

Curious Now - Jonathan Van Ness x ACLU x L.W.

JVN // Joining us on Curious Now is no stranger to the podcast, and someone who we are a huge fan of around here, Chase Strangio. And also we have L. So, Chase, you are not new to the Getting Curious universe, but for listeners who may need a refresher, can you introduce yourself and tell us about the work that you do with ACLU?

CHASE STRANGIO // Yes, well, thank you for having me. And I am a lawyer at the national office of the ACLU. I've been at the ACLU for about 11 years focusing on litigating trans justice cases in the courts, in federal court, in state court, lobbying around the country to try to stop all of the wave of anti-trans bills that unfortunately have been escalating over the last seven years and also doing different types of public education to try to talk about gender, talk about trans justice, and get people to understand that the fight for trans liberation is a fight that implicates all of us.

JVN // L, we are so excited to meet you. Can you tell us about yourself, hun?

L.W. // I'm, ya know, transgender. I happen to be in the right situation at the right time, and I'm suing the government for trying to legislate my body, I guess.

JVN // What's going on with gender affirming care? It's very in the news. Parents rights is only allowed for conservative Christians who don't want their kids to read certain books, but no one else.

L.W. // Yeah.

JVN // But what's going on with gender affirming care, Chase?

CHASE STRANGIO // So it is a good question: what is going on with gender affirming care? How did we get to this point in our—both lawmaking and our public discourse—where this became such a flashpoint? And so first, when we're talking about gender affirming care, what we're talking about is the established evidence-based medicine for treating transgender people's gender dysphoria. And that is the type of gender affirming care that's targeted right now by lawmakers across the country. Now, gender affirming care more broadly is something that is available and accessible to everyone. And in fact, the largest consumers of gender affirming care, cisgender people. We...you know, you can think of things like laser hair removal as gender affirming care. You could think of any sort of cosmetic surgery as gender affirming care. You can think of, you know, people wear, you know, eyeglasses when they don't need them because they look cute any you know... so so thinking about what does it mean to seek out some sort of intervention that affirms how you understand your gender? When we're talking about gender affirming care for transgender people, we're talking about treatment for a condition called gender dysphoria and gender affirming medical treatment for gender dysphoria has been around for decades. And that's one of the things that's super important to ground ourselves in because so much of the

conversation acts as though this originated yesterday, which that's not true. Look at you know, we have like Christine Jorgensen and many, many years ago...

JVN // These decisions that parents and their kids come to around whatever their gender affirming care is going to look like, aren't decisions that are made super flippantly or lightly!

L.W. // Oh, certainly not. I mean, I had to you know, I had to debate with my parents for like over the span of, like a few months.

JVN // And when was that? When were these, when were these, when were these month long debates, L?

L.W. // About a year ago.

JVN // Yes, I was...You're smelling what I'm stepping in, though, that I was trying to get the chronology that it's not like, you know, like it's not like L was like, "Hey, mom and dad, I think I might be trans." And then we were like, getting on hormones in 3 hours. It's like, there's just this fear that, like, kids are, are, are going too quick or that they're making these decisions that are too quick. And there are safeguards like parents are there, there are doctors, there are standards of care that Chase is so often talking about. And, you know, I'm just curious, I'm curious about what your experience was.

CHASE STRANGIO // This is something that parents and kids and doctors are talking about over a period, period of months and years. Way more than—I will say as a parent—most decisions that we make on behalf of our children, even those that have, you know, side effects and consequences. And I think one of the things that parents know is that there's so much about raising a kid that is unknown and you are doing your best with the best information that you have available. And this is something that is so deliberative and slow. In the media and in the public conversation, there is this very reflexive thing that happens for cis people and it's deliberately created by the right, which is to feel this revulsion at the notion of gender nonconformity, as they understand it—even if many trans people are actually gender conforming. So so that so many of the...so so, you know, they'll talk about you know, they'll use pictures of, say, top surgery scars, like they'll hold pictures up of trans masculine people and say these are mutilated people. And they use this idea, this effort, to talk about our bodies in a way that's designed to cause people to feel, in some way, disgusted by our bodies and play into the fear, that fear of difference. And that's very much part of the discourse now. And then in court and in the legislative testimony, we often hear things like, you know, "Testosterone causes, you know, hair growth on people's faces." Well, of course, that's what people want. That is the intended effect of the treatment. They're using the intended effects of the treatment to try to claim that they're harmful when those effects—bringing our physiological bodies into alignment with who we know we are—is diminishing the very serious distress that people are are experiencing prior to the treatment and all of the data that we have. And this is another thing we hear all the time: "There's no data. This is all new." There's there is so much data. There's the clinical data of physicians who have been treating us for decades. And there is the studies that we have available; both of which confirm that this treatment alleviates this type of distress by

bringing our bodies into alignment with how we understand ourselves. And then these other side effects that were talked about are extraordinarily exaggerated. So, for example, the impact on fertility is something that we hear all the time. And the reality is that for many people who, for example, just take hormone therapy, there is you know, all the studies are showing that, in fact there is very little impact on infertility. And one of the main problems that people have is they think that it is a form of birth control because they've been told so many times that it's sterilizing. And then you have all these trans men getting pregnant.

JVN // So you're both working together to fight against the gender affirming care ban in Tennessee. Can you remind us about what's at stake here in Tennessee and what's been going on legislatively there?

CHASE STRANGIO // Yeah so Tennessee is a state that has pushed anti-trans legislation for a long time. And as attacks on trans lives and bodies escalated, Tennessee really was leading the charge in many ways. And in 2023, they passed Senate Bill 1. So the very first piece of legislation introduced in Tennessee in 2023 was a bill that banned gender affirming care for trans adolescents under the age of 18. And it's far reaching; it, it bans not just a prescription of the care by doctors, but the filling of prescriptions by pharmacies and prohibits, for example, telemedicine from being provided from other states to people in Tennessee. So this is, you know, very much modeled after the type of bans we're seeing on access to abortion. And this was the first bill filed. It was passed; it went through both chambers of the Tennessee legislature, was signed by by the governor. We at the ACLU along with Lambda Legal, the ACLU of Tennessee and Akin Gump, a law firm, filed a lawsuit on behalf of L, two other young people and their families, and one doctor in Tennessee. And we were able to block the law at the district court. So the trial level court, where the judge is the closest to the evidence, issued an incredibly extensive ruling, in essence, finding all of the arguments put forth by the state of Tennessee to not be supported by the evidence. And this has really been the trend that when the evidence is looked at, what is shown to be true is that it just simply can't hold up to scrutiny. And the court found that the law violated the equal protection rights of transgender young people, as well as the rights of parents to make medical decisions for their minor children, which is a very well-established right under our constitutional system.

Unfortunately, the state of Tennessee—ever aggressive in its efforts to attack trans people—immediately sought a block on that injunction from the higher court: the Sixth Circuit Court of Appeals. So, in essence, there were two cases, one from Kentucky and then one from our case from Tennessee. We went up to the Sixth Circuit and unfortunately, that court reversed the injunctions from the lower court. And in so doing, really did two, I think, fundamental...made many errors, but I think two fundamental thematic things that we should note. First, they didn't look at the evidence. They said that for many reasons that they didn't have to do. And I would think that would be, that was a distortion of of of the Supreme Court case law, but avoided the evidence. And I think that's important because when you look at the evidence, it simply can't hold up to scrutiny. And the other thing that they did is greatly expand the reach of Dobbs, which is the Supreme Court case that overturned Roe v Wade. And we're starting to see that case being weaponized against trans people. That is what happened on September 28th; they issued that opinion and L is the

lead plaintiff on our case. And we are now, because of the urgency, because of the crisis facing young people in this country, there are now 21 states that are, that ban gender affirming care for trans minors in a span of 3 years. So just to keep that in mind, you know, there are 14 states that ban abortion and that's a crisis. There are 21 states that ban gender affirming care in the span of three years. There is not an infrastructure to support that type of restriction on care that people have come to rely on. So we are asking the Supreme Court to review that decision, and we are hopeful that they will take the case and see the error in the lower court's reasoning and reverse, and so that we can start to strike down these devastating and dangerous laws across the country.

JVN // What do you wish people knew about this subject that maybe they don't know?

CHASE STRANGIO // You know, this is about: are we going to have access to health care or not? And we already know in this country that we greatly limit access to people's health care. But to the point that, you know, yes, they're focusing on our health care, they're focusing on access to gender affirming care for trans adolescents. But we know they have no intention of stopping there, nor did they start there. That they've spent the last 50 years attacking access to abortion. We know that they're using Dobbs to try to take...to limit our ability as trans people to access the health care that we need to actualize our bodies and our freedom and our, you know, sort of full potential. But this is also about: are they going to come for other forms of health care that we need? Are they coming for contraception, are they coming for the care that people require as they age? We know that they're trying to limit access to vaccines and other forms of preventive care. We live in a country in which we don't prioritize health. We don't invest in health across the board. And this is part of that struggle: our ability to access health care is part of a larger struggle, and that is that we want, I think, we want people to understand that none of us are fighting these battles alone. We rise and fall together.

JVN // Haven't we now had like different rulings in district courts on gender affirming care? Like, didn't one district court say like, "Oh, like that's not constitutional, it's not going into effect?" But then the Sixth Circuit did allow it to go into effect. So doesn't that mean that we're probably going to be on a fast track to the Supreme Court now because district courts have made like competing rulings, or is that not true?

CHASE STRANGIO // District courts, which is the lowest federal court, have almost unanimously struck down these laws. And so, you know, up and before the Sixth Circuit, we had 7 federal district courts blocking these laws. And the Sixth Circuit when it's issued its stay opinion, which was the first opinion that in the beginning of July, that that allowed Tennessee's law to go into effect, that broke with the consensus. And then the Eleventh Circuit, which is another federal appeals court, also ended up reversing a lower court injunction. And and that will potentially allow Alabama's law to go into effect. So we have this sort of trend, unfortunately, towards these decisions from federal appeals courts that are allowing these laws to go into effect. Now, previously we had a case against Arkansas and that the law in Arkansas was enjoined preliminarily, and that decision was affirmed upheld by a federal appeals court. So the split among the federal appeals courts now is between this court that affirmed the decision from Arkansas and then the Sixth.

JVN // And what circuit is that?

CHASE STRANGIO // That's the Eighth Circuit. So we have the Eighth Circuit going one way and the Sixth and the Eleventh going the other way. Now, lots of procedural things have happened across the country. I think to your point, though, this is all moving incredibly quickly. It's moving incredibly quickly legislatively where we saw the sea change in terms of access to care and the bans. It's moving incredibly quickly through the federal courts. And one of the indicators of whether the Supreme Court is going to take a case is whether there's a split. So differing decisions from federal appellate courts. And that is, in essence, what we're saying is: this is time for the Supreme Court to step in, which is a weighty and terrifying thing when you know, a) the magnitude and power of a Supreme Court decision; it can impact the material conditions of people's lives for generations or longer. We know that this is a court that just overturned *Roe v Wade* with the *Dobbs* decision and issued many, you know...just struck down affirmative action. There are lots of reasons to be concerned about what this court will do with civil rights claims under the Constitution. Right now, if you look at the number of words that are discussing and really debating trans health care and trans people, it is highly disproportionate to our numbers in society, whereas we may represent somewhere around 1% of the population. Our representation in media coverage is far outsized for our numbers, and that is giving people a skewed sense of the sort of magnitude of quote unquote, debate over our lives and our health care. And that is very deliberate because when there is a sense that there is something to be debated that fuels anxiety and allows lawmakers to erode our civil rights and legal protections. And that's exactly what's happening now through not just the outsized coverage, but the amount of misinformation in that coverage, including misinformation about the nature of the care, the nature of parental involvement and exactly what is happening. And it's tapping into people's incredibly deep seated anxiety about anything that destabilizes the gender binary, which is a fundamental organizing principle for most of the power structures that we have in our society.

L.W. // Yeah, that's definitely true. And I think one of the main issues is that people are framing it as a debate. That's not a debate. Typically a debate: you know, both sides bring facts to the table and try and argue positions. One side is bringing facts and the other side is bringing fake facts.

CHASE STRANGIO // And one side's position—if you consider them sides—is that we shouldn't exist at all.

JVN // Would these bans outlaw...if they, if we, lost at the Supreme Court would it would State's rights still get to be states rights where you can get gender affirming care? Or would it just mean that it can go into effect in the states that don't want to have gender affirming care?

CHASE STRANGIO // So this is a really important and good question. At this point, the question is: is it unconstitutional to ban the care? And so the, if the answer to that question is no, it's not that that it's that that it's constitutional, that the states can do it, that doesn't

mean the states have to do it...in this current permutation. Now, we know that the right is coming more broadly. They want to be on this nationally. They just as they, you know-

JVN // And if the Republicans get the House and Senate, they could totally put forward a bill about that. And if it's ruled not unconstitutional, then just like we could have a national abortion ban, we could have this too.

CHASE STRANGIO // Correct. And I think I think the way in terms of the your question, would you move to another state, I think that the the bigger concern. Well, so so first and foremost, I think we want to fight so that this is available in every state. And it's not just available that it's widely accessible and affordable, which of course, it wasn't and isn't. And and and so that fight is is ongoing. That is ultimately what we're fighting at the Supreme Court, which is ten states continue to ban the care. The larger question of, okay, will states have to ban the care, that I think our greatest threat there is Congress: is what happens in 2024. Do we have a flip of the House... well, does the House stay? Does the Senate flip? Does the President flip, such that we have federal bans on gender affirming health care and abortion? And that is a real concern. And even if that doesn't happen, I think we should be really concerned about what states end up doing with respect - our ability to travel to get the care. And that we know is sort of the next frontier of attack, which is, you know, restrictions on people's movement in order to access care out of state that is prohibited in state. And there's other constitutional questions that come up in that context. But in terms of how are we feeling, you know, first and foremost, we're just asking them to take it. You know, the Supreme Court doesn't take most cases. And so the step one is: take the case. And then step two, if they do take it, is fight on the merits. And, you know, I will say it's always an uphill battle. And more than anything, what I'll say to the listener is this: is is that, yes, we fight in court and the justices apply the law, but at the end of the day, they're human beings that live in the country with the rest of us. And each and every person has a role to play in the country that we live in and the country that the justices see when they rule on our rights. And so whether we win is ultimately going to depend on what is the conversation that's happening over the next 6 months to 18 months. Are we going to continue to debate trans existence? Are we going to continue to legitimize the notion that our lives, our bodies and our health care are our proper subjects of debate? Or are we going to shift that narrative such that the conditions that the justices see in the world are different? And that's the conversation I want to have, because that's the conversation that implicates all of us.

JVN // Do you remember how old you were, L, when you started like...do you remember, like the first time you ever, like, thought or were like, or like you, were you ever experienced dysphoria or dysphoric feelings?

L.W. // Yeah, maybe in the fourth grade, I think. I was just kind of dreading the idea of myself having facial hair. Fortunately, that was never really a thing that happened, so.

CHASE STRANGIO // Which I think is important when we talk about the irreversibility; the rhetoric that we hear all the time is about the irreversibility of the gender affirming care, which is also overstated. But the reality is that for all of these young people, these pubertal

changes are irreversible. And that is extremely terrifying for people like L, who thankfully have access to treatment at a young age. And so we would be ripping that away and forcing their bodies to change in ways that they've never felt.

JVN // So, Chase, what's something that we can all do right now to support gender affirming care? How can we support the ACLU? How can we all follow your fight against the Tennessee gender affirming care ban; what can we do?

CHASE STRANGIO // I mean, I think first and foremost, I really believe that this starts with micro interventions in our lives. Like, I really want everyone to start thinking about how they're really reifying and reinforcing the gender binary all the time in their lives, because ultimately the transformation is going to start with how we reconceptualize what's possible. So that means just sort of stop making assumptions; stop gendering everything, stop gendering fetuses, stop gendering babies in a way that's overly gratuitous. We don't need that. What we need is to give people the opportunity to explore who they are, and that is actually what gender affirming care is about. It's about exploration. It's about understanding and affirming yourself. These prohibitions are about enforcing a conformity; are about prohibiting exploration, or about cutting off the possibilities that people will get to live full and free lives. And I really believe that all of us, it starts with how we engage in our everyday life. And then in terms of following the fight in the coming months and years: engage with state legislative fights; anti-trans bills have proliferated in almost every state around the country. So fight back, support people in states that are inundated with these types of laws. And if this case, if this L's case does end up at the Supreme Court, please follow Lambda Legal and the ACLU and our fight and the fight of other organizations across the country and and show your support for it, for for trans young people; don't debate them. And also don't take away their agency. They know who they are. And and, in fact, I mean, I listen to L: at 15 years old, I can no more put together a sentence about myself, let alone articulate my truth to the legislature, to the highest courts in this country. So we should be looking at them as guides, not taking... not not attacking them and their agency.

JVN // L, this is our final question and it's for you. We love to end Curious Now on a moment of of joy. Actually, it's really queer joy, but whatever the joy is.

L.W. // My moment of queer joy: I have a girlfriend now and it's awesome.

JVN // Oh, my gosh.

L.W. // She's awesome. She thinks I'm awesome, I guess. So, that's awesome.

JVN // Young love.

L.W. // She's like an amazing person. Oh, and I love her. Also, I have a funny picture of her holding a snake like a guy holding a fish on a, like, tinder profile.

JVN // I am literally scared of them, and I always have been my entire life, but I think that they're sweet. And sometimes I feel guilty when I see them getting eaten on like National

Geographic and stuff. So I will say that. Like, I don't not like snakes, I'm just freaking scared of them, L.

CHASE STRANGIO // I'm so scared of guys on Tinder profiles holding fish.

JVN // Thanks for coming on and we just love you. And thanks for being so brave and major and congratulations. And Chase, we love you so much. Thanks for coming on Curious Now.

CHASE STRANGIO // Love you!

JVN // But we did. We did it, L. We did it, Chase - you guys did so good on Curious Now. We love you guys. Yay, go us and congratulations, L, you're the best.