

Finally, the county carries the burden to prove, by clear and convincing evidence, that the subject individual requires involuntary medication. The court held that the county provided insufficient evidence to meet this standard, citing *Addington v. Texas*, 441 U.S. 418 (1979), and noting that involuntary medication hearings cannot simply be “perfunctory.” Wis Stat. § 51.61(1)(g) (2023) requires that petitions for involuntary medication orders “shall include a statement . . . based on an examination of the individual by a licensed physician” demonstrating that the subject individual is “incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives” or is “substantially incapable of applying an understanding of the advantages, disadvantages, and alternatives to his or her mental illness, developmental disability, alcoholism, or drug dependence to make an informed choice as to whether to accept or refuse medication or treatment.” The court noted that the court-appointed physicians did not explain the disadvantages, advantages, and alternatives to medication to M.A.C. and the court only relied on these physician reports in ordering involuntary medication. The county did not call other witnesses or enter other information into evidence to support its argument that M.A.C. was incompetent to refuse medication. Thus, the government did not meet the required standard of proof.

Discussion

Matter of Commitment of M.A.C. affirms the importance of protecting the rights of people who are subject to mental health commitments while balancing the government’s interest in personal and public safety. One of the first Wisconsin cases establishing these protections was the landmark case of *Lessard v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis. 1972). Subsequent Wisconsin cases, such as *Marathon County v. D.K.*, 921 N.W.2d 14 (Wis. Ct. App. 2018) and *In re J.W.J.*, 895 N.W.2d 783 (Wis. 2017), noted that mental health commitments involve a significant infringement on an individual’s liberties and outlined the precise procedures to safeguard these liberties. These procedures include limiting civil commitments only to those who are mentally ill, treatable, and imminently dangerous to themselves or others as a result of that mental illness; timely notice of hearings to the subject individual; access to counsel; adequate time to prepare for

hearings; opportunity for the individuals to attend the hearing and argue their case; and placement of individuals in the least restrictive environment necessary to appropriately manage their care.

Additionally, *M.A.C.* has important implications for forensic examiners who conduct involuntary medication examinations. In this case, because the physicians were unable to contact or locate M.A.C., they were unable to explain the advantages and disadvantages of certain medications or evaluate M.A.C.’s present capacity to accept or refuse medications. Additionally, M.A.C. did not receive notice and did not appear at the medication hearing. The county also did not call any of their proposed witnesses. The court emphasized that involuntary medication is a serious matter and the standard of clear and convincing evidence requires the county to produce more than it did in this case. The court did not outline the exact steps to take when a subject cannot be personally evaluated, but it appears that a forensic opinion based entirely on medical record review and collateral information may not be sufficient for a court to order involuntary medication. Ultimately, this may mean that the subject will be detained to conduct the examination or that the county must find additional witnesses or information to enter into evidence to supplement the expert reports.

Equal Protection in Healthcare

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Exclusion of Gender-Affirming Care Deemed Discriminatory Under Equal Protection

DOI:10.29158/JAAPL.250025-25

Key words: equal protection; transgender health care; discrimination; medical necessity; Fourteenth Amendment

In *Kadel v. Folwell*, 100 F.4th 122 (4th Cir. 2024), the Fourth Circuit Court of Appeals ruled that health care plans in North Carolina and West Virginia violated the Equal Protection Clause of the Fourteenth

Amendment because of exclusions related to transgender health. The court found that these plans, offered by the state, which categorically excluded gender-affirming care, were discriminatory, as they denied medically necessary treatments for individuals with gender dysphoria. The court found that the lower court did not abuse its discretion in rejecting various expert opinions about treatment of gender dysphoria.

Facts of the Case

Maxwell Kadel, a transgender man employed by the University of North Carolina, participated in the North Carolina State Health Plan (NCSHP), a state-operated insurance program providing coverage for state employees and their dependents. Mr. Kadel sought treatments for gender dysphoria recommended by his health care providers.

The NCSHP explicitly excluded all treatments related to “sex changes or modifications.” This prohibition applied to all participants in the plan, regardless of individualized care assessments by their health care team. Similarly, the Medicaid plan in West Virginia denied coverage for any gender-affirming surgeries. The same treatments that were rejected under the gender dysphoria diagnosis were approved when identified with different diagnostic codes.

The plaintiffs in both West Virginia and North Carolina argued that these exclusions violated their rights. They sought to have the exclusions declared unconstitutional and to obtain coverage for the treatment of gender dysphoria. The states maintained that their health care plans were lawful, nondiscriminatory, and based on legitimate concerns about cost and scientific evidence.

The district courts found in favor of the plaintiffs in both North Carolina and West Virginia, concluding that the health care plan violated the Equal Protection Clause and, in the case of West Virginia, also violated the Medicaid and Affordable Care Acts. The courts granted summary judgment in favor of the plaintiffs, prohibited the states from enforcing the exclusions, and ordered the reinstatement of coverage for medically necessary treatments for gender dysphoria. The defendants subsequently appealed the decision to the U.S. Court of Appeals for the Fourth Circuit, and the case consolidated for the opinion below.

Ruling and Reasoning

Among arguments, the appellants claimed that the district court misapplied evidentiary rules when it

excluded portions of their expert’s opinions. The district court constrained the experts to the specific areas where they had expertise, *e.g.*, an endocrinologist was not permitted to testify on the diagnosis of gender dysphoria but was permitted to testify on puberty-blocking medication. The U.S. Court of Appeals for the Fourth Circuit evaluated the admissibility of experts using Federal Rule of Evidence 702 (2011). Rule 702 requires that testimony be based on sufficient facts or data, that it is the product of reliable principles and methods, and that the expert has reliably applied these principles and methods to the facts of the case. The court found that the district court did not abuse its discretion in excluding the expert testimonies deemed speculative, lacking sufficient peer-reviewed backing, or outside the experts’ specific areas of expertise.

The appellants claimed that the exclusion of gender-affirming care was justified by the need to save costs and uncertainties about the treatments’ effectiveness. The Fourth Circuit Court of Appeals upheld the district courts’ rulings that excluding coverage for gender-affirming care violated the Fourteenth Amendment. The court cited *Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020), and *Bostock v. Clayton County*, 590 U.S. 644 (2020), for the position that gender identity has been established as a protected characteristic under the Equal Protection Clause. The court determined that the policies at issue discriminated on the basis of sex and transgender status. It found that the exclusion was discriminatory because it specifically denied coverage for treatments related to gender transition while covering the same treatments for other conditions.

Additionally, the court noted that financial considerations do not qualify as a valid government interest for discrimination and that substantial medical evidence supports the necessity of gender-affirming treatments for individuals diagnosed with gender dysphoria.

Dissent

Several judges wrote dissenting opinions. Judge Harvie Wilkinson expressed concerns about constitutional arguments for gender-affirming care, advocating for resolution through the democratic process. He framed gender dysphoria as an uncertain and scientifically debated matter. Judge Julius Richardson said that the policies were not inherently discriminatory and fell within the state’s authority to make decisions based on

medical diagnoses rather than on sex or transgender status. Judge Marvin Quattlebaum criticized excluding expert testimony and cautioned against making definitive declarations in unsettled scientific debates. Collectively, the dissenting opinions expressed concern about the broader implications of the majority's ruling on the balance between state policymaking authority and judicial oversight.

Discussion

The central question in *Kadel* was whether state-operated health care plans that excluded coverage for gender-affirming treatments violated the Equal Protection Clause of the Fourteenth Amendment. The court addressed several interconnected questions regarding discrimination based on sex and transgender status, evidence supporting the medical necessity of gender-affirming care, and the sufficiency of justifications such as cost concerns and treatment efficacy.

Forensic experts played a critical role in bridging the gap between clinical science and legal arguments. Their testimony sought to establish the validity of gender dysphoria as a medical diagnosis and the efficacy and necessity of gender-affirming treatments. The court relied heavily on standards from leading medical and psychiatric organizations, including the American Psychiatric Association, the National Institute of Mental Health, the World Health Organization, and the World Professional Association for Transgender Health. These standards indicate that the medical consensus is that gender-affirming treatments alleviate distress, reduce functional impairment, and decrease the risk of self-harm. The Fourth Circuit's exclusion of speculative or unsupported expert testimony underscored the importance of evidence-based conclusions. It also underscores the importance of a recent change to Federal Rule of Evidence 702, as of December 1, 2023, which pushes courts to critically decide whether expert testimony meets the threshold for admissibility.

The ruling extends beyond the individual plaintiffs, setting a precedent for other jurisdictions. By affirming that policies denying coverage for gender-affirming treatments constitute sex- and transgender-based discrimination, the appeals court reinforced the principles of equal treatment in health care, the insufficiency of financial considerations to justify discriminatory practices, and the pivotal role of medical testimony.

Cases such as this also raise questions regarding how the courts will treat mental health parity concerns moving forward. Here, we note that physical

health diagnoses with standard-of-care treatment are approved under state insurance plans, whereas a mental health diagnosis of "gender dysphoria" with the same standard-of-care treatment was excluded. Although the challenges brought here were on Fourteenth Amendment grounds, it is important to anticipate future cases and challenges where a divide is placed between medical and mental health diagnoses to justify exceptions.

Overall, the decision in *Kadel* exemplifies the critical role of interdisciplinary expertise in shaping legal outcomes. It challenges clinicians and experts to stay informed about appropriate evidence for testimony and evolving standards of care.

Restriction of Firearm Possession in the Post-Bruen Era

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Court Considers Firearm Restrictions for Persons with Domestic Violence Restraining Orders

DOI:10.29158/JAAPL.250025LI-25

Key words: Second Amendment; surety laws; going armed laws; domestic violence; restraining orders; extreme risk protection orders

In *United States v. Rahimi*, 602 U.S. 680 (2024), the U.S. Supreme Court determined that barring individuals subject to domestic violence restraining orders from possessing firearms if they were found to "represent a credible threat to the safety of [an] intimate partner" did not violate the Second Amendment (*Rahimi*, p 684, citing 18 U.S.C. §922(g)(8) (2022)).

Facts of the Case

In December 2019, Zackey Rahimi fought with his girlfriend, C.M., in a parking lot. C.M. tried to flee, but Mr. Rahimi grabbed her arm and dragged her to the car. He noticed a bystander observing the scene and went to retrieve a gun from the car, during which time