1 at 43, 45 ¶¶ 6, 12; K.H. Decl., Appendix Vol. 2 at 140-142 ¶¶ 6-7, 11; Kaefer Decl., Appendix Vol. 2 at 153 ¶¶6-8; M.F. Decl., Appendix Vol. 3 at 178-180, 186 ¶¶ 14, 19, 40; R.T. Decl., Appendix Vol. at 253-255, ¶¶ 10, 13, 18.

[29] L.L. Decl., Appendix Vol. 2 at 162 ¶ 9.

[30] S.F. Decl., Appendix Vol. 4 at 265-66 ¶ 6.

suit or in the dark so they didn't have to see their own body.[31] Others engaged in self-harm, "cutting" or "burning" themselves or developing eating disorders so they could "feel in control of their body."[32]

Meanwhile, parents experience profound "grief" seeing their children's pain, while fearing others will "harm their child."[33] Parents often seek extensive therapy before engaging in gender-affirming hormonal treatment.[34]

By contrast, transgender youth who receive gender-affirming care see their rates of anxiety and depression dramatically improve to mirror those of their cisgender peers.[35] Parents report similarly transformative changes, with kids experiencing "a profound sense of relief" when their "outsides" finally "match their insides," making them feel like "their true and authentic selves" for the first time in their lives.[36] Youth report their world transforming from "scales of gray" into "color."[37]

Nothing reveals the profundity of this transition better than patients' and parents' own words. Youth receiving treatment "blossom[ed] in every way," and experience newfound confidence that helps them "flourish," and live "joyful," lives.[38] They "go from socially isolating themselves, engaging in negative internal dialogue, not going to school" and avoiding people, to joining clubs, playing sports, and seeking out community.[39] Treatment makes youth feel "like

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[31] Buckley Decl., Appendix Vol. 1 at 56-57 ¶ 6; Seaton Decl., Appendix Vol. 4 at 278 ¶ 8.

[32] Dunham Decl., Appendix Vol. 2 at 72-73 ¶ 13.

[33] H.L. Decl., Appendix Vol. 2 at 110-11 ¶ 16.

[34] Stanfield Decl., Appendix Vol. 4 at 293 ¶ 8.

[35] A.M.M. Decl., Appendix Vol. 1 at 9 ¶ 11; B.M. Decl., Appendix Vol. 1 at 38 ¶ 13; H.L. Decl., Appendix Vol. 2 at 110 ¶¶ 13,14; H.R. Decl., Appendix Vol. 2 at 116 ¶ 6; A.P. Decl., Appendix Vol. 1 at 17-18 ¶ 11; McGuire Decl., Appendix Vol. 3 at 199-201 ¶¶ 10-14; E.K. Decl., Appendix Vol. 2 at 90-91 ¶¶ 13-15; W.J. Decl., Appendix Vol. 4 at 324 ¶¶ 7-8; Dunham Decl., Appendix Vol. 2 at 73 ¶¶ 14-16; Marie Doe Decl., Appendix Vol. 3 at 192 ¶ 13; R.C. Decl., Appendix Vol. 3 at 234 ¶ 12; Barnett-Kern Decl., Appendix Vol. 1 at 23 ¶¶ 7, 12; Z.C-L. Decl., Appendix Vol. 4 at 331 ¶ 13; R.R. Decl., Appendix Vol. 3 at 245-46 ¶¶ 8-9; M.E.S. Decl., Appendix Vol. 3 at 172 ¶ 15; Bertram Decl., Appendix Vol. 1 at 33 ¶ 9; Grande Decl., Appendix Vol. 2 at 96 ¶¶ 6-7; Riddle Decl., Appendix Vol. 3 at 259 ¶¶ 5-6; Khan Decl., Appendix Vol. 2 at 158 ¶ 7; Voelkel Decl., Appendix Vol. 4 at 320 ¶ 5; Buckley Decl., Appendix Vol. 1 at 57 ¶¶ 7-9..

[36] B.M. Decl., Appendix Vol. 1 at 38 ¶ 13; A.M. Decl., Appendix Vol. 1 at 3 ¶ 10; E.C. Decl., Appendix Vol. 2 at 79 ¶ 10.

[37] Beal Decl., Appendix Vol. 1 at 29-30 ¶ 13.

[38] S.F. Decl., Appendix Vol. 4 at 266 ¶ 7; H.E. Decl., Appendix Vol. 2 at 104-105 ¶ 8; H.B. Decl., Appendix Vol. 2 at 98-99 ¶6; Beal Decl., Appendix Vol. 1 at 29-30 ¶13.

[39] A.M.M. Decl., Appendix Vol. 1 at 9 ¶ 11; Bertram Decl., Appendix Vol. 1 at 33 ¶ 9; T.O. Decl., Appendix Vol. 4 at 304 ¶ 12.

something inside of them is lighter" when "they no longer hate themselves."[40] They feel "happier" and "more confident."[41] And it brings "a sense of security in identity without which [they] would not have survived."[42] Parents describe the transformation "like flipping a light switch," with their kids having increased energy and a renewed sense of self that reveals just "how much their child must have been suffering."[43] When children are "relieved of the need to mask, hide, or cover," they stop self-harming.[44] "Passing" or "being seen as the gender they identify" often "makes life worth living."[45] It allows them to "walk through the world without being discriminated against or harassed."[46] Not spending "every moment of their day" thinking about "how their body looks and how it does not align with their identity" gives these individuals the freedom to "learn better at school and proactively engage and prepare for their future careers and lives."[47] The benefits of gender-affirming care are described as "life-giving."[48]

2. **There is no basis for the FTC to single out providers of gender-affirming care compared to any other healthcare practitioners.**

In an unprecedented departure from its traditional zone of practice, the FTC has targeted medical professionals and providers of gender-affirming care for investigation into whether they have engaged in unfair or deceptive practices.[49] This departure is based in large part on individual reports that some patients have experienced regret after undergoing certain procedures, or that a patient's parent believed that their adolescent child was deceived by doctors because their child identified as transgender (even if the child did not express regret or state that they were deceived). While it is, of course, deeply unfortunate any time a patient experiences regret regarding medical decision making, such reports are an unreasonable basis for the FTC to target an entire category of medical treatments and to intrude, for the first time, into the patient-provider relationship. Reliance on statements of individual regret is also unreasonable where studies demonstrate that, as an aggregate statistical matter, gender-affirming care has an exceptionally low rate of regret as compared to other surgical interventions and even to other major life decisions,[50] and has been proven to produce exceptionally positive results.

Like all forms of healthcare, gender-affirming care providers are guided by standards of care issued by professional medical organizations and endorsed by numerous major medical

[40] A.P. Decl., Appendix Vol. 1 at 17-18 ¶ 11.

[41] E.H. Decl., Appendix Vol. 2 at 85 ¶ 9.

[42] Crone-Barón Decl., Appendix Vol. 1 at 68 ¶ 8.

[43] E.K. Decl., Appendix Vol. 2 at 90-91 ¶¶ 13-14.

[44] Brady Decl., Appendix Vol. 1 at 50 ¶ 9.

[45] Stanfield Decl., Appendix Vol. 4 at 292-293 ¶ 7.

[46] *Id*.

[47] Dunham Decl., Appendix Vol. 2 at 73 ¶ 16.

[48] Provider B.M. Decl., Appendix Vol. 1 at 45 ¶ 12.

[49] *See* RFI at 1-2.

[50] Thornton et al., *supra* note 24.

associations, including the American Academy of Pediatrics, the American College of Physicians, the American Psychiatric Association, and the American Psychological Association.[51] Based on a review of the most current and serious scientific evidence available, the operative standards of care for the delivery of gender-affirming care establish that providers should develop individualized, age-appropriate treatment plans that take into account each patient's mental health, internal identity, developmental stage, goals and aspirations, and other medically relevant factors such as comorbidities. Additionally, care guidelines require providers to consider health issues unique to TGD patients, such as increased risk of particular cancers, impacts on fertility, or unwanted side effects, such as male-pattern baldness. As for any treatment, doctors are bound by their ethical obligation to deliver the best care possible to their patients.

All medical therapies have the potential to produce varying outcomes in patients, and patients may experience regret across a broad range of therapies and medical specialties. Indeed, medical regret may occur even where patients are fully informed of the risks of a procedure or treatment. While medical regret is serious, the presence of medical regret in itself does not establish malpractice, much less deceptive practices or false advertising. Nor does it establish that the individual was not properly informed of the risks and benefits prior to the procedure.

Moreover, there is no evidence that the treatments involved in gender-affirming care carry significant or exceptional medical risks that would warrant singling it out from provision of the same care to non-transgender populations. Puberty-delaying medications and hormone therapies are FDA-approved, have been studied extensively, and have been widely and safely used in clinical settings for many years for both cisgender and transgender adolescents as a treatment for gender dysphoria as well as a range of other disorders. These treatments generally carry the same risks regardless of the diagnosis, *i.e.*, regardless of whether they are used in treating gender dysphoria for transgender adolescents or other conditions for cisgender adolescents, and providers follow equally stringent policies requiring informed consent in accordance with state law.

3. There is a strong medical consensus as to the safety and efficacy of gender-affirming care; every major medical organization supports the delivery of gender-affirming care because it is supported by the evidence.

As indicated by the broad consensus of the medical community, the RFI's claims that there is "professional debate" as to the safety and efficacy of gender-affirming care, or "apparent lack of a widespread medical consensus as to whether GAC is the correct course of action for gender dysphoric youth,"[52] are not supportable. There is broad consensus within the medical community that gender-affirming care is medically necessary, life-saving healthcare.[53] Many medical providers have remained steadfast in their support of gender-affirming care despite increasing

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[51] Whitman Walker Inst., *Pro. Orgs.' Position Statements on Care for Transgender People*, submitted for the record by Rep. Mark Takano *in* Hrg. of H. Comm. on Ed. and the Workforce, *Examining the Policies and Priorities of the Dep't of Health and Hum. Servs*. (May 15, 2024), https://docs.house.gov/meetings/ED/ED00/20240515/117232/HHRG-118-ED00-20240515-SD002.pdf.

[52] RFI at 2.

[53] *Pro. Orgs.' Position Statements on Care for Transgender People*, *supra* note 51.

political pressure. For example, at its August 2025 Leadership Conference, the American Academy of Pediatrics voted in favor of "[r]ecognizing transgender patients and providing gender affirming care" as its top resolution.[54] Similarly, the American Medical Association has repeatedly reaffirmed its commitment to advocate for access to gender-affirming care and to oppose the penalization of the provision of gender-affirming care.[55] These positions are in line with the vast majority of professional medical associations in the U.S. and internationally that uniformly oppose government interference with the patient-provider relationship in order to restrict the provision of care that is evidence-based and medically necessary.[56]

The RFI points to "a growing chorus of experts" who purportedly call into question the safety and efficacy of gender-affirming care, but cites no scientific studies or statements by medical associations in support of its claims.[57] Instead it cites various news articles for the proposition that some European countries have purportedly "restricted or banned" some forms of gender-affirming care for minors.[58] As an initial matter, the FTC misrepresents the facts. No country cited in the RFI has banned gender-affirming hormone treatment for minors, *as indeed the very article cited in the RFI admits*: "It's true that Europeans aren't banning such care, and so legislators in the U.S. who pursue bans are at odds with European recommendations."[59] Rather, these countries have limited use by age or require that the delivery of hormones occur in research settings.[60] Requiring that the delivery of gender-affirming care to minors occur in formalized research settings is a far cry from pursuing civil and criminal investigations into providers who deliver that care.

The principal source the RFI appears to rely on is the "Cass Review," a UK government-commissioned report conducted by a British pediatrician that has been harshly criticized for a lack

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[54] Steve Schering, *Leadership Conference: Top 10 Resolutions Focus on Vulnerable Children, Misinformation, Payment and More*, AAP News (Aug. 4, 2025), https://publications.aap.org/aapnews/news/32791.

[55] AMA PolicyFinder, *Clarification of Evidence-Based Gender-Affirming Care H-185.927* (2024), https://policysearch.ama-assn.org/policyfinder/detail/%22Clarification%20of%20Evidence-Based%20Gender-Affirming%20Care%20H-185.927%22?uri=%2FAMADoc%2FHOD-185.927.xml; *see also AMA Strengthens Its Policy on Protecting Access to Gender-Affirming Care*, Endocrine Society (Jun. 12, 2023), https://www.endocrine.org/news-and-advocacy/news-room/2023/ama-gender-affirming-care.

[56] *Pro. Orgs.' Position Statements on Care for Transgender People*, *supra* note 5151.

[57] RFI at 1.

[58] *Id.* at 1-2.

[59] Joshua P. Cohen, *Increasing Number Of European Nations Adopt A More Cautious Approach To Gender-Affirming Care Among Minors*, Forbes (June 6, 2023), https://www.forbes.com/sites/joshuacohen/2023/06/06/increasing-number-of-european-nations-adopt-a-more-cautious-approach-to-gender-affirming-care-among-minors/.

[60] In the United Kingdom, for example, patients may access gender-affirming hormones beginning at approximately age 16. *Treatment: Gender Dysphoria,* Nat'l Health Serv., https://www.nhs.uk/conditions/gender-dysphoria/treatment/.

of methodological rigor and subject matter competency.[61] But even setting aside these flaws, the Cass Review itself does not even support the sweeping claims in the RFI. As one analysis points out, the Cass Review "*does not* conclude that gender-affirming medical care for adolescent gender dysphoria should be banned … Rather, the [Cass] Review favorably describes the provision of individualized, evidence-informed clinical care, including robust assessments of the various medical and non-medical domains of support that an adolescent may require."[62] And leading medical organizations in both the United States and numerous other countries have responded to the Cass Review by reaffirming their support for gender-affirming care.[63]

Gender-affirming care has been practiced in the United States since the early 20th century.[64] From the opening of the Johns Hopkins Gender Identity Clinic in 1966 to the present day, providers have developed nearly 60 years of clinical evidence and more than 2,000 scientific studies that have examined aspects of gender-affirming care.[65] A report commissioned by the Utah's Governor's Office and conducted by experts from the University of Utah College of

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[61] *See, e.g.,* Molly Sprayregen, *New Report from European Medical Orgs Declares Unwavering Support for Gender-Affirming Care*, LGBTQ Nation (Mar. 11, 2025), https://www.lgbtqnation.com/2025/03/new-report-from-european-medical-orgs-declares-unwavering-support-for-gender-affirming-care/.

[62] Meredithe McNamara, et al., *An Evidence-Based Critique of "The Cass Review" on Gender-Affirming Care for Adolescent Gender Dysphoria,* https://law.yale.edu/sites/default/files/documents/integrity-project_cass-response.pdf (emphasis in original).

[63] *See* Sprayregen, *supra* note 61. Notably, the RFI does not cite the recent "Report" issued by HHS, "Treatment for Pediatric Gender Dysphoria," which was published at the direction of the President's Executive Order "Protecting Children from Chemical and Surgical Mutilation." *See* U.S. Dep't of Health and Hum. Servs., *HHS Releases Comprehensive Review of Medical Interventions for Children and Adolescents with Gender Dysphoria* (May 1, 2025), https://www.hhs.gov/press-room/gender-dysphoria-report-release.html. To the extent the FTC may rely on the HHS Report in the future, the States note that the Report is without scientific merit. It merely reflects the opinions of anonymous authors tasked with conducting a report with the specific aim of ending gender-affirming care and has been roundly criticized by medical experts. *See, e.g*., Phie Jacobs, *Researchers Slam HHS Report on Gender-Affirming Care for Youth*, Science (May 2, 2025), https://www.science.org/content/article/researchers-slam-hhs-report-gender-affirming-care-youth; Susan Kressly, *AAP Statement on HHS Report Treatment for Pediatric Gender Dysphoria, Am. Acad. of Pediatrics* (May 1, 2025), https://www.aap.org/en/news-room/news-releases/aap/2025/aap-statement-on-hhs-report-treatment-for-pediatric-gender-dysphoria/.

[64] *See* Cole Roblee, et al., *A History of Gender-Affirming Surgery at the University of Michigan: Lessons for Today*, 38 Seminars in Plastic Surgery 53, 53-54 (2024), https://pmc.ncbi.nlm.nih.gov/articles/PMC10942835/pdf/10-1055-s-0043-1778042.pdf (discussing history of gender-affirming care in early 20th century).

[65] *Id.*; *AMA Strengthens Its Policy on Protecting Access to Gender-Affirming Care*, Endocrine Society (Jun. 12, 2023), https://www.endocrine.org/news-and-advocacy/news-room/2023/ama-gender-affirming-care.

Pharmacy opined that "policies to prevent access to and use of GAHT [gender-affirming hormone therapy] for treatment of GD [gender dysphoria] in pediatric patients cannot be justified based on the quantity or quality of medical science findings or concerns about potential regret in the future."[66] For this reason, every major medical organization supports the provision of gender-affirming care.[67] Indeed, there is research to suggest that categorical prohibitions on gender-affirming care for minors meet the diagnostic criteria for medical neglect.[68]

The FTC should trust the patients whose lives are transformed for the better by accessing gender-affirming care, the dedicated providers who serve them, and the science.

B. Section 5 and 12 of the FTC Act do not give the FTC any authority to regulate the practice of medicine or to interfere in the private relationship between patients and their healthcare providers.

The FTC claims that its investigation of gender-affirming care is authorized by Sections 5 and 12 of the FTC Act. This is incorrect. Those statutes give the FTC authority to investigate only (i) unfair and deceptive commercial activity[69] and (ii) false advertising.[70] The FTC does *not* have any legal authority to regulate the practice of medicine. The FTC may not attempt to do so here under the guise of consumer protection law.[71]

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[66] Joanne LaFleur, *Gender-Affirming Medical Treatments for Pediatric Patients with Gender Dysphoria* 91, Univ. of Utah College of Pharmacy (Aug. 6, 2024), https://le.utah.gov/AgencyRP/reportingDetail.jsp?rid=636 (click "Download Report").

[67] *See, e.g., Medical Association Statements in Support of Health Care for Transgender People and Youth*, GLAAD, (June 26, 2024), https://glaad.org/medical-association-statements-supporting-trans-youth-healthcare-and-against-discriminatory/.

[68] Emily Georges *et al.*, *Prohibition of Gender-Affirming Care as a Form of Child Maltreatment: Reframing the Discussion*, 153 Pediatrics 1 (Jan. 2024), https://publications.aap.org/pediatrics/article/153/1/e2023064292/196236/Prohibition-of-Gender-Affirming-Care-as-a-Form-of/.

[69] FTC Act Section 5 bars "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45.

[70] FTC Act Section 12 makes unlawful "any false advertisement" that is "for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce, of food, drugs, devices, services, or cosmetics." 15 U.S.C. § 52. A "false advertisement" means an advertisement which is "misleading in a material respect." *Id.* § 55(a)(1). False advertising in violation of Section 12 is also a deceptive act or practice in violation of Section 5. *Id.* § 52(b); *see also FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 7-8 (1st Cir. 2010) (noting that Sections 5 and 12 of the FTC Act are applied in tandem as the basis for deceptive advertising claims).

[71] *Cf. Gonzales v. Oregon*, 546 U.S. 243, 249, 267-68 (2006) (U.S. Attorney General could not use limited authority under the Controlled Substances Act to "prohibit doctors from prescribing regulated drugs for use in physician-assisted suicide, notwithstanding a state law permitting the

The FTC has long recognized and abided by a distinction between commercial advertising by a healthcare provider and the practice of medicine. As the Commission explained in its recent *Health Products Compliance Guidance*, "the FTC has settled or adjudicated more than 200 cases involving false or misleading *advertising* claims about the benefits or safety of dietary supplements or other health-related products, including foods, over-the-counter (OTC) drugs, homeopathic products, health equipment, diagnostic tests, and health-related apps."[72] These cases all concern FTC investigations of false or misleading advertising claims by commercial marketers; in those cases, the FTC did not attempt to regulate the practice of medicine, including the exercise of medical judgment, the skill or competence of practitioners, or the provision of individualized medical advice.[73]

State enforcement authorities and courts have drawn a similar distinction between the practice of medicine and advertising claims about medical products. When construing state consumer protection laws (many of which are modeled on the FTC Act), state courts have repeatedly held that "consumer protection statutes may be applied to the entrepreneurial and business aspects of providing medical services, for example, advertising and billing, even though those statutes do not reach medical malpractice claims."[74] Courts analyze the alleged violative

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procedure," because such medical judgments are beyond the "authority" and "expertise" of Attorney General).

[72] FTC, *Health Products Compliance Guidance* 1 (Sept. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Health-Guidance-508.pdf (emphasis added).

[73] *See, e.g., Thompson Med. Co. v. FTC*, 791 F.2d 189, 191 (D.C. Cir. 1986) (television commercials and other advertisements suggested that Aspercreme contained aspirin and was scientifically proven to treat arthritis); *Nat'l Comm'n on Egg Nutrition v. FTC*, 570 F.2d 157, 159 (7th Cir. 1977) (newspaper advertisements stated that eating eggs does not increase blood cholesterol and that no scientific evidence links eating eggs to an increased risk of heart disease); *FTC v. Medlab, Inc.*, 615 F. Supp. 2d 1068, 1072 (N.D. Cal. 2009) (advertisements promised consumers clinically-proven rapid and substantial weight loss without dieting or exercise); *FTC v. Nat'l Urological Grp., Inc.*, 645 F. Supp. 2d 1167, 1191-1202 (N.D. Ga. 2008) (advertisements promised consumers rapid, substantial, safe, and clinically-proven weight loss and erectile-dysfunction treatment); *Rock v. FTC*, 117 F.2d 680, 681 (7th Cir. 1941) (magazines, pamphlets, and other advertisements made representations about goiter treatments); *FTC v. Alcoholism Cure Corp.*, No. 3:10-CV-266-J-34JBT, 2011 WL 13137951, at *34, 42 (M.D. Fla. Sept. 16, 2011) (website claimed supplements were scientifically proven to cure alcoholism while allowing alcoholics to drink socially).

[74] *Darviris v. Petros*, 442 Mass. 274, 279 (2004). *See also, e.g.*, *Haynes v. Yale-New Haven Hosp.*, 243 Conn. 17, 38 (1997) (drawing same distinction); *Simmons v. Stephenson*, 84 S.W.3d 926, 928 (Ky. Ct. App. 2002) (consumer protection statute applies only to entrepreneurial, commercial, or business aspect of practice of medicine); *Nelson v. Ho,* 222 Mich. App. 74, 82-84 (1997) (only allegations that concern entrepreneurial, commercial, or business aspect of physician's practice may be brought under consumer protection statute); *Karlin v. IVF Am., Inc.,* 93 N.Y.2d 282, 293-294 (1999) (when physicians "reach out to the consuming public at large in order to promote business," as opposed to "providing information to their patients in the course

conduct at issue to determine whether it involves the actual practice of medicine or is something outside that scope.[75] This distinction is critical, because to "hold otherwise would transform every claim for medical malpractice into a [consumer protection] claim.[76]

Until now, there has never been a need for statutes, regulations or agency policies to formally prohibit the FTC from interfering with the practice of medicine or the doctor/patient relationship.[77] However, such restraints have long existed to prevent the Food and Drug Administration (FDA) from overstepping its parallel authority over medical labeling and prescription drug advertising.[78] As the FDA recently explained during a 2021 rulemaking, the "FDA generally does not seek to interfere with the exercise of the professional judgment of healthcare providers in prescribing or using, for unapproved uses for individual patients, most

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of medical treatment," they are covered by consumer protection statutes); *Gadson v. Newman*, 807 F. Supp. 1412, 1416 (C.D. Ill. 1992) (finding "crucial" distinction between "the business aspects [of] medicine and the actual practice of medicine" in deciding whether claim could be brought against healthcare provider under Illinois consumer fraud statute); *Scull v. Groover, Christie & Merritt, P.C.*, 435 Md. 112, 130 (2013) (noting that Maryland law distinguishes between "commercial and entrepreneurial aspects of a medical practice," on the one hand, and "actual rendering of health care services," on the other).

[75] *Compare Michael v. Mosquera-Lacy*, 165 Wash. 2d 595, 604 (2009) (claim related purely to "judgment and treatment of a patient" not actionable under state consumer protection statute), *with Williams v. Lifestyle Lift Holdings, Inc.*, 175 Wash. App. 62, 72 (2013) (claim related to misleading representations about invasiveness of facelift technique, where defendants "used mass-market advertising, solicitation, and high-pressure sales techniques," were not based on skill and competence of surgeon and were thus actionable under same statute).

[76] *Haynes,* 243 Conn. at 38.

[77] Even during the 1960s and 1970s, when some critics accused FTC of using its "unfairness" authority to impose public policies without sufficient evidence of consumer injury, these proposals were focused on *advertising* (such as restrictions on cigarette advertising or advertising aimed at children) or on *unfair methods of competition* (which caused market "by-products" such as harms to workers or the environment), but did not attempt to interfere in the doctor/patient relationship. *See* J. Howard Beales, *The FTC's Use of Unfairness Authority: Its Rise, Fall, and Resurrection* (May 30, 2003), https://www.ftc.gov/news-events/news/speeches/ftcs-use-unfairness-authority-its-rise-fall-resurrection; Thomas B. Leary, *Unfairness and the Internet* (April 13, 2000), https://www.ftc.gov/news-events/news/speeches/unfairness-internet.

[78] The FTC and FDA have overlapping authority over the regulation of health-related advertising, labeling and promotions, and have divided up these responsibilities pursuant to working agreements and memoranda of understanding dating back to the 1950s. *See, e.g.*, 1971 Memorandum of Understanding (MOU) between the FTC and the FDA (MOU 225-71-8003), https://www.fda.gov/about-fda/domestic-mous/mou-225-71-8003. Pursuant to the 1971 MOU, the FTC has "primary responsibility with respect to the regulation of the truth or falsity of all *advertising* (other than labeling) of foods, drugs, devices, and cosmetics" (emphasis added), while FDA has primary responsibility over branding, labeling and prescription drug advertising. *Id.* § III(A)-(B).

legally marketed medical products."[79] Furthermore, this "longstanding position," *id.*, has been codified with respect to medical devices by 21 U.S.C. § 396, which states that nothing in the Food, Drug & Cosmetic Act (FDCA) "shall be construed to limit or interfere with the authority of a health care practitioner to prescribe or administer any legally marketed device to a patient for any condition or disease within a legitimate health care practitioner-patient relationship."[80] This statute "protects a doctor's ability to practice medicine by limiting how the FDCA is to be applied to them."[81]

These laws and principles have been particularly important for protecting the rights of healthcare professionals to engage in "off-label" use of drugs and devices to benefit their patients. Although the FDCA limits the ability of manufacturers to *promote* drugs and devices for off-label uses (*i.e.*, uses not included in the FDA-approved labeling), these off-label uses are lawful and often represent the standard of care.[82] The FTC's recent steps to investigate gender-affirming care ignore this important legal distinction. The FTC is instead attempting to do exactly what the FDA has long warned government agencies *not* to do: "interfere with the exercise of the professional judgment of healthcare providers," including by targeting "off-label" uses of drugs where those treatments are widely accepted as the best standard of care for certain patients.

Two further legal principles should bar the FTC's illegitimate attempt to expand its authority into regulating medical practice and the doctor/patient relationship.

First, the regulation of the practice of medicine has long been and remains the province of the States.[83] The Constitution vests the States with traditional police powers, which include the

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[79] *Regulations Regarding "Intended Uses"*, 86 Fed. Reg. 41383, 41398 n.4 (Aug. 2, 2021).

[80] 21 U.S.C. § 396.

[81] *United States v. Jackson*, 126 F.4th 847, 860 (4th Cir. 2025).

[82] As one commentator has explained, off-label uses

> not only are lawful but also are common, can be a source of innovation, and in some settings may represent the standard of care. Doctors must often rely on off-label use because the pace of medical discovery runs ahead of the FDA's regulatory machinery, rendering off-label uses the 'state-of-the-art' treatment. For some diseases, off-label uses either are the only therapies available, or are the therapies of choice. Indeed, a drug given off-label may have been proven to be safer and more beneficial than any drug labeled for that disease.

Coleen Klasmeier, *FDA, Medical Communications, and Intended Use–A New Challenge to First and Fifth Amendment Constraints on Government Power*, 78 Food & Drug L. J. 263, 269-70 (2023) (internal quotations, punctuation marks and citations omitted).

[83] *See, e.g., Medina v. Planned Parenthood S. Atl.*, 606 U.S. ----, 145 S. Ct. 2219, 2227 (2025); *De Buono v. NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814 (1997); *Whalen v. Roe*, 429 U.S. 589, 603 n.30 (1977); *Barsky v. Bd. of Regents of Univ. of State of N.Y.*, 347 U.S. 442, 449 (1954); *Linder v. United States*, 268 U.S. 5, 18 (1925); *Conant v. Walters*, 309 F.3d 629, 639 (9th Cir. 2002). *See also United States v. Skrmetti*, 605 U.S. ----, 145 S. Ct. 1816, 1836 (2025)

ability to regulate the practice of medicine and license medical professionals, and the sovereign authority to make policy judgments regarding the health, wellbeing, dignity, and autonomy of their residents and people within their borders.[84] All States, therefore, have boards or agencies that oversee the licensing of medical professionals.[85] States set standards and regulations to ensure that patients receive care consistent with evidence-based medicine. And States are responsible for hearing complaints against licensed medical practitioners, and for taking appropriate disciplinary action against providers who violate these standards and rules.[86] The FTC's efforts to usurp the States' authority to regulate medical practice thus violate the Tenth Amendment.

Second, the Supreme Court has long recognized that the First Amendment protects the right of healthcare providers and patients to exchange information about medical treatments, a right that the FTC's investigation threatens to trample. For example, in *Thompson v. Western States Medical Center*, the Supreme Court struck down restrictions that would have prevented pharmacies from sharing truthful information about compounded drugs.[87] The Court "rejected the notion that the Government has an interest in preventing the dissemination of truthful commercial information in order to prevent members of the public from making bad decisions with the information."[88] For the same reason, courts have cautioned against denying consumers "useful, truthful information about products with a demonstrated capacity to treat or prevent serious disease."[89] As the Supreme Court explained when striking down a Vermont law that restricted the commercial use of prescribing data, the choice "between the dangers of suppressing information, and the dangers of its misuse if it is freely available, is one that the First Amendment makes for us."[90] These

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("We afford States wide discretion to pass legislation in areas where there is medical and scientific uncertainty." (internal quotation marks omitted)).

[84] *See supra* notes 3-5.

[85] *See* Federation of State Medical Boards, *Contact a State Medical Board* (n.d.) https://www.fsmb.org/contact-a-state-medical-board.

[86] *See* Complaint ¶¶ 83-100, *Massachusetts v. Trump*, No. 1:25-cv-12162 (D. Mass. Aug. 1, 2025), ECF No. 1.

[87] 535 U.S. 357 (2002).

[88] *Id.* at 374-75 (citing *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc*., 425 U.S. 748, 769-70 (1976)).

[89] *POM Wonderful, LLC v. FTC*, 777 F.3d 478, 502 (D.C. Cir. 2015) (citing *Edenfield v. Fane*, 507 U.S. 761, 766 (1993)).

[90] *Sorrell v. IMS Health Inc*., 564 U.S. 552, 577 (2011) (quoting *Virginia State Bd. of Pharmacy*, 425 U.S. at 770) (internal quotation marks omitted). The Supreme Court emphasized that under the Constitution, resolution of healthcare policy debates "must result from free and uninhibited speech." *Id.* at 578. As the *Sorrell* Court explained when describing the record:

> As one Vermont physician put it, "We have a saying in medicine, information is power. And the more you know, or anyone knows, the better decisions can be made." There are similar sayings in law, including that information is not in itself harmful, that people will

principles, which apply to commercial speech in the healthcare context, are even more critical for protecting the medical advice, consistent with the standard of care, given by providers to inform the personal decisions of patients.

C. The RFI seeks information that the FTC has no legal authority to investigate.

As the above analysis explains, the FTC's authority to regulate healthcare advertising does not give the Commission any right to regulate the practice of medicine. Nor does the FTC have any legal right to intercede in medical consultations between doctors and patients, or to interfere with the personal healthcare decisions of patients and their families. Yet, that is exactly what the FTC is doing. The immensely broad RFI goes well beyond the Commission's authority to investigate commercial activity and false advertising pursuant to Secs. 5 and 12, and instead represents an illegal and *ultra vires* investigation of the practice of medicine.

For example, the RFI's very first question asks: "Have you or a family member ever visited a medical professional or other organization that recommended gender-affirming care ('GAC')? If so, describe your experience."[91] The RFI then asks over a dozen questions that probe the private healthcare discussions between a doctor and patient.[92] To understand how shocking this questionnaire is, imagine if the FTC asked for the disclosure of private doctor-patient discussions about depression, obesity, cancer, or any of the other innumerable conditions that prompt Americans to seek counsel from trained medical professionals.

The FTC's inquiry further raises grave concerns regarding privacy and due process. For example, it asks respondents to describe the experience of a "family member" with gender-affirming care,[93] even though the federal government's solicitation of this information (potentially against the patient's wishes) is inappropriate and may violate that patient's privacy. The FTC also asks respondents to name "practitioners, entities, or institutions providing GAC" that they believe "have made false representations regarding the benefits or effectiveness of GAC," without asking for any proof to support these potentially career-threatening accusations.[94] That solicitation of unsupported allegations, which by virtue of the process of submitting public comments will automatically be made public on regulations.gov, stands in stark contrast to established procedures

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> perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them."

Id. (quoting appendix and *Virginia State Bd. of Pharmacy*, 425 U.S. at 770) (cleaned up).

[91] RFI at 2.

[92] *Id.* at 2-3. Some of these questions are not only leading but also legally irrelevant. For example, the FTC asks for disclosure of whether "the GAC practitioner inform[ed] you that some states have prohibited GAC for minors." *Id.* at 3. This question has no bearing in States that have used their sovereign authority to enact legal protections for gender-affirming care practitioners and the patients and families who seek their counsel. See *infra* note 108.

[93] *See* RFI at 3.

[94] *See id.*

for filing complaints with state medical boards.[95] Those established procedures are subject to rigorous fairness and due process requirements. In many States, for example, complaints are investigated on an individualized basis by experts in the field of medicine[96] (rather than generalists in the field of consumer protection) and complaints are treated as confidential, to protect both the patient and the physician.[97]

The FTC should withdraw its requests for information about Americans' private consultations with a "medical professional" or "practitioner" concerning personal healthcare treatment recommendations. Such requests go beyond the FTC's permissible enforcement authority in the healthcare context.

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[95] *See generally* Federation of State Medical Boards, About Physician Discipline (n.d.), https://www.fsmb.org/u.s.-medical-regulatory-trends-and-actions/guide-to-medical-regulation-in-the-united-states/about-physician-discipline (describing state medical board disciplinary process).

[96] *See, e.g.*, **Illinois:** 225 Ill. Comp. Stat. Ann. 60/7.1(A) ("Eight members shall be physicians licensed to practice medicine in all of its branches in Illinois possessing the degree of doctor of medicine."). **Nevada:** Nev. Rev. Stat. § 630.060(1) (requiring, of eleven members of Board of Medical Examiners, six licensed physicians, one licensed physician assistant, and one licensed respiratory therapist); *see also id.* § 630.311(1) (requiring that complaints be investigated by committee consisting of board members). **New Jersey:** N.J. Stat. Ann. § 45:9-1 (requiring that that the Board of Medical Examiners shall consist of 21 members and that "said board shall consist of 12 graduates of schools of medicine or osteopathic medicine who shall possess the degree of M.D. or D.O."). **New York:** N.Y. Pub. Health Law § 230(1) (providing that "[n]ot less than sixty-seven percent of the members appointed by the board of regents shall be physicians"); *see also id.* § 230(10)(a)(ii) (requiring that, in disciplinary matters involving "issues of clinical practice, medical experts shall be consulted"). **Vermont:** Vt. Stat. Ann. tit. 26, § 1351 (requiring nine of the seventeen members of the Vermont Board of Medical Practice to be licensed physicians), § 1353 (giving the Vermont Board of Medical Practice power and authority to investigate all complaints and charges of unprofessional conduct against licensed physicians). **District of Columbia:** D.C. Code §3-1202.03(a)(3)(A) (providing that "of the [fifteen] members of the Board ... 9 shall be physicians licensed to practice in the District of Columbia").

[97] *See, e.g.*, **Illinois:** 225 Ill. Comp. Stat. Ann. 60/45. **Nevada:** Nev. Rev. Stat. § 630.311(3) (providing that proceedings of committee investigating complaint remain confidential and prohibiting meeting summaries from identifying subjects of complaints). **New York:** N.Y. Pub. Health Law § 230(10)(a)(v) (requiring that all files of state medical board investigations be kept confidential); N.Y. State Dep't of Health, Off. of Professional Medical Conduct, Frequently Asked Questions (July 2012), https://www.health.ny.gov/professionals/doctors/conduct/frequently_asked_questions.htm ("Reports of misconduct are kept confidential."). **Vermont:** Vt. State Ann. tit. 26, § 1318 (requiring certain information from complaints filed with the Vermont Board of Medical Practice be kept confidential).

D. The FTC is misrepresenting the standards for "false or unsubstantiated" healthcare claims in order to demonize transgender Americans and limit patients' freedom of choice.

In addition to misstating the scope of its own authority, the FTC misrepresents the legal and scientific standards that apply to claims of false or misleading healthcare advertising. To be clear: these standards do *not* apply to the practice of medicine. But to the extent that the FTC is reviewing advertising or promotional materials about gender-affirming care, it distorts the legal standards that would apply to such review.

The FTC's RFI asserts that "some medical organizations continue to advocate for GAC as the best standard of care, despite the apparent lack of a widespread medical consensus as to whether GAC is the correct course of action for gender dysphoric youth."[98] As a factual matter, the assertion that there is a lack of medical consensus is false. As previously discussed, there is in fact broad medical consensus that gender-affirming care—following a diagnostic process and treatment plan based on the needs of each individual patient—is the best standard of care for gender dysphoric youth. This conclusion is supported by decades of scientific and medical research, and some medical organizations have even opined that failing to provide gender-affirming care when appropriate for the needs of an individual patient would constitute medical neglect.[99]

Furthermore, the FTC's framing of these issues blatantly misrepresents the relevant legal standards that the Commission has helped develop and enforce to protect American consumers from false and misleading advertising. The FTC has never prosecuted a healthcare advertiser (much less a physician) based on the existence of medical debates over the best course of treatment. Such a standard would render any medical claim that is the subject of debate—that is, almost any medical claim at all—susceptible to a consumer protection investigation. Imagine if every healthcare advertiser were afraid to make truthful, non-misleading statements about products or treatments for fear that a dissenting view in the marketplace would leave them vulnerable to claims of false advertising.[100] Using consumer protection law to chill healthcare debates in this fashion is

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[98] RFI at 2; *see also id.* at 1 ("According to the [Supreme] Court, there are now 'fierce scientific and policy debates about the safety, efficacy, and propriety of medical treatments in the evolving field' of transgender medicine." (quoting *Skrmetti v. United States*, 605 U.S. ----, 145 S. Ct. 1816, 1837 (2025) (cleaned up)).

[99] *See* Georges et al., *supra* note 6868.

[100] FTC Chairman Ferguson has similarly warned against using consumer protection law to execute this sort of heckler's veto:

> American law has long avoided imposing liability purely because [of] an emotional injury for an obvious reason: almost any act can trigger emotional trauma in somebody. Society would come to a standstill if we tried to hold people liable every time they caused a negative emotional reaction in someone else.

Andrew N. Ferguson, *Staying in Our Lane: Resisting the Temptation of Using Consumer Protection Law to Solve Other Problems* 3 (Sept. 27, 2024), prepared remarks *at* 2024

plainly forbidden. Even when commercial speech is involved, the government has no right to quash honest debate about medical practices based on "nothing more than a difference of opinion."[101]

The actual legal standard for false or misleading healthcare advertising is not that medical experts disagree—it is whether an advertiser possesses a "reasonable basis" to substantiate its claims, including by possessing "competent and reliable scientific evidence" to support those claims within the relevant expert community.[102] The "competent and reliable scientific evidence" standard "has been developed over many years by agency enforcement precedent and guidance from the FTC."[103] The standard "is context specific and permits different variations … depending on what pertinent professionals would require for the particular claim made."[104]

It bears repeating that the FTC is inappropriately targeting doctors and clinics for *providing* gender-affirming care, not for advertising or marketing it, as part of the Administration's broader campaign to end this medical treatment. But in any event, statements about the availability, benefits, and safety of gender-affirming care easily meet the legal and evidentiary standards established by the FTC in its decades of enforcing Sections 5 and 12. As explained above, the pertinent standards of care are based on competent and reliable scientific evidence.[105] Patients report overwhelmingly positive results from accessing gender-affirming care, including very high levels of satisfaction with their care and its positive impacts on their mental and physical health.[106] The stories of regret cited by the FTC represent only a tiny percentage of the stories told by patients who received such treatments.[107] And critically, gender-affirming care treatments are regulated by and protected under the laws of most of the undersigned States.[108] The RFI cites no evidence that

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International Consumer Protection and Enforcement Network Fall Conference, https://www.ftc.gov/system/files/ftc_gov/pdf/9.27.2024-Ferguson-ICPEN-Remarks.pdf.

[101] *Sorrell*, 564 U.S. at 579 (citing *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 69 (1983) and *Thompson*, 535 U.S. at 376).

[102] *Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1156 (9th Cir. 1984); *see also POM Wonderful*, 777 F.3d at 491, 498; *Removatron Int'l Corp. v. FTC*, 884 F.2d 1489, 1498 (1st Cir. 1989); *Alcoholism Cure Corp.*, 2011 WL 13137951, at *27 ("The Court can look to what experts in the relevant area of study would consider to be adequate in determining the amount and type of evidence that is sufficient for scientific validation of the advertisement's claims." (quotation marks omitted)).

[103] *Direct Mktg. Concepts, Inc. v. FTC*, 581 F. Supp. 2d 115, 118 (D. Mass. 2008).

[104] *Nat'l Urological Grp.*, 645 F. Supp. 2d at 1186.

[105] See *supra* notes 51, 53-56.

[106] See *supra* notes 23, 27, 35-48.

[107] See *supra* notes 21-24, 26.

[108] *See Shield Laws for Reproductive and Gender-Affirming Health Care: A State Law Guide*, UCLA Law Williams Institute (Aug. 2024), https://williamsinstitute.law.ucla.edu/publications/shield-laws-fact-sheets/ (listing and discussing state laws shielding patients and providers of gender-affirming care); Movement Advancement Project, *Healthcare Laws and Policies: Private Insurance Nondiscrimination Laws, Bans on*

health care providers, in merely advertising the availability of gender-affirming care at their practices or institutions, have made any statements that would be considered false or misleading under any of the applicable legal standards.

None of this diminishes or disparages the personal experiences of individuals who have complaints or experience regret about their experience with gender-affirming care. Research into detransitioning (*i.e.*, the process of stopping or reversing a gender transition) has found that transgender individuals detransition for a number of reasons—including personal changes in their gender identity and regrets about their gender transition, but also in response to negative societal attitudes toward transgender individuals, lack of familial support, and, more recently, intimidation due to threats exhibited by the Trump Administration.[109] In a recent essay summarizing his personal experience and his research into detransitioning, Dr. Kinnon R. McKinnon explains:

> I am a researcher who studies detransition — what happens when people who have undergone a gender transition decide to stop or reverse it, often halting medical treatments like hormones. I am also transgender, having begun my own medical transition with testosterone 15 years ago, when I was a 25-year-old graduate student. Under the guise of protecting children from medical harm, the Trump administration is oversimplifying detransition and using it as a political cudgel against transgender health care.
>
> My personal experience, that of most trans people I know and a large body of research show that medical transition can help many resolve their gender dysphoria and improve their quality of life. (I live a fulfilling life as a trans man and am the proud father of a 5-year-old.) But it's also true that a subset of people reverse course after already changing their bodies with hormones or surgeries … The focus of my research is on why people detransition and what the field of trans health care can learn from these experiences.[110]

More research into both positive and negative experiences with gender-affirming care will undoubtedly improve standards of care going forward. But that is neither this Administration's goal nor the role of the FTC. Instead, this investigation is part of the Administration's broader effort to weaponize individual stories of regret while slashing funding for science and healthcare research (including moving to slash $800 million in grant funding relating to LGBTQIA+ health

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Exclusions of Transgender Health Care, and Related Policies (June 3, 2025), https://www.lgbtmap.org/img/maps/citations-nondisc-insurance.pdf (cataloguing state laws and policies that protect TGD individuals from being denied insurance coverage on the basis of gender identity).

[109] See Kinnon R. MacKinnon, *The Truth About Detransitioning*, N.Y. Times (Aug. 10, 2025), https://www.nytimes.com/2025/08/10/opinion/trans-health-care-detransitioning.html.

[110] *Id.*

research).[111] A federal court recently called out the Administration's "bad faith" conduct when quashing a DOJ subpoena seeking confidential medical records from a gender-affirming care program under the guise of investigating promotion of off-label drug usage and false healthcare billing claims. As that court concluded:

> The Administration has been explicit about its disapproval of the transgender community and its aim to end GAC. The subpoena reflects those goals, comprising overbroad requests for documents and information seemingly unrelated to investigating fraud or unlawful off-label promotion. It is abundantly clear that the true purpose of issuing the subpoena is to interfere with the Commonwealth of Massachusetts' right to protect GAC within its borders, to harass and intimidate [Boston Children's Hospital] to stop providing such care, and to dissuade patients from seeking such carebasi. For the above reasons, I find that the Government has failed to show proper purpose and, even if it had, that BCH has demonstrated that the subpoena was issued for an improper purpose, motivated only by bad faith.[112]

The FTC's conduct here is similarly improper. Its blatant misrepresentation of its legal authority, and of the applicable legal standards that have long governed false advertising claims in the healthcare context, will limit patients' freedom of choice and stifle healthcare innovation. And it will not advance the FTC's mandate to protect American consumers.

Conclusion

The RFI represents a radical break from over a century of the FTC's lawful exercise of its consumer protection authority. Since its creation in 1914, the FTC has consistently recognized that its regulation of unfair and deceptive commercial activity and false advertising do not give the Commission any authority to interfere with the practice of medicine. And just as importantly, the FTC has served its mission to protect American consumers without political favoritism. As the Supreme Court emphasized nearly a century ago: "The commission is to be nonpartisan; and it must, from the very nature of its duties, act with entire impartiality. It is charged with the enforcement of no policy except the policy of the law."[113]

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[111] *Id.* (citing David J. Kinitz, et al., *The Hidden Human Cost of Defunded LGBTQIA+ Health Research*, 31 Nature Medicine 2842 (June 27, 2025), https://www.nature.com/articles/s41591-025-03794-5.

[112] Memorandum of Decision, *In Re: Administrative Subpoena No. 25-1431-019*, No. 1:25-mc-91324-MJJ (D. Mass. filed Sept. 9, 2025), https://clearinghouse.net/doc/163033/.

[113] *Humphrey's Ex'r v. United States*, 295 U.S. 602, 624 (1935). Former FTC Commissioner Rebecca Kelly Slaughter referenced these founding principles in her testimony to Congress in March of this year, when she explained that the FTC is at its most efficient when it functions under bipartisan leadership. Statement of FTC Commissioner Rebecca Kelly Slaughter, *submitted in* Hr'g: The World Wild Web: Examining Harms Online, House Committee on

The FTC's commitment to avoiding any politicized misuse of its consumer protection authority has been a core principle for the agency's career staff, political appointees, and highest leadership. As 149 FTC employees explained in a July 2025 open letter opposing the July 9 workshop on gender-affirming care that preceded this RFI:

> Regulation of the practice of medicine falls under the jurisdiction of state licensing boards, not the FTC. To be sure, the FTC has challenged deceptive commercial speech promoting widely advertised health products. For example, the FTC has sued many companies for false online advertisements claiming that an over-the-counter drug will cause rapid weight loss. But the FTC has not historically intervened in the confidential, individualized advice given across a series of professional, consent-based appointments protected by the doctor-patient relationship. This is a critical distinction between past consumer protection law enforcement matters concerning health and what the Commission now appears ready to police.[114]

Until now, these principles have been shared by the FTC's leadership, across a variety of Republican and Democratic administrations. As Chairman (then-Commissioner) Andrew Ferguson put it in a September 2024 speech, the FTC must resist "the temptation to treat consumer-protection law as a panacea for social ills."[115] Chairman Ferguson concluded that speech as follows: "Most importantly, abuse of consumer protection authority undermines the rule of law … [W]hen such a law is used to punish any conduct that a government bureaucrat finds undesirable after the fact, regardless of subject matter, then that . . . lack of legal clarity . . . begins to look like tyranny."[116]

The undersigned States urge the FTC to cease abusing its consumer protection authority and to drop this unlawful investigation.

Energy and Commerce, Subcommittee on Commerce, Manufacturing, and Trade (March 26, 2025), https://www.congress.gov/119/meeting/house/118066/witnesses/HHRG-119-IF17-Wstate-SlaughterR-20250326.pdf.

[114] Statement of Concern Dated July 2, 2025 from FTC Employees on the FTC's July 9 Workshop on Gender-Affirming Care, https://fingfx.thomsonreuters.com/gfx/legaldocs/akvexqzyopr/FTC%20staff%20statement.pdf.

[115] Ferguson, *Staying in Our Lane*, *supra* note 100.

[116] *Id.* at 3-4.

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