4/15 OGC/OCR Bi-monthly Meeting Agenda

(b)(5)

From: (b)(6) (HHS/OCR)
Sent: Wed, 13 Apr 2022 19:03:55 +0000
To: Jee, Lauren (HHS/OCR); Barron, Pamela (HHS/OCR)
Cc: Carter, Carla (HHS/OCR); Schuham, Aaron (HHS/OGC)
Subject: Alabama - criminal ban on gender-affirming care for minors (update)
Attachments: 2022_04_12_Walker_PI_Motion.pdf, 2022_04_12_Walker_PI_Motion_memo.pdf, 2022_04_08_Landisky_Complaint.pdf, 2022_04_11_Walker_Complaint.pdf

Hi Lauren and Pam,

(b)(5)

(b)(5)

(b)(5)

Please let me know if you have any questions.

Best,

(b)(6)

(b)(6), Esq., MSW (she/her) | Section Chief
Office for Civil Rights
U.S. Department of Health & Human Services
200 Independence Ave. S.W., Room (b)(6)
Washington, D.C. 20201
Phone: (b)(6)
Email: (b)(6)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

2022 APR 12 P 5:41

JEFFREY WALKER, LISA WALKER, H.W., JEFFREY WHITE, CHRISTA WHITE, and C.W.,

Plaintiffs,

v.

STEVE MARSHALL, in his official capacity as Attorney General of the State of Alabama, BRIAN C.T. JONES, in his official capacity as District Attorney for Limestone County, and JESSICA VENTIERE, in her official capacity as District Attorney for Lee County,

Defendants.

Civil Action No. 2:22-cv-00167

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Plaintiffs Jeffrey Walker, Lisa Walker, H.W., Jeffrey White, Christa White, and C.W. hereby move the Court pursuant to Rule 65 of the Federal Rules of Civil Procedure for preliminary injunctive relief and/or a temporary restraining order blocking the enforcement of Alabama Senate Bill 184 ("S.B. 184" or the "felony health care ban"), prior to its May 8, 2022 effective date. In addition, Plaintiffs respectfully request this Court exercise its discretion to waive the Federal Rule of Civil Procedure 65(c) security requirement. *See Bell S. Telecomm., Inc.* v. *MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005).

S.B. 184 makes it a Class C felony for any "person" to "engage in or cause" the performance of certain medical treatments on any minor, "if the practice is performed for the purpose of attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent with the minor's sex as defined by [the] act[.]" By criminalizing medically necessary care to treat gender dysphoria while permitting non-transgender youth to receive comparable medical care, S.B. 184 violates the Equal Protection Clause of the Fourteenth Amendment by discriminating on the basis of transgender status and sex. The felony health care ban also violates Plaintiffs' fundamental right to parental autonomy under the Due Process Clause of the Fourteenth Amendment, because it interferes with Parent Plaintiffs' exercise of their fundamental rights to seek medical care for their transgender children by categorically prohibiting them from seeking medically necessary care that is safe, effective, and well-accepted by major medical associations. Finally, S.B. 184 violates the Due Process Clause of the Fourteenth Amendment, because it fails to provide sufficient notice of the specific conduct that is subject to criminal penalties under the law.

As detailed more fully in the accompanying Memorandum of Law, Plaintiffs

satisfy the requirements for preliminary injunctive relief and/or a temporary restraining order. *See McDonald's Corp.* v. *Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998). If S.B. 184 is not enjoined, Plaintiffs will suffer immediate and irreparable constitutional, medical, emotional, psychological, and other harm for which there is no adequate remedy at law. The balance of hardships also favors Plaintiffs, because a preliminary injunction and/or temporary restraining order would preserve the status quo and the harm imposed through enforcement of the felony health care ban is far greater than any harm that could result from the preliminary injunction and/or temporary restraining order. In addition, the entry of a preliminary injunction and/or temporary restraining order is in the public interest. Finally, Plaintiffs respectfully request this Court exercise its discretion to waive the Federal Rule of Civil Procedure 65(c) security requirement.

Accordingly, and for the reasons set forth in the accompanying Memorandum of Law, this Motion for a Temporary Restraining Order and/or Preliminary Injunction should be granted without security. *See City of Atlanta* v. *Metropolitan Atlanta Rapid Transit Authority*, 636 F.2d 1084, 1094 (5th Cir. Unit B 1981) (recognizing "an exception to the Rule 65 security requirement" for "public-interest litigation"); *Bell S. Telecomm.*, 425 F.3d at 971 (citing *City of Atlanta* approvingly).

Dated: April 12, 2022

Respectfully submitted.

s/ LaTisha Gotell Faulks

L. Nowlin-Sohl* (WA Bar No. 51512)
Malita Picasso* (NY Bar No. 5750013)
Chase Strangio* (NY Bar No. 4879466)
James D. Esseks* (NY Bar No. 2643807)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC.
125 Broad Street, 18th Floor
New York, NY 10004
Phone: (212) 549-2500
lnowlin-sohl@aclu.org

Carl Charles* (GA Bar No. 5427026)
Tara Borelli* (GA Bar No. 265084)
LAMBDA LEGAL
158 West Ponce De Leon Ave.,
Suite 105
Decatur, GA 30030
Phone: (404) 897-1880
ccharles@lambdalegal.org

Sruti J. Swaminathan* (NY Bar No. 5598792)
LAMBDA LEGAL
120 Wall Street, 19th Floor
New York, NY 10005
Phone: (212) 809-8585
sswaminathan@lambdalegal.org

Lynly S. Egyes* (NY Bar No. 4838025)
Milo Inglehart* (NY Bar No. 5817937)
TRANSGENDER LAW CENTER
594 Dean Street, Suite 11
Brooklyn, NY 11238
Phone: (510) 587-9696
lynly@transgenderlawcenter.org

Dale Melchert* (NY Bar No. 5366554)
TRANSGENDER LAW CENTER
P.O. Box 70976
Oakland, CA 94612
Phone: (510) 587-9696, ext. 354
dale@transgenderlawcenter.org

LaTisha Gotell Faulks (ASB-1279-I63J)
Kaitlin Welborn* (DC Bar No. 88187724)
AMERICAN CIVIL LIBERTIES UNION OF ALABAMA FOUNDATION
P.O. Box 6179
Montgomery, AL 36106
Phone: (334) 265-2754
tgfaulks@aclualabama.org

Kathleen R. Hartnett* (CA Bar No. 314267)
Julie Veroff* (CA Bar No. 310161)
Zoë W. Helstrom* (CA Bar No. 339093)
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
Phone: (415) 693-2000
khartnett@cooley.com

Andrew Barr* (CO Bar No. 49644)
COOLEY LLP
1144 15th Street, Suite 2300
Denver, CO 80202
Phone: (720) 566-4121
abarr@cooley.com

Adam Katz* (MA Bar No. 706834)
Elizabeth Reinhardt* (MA Bar No. 707645)
COOLEY LLP
500 Boylston Street, 14th Floor
Boston, MA 02116
Phone: (617) 937-2305
ereinhardt@cooley.com

Katelyn Kang* (NY Bar No. 5745799)
Valeria M. Pelet del Toro* (NY Bar No. 5764667)
COOLEY LLP
55 Hudson Yards
New York, NY 10001
Phone: (212) 479-6849
kkang@cooley.com

Robby L.R. Saldaña* (DC Bar No. 1034981)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004-2400
Phone: (202) 842-7800
rsaldana@cooley.com

**Pro Hac Vice Applications Forthcoming*

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April 2022, I served the foregoing to the below parties via Fedex overnight mail, thereby serving all counsel of record.

Steve Marshall
Alabama Attorney General's Office
State of Alabama
501 Washington Avenue
Montgomery, AL 36104

Brian C.T. Jones
Limestone Co. Courthouse
200 West Washington St.
1st Floor
Athens, AL 35611

Jessica Ventiere
2311 Gateway Drive
Opelika, Alabama 36801

/s/ LaTisha Gotell Faulks

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JEFFREY WALKER, LISA WALKER, H.W., JEFFREY WHITE, CHRISTA WHITE, and C.W.,

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Defendants.

Civil Action No. 2:22-cv-00167

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

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INTRODUCTION

On April 7, 2022, in the final hours of the 2022 legislative session Alabama legislators pushed through S.B. 184 (the "felony health care ban" or the "ban")—a sweeping law that makes it impossible to provide or help transgender adolescents access critical, medically necessary care to treat gender dysphoria. The ban is the first law in the Nation to make it a crime to "engag[e] in or caus[e]" such medical care to be provided—in this case, a felony punishable by up to a decade in prison.[1] The ban categorically bars transgender minors in Alabama—defined in the ban as persons up to the age of 19—from receiving this medical care even when the minor, the minor's parents, and the minor's medical providers *all* agree that the care is medically necessary and in the minor's best interests. Thus, not only does the ban criminalize the care itself, but it also strips parents of the fundamental rights to decide, with the support of a team of medical providers, what medical care is necessary for their own child. Indeed, the ban's vague language threatens imprisonment not just for the doctors who provide this treatment pursuant to accepted medical protocols, but also for parents, nurses, teachers, guidance counselors, clergy members, and anyone else who could conceivably "cause" a

[1] *See* Rick Rojas, Tarriro Mzezew, *Alabama Lawmakers Approve Ban on Medical Care for Transgender Youth*, NY TIMES (Apr. 7, 2022), https://www.nytimes.com/2022/04/07/us/alabama-transgender-youth-bill.html?searchResultPosition=1.

minor to obtain this care.

Alabama's felony health care ban warrants this Court's immediate intervention through the issuance of a temporary restraining order and/or a preliminary injunction pending a final resolution of the case on its merits.

First, Plaintiffs are likely to succeed on the merits of their constitutional claims. The felony health care ban violates the equal protection rights of transgender youth because it singles out and discriminates against them based on their transgender status and sex, including for failure to conform to sex stereotypes. The ban prohibits treatments, such as puberty-delaying medication, hormone therapy, and chest surgeries, when those treatments are provided to transgender adolescents for gender-affirming purposes. Yet, the ban allows non-transgender adolescents to access these treatments for any purpose, including to help align their physical characteristics with their gender identity. The ban also strips the parents of transgender youth of their fundamental right to seek medical care for their minor children in consultation with medical professionals. And the ban violates due process because it fails to provide the public with fair notice of what conduct will trigger its serious criminal penalties.

Second, the felony health care ban, if allowed to go into effect, will devastate and irreparably harm Plaintiffs—two transgender adolescents and their parents. The minor Plaintiffs depend on puberty blockers and/or hormone therapy to treat their

gender dysphoria. If these medications were to be cut off—as the ban requires under threat of severe criminal sanction—the minor Plaintiffs would immediately experience physical changes of puberty, with lasting physical and psychological consequences. Plaintiffs Jeff White, Christa White, Jeff Walker, and Lisa Walker (collectively, the "Parent Plaintiffs") simply want their children to have access to the medical care they need to be healthy and happy.

Finally, the balance of the equities and the public interest demand that the Court enjoin the enforcement of the felony health care ban at this stage. The threat of harm to Plaintiffs is concrete, imminent, and devastating, particularly given that the targeted medical treatments have been provided safely and effectively for decades. The harm to Plaintiffs far outweighs any impact on the State of maintaining the status quo while this case proceeds.

Plaintiffs respectfully request that this Court issue a temporary restraining order and/or a preliminary injunction before the ban goes into effect on May 8, 2022, prohibiting Defendants from enforcing the ban. The consequences of the ban going into effect, even for a single day, would be irreparable and catastrophic.

BACKGROUND

I. MEDICAL PROTOCOLS FOR THE TREATMENT OF TRANSGENDER YOUTH WITH GENDER DYSPHORIA.

"Gender identity" is the inherent sense of belonging to a particular gender. (Exhibit 1 - Declaration of Dan Karasic, MD ("Karasic Decl.") ¶ 19.) Everyone has

a gender identity, and a person's gender identity does not always align with their sex assigned at birth. (*Id.*) Gender identity has biological bases and is not subject to change by external factors. (*Id.*) People who have a gender identity that aligns with the sex they were assigned at birth based on their external genitalia are cisgender, while people who have a gender identity that does not align with their sex assigned at birth are transgender. (Exhibit 2 - Declaration of Cassie Brady, MD ("Brady Decl.") ¶ 22.)

The incongruence between one's gender identity and one's sex assigned at birth can cause significant distress. (Karasic Decl. ¶¶ 20–21.) "Gender dysphoria" is the diagnostic term in the American Psychiatric Association's Diagnostic and Statistical Manual Fifth Edition (DSM-5) for the condition experienced by some transgender people of clinically significant distress resulting from this incongruence. (*Id.* ¶¶ 21–22.)

Being transgender is a normal variation of human development and is not itself a medical condition to be cured. (Brady Decl. ¶ 24.) Gender Dysphoria, however, is a serious medical condition that, if left untreated, can result in debilitating anxiety, severe depression, self-harm, and suicide. (*Id.* ¶¶ 27, 31.) Doctors and other medical professionals use well-established practices, developed through decades of research and treatment, to diagnose and treat gender dysphoria. (Exhibit 3 - Declaration of Armand Antommaria, MD ("Antommaria Decl.") ¶ 22.)

The Endocrine Society[2] and the World Professional Association for Transgender Health ("WPATH")[3] have published widely accepted medical protocols for treating gender dysphoria. (Karasic Decl. ¶¶ 23–27; Brady Decl. ¶ 32.) Medical treatment for gender dysphoria seeks to eliminate the distress of gender dysphoria by aligning an individual patient's body and presentation with their internal sense of self. (Karasic Decl. ¶ 45.) This treatment is recognized as safe and effective for those who need it by every major medical organization in the United States, including the American Medical Association, the American Psychiatric Association, the American Academy of Pediatrics, and the Endocrine Society. (*Id.* ¶ 44.)

The treatment for gender dysphoria differs depending on whether the patient is a pre-pubertal child, an adolescent, or an adult. Before puberty, there are no medical or pharmacological treatments for gender dysphoria. (Brady Decl. ¶¶ 39–40.)

For adolescents with gender dysphoria who experience severe distress with the onset of puberty, puberty-delaying medications may be indicated. (Karasic Decl.

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[2] Wylie C. Hembree et al., "Endocrine Treatment of GenderDysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline," The Journal of Clinical Endocrinology & Metabolism, Volume 102, Issue 11, 1 November 2017, Pages 3869-3903, https://doi.org/10.1210/jc.2017-01658, ("Endocrine Society Guideline").

[3] World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Conforming People (7th Version) (2012), https://www.wpath.org/publications/soc, ("WPATH Standards of Care").

¶ 29.) In providing medical treatments to adolescents, pediatric endocrinologists work in close consultation with qualified mental-health professionals. (*Id.* ¶ 30.) The Endocrine Society's clinical practice guideline for treating gender dysphoria recommends medical treatment only for adolescents whose gender dysphoria has been "long standing and intense." (Brady Decl. ¶ 50.) Puberty blockers afford the adolescent time to better understand their gender identity while delaying the development of secondary sex characteristics, which can cause severe distress when incompatible with an adolescent's gender identity. (Karasic Decl. ¶ 29.) Puberty-delaying treatment is reversible, and if an adolescent discontinues the treatment, endogenous puberty will resume. (Brady Decl. ¶¶ 42, 46.) Treatment with puberty blockers can drastically minimize gender dysphoria later in life and may eliminate the need for surgery. (*Id.* ¶ 52, 62.)

For some adolescents with gender dysphoria, initiating puberty consistent with their gender identity through hormone therapy (utilizing testosterone for transgender males and testosterone suppression and estrogen for transgender females) may be medically necessary. (*Id.* ¶¶ 63, 66; Karasic Decl. ¶ 30.) Hormone therapy is provided only after further mental health evaluation and when the adolescent patient has sufficient capacity to give informed consent. (Brady Decl. ¶¶ 67–68; Endocrine Society Guideline, Table 5.) Under the WPATH Standards of Care and the Endocrine Society Guideline, transgender adolescent boys may also receive

medically necessary chest reconstructive surgery before the age of majority. (Karasic Decl. ¶¶ 27, 31.) Neither the WPATH Standards of Care nor the Endocrine Society Guideline recommend genital surgery until a patient has reached the age of majority. (*Id.* ¶ 31) As with all medical interventions, gender-affirming medical treatment is highly individualized and responsive to the particular medical and mental health needs of each patient. (*Id.* ¶ 32.)

II. ALABAMA'S FELONY HEALTH CARE BAN.

S.B. 184. The felony health care ban makes it a felony for any "person" to "engage in or cause" certain medical "practices" to be "performed upon a minor" if the "purpose" of doing so is to "attempt[] to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent with the minor's sex as defined in [S.B. 184]." S.B. 184 § 4(a) (Ala. 2022).[4] The forbidden "practices" are:

> (1) Prescribing or administering puberty blocking medication to stop or delay normal puberty.
>
> (2) Prescribing or administering supraphysiologic doses of testosterone or other androgens to females.
>
> (3) Prescribing or administering supraphysiologic doses of estrogen to males.
>
> (4) Performing surgeries that sterilize, including castration,

[4] Under the law, a minor is a person under 19 years of age. *See* S.B. 184 § 3(1) (adopting definition of "minor" in Alabama Code 1975 § 43-8-1(18)).

> vasectomy, hysterectomy, oophorectomy, orchiectomy, and penectomy.
>
> (5) Performing surgeries that artificially construct tissue with the appearance of genitalia that differs from the individual's sex, including metoidioplasty, phalloplasty, and vaginoplasty.
>
> (6) Removing any healthy or non-diseased body part or tissue, except for male circumcision.

Id. The ban provides that any "violation" is a "Class C felony," *id.* § 4(c), which is punishable by up to a decade in prison and $15,000. Ala. Code § 13A-5-6(a)(3) (specifying up to 10-year imprisonment for a Class C felony); *id.* § 13A-5-11 (specifying up to $15,000 fine for a Class C felony).[5]

Section 3 of the felony health care ban defines "person" to include "[a]ny individual," "[a]ny agent, employee, official, or contractor of any legal entity," or "[a]ny agent, employee, official, or contractor of a school district or the state or any of its political subdivisions or agencies." *Id.* § 3(2). It defines "sex" as "[t]he biological state of being male or female, based on the individual's sex organs, chromosomes, and endogenous hormone profiles." *Id.* § 3(3). The ban does not define or otherwise limit the reach of the word "cause." Thus, on its face, the ban's broad language appears to make felons out of parents who drive their transgender child to a doctor's appointment, secretaries who check patients in to a clinic, and

[5] The ban's prohibitions "do[] not apply to a procedure undertaken to treat a minor born with a medically verifiable disorder of sex development[.]" S.B. 184 § 4(b).

countless other individuals that may in more attenuated ways be said to "cause" a transgender minor to receive medical care.

Legislative history. Senator Shay Shelnutt first introduced the felony health care ban in the Alabama Senate on February 3, 2022.[6] House Representative Wes Allen introduced a companion bill, H.B. 266, in the Alabama House on the same day.[7]

After the felony health care ban's introduction, it was referred to the Senate Healthcare Committee, which held a public hearing on February 9, 2022. During the hearing, opponents of the ban testified and drew attention to the fact that the decision to undergo gender-affirming hormone treatment is a years-long process involving the child, the child's guardians, and the child's physician; that puberty-blocking medications are 100% reversible, potentially lifesaving, and have been used to treat premature puberty for over thirty years; and that sterilizing surgeries are never performed on minor children to treat gender dysphoria in Alabama. *See* Ex. 10, Declaration of Kaitlin Welborn ("Welborn Decl."), Ex A. Opponents of the ban also criticized it for targeting an already vulnerable population—transgender youth—who disproportionately suffer anxiety, depression, homelessness, and suicide. *Id.* They also raised concerns about the ban's extremely broad scope. *Id.*

[6] LegisScan, S.B. 184 (last visited Apr. 9, 2022), https://bit.ly/3up2LQK.
[7] LegisScan, H.B. 266 (last visited Apr. 9, 2022), https://bit.ly/3KtXnS2.

One parent warned that depriving his daughter of gender-affirming care would render his family "powerless . . . to make medical decisions about [their daughter]," and pleaded with the Senators to "[v]ote no on this extremist bill before it kills someone." *Id.* at 10:08; 10:41. Similarly, a transgender young man who is a student at the Alabama School of Fine Arts testified that—contrary to the felony health care ban's suppositions—he and his parents did not pursue gender-affirming care "at the drop of a hat" or under any "pressure" from providers, but only after a careful and "steady process of communication" between him, his parents, and his team of doctors. *Id.* at 11:35. The student cautioned that he "would not be the successful young man" he is without "gender-affirming care," and that he is a "living, breathing example" of how this care "saves lives." *Id.* at 12:37. The only proponent of the felony health care ban to testify was a plastic surgeon who compared being transgender to "self-identif[ying] as . . . a famous Olympian." *Id.* at 25:25.

Nonetheless, on February 23, 2022, the felony health care ban passed the full Senate.[8] During the Senate floor debate, Senator Shelnutt—the ban's sponsor—took the position that gender-affirming medical care constitutes "child abuse": "We don't want parents to be abusing their children. We don't want to make that an option, because that's what it is; it's child abuse." Welborn Decl., Ex. B at 3:49.

That same day, the House Judiciary Committee held a public hearing on the

[8] LegisScan, S.B. 184 (last visited Apr. 9, 2022), https://bit.ly/3up2LQK.

felony health care ban's companion bill, H.B. 266.[9] Doctor Nola Jean Ernest, an Alabama-based pediatrician and neurobiologist, who is the Vice-President of the Alabama Chapter of the American Academy of Pediatrics, testified that puberty-blocking medications have been safely used in the context of precocious puberty for over thirty years. She further testified that "studies show that if you invalidate the experiences of youth, that will increase their risk of self-harm." She pleaded with the legislators: "Please do not take hope away from Alabama children."[10]

One week later, on March 2, 2022, the House Judiciary Committee convened for a hearing on H.B. 266. Welborn Decl., Ex. C. At that hearing, Representative Allen—the bill's sponsor—compared gender-affirming medical care to "vaping," "dealing with cigarettes," and "drinking" alcohol. *Id.* at 7:57.

Representative Allen received questions at the hearing from several Representatives, including Representative Christopher England. Representative England asked whether Representative Allen envisioned a scenario in which "the parent may be required to testify against the person that's providing . . . care to their child" in a criminal case. *Id.* at 17:22. Representative Allen conceded that that was a "good question[]," and offered only that he was "not learning in the law [sic]" enough

[9] LegisScan, H.B. 266 (last visited Apr. 9, 2022), https://bit.ly/3KtXnS2.
[10] Savanna Tryens-Fernandes, *Lawmakers Again Consider Alabama Bill to Limit Treatments for Transgender Children*, Ala. News (Feb. 23, 2022), https://bit.ly/37BTkop.

to answer. *Id.* at 17:51. Representative Allen added that he "consider[s]" gender-affirming medical care to be "child abuse." *Id.* at 21:04. At the end of the hearing, the House gave a favorable report on H.B. 266 and sent the bill to the full House. *Id.* at 47:14.

On April 7, 2022—the last day of the legislative session—the House passed the felony health care ban. Welborn Decl., Ex. D. During the floor debate on the ban, Representative Allen compared prohibiting gender-affirming care to "not allow[ing] children to vape" or "not allow[ing] children to get tattoos." *Id.* at 1:22:33.

Governor Ivey signed the felony health care ban into law on April 8, 2022.[11] In a statement released upon signing the law, Governor Ivey justified her support for the ban as follows: "I believe very strongly that if the Good Lord made you a boy, you are a boy, and if he made you a girl, you are a girl . . . . [L]et us all focus on helping them to properly develop into the adults God intended them to be."[12]

The ban is among several pieces of recent legislation passed in Alabama targeting and restricting the rights of transgender adolescents. In April 2021, Alabama passed H.B. 391, which bans women and girls who are transgender from participating in school athletics consistent with their gender identity. H.B. 391 § 1(a) (Ala. 2022). And on April 7, 2022, the same day the Legislature passed the felony

[11] LegisScan, S.B. 184 (last visited Apr. 9, 2022), https://bit.ly/3up2LQK.
[12] Kiara Alfonseca, *Alabama Governor Signs 'Don't Say Gay,' Trans Care, and Bathroom Ban Bills*, ABC News (Apr. 8, 2022), https://abcn.ws/35VXWFe.

health care ban, it passed H.B. 322, a bill that requires children in K-12 public schools to use bathrooms, changing rooms, and locker rooms based on the sex "as stated on the individual's original birth certificate." H.B. 322 § 1(a)(1) (Ala. 2022). A last-minute amendment to H.B. 322 also added a provision forbidding any discussion in K-5 public school classrooms of "sexual orientation or gender identity in a manner that is not age appropriate or developmentally appropriate for students in accordance with state standards." H.B. 322 § 2(a).

III. THE FELONY HEALTH CARE BAN WILL SUBSTANTIALLY HARM PLAINTIFFS.

The felony health care ban will cause imminent and severe harm to Plaintiffs and to transgender adolescents, their parents, and medical providers across the state. If the ban goes into effect, Alabama doctors who treat adolescents with gender dysphoria will be barred from providing medically necessary care to their patients, subject to criminal punishment. Thus, doctors will have to choose between denying medical treatment to their patients with full knowledge of the harm it will cause and in violation of their ethical and professional obligations or facing up to a decade in prison for each violation of the ban.

Without gender-affirming medical treatment, many transgender adolescents with gender dysphoria will suffer extreme distress and elevated rates of anxiety, depression, and suicidal ideation. (Brady Decl. ¶¶ 31, 48, 94.) In one survey, more

than half of the transgender youth surveyed had seriously contemplated suicide.[13] When adolescents are able to access puberty-delaying drugs and hormone therapy, which prevent them from going through endogenous puberty and allows them to go through puberty consistent with their gender identity, they experience significant improvement in mental health. (Karasic Decl.¶¶ 35–36.) The cessation of medical treatment will cause transgender youth to experience significant distress from gender dysphoria from the potentially irreversible changes of endogenous puberty and the cessation of gender-affirming physical developments.

Because the felony health care ban prohibits treatment that is medically necessary for many transgender adolescents, their parents are faced with the impossible choice of risking criminal prosecution, forcing their child to suffer without the medical care they need, or abandoning their home and community by leaving the state.

The felony health care ban, if permitted to take effect, will inflict specific harms on the Plaintiffs in this action:

The Walker Family

Plaintiff H.W. is a fifteen-year-old girl who is transgender. (Exhibit 4 - Declaration of H.W. ("H.W. Decl.") ¶ 2.) H.W.'s sex assigned at birth was male,

[13] Trevor Project, National Survey on LGBTQ Youth Mental Health 2020, available at https://www.thetrevorproject.org/survey-2020/.

but her gender identity is female. (*Id.* ¶¶ 4–5.) From a young age, H.W. did not feel comfortable with her sex assigned at birth and the dysphoria of growing up in a body and social role that did not match who she was made her feel miserable. (*Id.* ¶ 6) H.W. came out to her parents at the end of fourth grade. (*Id.* ¶ 7.) After coming out, H.W. began receiving care at the Gender Health Clinic at the University of Alabama at Birmingham ("UAB") and began to live consistently with her female gender. (Exhibit 5 - Declaration of Lisa Walker ("L. Walker Decl.") ¶ 5.) When she turned eleven, H.W. was diagnosed with gender dysphoria. (*Id.* ¶ 8.)

H.W. was terrified of going through a typically male puberty, and when her body began showing signs of those changes her distress worsened. (*Id.*; H.W. Decl. ¶¶ 7, 9.) Under the care and supervision of her physicians at UAB, H.W. began taking puberty-delaying medication when she was twelve years old. (L. Walker Decl. ¶ 8.) H.W. has also been assessed for the administration of estrogen so that she can begin puberty consistent with her gender identity on a timeline similar to her friends and peers. (*Id.*)

Treatment has made a transformative difference in H.W.'s life. (*Id.* ¶ 10; H.W. Decl. ¶ 10.) H.W.'s health and life have been changed for the better, and she has gained a confidence that she did not have prior to receiving treatment. (*Id.*) The prospect of losing access to her medical care has caused H.W., her mother, and her father tremendous anxiety and stress. (H.W. Decl. ¶ 11; L. Walker Decl. ¶ 11; Ex.

6 - Declaration of Jeffrey Walker ("J. Walker Decl.") ¶ 11.) If H.W. is forced to stop the treatment that she has relied upon for the past three years, she would go through endogenous puberty, which would worsen her gender dysphoria and likely cause the return of the depression she experienced before receiving medical treatment. (H.W. Decl. ¶ 11.) H.W.'s parents are also terrified of watching their child suffer through unwanted and potentially irreversible physical changes, which would take an enormous toll on H.W.'s mental health. (J. Walker Decl. ¶¶ 11–12; L. Walker Decl. ¶ 11.)

H.W. and her mother are also concerned that H.W. will be subject to bullying if she is forced to experience male puberty. (L. Walker Decl. ¶ 12; H.W. Decl. ¶ 12.) H.W.'s parents have discussed potentially moving out of Alabama in order to continue H.W.'s medical treatment but doing so would separate H.W. and her parents from H.W.'s brother, Robert, who is honorably completing a six-year term of service with the Alabama national guard. (L. Walker Decl. ¶ 13.) In addition, moving away would require H.W. to adjust to a new school and new medical professionals who do not know her history, require Mr. Walker to find new employment out of state, and require H.W. and her family to leave behind their friends, family, and the support network that they have developed in Alabama. (J. Walker Decl. ¶ 14; L. Walker Decl. ¶ 13.)

The White Family

Plaintiff C.W. is a thirteen-year-old girl who is transgender. (Ex. 7 - Declaration of C.W. ("C.W. Decl.") ¶¶ 3–4.) Her sex assigned at birth was male, but her gender identity is female. (*Id.* ¶¶ 2, 15.) C.W. first noticed her strong feelings that she is a girl when she was 9. (*Id.* ¶ 4.) After expressing her feelings to her mother and talking with a therapist, C.W. came out as transgender in the fourth grade. (*Id.* ¶ 9.)

C.W.'s parents took her to the Gender Health Clinic at the Children's Hospital of Alabama at Birmingham in 2019. (Ex. 8 - Declaration of Jeffrey White ("J. White Decl.") ¶ 12; Ex. 9 - Declaration of Christa White ("C. White Decl.") ¶ 15.) She was diagnosed with gender dysphoria that year at the age of 10. (J. White Decl. ¶ 14; C. White Decl. ¶ 16.) At the start of puberty, C.W. began taking medications to put her endogenous puberty on hold. (C.W. Decl. ¶ 15; J. White Decl. ¶ 15; C. White Decl. ¶ 20.) The medication has been life-changing for C.W., making her flourish into a happy and confident girl. (C.W. Decl. ¶¶ 15–16; J. White Decl. ¶¶ 16–17; C. White Decl. ¶¶ 23–24.) C.W. wants to one day take hormones so that her body will go through the changes that other girls' bodies experience during puberty. (C.W. Decl. ¶ 15.)

The prospect of losing access to gender-affirming medically necessary care is causing significant stress to C.W. and her parents. (C.W. Decl. ¶¶ 18–20; J. White

Decl. ¶ 20; C. White Decl. ¶¶ 26–28.) C.W. fears that, without the medication, her body will go through changes she does not want to experience as a girl, and she will be teased and harassed. (C.W. Decl. ¶ 20.) Her mother fears that C.W.'s mental health will experience "devastating harm" if C.W. loses access to the medication she takes. (C. White Decl. ¶ 26.)

The Whites fear that, if they stay in Alabama, they will face criminal penalties if they seek medically necessary care for C.W. (J. White Decl. ¶¶ 21–23; C. White Decl. ¶ 29.) Although they do not want to uproot their lives, they fear that they will have to leave their home, jobs, family, and friends in Alabama so that C.W. can receive the medical care she needs. (C.W. Decl. ¶ 21; J. White Decl. ¶¶ 21–23; C. White Decl. ¶ 29.)

* * *

Given the substantial harm that they face from the Health Care ban, Plaintiffs—transgender youth and their parents—seek a temporary restraining order and/or preliminary injunction to stop the ban from going into effect.[14]

LEGAL STANDARD[15]

On a motion for preliminary injunction, the plaintiffs must establish: "(1) a

[14] The ban provides that it "shall become effective 30 days following its passage and approval by the Governor," which is May 8, 2022. S.B. 184 § 11.

[15] A temporary restraining order requires the same four elements as a preliminary injunction. *Parker* v. *State Bd. of Pardons & Paroles*, 275 F.3d 1032, 1034–35 (11th Cir. 2001).

substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the preliminary injunction is not granted; (3) that the threatened injury to the plaintiffs outweighs the threatened harm that the injunction may cause the defendants; and (4) that granting preliminary injunctive relief is not adverse to the public interest." *Robinson* v. *Marshall*, 454 F. Supp. 3d 1188, 1195 (M.D. Ala. 2020) (citing *Ferrero* v. *Associated Materials, Inc.*, 923 F.2d 1441, 1448 (11th Cir. 1991); *Cate* v. *Oldham*, 707 F.2d 1176, 1185 (11th Cir. 1983)).

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR EQUAL PROTECTION CLAIM.

Plaintiffs are likely to succeed on their claim that the felony health care ban violates the Equal Protection Clause. Before the Legislature's enactment of this sweeping intrusion into long-standing medical practice, transgender youth in Alabama had been able to access medical care pursuant to well-established protocols for the treatment of gender dysphoria. The ban seeks to alter the status quo by prohibiting—through criminal sanction—the provision of medically necessary care to treat gender dysphoria. No other medically accepted care is subject to such penalty. The ban classifies based on transgender status and sex, thereby triggering heightened equal protection scrutiny. Specifically, the ban prohibits and felonizes medically necessary care only when that care is provided to transgender youth for treating their gender dysphoria and affirming their gender identity. Non-transgender

youth, however, are allowed to access comparable medical treatments, including treatment with the prohibited medications, for any purpose, including to bring their bodies into alignment with their gender identity.

No government interest justifies singling out and prohibiting gender-affirming care only for transgender adolescents. Nor does the felony health care ban advance any government interest—indeed, the ban expressly permits non-transgender youth to access the treatments that it prohibits and criminalizes for transgender youth. The ban thus is "so woefully underinclusive" with respect to its purported interest in protecting the health and safety of minors "as to render belief in that purpose a challenge to the credulous" under any standard of review. *Republican Party of Minn.* v. *White*, 536 U.S. 765, 780 (2002).

Rather than having any rational connection to a legitimate state interest, the felony health care ban reflects the Legislature's illegitimate purpose of expressing—through law—government disapproval of transgender people. The Equal Protection Clause prohibits such discrimination.

A. The Felony Health Care Ban Triggers Heightened Scrutiny.

The felony health care ban triggers heightened scrutiny because it discriminates based on transgender status and sex, both of which are at least quasi-suspect classes.

1. Alabama's felony health care ban triggers heightened scrutiny because it discriminates on the basis of transgender status.

a. The felony health care ban facially discriminates on the basis of transgender status.

The felony health care ban targets and discriminates on the basis of transgender status by singling out transgender youth and criminalizing medically necessary care to treat gender dysphoria, while permitting access to the same medical care for non-transgender youth.

By definition, a transgender person is someone whose gender identity is different from their sex assigned at birth. (*See* Brady Decl. ¶ 22.) When a transgender person experiences distress due to the incongruence between their gender identity and their sex assigned at birth, the accepted medical protocols are to treat the patient to help them live in accordance with their gender identity. (Karasic Decl. ¶ 2.)

The felony health care ban prohibits medical care provided to affirm an individual's gender identity only when the individual's gender identity differs from their assigned sex at birth. This is plainly a prohibition on care provided to a transgender person for treatment of gender dysphoria. Under the ban's plain terms, the provision of medical care is prohibited only when it is "performed for the purpose of attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, *if that appearance or perception is inconsistent with the minor's sex*

as defined in this act." SB 184 § 4(a) (emphasis added). The ban defines "sex" as "[t]he biological state of being male or female, based on the individual's sex organs, chromosomes, and endogenous hormone profiles." *Id.* at § 3. By definition, this is an individual person's sex assigned at birth. (Brady Decl. ¶¶ 19–20.)

Whereas the felony health care ban makes the provision of medical treatment to transgender youth a felony, the ban permits non-transgender youth to access the same care for any reason, including to align their body with their gender identity. For example, as discussed *infra* Section I.B, under accepted standards of care, a cisgender adolescent boy and a transgender adolescent boy could both be prescribed testosterone to help align their body or appearance with their gender identity, but when prescribed to the transgender adolescent, the care would be a felony. (*See* Brady Decl. ¶¶ 52, 66.) The prohibition on medical care for transgender youth turns not on the risks or efficacy of the treatment, but rather on whether or not the treatment, in the view of the Alabama Legislature, is "inconsistent with the minor's sex[.]" SB 184 § 4(a).

By prohibiting medically necessary gender-affirming care only when provided to transgender youth, the felony health care ban facially discriminates on the basis of transgender status, thereby triggering heightened scrutiny.

b. Transgender status is at least a quasi-suspect classification.

"[T]ransgender people constitute at least a quasi-suspect class." *Grimm* v.

Gloucester Cnty. Sch. Bd., 972 F.3d 586, 610–13 (4th Cir. 2020); *see also Karnoski* v. *Trump*, 926 F.3d 1180, 1200 (9th Cir. 2019). The Fourth and Ninth Circuits as well as numerous federal district courts have determined that transgender people as a class meet all of the considerations the Supreme Court utilizes to assess whether a classification triggers heightened scrutiny under the Equal Protection Clause. *See, e.g.*, *Ray* v. *McCloud*, 507 F. Supp. 3d 925, 937–38 (S.D. Ohio 2020); *F.V.* v. *Barron*, 286 F. Supp. 3d 1131, 1145 (D. Idaho 2018); *Flack* v. *Wis. Dep't of Health Servs.*, 328 F. Supp. 3d 931, 951–53 (W.D. Wis. 2018); *Evancho* v. *Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *Adkins* v. *City of N.Y.*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015); *Bd. of Educ. of the Highland Loc. Sch. Dist.* v. *U.S. Dep't of Educ.*, 208 F. Supp. 3d 850, 873–74 (S.D. Ohio 2016); *M.A.B.* v. *Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 718–22 (D. Md. 2018); *Norsworthy* v. *Beard*, 87 F. Supp. 3d, 1104, 1119 (N.D. Cal. 2015). In the absence of binding Eleventh Circuit authority, this Court should follow these well-reasoned decisions of other courts.[16]

Transgender people constitute at least a quasi-suspect class because they (1)

[16] As explained below, even if this Court declines to hold that transgender status independently triggers heightened scrutiny, discrimination against transgender persons is necessarily sex discrimination that triggers heightened scrutiny. *See infra* I.A.2; *Bostock* v. *Clayton Cnty., Ga.*, 140 S. Ct. 1731, 1747–48 (2020); *Glenn* v. *Brumby*, 663 F.3d 1312, 1319 (11th Cir. 2011) (holding that heightened scrutiny applies to government discrimination against transgender people on the basis of gender non-conformity).

have historically suffered discrimination and (2) possess a defining characteristic that bears no relation to their ability to contribute to society. While courts do not always examine these additional considerations, transgender people also (3) exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group, and (4) are a politically powerless minority.

First, "[t]here is no doubt that transgender individuals historically have been subjected to discrimination on the basis of their gender identity, including high rates of violence and discrimination in education, employment, housing, and health care access." *Grimm*, 972 F.3d at 611 (quoting *Grimm Gloucester Cnty. Sch. Bd.*, 302 F. Supp. 3d 730, 749 (E.D. Va. 2018) (collecting cases)). For example, recent data show that transgender people "are twice as likely as the general population to have experienced unemployment" and 97% of transgender people "report[] experiencing some form of mistreatment at work" or having to "hid[e] their gender transition to avoid such treatment." *Id.* at 611–12 (internal quotation marks and citation omitted). "Transgender people frequently experience harassment in places such as schools (78%), medical settings (28%), and retail stores (37%), and they also experience physical assault in places such as schools (35%) and places of public accommodation (8%)," and "are more likely to be the victim of violent crimes." *Id.* at 612.

Second, being transgender "bears no relation to ability to perform or contribute to society." *City of Cleburne, Tex.* v. *Cleburne Living Ctr.*, 473 U.S. 432,

441 (1985) (citation omitted). Indeed, "[s]eventeen of our foremost medical, mental health, and public health organizations agree that being transgender implies no impairment on judgment, stability, reliability, or general social or vocational abilities." *Grimm*, 972 F.3d at 612 (internal quotation marks omitted).

Third, "transgender people constitute a discrete group with immutable characteristics." *Id.* at 612–13 (explaining "that gender identity is formulated for most people at a very early age," and that "being transgender is not a choice," but "is as natural and immutable as being cisgender").

Finally, "transgender people constitute a minority lacking political power." *Id.* at 613. Transgender individuals comprise less than 1 percent of the adult population in the United States and "are underrepresented in every branch of government." *Id.* "Transgender people constitute a minority that has not yet been able to meaningfully vindicate their rights through the political process." *Id.* Indeed, the passage of the felony health care ban and the other laws enacted in Alabama over the past two years demonstrate how little political power transgender people have today; they cannot rely on the normal political process to protect themselves from majoritarian discrimination.

Because transgender people "are at least a quasi-suspect class," *id.* at 610, heightened scrutiny applies.

2. The felony health care ban triggers heightened scrutiny because it discriminates on the basis of sex.

Government action that discriminates on the basis of sex always triggers heightened scrutiny. *United States* v. *Virginia*, 518 U.S. 515, 533 (1996). The ban independently triggers heightened scrutiny because it discriminates on the basis of sex in at least three ways: (1) as discussed above, it discriminates based on transgender status, which is necessarily sex discrimination, (2) it conditions treatment based on an individual's sex and (3) it discriminates based on non-conformity with sex stereotypes.

First, by discriminating on the basis of transgender status, *see supra* Part I.A.1, the felony health care ban necessarily discriminates on the basis of sex. This is because "it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex." *Bostock*, 140 S. Ct. at 1741.

Second, the felony health care ban facially discriminates on the basis of sex because the law allows persons of one sex to access medical care that it prohibits persons of another sex from accessing. For example, the ban prohibits a transgender boy with a medical need for chest surgery to treat his gender dysphoria from receiving that treatment because he was assigned female at birth. But the ban permits a non-transgender boy with a comparable need for chest surgery to affirm his gender to receive such treatment solely because he was assigned male at birth. That is, a

person assigned male at birth can affirm his male gender identity with medical treatment, but a person assigned female at birth cannot. Thus, "sex plays an unmistakable and impermissible role" in Alabama's ban, which "intentionally penalizes a person . . . for traits or actions that it tolerates" in another individual simply because of sex assigned at birth. *See Bostock*, 140 S. Ct. at 1741–42.

Third, the felony health care ban further discriminates based on sex by penalizing transgender minors for not conforming to sex stereotypes. "All persons, whether transgender or not, are protected from discrimination on the basis of gender stereotype." *See Glenn*, 663 F.3d at 1318; *Smith* v. *City of Salem, Ohio*, 378 F.3d 566, 576–77 (6th Cir. 2004) (same); *Lange* v. *Houston Cnty., Ga.*, 499 F. Supp. 3d 1258, 1275 (M.D. Ga. 2020). As is plain from its text, the ban impermissibly "presume[s] that men and women's appearance and behavior will be determined by their sex" assigned at birth. *See Glenn*, 663 F.3d at 1320; *see also Grimm*, 972 F.3d at 608. The ban expressly allows irreversible surgeries on minors with intersex conditions (called "disorder[s] of sex development" in the statute) because they are deemed to be "consistent" with the patient's sex assigned at birth. *See* SB 184 § 4(b); (Antommaria Decl. ¶ 44). The operative language of the prohibition is keyed to whether or not the treatment alters a patient's body in a way deemed "inconsistent" with the patient's sex assigned at birth. Thus, the statute "tethers

Plaintiffs to sex stereotypes which, as a matter of medical necessity, they seek to reject." *Kadel* v. *Folwell*, 446 F. Supp. 3d 1, 14 (M.D.N.C. 2020).

B. The Felony Health Care Ban Does Not Survive Heightened Scrutiny.

To survive heightened scrutiny, Alabama must show that the ban serves at least an important governmental interest and that the discriminatory means employed are adequately tailored to the achievement of those objectives. *Sessions* v. *Morales-Santana*, 137 S. Ct. 1678, 1690 (2017). "The burden of justification is demanding and it rests entirely on the [government]." *Virginia*, 518 U.S. at 533. According to the legislative findings, the ban is premised on a purported interest in protecting the safety and health of minor. *See* SB 184 § 2(11)–(16). The State cannot meet its heavy burden of showing how a categorical criminal ban on medically accepted treatment in any way advances those interests for at least three reasons.

First, the purported concerns about the potential risks and side effects of prohibited treatment do not justify the ban. The very treatments prohibited by the ban are permitted when prescribed to non-transgender persons despite comparable risks and side effects.

Second, the alleged lack of evidence supporting the prohibited treatment's efficacy does not justify the ban. All major medical associations in the United States support these prohibited treatments, and decades of research support their efficacy

in treating adolescents with gender dysphoria. In any event, the State does not hold any other form of medical treatment to this uniquely onerous burden of scientific evidence. If the State did so, then the State would have to outlaw a substantial number of commonly accepted medical treatments.

Third, the ban actually endangers the health and safety of transgender adolescents thereby undermining any alleged interest in protecting minors.

1. The purported concerns about the prohibited treatment's potential risks and side effects do not justify the felony health care ban.

Alabama's ban on medically necessary care for transgender youth is not adequately tailored to a government interest in health and safety. The stated justifications for the ban—that the care could cause certain side effects—apply to a wide range of medical treatments. Yet, Alabama law criminalizes only gender-affirming care to treat gender dysphoria in adolescents. If there is a need to protect transgender youth from the purported risks of the banned treatments (there is not), then that need is as great for cisgender and/or intersex youth who receive the same medical treatments. *See Eisenstadt* v. *Baird*, 405 U.S. 438, 450 (1972) ("If there is need to have [a] physician prescribe (and a pharmacist dispense) contraceptives, that need is as great for unmarried persons as for married persons."). Yet, the felony health care ban's penalty turns not on risk or side effect but rather on whether the treatment is provided to a transgender adolescent to treat gender dysphoria and

affirm a gender identity different from their assigned sex at birth.

Specifically, the ban prohibits only transgender youth from accessing the relevant medically necessary care, including puberty-delaying treatments, gender-affirming hormone therapy (testosterone suppressants and estrogen for transgender girls, and testosterone for transgender boys), and in appropriate cases, chest surgery while permitting those treatments for cisgender minors—often to affirm their gender. SB 184 § 4(a); (Antommaria Decl. ¶ 42; Brady Decl. ¶¶ 46, 52, 66, 81.) The following is a non-exhaustive list of examples:

- The puberty-delaying drugs proscribed by the ban for the treatment of transgender adolescents with gender dysphoria are also used to delay puberty in children with central precocious puberty (puberty starting prior to age eight in children assigned female at birth and prior to age nine in children assigned male at birth). (Antommaria Decl. ¶¶ 31, 41.)
- The ban prohibits hormone therapy for transgender adolescents with gender dysphoria, but the same hormone therapy is permitted when prescribed to cisgender and/or intersex patients for any purpose, including gender-affirming purposes. SB 184 §§ 4(a)(2)–(3), (b). For example, non-transgender girls with primary ovarian insufficiency (the depletion or dysfunction of ovarian follicles with cessations of menses before age forty), hypogonadism (delayed puberty due to lack of estrogen caused by

a problem with the pituitary gland or hypothalamus), or Turner's Syndrome (a chromosomal condition that can cause a failure of ovaries to develop) may be treated with estrogen. (Brady Decl. ¶ 70.) Yet, transgender girls are barred from receiving estrogen. SB 184 § 4(a)(3). Cisgender girls with polycystic ovarian syndrome (a condition that can cause increased testosterone and, as a result, symptoms including facial hair growth) may be treated with testosterone suppressants. (Brady Decl. ¶ 55.) Yet, transgender girls are barred from receiving the same treatment because of their sex assigned at birth. SB 184 § 4(a)(1).

- The ban prohibits chest surgery[17] to treat gender dysphoria in transgender adolescent boys, SB 184 § 4(a)(6), but cisgender boys are permitted to undergo chest surgery for treatment of gynecomastia (proliferation of breast tissue in individuals assigned male at birth). (Brady Decl. ¶ 88.) And while a transgender girl cannot receive chest-feminizing surgery to affirm her gender identity under the ban, SB 184 § 4(a)(6), a cisgender girl can receive the same surgery for the same purpose. (Antommaria Decl. ¶ 42.)
- The ban expressly permits the proscribed treatments to be provided to

[17] The legislative findings and declaration discuss the potential harms of genital surgery, SB 184 § 2(13), but genital surgery is not provided until after age eighteen if it is medically necessary. (Karasic Decl. ¶ 31.)

minors with intersex conditions, including to infants and those too young to meaningfully participate in decision making, despite having the same potential risks. *See* SB 184 § 4(b); (Antommaria Decl. ¶ 44); (Brady Decl. ¶ 54.)

In enacting the felony health care ban, the Alabama Legislature asserted that the transgender youth who need this medically necessary care and "often their parents" cannot "comprehend the risks" of the banned care. But Alabama has already determined elsewhere that a minor fourteen years or older alone "may give effective consent" to medical care. Ala. Code § 22-8-4. There is nothing unique about the risks associated with puberty-delaying treatment, hormone therapy, and chest surgery for transgender adolescents to justify Alabama's singling out these medical treatments for a wholesale felony prohibition based on a purported concern for adolescents' inability to assent or parents' inability to consent.[18] (Antommaria Decl. ¶ 43.)

[18] The State suggests that the care is more "risky" for this population because, it claims, "a substantial majority of children who experience discordance between their sex and identity will outgrow the discordance once they go through puberty and will eventually have an identity that aligns with their sex." SB 184 § 2(4). But this claim is categorically untrue and contradicted by evidence. Studies have consistently found that when young people have a consistent and persistent identification with a gender different from their assigned sex at birth at the start of puberty, they do not come to identify with their assigned sex at birth. (Brady Decl. ¶ 42.) And since there are no medical treatments prescribed to treat gender dysphoria prior to puberty, the population of people affected by the ban will not "outgrow" their gender

To the extent the State might contend that the ban purportedly advances an interest in protecting minors from the risks of irreversible treatment, the ban's under-inclusive and over-inclusive scope undercuts that contention. The ban allows minors to undergo many comparable or riskier treatments, including surgeries, such as those for gynecomastia, pectus excavatum or carinatum (chest wall anomalies in which the sternum is depressed or protrudes), and breast reconstruction, which carry risks of bleeding, infection, scarring, loss of sensation, and impaired nursing. (Antommaria Decl. ¶ 42.) And the ban expressly allows doctors to perform irreversible genital surgeries on infants and children with intersex conditions at ages when they are unable to meaningfully participate in medical decision making. (Antommaria Decl. ¶ 44.) The ban also prohibits treatment with puberty blockers, which are reversible. (Brady Decl. ¶¶ 42, 46–49.) Though the risks of puberty blockers are rare and comparable for both transgender and non-transgender youth, (*id.* ¶¶ 54, 58), the ban prohibits this treatment only for transgender youth.

Likewise, the ban's purported interest in protecting against procedures that could be sterilizing does not justify the blanket prohibition on all gender-affirming medical treatment. SB 184 §§ 2(13), (15). The law does not ban treatments based on risk of infertility. Instead, the law both prohibits treatments that do not have any

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dysphoria and come to identify as cisgender. (Brady Decl. ¶ 40.) Thus, the claimed risk of providing treatment is wholly inapplicable to the population of people for whom treatment is indicated.

impact on fertility, such as puberty blockers and chest surgery, (Brady Decl. ¶¶ 59–60), and permits potentially irreversibly sterilizing genital surgeries on intersex minors, (Antommaria Decl. ¶ 44). In short, because "in each case the evil, as perceived by the State, would be identical" in other, permitted applications of this medical care, the ban bears nothing more than "superficial earmarks as a health measure[.]" *See Eisenstadt*, 405 U.S. at 452, 454 (striking down contraception ban for single people where stated health-related rationales applied equally to married people); *see also Jernigan* v. *Crane*, 64 F. Supp. 3d 1260, 1283 (E.D. Ark. 2014), *aff'd*, 796 F.3d 976 (8th Cir. 2015) (rejecting argument that inability to procreate justified preventing same-sex couples from marrying because law allowed others who cannot procreate to marry and "[s]uch a mismatch between the class identified by a challenged law and the characteristic allegedly relevant to the state's interest is precisely the type of imprecision prohibited by heightened scrutiny.") (quoting *Kitchen* v. *Herbert*, 755 F.3d 1193, 1219 (10th Cir. 2014)).

2. The purported concern about the quality of the evidence for the treatment does not justify the felony health care ban.

The ban's legislative findings and declarations state that gender-affirming medical treatments should not be provided to patients because the treatments are "unproven" and "poorly studied." SB 184 § 2(11). The Court cannot simply accept these findings because "[t]he Court retains an independent constitutional duty to review [legislative] factual findings where constitutional rights are at stake."

Gonzales v. *Carhart*, 550 U.S. 124, 165 (2007).

Here, the State cannot carry its burden to justify the ban based on purported concerns about the quality of the evidence concerning the treatment for two reasons: (1) the consensus within the mainstream medical community is that the treatment is effective, and (2) even if there were limitations in the data supporting efficacy of the care, that would not explain why only this medical care—when provided to transgender youth—is singled out for a uniquely high standard of evidence.

First, Alabama's purported concern that this care is not supported by sufficient evidence conflicts with the views of the entire mainstream medical community in the United States, including the American Medical Association, the American Academy of Pediatrics, and the Endocrine Society, which have determined that the banned care is safe and effective. (Antommaria Decl. ¶¶ 32–33; Karasic Decl. ¶ 42.) While the legislative findings baldly assert that this well-established treatment is "unproven," "poorly studied," and "experimental," the reality of the medical and scientific landscape shows the opposite of what the Legislature claims. (Karasic Decl. ¶¶ 35–37, 44; Brady Decl. ¶¶ 32–33, 99; Antommaria Decl. ¶¶ 15–16, 23, 26.) Thus, the State cannot carry its burden to show a substantial relationship between the ban and a purported interest in protecting youth.

In addition to inaccurately representing the nature of the evidence supporting

the efficacy of the banned treatment, the State singles out this treatment alone for a uniquely high burden of evidence. To justify the ban, the Alabama Legislature appears to be pointing to a claimed absence of "long-term longitudinal studies" and "randomized clinical trials" assessing safety and efficacy of treatment. But the ban does not criminalize care based on degree of evidence or risk. SB 184 § 2(12). There are many medical conditions for which the supportive evidence is comparable to the evidence supporting gender-affirming care, but Alabama has chosen to ban only treatment for gender dysphoria in adolescents. Likewise, there are multiple types of data that the medical profession relies on in determining the safety and efficacy of medical treatments. (*See* Antommaria Decl. ¶¶ 20, 23, 26, 36.) In the context of pediatric medicine, the body of research is less likely to use randomized trials than is clinical research for adults, and, at times, it is unethical to conduct such randomized trials.[19] (Antommaria Decl. ¶¶ 25, 30.) Thus, if the Legislature were to criminalize all treatment unsupported by randomized clinical trials, then much of pediatric medicine would be criminalized in the state of Alabama.

[19] Requiring use of randomized trials to justify a medical intervention would be unethical because it would require doctors to disregard substantial evidence demonstrating the safety and efficacy of medical treatments and deny patients treatments that are known to provide relief for their medical conditions. Moreover, even if this demand were legitimate, a sweeping criminal prohibition on treatment would prohibit any additional research, thereby undermining any purported desire for further study.

If limiting medical care to treatments supported by certain kinds of medical research, such as randomized clinical trials, somehow advanced a government interest in protecting children, then Alabama would require that standard to be met in more settings than just one. *See Eisenstadt*, 405 U.S. at 452. For years, Alabama has not deemed such an evidentiary standard necessary before allowing people to receive medical care. Indeed, the state provides a statutory right for minors aged 14 and older to consent to medical procedures regardless of the evidence supporting such procedures. *See* Ala. Code § 22-8-4. Instead of setting a generally applicable requirement that all medical treatment for minors satisfy some state-defined level of scientific study, Alabama has singled out gender-affirming care for transgender adolescents—and only that care—for a uniquely stringent level of scientific proof. Alabama cannot provide any rational explanation—much less an "exceedingly persuasive" one, for why gender-affirming care for transgender adolescents is singled out for this unique burden. *Virginia*, 518 U.S. at 533.

3. The felony health care han actually undermines the state's purported interests.

Heightened scrutiny requires that a law *advance* at least an important governmental interest, not impede it. *See Virginia*, 518 U.S. at 524 ("[The State] must show at least that the [challenged] classification *serves* important governmental objectives. . . ." (emphasis added) (internal quotations and citation omitted)). The felony health care ban cannot satisfy this because, if it becomes effective, the ban

will harm transgender youth by categorically denying them medically necessary care. Without treatment to affirm their gender identity, many adolescents with gender dysphoria, including Plaintiffs, suffer extreme distress and elevated rates of anxiety, depression, and suicidality. (Brady Decl. ¶ 31.) Thus, the ban will likely harm the health and safety of the transgender youth it targets, which further demonstrates why the ban does not survive heightened scrutiny.

C. Alabama's Felony Health Care Ban Cannot Survive Even Rational Basis Review.

Alabama's felony health care ban fails any level of equal protection review. As discussed above, Alabama's stated justifications for banning gender-affirming care "ma[k]e no sense in light of how" Alabama treats care for non-transgender minors. *Bd. of Trs. of Univ. of Ala.* v. *Garrett*, 531 U.S. 356, 366 n.4 (2001); *Lindsey* v. *Normet*, 405 U.S. 56, 77 (1972) (when a right is granted "it cannot be granted to some [] and capriciously or arbitrarily denied to others without violating the Equal Protection Clause").

There is no rational basis to conclude that providing gender-affirming care to transgender children and adolescents "would pose any special threat to [Alabama's] legitimate interests" in a way that providing other types of care "would not." *Cleburne*, 473 U.S. at 448; *see also Eisenstadt*, 405 U.S. at 453 (health risks of birth control pills not a rational basis for banning access for unmarried people while allowing for married people, where risk is the same); (Antommaria Decl. ¶ 42) (risks

associated with chest surgery for both transgender and non-transgender patients are identical); (*id.* ¶ 41) (risks associated with usage of puberty blockers to treat both transgender and non-transgender individuals are identical).

When considered in the context of how Alabama regulates all other forms of pediatric medicine, "[t]he breadth of the [statute] is so far removed from [the] particular justifications" advanced by Alabama, that it is "impossible to credit them." *Romer* v. *Evans*, 517 U.S. 620, 635 (1996). For example, the felony health care ban prohibits certain gender-affirming treatments on the asserted grounds that the usage of these drugs to provide gender-affirming care is "not FDA-approved." S.B. 184 § 2(7). But the off-label usage of drugs is a common and well-established practice in medicine. (Antommaria Decl. ¶¶ 18–21.) The Alabama Legislature itself has endorsed off-label drug usage outside of the gender-affirming context. (*See* Ala. Sen. J. Res. 82, Assigned Act No. 2021-251 (joint resolution by the Alabama House and Senate providing that "we hereby recognize the sanctity of the physician/patient relationship and that a duly licensed physician should be allowed to prescribe any FDA approved medication for any condition that the physician and patient agree would be beneficial for treatment of the patient without interference by government or private parties.").

The ban also prohibits gender-affirming treatments on the asserted grounds that such treatments are "poorly studied," and "experimental." But, as discussed

above, these criticisms can be applied to a broad swath of pediatric care that is permitted under the ban, such as the usage of puberty blockers to treat precocious puberty in cisgender children and the performance of genital surgeries on infants with intersex conditions. (Antommaria Decl. ¶¶ 44, 46.) The ban's marked over- and under-inclusivity shows why it fails rational basis review. *Lewis* v. *Ala. Dep't of Pub. Safety*, 831 F. Supp. 824, 826 (M.D. Ala. 1993) (invalidating under rational basis review a regulation that was "both over and under inclusive" in its application).

"The history of [the statute's] enactment and its own text demonstrate that" the purpose of Alabama's felony health care ban was to express Alabama's moral and social disapproval of transgender youth. *United States* v. *Windsor*, 570 U.S. 744, 770 (2013); *see supra* Background, Part II.

This context, combined with the ban's laser focus on banning only treatment provided to transgender minors, reveals that the ban was "drawn for the purpose of disadvantaging the group burdened by the law," something the Equal Protection Clause does not permit. *Romer*, 517 U.S. at 633 (invalidating state constitutional amendment barring non-discrimination protections for LGBTQ people); *U.S. Dep't. of Agriculture* v. *Moreno*, 413 U.S. 528, 534 (1973) (invalidating food stamp regulation aimed at excluding hippies from eligibility). Thus, Plaintiffs are likely to succeed on their claim that Alabama's felony health care ban violates the Equal Protection Clause.

II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIM THAT THE BAN VIOLATES PARENTS' FUNDAMENTAL RIGHT TO PARENTAL AUTONOMY.

The felony health care ban also violates the Fourteenth Amendment's Due Process Clause by stripping parents of their right to seek out medical care for their children. The ban is subject to strict scrutiny under the Due Process Clause because it intrudes upon parents' fundamental right to make decisions concerning the care, custody, and control of their children. *See Washington* v. *Glucksburg*, 521 U.S. 702, 719–21 (1997) (A governmental infringement of a fundamental liberty interest, such as "direct[ing] the . . . upbringing of one's children" must be "narrowly tailored to serve a compelling state interest." (citation omitted)); *Troxel* v. *Granville*, 530 U.S. 57, 80 (2000) (Thomas, J., concurring) (strict scrutiny is the appropriate standard of review for infringements of a fundamental parental right). The State cannot meet this demanding standard, or any standard of review, and Plaintiffs are therefore likely to succeed on the merits of their Due Process claim.

A. The Due Process Clause Protects Parents' Fundamental Right to Seek Appropriate Medical Care for Their Children.

The Due Process Clause protects the right of parents to make decisions regarding the "care, custody, and control" of their children and "does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state [authority] believes a 'better' decision could be made." *Troxel*, 530 U.S. at 68, 72–73; *see also id.* at 80 (Thomas, J., concurring) ("[T]he

State . . . lacks even a legitimate governmental interest—to say nothing of a compelling one—in second-guessing a fit parent's decision . . ."); *Santosky* v. *Kramer*, 455 U.S. 745, 758–59 (1982) ("[Parents'] desire for and right to the companionship, care, custody, and management of [their] children is an interest far more precious than any property right." (internal quotation marks and citation omitted)).

The right of parents to care for their children includes the right to make decisions regarding their children's medical care. *Parham* v. *J.R.*, 442 U.S. 584, 602 (1979) (holding that this fundamental right encompasses the ability of parents "to seek and follow medical advice" for their children); *see also Kanuszewski* v. *Mich. Dep't of Health & Hum. Servs.*, 927 F.3d 396, 419 (6th Cir. 2019) (holding that "parents' substantive due process right 'to make decisions concerning the care, custody, and control' of their children includes the right to direct their children's medical care," and that strict scrutiny is the appropriate standard to apply to such claims (quoting *Troxel*, 530 U.S. at 72)). Ultimately, the fundamental parental right presumes "that natural bonds of affection lead parents to act in the best interests of their children." *Parham*, 442 U.S. at 602.

This fundamental right of parents does not derive from their children's rights, although, as children reach a certain age and maturity, they have their own constitutional rights—*see, e.g.*, *Tinker* v. *Des Moines Indep. Cmty. Sch. Dist.*, 393

U.S. 503, 511 (1969) ("[Teenagers] are 'persons' under our Constitution. They are possessed of fundamental rights . . . ."). Rather, the right is grounded in parents' own liberty interest. And when a parent's decision on a course of medical treatment for their child is in accord with their child's wishes and the advice of the child's doctor, the Constitution does not give the state the right to override a parental decision unless it can satisfy strict scrutiny.

Here, the felony health care ban triggers strict scrutiny because Alabama has categorically prohibited the well-established and accepted treatment protocols for minor patients with gender dysphoria, thereby intruding upon the fundamental right of the Parent Plaintiffs to access medical care for their minor children and make medical decisions. Alabama is "inject[ing] itself into the private realm of the family to . . . question the ability of [fit] parent[s] to make the best decisions" regarding the care to provide to their children who are suffering from gender dysphoria. *See Troxel*, 530 U.S. at 68–69. In doing so, Alabama discriminates against the parents of transgender children by interfering with their fundamental right to access medically necessary care for the children while permitting parents without transgender children to access such care.

B. The Felony Health Care Ban Fails Strict Scrutiny.

Defendants have the burden to show that Alabama has a compelling state interest in infringing parents' fundamental right to seek medical care for their

children, and that the ban is narrowly tailored to serve that interest. *See Glucksberg*, 521 U.S. at 719–21.

Strict scrutiny applies when a parent determines, together with a doctor, that a medically accepted course of treatment is necessary for a particular child. While a parent's right is not absolute, the Constitution does not permit the government to substitute its judgment over the decision of a parent to seek medically accepted care for their child when the parent, the child, and the child's doctor all agree that the medical care is appropriate. *See Troxel*, 530 U.S. at 68–69; *Jehovah's Witnesses in State of Wash.* v. *King Cnty. Hosp. Unit No. 1*, 278 F. Supp. 488, 504 (W.D. Wash. 1967), *aff'd* 390 U.S. 598 (1968).

The felony health care ban's interference with parents' decisions about the care of their children is unprecedented. The only time an intrusion on parents' authority to make medical decisions for their children would be warranted under strict scrutiny is where the state's actions are necessary to *preserve* the health of a minor. But here, the ban prohibits treatments for gender dysphoria that are recognized as safe, effective, and necessary by every major medical association. Barring these treatments *endangers* the health of the minors the ban is purportedly meant to protect. (Antommaria Decl. ¶¶ 31–32, 42–46.) The State cannot show any compelling interest in prohibiting these parents, who are presumed to be acting in the best interests of their children, *see Parham*, 442 U.S. at 602, from making the

decision to seek gender-affirming medical care for their children—care that has already greatly improved their children's health and well-being. The Parent Plaintiffs have seen their children suffer the pain and distress of untreated gender dysphoria, consulted with experts, and concluded, consistent with prevailing medical standards, that gender-affirming medical care was in their children's best interests. (L. Walker Decl. ¶¶ 8-9; J. Walker Decl. ¶¶ 6, 9–10.) The Whites and Walkers have witnessed marked improvement in their children's health when they were able to access the care barred by the new law. (L. Walker Decl. ¶ 10; J. Walker Decl. ¶ 10.)

As discussed in Sections II.B. and II.C., *supra*, the rationales for the felony health care ban expressed in the legislative findings cannot survive any form of review. Therefore, *a fortiori* they fail strict scrutiny. The Parent Plaintiffs are thus likely to succeed on their Due Process claim and are entitled to relief.

III. PLAINTIFFS ARE LIKELY TO SUCCEED ON THEIR VOID FOR VAGUENESS CLAIM.

Plaintiffs are likely to succeed on their claim that the felony health care ban is unconstitutionally vague in violation of the Due Process Clause. *Indigo Room, Inc.* v. *City of Ft. Myers*, 710 F.3d 1294, 1301 (11th Cir. 2013). The ban "fails to provide a person of ordinary intelligence fair notice of what is prohibited [and] is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States* v. *Williams*, 553 U.S. 285, 304 (2008); *see Kolender* v. *Lawson*, 461

U.S. 352, 358 (1983) (stating that a statute must "establish minimal guidelines" to prevent law enforcement from engaging in "a standardless sweep" (citation omitted)); *Smith* v. *Goguen*, 415 U.S. 566, 576 (1974) ("Where inherently vague statutory language permits such selective law enforcement," it is unconstitutional).

In particular, the ban makes it a felony for any person to "engage in or cause any of the practices" enumerated "to be performed upon a minor if the practice is performed for the purpose of" providing gender-affirming care for a transgender youth. The ban does not define what constitutes engaging in or causing any of the practices. It is not clear whether the following persons would fall within the scope of the ban's sweeping criminal prohibition: parents who drive their children to a doctor's appointment (even if the appointment is out of state), secretaries who check patients in to a clinic, friends who talk with a child about their chosen course of treatment. All of these people, and many more, will be confused and left wondering whether they are at risk of prosecution for a felony. There are no limits on the type of conduct that can be seen as "caus[ing]" an enumerated practice, thereby giving prosecutors free reign to target a wide range of conduct under the felony health care ban. *See Goguen*, 415 U.S. at 576 (prohibiting vague statutes that permit "selective law enforcement").

Similarly, the ban does not provide any explanation or limitation on who is the target of enforcement. It thus lacks the requisite "minimal guidelines" necessary

to pass constitutional muster. *See Kolender*, 461 U.S. at 358. Perhaps most problematic, the transgender minor who is purportedly being protected by the ban presumably is subject to felony penalties for "engag[ing] in" an enumerated practice. So too could an out-of-state doctor who provides an Alabama-resident minor with gender-affirming treatment notwithstanding that the doctor is otherwise not subject to Alabama's law. And finally, an employer and its insurance company are left wondering whether they commit a felony for providing coverage for the enumerated practices given that the "purpose" of the practice would only be determined subsequent to the coverage being offered. In each circumstance, the law sweeps far too broadly and is far too ill-defined to give a reasonable person notice of what is criminalized. This unbounded delegation of prosecutorial power is unconstitutional. *See NAACP* v. *Button*, 371 U.S. 415, 435 (1963) ("It makes no difference whether such prosecutions or proceedings would actually be commenced. It is enough that a vague and broad statute lends itself to selective enforcement against unpopular causes.").

As demonstrated *supra*, Alabama's felony health care ban makes it impossible for an ordinary person to know if and to what extent any conduct "causes" a minor to seek proscribed treatment. These same problems also render the ban unconstitutionally vague. Just as a prosecutor can define "cause" in any way that is convenient with the effect of chilling constitutionally protected expression, the ill-

defined aspects of the ban also authorize a "standardless sweep" of politically unpopular groups under color of state law. *See Kolender*, 461 U.S. at 358. Federal law prohibits Alabama from enforcing a law that provides such ripe ground for pretextual and discriminatory enforcement. *Williams*, 553 U.S. at 304.

IV. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF THE FELONY HEALTH CARE BAN IS NOT ENJOINED.

The statute's criminal penalties will cause irreparable harm to each of the Plaintiffs if the statute is not enjoined. *See Planned Parenthood Se., Inc.* v. *Bentley*, 951 F. Supp. 2d 1280, 1289 (M.D. Ala. 2013) (Thompson, J.) (listing cases finding irreparable harm where plaintiffs would be subject to criminal penalties).

The constitutional violations caused by Alabama's felony health care ban by themselves constitute irreparable injury. The right to equal protection is "so fundamental to our legal system" that any violation amounts to irreparable harm. *Cent. Ala. Paving, Inc.* v. *James*, 499 F. Supp. 629, 639 (M.D. Ala. 1980).

Beyond the constitutional violations, the ban causes devastating and, in some cases, life-threatening injuries to all the Plaintiffs. There is no question that the ban will impose irreparable physical, emotional, and psychological harms on the minor Plaintiffs by forcing them to go without life-saving medical care. Delaying or preventing medical treatment constitutes irreparable harm. *See W. Ala. Women's Ctr.* v. *Miller*, 217 F. Supp. 3d 1313, 1334 (M.D. Ala. 2016) (Thompson, J.). Here, for example, abruptly withdrawing hormone treatment from patients who currently

receive it can result in a range of serious physiological and mental health consequences, induce headaches, fatigue, hot flashes, contribute to depression, and even produce cardiac effects. (Brady Decl. ¶ 97.)

The harms that the felony health care ban imposes on the minor Plaintiffs are severe and permanent. On the physical side, taking away puberty blockers or denying hormone treatment may harm transgender minors forever. (*See id.* ¶¶ 95–96.) There is no "undo" button for puberty when it conflicts with your gender identity. The physical changes that occur during endogenous puberty—including stature, hair growth, genital growth, voice development, and breast development—are at least partially irreversible, and can be impossible to counteract, "even with subsequent hormone therapy and surgery, thus exacerbating lifelong gender dysphoria in patients who would have this treatment withheld or cut off." (*Id.* ¶ 96) For this reason, the minor Plaintiffs do not want to go through endogenous puberty. (*See* C.W. Decl. ¶¶ 14, 15, 19; H. W. Decl. ¶ 11.)

On the emotional and psychological front, prohibiting gender-affirming healthcare changes transgender youths' lives for the worse. Treatment of transgender youth with gender-affirming hormones, for example, substantially reduces body dissatisfaction and improves mental health measures. (Karasic Decl. ¶ 35.) Transgender minors experiencing gender dysphoria gain confidence and can act like themselves once they receive gender-affirming treatment. (*See id.*; C.W.

Decl.¶¶ 16, 18–20; C. White Decl. ¶¶ 18–19; J. White Decl. ¶¶ 7, 9, 14–15; L. Walker Decl. ¶ 10; H.W. Decl. ¶¶ 7–8; J. Walker Decl. ¶ 10.) Depriving them of gender-affirming healthcare would exacerbate their gender dysphoria and could lead to depression, anxiety, and suicidal ideation. (Karasic Decl. ¶¶ 2, 35, 45.)

Denying gender-affirming healthcare to transgender minors may result in the ultimate irreparable harm: suicide. There is no greater harm than the loss of a child's life. "[T]he immediate and substantial risk of suicide [absent an injunction] . . . satisfies the irreparable harm inquiry." *Braggs* v. *Dunn*, 383 F. Supp. 3d 1218, 1243 (M.D. Ala. 2019) (Thompson, J.). Transgender minors who do not receive gender-affirming healthcare are at far greater risk of death by suicide than those who receive such care. (*See* Karasic Decl. ¶¶ 2, 35, 45.) When Arkansas passed a similar (but narrower) law in 2021, for example, the state witnessed an increase in emergency room visits for attempted suicide by transgender young people. (Brady Decl. ¶ 93.) This is quintessential irreparable injury, the prevention of which necessitates the injunction that Plaintiffs seek.

It is not only the Plaintiff children who suffer absent an injunction. The ban prevents parents of transgender young people in Alabama from fulfilling their parental roles and leaves them powerless to help their own children. Parent Plaintiffs Jeffrey and Christa White live in fear of the pain and agony that their daughter, C., will suffer should she lose access to her gender-affirming medical care. (J. White

Decl. ¶ 19.) Plaintiff Christa White witnessed her daughter blossom in her confidence and self-awareness with the help of the gender-affirming care that SB 184 now seeks to ban. (C. White Decl. ¶ 18; *see also id.* ¶ 19 ("Before this life-changing medication, C. used to be withdrawn from many of the activities and interests that bring her joy and rarely did we see her smile. I cannot let my child suffer by returning to that dark place.").)

Parent Plaintiffs Lisa and Jefferey Walker observed a similar transformation when their daughter, H., gained access to gender-affirming medical care to treat her gender dysphoria. (L. Walker Decl. ¶ 10; J. Walker Decl. ¶ 10.) They are "terrified" that complying with the ban in order to avoid criminal consequences will cause their daughter's depression to return, "and that she might do something to seriously harm herself." (L. Walker Decl. ¶ 11.)

Without an injunction, the State, not the parents, decides what is "best" for the minor Plaintiffs until the conclusion of the case. Families will be forced to uproot their entire lives to move to another state where their children can receive appropriate medical care. (*See* J. White Decl. ¶¶ 20–21; C. White Decl. ¶ 23; J. Walker Decl. ¶¶ 12–13; L. Walker Decl. ¶ 13.) For the Walker family, leaving the state would also mean leaving behind their son, Robert Walker, who is honorably serving a six-year commitment with the Alabama National Guard. (J. Walker Decl. ¶ 13.) The ban forces Parent Plaintiffs to make the impossible choice between supporting their

children and thereby criminally implicating themselves or avoiding criminal consequences by complying with the ban while witnessing the deterioration of their children's health and wellness, or fleeing the state and abandon their lives, families, communities, and employments. In light of the severe and irreparable harms the Plaintiffs face if the ban were to take effect, a preliminary injunction is warranted.

V. THE BALANCE OF THE EQUITIES TIPS SHARPLY IN PLAINTIFFS' FAVOR.

Plaintiffs will suffer greater harm than Defendants in the absence of injunctive relief. The felony health care ban's constitutional violations alone are sufficient to tip the balance of the equities towards the Plaintiffs. The denial of Equal Protection is "simply far graver and more important" than the harm the State would face by simply maintaining the status quo during the pendency of the case. *Cent. Ala. Paving, Inc.*, 499 F. Supp. at 639; *see also Klay* v. *United Healthgroup, Inc.*, 376 F.3d 1092, 1101 n.13 (11th Cir. 2004) ("[T]he textbook definition of a preliminary injunction [is one] issued to preserve the status quo and prevent allegedly irreparable injury until the court ha[s] the opportunity to decide whether to issue a permanent injunction.").

Conversely, the State will suffer no harm if an injunction is entered. As noted above, the Alabama Legislature has specifically disclaimed any governmental interest in preventing a duly licensed physician from "prescrib[ing] any FDA approved medication for any condition that the physician and patient agree would

be beneficial for treatment of the patient without interference by government or private parties." (*See* Ala. Sen. J. Res. 82, Assigned Act No. 2021-251.) And the government "has no legitimate interest in enforcing an unconstitutional" law. *See KH Outdoor, LLC* v. *City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). Prohibiting life-saving care for transgender minors advances no exceedingly persuasive government interest but creates a grave risk of harm to the Plaintiffs. Plaintiffs' harms without an injunction are far greater than the minimal to nonexistent harm an injunction would cause the State. Thus, the equities tip sharply in favor of granting a preliminary injunction. *See Scott* v. *Roberts*, 612 F.3d 1279, 1297 (11th Cir. 2010); *KH Outdoor*, 458 F.3d at 1272.

VI. A PRELIMINARY INJUNCTION SERVES THE PUBLIC INTEREST.

Finally, a preliminary injunction against enforcement of the ban is in the public interest. The public interest is not served by permitting the State to enforce unconstitutional statutes and regulations. *Fla. Businessmen for Free Enter.* v. *City of Hollywood*, 648 F.2d 956, 959 (5th Cir. Unit B 1981) ("The public interest does not support the city's expenditure of time, money, and effort in attempting to enforce an ordinance that may well be held unconstitutional.")[20]; *see also Scott*, 612 F.3d at 1297; *KH Outdoor*, 458 F.3d at 1272. Particularly where civil rights are at stake, an

[20] In *Bonner* v. *City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc), the Eleventh Circuit adopted as binding precedent all the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

injunction serves the public interest because the injunction "would protect the public interest by protecting those rights to which it too is entitled." *Nat'l Abortion Fed'n* v. *Metro. Atlanta Rapid Transit Auth.*, 112 F. Supp. 2d 1320, 1328 (N.D. Ga. 2000). "[I]t is always in the public interest to protect constitutional rights." *Strawser* v. *Strange*, 44 F. Supp. 3d 1206, 1210 (S.D. Ala. 2015) (quoting *Phelps-Roper* v. *Nixon*, 545 F.3d 685, 690 (8th Cir. 2008)). Thus, Plaintiffs satisfy the fourth and final requirement for injunctive relief.

VII. SECURITY IS NOT NECESSARY IN THIS CASE.

This Court should waive the Federal Rule of Civil Procedure 65(c) security requirement. As the Eleventh Circuit held in *BellSouth Telecomm., Inc.* v. *MCIMetro Access Transmission Servs., LLC*, "it is well-established that 'the amount of security required by the rule is a matter within the discretion of the trial court . . . [and] the court may elect to require no security at all.'" 425 F.3d 964, 971 (11th Cir. 2005) (quoting *City of Atlanta* v. *Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. Unit B 1981)). The Court should use its discretion to waive the requirement in this case, as the preliminary injunction will not result in a monetary loss for Defendants. Moreover, Plaintiffs are families with limited means paying for expensive healthcare for their children. A bond would strain their already-limited resources. If security is required, Plaintiffs request it be set at $1.00.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the motion for a temporary restraining order and/or preliminary injunction.

Dated: April 12, 2022

Respectfully submitted,

/s/ LaTisha Gotell Faulks

L. Nowlin-Sohl* (WA Bar No. 51512)
Malita Picasso* (NY Bar No. 5750013)
Chase Strangio* (NY Bar No. 4879466)
James D. Esseks* (NY Bar No. 2643807)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC.
125 Broad Street, 18th Floor
New York, NY 10004
Phone: (212) 549-2500
lnowlin-sohl@aclu.org

Carl Charles* (GA Bar No. 5427026)
Tara Borelli* (GA Bar No. 265084)
LAMBDA LEGAL
158 West Ponce De Leon Ave., Suite 105
Decatur, GA 30030
Phone: (404) 897-1880
ccharles@lambdalegal.org

Sruti J. Swaminathan* (NY Bar No. 5598792)
LAMBDA LEGAL
120 Wall Street, 19th Floor
New York, NY 10005
Phone: (212) 809-8585
sswaminathan@lambdalegal.org

LaTisha Gotell Faulks (ASB-1279-I63J)
Kaitlin Welborn* (DC Bar No. 88187724)
AMERICAN CIVIL LIBERTIES UNION OF ALABAMA FOUNDATION
P.O. Box 6179
Montgomery, AL 36106
Phone: (334) 265-2754
tgfaulks@aclualabama.org

Kathleen R. Hartnett* (CA Bar No. 314267)
Julie Veroff* (CA Bar No. 310161)
Zoë W. Helstrom* (CA Bar No. 339093)
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
Phone: (415) 693-2000
khartnett@cooley.com

Andrew Barr* (CO Bar No. 49644)
COOLEY LLP
1144 15th Street, Suite 2300
Denver, CO 80202
Phone: (720) 566-4121
abarr@cooley.com

Lynly S. Egyes* (NY Bar No. 4838025)
Milo Inglehart* (NY Bar No. 5817937)
TRANSGENDER LAW CENTER
594 Dean Street, Suite 11
Brooklyn, NY 11238
Phone: (510) 587-9696
lynly@transgenderlawcenter.org

Dale Melchert* (NY Bar No. 5366554)
TRANSGENDER LAW CENTER
P.O. Box 70976
Oakland, CA 94612
Phone: (510) 587-9696, ext. 354
dale@transgenderlawcenter.org

Adam Katz* (MA Bar No. 706834)
Elizabeth Reinhardt* (MA Bar No. 707645)
COOLEY LLP
500 Boylston Street, 14th Floor
Boston, MA 02116
Phone: (617) 937-2305
ereinhardt@cooley.com

Katelyn Kang* (NY Bar No. 5745799)
Valeria M. Pelet del Toro* (NY Bar No. 5764667)
COOLEY LLP
55 Hudson Yards
New York, NY 10001
Phone: (212) 479-6849
kkang@cooley.com

Robby L.R. Saldaña* (DC Bar No. 1034981)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004-2400
Phone: (202) 842-7800
rsaldana@cooley.com

**Pro Hac Vice Applications Forthcoming*

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April 2022. I served the foregoing to the below parties via Fedex overnight mail, thereby serving all counsel of record.

Steve Marshall
Alabama Attorney General's Office
State of Alabama
501 Washington Avenue
Montgomery, AL 36104

Brian C.T. Jones
Limestone Co. Courthouse
200 West Washington St.
1st Floor
Athens, AL 35611

Jessica Ventiere
2311 Gateway Drive
Opelika, Alabama 36801

/s/ LaTisha Gotell Faulks

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

MORISSA J. LADINSKY, M.D., F.A.A.P.; HUSSEIN D. ABDUL-LATIF, M.D.; ROBERT ROE, individually and on behalf of his minor child, MARY ROE; and JANE DOE, individually and on behalf of her minor child, JOHN DOE.

Plaintiffs,

v.

KAY IVEY, in her official capacity as Governor of the State of Alabama; STEVE MARSHALL, in his official capacity as Attorney General of the State of Alabama; JILL H. LEE, in her official capacity as District Attorney for Shelby County; and DANNY CARR, in his official capacity as District Attorney for Jefferson County.

Defendants.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMPLAINT

Morissa J. Ladinsky, M.D., F.A.A.P.; Hussein D. Abdul-Latif, M.D.; Robert Roe, individually and on behalf of his minor child, Mary Roe; and Jane Doe, individually and on behalf of her minor child, John Doe (collectively "Plaintiffs"), bring this Action for Declaratory and Injunctive Relief against Defendants Kay Ivey, in her official capacity as Governor of the State of Alabama; Steve Marshall, in his

official capacity as Attorney General of the State of Alabama; Jill H. Lee, in her official capacity as District Attorney for Shelby County, Alabama; and Danny Carr, in his official capacity as District Attorney for Jefferson County, Alabama (collectively, "Defendants"), respectfully stating as follows:

PRELIMINARY STATEMENT

1. This Action is a federal constitutional challenge to the State of Alabama's Vulnerable Child Compassion and Protection Act (the "Act"), passed by the Alabama Legislature on April 7, 2022, and signed into law by Governor Kay Ivey on April 8, 2022.

2. The Act targets transgender minors, parents of transgender minors, and physicians who provide medical care to transgender minors. It unlawfully denies necessary and appropriate medical treatment to transgender minors and imposes criminal penalties on parents and health care providers who obtain or provide such care.

3. The Act prohibits all persons in Alabama, including trained professionals, from engaging in, prescribing, performing, or otherwise providing medical treatments recognized as the standard of care for the treatment of gender dysphoria in minors and that are safe, effective, and medically necessary. If this restriction is enforced, medical professionals who administer these medically necessary treatments will face criminal prosecution.

4. The Act also prohibits parents of transgender minors from consenting to their children receiving this medically necessary care. If this restriction is enforced, parents will not only be unable to obtain that treatment for their children but will also be subject to criminal prosecution. Medical professionals, parents of transgender minors, and the transgender minors themselves all will suffer irreparable harm as a result.

5. The Act's prohibitions on the provision of safe, effective, and medically necessary care for transgender minors lack a rational foundation and serve no legitimate purpose.

6. As detailed below, the Act violates Section 1557 of the Affordable Care Act, as well as constitutional guarantees of equal protection and due process, impermissibly intruding into parents' fundamental right to obtain safe, effective, and medically necessary care for their children.

7. Plaintiffs seek declaratory and injunctive relief to enjoin the enforcement of the Act. Without the injunctive relief sought, the Act will bar the healthcare provider Plaintiffs from being able to administer essential care to their patients, who include transgender minors living in Alabama; will prevent the parent Plaintiffs from obtaining such care for the minor Plaintiffs; and will cause the minor Plaintiffs to be denied essential treatment, causing them irreparable physical and psychological harm.

PARTIES

I. *Transgender Plaintiffs and Their Parents*

8. Plaintiff Robert Roe is and has at all relevant times been a resident of Jefferson County, Alabama. He is the father of Plaintiff, Mary Roe, a 13-year-old transgender girl, for whom he also appears in this case as her next friend. Because of concerns about his and his child's privacy and safety, Robert Roe and Mary Roe seek to proceed in this case under a pseudonym. *See* Motion to Proceed Pseudonymously, concurrently filed herewith.

9. Plaintiff Jane Doe is and has at all relevant times been a resident of Shelby County, Alabama. She is the mother of Plaintiff, John Doe, a 17-year-old transgender boy for whom she also appears in this case as his next friend. Because of concerns about her and her child's privacy and safety, Jane Doe and John Doe seek to proceed in this case under a pseudonym. *See* Motion to Proceed Pseudonymously, concurrently filed herewith.

10. Plaintiffs Jane Doe and Robert Roe (collectively, the "Parent Plaintiffs") are the parents and legal guardians of Plaintiffs John Doe and Mary Roe (collectively, the "Transgender Plaintiffs"), respectively. They bring this action for themselves and as next friends of the Transgender Plaintiffs.

II. *Healthcare Provider Plaintiffs*

11. Plaintiff Morissa J. Ladinsky, M.D., F.A.A.P., is a pediatrician with over 30 years of experience. Dr. Ladinsky works at the Children's Hospital of Alabama and is an active member of the medical staff at the University of Alabama at Birmingham ("UAB") Hospital, which are both located in Jefferson County, Alabama. She is also an associate professor of pediatrics at UAB School of Medicine in Birmingham, Alabama. Her patients include transgender minors living in Alabama. Dr. Ladinsky resides and works in Jefferson County, Alabama.

12. Plaintiff Hussein D. Abdul-Latif, M.D. is a pediatric endocrinologist with approximately 25 years of experience. Dr. Abdul-Latif works at the Children's Hospital of Alabama and is an active member of the medical staff at UAB Hospital, which are both located in Jefferson County, Alabama. He is also a professor of pediatrics at the UAB School of Medicine in Birmingham, Alabama. His patients include transgender minors living in Alabama. Dr. Abdul-Latif resides and works in Jefferson County, Alabama.

III. *Defendants*

13. Defendant Kay Ivey is the Governor of the State of Alabama. Governor Ivey is sued in her official capacity as Governor of Alabama.

14. Defendant Steve Marshall is the Attorney General of the State of Alabama. He is the chief law enforcement officer of the State with the power to

initiate criminal action to enforce the Act. In his capacity as Attorney General, Mr. Marshall has the ability to enforce the Act. Mr. Marshall is sued in his official capacity as Attorney General of Alabama.

15. Defendant Jill H. Lee is the District Attorney of Shelby County, Alabama. She is the chief law enforcement officer of Shelby County, who prosecutes all felony and some misdemeanor criminal cases which occur within Shelby County. In her capacity as District Attorney, Ms. Lee has the ability to enforce the Act. Ms. Lee is sued in her official capacity as District Attorney of Shelby County, Alabama.

16. Defendant Danny Carr is the District Attorney of Jefferson County, Alabama. He is the chief law enforcement officer of Jefferson County who prosecutes all felony criminal cases that occur within the Birmingham Division of Jefferson County, including the City of Birmingham. In his capacity as District Attorney, Mr. Carr has the ability to enforce the Act. Mr. Carr is sued in his official capacity as District Attorney of Jefferson County, Alabama.

17. Defendants each have separate and independent authority to enforce the Act within their respective jurisdictions.

JURISDICTION AND VENUE

18. Plaintiffs seek redress for the deprivation of their rights secured by Section 1557 of the Affordable Care Act, the United States Constitution, and the equitable powers of this Court to enjoin unlawful official conduct. This action is

instituted pursuant to 42 U.S.C. § 18116 and 42 U.S.C. § 1983 to enjoin Defendants from enforcing the Act and for a declaration that the Act violates federal law. Therefore, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

19. This Court has personal jurisdiction over Defendants because Defendants are domiciled in Alabama and the denial of Plaintiffs' rights guaranteed by federal law occurred within Alabama.

20. All defendants reside in Alabama, and, upon information and belief, Defendants Lee and Carr reside in this judicial district. Therefore, venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1).

21. If enforced, the Act would violate the federal statutory and constitutional rights of Plaintiffs in this judicial district. Therefore, venue is also proper in this district pursuant to 28 U.S.C § 1391(b)(2).

22. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Fed. R. Civ. P. 57 and 65, 28 U.S.C. §§ 2201 and 2202, and this Court's inherent equitable powers.

FACTUAL ALLEGATIONS

I. *Gender Identity and Gender Dysphoria*

23. Gender identity is an innate, internal sense of one's sex and is an immutable aspect of a person's identity. Everyone has a gender identity. Most people's gender identity is consistent with their birth sex. Transgender people, however, have a gender identity that differs from their birth sex.

24. Gender dysphoria is the clinical diagnosis for the distress that arises when a person's gender identity does not match their birth sex. To receive a diagnosis of gender dysphoria, a young person must meet the criteria set forth in the Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) ("DSM-5").[1] If left untreated, gender dysphoria can cause anxiety, depression, and self-harm, including suicidality.

25. In fact, data indicate that 82% of transgender individuals have considered killing themselves and 40% have attempted suicide. 56% of youth reported a previous suicide attempt and 86% reported suicidality. *See* Austin, Ashley, Shelley L. Craig, Sandra D. Souza, and Lauren B. McInroy (2022),

[1] Earlier editions of the DSM included a diagnosis referred to as "Gender Identity Disorder." The DSM-5 noted that Gender Dysphoria "is more descriptive than the previous DSM-IV term *gender identity disorder* and focuses on dysphoria as the clinical problem, not identity *per se*. Being diagnosed with gender dysphoria "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender & Gender Variant Individuals* (2012).

Suicidality Among Transgender Youth: Elucidating the Role of Interpersonal Risk Factors. J. of Interpersonal Violence. Vol. 37 (5–6) NP2696-NP2718.

26. Research has shown that an individual's gender identity is biologically based and cannot be changed. In the past, mental health professionals sought to treat gender dysphoria by attempting to change the person's gender identity to match their birth sex; these efforts were unsuccessful and caused serious harms. Today, the medical profession recognizes that such efforts are unethical and put minors at risk of serious harm, including dramatically increased rates of suicidality.

27. Gender dysphoria is highly treatable. Healthcare providers who specialize in the treatment of gender dysphoria follow a well-established standard of care that has been adopted by the major medical and mental health associations in the United States including, but not limited to, the American Medical Association, the American Academy of Pediatrics, the American Association of Child and Adolescent Psychiatrists, the Pediatric Endocrine Society, the American Psychiatric Association, the American Psychological Association, and the Endocrine Society.

28. The standards of care for treatment of transgender people, including transgender youth, were initially developed by the World Professional Association for Transgender Health ("WPATH"), an international, multidisciplinary, professional association of medical providers, mental health providers, researchers, and others, with a mission of promoting evidence-based care and research for

transgender health, including the treatment of gender dysphoria. WPATH published the most recent edition of the Standards of Care for the treatment of gender dysphoria in minors and adults in 2011 and is in the process of finalizing a revised edition of the Standards of Care, which will likely be published later this year.

29. The Endocrine Society has also promulgated a standard of care for the provision of hormone therapy as a treatment for gender dysphoria in minors and adults. *See* Wylie C. Hembree, et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clin. Endocrinol. Metab. 3869 (2017).

30. The American Medical Association, the American Academy of Pediatrics, the American Association of Child and Adolescent Psychiatrists, the Pediatric Endocrine Society, the American Psychiatric Association, the American Psychological Association, and other professional medical organizations, also follow the WPATH and Endocrine Society standards of care.

31. The treatment of gender dysphoria is designed to reduce a transgender person's psychological distress by permitting them to live in alignment with their gender identity. Undergoing treatment for gender dysphoria is commonly referred to as transition. There are several components to the transition process: social, legal, medical, and surgical. Each of these components is part of the approved, medically

necessary process for transition, some or all of which may be implemented by a transgender person seeking to transition.

32. Social transition typically involves adopting a new name, pronouns, hairstyle, and clothing that match that person's gender identity, and treating that person consistent with their gender identity in all aspects of their life, including home, school, and everyday life. Following those steps, transgender people often obtain a court order officially changing their name and, where possible, correcting the sex listed on their birth certificate and other identity documents.

33. For transgender people who have already begun puberty, it may be appropriate for them to start taking puberty-blocking medication and later hormone-replacement therapy to ensure their body develops in a manner consistent with their gender identity.

34. Finally, surgical treatment may be part of essential medical care for a transgender individual. The only surgical treatment available to transgender minors is male chest reconstruction surgery, a procedure to remove existing breast tissue and create a male chest contour for transgender males. Like all treatments for gender dysphoria, male chest reconstruction surgery is safe and effective in treating gender dysphoria. The medical necessity of surgical care is determined on a case-by-case basis that considers the age of the patient, medical need, and appropriateness of the procedure relative to the psychological development of the individual.

35. Longitudinal studies have shown that children with gender dysphoria who receive essential medical care show levels of mental health and stability consistent with those of non-transgender children. Lily Durwood, et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56 J. Am. Acad. Child & Adolescent Psychiatry 116 (2017); Kristina Olson, et al., *Mental Health of Transgender Children who are Supported in Their Identities*, 137 Pediatrics 1 (2016). In contrast, children with gender dysphoria who do not receive appropriate medical care are at risk of serious harm, including dramatically increased rates of suicidality and serious depression.

II. *The Alabama Vulnerable Child Compassion and Protection Act*

36. On April 8, 2022, Defendant Kay Ivey signed the Act into law, and the Act will become effective on May 8, 2022.

37. Despite the essential medical need of many transgender youth in Alabama for puberty blocking medication, hormone replacement therapy, and, in some cases, surgeries, the Act makes it criminal for any person, including healthcare providers, to provide these treatments. The Act likewise makes it criminal for a minor's parents to consent to such treatments.

38. The Act abandons science and seeks to stop safe, effective, and medically necessary treatments for children with gender dysphoria in Alabama without any rational basis.

39. The Act ignores established medical science finding that transgender minors who do not receive this essential medical care suffer serious injuries to their physical and mental health.

40. In short, the Act prevents healthcare professionals from providing, and parents from consenting to, well-established medically necessary care. It also prevents parents from securing and administering such treatments to their transgender children.

41. Specifically, subsection 4(a) of the Act provides that:

> Except as provided in subsection (b), no person shall engage in or cause any of the following practices to be performed upon a minor if the practice is performed for the purpose of attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent with the minor's sex as defined in this act:
>
> (1) Prescribing or administering puberty blocking medication to stop or delay normal puberty.
>
> (2) Prescribing or administering supraphysiologic doses of testosterone or other androgens to females.
>
> (3) Prescribing or administering supraphysiologic doses of estrogen to males.
>
> (4) Performing surgeries that sterilize, including castration, vasectomy, hysterectomy, oophorectomy, orchiectomy, and penectomy.
>
> (5) Performing surgeries that artificially construct tissue with the appearance of genitalia that differs from the individual's sex, including metoidioplasty, phalloplasty, and vaginoplasty.

(6) Removing any healthy or non-diseased body part or tissue, except for a male circumcision.

42. A violation of subsection 4(a) of the Act is a Class C felony, punishable upon conviction by up to 10 years imprisonment or fine of up to $15,000.00.

43. As a result of subsection 4(a) of the Act, medical professionals, including the Healthcare Provider Plaintiffs, and parents of transgender minors, including the Parent Plaintiffs, are forced to choose between withholding medically necessary treatment from their minor transgender patients or children, on the one hand, or facing criminal prosecution, on the other.

44. The Act also prohibits the Healthcare Provider Plaintiffs from prescribing or providing medically necessary treatments for gender dysphoria, while at the same time placing no restrictions on the prescription or provision of the same treatments when necessary for other medical conditions. For example, the law permits an endocrinologist to prescribe puberty blocking medication for a child with early puberty while preventing the endocrinologist from prescribing the same medication for a youth with gender dysphoria. Similarly, an endocrinologist may prescribe testosterone for a young person suffering from delayed pubertal development while prohibiting the same endocrinologist from prescribing testosterone for a transgender minor.

45. By so doing, the Act singles out and prohibits treatment when it is necessary for a transgender person's medical care while allowing the same treatment

when it is necessary for a non-transgender person. Because only transgender individuals experience gender dysphoria, the Act's criminalization of treatments for this medical condition—while permitting the very same treatments for minors to treat other medical conditions—discriminates against individuals based on sex and their transgender status.

46. The Transgender Plaintiffs are currently receiving medical care, including puberty blockers and hormone therapy, for gender dysphoria. If allowed to take effect, the Act will interrupt these medically necessary treatments, prevent them from obtaining future medically necessary treatments for gender dysphoria, and cause them to experience irreparable physical and psychological harm.

III. *Impact of the Act on Plaintiffs*

Robert Roe and Mary Roe

47. Mary Roe is a 13-year-old transgender girl who resides with her parents in Jefferson County, Alabama.

48. The Roe family has deep roots in Alabama. Robert Roe is an Alabama native and a state employee. Both Robert and his wife are graduates of public universities in Alabama. The family attends a local Baptist church in Jefferson County.

49. When Robert and his wife found out their first child was a boy, they were excited to have a son. They named Mary after a revered patriarch in Robert's

family who was also an important figure in the history of the Civil Rights Movement in Alabama.

50. But, from an early age, Mary started showing behaviors that indicated her female gender identity. Robert and his wife treated Mary as a boy and dressed her in boys' clothing, but Mary would come home from preschool every day and immediately put on dresses.

51. When she was around six years old, Mary became reclusive and was very often unhappy, including frequent emotional outbursts where Mary would slam her head into the wall. Concerned for her well-being, Mary's parents brought her to a therapist to get insight into her behavior and guidance on how to support her.

52. Around the same time, Mary began to regularly say that she is a girl. Her statements and actions made clear that this was not simply imaginative play.

53. Based on the advice of Mary's therapist, Robert and his wife began to permit Mary to wear clothing reflecting her female gender identity outside the home. She wore dresses throughout summer and to church on Sundays. The pastor of the local Baptist church and the entire church community were very supportive of Mary.

54. Mary's mental health and behavior greatly improved when her parents allowed her to dress as a girl outside the house. She became a happy child who loved playing outside and was able to be just a kid.

55. By the end of that summer and the beginning of the school year, Robert and his wife advised Mary's school that Mary is transgender and would be returning to school as female. Although the school administration assured them that Mary would be allowed to express her gender identity freely in school and be referred to by her new name, Mary was met with hostility—some accidental, but some intentional. For example, some teachers continued to refer to Mary by her birth name. And her peers—picking up on cues from the teachers—would also use her birth name, and some would refuse to play with her if she tried to correct them.

56. As a result, Mary's mental health deteriorated again. She skipped classes, hid in the bathroom, went to the nurse's office during class hours to avoid her teachers and other classmates, and hid any documents that bore her birth name. Initial efforts to transfer Mary to another school were unsuccessful. In the summer between first and second grade, Robert and his wife found a new school for Mary.

57. At the new school, Mary is no longer referred to by her birth name and is accepted as a girl. She dresses as a girl, interacts with others as a girl, and is private about the fact that she is transgender.

58. Since Mary's transfer to the new school, she has returned to being the happy, active child she was during the summer prior to first grade.

59. All through these times, Robert and his wife continually checked in with Mary's healthcare providers—including the staff at the transgender health clinic at Children's Hospital of Alabama in Birmingham—for advice and guidance.

60. When Mary visited her pediatrician in early 2021, the pediatrician confirmed that she had started puberty, and needed to be evaluated to determine whether she is a good candidate for puberty-blocking medication. Mary has been taking puberty blockers since April 2021.

61. It is essential for Mary's mental health that she continues to receive puberty-blocking medications every three months and is able to obtain any future medical treatments that her healthcare providers determine are medically necessary to treat her gender dysphoria. For Mary to be forced to go through male puberty would be devastating; it would predictably result in her experiencing isolation, depression, anxiety, and distress. Mary's parents are also concerned that without access to the puberty-blocking medication she needs, Mary would resort to self-harm as a means of coping with her psychological distress or even attempt suicide.

62. Like all parents, Robert and his wife want the best for Mary and have been careful to follow the advice of professionals, making decisions based on the recommendations of healthcare professionals who are following well-established standards of care.

63. If the Act goes into effect, Mary's medical care will be disrupted. Without access to puberty-blocking medication, Mary's body will produce testosterone, and she will begin to develop secondary sex characteristics associated with males. The changes to Mary's body—some of which would be permanent or would require surgery to reverse—would make visible to others that she is a transgender girl and would cause her to experience again the distress she experiences from having a body seen by others as inconsistent with her female identity.

Jane Doe and John Doe

64. John Doe is a 17-year-old high school student living in Shelby County, Alabama. He has lived in Alabama all his life. John is a transgender boy.

65. As a young child, John fashioned his behavior and conduct after other boys. He often asked his parents questions about "boys' activities" and told his father that he thinks he should have been a boy. John also had rules about birthday gifts that were well-known by his friends: no clothes and no pink.

66. John's parents thought it was a phase, or that perhaps John was a lesbian. It didn't matter either way to his parents; they were very accepting of who he was.

67. Despite his parents' support, John experienced significant isolation and depression that affected his performance in school and made it difficult for him to sleep. John's parents started taking him to a therapist when he was around eight or

nine years old. Although therapy helped temporarily, John's mental health declined further when he started puberty. He quickly developed large breasts, which was very distressing for John. He would often cry in the shower because of the shape of his chest, wear multiple sports bras at a time, and slouch his shoulders to make the appearance of his chest less prominent. Getting his period was equally distressing for John. John's dysphoria was so severe that he stayed home from school for at least one day each month.

68. John started trying to counteract the dysphoria he was feeling by changing his appearance to be more masculine. He cut his hair shorter so that it would look like a more typical boys' hairstyle and wore more masculine clothing—anything baggy enough to hide the female-appearing parts of his body. John even grew out his leg hair, which he hid from everyone, including his parents; he loved having hair on his legs. When Jane found out, she made him shave, but John just grew it out again.

69. It wasn't until John started high school that he developed an understanding of the source of his dysphoria and the vocabulary to explain what he was experiencing. Soon after that, John told his parents that he is transgender. As in the past, his parents were accepting.

70. Unfortunately, John's peers and school were not as accepting as his parents. In addition to losing several friends, John experienced significant bullying

and harassment. He was also not permitted to use the boys' restroom facilities, which led him to not use the restroom all day until he returned home. Not only did that mistreatment make him feel unwelcome at the school, but not having access to a restroom made it impossible for John to focus while in class. His grades soon began to suffer to the point that he was at risk of failing several classes in both his freshman and sophomore years.

71. Besides choosing a new name as part of his transition, John began also wearing a binder, which is a compressive garment designed to flatten the appearance of a transgender person's chest so that they have a more male-appearing chest contour. John wore his binder all the time and often for hours longer than he was supposed to. Having the binder became crucial to John's ability to function because it gave him a newfound confidence, which helped buoy him against the mistreatment he experienced in school.

72. Not long after John came out as transgender, Jane started reaching out to healthcare providers to get John appropriate mental health and medical treatment. She knew of the clinic at UAB due to her work as an interpreter and contacted Dr. Ladinsky. Through the clinic, John was able to connect with both mental health and medical providers who were experienced in working with young people experiencing gender dysphoria.

73. Although John's parents soon thereafter consented to him taking medication to stop his period, it took about a year before he started testosterone. John's healthcare providers conducted a thorough assessment of him, including diagnosing him with gender dysphoria, and both he and his parents researched and talked extensively to John's healthcare providers about the risks, benefits, and alternatives to that treatment. Confident that this course of treatment was in their child's best interests, his parents eventually consented to testosterone treatments for John.

74. Starting testosterone has been amazing for John. He finally is feeling more like himself, building greater confidence, and is happier overall. Over the past year and a half, John's voice has dropped and he has developed facial hair. Those features have allowed him to feel more comfortable in his body and eased his anxieties about not being treated as a male by others.

75. The appearance of John's chest, however, continues to be a source of significant distress for him. Due to severe chaffing caused by his binder, John is only able to wear his binder every other day, as recommended by his treating healthcare providers. And, because of the size of his chest, wearing the binder for extended periods of time causes John significant physical discomfort. With the support of his treating mental health and medical providers, John consulted with a surgeon who performs male chest reconstruction surgery on transgender patients. After examining

John, the surgeon indicated that he was a good candidate and was willing to schedule him for surgery later this year.

76. If the Act is allowed to go into effect, John's medical care will be disrupted because he will not be able to access medications his physicians have prescribed to treat his gender dysphoria. John will also be unable to obtain male chest reconstruction surgery in Alabama until he reaches the age of majority, which in Alabama is age 19. Thus, if the Act is allowed to go into effect, it will lead to devastating physical and psychological consequences for John.

Dr. Morissa Ladinsky and Dr. Hussein D. Abdul-Latif

77. Dr. Ladinsky and Dr. Abdul-Latif are physicians at the Children's Hospital of Alabama who provide medical care to transgender young people. Dr. Ladinsky is a pediatrician at the Children's Hospital of Alabama and co-lead of the multi-disciplinary gender clinic at the UAB Hospital. In her practice, Dr. Ladinsky has treated and is currently treating dozens of transgender young people for gender dysphoria, including John Doe and Mary Roe.

78. Dr. Abdul-Latif is a pediatric endocrinologist at the Children's Hospital of Alabama. He is also a member of the Pediatric Endocrine Society. His medical practice consists of providing medical care to transgender young people, including prescribing puberty blocking medication and hormone therapy to treat their gender dysphoria.

79. Drs. Ladinsky and Abdul-Latif know, based on data, their observations and years medical practice, as well as their familiarity with medical research on the treatment of gender dysphoria in minors, that transgender young people who receive appropriate medical treatment have improved mental health, better social interactions, and better academic performance, as compared with their peers who do not receive such treatment.

80. Before Drs. Ladinsky and Abdul-Latif provide medical treatments to their transgender minor patients, one or more mental health providers evaluate the patient, confirm the gender dysphoria diagnosis, and thoroughly assess the patient's mental health, maturity, and readiness to undergo medical treatment for gender dysphoria. Each patient's mental health provider then provides a letter detailing the outcome of their assessment to Drs. Ladinsky and Abdul-Latif.

81. Both Dr. Ladinsky and Dr. Abdul-Latif then conduct their own assessment of the patient to determine whether they agree with the mental health provider's assessment. Additionally, Drs. Ladinsky and Abdul-Latif meet with the patient and their parents to explain the risks, benefits, alternatives to the treatment and consequences of forgoing it. The patient and their family are also given written materials that review the information covered during the appointment. To ensure that patients and their families take the time to read those materials and discuss them among themselves, the clinic requires the patient to return for an additional

appointment prior to receiving a prescription for either puberty-blocking medication or hormone-replacement therapy.

82. In the time between appointments, the patient and family are encouraged to discuss their options further with the patient's mental health provider, or to engage with the other services offered by the clinic, such as pastoral care.

83. At the second appointment, Drs. Ladinsky and Abdul-Latif review the consent forms with the patient and their parents again, giving them another opportunity to ask questions and address any concerns. If, after that discussion, the patient and their parents provide written consent for treatment, and if Drs. Ladinsky and Abdul-Latif believe that such treatment is safe, effective, and medically appropriate for the patient, Drs. Ladinsky and Abdul-Latif will write the necessary prescriptions.

84. Both Dr. Ladinsky and Dr. Abdul-Latif then see their patients for follow-up care at regular intervals to evaluate the patients' physical and mental health and address any questions the patients or their parents may have.

85. Drs. Ladinsky and Abdul-Latif's clinical experience treating gender dysphoria is consistent with the medical literature. Puberty-blocking medication and hormone-replacement therapy are safe and effective at treating their patients' gender dysphoria, resulting in significant improvement in their overall health and well-

being and preventing the decompensation seen in transgender minors who are unable to access needed medical treatment.

86. If the Act goes into effect, thereby denying transgender minors access to this essential treatment, Drs. Ladinsky and Abdul-Latif's patients will experience severe psychological distress and irreversible physical changes to their bodies that will result in long-lasting damage to their health.

87. Unwilling to violate their professional and ethical duties to their patients, Drs. Ladinsky and Abdul-Latif cannot comply with the Act. As a result of the Act, both Drs. Ladinsky and Abdul-Latif will face the ever-present threat of criminal prosecution and criminal penalties if they continue to provide medically necessary and appropriate treatments for gender dysphoria to their minor transgender patients, consistent with the applicable standard of care.

CLAIMS FOR RELIEF

COUNT I

Preemption
Healthcare Provider Plaintiffs and Transgender Plaintiffs Against Defendants in Their Official Capacities
42 U.S.C. § 18116

88. Plaintiffs incorporate paragraphs 1 through 87 of the Complaint as if set forth fully herein.

89. Healthcare Provider Plaintiffs and Transgender Plaintiffs bring this Count against all Defendants.

90. Under Section 1557 of the Affordable Care Act, "an individual shall not . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments)" on the basis of sex. 42 U.S.C. § 18116.

91. The prohibition on sex discrimination in Section 1557 of the Affordable Care Act protects transgender individuals from discrimination by healthcare providers, including physicians and hospitals.

92. The Transgender Plaintiffs obtain their medical care from providers who are recipients of federal financial assistance and therefore subject to the non-discrimination requirements of Section 1557 of the Affordable Care Act.

93. The Act subjects the Transgender Plaintiffs to unlawful sex discrimination by preventing them from obtaining medically necessary care related to their transgender status and by requiring their healthcare providers to discriminate against them because they are transgender. As such, the Act conflicts with the non-discrimination requirements of Section 1557. It also conflicts with and undermines the purposes and goals of Section 1557.

94. In addition, as providers for transgender beneficiaries of Alabama Medicaid, the Healthcare Provider Plaintiffs are recipients of federal financial assistance and therefore subject to the non-discrimination requirements of Section 1557 of the Affordable Care Act.

95. It is impossible for the Healthcare Plaintiffs to continue to comply with their obligations under Section 1557 and also comply with the restrictions imposed by the Act. On the one hand, refusing to comply with the Act would bring them into compliance with Section 1557, but subject them to criminal penalties under the Act. On the other hand, complying with the Act would subject the Healthcare Plaintiffs to civil liability for discrimination under Section 1557.

96. The Act stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, including the objective of preventing discrimination in the provision of healthcare based on sex.

97. The Healthcare Plaintiffs have no adequate remedy at law to redress the wrongs alleged herein, which are of a continuing nature and will cause them irreparable harm.

98. Accordingly, the Healthcare Plaintiffs are entitled to declaratory and injunctive relief.

COUNT II
Deprivation of Equal Protection
Transgender Plaintiffs Against Defendants in Their Official Capacities
Healthcare Provider Plaintiffs Against Defendants in Their Official Capacities
U.S. Const. Amend. XIV

99. Plaintiffs incorporate paragraphs 1 through 87 of the Complaint as if set forth fully herein.

100. Transgender Plaintiffs bring this Count against all Defendants. Healthcare Provider Plaintiffs bring this Count against Defendants Kay Ivey, Steve Marshall, and Danny Carr.

101. The Equal Protection Clause of the Fourteenth Amendment, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1.

102. The Act singles out transgender minors and prohibits them from obtaining medically necessary treatment based on their sex and transgender status.

103. The Act also treats transgender minors differently and less favorably than non-transgender minors by allowing minors who are not transgender to obtain the same medical treatments that are prohibited when medically necessary for transgender minors.

104. Under the Equal Protection Clause, government classifications based on sex are subject to heightened scrutiny and are presumptively unconstitutional.

105. Transgender-based government classifications are subject, at a minimum, to heightened scrutiny because they are also sex-based classifications.

106. Because transgender people have obvious, immutable, and distinguishing characteristics, including having a gender identity that is different than their birth sex, they comprise a discrete group. This defining characteristic bears no relation to a transgender person's ability to contribute to society. Nevertheless, transgender people have faced historical discrimination and have been unable to secure equality through the political process.

107. As such, transgender classifications are subject to strict scrutiny.

108. The Act does nothing to protect the health or well-being of minors, or anyone else. To the contrary, the Act undermines the health and well-being of transgender minors by denying them essential medical care.

109. The Act is not narrowly tailored to further a compelling government interest and is not substantially related to any important governmental interest. Nor is it even rationally related to a governmental interest. Accordingly, the Act violates the Equal Protection Clause of the Fourteenth Amendment.

COUNT III
Deprivation of Substantive Due Process
Parent Plaintiffs Against Defendants in Their Official Capacities
Violation of Parent Plaintiffs' Right to Direct Their Children's Medically Necessary Care
U.S. Const. Amend. XIV

110. Plaintiffs incorporate paragraphs 1 through 87 of the Complaint as if set forth fully herein.

111. The Parent Plaintiffs bring this Count against all Defendants.

112. The Fourteenth Amendment to the United States Constitution protects the rights of parents to make decisions "concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66, 120 S. Ct. 2054, 147 L.Ed.2d 49 (2000). That fundamental right includes the liberty to make medical decisions for their minor children, including the right to obtain medical treatments that are recognized to be safe, effective, and medically necessary to protect their children's health and well-being.

113. The Act violates this fundamental right by preventing the Parent Plaintiffs from obtaining medically necessary care for their minor children.

114. By intruding upon parents' fundamental right to direct the upbringing of their children, the Act is subject to strict scrutiny.

115. Defendants have no compelling justification for preventing parents from ensuring their children can receive essential medical care. The Act does not advance any legitimate interest, much less a compelling one.

COUNT IV
Deprivation of Procedural Due Process
All Plaintiffs Against Defendants in Their Official Capacities
Void for Vagueness
U.S. Const. Amend. V and XIV

116. Plaintiffs incorporate paragraphs 1 through 87 of the Complaint as if set forth fully herein.

117. All Plaintiffs bring this Count against all Defendants.

118. Under the Due Process Clause, a criminal statue is void for vagueness if it either (1) fails "to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits" or (2) authorizes or encourages "arbitrary and discriminatory enforcement." *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999).

119. Subsection 4(a) of the Act states, in relevant part, that "no person shall … cause any of the following practices to be performed upon a minor …."

120. As written, the Act does not provide sufficient definiteness to ordinary people, including Plaintiffs, of what actions constitute "caus[ing]" any of the proscribed activities upon a minor.

121. The lack of definiteness in the Act encourages arbitrary and discriminatory enforcement against anyone who is aware of, refers, discusses, talks about, recommends, or gives an opinion on a transgender person's healthcare.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court:

(1) issue a judgment, pursuant to 28 U.S.C. §§ 2201-2202, declaring that the Act violates federal law for the reasons and on the Counts set forth above;

(2) permanently enjoin Defendants and their officers, employees, servants, agents, appointees, or successors from enforcing the Act;

(3) declare that the Act violates the Fifth and Fourteenth Amendments to the United States Constitution;

(4) award Plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and

(5) grant such other relief as the Court finds just and proper.

Respectfully submitted this 8th day of April, 2022.

/s/ Melody H. Eagan
Melody H. Eagan (ASB-9780-D38M)
Jeffrey P. Doss (ASB-4212-R62D)
Amie A. Vague (ASB-4113-Q46I)
LIGHTFOOT, FRANKLIN & WHITE LLC
The Clark Building
400 20th Street North
Birmingham, AL 35203
205.581.0700
meagan@lightfootlaw.com
jdoss@lightfootlaw.com
avague@lightfootlaw.com

J. Andrew Pratt (*pro hac vice* forthcoming)
Misty L. Peterson (*pro hac vice* forthcoming)
Adam Reinke (*pro hac vice* forthcoming)
Gilbert Oladeinbo (*pro hac vice* forthcoming)
KING & SPALDING LLP
1180 Peachtree Street Northeast, Suite 1600
Atlanta, GA 30309
404.572.4600
apratt@kslaw.com
mpeterson@kslaw.com
areinke@kslaw.com
goladeinbo@kslaw.com

Brent P. Ray (*pro hac vice* forthcoming)
Abigail J.M. Hoverman (*pro hac vice* forthcoming)
KING & SPALDING LLP
110 North Wacker Drive, Suite 3800
Chicago, IL 60606
312.995.6333
bray@kslaw.com
ahoverman@kslaw.com

Michael B. Shortnacy (*pro hac vice* forthcoming)
KING & SPALDING LLP
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071
213.443.4355
mshortnacy@kslaw.com

Asaf Orr (*pro hac vice* forthcoming)
NATIONAL CENTER FOR LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
415.392.6257
aorr@nclrights.org

Jennifer L. Levi (*pro hac vice* forthcoming)
GLBTQ LEGAL ADVOCATES & DEFENDERS
18 Tremont, Suite 950
Boston, MA 02108
617.426.1350
jlevi@glad.org

Scott D. McCoy (*pro hac vice* forthcoming)
SOUTHERN POVERTY LAW CENTER
P.O. Box 12463
Miami, FL 33101
(334) 224-4309
scott.mccoy@splcenter.org

Diego A. Soto (admission forthcoming)
SOUTHERN POVERTY LAW CENTER
400 Washington Avenue
Montgomery, AL 36104
334.604.1414
diego.soto@splcenter.org

Jessica Stone (*pro hac vice* forthcoming)
SOUTHERN POVERTY LAW CENTER
P.O. Box 1287
Decatur, GA 30031
404.221.5837
jessica.stone@splcenter.org

Sarah Warbelow (*pro hac vice* forthcoming)
Cynthia Weaver (*pro hac vice* forthcoming)
HUMAN RIGHTS CAMPAIGN FOUNDATION
1640 Rhode Island Ave., NW
Washington, DC 20036

202.628.4160
sarah.warbelow@hrc.org
cynthia.weaver@hrc.org

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JEFFREY WALKER, LISA WALKER, H.W., JEFFREY WHITE, CHRISTA WHITE, and C.W.,

Plaintiffs,

v.

STEVE MARSHALL, in his official capacity as Attorney General of the State of Alabama, BRIAN C.T. JONES, in his official capacity as District Attorney for Limestone County, and JESSICA VENTIERE, in her official capacity as District Attorney for Lee County,

Defendants.

CIVIL ACTION NO. 2:22-cv-167-ECM-SMD

Claim of Unconstitutionality

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by and through their attorneys, bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof state the following:

INTRODUCTION

1. In the final hours of the 2022 legislative session, Alabama passed S.B. 184 (attached hereto as Exhibit A). This felony ban on health care, referred to herein

as the felony health care ban, categorically bars transgender minors from receiving medical care to affirm their gender identity, including to treat gender dysphoria.

2. Specifically, the felony health care ban makes it a felony to "engage in or cause" certain enumerated forms of medical care if the care is provided for "the purpose of attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent with the minor's biological sex as defined in [the law]." S.B. 184, § 4(a).

3. The felony health care ban criminalizes the provision of this medical treatment even when the minor, the minor's parents, and the minor's medical providers all agree that the care is medically necessary and in the minor's best interest.

4. The medical care criminalized by Alabama has been recognized as safe and effective by the American Medical Association, the American Academy of Pediatrics, the Endocrine Society, the American Psychological Association, and every other leading relevant professional medical association.

5. The law is so broad that doctors, nurses, parents, clergy members, teachers, guidance counselors, and perhaps even transgender youth themselves are subject to criminal penalty—as is anyone else who could conceivably be said to "cause" a transgender minor to receive medical care that affirms their gender identity.

6. Because the felony health care ban singles out and discriminates against

transgender youth based on their transgender status and sex, including sex stereotypes, the State must show that it substantially serves at least an exceedingly persuasive government interest to comply with the Equal Protection Clause. It cannot do so.

7. Instead of protecting transgender youth, the felony health care ban endangers them by making it a felony to provide them with medical care necessary to treat their gender dysphoria, a serious medical condition characterized by clinically significant distress resulting from the lack of congruence between a person's gender identity and their sex assigned at birth. Without treatment, young people with gender dysphoria often suffer extreme distress, anxiety, depression, and suicidal ideation. The State's alleged concern for public health and the ability to provide informed consent is misguided and pretextual.

8. The medical treatments targeted by the law are safe and effective. And according to standard medical practice, these treatments are provided only after a medical provider has undertaken an individualized assessment of the minor's needs and discussed the treatment options available to the patient, and only after the minor, the minor's parents, and the minor's medical providers all agree that the treatment at issue is the most appropriate course of treatment.

9. The felony health care ban is contrary to the legislature's previous recognition of "the sanctity of the physician/patient relationship" and "that a duly licensed physician should be allowed to prescribe any FDA approved medication for

any condition that the physician and patient agree would be beneficial for treatment of the patient without interference by government or private parties." S. J. Res. 82, Act. No. 2021-251 (Ala. Apr. 13, 2021).

10. If allowed to go into effect, the felony health care ban will have dire physical, emotional, and psychological consequences for transgender youth, who will be kept from receiving necessary medical care. It will render parents powerless to help and make medical decisions for their own adolescent children, forcing them to watch as their children suffer from the extreme distress caused by gender dysphoria. It will force medical professionals to violate the tenets of their profession and abandon their patients.

11. None of these consequences need or should occur because the felony health care ban is unconstitutional in multiple respects and therefore should be enjoined.

JURISDICTION AND VENUE

12. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the United States Constitution.

13. This Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1343 and Article III of the United States Constitution.

14. Venue is proper in the Middle District of Alabama under 28 U.S.C. § 1391(b)(1) and (2) because a substantial part of the events or omissions giving rise

to Plaintiffs' claims occurred in the District and because Defendants Marshall and Ventiere, who are sued in their official capacities, carry out their official duties at offices located in this District.

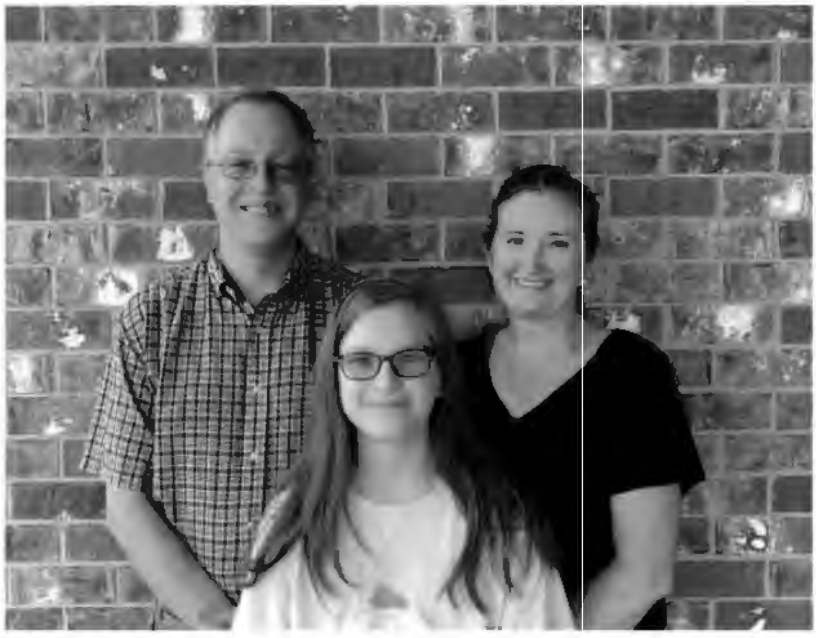
15. The Court has authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§2201 and 2202.

16. This Court has personal jurisdiction over Defendants because they are domiciled in Alabama and because their denial of Plaintiffs' rights under the United States Constitution occurred within Alabama.

PLAINTIFFS

17. Plaintiffs Jeffrey ("Jeff") Walker, Lisa Walker, and H.W. live in Auburn, Alabama. Jeff and Lisa are the parents of H.W., who is a 15-year-old girl. H.W. is transgender and currently receives medical care targeted by the felony health care ban. The Walker family, including 20-year-old son Robert, are pictured here:

18. Plaintiffs Jeffrey ("Jeff") White, Christa White, and C.W. live in Limestone County, Alabama. Jeff and Christa are the parents of C.W., who is a thirteen-year-old girl. C.W. is transgender and currently receives medical care targeted by the felony health care ban. The White family is pictured here:



DEFENDANTS

19. Defendant Steve Marshall is the Attorney General of the State of Alabama, located at 501 Washington Avenue, Montgomery, Alabama. The Attorney General may, at "any time he [] sees proper, . . . superintend and direct the prosecution of any criminal case in any of the courts of this state," Ala. Code § 36-15-14, and may also "direct any district attorney to aid and assist in the investigation or prosecution of any case in which the state is interested," *id.* at § 36-15-15. As such, Defendant Marshall is responsible for criminal enforcement of S.B. 184. Defendant Marshall is sued in his official capacity.

20. Defendant Brian C.T. Jones is District Attorney for Limestone County, located at 200 W Washington St., Athens, Alabama. District attorneys have the power to "draw up all indictments and to prosecute all indictable offenses" within

their jurisdiction. Ala. Code § 12-17-184(2). As such, Defendant Jones is responsible for criminal enforcement of S.B. 184 in Limestone County. Defendant Jones is sued in his official capacity.

21. Defendant Jessica Ventiere is District Attorney Pro Tem for Lee County, located at 2311 Gateway Dr. #111, Opelika, AL. District attorneys have the power to "draw up all indictments and to prosecute all indictable offenses" within their jurisdiction. Ala. Code § 12-17-184(2). As such, Defendant Ventiere is responsible for criminal enforcement of S.B. 184 in Lee County. Defendant Ventiere is sued in her official capacity.

FACTUAL ALLEGATIONS

Standards of Care for Treating Transgender Youth

22. "Gender identity" is a person's internal, innate sense of belonging to a particular sex.

23. There is a significant biological component underlying gender identity.

24. Everyone has a gender identity.

25. An individual's gender identity cannot be changed by external factors.

26. A person's gender identity usually matches the sex they were designated at birth based on their external genitalia. The terms "sex designated at birth" or "sex assigned at birth" are more precise than the term "biological sex" because all of the physiological aspects of a person's sex are not always aligned with each other as

typically male or typically female. For these reasons the Endocrine Society cautions that the terms "biological sex" and "biological male or female" are imprecise and should be avoided.

27. Most boys are designated male at birth based on their external genital anatomy and have a male gender identity, and most girls are designated female at birth based on their external genital anatomy and have a female gender identity. But transgender people have a gender identity that differs from the sex assigned to them at birth. A transgender boy is someone who was assigned a female sex at birth but has a male gender identity. A transgender girl is someone who was assigned a male sex at birth but has a female gender identity. This lack of alignment between gender identity and sex assigned at birth experienced by transgender individuals can cause significant distress.

28. Some transgender people first experience this lack of alignment early in childhood. For others, the onset of puberty, and the resulting physical changes in their bodies, may lead them to recognize that their gender identity does not align with their sex assigned at birth.

29. According to the American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders ("DSM-V"), "Gender Dysphoria" is the diagnostic term for the condition experienced by some transgender people of clinically significant distress resulting from the lack of congruence between their gender identity

and the sex assigned to them at birth. In order to be diagnosed with gender dysphoria, the incongruence must have persisted for at least six months and be accompanied by clinically significant distress or impairment in social, occupational, or other important areas of functioning.

30. Being transgender is not a condition to be cured. But gender dysphoria is a serious medical condition that, if left untreated, can result in debilitating anxiety, severe depression, self-harm, and suicidality.

31. The World Professional Association for Transgender Health ("WPATH") and the Endocrine Society have published widely accepted clinical guidelines for treating gender dysphoria. The medical treatment for gender dysphoria seeks to eliminate the clinically significant distress created by gender dysphoria by helping transgender people live in alignment with their gender identity. This treatment is sometimes referred to as "gender transition," "transition related care," or "gender affirming care." The American Academy of Pediatrics agrees that this care is safe, effective, and medically necessary treatment for the health and wellbeing of children and adolescents suffering from gender dysphoria.

32. The precise treatment for gender dysphoria depends on each person's individualized needs, and the medical standards of care differ depending on whether the treatment is for a pre-pubertal child, an adolescent (i.e., minors who have entered puberty), or an adult.

33. Before puberty, treatment does not include any pharmaceutical or surgical intervention and is limited to "social transition," which means allowing a transgender child to live and express themselves in ways consistent with their gender identity.

34. As transgender youth reach puberty, puberty delaying therapy may become medically necessary and appropriate under the Endocrine Society's clinical practice guidelines.

35. For many transgender adolescents, going through puberty in accordance with the sex assigned to them at birth can cause extreme distress. Puberty delaying hormone treatment (also referred to as puberty blockers or puberty suppressing treatment) allows transgender youth to avoid going through endogenous puberty, along with the heightened gender dysphoria and permanent physical changes that puberty would cause. In providing puberty delaying therapy, pediatric endocrinologists work in close consultation with qualified mental health professionals experienced in diagnosing and treatment gender dysphoria.

36. Puberty delaying treatment works by pausing puberty at the stage it has reached when the treatment begins. This has the impact of limiting the influence of a person's endogenous hormones on the body. For example, after the initiation of puberty delaying treatment and for the duration of the treatment, a transgender girl

will experience none of the impacts of testosterone that would be typical if she underwent her full endogenous puberty.

37. Under the Endocrine Society's clinical guidelines, transgender adolescents may be eligible for puberty-blocking hormone therapy if:

- A qualified mental health professional has confirmed that:
  - the adolescent has demonstrated a long-lasting and intense pattern of gender nonconformity or gender dysphoria (whether suppressed or expressed);
  - gender dysphoria worsened with the onset of puberty; and
  - any coexisting psychological, medical, or social problems that could interfere with treatment (e.g., that may compromise treatment adherence) have been addressed, such that the adolescent's situation and functioning are stable enough to start treatment.
- The adolescent:
  - has sufficient mental capacity to give informed consent to this (reversible) treatment;
  - has been informed of the effects and side effects of treatment (including potential loss of fertility if the individual subsequently continues with hormone treatment) and options to preserve

fertility; and

- has given informed consent and (particularly when the adolescent has not reached the age of legal medical consent, depending on applicable legislation) the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process,

- And a pediatric endocrinologist or other clinician experienced in pubertal assessment:
  - agrees with the indication for GnRH agonist (puberty blocking) treatment,
  - has confirmed that puberty has started in the adolescent, and
  - has confirmed that there are no medical contraindications to GnRH agonist treatment.

38. Additionally, for some transgender adolescents, it may be medically necessary and appropriate to provide hormone therapy to initiate puberty consistent with gender identity. Evaluation for this treatment generally occurs starting around age 14.

39. Under the Endocrine Society's clinical guidelines, transgender adolescents may be eligible for gender-affirming hormone therapy if:

- A qualified mental health professional has confirmed:

- the persistence of gender dysphoria;
- any coexisting psychological, medical, or social problems that could interfere with treatment (e.g., that may compromise treatment adherence) have been addressed, such that the adolescent's situation and functioning are stable enough to start hormone treatment; and
- the adolescent has sufficient mental capacity to estimate the consequences of this (partly) irreversible treatment, weigh the benefits and risks, and give informed consent to this (partly) irreversible treatment,

- And the adolescent:
  - has been informed of the (irreversible) effects and side effects of treatment (including potential loss of fertility and options to preserve fertility); and
  - has given informed consent and (particularly when the adolescent has not reached the age of legal medical consent, depending on applicable legislation) the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process,
- And a pediatric endocrinologist or other clinician experienced in pubertal

induction:

- agrees with the indication for sex hormone treatment; and
- has confirmed that there are no medical contraindications to sex hormone treatment.

40. Transgender adolescents who receive hormone therapy after puberty blockers do not go through puberty in accordance with the sex assigned to them at birth but instead go through puberty that matches their gender identity.

41. For many transgender patients, social transition and hormone therapy adequately manage gender dysphoria. Others may also need one or more forms of surgical treatment.

42. Under WPATH's clinical guidelines, adolescents who are transgender may receive medically necessary chest reconstructive surgeries prior to the age of majority if they have severe gender dysphoria, provided they have been living consistent with their gender identity for a significant period of time. If medically indicated, treatment for gender dysphoria may include genital surgery after a patient reaches the age of majority.

43. Medical care that allows a transgender youth to avoid going through puberty that does not align with their gender identity and that provides gender-affirming hormones can be lifesaving and can eliminate or reduce the need for surgery later in life. These treatments improve short- and long-term health outcomes for

transgender youth.

44. Puberty blockers and hormone therapy are safe and effective.

Legislative History and Text of S.B. 184

45. S.B. 184 was introduced in the Alabama Senate on February 3, 2022 by Senator Shay Shelnutt.

46. The operative portion, replicated below, is as follows:

Section 4.

(a) Except as provided in subsection (b), no person shall engage in or cause any of the following practices to be performed upon a minor if the practice is performed for the purpose of attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent with the minor's sex as defined in this act:

(1) Prescribing or administering puberty blocking medication to stop or delay normal puberty.

(2) Prescribing or administering supraphysiologic doses of testosterone or other androgens to females.

(3) Prescribing or administering supraphysiologic doses of estrogen to males.

(4) Performing surgeries that sterilize, including castration, vasectomy, hysterectomy, oophorectomy, orchiectomy, and penectomy.

(5) Performing surgeries that artificially construct tissue with the appearance of genitalia that differs from the individual's sex, including metoidioplasty, phalloplasty, and vaginoplasty.

(6) Removing any healthy or non-diseased body part or tissue, except for a male circumcision.

> (b) Subsection (a) does not apply to a procedure undertaken to treat a minor born with a medically verifiable disorder of sex development, including either of the following:
>
> > (1) An individual born with external biological sex characteristics that are irresolvably ambiguous, including an individual born with 46 XX chromosomes with virilization, 46 XY chromosomes with under virilization, or having both ovarian and testicular tissue.
> >
> > (2) An individual whom a physician has otherwise diagnosed with a disorder of sexual development, in which the physician has determined through genetic or biochemical testing that the person does not have normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action for a male or female.

47. A parallel bill was introduced in the House as H.B. 266 by Representative Wes Allen.

48. A violation of S.B. 184 is a Class C felony, punishable by 1 to 10 years in prison and a fine of up to $15,000. *See* Ala. Crim. Code §§ 13-A-5-6(a)(3), 13A-5-11(a)(3).

49. After S.B. 184 was introduced, it was referred to the Senate Healthcare Committee, which held a public hearing on February 9, 2022.[1] During the hearing, parents and physicians of transgender youth testified in opposition to the bill, explaining that the decision to undergo gender-affirming hormone treatment is a

[1] Senate Healthcare Comm. Meeting (Feb. 9, 2022), https://vimeo.com/675565353/99cfbd4ffe.

years-long process involving the minor, the minor's parents, and the team of physicians monitoring the care plan, and that genital surgery is never performed on minor children as part of gender-affirming care in Alabama. Five opponents of the bill testified, whereas only one proponent of the bill testified.

50. Testifying against the bill, Plaintiff Jeffrey White spoke to "advocat[e] for [his] daughter," C.W., who is transgender, and would be "forced into psychological desolation by th[e] bill." Mr. White harshly criticized the bill as "dehumaniz[ing]" his daughter:

> This irresponsible action is the final link in a long chain of dehumanizations she has endured on a regular basis for years. Her identity is repeatedly denigrated by the ignorant and hateful. Her dignity is damaged every time she is mistreated for being herself. Now even her liberty will be denied by this egregious overreach into her life. This bill is not about compassion or protection. It is a violation and subjugation of who my daughter is. My daughter is much like her peers. She loves to draw, hang out with her cats, and play games . . . . She is one of the kindest and most creative people I am privileged to know. Her success is possible because the treatment she receives allows her to focus on having a normal childhood. This bill forces her onto a difficult path rife with risk and despair. The light shining brightly in her eyes will dim, as all she cares about is overtaken by a formerly treatable incongruence that you will have rendered intractable. The bill renders us powerless by violating our rights as parents to make medical decisions about our child. . . . . Vote no on this extremist bill before it kills someone.

51. Testifying against the bill, Monroe Smith—who is transgender and a student at the Alabama School of Fine Arts—explained that his and his parents' joint decision to pursue medical care affirming his gender identity was not made "at the drop of a hat," but was deliberate, careful, and preceded by a "steady process of

communication between [Mr. Smith], [his] parents, [his] doctors, and mental health professionals, all for the purpose of making sure that we were informed and ready to pursue this long journey ahead." Mr. Smith testified that "[o]nly after many dialogues and evaluations to determine my physical and emotional readiness, my family and I and our team of doctors finally began the process of my medical transition," and that "[n]ot once in this process did I nor my parents ever feel like we faced pressure to receive this necessary and life-saving medical service that I needed." Mr. Smith cautioned that if he "was denied the option of gender-affirming care," he "would not be the successful young man [he is] today," and that he is a "living, breathing example among so many other youth across Alabama" that this care "saves lives."

52. Testifying against the bill, Doctor Nola Jean Ernest—a community pediatrician in Alabama with a medical degree and a PhD in neurobiology who treats many patients with gender dysphoria, and who is the Vice President of the Alabama Academy of Pediatrics—pointed out that the alleged justifications for S.B. 184 distorted or misrepresented existing science and medicine. Disputing the Act's presumption that gender-affirming care is "experimental," Dr. Ernest explained that "we know the use of medication for gender dysphoria under the guidance of a medical team is an evidence-based standard of care." Dr. Ernest testified that her team of gender experts "have dedicated their lives and careers" to treating patients with gender dysphoria, which is "vitally important, because transgender patients, on order of about

86% of them will . . . think about suicide. And over half of them will attempt it." Criminalizing gender-affirming medical care, Dr. Ernest continued, would not only "override doctors" and "interfere[] in the parent-doctor and patient-doctor relationship," but deny transgender children "lifesaving" medical treatment.

53. Testifying against the bill, Reverend David Chatel—a priest at St. Peter's Episcopal Church in Alabama—expressed his "deep[] concern[] with the content and potential impact of S.B. 184." Rev. Chatel pleaded with the Senators to recognize that "transgender youth and their families have a right to supportive and affirming healthcare that respects their dignity and their privacy." To "deny them this," Rev. Chatel explained, is "cruel."

54. As the sole proponent testifying in favor of the bill, Patrick Lappert—a plastic surgeon—compared gender dysphoria in transgender children to a child saying to a doctor, "I self-identify as an Olympic athlete, I need anabolic steroids."

55. S.B. 184 passed the full Senate on February 23, 2022. During the Senate floor debate, Senator Shelnutt—the bill's sponsor—characterized gender-affirming medical care as "child abuse": "We don't want parents to be abusing their children. We don't want to make that an option, because that's what it is; it's child abuse."[2]

56. That same day, February 23, 2022, the House Judiciary Committee held

[2] Kiara Alfonseca, *Alabama Governor Signs 'Don't Say Gay,' Trans Care, and Bathroom Ban Bills*, ABC News (Apr. 8, 2022), https://abcn.ws/35VXWFe.

an extensive public hearing on S.B. 184's companion bill, H.B. 266.

57. Opponents of H.B. 266 noted that puberty-blocking medications are both reversible and potentially lifesaving and that genital surgeries are never performed on transgender minors in Alabama to treat gender dysphoria. Dr. Ernest, who also testified against the felony health care ban in the Senate, testified that puberty-blocking medications are also used to treat precocious puberty (i.e., to treat conditions other than gender dysphoria) and have been in use for over thirty years. She further testified that "studies show that if you invalidate the experiences of youth, that will increase their risk of self-harm." She asked the legislators: "Please do not take hope away from Alabama children."[3]

58. Members of the House Judiciary Committee spoke out strongly against H.B. 266. Representative Christopher England said that "[t]he legislature has no place in this discussion." Calling for deference to the rights of parents, he added, "I don't want to put myself in a position to restrict a parent's ability to do what's best for their child."[4]

59. Other opponents of H.B. 266 criticized the bill's broad scope, noting that

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[3] Savanna Tryens-Fernandes, *Lawmakers Again Consider Alabama Bill to Limit Treatments for Transgender Children*, Ala. News (Feb. 23, 2022), https://www.al.com/news/2022/02/lawmakers-again-consider-alabama-bill-to-limit-healthcare-treatments-for-transgender-children.html.

[4] *Id.*

it criminalized a broad range of doctors, nurses, and medical providers for prescribing, referring, or even dispensing medications.

60. One week later, on March 2, 2022, the House Judiciary Committee held another hearing on H.B. 266.[5] At the conclusion of the hearing, the Committee gave a favorable report on H.B. 266 and sent it to the full House.

61. During the March 2, 2022 House Judiciary Committee hearing, Representative Allen compared gender-affirming medical care to "vaping," "dealing with cigarettes," and "dealing with drinking."

62. Representative Allen also received questions from Representative England. Representative England asked whether Representative Allen envisioned a scenario in which "the parent may be required to testify against the person that's providing some care to their child" in a criminal case. Representative Allen responded that that was a "good question[]," but that he was "not learning in the law [sic]" enough to answer. Representative Allen added that, in his view, gender-affirming medical care is "child abuse."

63. On the very last day of the legislative session, April 7, 2022, the House passed S.B. 184.[6]

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[5] House Judiciary Committee Meeting (Mar. 2, 2022), https://vimeo.com/683940881/4edaeefda2.

[6] House Session (Apr. 7, 2022), https://vimeo.com/697000650/59a642f5d4.

64. Governor Ivey signed S.B. 184 into law on April 8, 2022. By its own terms, the law is scheduled to take effect 30 days from signing, on May 8, 2022. In a statement released contemporaneous with signing the law, Governor Ivey stated: "I believe very strongly that if the Good Lord made you a boy, you are a boy, and if He made you a girl, you are a girl . . . . [L]et us all focus on helping them to properly develop into the adults God intended them to be."[7]

65. On the same day the House passed S.B. 184, the House passed another bill restricting basic rights and opportunities for transgender youth, H.B. 322. That bill requires children in public K-12 schools to use bathrooms, changing rooms, and locker rooms based on the sex "as stated on the individual's original birth certificate." That bill also prohibits—as a result of an amendment added just before its passage—classroom discussion of sexual orientation or gender identity in grades K-5.

66. Governor Ivey signed H.B. 322 into law on April 8, 2022—the same day that Governor Ivey signed S.B. 184. H.B. 322 is scheduled to take effect on July 1, 2022.

67. The 2022 legislative session was not the first time that Alabama's Legislature restricted the rights of transgender youth. Both Senator Shelnutt and Representative Allen introduced anti-transgender bills similar to S.B. 184 in

[7] Alfonseca, *supra* note 2.

2021: S.B. 10 and H.B. 1, respectively.

68. Around the same time that H.B. 1 was introduced in 2021, the House also introduced H.B. 391, a bill banning transgender young women and girls from playing on athletic teams consistent with their gender identity. H.B. 391 was signed into law on April 20, 2021.

69. Over the last few years, hundreds of bills that would restrict the rights of transgender people have been introduced across the country each year. In July 2021, a federal court in Arkansas blocked an Arkansas law prohibiting health care professionals from providing transgender young people with gender-affirming care.[8] In February 2022, Texas Governor Greg Abbott issued a formal letter directing that gender-affirming medical treatment is "child abuse" under Texas law and ordering the Texas Department of Family and Protective Services to investigate (and punish) parents and guardians who support the clinically supervised and prescribed medical

[8] *Brandt v. Rutledge*, 21 Civ. 450, Dkt. 59 (C.D. Ark. July 21, 2021); *see also Brandt v. Rutledge*, 551 F. Supp. 3d 883 (E.D. Ark. 2021). The same day, a federal court in West Virginia blocked a West Virginia law prohibiting girls who are transgender from participating in school sports. *B.P.J. v. W. Va. State Bd. of Educ.*, 550 F. Supp. 3d 347 (S.D.W. Va. 2021). A federal court in Idaho had previously blocked a similar law prohibiting girls who are transgender from participating in school sports in Idaho. *See Hecox v. Little*, 479 F. Supp. 3d 930, 975 (D. Idaho 2020).

transition of their minor children.[9] A Texas state court temporarily enjoined Governor Abbott's order.[10] Like S.B. 184, the crux of these bills and policies is to exclude transgender youth from participating in society consistent with their gender identity and/or to prevent them from accessing necessary (and frequently lifesaving) medical care.

The Legislative Findings in S.B. 184 Do Not Support the Felony Health Care Ban, Which Treats Healthcare for Transgender Youth Differently from Every Other Type of Pediatric Medicine Under Alabama Law

70. Without any legitimate justification, the felony health care ban denies transgender youth the same types of medically necessary treatments provided to non-transgender youth.

71. Far from fulfilling its stated purpose of protecting the physical and mental health of transgender youth, the felony health care ban endangers it.

72. The forms of medical care criminalized by Alabama are safe, effective, and medically necessary for the health and wellbeing of children and adolescents suffering from gender dysphoria and are recognized as such by the American Medical Association, the American Academy of Pediatrics, and every other leading

[9] Letter from Gov. Greg Abbott to Tex. Dep't of Fam. and Protective Servs. (Feb. 22, 2022), https://s3.documentcloud.org/documents/21272649/abbott-letter-to-masters.pdf.

[10] *Doe v. Abbott*, No. D-1-GN-22-000977, 2022 WL 628912, at *1 (Tex. Dist., 353rd Judicial Dist., Mar. 02, 2022).

relevant professional medical association in the United States.

73. Without treatment, many people with gender dysphoria suffer extreme distress and elevated rates of anxiety, depression, and suicidal ideation.

74. The felony health care ban not only prospectively criminalizes evidence-based medical care but also requires the withdrawal of treatment from transgender minors already receiving it. Withdrawing hormone blockers can result in extreme distress for adolescent patients who are relying on the treatment to prevent irreversible changes to their bodies from puberty.

75. In addition to the severe and potentially deadly mental health consequences of cutting off this treatment, abruptly withdrawing hormone treatment can also result in a range of serious physiological health consequences, including hot flashes, headache, fatigue, and cardiac effects.

76. The felony health care ban does not protect transgender minors from "unproven treatments." Puberty blockers and hormone therapy have repeatedly been recognized by doctors and every leading relevant professional medical association as safe and effective treatments supported by evidence.

77. Puberty blockers are also safely and consistently used with adolescents and adults undergoing chemotherapy, as well as youth experiencing precocious puberty, and hormone therapy is used for patients with Turner syndrome, Klinefelter syndrome, and hypogonadism (inability to secrete sex steroids) such as primary

ovarian insufficiency.

78. The felony health care ban's legislative findings misleadingly assert that the use of puberty blockers to treat transgender children is "experimental" and suggest that because the treatment is "not FDA-approved" for treating gender dysphoria it is unsafe or untested. But this treatment is not experimental and FDA approval is not required for all uses of a medication; once the FDA has approved a medication for one indication, as is the case with the medications at issue here, prescribers are generally free to prescribe it for other indications.

79. The legislative findings also incorrectly assert that providing puberty blockers should be criminalized because such treatment is "unproven" and "poorly studied," terms the felony health care ban does not define. But puberty blockers have been provided to minors—transgender or not—for decades, and the gender-affirming medical care of adolescents has been supported by multiple, prospective observational trials.

80. If by "unproven" and "poorly studied" the Alabama legislature means a lack of randomized trials, then the legislature's criticism would apply to much of pediatric medicine, including treatments that the law expressly permits.

81. There are no randomized trials regarding administration of puberty blockers to treat precocious puberty in cisgender children. Yet Alabama law permits this treatment, which is not covered by the felony health care ban because it is not

performed for the purpose of affirming a gender identity different from a minor's sex assigned at birth.

82. The felony health care ban also categorically forecloses gender-affirming care even when the minor patient and their parents provide informed consent and the treating physician agrees the treatment is in the minor patient's best interest. For any other type of medical care in Alabama (except abortion), parents can consent to treatment on their children's behalf, and minors can consent to treatment on their own once they turn fourteen. Ala. Code § 22-8-4.

83. The Endocrine Society's clinical guidelines for treating gender dysphoria incorporate extensive screening protocols that are consistent with general ethical principles of informed consent and shared decision-making. The guidelines extensively discuss the potential benefits, risks, and alternatives to treatment and its recommendations regarding the timing of interventions are based in part on the treatment's potential risks and the adolescent's decision-making capacity. The guidelines recommend that informed consent for pubertal blockers and hormone therapy include a discussion of all potential side effects of treatment, including the potential implications for fertility and options for fertility preservation, and require that informed consent be obtained from both the adolescent and the parents.

84. Gender-affirming chest surgery is the only surgery generally indicated for minors under current guidelines, and it is only provided when medically

indicated. Minors in Alabama are permitted to undergo many comparable surgeries, such as those for gynecomastia, pectus excavatum or carinatum, and breast reconstruction, all of which carry risks. Though the risks are comparable, Alabama's felony health care ban prohibits this care for transgender adolescents alone.

85. The felony health care ban also expressly allows doctors to perform irreversible surgeries on infants and children to change the appearance of their genitals and secondary sex characteristics when the purpose is not to affirm the gender of the individual where their gender differs from their assignment sex; in other words, when the minor is not transgender. For example, the felony health care ban prohibits "[r]emoving any healthy or non-diseased body part or tissue" if the purpose is to provide gender-affirming care, but expressly allows such removal if the purpose is for "male circumcision," regardless of whether the minor is at an age capable of meaningfully participating in the medical decision. S.B. 184 § 4(a)(6). Similarly, the felony health care ban expressly permits doctors to perform irreversible surgeries to change the appearance of genitals and secondary sex characteristics on infants and children with intersex conditions or differences of sex development at ages when they are unable to meaningfully participate in medical decision making. *Id.* §§ 4(b)(1)-(2).

86. The felony health care ban defines a person's "sex" as the "biological state of being female or male, based on the individual's sex organs, chromosomes,

and endogenous hormone profiles." The felony health care ban's legislative findings likewise claim that the "sex of a person is the biological state of being female or male, based on sex organs, chromosomes, and endogenous hormone profiles, and is genetically encoded into a person at the moment of conception, and it cannot be changed." But this definition of sex is not accurate as a matter of law or medicine.

87. In addition to being scientifically inaccurate and imprecise, the felony health care ban's definition and understanding of "sex" as something that is immutable contradicts its usage in other Alabama statutes. In Alabama Code § 22-9A-19(d), for example, which lays out the procedure for individuals to change the sex marker on their birth certificate, the law states that:

> [u]pon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual born in this state has been changed by surgical procedure and that the name of the individual has been changed, the certificate of birth of the individual shall be amended as prescribed by rules to reflect the changes.

The Felony Health Care Ban Is Harmful

88. Withholding pubertal suppression and hormone therapy from transgender young people when it is medically indicated can be extremely harmful.

89. If a clinician is forced to immediately stop pubertal suppression as a result of a criminal prohibition on the care, it will cause patients to immediately resume their endogenous puberty. This could result in extreme distress for patients who have been relying on the suppression to prevent bodily changes that come with

their endogenous puberty. These changes can be extremely distressing for a young person who had been experiencing gender dysphoria that was then relieved by medical treatment.

90. Additionally, bodily changes resulting from puberty, such as stature, hair growth, genital growth, and voice and breast development, can be impossible or difficult to counteract even with subsequent hormone therapy and surgery, thus exacerbating lifelong gender dysphoria in patients who would have this treatment withheld or cut off.

91. Abruptly withdrawing hormone treatment can result in a range of serious physiological and mental health consequences, including depressed mood, hot flashes, headaches, and cardiac effects. The abrupt withdrawal of treatment may also result in predictable and negative mental health consequences including heightened anxiety, depression, and suicidal ideation.

92. The American Medical Association has denounced similar laws as "dangerous governmental intrusion into the practice of medicine" and "detrimental to the health of transgender children across the country."[11] So have numerous other major medical organizations.

[11] James L. Madara, Letter to National Governors Association, American Medical Association (Apr. 26, 2011), https://bit.ly/3Kz7jJY.

93. The passage in Arkansas of a bill similar to S.B. 184 increased emergency room visits for attempted suicide in transgender youth. Calls to crisis lines from transgender people notably increase when bills preventing transgender youth from accessing medical care pass.

The Felony Health Care Ban Criminalizes and Chills a Wide Range of Conduct

94. Section 4 of the felony health care ban makes it a Class C felony for any *"person"* to *"cause"* a minor to engage in an enumerated "practice" "if the practice is performed for the purpose of attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent with the minor's sex as defined in [S.B. 184]" (emphases added).

95. Section 3 of the felony health care ban defines "person" to include "[a]ny individual," "[a]ny agent, employee, official, or contractor of any legal entity," or "[a]ny agent, employee, official, or contractor of a school district or the state or any of its political subdivisions or agencies." This broad definition reaches, among others, parents, doctors, nurses, teachers, guidance counselors, clergy members, and even minor patients themselves.

96. Section 3 does not define the word "cause." Parents who drive their children to a doctor's appointment out of state, secretaries who check patients in to a clinic, friends who talk with a child about their chosen course of treatment, and

many others will all be confused and left wondering whether they will be charged with a felony.

The Felony Health Care Ban Irreparably Harms Plaintiffs

97. The felony health care ban will impose grave harm on transgender youth, their parents, and their medical providers.

98. The felony health care ban will deny transgender youth life-saving medical care, including puberty blockers and hormone therapy. Without access to this care, they will suffer irreparable physical, emotional, and psychological harms. Importantly, they will be forced to experience physical changes from a puberty that conflicts with their gender identity. Those changes to their bodies can cause extreme distress, depression, anxiety, and suicidal ideation.

99. The felony health care ban also conveys the State's moral disapproval of transgender youth for being transgender.

100. The felony health care ban will render parents of transgender youth powerless to help their own children, lest they risk imprisonment. Parents will be forced to make agonizing choices between leaving their homes, families, and friends to move out of state or depriving their children of medically necessary health care essential to their well-being.

Plaintiffs Jeff Walker, Lisa Walker, and H.W.

101. Plaintiff H.W. is a 15-year-old girl who is transgender. H.W. always felt like a girl. She came out to her parents as a girl when she was ten years old. She began her social transition soon after, and adopted the name H., began using female pronouns, bought typically female clothing, and began growing her hair long. H.W. obtained a court order changing her name, which is now reflected in her Social Security records and birth certificate.

102. Those changes were very helpful to H.W., but she remained terrified about what would happen when she started puberty, as she could not imagine having a body like a teenage boy.

103. At the recommendation of H.W.'s pediatrician, H.W.'s parents—Plaintiffs Jeff and Lisa Walker—sought out medical care for H.W. at the University of Alabama at Birmingham's Gender Health Clinic (the "Clinic"). H.W.'s care team includes several physicians and a psychologist.

104. H.W. and her parents met with five doctors during their initial visit to the Clinic. H.W. also was evaluated by a psychologist.

105. After those assessments, H.W. was diagnosed with gender dysphoria. She was eleven years old and had not yet begun puberty.

106. At age twelve, H.W.'s medical team concluded that pubertal suppression was medically indicated and, following consultation with and informed

consent from H.W. and her parents, H.W. began puberty-suppressing medication. This treatment has prevented H.W. from having to undergo a puberty that would cause changes in her body—some irreversible—that would severely exacerbate her gender dysphoria. By allowing H.W. to pause puberty and not experience the physical changes that terrified her, puberty-suppressing medication has significantly improved H.W.'s health.

107. H.W.'s doctor recently recommended that she begin taking a prescribed limited dose of estrogen in conjunction with her puberty-suppressing medication. That recommendation was made only after H.W. met her doctor's requirement that an outside therapist conduct no fewer than five counseling sessions with H.W. The outside therapist agreed with the doctor's assessment that H.W. should begin hormone treatment. She will begin taking estrogen in fall 2022 and over time will discontinue pubertal suppression and maintain her hormone therapy as medically indicated.

108. For each stage of treatment, H.W.'s doctors discussed all the potential side effects with H.W. and her parents and closely monitored H.W. H.W. and her parents agreed that the benefits of treatment significantly outweighed any risks.

109. Growing up in a body that did not match who she was made H.W. miserable. Before she began receiving medical care to affirm her gender identity, H.W. experienced severe gender dysphoria, depression, and anxiety.

110. Accessing medical care has been transformative for H.W. She became less shy and more confident and began thriving in school.

111. The prospect of losing access to gender-affirming medical care because of the felony health care ban causes H.W. and her parents severe anxiety. Without H.W.'s puberty-suppressing medication, she would be forced to undergo a typical male puberty, which would cause her to develop a deep voice, a typically masculine jawline, an Adam's apple, hair growth on her body, and a broadening of her shoulders. Those changes are potentially irreversible and inconsistent with H.W.'s female gender identity. Going through masculinizing puberty would cause H.W. to experience severe gender dysphoria, depression, and anxiety. She would not feel like herself anymore.

112. H.W. and her parents further worry that being forced to undergo a masculinizing puberty would invite bullying at school. H.W. experienced such significant bullying after coming out as transgender that she had to leave school and complete her entire sixth grade year in an alternative online school, which caused her grades to suffer. She has since thrived in school, and she and her parents fear that the felony health care ban will reverse her progress and force her back into a place of profound suffering.

113. If the felony health care ban goes into effect, Jeff, Lisa, and H.W. may be forced to leave Alabama—and thus leave behind Jeff's job, their relatives and

friends, and H.W.'s school community and medical care team. And critically, it would require Jeff, Lisa, and H.W. to move away from H.W.'s brother Robert, who cannot leave the state because he has a six-year commitment to the Alabama National Guard that he must honor.

Plaintiffs Jeff, Christa, and C.W. White

114. Plaintiff C.W. White is a thirteen-year-old girl who is transgender.

115. When C.W. was approximately nine years old, her parents, Plaintiffs Jeff and Christa White, observed that she was experiencing significant stress and anxiety. She often had stomach aches, did not want to go to school, and would cry easily over small day-to-day things.

116. Around that time, C.W. began speaking about her female gender identity but struggled to articulate her feelings. Christa and Jeff thought that C.W. was experiencing gender dysphoria. Christa discussed the meaning of the word "transgender" with C.W. and it clicked for C.W. She said she knew that word fit for her. After being able to name her feelings, her stress and anxiety began to diminish.

117. C.W. requested that her family use she/her pronouns and call her "C.W." She later shared her gender identity, new name, and she/her pronouns with her extended family. Her stress and anxiety continued to diminish, and her mood, outlook, demeanor, and overall well-being immediately improved.

118. When C.W. began fourth grade in fall 2018, she asked her friends, teachers, and other people at her elementary school to use her new name and pronouns. She experienced a few incidents of harassment, which were immediately addressed by the school administration. She was harassed again in fifth grade and sixth grade.

119. In 2019, Jeff and Christa helped C.W. change her legal name through the county court and submitted the paperwork to her elementary school.

120. In March 2019, C.W. began receiving care at the University of Alabama at Birmingham's Gender Health Clinic, where she was seen by a team of doctors including a pediatric endocrinologist and a child psychologist.

121. C.W. was diagnosed with gender dysphoria in 2019, when she was eleven years old.

122. In September 2019, C.W.'s care team determined that C.W. had started puberty. Because of her longstanding dysphoria and the distress she felt about her body changing, her care team spoke to C.W. and her parents about the possibility of pubertal suppression, explained the treatment and its side effects, and ultimately recommended that she begin taking puberty blockers to delay her endogenous puberty. They advised C.W. that this treatment could be discontinued at any time as warranted. C.W. and her parents decided that it was in C.W.'s best interest to proceed with puberty-suppressing treatment. C.W. has been taking the medication

and having regular check-in appointments and blood tests with her care team since then.

123. Puberty-suppressing medication has made an incredible difference in C.W.'s life, health, and happiness. It diminished the intense gender dysphoria that she would otherwise experience if she were to go through a puberty that does not correspond to her gender identity. Some of the irreversible changes to her body that "masculinizing" puberty would cause would severely exacerbate her gender dysphoria and attendant symptoms.

124. The felony health care ban would force C.W. to stop her gender-affirming medical care, which would be devastating to her mental health and put her at risk of significant harassment at school. C.W.'s parents are concerned that without her medical treatment, C.W.'s confident self would fade away. To avoid these devastating impacts, C.W. and her parents would have to seriously consider uprooting their family and moving out of Alabama, leaving behind their family, friends, and support networks, as well as Jeff's job and Christa's volunteer work.

CLAIM FOR RELIEF

COUNT ONE

Violation of Equal Protection
U.S. Const. Amend. XIV
(Brought by Minor Plaintiffs)

125. Plaintiffs incorporate the allegations set forth above as fully set forth herein.

126. The Equal Protection Clause of the Fourteenth Amendment, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

127. The felony health care ban violates the equal protection rights of transgender minors, who are denied the same types of medically necessary treatments provided to other youth.

128. The statute is subject to heightened scrutiny under the Equal Protection Clause because it discriminates based on: (1) transgender status and (2) sex, including non-conformity with sex stereotypes.

129. Transgender status is at least a quasi-suspect classification because transgender people (1) have historically suffered discrimination, (2) possess a defining characteristic that bears no relation to their ability to contribute to society,

(3) exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group, and (4) are a politically powerless minority.

130. By predicating the statute's application on whether a minor's gender identity is different from their sex assigned at birth, the felony health care ban purposefully and expressly discriminates based on transgender status. Because the felony health care ban singles out and discriminates against transgender people, the statute triggers at least heightened scrutiny.

131. The felony health care ban also triggers heightened scrutiny because it discriminates based on sex.

132. Discriminating on the basis of transgender status is necessarily sex discrimination.

133. The felony health care ban treats similarly situated people differently based on their sex assigned at birth, which is sex discrimination.

134. The felony health care ban also discriminates based on sex by penalizing transgender minors for not conforming to sex stereotypes.

135. The felony health care ban cannot survive heightened scrutiny because it impermissibly seeks to establish a government preference for sex stereotypes in conformity with sex assigned at birth, while criminally sanctioning a departure from stereotypes associated with a person's sex assigned at birth.

136. Alabama's asserted governmental interests in protecting minors does not and cannot justify singling out gender-affirming medical care when provided to transgender youth for different treatment, much less a criminal ban.

137. The felony health care ban is not substantially related to a governmental interest in protecting minors' health.

138. The felony health care ban is not substantially related to a governmental interest in protecting minors' health from unproven treatments.

139. The felony health care ban is not substantially related to an important governmental interest in protecting minors' ability to give informed consent.

140. The felony health care ban cannot survive even rational basis review because it draws irrational and arbitrary distinctions.

141. The felony health care ban cannot survive even rational basis review because it expresses government disapproval of transgender persons.

142. Defendants are acting under color of state law and are liable for their violation of Plaintiffs' Fourteenth Amendment rights under 42 U.S.C. § 1983. Plaintiffs face a credible threat of enforcement.

COUNT TWO

Violation of Fundamental Right to Parental Autonomy
Due Process Clause
U.S. Const. Amend. XIV
(Brought by Parent Plaintiffs)

143. Plaintiffs incorporate the allegations set forth above as fully set forth herein.

144. The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.

145. That fundamental right of parental autonomy includes the right of parents to seek and follow medical advice to protect the health and well-being of their children.

146. Parents' fundamental right to seek and follow medical advice is at its apogee when the parents, their minor child, and that child's doctor all agree on an appropriate course of medical treatment.

147. The felony health care ban's prohibition against well-accepted medical treatments for adolescents with gender dysphoria is directly at odds with parents' fundamental right to make decisions concerning the care of their children. The felony health care ban strips Alabama parents of the right to obtain medical care for their children.

148. The felony health care ban does nothing to protect the health or well-being of minors. To the contrary, it gravely threatens the health and well-being of

adolescents with gender dysphoria by denying their parents the ability to obtain lifesaving care for them.

149. The felony health care ban's prohibition on the provision of medically accepted treatments for adolescents with gender dysphoria is not narrowly tailored to serve a compelling state interest; nor is it rationally related to any legitimate government interest.

150. The felony health care ban's extraordinary infringement on Plaintiffs' parental autonomy cannot be justified under strict scrutiny or any standard of scrutiny.

151. The Due Process Clause of the Fourteenth Amendment is enforceable pursuant to 42 U.S.C. § 1983.

152. Defendants are acting under color of state law and are liable for their violation of Plaintiffs' Fourteenth Amendment rights under 42 U.S.C. § 1983. Plaintiffs face a credible threat of enforcement. They are entitled to a declaratory judgment and injunctive relief.

COUNT THREE

Void for Vagueness
Due Process Clause
U.S. Const. Amends. I, XIV
(Brought by Minor and Parent Plaintiffs)

153. Plaintiffs incorporate the allegations set forth above as fully set forth herein.

154. The felony health care ban is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment. The felony health care ban makes it impossible for an ordinary person to know if and to what extent any particular conduct "causes" a minor to seek proscribed treatment. It gives prosecutors near unfettered ability to bring felony charges at their prerogative against any "person" who, even indirectly, supports a transgender minor in receiving gender-affirming medical care.

155. The Fourteenth Amendment is enforceable pursuant to 42 U.S.C. § 1983.

156. Defendants are acting under color of state law and are liable for their violation of Plaintiffs' Fourteenth Amendment right under 42 U.S.C. § 1983. Plaintiffs face a credible threat of enforcement.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court:

A. Enter a judgment declaring that:

   a. S.B. 184 violates the Equal Protection Clause of the Fourteenth Amendment;

   b. S.B. 184 violates the fundamental right to parental autonomy protected by the Due Process Clause of the Fourteenth Amendment;

c. S.B. 184 is void for vagueness under the Due Process Clause of the Fourteenth Amendment;

B. Temporarily restrain and issue a preliminary and permanent injunction, restraining Defendants, their employees, agents, and successors in office from enforcing S.B. 184;

C. Award Plaintiffs nominal damages of one dollar, as well as their costs and expenses, including reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

D. Grant any additional relief as may be just and proper.

Dated: April 11, 2022

Respectfully submitted,

/s/ LaTisha Gotell Faulks

L. Nowlin-Sohl* (WA Bar No. 51512)
Malita Picasso* (NY Bar No. 5750013)
Chase Strangio* (NY Bar No. 4879466)
James D. Esseks* (NY Bar No. 2643807)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC.
125 Broad Street, 18th Floor
New York, NY 10004
Phone: (212) 549-2500
lnowlin-sohl@aclu.org

LaTisha Gotell Faulks (ASB-1279-I63J)
Kaitlin Welborn* (DC Bar No. 88187724)
AMERICAN CIVIL LIBERTIES UNION OF ALABAMA FOUNDATION
P.O. Box 6179
Montgomery, AL 36106
Phone: (334) 265-2754
tgfaulks@aclualabama.org

Carl Charles* (GA Bar No. 5427026)
Tara Borelli* (GA Bar No. 265084)
LAMBDA LEGAL
158 West Ponce De Leon Ave., Suite 105
Decatur, GA 30030
Phone: (404) 897-1880
ccharles@lambdalegal.org

Sruti J. Swaminathan* (NY Bar No. 5598792)
LAMBDA LEGAL
120 Wall Street, 19th Floor
New York, NY 10005
Phone: (212) 809-8585
sswaminathan@lambdalegal.org

Lynly S. Egyes* (NY Bar No. 4838025)
Milo Inglehart* (NY Bar No. 5817937)
TRANSGENDER LAW CENTER
594 Dean Street, Suite 11
Brooklyn, NY 11238
Phone: (510) 587-9696
lynly@transgenderlawcenter.org

Dale Melchert* (NY Bar No. 5366554)
TRANSGENDER LAW CENTER
P.O. Box 70976
Oakland, CA 94612
Phone: (510) 587-9696, ext. 354
dale@transgenderlawcenter.org

Kathleen R. Hartnett* (CA Bar No. 314267)
Julie Veroff* (CA Bar No. 310161)
Zoë W. Helstrom* (CA Bar No. 339093)
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
Phone: (415) 693-2000
khartnett@cooley.com

Andrew Barr* (CO Bar No. 49644)
COOLEY LLP
1144 15th Street, Suite 2300
Denver, CO 80202
Phone: (720) 566-4121
abarr@cooley.com

Adam Katz* (MA Bar No. 706834)
Elizabeth Reinhardt* (MA Bar No. 707645)
COOLEY LLP
500 Boylston Street, 14th Floor
Boston, MA 02116
Phone: (617) 937-2305
ereinhardt@cooley.com

Katelyn Kang* (NY Bar No. 5745799)
Valeria M. Pelet del Toro* (NY Bar No. 5764667)
COOLEY LLP
55 Hudson Yards
New York, NY 10001
Phone: (212) 479-6849
kkang@cooley.com

Robby L.R. Saldaña* (DC Bar No. 1034981)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004-2400
Phone: (202) 842-7800
rsaldana@cooley.com

**Pro Hac Vice Applications Forthcoming*

Attorneys for Plaintiffs

U.S. Department of Health & Human Services
Office for Civil Rights

U.S. Department of Justice
Civil Rights Division

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