No. 23-0697

In the Supreme Court of Texas

THE STATE OF TEXAS; OFFICE OF THE ATTORNEY GENERAL; KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS; THE TEXAS MEDICAL BOARD; AND THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION,

Appellants,

v.

LAZARO LOE, ET AL.,

Appellees.

On Direct Appeal from the
201st Judicial District Court, Travis County

APPELLANTS' BRIEF

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Texas Medical Board
Texas Health and Human Services Commission

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Mary Moe, individually and as parent and next friend of Maeve Moe, a minor
Matthew Moe, individually and as parent and next friend of Maeve Moe, a minor
Nora Noe, individually and as parent and next friend of Nathan Noe, a minor
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Statement of the Case

Nature of the Case: Senate Bill 14 prohibits certain medical procedures and treatments when performed "[f]or the purpose of transitioning a child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex." Tex. Health & Safety Code § 161.702; *see* Act of May 17, 2023, 88th R.S., ch. 335, 2023 Tex. Sess. Law Serv. 733 ("S.B. 14"), App'x Tab E. Plaintiffs-Appellees are parents of children who seek prohibited medical procedures, physicians who have provided such services and wish to continue doing so, and two organizations representing such persons, PFLAG and GLMA. They sued the State of Texas, the Attorney General, the Office of the Attorney General, the Texas Medical Board, and the Texas Health and Human Services Commission to prevent enforcement of the statute. The parent plaintiffs contend the statute violates the Texas Constitution's due-course clause by interfering with their rights to parental autonomy. Tex. Const. art. I, § 19. The physicians and their trade organization, GLMA, say it violates physicians' economic substantive-due-course rights. *Id.* And all plaintiffs claim the statute discriminates based on sex or "transgender status," and thus violates the Texas Constitution's equal-rights guarantees. *Id.* §§ 3, 3a. App'x Tab C, 1.CR.3-75.

Trial Court: 201st Judicial District Court, Travis County
Hon. Maria Cantú Hexsel

Disposition in the Trial Court: The trial court granted Plaintiffs' request for a temporary injunction on the basis of the constitutionality of the statute and denied Defendants' plea to the jurisdiction. App'x Tab A, 7.CR.2148-49; App'x Tab B, 7.CR.2150-56.

Statement of Jurisdiction

The Court has noted probable jurisdiction under Texas Government Code section 22.001(c). The trial court granted a temporary injunction on the basis of the constitutionality of a state statute. *See id.* This Court may exercise its extended jurisdiction to review the denial of defendants' plea to the jurisdiction. *Perry v. Del Rio*, 67 S.W.3d 85, 89 (Tex. 2001); *Brown v. Todd*, 53 S.W.3d 297, 301 (Tex. 2001).

Issues Presented

Legislatures around the country have noted a disturbing trend: as smartphones and social media have become an increasingly ubiquitous force in the lives of children and adolescents, reports of gender dysphoria—once exceedingly rare—have grown exponentially. Meanwhile, medical organizations have been captured by activists and appear unconcerned by the lack of scientific research on the long-term effects of medical treatments given to children to address a mental-health condition. Concerned about the effect these outside influences have on young people, Texas's Legislature has chosen to prohibit certain irreversible treatments for gender dysphoria until a potential patient has reached the age of majority. The questions presented here are:

1. Whether plaintiffs have viable claims or have shown entitlement to temporary injunctive relief, including a probability of success on the merits concerning:
    a. Whether the parent plaintiffs have shown that they have a fundamental right to obtain the subject medical procedures for their children or that

S.B. 14 violates the due-course clause in article I, section 19 of the Texas Constitution.

b. Whether the physician plaintiffs have shown that S.B. 14 violates a fundamental right to practice medicine that is protected under article I, section 19 of the Texas Constitution.

c. Whether plaintiffs have shown that S.B. 14 discriminates on the basis of sex or "sex stereotypes" in violation of article I, section 3a of the Texas Constitution.

d. Whether plaintiffs have shown that S.B. 14 discriminates on the basis of "transgender status" in violation of article I, section 3a of the Texas Constitution.

2. Whether the temporary injunction was jurisdictionally and remedially proper.

To the Honorable Supreme Court of Texas:

"This case revolves around an issue that is surely of the utmost importance to all of the parties involved: the safety and well-being of . . . children." *Eknes-Tucker v. Governor of Alabama*, 80 F.4th 1205, 1231 (11th Cir. 2023). As in similar litigation pending around the country, however, "there is a strong disagreement between the parties over what is best for those children." *Id.* In particular, the parties disagree about how best to address children suffering from "gender dysphoria," a condition arising when children experience distress from an apparent disconnect between their biological sex and their self-perceived gender. "Clinical guidelines" regarding gender dysphoria "suggest that comorbidities, including mental health issues," can often be present in these children. *Id.* at 1217.

Texas is among two dozen States that recognize that as children mature through adolescence and into adulthood, their bodies and minds undergo profound changes that affect both their physical and mental health. These States therefore prevent minors from undergoing irreversible medical treatments for gender dysphoria until they reach adulthood. *See infra* pp.2-5; Tex. Health & Safety Code § 161.702.

Plaintiffs disagree with those legislative judgments, and specifically with how the Legislature has balanced the need to prevent harm to minors who might one day regret irreversible medical interventions against the asserted benefits from such treatments for gender dysphoria. These are precisely the kinds of legislative judgments that the law-making process is designed to settle. But instead, plaintiffs have foisted this essentially legislative question on the courts. The parent plaintiffs claim that because the Texas Constitution guarantees parents' right to control the

upbringing of their children, the Legislature cannot pass regulations regarding what medical procedures may be performed on minors. The physician plaintiffs further insist that the due-course-of-law clause gives doctors a protected right to perform such procedures. And they all claim that S.B. 14 unconstitutionally discriminates on the basis of sex; and even if not, that "transgender status" should be treated as a protected class under the Texas Constitution.

Following an evidentiary hearing, the trial court concluded that S.B. 14 was unconstitutional and issued a temporary injunction preventing state officials from enforcing it. That injunction is superseded during the pendency of this appeal. It should now be dissolved. S.B. 14 plainly comports with our Constitution's various guarantees. The injunction, however, cannot be squared with the text of the Constitution, this Court's precedent, or the evidence of harm that these treatments can cause vulnerable children, this Court should vacate the temporary injunction, reverse the district court's denial of Defendants-Appellants' plea to the jurisdiction, and render judgment dismissing Plaintiffs' claims.

STATEMENT OF FACTS

I. Gender Dysphoria and S.B. 14

Gender dysphoria is understood to "refer[] to the distress that may accompany the incongruence between one's experienced or expressed gender and one's assigned gender." *Keohane v. Florida Dep't of Corr. Sec'y*, 952 F.3d 1257, 1262 (11th Cir. 2020) (quoting American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 451 (5th ed. 2013)); *accord* 2.RR.38, 76 (plaintiffs' experts). As

other courts have recognized, "the concept of gender dysphoria as a medical condition is relatively new and the use of drug treatments that change or modify a child's sex characteristics is even more recent." *L.W. ex rel. Williams v. Skrmetti*, No. 23-5600, 2023 WL 6321688, at *6 (6th Cir. Sept. 28, 2023). For all the attention it receives (correctly or incorrectly), the condition is relatively rare: "one report shows that the prevalence among the total U.S. population is about 0.6%." Danyon Anderson et al., *Gender Dysphoria and Its Non-Surgical and Surgical Treatments*, Health Psychol. Res. (2022), https://tinyurl.com/NIH-GenderDysphoria. According to recent data, however, "there has been an increase in the prevalence of individuals seeking treatment for gender dysphoria"—particularly among children and adolescents. *Id.*

This growth has led to concern in many States about the quality of the research on how to treat such children; such concerns include the lack of any long-term scientific studies about the impact of medical intervention as a treatment for gender dysphoria on children's overall health. *See, e.g.*, *Skrmetti*, 2023 WL 6321688, at *2-5; *Ecknes-Tucker*, 80 F.4th at 1216-18. More than 20 States have passed legislation limiting such medical procedures on children. *See also, e.g.*, Iowa Code § 147.164; Regulate Experimental Adolescent Procedures Act, H.B. 1125, 2023 Miss. Laws ch. 303; Youth Health Protection Act, S.B. 99, 2023 Mont. Laws ch. 306; N.D. Cent. Code §§ 12.1-36.1-01 through -04; .

Signed into law on June 2, 2023, and effective as of September 1, S.B. 14 responds to those and similar concerns by prohibiting certain medical procedures and treatments when performed "[f]or the purpose of transitioning a child's

biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex." S.B. 14 § 2 (codified as Tex. Health & Safety Code § 161.702). If done for that purpose, it is unlawful to "perform a surgery that sterilizes the child, including," *inter alia*, castration, vasectomy, and hysterectomy; to perform a mastectomy on a child; to "provide, prescribe, administer, or dispense [listed] prescription drugs that induce transient or permanent infertility"; and to "remove any otherwise healthy or non-diseased body part or tissue." *Id.* (codified as Tex. Health & Safety Code § 161.702(1)-(4)).

S.B. 14 contains two express caveats and one express exception. *First*, to avoid any doubt, the prohibition does not apply to "puberty suppression or blocking prescription drugs for the purpose of normalizing puberty for a minor experiencing precocious puberty." *Id.* (codified as Tex. Health & Safety Code § 161.703(a)(1)). *Second*, it does not apply to "appropriate and medically necessary procedures or treatments to a child who: (A) is born with a medically verifiable genetic disorder of sex development" or "(B) does not have the normal sex chromosome structure for male or female as determined by a physician through genetic testing." *Id.* (codified as Tex. Health & Safety Code § 161.703(a)(2)). *Third*, for children who had started receiving such treatment before June 1, 2023, S.B. 14 provides for gradual cessation of the treatment "in a manner that is safe and medically appropriate and that minimizes the risk of complications." *Id.* (codified as Tex. Health & Safety Code § 161.703(b), (c)).

Because S.B. 14 makes performing such procedures a prohibited practice for Texas physicians, *id.* § 4 (codified as Tex. Occ. Code § 164.052(a)(24)), the Texas Medical Board (among other things) "shall revoke the license or other authorization to practice medicine of a physician who" does so, *id.* § 5 (codified as Tex. Occ. Code § 164.0552(a)). S.B. 14 also prohibits the use of public money for prohibited procedures, *id.* §§ 2, 3 (codified as Tex. Health & Safety Code §§ 161.704, .705, Tex. Hum. Res. Code § 32.024(pp)), and permits "the attorney general [to] bring an action . . . to restrain or enjoin [a] person from committing, continuing to commit, or repeating the violation." *Id.* § 2 (codified as Tex. Health & Safety Code § 161.706).

II. Procedural Background

A. Plaintiffs' lawsuit

Plaintiffs brought this pre-enforcement challenge on July 12, 2023. 1.CR.3. They are (1) parents of children who have received and want to continue to receive prohibited procedures, suing on behalf of themselves and their children; (2) three licensed physicians who would like to continue to perform such procedures on children; and (3) two organizations that represent the interests of these groups, PFLAG and GLMA. 1.CR.7-10.

Plaintiffs allege that S.B. 14 violates the Texas Constitution in three ways. *First*, the parent plaintiffs (and PFLAG) argue that S.B. 14 "violat[es]" the "rights of parents to parental autonomy" in violation of the due-course-of-law guarantee in article I, section 19. 1.CR.63-64. *Second*, the physician plaintiffs (along with GLMA) argue that S.B. 14 "deprives" physicians "of their vested property interests in

the[ir] medical licenses" and "infringes upon" their "right to occupational liberty." 1.CR.65-66. *Third*, plaintiffs claim that S.B. 14 "discriminates because of sex" in violation of the Texas Constitution's equality-under-the-law clause, 1.CR.66-68 (citing Tex. Const. art. I, § 3a); and *fourth*, that it "discriminat[es] . . . because of transgender status" in violation of the equal-rights clause, 1.CR.69-71 (citing Tex. Const. art. I, § 3).

Plaintiffs sued the State of Texas, the Office of the Attorney General, the Attorney General, the Texas Medical Board ("TMB"), and the Texas Health and Human Services Commission ("HHSC"). 1.CR.10-12. They sought a temporary injunction prohibiting defendants from enforcing S.B. 14 against anyone at all, not just themselves. 1.CR.72-73; *see* App'x Tab B. Defendants opposed the temporary injunction and filed a plea to the jurisdiction. 3.CR.642-1110; 4.CR.1120-1697.

In support of their claims, plaintiffs relied upon preliminary injunctions against a subset of similar laws passed in other States 1.CR.57-59; *see also* 6.CR.1727, one of which had been affirmed on appeal by the Eighth Circuit, *Brandt ex rel. Brandt v. Rutledge*, 47 F.4th 661, 669 (8th Cir. 2022). Three of those preliminary injunctions have now been vacated by the Sixth and Eleventh Circuits, respectively, because no authority supports the challengers' due-process or equal-protection claims under the U.S. Constitution. *See Skrmetti*, 2023 WL 6321688, at *2-5 (Kentucky, Tennessee); *Eknes-Tucker*, 80 F.4th at 1216-18 (Alabama). And earlier this month a federal district court in the Tenth Circuit agreed with the Sixth and Eleventh Circuits when it denied a preliminary injunction based on the same substantive-due-process and equal-protection theories under the U.S. Constitution that plaintiffs raise here under

the Texas Constitution. *Poe v. Drummond*, No. 23-CV-177-JFH-SH, 2023 WL 6516449, at *17 (N.D. Okla. Oct. 5, 2023).[1]

B. The trial court's hearing

Largely without the benefit of this developing case law, the trial court conducted concurrent hearings on the plea to the jurisdiction and the temporary injunction.

1. Plaintiffs put on evidence from expert witnesses and some of their own testimony. Some of the parent plaintiffs testified about their children's history, diagnoses of gender dysphoria, and about medical treatment their children were receiving. *See, e.g.*, 2.RR.26-31, 142-51, 198-208, 211-18. One of their children, who was 16 at the time of the hearing, testified about receiving testosterone injections beginning at age 14 to treat gender dysphoria. 3.RR.9-13, 15-21.

Two of the physician plaintiffs also testified. Dr. Richard Roberts, a pediatric endocrinologist in Houston, 2.RR.161-67, estimated that 10- 20% of his clinical time is spent treating gender dysphoria, 2.RR.164, and described the impact of S.B. 14 on

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[1] Three of the federal injunctions on which plaintiffs have relied are also destined for reversal in light of the Eleventh Circuit's decision. *See Koe v. Carlson*, No. 1:23-CV-2904-SEG, ECF No. 119 at 1-4 (N.D. Georgia Sept. 5, 2023) (staying preliminary injunction pending reconsideration in light of *Eknes-Tucker*); *Doe v. Ladapo*, No. 4:23-cv-114, ECF 151 at 2 (N.D. Fla. Sept. 11, 2023), *appeal docketed*, No. 23-12159 (11th Cir. June 27, 2023) (denying motion for further preliminary injunction and noting that "[t]he plaintiffs' likelihood of success on the merits is significantly lower now than it was prior to *Eknes-Tucker*"); *cf. Dekker v. Sec., Florida Agency for Health Care Admin.*, No. 23-12155 (11th Cir. June 27, 2023) (concerning Medicaid coverage). The balance of the cited federal injunctions—Arkansas and Indiana—are also on appeal. *K.C. v. Indiv. Members of Med. Licensing Bd. of Indiana*, No. 23-2366 (7th Cir. July 12, 2023); *Brandt v. Griffin*, No. 23-2681 (8th Cir. July 21, 2023).

his practice, 2.RR.169-70. Dr. David Paul—also a pediatric endocrinologist, 2.RR.172-89—spends only six months of the year practicing in a "clinic setting," 2.RR.174, where gender dysphoria treatments makes up "perhaps 5 percent" of his practice. 2.RR.176.

Plaintiffs offered expert testimony from three physicians as well. *First*, they offered Dr. Aron Janssen, a psychiatrist who founded a "gender clinic" in Chicago, who is a co-author of the WPATH standards on which plaintiffs rely. 2.RR.34-38. Discussing those standards, Janssen summarized that "for adolescents with gender dysphoria, we're still recommending therapy for some folks and social supports, and for those for whom it is medically indicated, one would consider puberty blockers or hormones." 2.RR.47.

Second, plaintiffs offered Dr. Daniel Shumer, who serves as medical director for gender-dysphoria clinics in Michigan and has "provided gender-affirming care" to approximately 400 adolescents. 2.RR.75. Plaintiffs offered Dr. Shumer as an expert on gender dysphoria and "the field of pediatric endocrinology." 2.RR.76. He testified that he treats children as young as twelve with GnRH agonists, or "puberty blockers," and that he provides "hormonal intervention such as testosterone or estrogen" to older children. 2.RR.76-79, 2.RR.98-99.

Dr. Shumer described puberty suppression as follows:

> [A]s puberty continues, the child would develop more secondary sex characteristics, those differences that help to identify men versus women; so for men, deeper voice, more body hair, more facial hair, body shape changes; for women, breast shape changes, body shape changes, skin softening. Those secondary sex characteristics are different between males and females due to different hormones.

> GnRH agonists arrest the progression of the production of those hormones. And so in doing that, the child - if puberty is causing distress, that distress would be alleviated. But also, by never developing the secondary sex characteristics associated with the unwanted puberty, in the long term that person would not have to carry those secondary sex characteristics with them for the rest of their life, which would have the potential for long-term harm.

2.RR.81. Dr. Shumer acknowledged that "one must go through some of [one's] endogenous puberty to achieve fertility." 2.RR.86; *compare with* 3.CR.780. He explained that GnRH agonists are used differently as treatment for gender dysphoria than they are for precocious puberty or other conditions. 2.RR.84. When given during a child's natural puberty, the GnRH agonists delay the child's pubertal growth spurt and increase in bone density—consequences that are absent when the same hormones are given to a young child. 2.RR.84; *see also* 3.CR.888-89 (discussing a child's development of bone mass and its indications for future osteoporosis).

Dr. Shumer also described hormone treatments for gender dysphoria in adolescents:

> [W]e're using hormones like testosterone or estrogen to mimic the normal rise of testosterone or estrogen in other people of that gender. So if someone is being prescribed testosterone, we're dosing the testosterone in order to raise the testosterone level up into the normal range for a young person that age. In so doing, very predictably, the development of secondary sex characteristics would follow similar to other young men that age; and similarly with estrogen, using estrogen, dosing estrogen to mimic the normal rise of estrogen in other young women, young women that age, and then predictably expecting the development of secondary sex characteristics similar to other young women, women that age.

2.RR.88. (The hormones must be administered for the rest of the person's life if these secondary sex characteristics are to be maintained. *See* 3.CR.874.) Dr. Shumer

testified that someone taking these hormones is "less likely" to "ovulate or have a normal sperm count." 2.RR.92-93. He also acknowledged, "[t]here is probably a subset of people that if they are taking testosterone or estrogen for a long enough period of time may have reduction in their fertility," but he dismissed this risk because "there's a big—there's variability in fertility in people in the first place." 2.RR.93.

Dr. Shumer testified that testosterone and estrogen hormones are prescribed to pediatric patients for other purposes, too. 2.RR.88-89. Testosterone is prescribed to boys who are unable to produce sufficient testosterone due to, for example, testicular loss, or who have Klinefelter syndrome (a chromosomal abnormality, *see* 2.RR.235). 2.RR.88-89. Estrogen is prescribed to girls whose bodies cannot make enough of the hormone for various reasons. 2.RR.89.

Third, Dr. Johanna Olson-Kennedy testified as an expert on "the study, research, and treatment of gender dysphoria." 2.RR.112. She described the history of these types of medical interventions, 2.RR.112-13, including recounting that GnRH agonists were first used as puberty blockers for children diagnosed with gender dysphoria in the 1990s at a clinic in the Netherlands. 2.RR.113, 118. Dr. Olson-Kennedy also discussed the field of research on such treatments, and reasoned that there are no randomized controlled trials because "it is highly unlikely that anyone would make a decision to participate in a study where they might be randomized to not getting treatment." 2.RR.115-16. Regarding the process of diagnosing gender dysphoria, Dr. Olson-Kennedy acknowledged that the condition has no physical manifestation, and that there is no "physical test to prove or

disprove" a person's "experience of having an incongruent gender identity." 2.RR.135; *accord* 3.RR.66.

2. Defendants also put on evidence, including the testimony of six expert witnesses either live or by declaration, which showed that medical procedures to treat gender dysphoria in children are experimental, come with significant health risks, and can be counterproductive.

First, Dr. Colin Wright, PhD, an evolutionary behavioral ecologist, testified as an expert on biological sex. 2.RR.229-40. He explained that "biological sex refers to the type of reproductive strategy that an individual has," and it cannot be changed. 2.RR.228-29. In anisogamous species—including humans—biological sex is defined by the type of gamete that individual can produce—an individual who produces the larger gamete is called the female, while one "who produce[] the smaller gamete or sperm is called the male." 2.RR.229-30. Because there are "only two gamete types" for a species, there are only two biological sexes. 2.RR.230.

Dr. Wright explained that in human beings, the type of gamete an individual can produce (sperm and ovum, respectively) is determined by his or her chromosomes (typically XY for males and XX for females); one's type of gamete, in turn, results in the production of relatively greater testosterone (males) and estrogen (females), which in turn result in secondary sex-related characteristics such as facial hair (males) or breasts (females). 2.RR.235-40. These secondary characteristics do not "define the sex of an individual," but "are downstream consequences of an individual's sex." 2.RR.235.

Next, Dr. James Cantor, Ph.D., testified as an expert on the scientific research related to treating gender dysphoria in minors. 3.RR.78, 81. Noting that the treatment of gender dysphoria is as-yet a developing field—particularly for minors—he testified that the treatments at issue are experimental and not "medically necessary." 3.RR.116; 4.CR.1205-10. Further, there is no scientific evidence that these treatments reduce the rate of either suicide or suicidality in minors with gender dysphoria. 3.RR.114; 4.CR.1193-96. The eleven cohort studies that have been conducted regarding childhood-onset gender dysphoria show that 61-88% of children desist feeling gender dysphoria over the course of puberty. 4.CR.1182-85; 3.RR.107. Finally, Dr. Cantor testified that the WPATH and Endocrine Society guidelines' conclusions and recommendations relating to the prohibited treatments are not supported by the scientific research. 3.RR.117; 4.CR.1237-39.

Second, Dr. Michael Laidlaw, M.D., an endocrinologist, testified that puberty blockers are not a safe and effective treatment for gender dysphoria. 3.RR.39; 4.CR.1371-72. Dr. Laidlaw explained that there is no medical consensus supporting the use of puberty blockers and cross-sex hormones for the treatment of gender dysphoria in minors, 3.RR.32:; *see* 4.CR.1359, and that puberty blockers are not FDA-approved for the treatment of gender dysphoria in minors, 3.RR.37—a fact that is undisputed. Among their many risks, Dr. Laidlaw explained, puberty blockers can cause infertility, sexual dysfunction, osteoporosis, and psychosocial underdevelopment. 3.RR.35-36; *see* 4.CR.1326-36. They also can be counterproductive because they interfere with natural desistance of gender dysphoria—that is, children no longer identifying their gender identity to be

different than their biological sex. 4.CR.1316, 1336-37. Dr. Laidlaw further testified that some effects of puberty blockers prescribed to minors for the treatment of gender dysphoria are irreversible, 3.RR.36-37; 4.CR.1324, and he opined that the potential benefits do not outweigh the risks, 3.RR.37-39.

Third, Dr. Katrina Taylor, LMFT, testified as an expert in clinical psychotherapy and the diagnosis, treatment, and care of gender dysphoria as well as other psychological conditions. 3.RR.140, 142. Dr. Taylor explained that what most people describe as "gender identity" is a personal or spiritual belief about the self, and that individuals experiencing gender dysphoria are experiencing feelings of hatred or revulsion for their bodies that require therapy. 3.RR.144. For children, these feelings can be distress associated with puberty, especially among girls who may experience unwanted, painful, and embarrassing changes to their bodies. 3.RR.157. As a result, she testified that psychotherapy is a safe and effective treatment for minors with gender dysphoria. 3.RR.144. She has noticed patterns among minors with gender dysphoria: they often come from dysfunctional families with marital discord and divorce, or there is trauma in their parents' histories or mental illness in the extended family. 3.RR.148.

Fourth, Dr. Sven Román, M.D., a Swedish child and adolescent psychiatrist. 4.CR.1617, and an expert on the research, study, and practice of child and adolescent psychiatry, 4.CR.1653-63, explained that he does not refer minors with gender dysphoria for the treatments prohibited by S.B. 14 because of (1) the lack of scientific evidence supporting those treatments' safety and effectiveness, and (2) his observation that such patients have other psychiatric conditions in addition to their

professed gender dysphoria. 4.CR.1618. Gender dysphoria often arises as a secondary condition relative to a different and main psychiatric condition, and treatment of that condition frequently alleviates gender dysphoria. 4.CR.1635. Dr. Román also explained that the treatments covered by S.B. 14 could be counterproductive. A person's sense of gender identity can change over time, 4.CR.1630, yet almost all children who are treated with puberty blockers go on to begin cross-sex-hormone treatments, thus transforming what may well have been a temporary state of gender dysphoria into a permanent state of gender dysphoria. 4.CR.1645.

Dr. Román also testified about European countries' experience with gender dysphoria in recent years. In particular, Dr. Román testified that in March 2021, the leading gender clinic in Sweden prohibited many of these treatments on children under 16, and permits them on older adolescents only within a "research setting." 4.CR.1627-28. The decision was based on a systematic review showing the lack of evidence regarding long-term consequences of the prohibited treatments: for example, "[t]hese treatments are potentially fraught with extensive and irreversible adverse consequences such as cardiovascular disease, osteoporosis, infertility, increased cancer risk, and thrombosis." 4.CR.1627-28. The change also reflects concerns about the reasons for the large influx of patients in recent years—an influx that correlates with the advent of the smartphone and rise in social-media use by children. 4.CR.1622-23. Dr. Román explained that treating such procedures as experimental represents the trend in Europe. 4.CR.1628-29. The Swedish National Board of Health and Welfare concluded that "the risks of puberty blockers and

gender-affirming treatment are likely to outweigh the expected benefits of these treatments." 4.CR.1637; *accord* 4.CR.1538-49 (discussing similar developments in England and the National Health System's recent limitations on providing hormone treatments to minors).

Fifth, Dr. Geeta Nangia, M.D., a child and adolescent psychiatrist, discussed her expertise developed through research, study, and practice of child and adolescent psychiatry. 4.CR.1420-22, 1533-35. Dr. Nangia has treated 550 children who met the criteria for gender dysphoria, approximately 350 of whom had their gender dysphoria resolved with time and puberty, and without the need for psychotherapy. 4.CR.1443-44. She has treated approximately 100 children with psychotherapy presenting with adolescent onset gender dysphoria. 4.CR.1445-47. Dr. Nangia explained that minors lack the necessary neurological, psychosocial, and cognitive development to provide informed consent or assent to such treatments. 4.CR.1452-85.

Instead, Dr. Nangia has treated her patients with exploratory, supportive, and family therapy. 4.CR.1447. She testified that children with gender dysphoria benefit tremendously from therapy—particularly psychodynamic therapy, 4.CR.1448-49, which "focuses on unconscious processes as they are manifested in the client's present behavior." Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Brief Interventions and Brief Therapies for Substance Abuse Ch. 7 – Brief Psychodynamic Therapy (1999), https://tinyurl.com/Psycholdynamic. In such therapy, the goal is to promote "self-awareness and understanding of the influence of the past on present behavior." *Id.*

Defendants put on evidence that the "consensus" to which plaintiffs' point is the result of activist capture and market motivations, not rigorous scientific inquiry. *See* 4.CR.1536-1604. Even the Dutch clinic that first used puberty blockers for gender dysphoria in the 1990s was more conservative than gender clinics and physicians in the United States today. 4.CR.1542-43, 1571, 1587, 1628, 1136. "In the short span of a decade, psychiatrists, psychologists, pediatricians, and their patients have been pressed both to think about and to treat child and adolescent dysphoria in one 'correct' manner." 4.CR.1571; *see also* 4.CR.1574-75. Researchers who question such gender-transitioning procedures are fired or ostracized, 4.CR.1574-80, while clinics performing gender-transitioning procedures for patients who want them have grown their businesses astronomically, 4.CR.1571-73.

Fact witnesses described not only the damage the medical interventions prohibited by S.B. 14 can do to children and adolescents, but also the social pressure that can lead vulnerable youths to believe that such intervention is the solution to feelings of depression or anxiety. For example, Emelie Schmidt is a woman who experienced depression, anxiety, and what was diagnosed as rapid-onset gender dysphoria as a minor. 4.CR.1664; 3.RR.251:16-20. At age 14, she joined an online transgender community, where others encouraged and affirmed her feelings of gender dysphoria. 3.RR.247:17-248:13, 251:16-25; 4.CR.1664-66. Emelie testified that she was never more suicidal and depressed than during this time. 4.CR.1665; 3.RR.251:6-9. She socially transitioned at school, but she did not undergo any medical treatments. 3.RR.249:3-15; 4.CR.1666-67.

When Emelie began to spend less time online, her feelings of gender dysphoria began to subside, and she began to question whether she was truly transgender. 3.RR.250:2-18; 4.CR.1667. When she conveyed these changes to her online community, rather than celebrate that she was no longer experiencing acute mental distress, her so-called friends bombarded Emelie with hatred, accused her of trying to erase the transgender community, and told her that she should die. 4.CR.1667. Emelie eventually left the online transgender community, and her feelings of gender dysphoria desisted. 4.CR.1666-67.

Another witness, Soren Aldaco, is also a woman who was diagnosed with gender dysphoria as a minor. *See* 3.RR.255. Like Emelie, Soren was introduced to the transgender community through the internet. 3.RR.255:. While hospitalized for a psychiatric episode at age 15, she began to "identify as transgender" at the suggestion of a psychiatrist. 3.RR.255-56. She was diagnosed with gender dysphoria, along with autism, major-depressive disorder, social rejection and exclusion, general anxiety, and obsessive-compulsive disorder. 3.RR.256-57. After "attending a transgender youth support group," Soren "was prescribed testosterone by a psychiatrist in that support group who prescribed hormones for many children and adults in that support group." 3.RR.257.

Although testosterone initially made Soren feel "high" and very engaged, over time she began to have complications like joint pain, brain fog, and hot flashes. 3.RR.258:3-24. At one time she was taking 11 different medications to manage these side-effects. *Id.* She stopped engaging in any of her prior interests and became obsessed with her gender identity. *Id.* Shortly after her 19th birthday, Soren had a

double mastectomy, 3.RR.257, which brought further severe medical complications, 3.RR.258-59. Her nipples, which had been surgically grafted back onto her body, were peeling off, and she had extensive bruising. 3.RR.259. Eventually, Soren had to go to the hospital where the incisions were reopened and a drain was inserted. 3.RR.529.

Soren "detransitioned" just six months later. 3.RR.257:25-258:2. She continues to struggle with chest pain, pain in her mastectomy scars, vaginal dysfunction, hypothyroidism, hypoglycemia, idiopathic hypersomnia, and chronic-fatigue. 3.RR.260-61. She testified that she wishes she had never received these treatments and had instead received psychotherapy. 3.RR.263, 267-68. "I realized," she explained, "that I had been sold [a] lie that that was the only way forward when in fact it was not the only way forward, and it caused me a lot of other problems on top of the ones that I was already experiencing." 3.RR.260.

Defendants also offered the accounts of parents whose children—like Emelie and Soren—were diagnosed as minors with gender dysphoria. For example, defendants offered the account of a mother who felt pressured by doctors to consent to medical intervention, rather than first pursuing therapy for her daughter who announced she was a transgender male at age 16. 4.CR.1670-74. Another mother described her prepubescent daughter's temporary symptoms of gender dysphoria, which desisted by the time her daughter started sixth grade. 4.CR.1676-79. Parents also described the negative influence of the online transgender community on their children as they struggled with anxiety and depression during puberty. 4.CR.1682-83, 1692-94.

C. The trial court's order

On August 25, 2023, the trial court denied defendants' plea to the jurisdiction, 7.CR.2148-49, and entered a statewide temporary injunction prohibiting defendants from "enforcing" S.B. 14's prohibitions in any way, including as to persons not parties to the case, 7.CR.2150-56. Defendants appealed directly to this Court because the injunction was granted on the ground of the constitutionality of a state statute. Tex. Gov't Code § 22.001(c). The Court has noted probable jurisdiction and set argument for January 30, 2024. *See* Orders Pronounced Sept. 15, 2023.

Defendants' notice of appeal superseded the trial court's temporary injunction. Tex. Civ. Prac. & Rem. Code § 6.001(b); Tex. R. App. P. 29.1(b). Plaintiffs filed a motion for temporary relief, asking this Court to "use its inherent powers and its authority under Rule 29.3 to . . . reinstat[e] the terms of the temporary injunction issued by the trial court." Emergency Mot. for Temp. Relief at 27 (Aug. 28, 2023). The Court denied that motion. *See* Orders Pronounced Aug. 31, 2023.

STANDARD OF REVIEW

The Court reviews an order denying a plea to the jurisdiction de novo. *Presidio ISD v. Scott*, 309 S.W.3d 927, 929 (Tex. 2010). An order granting a temporary injunction is reviewed for an abuse of discretion. *TEA v. Hous. ISD*, 660 S.W.3d 108, 116 (Tex. 2023). Under this standard, the Court "defer[s] to the trial court's factual determinations if they are supported by evidence, but review[s] legal determinations de novo." *Haedge v. Cent. Tex. Cattlemen's Ass'n*, 603 S.W.3d 824, 827 (Tex. 2020) (per curiam) (quotation marks omitted).

Summary of the Argument

I. The temporary injunction and plaintiffs' claims alike rely on a variety of fatal legal errors. Chief among them is that plaintiffs have not alleged any viable claim that S.B. 14 violates the Texas Constitution. As with many other plaintiffs pursuing similar claims across the country, plaintiffs' primary theory here is that by regulating what medical treatments may be performed on minors, the Texas Legislature has impermissibly interfered with the fundamental rights of both parents and physicians. These claims fail because, even if Texas's due-course-of-law provisions provide substantive legal rights, they certainly do not protect a form of medical care that was unfathomable to most when they were ratified as part of the Texas Constitution of 1876. Parental rights do not create an exemption from otherwise-applicable regulation of the medical profession, and physicians do not have due-course protected rights to perform these procedures as part of their medical licenses. Plaintiffs' equal protection claims also fail because as a growing number of courts have recognized, health-care regulations such as S.B. 14 do not discriminate on the basis of sex, and transgenderism is not a protected class.

II. Where "a probable right to relief is lacking," the Court "need not consider . . . whether the plaintiffs have" established the other elements on which they bear the burden of proof. *In re Abbott*, 628 S.W.3d at 288, 294 n.8 (citing *Abbott v. Anti-Defamation League Austin, Sw., & Texoma Regions*, 610 S.W.3d 911, 917 (Tex. 2020) (per curiam); *Tex. All. for Retired Ams. v. Hughs*, 976 F.3d 564, 567-68 (5th Cir. 2020) (per curiam)). But plaintiffs have not, in any event; indeed, the district court lacked subject-matter jurisdiction. After all, plaintiffs' only route around the defendants'

sovereign immunity is the limited waiver this Court has found in the text of the Uniform Declaratory Judgment Act. 1.CR.62-63. Reliance on that waiver, however, requires that the claims be facially valid, which they are not because the Texas Constitution does not protect the putative rights plaintiffs seek to vindicate.

Even beyond these several injunction-dispositive reasons, the Court should still vacate the injunction and dismiss at least in part because the case presents additional jurisdictional problems. *First*, certain of the defendants do not fall within the limited waiver of sovereign immunity found in the UDJA. *Second*, plaintiffs lack standing to pursue several of the claims they raise. Standing is a claim-by-claim analysis, and at least one plaintiff must have standing for every claim pursued and every form of relief sought in the complaint. *Heckman v. Williamson County*, 369 S.W.3d 137, 150 (Tex. 2012). Plaintiffs fail to meet this obligation because (1) this Court has never recognized the theory of third-party standing asserted by the physician and organizational plaintiffs, (2) their complaints regarding state funding do not represent a cognizable injury, and (3) no plaintiff has asserted a desire to obtain some of the procedures that S.B. 14 prohibits.

Finally, the statewide temporary injunction was overbroad and procedurally improper. A court can and should issue only temporary injunctive relief sufficient to remedy the demonstrated harm of the plaintiffs. Here, even if the plaintiffs had demonstrated cognizable harm (and they have not), the trial court went too far in prohibiting the State from enforcing S.B. 14 anywhere, against anyone, in any circumstances. Such a sweeping injunction cannot be justified by reference to the physician plaintiffs, who seek to treat patients who have chosen not to sue, because

the temporary injunction will not prevent the putative chill they feel in performing these procedures as physicians due to the threat of disciplinary action. Because the statute of limitations for disciplinary action far exceeds the likely extent of this lawsuit, only a permanent injunction can remove that chill. The temporary injunction does nothing to redress the harm alleged, so principles of equity will not allow its issuance to the prejudice of the State's inherent right to enforce its laws.

ARGUMENT

I. Plaintiffs Failed to Bring a Facially Valid Constitutional Challenge to S.B. 14—Let Alone Demonstrate a Probability of Relief.

Try as they might, plaintiffs have not identified a right to obtain or perform the prohibited medical procedures that is subject to strict scrutiny under article I, section 19's due-course-of-law clause, and S.B. 14 easily passes rational-basis review. Nor can plaintiffs base an equality-under-the-law violation on a statute that distinguishes between types of medical procedures, not the sexes, and is supported by a rational basis. This failure is fatal twice over: it renders the trial court's temporary injunction legally defective, and it deprives the courts of jurisdiction for want of a route around defendants' sovereign immunity. *Abbott v. Mexican Am. Legis. Caucus, Tex. House of Representatives*, 647 S.W.3d 681, 698 (Tex. 2022).

A. Parents do not have a constitutional right to have gender-transitioning procedures performed on their children.

Plaintiffs' primary theory is that by regulating what medical treatments may be performed on minors, the Texas Legislature has impermissibly interfered with the fundamental rights of parents. 1.CR.46-48. Plaintiffs rely on parents' general right

"to make decisions concerning the care, custody, and control of their children," *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality op.); *see* 1.CR.46 (citing *Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976)), which has long been recognized as protected by the federal Constitution's due-process clause, U.S. Const. amend. XIV, and Texas law, *see In re A.M.*, 630 S.W.3d 25 (Tex. 2019) (Blacklock, J., concurring in the denial of petition for review). But no authority supports plaintiffs' contention that this general proposition provides a substantive right to obtain these medical procedures. As the Sixth Circuit put it, "becoming a parent does not create a right to reject democratically enacted laws." *Skrmetti*, 2023 WL 6321688, at *9.

1. This Court interprets the Texas Constitution to give effect to the plain meaning of the text as it was understood by those who ratified it. *Sears v. Bayoud*, 786 S.W.2d 248, 251 (Tex. 1990); *accord Wentworth v. Meyer*, 839 S.W.2d 766, 767 (Tex. 1992). Plaintiffs cite article I, section 19's due-course clause, which provides: "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." 1.CR.46; *see also* 1.CR.63-64.

The clause has remained unchanged since Texas adopted its current constitution. *LeCroy v. Hanlon*, 713 S.W.2d 335, 340 (Tex. 1986).[2] Because "the constitutional language . . . means to-day what it meant . . . when the Constitution was adopted," the relevant question is what the due-course provisions meant in

[2] *See* Tex. Legislative Council, *Amendments to the Texas Constitution Since 1876* (May 7, 2022), https://tlc.texas.gov/docs/amendments/Constamend1876.pdf.

1876. *Travelers' Ins. Co. v. Marshall*, 76 S.W.2d 1007, 1012 (Tex. 1934); *see also Van Dyke v. Navigator Group*, 668 S.W.3d 353, 359 (Tex. 2023); *Booth v. Strippleman*, 61 Tex. 378, 380 (1884). When answering that question, "[l]egislative construction and contemporaneous exposition of a constitutional provision is of substantial value." *In re Abbott*, 628 S.W.3d at 293.

Plaintiffs do not contend that the original meaning of the due-course clause includes a right to provide one's children with puberty-delaying treatment and hormone therapy for gender-transitioning, or the other prohibited medical interventions. They have identified no judicial decisions, legislative enactments, or other contemporaneous evidence suggesting that the Texans who ratified the Constitution of 1876 understood it to prevent the Legislature from prohibiting such medical procedures on children, even with the consent of their parents. For good reasons: their own witness acknowledged that these medical interventions are late–twentieth-century innovations. *Supra* p.10.

Indeed, article I, section 19's due-course-of-law clause likely does not protect substantive legal rights at all. As four justices of this Court recently observed, "the scope of the due-course clause [remains] an open question." *Tex. DSHS v. Crown Distrib. LLC*, 647 S.W.3d 648, 670 (Tex. 2022) (Young, J., concurring). As defendants-appellants have discussed, text and history suggest that the due-course-of-law provisions in article I, section 13 and 19 provide procedural, rather than substantive, protections. Resp. to Emergency Motion for Temp. Relief at 17-22 (Aug. 30, 2023).

The Court need not resolve that question to decide this case, however. Parents' historic rights "to the custody and care of their children" do *not* extend to "ill treatment or cruelty," or even an absolute right to "act[] in a manner injurious to the morals or interests of [one's] children." 2 Joseph Story, Commentaries on Equity Jurisprudence as Administered in England and America § 1341 (2d ed. 1839). In S.B. 14, the Legislature has determined that as a matter of Texas public policy, the prohibited gender-transitioning treatments are too risky to be performed on children, who lack the maturity and cognitive development necessary to appreciate their long-term effects. *See Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 665 (Tex. 2008) ("The Legislature determines public policy through the statutes it passes.").

2. Nor can plaintiffs show that federal courts have recognized these medical treatments to be among the "'select list of fundamental rights that are not mentioned anywhere in the Constitution.'" *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2246 (2022). Assuming the federal substantive-due-process framework even applies to the due-course clause, *cf. Crown Distrib.*, 647 S.W.3d at 664 (Young, J., concurring) (explaining that these protections are *not* identical), an unenumerated right is protected as fundamental only where it is "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if [it] were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citing, *inter alia*, *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)). The doctrine requires a reviewing court to be "mindful of the reality that substantive due process is 'a treacherous field,' and [to be] appreciative of the risk that comes with it—loss of democratic control over public

policies that the people never delegated to the judiciary." *Skrmetti*, 2023 WL 6321688, at *7 (quoting *Moore v. City of E. Cleveland*, 431 U.S. 494, 502 (1977)).

When applying the federal analysis to a request to recognize an unenumerated fundamental right, it does not suffice to cite parents' general right to direct their children's upbringing. Instead, this analysis requires the plaintiff (and ultimately the Court) to give "a 'careful description' of the asserted fundamental liberty interest," and show that the *particular* interest is "deeply rooted" in "history and tradition." *Glucksberg*, 521 U.S. at 720-21. "Level of generality," after all, "is everything in constitutional law," *Skrmetti*, 2023 WL 6321688, at *9. Carefully described, the interest the parent plaintiffs assert is a right to obtain the medical procedures that S.B. 14 proscribes as treatments for their children's gender dysphoria. *See Glucksberg*, 521 U.S. at 724; *see* 1.CR.4. A growing number of federal courts have rejected the same argument in due-process challenges to materially identical laws.

As the Eleventh Circuit explained, Supreme Court precedent "does not at all suggest that parents have a fundamental right to direct a particular medical treatment for their child that is prohibited by state law." *Eknes-Tucker*, 80 F.4th at 1223 (analyzing, *inter alia*, *Parham v. J.R.*, 442 U.S. 584 (1979)). Rather, "all of the cases dealing with the fundamental parental right reflect the common thread that states properly may limit the authority of parents where 'it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.'" *Id.* at 1224 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 233-34 (1972)). As a result, a preliminary injunction prohibiting enforcement of Alabama's analogue to S.B. 14 could not be sustained. *See id.* at 1212-15, 1218-19, 1231.

The Sixth Circuit said the same, agreeing that no fundamental right is infringed by Kentucky and Tennessee's materially identical laws, and that the laws easily satisfy rational-basis review. *Skrmetti*, 2023 WL 6321688, at *3-5, 7. "There is a long tradition of permitting state governments to regulate medical treatments for adults and children." *Id.* at *8. The court explained:

> State and federal governments have long played a critical role in regulating health and welfare, which explains why their efforts receive a "strong presumption of validity." *Heller v. Doe*, 509 U.S. 312, 319 (1993). State governments have an abiding interest "in protecting the integrity and ethics of the medical profession," *Glucksberg*, 521 U.S. at 731, and "preserving and promoting the welfare of the child," *Schall v. Martin*, 467 U.S. 253, 265 (1984). These interests give States broad power, even broad power to "limit[ ] parental freedom," *Prince v. Massachusetts*, 321 U.S. 158 (1944), when it comes to medical treatment, *cf. Watson v. Maryland*, 218 U.S. 173, 176 (1910).

Id. at *7 (some internal citations omitted). The longstanding role of federal regulatory agencies also refutes the claimed right, the Sixth Circuit reasoned: "Neither doctors, adults, nor their children have a constitutional right to use a drug that the FDA deems unsafe or ineffective," and "[t]hat is true even if the FDA bars access to an experimental drug that a doctor believes might save a terminally ill patient's life." *Id.* at *8 (citing *Abigail All. for Better Access to Developmental Drugs v. von Eschenbach*, 495 F.3d 695, 703, 706 (D.C. Cir. 2007) (en banc)).

The Sixth Circuit rejected the plaintiffs' contention that parents' general right to direct their children's upbringing subjects such regulations to strict scrutiny:

> This country does not have a custom of permitting parents to obtain banned medical treatments for their children and to override contrary legislative policy judgments in the process. Any other approach would not work. If

> parents could veto legislative and regulatory policies about drugs and surgeries permitted for children, every such regulation—there must be thousands—would come with a springing easement: It would be good law until one parent in the country opposed it.

Id. at *9. Put another way, both here and in *Skrmetti*, plaintiffs "overstate the parental right by climbing up the ladder of generality to a perch—in which parents control all drug and other medical treatments for their children—that the case law and our traditions simply do not support." *Id.*

Plaintiffs, like the challengers in the Sixth Circuit, "insist that these treatments are not new and do not involve experimental care." *Skrmetti*, 2023 WL 6321688, at *10; *see* 1.CR.6 (relying on what plaintiffs describe as "well-established, evidence-based clinical practice guidelines"). This Court should reject that argument just as the Sixth Circuit did. "Even if that were true," the court explained, "that alone does not give parents a fundamental right to acquire" such treatments. *Id.* "As long as it acts reasonably, a state may ban even longstanding and nonexperimental treatments for children." 2023 WL 6321688, at *10. And in any event, the claim that these treatments are not new is unsupportable on this record, where the witnesses of both sides testified that these treatments are of recent vintage and are still being studied. *Supra* p.8-16.

3. Because no fundamental right is at issue, the rational-basis test applies to this type of substantive-due-course challenge. *See, e.g.*, *City of San Antonio v. TPLP Office Park Props.*, 218 S.W.3d 60, 65 (Tex. 2007) (per curiam); *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 633 (Tex. 1996). S.B. 14 easily meets that low bar, which requires only that a law be rationally related to a

legitimate state interest. *Barshop*, 925 S.W.2d at 633; *see also Hegar v. Tex. Small Tobacco Coal.*, 496 S.W.3d 778, 792 (Tex. 2016). The long-term risks of gender-transition medical procedures are well documented, while the benefits to children of puberty suppression or hormone treatments, if any, are unknown. *See supra* pp.8-18.

Indeed, the State's authority to regulate is particularly strong "in areas of 'medical and scientific uncertainty.'" *Skrmetti*, 2023 WL 6321688, at *7 (quoting *Gonzales v. Carhart*, 550 U.S. 124, 163 (2007)). "In that setting, courts face two risks of error, not just one." *Id. First*, there is the risk inherent in any substantive-due-process claim: "that the[courts] will assume authority over an area of policy that is not theirs to regulate." *Id. Second*, there is the risk "that they will impose a constitutional straightjacket on legislative choices before anyone knows how that 'medical and scientific uncertainty' will play out." *Id.*

Here, respecting the Legislature's role as policymaker "is critical in view of two realities": "the concept of gender dysphoria as a medical condition is relatively new and the use of drug treatments that change or modify a child's sex characteristics is even more recent." *Id.* at *6. "Prohibiting citizens and legislatures from offering their perspectives on high-stakes medical policies, in which compassion for the child points in both directions, is not something" the judiciary should hasten to do. *Id.* Given this scientific and legislative reality, the parent plaintiffs' due-course claim is facially invalid and thus barred by defendants' sovereign immunity. *See MALC*, 647 S.W.3d at 698.

Plaintiffs have asserted that S.B. 14 lacks a rational basis because, in their view, it was "motivated and justified by Texas lawmakers' anti-transgender animus."

1.CR.25; *see also* 6.CR.1748-50. Even assuming plaintiffs have accurately characterized the legislators' statements they cite (and they have not), that theory fails on its face. *First*, statements by individual lawmakers do not show the collective intent of the Legislature. *See Tex. Health Presbyterian Hosp. of Denton v. D.A.*, 569 S.W.3d 126, 136-37 (Tex. 2018).

Second, plaintiffs cannot satisfy the doctrine they rely upon. To be sure, on a few occasions the U.S. Supreme Court has concluded a state law fails rational-basis review because it "lack[ed] any purpose other than a bare . . . desire to harm a politically unpopular group." *Trump v. Hawaii*, 138 S. Ct. 2392, 2420 (2018) (citing *Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973); *Romer v. Evans*, 517 U.S. 620, 632 (1996)). The inquiry is not subjective, however. That Court still looks to whether the law has a "discern[able] relationship to legitimate state interests" or, instead, that it is "inexplicable by anything but animus." *Id.* at 2420-21. The Sixth Circuit rejected the same animus-based argument:

> The key problem is that a law premised only on animus toward the transgender community would not be limited to [children]. The legislature plainly had other legitimate concerns in mind. A fair-minded legislature could review the evidence in the area and call for a pause, demanding more proof that these procedures are safe before continuing on the path the plaintiffs propose. Neither risk aversion nor a fair-minded policy dispute about the best way to protect children shows animus.

Skrmetti, 2023 WL 6321688, at *19. The same could be said about S.B. 14.

4. Even if plaintiffs pleaded a facially valid claim, the temporary injunction was in error. To establish a right to a temporary injunction, plaintiffs must demonstrate: "(1) a cause of action against the defendant; (2) a probable right to the relief sought;

and (3) a probable, imminent, and irreparable injury in the interim." *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). As a result, plaintiffs needed to do more than plead plausible facts; they had to offer evidence "that the claims will probably succeed on the merits." *Anti-Defamation League*, 610 S.W.3d at 917.

Plaintiffs are not likely to show that S.B. 14 lacks a rational basis. Rational-basis review "does not require the Legislature to show that its understanding of the record before it is infallible"—only that it is reasonable. *Tex. Small Tobacco Coal.*, 496 S.W.3d at 792. That standard is satisfied so long as the Legislature "rationally could have believed" the statute would promote its objective. *First Am. Title Ins. Co. v. Combs*, 258 S.W.3d 627, 640 (Tex. 2008).

S.B. 14 easily withstands that review. The State has a substantial—indeed, a "compelling"—interest in "safeguarding the physical and psychological well-being of [children]." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982); *accord State v. Corpus Christi People's Baptist Church, Inc.*, 683 S.W.2d 692, 696 (Tex. 1984) (holding that "the State has a compelling interest of the highest order in protecting the children in child-care facilities from physical and mental harm"). After all, "[a] democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens." *Prince*, 321 U.S. at 168. Accordingly, the United States Supreme Court and this Court have consistently sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights. *New York v. Ferber*, 458 U.S. 747, 756-57 (1982); *Corpus Christi People's Baptist Church*, 683 S.W.2d at 695-97.

The State offered extensive evidence that S.B. 14 is rationally related to that interest, including testimony from numerous experts showing that S.B. 14 serves that interest by preventing vulnerable young people from being pressured into agreeing to unproven, irreversible medical interventions which might actually exacerbate their feelings of emotional distress and prolong their gender dysphoria. *Supra* pp.11-18. Plaintiffs and their contrary experts clearly disagree, but that is a policy dispute for the Legislature—not this Court. *See Bell*, 95 S.W.3d at 264.

Indeed, the State offered evidence establishing that S.B. 14 is sufficiently tailored to achieving that compelling interest to survive strict scrutiny. The prohibited medical procedures subject children to potentially life-altering side effects, including infertility, sexual dysfunction, erythrocytosis, diminishing bone density, and damage to psychosocial development. *See supra* pp.10-15. And they do so at an age where the patient necessarily cannot legally consent because children—even adolescents—lacks the cognitive and emotional maturity to appreciate the long-term significance of these effects. S.B. 14 is narrowly tailored; it is limited to minors and provides a transition period for children who were already receiving a prohibited treatment. *See* Tex. Health & Safety Code § 161.703(b), (c). Because the record shows that parents often feel pressured to consent to the prohibited procedures from a variety of social forces—even when they would prefer more conservative approaches such as psychotherapy or watchful waiting—and physicians have every incentive to provide affirmative treatments instead, there are no less restrictive means to preserve the State's compelling interest. *E.g.* 4.CR.1672-76. As a result,

regardless of the level of constitutional scrutiny, the parent plaintiffs have not shown a probability of success on the merits on their due-course-of-law claim.

B. Doctors do not have a constitutional right to perform gender-transitioning procedures on children.

Nor have the physician plaintiffs shown a facially valid claim that S.B. 14 violates (1) their "property rights in their medical licenses" or (2) their "liberty rights to engage in their occupations." 1.CR.53-56 (capitalization altered); *see also* 1.CR.64-65. They certainly did not establish the probable right to relief necessary for a temporary injunction.

1. S.B. 14 does not infringe on any property right. "The right to practice medicine is a privilege and is not a natural right." *Tex. Med. Bd. v. Wiseman*, No. 03-13-00210-CV, 2015 WL 410330, at *2 (Tex. App.—Austin Jan. 30, 2015, pet. denied) (mem. op.). And, "[a]s 'a general rule,' constitutional due-process protections do not 'extend' to such privileges." *Crown Distrib.*, 647 S.W.3d at 656. Nor do the physicians have a property interest in performing medical procedures that violate public policy. As discussed above, there is a deeply rooted historical tradition of States regulating medical treatments and procedures, including by prohibiting those that are deemed unsafe or where efficacy is in doubt. *See supra* pp.25-28.

S.B. 14 does not deprive the physician plaintiffs of their medical licenses in any event. The physician plaintiffs *can* continue to practice medicine even with S.B. 14 in effect. Dr. Roberts, for example, averred that performing prohibited procedures is "a small portion of [his] medical practices." 1.CR.125. Neither he nor any of the other physician plaintiffs can plausibly claim to be deprived of a lawful occupation as

a physician based on a statute that applies to only "a small portion" of his previous practice.

Plaintiffs have relied on precedent recognizing that a license to practice medicine cannot be taken away arbitrarily. 6.CR.1732-34 (citing, *inter alia*, *House of Tobacco, Inc. v. Calvert*, 394 S.W.2d 654, 657 (Tex. 1965)). This precedent, however, stands for the proposition that the due-course clause provides *procedural* protection against the arbitrary deprivation of a medical license. *See Crown Distrib.*, 647 S.W.3d at 669 (Young, J., concurring) ("[T]he due-course clause operates independently—to protect any citizen from an unfair trial or governmental proceeding."). These cases do not help the physician plaintiffs because they do not contend the Texas Medical Board's procedures for disciplinary action fail to satisfy due course of law. If the Texas Medical Board should need to take disciplinary action based on a violation of S.B. 14, the physician in question would receive notice and an opportunity to be heard, *see, e.g.*, Tex. Occ. Code § 164.005, along with a right to judicial review and all manner of other procedural protections, *see generally* Tex. Occ. Code ch. 164. Precedent recognizing procedural-due-course rights provides no support for a substantive-due-course claim.

2. The physician plaintiffs' claim that S.B. 14 infringes a liberty interest "to engage in their occupations" also fails. 1.CR.53. This Court has squarely held that "[t]he due-course clause is not so broad as to protect every form and method in which one may choose to work or earn a living, and some work-related interests do not enjoy constitutional protection at all." *Crown Distrib.*, 647 S.W.3d at 654.

Instead, the clause's protections for "work-related interest[s]" do not extend beyond "*common* occupations" and "*lawful* calling[s]." *Id.*

Even leaving aside whether performing medical interventions invented in the 1990s that are not FDA-approved—and that many in other Western countries have deemed experimental—can be considered a "common occupation," plaintiffs have not plausibly alleged or shown that S.B. 14's regulation of the practice of medicine is arbitrary. Texas has a long history of regulating the practice of medicine—going back to the Medical Practice Act of 1837. Act approved Dec. 14, 1837, 2nd Cong. R.S., 1838 Repub. Tex. Laws 39, *reprinted in* 1 H.P.N Gammel, The Laws of Texas 1822-1897 at 1381 (Austin, Gammel Book Co. 1898). S.B. 14 carries on that tradition by prohibiting certain procedures that the Legislature has determined are too risky to justify the uncertain potential benefits, while leaving physicians free to treat gender dysphoria through other means, including mental health care and watchful waiting—treatments that plaintiffs' experts recognize. 2.RR.98. The record contains ample evidence of the many risks of the medical interventions prohibited by S.B. 14, *see supra* pp.10-18, so there is no validity to plaintiffs' contention that S.B. 14 arbitrarily deprives the physician plaintiffs' right to practice their occupations.

And because S.B. 14 implicates only a small fraction of the physician plaintiffs' practices, *Patel v. Texas Department of Licensing and Regulation*, 469 S.W.3d 69 (Tex. 2015), does not help their claim. *Contra* 6.CR.1734. After all, *Patel* involved an as-applied challenge to a regulation that made it prohibitively expensive for eyebrow threaders to practice their trade at all. 469 S.W.3d at 87-90. The physician plaintiffs' facial challenge to S.B. 14 alleges nothing of the sort. The two endocrinologists

complain instead about the delay of medical procedures—the procedures, after all, are lawful once the patient reaches adulthood—that form a small portion of their respective medical practices.[3] The third physician plaintiff is a psychiatrist, and the 20% of his practice that involves treating minors with gender dysphoria consists of "psychotherapy, psychiatric medication management, and family consultation." 1.CR.41. Plaintiffs have not shown that *any* of this practice is prohibited by S.B. 14. *See* 1.CR.41-42.

C. S.B. 14's prohibitions on particular medical procedures do not offend the Texas Constitution's equality-under-the-law clause.

Finally, plaintiffs have not pleaded a viable claim—let alone shown probable relief—that S.B. 14 violates article I, section 3a. To state an equal-rights claim under the Texas Constitution, Plaintiffs must show they have been "treated differently from others similarly situated" based on one of the Constitution's enumerated classifications. *Klumb v. Hous. Mun. Emps. Pension Sys.*, 458 S.W.3d 1, 13 (Tex. 2015) (quoting *TxDOT v. City of Sunset Valley*, 146 S.W.3d 637, 647 (Tex. 2004)). Where no fundamental right or suspect classification is involved, plaintiffs must carry the heavy burden of demonstrating that the law is not rationally related to a legitimate governmental purpose. *Id.* S.B. 14 easily withstands rational-basis review, as discussed above. *See supra* pp.28-32.

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[3] To the extent their concern is losing business because some children will no longer want gender-transitioning procedures once they reach adulthood, that only underscores the reasonableness of the Legislature's choice to delay such intervention. *E.g.* 4.CR.1316, 1336-37.

To invoke heightened scrutiny, plaintiffs contend that S.B. 14 "draws a classification based on sex in three [putatively] distinct ways": (1) it "speaks in explicitly gendered terms and facially discriminates based on sex"; (2) it "discriminates based on sex stereotypes." 1.CR.48; *see* 1.CR.65-68. These claims fail.

1. Sex

Under this Court's precedent, S.B. 14 is not an impermissible sex-based classification. To assess such a claim, the Court considers whether equality under the law has been denied, whether that denial was because of sex, and if so—and only if so—whether the law is narrowly tailored to serve a compelling governmental interest. *Bell v. Low Income Women of Texas*, 95 S.W.3d 253, 257 (Tex. 2002).

This Court has long recognized that the Texas Constitution is not offended by prohibitions on medical procedures merely because those procedures are performed on individuals of one sex only. In *Bell*, the Court rejected such a challenge to prohibitions on public funding for certain abortions. 95 S.W.3d at 258. The Court explained that "[t]he classification here is not so much directed at women as a class as it is abortion as a medical treatment." *Id.* As the *Dobbs* Court put it, the regulation of a medical procedure that only one sex can undergo does not trigger heightened constitutional scrutiny unless the regulation is a "mere pretex[t] designed to effect an invidious discrimination against members of one sex or the other.'" 142 S. Ct. at 2245-46 (quoting *Geduldig v. Aiello*, 417 U.S. 484, 496, n.20 (1974)).

S.B. 14 is not. Although S.B. 14 refers to sex because the regulated medical treatments depend on biology, S.B. 14 applies to children of both sexes. As the Sixth Circuit explained:

> Testosterone transitions a minor from female to male, never the reverse. That means only females can use testosterone as a transition treatment. Estrogen transitions a minor from male to female, never the reverse. That means that only males can use estrogen as a transition treatment. These treatments, by biological necessity, are "medical procedure[s] that only one sex can undergo."

Skrmetti, 2023 WL 6321688, at *14 (quoting *Dobbs*, 142 S. Ct. at 2245). Plaintiffs' own expert agrees: that is precisely how the hormone treatments work. *See supra* pp.8-10. So S.B. 14's references to a particular hormone for treatment of gender dysphoria in males and females, respectively, do not render it a constitutionally suspect classification based on sex. *See Bell*, 95 S.W.3d at 257; *accord Eknes-Tucker*, 80 F.4th at 1227 (explaining that Alabama's statute "is best understood as a law that targets specific medical interventions for minors, not one that classifies on the basis of any suspect characteristic under the Equal Protection Clause.").

Plaintiffs' equal-treatment challenges to S.B. 14 fail because, like other States' laws, the statute "regulate[s] sex-transition treatments for all minors, regardless of sex." *Skrmetti*, 2023 WL 6321688, at *13. "Under [S.B. 14], no minor may receive puberty blockers or hormones or surgery in order to transition from one sex to another." *Id.* As the Sixth Circuit reasoned:

> Such an across-the-board regulation lacks any of the hallmarks of sex discrimination. It does not prefer one sex over the other. It does not include one sex and exclude the other. It does not bestow benefits or burdens based on sex. And it does not apply one rule for males and another for females.

Id. (internal citations omitted). The Eleventh Circuit reached the same conclusion, reasoning that Alabama's "statute does not establish an unequal regime for males and females" and "refers to sex only because the medical procedures that it regulates—puberty blockers and cross-sex hormones as a treatment for gender dysphoria—are themselves sex-based." *Eknes-Tucker*, 80 F.4th at 1228.

Just as legal classifications for abortion as a medical procedure were not discrimination based on sex, S.B. 14's classifications are not based on boys or girls as a class, but on the prohibited procedures "as a medical treatment" for gender dysphoria. *Bell*, 95 S.W.3d at 258. "Far from 'command[ing] dissimilar treatment for [boys] and [girls] who are similarly situated,'" S.B. 14 treats "boys and girls exactly the same for constitutional purposes—reasonably limiting potentially irreversible procedures until they become adults." *Skrmetti*, 2023 WL 6321688, at *15.

Plaintiffs' contrary assertion leans heavily on the Supreme Court's interpretation of Title VII's prohibitions on workplace discrimination in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020); *see* 42 U.S.C. § 2000e-2(a)(1). "If the legislature cannot 'writ[e] out instructions' for determining whether treatment is permitted 'without using the words man, woman, or sex (or some synonym),'" plaintiffs argue, "the law classifies based on sex." 1.CR.48 (quoting *Bostock*, 140 S. Ct. at 1746).

This Court should reject that argument. *Bostock*, of course, is not legally controlling on Texas courts interpreting the Texas Constitution. Under this Court's precedent, if "because of sex" were not self-explanatory (and it is), then the Court's

next step would be to consider the larger context of the amendment to the *Texas Constitution*. *Brown v. City of Houston*, 660 S.W.3d 749, 752 (Tex. 2023). And there is nothing in the larger context indicating that when Texas voters ratified the equality-under-the-law provision in 1972, they understood that term to apply to persons whose "gender identity does not match their gender assigned at birth."

Transplanting *Bostock* onto the Texas Constitution would not make sense. For one thing, "Title VII focuses on but-for discrimination," meaning that evidence of disparate impact can be sufficient to show a violation. *Skrmetti*, 2023 WL 6321688, at *16; *see Griggs v. Duke Power Co.*, 401 U.S. 424, 429-30 (1971). This Court has never treated the Texas Constitution to prohibit laws based on a mere disparate impact on a protected class. *See Bell*, 95 S.W.3d at 259-60. (And plaintiffs did not even show disparate impact on females over males, or vice versa.) For another, "[i]mporting the Title VII test for liability . . . would require adding Title VII's many defenses to the Constitution: bona fide occupational qualifications and bona fide seniority and merit systems, to name a few." *Skrmetti*, 2023 WL 6321688, at *17. That would make little sense in the context of the Texas Constitution's general provisions requiring equality under the law.

And *Bostock* rests on faulty reasoning anyway. For many decades after Title VII was enacted, no court or government agency understood "because of sex" to mean anything other than biological sex, or "the division of living things into two groups, male and female, based on biology." *Bostock*, 140 S. Ct. at 1765 (Alito, J., dissenting). Nor would the general public have read it to include gender identity or sexual orientation—concepts that were respectively unknown and criminalized. *See id.* at

1756-58, 1766-73 (Alito, J., dissenting). Even today, "the concept of discrimination because of 'sex' is different from discrimination because of 'sexual orientation' or 'gender identity.'" *Id.* at 1755; *see id.* at 1766-73 (Alito, J., dissenting). After all, "[b]oth men and women may be attracted to members of the opposite sex, members of the same sex, or members of both sexes. And individuals who are born with the genes and organs of either biological sex may identify with a different gender." *Id.* at 1758 (Alito, J., dissenting). This Court should be particularly reluctant to engage in the sort of linguistic updating reflected in *Bostock*'s majority opinion when it comes to Texas's Constitution.

2. "Sex stereotypes"

Plaintiffs' second theory—that S.B. 14 discriminates based on sex stereotypes—is also facially invalid. That theory traces to *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (plurality op.), in which four justices reasoned that a Title VII plaintiff may establish unlawful discrimination by showing that her employer acted on the basis of a sex stereotype about, in that case, how a woman should behave. *Id.* at 250-51.

This Court has never recognized such a theory under the Texas Constitution, which unlike the Fourteenth Amendment expressly lists the considerations upon which equal protection "shall not be denied or abridged"—namely, "sex, race, color, creed, or national origin." Tex. Const. art. I, § 3a. To the extent a "sex stereotype" is different than "sex," it is not listed and thus is not included. Unless this Court recognizes such a suspect class, "rational basis review applies." *Skrmetti*,

2023 WL 6321688, at *18; *see Bell*, 95 S.W.3d at 266. And S.B. 14 easily withstands rational basis review. *See supra* pp.28-32.

Even assuming such a theory is viable, S.B. 14 "simply reflects biological differences between males and females, not stereotypes associated with either sex." *Eknes-Tucker*, 80 F.4th at 1229. It is not a stereotype to recognize the biological fact that estrogen promotes female secondary sex characteristics while testosterone promotes male. Plaintiffs' own expert explained as much. *See* 2.RR.81-84. That is why the Eleventh Circuit rejected the sex-stereotype theory, explaining that Alabama's statute "targets certain medical interventions for minors meant to treat the condition of gender dysphoria; it does not further any particular gender stereotype." *Eknes-Tucker*, 80 F.4th at 1229. "Insofar as [it] involves sex, it simply reflects biological differences between males and females, not stereotypes associated with either sex." *Id.*

The Sixth Circuit agreed: "Recognizing and respecting biological sex differences does not amount to stereotyping—unless Justice Ginsburg's observation . . . that biological differences between men and women 'are enduring' amounts to stereotyping." *Skrmetti*, 2023 WL 6321688, at *18 (quoting in *United States v. Virginia*, 518 U.S. 515, 533 (1996)). It did not, and S.B. 14 doesn't either. S.B. 14 "do[es] not deny anyone general healthcare treatment based on . . . stereotypes [about how males and females should behave]; [it] merely den[ies] the same medical treatments to all children facing gender dysphoria if they are 17 or under, then permit[s] all of these treatments after they reach the age of

majority." *Id.* "A concern about potentially irreversible medical procedures for a child is not a form of stereotyping." *Id.*

D. "Transgender status" is not a quasi-suspect classification under the Texas Constitution's equal-rights provision.

Finally, plaintiffs contend S.B. 14 discriminates "based on transgender status" and thus violates article I, section 3. 1.CR.69-71. Section 3 provides: "All freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services." Plaintiffs' theory is that "transgender status" should be treated as a "quasi-suspect classification." 6.CR.1728; *see* 1.CR.67. The first fault in that argument is that—like "sex stereotypes"—"transgender status" is not in the Texas Constitution's explicit list of suspect classifications. Tex. Const. art. 1, § 3a. Plaintiffs have not identified any Texas authority suggesting transgender status is nevertheless implicitly subject to special protection under section 3. As a result, S.B. 14 is subject to rational-basis review, which it easily passes. *Supra* pp.28-32.

Treating transgenderism as a suspect class subject to heightened scrutiny under the Constitution would open a host of issues, as "[r]egulation of treatments for gender dysphoria poses fraught line-drawing dilemmas." *Skrmetti*, 2023 WL 6321688, at *18. The Sixth Circuit identified some of these:

> Counseling versus drugs. Puberty blockers versus hormone treatments. Hormone treatments versus surgeries. Adults versus minors. One age cutoff for minors (16) versus another (18). And that's just the line-drawing challenges that accompany treatments for gender dysphoria. What of other areas of regulation that affect transgender individuals? Bathrooms and

> locker rooms. Sports teams and sports competitions. Others are sure to follow.

Id. "Removing these trying policy choices" from the Legislature to this Court "will not solve them and in truth runs the risk of making them harder to solve." *Id.*

And even if transgender status received heightened scrutiny, plaintiffs' claim would fail. Plaintiffs' theory is that S.B. 14 discriminates on the basis of "transgender status" because it prohibits medical interventions when "used to treat transgender adolescents with gender dysphoria," but not "when prescribed to non-transgender patients to treat" medical conditions such as central precocious puberty, primary ovarian insufficiency, or Turner's Syndrome. 1.CR.52-53.

The Constitution does not require the State to treat distinct things as if they are the same, and even plaintiffs' experts agree that these medical conditions are not the same. Gender dysphoria is often accompanied by significant comorbidities such as other mental-health diagnoses. *See supra* pp.12-18. And plaintiffs' own expert acknowledged that puberty blockers are used differently for the treatment of gender dysphoria than for other conditions, and the risks of giving them to a young child to prevent precocious puberty are not the same as the risks of giving them to an older child to prevent natural, or endogenous, puberty. 2.RR.84, 89.

The sex hormones, too, can be used to treat other medical conditions, but "[t]hese distinct uses of testosterone and estrogen stem from different diagnoses and seek different results." *Skrmetti*, 2023 WL 6321688, at *14. "Because the underlying condition and overarching goals differ, it follows that the cost-benefit analysis does too." *Id.* Equal protection "does not require things which are different in fact or

opinion to be treated in law as though they were the same." *Id.* (quoting *Tigner v. Texas*, 310 U.S. 141, 147 (1940)); *see also id.* at *19 ("A legislature could conclude that treating congenital conditions with puberty blockers and hormones carries less risk than using these drugs to treat gender dysphoria for the purpose of changing an individual's secondary sex characteristics."). Texas can "permit distinct treatments of varying diagnoses," *id.* at *14, without violating its Constitution.

* * *

In sum, S.B. 14 is a regulation of the medical profession designed to protect minor children, which impinges on no fundamental rights. As a result, rational-basis review applies and is easily satisfied. *See supra* pp.28-32. But even if heightened scrutiny applied, S.B. 14 would satisfy that standard too as there is no narrower way to achieve the State's compelling interest in protecting children from irreversible medical conditions when parents—the first line of defense—are themselves subject to substantial pressures to consent. *See, e.g.*, *supra* p.18. Plaintiffs lack a facially viable claim that S.B. 14 violates the Texas Constitution. And at the very least their right to relief is improbable, so the trial court erred in issuing a temporary injunction.

II. The Trial Court Erred in Issuing a Temporary Injunction.

Not only do plaintiffs lack facially valid claims or a probable right to relief on the merits, but numerous jurisdictional defects affect individual claims. As a result, they lack a probable right to relief as to those claims. And even if they could overcome these jurisdictional problems, the trial court's injunction exceeded the scope of its authority to issue equitable relief.

A. Additional jurisdictional defects

1. Sovereign immunity and lack of standing bar claims against the State of Texas and the Attorney General.

If sovereign immunity bars a claim, it is the district court's "duty" to dismiss the suit in order to "ensure that the court itself is functioning in an authorized and properly judicial capacity." *Rattray v. City of Brownsville*, 662 S.W.3d 860, 867 (Tex. 2023). As discussed above, sovereign immunity bars plaintiffs' claims because they are facially invalid. *Supra* Part I. But even if plaintiffs had facially valid claims, their claims against the Attorney General and the State of Texas would be barred.

The UDJA's waiver of immunity for claims challenging the constitutionality of a statute authorizes suit against governmental entities, not *ultra vires* claims against government officials. Under Texas law, an individual government official like the Attorney General does not act *ultra vires* by complying with an unconstitutional law; that is why a challenge to a law's constitutionality is brought against the enforcing agency under the UDJA. *See Patel*, 469 S.W.3d at 77; Tex. Civ. Prac. & Rem. Code § 37.006(b). The claims against the Attorney General must be dismissed.

And plaintiffs do not have standing to sue "the State of Texas": "The State is not automatically a proper defendant in a suit challenging the constitutionality of a statute merely because the Legislature enacted it." *MALC*, 647 S.W.3d at 697. Instead, the UDJA allows a suit against the agency with authority to enforce the law. *Id.* at 698. The claims against the State of Texas must also be dismissed.

2. The physician and organizational plaintiffs are not proper plaintiffs.

a. Physician plaintiffs cannot pursue claims on behalf of their patients.

In addition to suing at least two incorrect defendants, neither physicians nor physician trade groups can invoke federal third-party standing doctrine as a basis to assert constitutional claims on behalf of their patients. *See* 6.SCR.1711-14. Third-party standing doctrine has never been recognized in Texas, and it should not be. Under this Court's precedent, "the standing inquiry begins with determining whether the plaintiff has personally been injured, that is, 'he must plead facts demonstrating that he, himself (rather than a third party or the public at large), suffered the injury.'" *Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 485 (Tex. 2018) (quoting *Heckman*, 369 S.W.3d at 155); *accord Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004). Thus, to demonstrate standing under Texas law, a plaintiff must be *personally* aggrieved. *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008). If a plaintiff lacks an actual or threatened injury, he is not "personally aggrieved," has no personal stake in the litigation, and lacks standing. *M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W.3d 704, 707-08 (Tex. 2001).

As applied to challenges to the constitutionality of a statute, a plaintiff must (1) "suffer some actual or threatened restriction under that statute," and (2) "contend that the statute unconstitutionally restricts the plaintiff's rights, not somebody else's." *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 518 (Tex. 1995); *see also Barshop*, 925 S.W.2d at 626. Here, the physician plaintiffs claim that Texas has impermissibly restricted their alleged right to *perform* medical

procedures prohibited by S.B. 14. 1.CR.65-66. But they do not claim that they have suffered the same injuries as their patients or their parents: an inability to *obtain* such treatments. *Compare* 1.CR.53-56, 66, *with* 1.CR.46-50.

Because "[s]tanding is not dispensed in gross," "a plaintiff who has been subject to injurious conduct of one kind" does not "possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject." *Heckman*, 369 S.W.3d at 153 (quoting *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996)). Because the physician plaintiffs have not been personally aggrieved in the same way their patients allegedly have, they lack the necessary injury to assert their patients' rights.

This Court should decline Plaintiffs' invitation to adopt the federal courts' third-party standing doctrine, under which a litigant may assert the rights of a third party when (1) the litigant has "a close relationship" with the third party and (2) some "hindrance" affects the third party's ability to protect her own interests. *Kowalski*, 543 U.S. at 130 (citations omitted). Doing so would effectively create an exception to the constitutional requirement of a personal injury. *See Garcia*, 893 S.W.2d at 518. And even assuming the physician plaintiffs have the necessary "close relationship" with their established patients, there is no "hindrance" to patients protecting their own interests. As evidenced by this lawsuit, children who seek these medical treatments are more than capable of asserting their rights through their parents (or another next friend), which is the usual means of bringing suit on behalf of a child. In any event, for the reasons discussed above, the physician plaintiffs have not alleged any viable constitutional claim that their patients could assert.

b. The organizations did not establish associational standing.

The organizations lack associational standing because, even to the extent their members have standing, their claims "require[] the participation of individual members in the lawsuit." *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 447 (Tex. 1993). PFLAG and GLMA contend that participation by individual members is not necessary because all of their members allege the same legal injury—alleged violations of their constitutional rights. 6.CR.1718. But "an injury in law is not an injury in fact." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2205 (2021). And to establish standing to sue in Texas court, a member would have to establish an injury in *fact*, such as by asserting an imminent plan to obtain a prohibited treatment. *See Data Foundry, Inc. v. City of Austin*, 620 S.W.3d 692, 696 (Tex. 2021).

As to potential patients for are members of PFLAG, an individual person's injury in fact turns on the medical treatments or procedures that person would obtain if not prohibited by S.B. 14—as plaintiffs' own experts emphasize, diagnosing and treating gender dysphoria is highly individualized. *See* 1.CR.40-41. Under any standard of review, the cost-benefit balancing differs for each procedure—puberty blockers, cross-sex hormones, and surgical interventions, for example, do not pose the same relative risks. As to physicians who are members of GLMA, an occupational liberty claim would require each one to show that S.B. 14 is "so unreasonably burdensome that it becomes oppressive in relation to the underlying governmental interest" as applied to his or her medical practice. *Patel*, 469 S.W.3d at 87. That is not a showing the GLMA could make on every member's behalf.

Even if the organizations had associational standing, to obtain a preliminary injunction, an organization must submit evidence of injury as to specific members, *see Campaign Legal Center v. Scott*, 49 F.4th 931, 937 (5th Cir. 2022); *Barber v. Bryant*, 860 F.3d 345, 352 (5th Cir. 2017), and any remedy is limited to the injuries proved, *see, e.g.*, *United Food & Comm. Workers Union Loc. 751 v. Brown Group, Inc.*, 517 U.S. 544, 553 (1996); *Conservation Law Found. of New England, Inc. v. Reilly*, 950 F.2d 38, 43 (1st Cir. 1991). Here, the alleged injuries are specific to individual members, so even if the organizations identified certain members with standing to sue, that could support, at most, an injunction preventing enforcement against those members.

3. Plaintiffs lack a cognizable injury as to certain claims.

Finally, apart from suing two incorrect defendants and listing parties who are not injured, no plaintiff claims to have been injured by two challenged provisions: S.B. 14's prohibitions on public funding and surgical procedures. As injury is the most basic building-block of a justiciable controversy, the court lacks jurisdiction to consider such challenges.

a. Plaintiffs have shown no injury from the prohibition on public funding.

Plaintiffs complain about S.B. 14's prohibitions on public funding for prohibited medical procedures, *see, e.g.*, 1.CR.41-42, 59, and the trial court enjoined HHSC from enforcing these provisions. 7.CR.2155. But plaintiffs nowhere identify a constitutional right to such funding. *Cf.* 1.CR.62-71. Nor have the parent plaintiffs alleged—let alone shown—that they plan to use public programs such as Medicaid or CHIP to pay for medical procedures subject to S.B. 14. It is hard to see how an

injunction can stand where plaintiffs have not even identified—let alone proven—a right to be protected by such an injunction.

At most, plaintiffs point to a declaration from one of the parent plaintiffs stating that she and her husband "have been able to obtain health care coverage for our daughter through our state employee plan and will lose coverage as a result of S.B. 14." 1.CR.106-07, *see also* 1.CR.112. That could, at most, support injunctive relief for that plaintiff—not the statewide injunction that the trial court entered here. But it does not support even that, because HHSC lacks an enforcement role when it comes to state employee health insurance, which is administered by the Employee Retirement System of Texas. *See* Tex. Gov't Code ch. 811. Without some connection to enforcement, this declaration cannot establish standing. *See MALC*, 647 S.W.3d at 697.

It is no response that the physician plaintiffs say some unidentified number of their patients "are on Medicaid" or CHIP. *See* 1.CR.127-28, 179; 2.RR.178. The physician plaintiffs (and their experts) agree that treating gender dysphoria is individualized, *e.g.*, 1.CR.40-41, and acknowledge "gender-affirming care is a small portion of [each of their] medical practice," 1.CR.125; *see also* 2.RR.164, 176. There is no evidence showing an overlap between patients who are "on Medicaid" and patients who would obtain prohibited procedures in the absence of S.B. 14. In the absence of such a link, such generalizations are not enough to support standing to sue, much less show a probable right to injunctive relief. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) ("Since [the requirements of standing] are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each

element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof.").

Even if the Court were willing to overlook these defects, this Court has already unequivocally held that a recognized constitutional right to a medical procedure does not carry a concomitant right to have the taxpayers fund the procedure. *See Bell*, 95 S.W.3d at 265 (under the *Roe v. Wade* regime, no constitutional right to public funds for abortion). As a result, even if the Court were to conclude that there is a constitutionally cognizable right to puberty blockers and sex-change operations (and it should not), plaintiffs would have no right to public funds for such treatments. The trial court could not properly enjoin Defendants from enforcing the S.B. 14 public-funding provisions based on a constitutional right that has been held not to exist.

b. None of the plaintiffs established standing to challenge S.B. 14's prohibitions on surgery as a treatment for gender dysphoria.

Plaintiffs also did not establish standing to challenge S.B. 14's prohibitions on surgical procedures such as castration, hysterectomy, vaginoplasty, or mastectomy. *See* S.B. 14 § 2 (codified as Tex. Health & Safety Code § 702(1), (2), (4)). "Absent allegations that plaintiffs will trigger these [provisions] in the near future, they have no standing to challenge them." *In re Gee*, 941 F.3d 153, 1664 (5th Cir. 2019) (per curiam).

The parent plaintiffs do not say their children would obtain a prohibited surgery during the pendency of this lawsuit if S.B. 14 did not prohibit it. One plaintiff parent's declaration states her 16-year-old child "wants to get top surgery, which we

have been discussing as a family," and that "a consultation with a surgeon . . . was canceled after SB 14 passed." 1.CR.100. That is not sufficient to establish standing at the temporary-injunction stage.

The physician plaintiffs also lack standing because they made no showing they plan to perform such procedures on a child. After all, the physician plaintiffs are two endocrinologists and a psychiatrist, 1.CR.39-41, not plastic surgeons. Because their scope of practice would not permit them to perform such surgeries, they are not injured by a legal prohibition against the procedures.

B. The temporary injunction is remedially defective.

Finally, apart from its jurisdictional and merits defects, the temporary injunction is overbroad because it applies beyond the parties before the court. The inclusion of physicians cannot solve this problem because a *temporary* injunction cannot remedy the only alleged injury: the chill putatively caused by the potential for disciplinary action in the future. Moreover, the injunction was entirely unnecessary to do the only thing for which a temporary injunction is proper—maintaining the status quo.

1. A statewide injunction is improper.

Courts generally lack power to "grant[] a remedy beyond what [i]s necessary to provide relief to [the plaintiff]" *Casey*, 518 U.S. at 360; *accord In re Abbott*, 954 F.3d 772, 786 n.19 (5th Cir. 2020), *vacated as moot sub nom. Planned Parenthood Ctr. for Choice v. Abbott*, 141 S. Ct. 1261 (2021) (courts lack authority to "enjoin enforcement of [a challenged law] as to anyone other than the named plaintiffs"); *McKenzie v. City of Chicago*, 118 F.3d 552, 555 (7th Cir. 1997) ("[P]laintiffs lack standing to seek—and the district court therefore lacks authority to grant—relief that benefits third

parties."); *cf. In re Abbott*, 645 S.W.3d 276, 282 (Tex. 2022) (orig. proceeding) ("Rule 29.3 plainly limits the scope of the available relief to that which is necessary to preserve *the parties'* rights."). Prohibiting state agencies from enforcing the law against non-party physicians is not necessary to protect any *plaintiff's* rights.

Plaintiffs do not contend there are particular non-party physicians against whom enforcement could be enjoined in order to alleviate a plaintiff *parent's* or her *child's* injury, such as by identifying a particular treating physician and showing this physician would perform prohibited procedures on that child if enforcement of S.B. 14 were enjoined. Instead, plaintiffs have argued that injuries to the plaintiff children and parents justify a statewide prohibition on enforcement. But extending an injunction on enforcement to benefit third-party patients or parents, even if they are members of an organizational plaintiff, would be unworkable. Enforcement is with respect to regulated parties—physicians, not parents. An injunction that does not identify which physicians it protects cannot meet the requirement that an injunction "be specific in terms" and describe "the act or acts sought to be restrained." Tex. R. Civ. P. 683. The burden was on the plaintiffs to make the connection to any non-party physicians whose discipline would harm a plaintiff who is actually before the court.

Recognizing that the parents' alleged injuries flow from physicians' unwillingness to violate the law, plaintiffs have attempted to justify a statewide injunction as necessary to "mitigate the fears" of all non-party physicians. Emergency Mot. for Temp. Relief at 36-38. But the "chilling" that causes the injury could not be alleviated by a temporary injunction on enforcement. Only a

permanent injunction could do that. *See Am. Postal Workers Union, AFL-CIO v. U.S. Postal Serv.*, 766 F.2d 715, 722 (2d Cir. 1985) (temporary injunction based on First Amendment "chilling" was improper where "the theoretical chilling . . . stems not from the interim [action], but from the threat of permanent [action], which is not vitiated by an interim injunction"); *accord Ohio v. Yellen*, 539 F. Supp. 3d 802, 821 (S.D. Ohio 2021). The trial court erred in issuing an injunction that could not remedy the injury alleged.

2. Temporary injunctive relief is not necessary to maintain the status quo.

The trial court also erred in issuing a temporary injunction because it was not necessary to maintain the status quo. In this context, the "status quo" is "the last peaceable uncontested status between the[] parties." *Clint ISD v. Marquez*, 487 S.W.3d 538, 555 (Tex. 2016). Stripped of plaintiffs' effort to obtain relief beyond the parties before the Court, the status quo is that some minor patients were receiving these treatments; others were not. But S.B. 14 already accounted for that possibility, and it does *not* immediately prohibit preexisting treatments plaintiffs are receiving or performing. It provides for gradual cessation of treatments initiated prior to the date the statute was enacted. *See* Tex. Health & Safety Code § 161.703(b), (c).

To the extent any plaintiff's concern is continuing a treatment or procedure that was initiated between the date the law was enacted (June 1) and the date the law became effective (September 1), that is not the "status quo" recognized by Texas law. Again, this Court begins with a presumption of "compl[iance] with both the United States and Texas Constitutions." *EBS Sols., Inc. v. Hegar*, 601 S.W.3d 744,

754 (Tex. 2020). "The party asserting that the statute is unconstitutional bears a high burden to show unconstitutionality.'" *Id.* To prevent unfairness to parties who need time to adjust their behavior, "statutory grace periods are required by our Constitution," absent exception. *Fire Prot. Serv., Inc. v. Survitec Survival Prods., Inc.*, 649 S.W.3d 197, 202 (Tex. 2022). A party cannot use that 90-day grace period, however, to begin a course of conduct that he knows will be forbidden and then insist equity allows him to continue the conduct.

Prayer

The Court should vacate the temporary injunction, reverse the judgment of the district court denying Defendants-Appellants' plea to the jurisdiction, and render judgment dismissing the claims.

Respectfully submitted.

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Certificate of Service

On October 16, 2023, this document was served on Kennon L. Wooten, lead counsel for Plaintiffs-Appellees, via kwooten@scottdoug.com.

/s/ Judd E. Stone II
Judd E. Stone II

Certificate of Compliance

Microsoft Word reports that this document contains 14,937 words, excluding exempted text.

/s/ Judd E. Stone II
Judd E. Stone II

No. 23-0697

In the Supreme Court of Texas

THE STATE OF TEXAS; OFFICE OF THE ATTORNEY GENERAL; KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS; THE TEXAS MEDICAL BOARD; AND THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION,

Appellants,

v.

LAZARO LOE, ET AL.,

Appellees.

On Direct Appeal from the
201st Judicial District Court, Travis County

APPENDIX

TAB A

Order on Defendants' Plea to the Jurisdiction

7.CR.2148-49

CAUSE NO. D-1-GN-23-003616

LAZARO LOE, *et al.*, *Plaintiffs*,	§	**IN THE DISTRICT COURT OF**
v.	§	**TRAVIS COUNTY, TEXAS**
THE STATE OF TEXAS, *et al.*, *Defendants.*	§	**201st JUDICIAL DISTRICT**

ORDER ON DEFENDANTS' PLEA TO THE JURISDICTION

Defendants' (the State of Texas, the Office of the Attorney General, Angela Colmenero, in her official capacity as Provisional Attorney General of Texas, the Texas Medical Board, and the Texas Health and Human Services Commission) Plea to the Jurisdiction came for consideration before this Court.

After consideration of the plea, the response, the reply, the evidence on file and the parties' objections thereto, as well as the evidence admitted at the hearing held on August 15-16, 2023, the Court finds that the Plea to the Jurisdiction should be DENIED.

IT IS THEREFORE ORDERED that Defendants' Plea to the Jurisdiction is DENIED.

IT IS FURTHER ORDERED that the parties' objections to the evidence on file are SUSTAINED IN PART and OVERRULED IN PART as follows:

- Defendants' objections are SUSTAINED with respect to Exhibit D attached to Plaintiffs' Response to Defendants' Plea to the Jurisdiction.
- Defendants' objections are OVERRULED with respect to Exhibit B and Exhibit C attached to Plaintiffs' Response to Defendants' Plea to the Jurisdiction.
- Plaintiffs' objections are SUSTAINED with respect to (i) Paragraph 56 in Exhibit K in Defendants' Amended Appendix (Schmidt Declaration); (ii) Paragraph 52 in Exhibit L in Defendants' Amended Appendix (Stanton Declaration); (iii) Paragraph 30 in Exhibit M in Defendants' Amended Appendix (Bradwell Declaration); and

(iv) Paragraph 47 in Exhibit N in Defendants' Amended Appendix (Pankhurst Declaration). Plaintiffs' remaining objections to Exhibits K, L, M, and N in Defendants' Amended Appendix are OVERRULED.

- Plaintiffs' Objections are OVERRULED with respect to Defendants' Exhibits A, B, C, D, E, F, G, H, I, J, O, and P in Defendants' Amended Appendix.

SIGNED on the 25th day of August, 2023.

Judge Maria Cantú Hexsel
PRESIDING JUDGE

I, VELVA L. PRICE, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office
On 09/07/2023 10:24:52

VELVA L. PRICE
DISTRICT CLERK
By Deputy: SH

TAB B

Temporary Injunction Order

7.CR.2150-56

CAUSE NO. D-1-GN-23-003616

LAZARO LOE, *et al.*, *Plaintiffs*,	§	**IN THE DISTRICT COURT OF**
	§	**TRAVIS COUNTY, TEXAS**
v.	§	
THE STATE OF TEXAS, *et al.*, *Defendants*.	§	**201st JUDICIAL DISTRICT**

TEMPORARY INJUNCTION ORDER

On August 15 and 16, 2023, the Court held an evidentiary hearing on the Application for Temporary Injunction included within Plaintiff's Verified Original Petition ("Application") filed by Plaintiffs Lazaro Loe, individually and as parent and next friend of Luna Loe, a minor; Mary Moe and Matthew Moe, individually and as parents and next friends of Maeve Moe, a minor; Nora Noe, individually and as parent and next friend of Nathan Noe, a minor; Sarah Soe and Steven Soe, individually and as parents and next friends of Samantha Soe, a minor; Gina Goe, individually and as parent and next friend of Grayson Goe, a minor; PFLAG, Inc. ("PFLAG"); Richard Ogden Roberts III, M.D.; David L. Paul, M.D.; Patrick W. O'Malley, M.D.; American Association of Physicians for Human Rights, Inc., d/b/a GLMA: Health Professionals Advancing LGBTQ Equality ("GLMA") (collectively, "Plaintiffs") against Defendants the State of Texas, the Office of the Attorney General of Texas, John Scott, in his official capacity as Provisional Attorney General[1] ("Attorney General"), the Texas Medical Board, and Texas Health and Human Services Commission (collectively, "Defendants").

[1] Plaintiffs' Verified Original Petition for Declaratory Judgment and Application for Temporary and Permanent Injunctive Relief sued John Scott, in his capacity as Provisional Attorney General due to the Articles of Impeachment against Ken Paxton passed by the Texas House of Representatives on 5/27/2023, which resulted in the suspension of the exercise of Ken Paxton's duties in the Office of Attorney General. On July 12, 2023, Angela Colmenero succeeded John Scott as Provisional Attorney General of Texas.

In their Application, Plaintiffs seek to temporarily restrain and enjoin Defendants, their officers, agents, servants, employees, attorneys, and all persons in active concert and participation with Defendants, from implementing and enforcing the act commonly known as Senate Bill 14, passed by the 88th Texas Legislature, Regular Session, and signed by the Governor on June 2, 2023 ("Act"). The Act prohibits the provision of certain medical treatments and procedures to transgender adolescents in Texas by various amendments to the Health and Safety Code, the Occupations Code, and Human Resources Code. Act §§ 1-9 (adding Subsection (g) to Section 62.151 of the Health and Safety Code; Subchapter X to Chapter 161 of the Health and Safety Code; Subsection (pp) to Section 33.024 of the Human Resources Code; Section 164.052(a)(24) of the Occupations Code; Section 164.0552 to Subchapter B, Chapter 164 of the Occupations Code).

Having considered the testimony and evidence admitted at the hearing, the arguments of counsel, and the applicable authorities, this Court finds sufficient cause to enter a Temporary Injunction against Defendants. Plaintiffs state a valid cause of action against Defendants and have a probable right to the declaratory and permanent injunctive relief they seek in this lawsuit. There is a substantial likelihood that Plaintiffs will prevail after a trial on the merits. Furthermore, unless Defendants are immediately enjoined from enforcing the Act, Plaintiffs will suffer probable, imminent, and irreparable injury in the interim.

FINDINGS

I. Likelihood of Success

A. The Court finds the Act likely violates Article I, Section 19 of the Texas Constitution by infringing upon the fundamental right of parents to make decisions concerning the care, custody, and control of their children. This fundamental right includes the right of parents to give, withhold, and withdraw consent to medical treatment for their children. This fundamental right also includes the right to seek and to follow medical advice to protect the health and wellbeing of their minor children. The Act's prohibitions on providing evidence-based treatment for adolescents with gender dysphoria stands directly at odds with parents' fundamental right to make decisions

concerning the care of their children. Furthermore, the Act interferes with Texas families' private decisions and strips Texas parents, including Parent Plaintiffs and PFLAG parent members, of the right to seek, direct, and provide medical care for their children. The evidence before the Court does not support the conclusion the Act protects the health or wellbeing of minors. Instead, the evidence demonstrates that the Act threatens the health and wellbeing of adolescents with gender dysphoria. Specifically, the Act denies their parents, including Parent Plaintiffs and PFLAG parent members, the ability to obtain necessary and in some circumstances, lifesaving medical treatment for these children. The Court finds the Act is not narrowly tailored to serve a compelling government interest. Furthermore, the Court finds the Act lacks even a rational relationship to any legitimate government interest.

B. The Court further finds the Act likely violates Article I, Section 19 of the Texas Constitution by infringing upon Texas physicians' right of occupational freedom. The Act deprives Texas physicians of a vested property interest in their medical licenses. The Act requires Texas medical providers, including the physician Plaintiffs and health professional members of GLMA, to disregard well-established, evidence-based clinical practice guidelines, and their training and oaths, thereby significantly and severely compromising the health of their patients with gender dysphoria or, alternatively, to risk their livelihoods. The Act mandates revocation of licenses, along with a panoply of other disciplinary actions (including actions available to some Defendants through existing enforcement provisions of the Texas Medical Practice Act) if physicians provide their transgender adolescent patients with medically necessary treatment. The Act interferes with the professional relationship among medical providers, adolescent patients, and the patients' parents. Further, it subjects physicians to discipline for treating a patient according to generally accepted standards of care. The Act is clearly arbitrary and its effect as a whole is so unreasonably burdensome that it is oppressive.

C. The Court further finds that the Act likely violates Article I, Sections 3 and 3a the Texas Constitution by discriminating against transgender adolescents with gender dysphoria because of

their sex, sex stereotypes, and transgender status. The Act infringes upon the Texas Constitution's guarantees of equality under the law by enacting a discriminatory and categorical prohibition on evidence-based medical treatments for transgender youth which remains available to cisgender youth. Puberty-delaying treatment, hormone therapy, and chest surgery may be administered to treat minors with a variety of conditions other than gender dysphoria. However, the Act does not prohibit the same medical treatments for minors with all medical conditions; rather, it prohibits the treatments *only* when used to treat an adolescent for gender dysphoria, even though the risks of the treatments are similar, if not the same, regardless of the condition for which they are prescribed. In short, the Court finds that the Act is not justified by any legitimate state purpose, let alone a compelling one. The Act was passed because of, and not in spite of, its impact on transgender adolescents, depriving them of necessary, safe, and effective medical treatment. Further, the Act interferes with and overrides the clinical and evidence-based judgment of medical providers and the decision-making of parents, who provide informed consent.

II. Likelihood of Irreparable Harm

A. It is clear to the Court that, unless Defendants are immediately enjoined from enforcing the Act, Plaintiffs will suffer probable, imminent, and irreparable injury in the interim. Such injury, which cannot be remedied by an award of damages or other adequate remedy at law, includes:

(i) the loss of access to safe, effective, and medically necessary treatment for transgender adolescents experiencing gender dysphoria;

(ii) significantly and severely compromising the health and wellbeing of transgender adolescents experiencing gender dysphoria, including forcing such patients to experience unwanted and unbearable changes to their body;

(iii) the loss of a parent's ability to direct their child's medical treatment;

(iv) destabilizing the family unit, including forcing families to leave Texas, travel regularly out of state, and/or choose indefinite family separation;

(v) depriving Texas physicians the right of occupational freedom and their vested property interests in their medical licenses;

(vi) forcing Texas physicians to either violate their oath by disregarding the patient's medical needs and inflicting needless suffering, or putting their medical license and livelihood at risk; and

(vii) exacerbating health disparities for transgender adolescent patients who receive Medicaid and Children's Health Insurance Program (CHIP) coverage and who will lose that coverage if the Act goes into effect.

III. Balancing of the Equities

Defendants were provided notice of the causes of action, the Application, and participated in the hearing. The balance of the equities favors Plaintiffs. The threatened injury to Plaintiffs substantially outweighs the harm, if any, that Defendants would suffer from having to forestall enforcement of the Act, pending resolution of this case.

The Temporary Injunction being entered by the Court today is necessary to maintains the status quo and should remain in effect while this Court, and potentially the Third Court of Appeals and the Supreme Court of Texas, examine the parties' merits and jurisdictional arguments.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

A. Until all issues in this lawsuit are finally and fully determined, Defendants and their respective officers, agents, servants, employees, and attorneys, as well as any individuals or entities in active concert with them, directly or indirectly under their control, or participating with them, who receive actual notice of the Order by personal service or otherwise, are immediately enjoined and restrained from implementing or enforcing the Act, and such restraint encompasses but is not limited to:

(1) enjoining and restraining the State of Texas, Office of the Attorney General of the State of Texas, Angela Colmenero, in her official capacity as Provisional Attorney General, and any successor Attorney General from filing an action to

enforce the Act, whether directly through authority provided by proposed Section 161.706 of Texas Health and Safety Code, or indirectly through authority provided by the Texas Medical Practice Act or otherwise;

(2) enjoining and restraining the State of Texas and Texas Medical Board from taking action to implement or enforce the Act, including investigating a complaint, referring a complaint to the Office of the Attorney General, revoking the license or other authorization to practice medicine of a physician, refusing to admit to examination or refuse to issue a license or renewal license to a person based on the Act, whether directly through authority provided by proposed Sections 164.052(a)(24) or 164.0552 of Texas Occupations Code, or indirectly through authority provided by the Texas Medical Practice Act or otherwise;

(3) enjoining and restraining the State of Texas and Texas Health and Human Services Commission from (a) withholding public money from being used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a procedure or treatment based on the Act, and (b) withholding or otherwise limiting reimbursement of or coverage for prohibited care under the Act by Medicaid and/or CHIP insurance plans.

B. Defendants shall provide notice of this Temporary Injunction to their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them.

C. Plaintiffs' bond is set at $100. The clerk of this Court shall issue a Temporary Injunction in conformity with the law and the terms of this Order.

D. All parties may be served with notice of this Temporary Injunction in any matter provided under Rule 21a of the Texas Rules of Civil Procedure.

E. This Temporary Injunction shall not expire until judgment in this case is entered or this case is otherwise dismissed by this Court.

F. A trial on the merits is preferentially set before the Honorable Maria Cantú Hexsel, Judge of the 53rd Judicial District Court of Travis County, Texas on May 6, 2024, at 9:00 AM.

SIGNED on the 25th day of August, 2023.

Judge Maria Cantú Hexsel
PRESIDING JUDGE

I, VELVA L. PRICE, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office
On 09/07/2023 10:24:52

VELVA L. PRICE
DISTRICT CLERK
By Deputy: SH

TAB C

Plaintiffs' Verified Original Petition for Declaratory Judgment and Application for Temporary and Permanent Injunctive Relief

1.CR.3-75

CAUSE NO. _____

LAZARO LOE, individually and as parent and next friend of LUNA LOE, a minor; MARY MOE and MATTHEW MOE, individually and as parents and next friends of MAEVE MOE, a minor; NORA NOE, individually and as parent and next friend of NATHAN NOE, a minor; SARAH SOE and STEVEN SOE, individually and as parents and next friends of SAMANTHA SOE, a minor; GINA GOE, individually and as parent and next friend of GRAYSON GOE, a minor; PFLAG, INC.; RICHARD OGDEN ROBERTS III, M.D., on behalf of himself and his patients; DAVID L. PAUL, M.D., on behalf of himself and his patients; PATRICK W. O'MALLEY, M.D., on behalf of himself and his patients; and AMERICAN ASSOCIATION OF PHYSICIANS FOR HUMAN RIGHTS, INC. d/b/a GLMA: HEALTH PROFESSIONALS ADVANCING LGBTQ+ EQUALITY; *Plaintiffs*, v. THE STATE OF TEXAS; OFFICE OF THE ATTORNEY GENERAL OF TEXAS; JOHN SCOTT, in his official capacity as Provisional Attorney General; TEXAS MEDICAL BOARD; and TEXAS HEALTH AND HUMAN SERVICES COMMISSION, *Defendants*.	§	IN THE DISTRICT COURT OF 201ST, DISTRICT COURT TRAVIS COUNTY, TEXAS JUDICIAL DISTRICT

PLAINTIFFS' VERIFIED ORIGINAL PETITION FOR DECLARATORY JUDGMENT AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

Plaintiffs file this Verified Original Petition for Declaratory Judgment, and Application for Temporary and Permanent Injunctive Relief ("Petition") against the State of Texas, the Office of

the Attorney General of Texas, John Scott, in his official capacity as Provisional Attorney General ("Attorney General"), the Texas Medical Board, and Texas Health and Human Services Commission (collectively, "Defendants"). In support of their Petition, Plaintiffs respectfully show the following:

I. PRELIMINARY STATEMENT

Gender dysphoria is a medical condition characterized by the clinically significant distress caused by the incongruence between a person's gender identity and the sex they were assigned at birth. If left untreated, gender dysphoria can have dire and serious consequences for the health and wellbeing of transgender people, including adolescents. In Texas, adolescents who experience gender dysphoria currently have access to medically necessary care and treatment, which allows them to safely address their gender dysphoria and live as their true selves.

Many parents of transgender children in Texas have worked with their children's medical providers to ensure that their adolescent children receive the medically necessary course of care for their individual experiences of gender dysphoria. As parents, they are driven by their love for their children and desire to see them grow into happy, healthy, functioning adults, which is why they sought treatment from medical providers when their children expressed or exhibited gender dysphoria. These parents have seen that affirming their children, including by helping them access the medical care their providers have deemed necessary and appropriate, has helped them flourish.

Medical providers have long followed evidence-based and comprehensive clinical practice guidelines that recommend certain medical treatments for gender dysphoria. Decades of clinical experience and a large body of scientific and medical literature support these medical guidelines, which are recognized as authoritative by the major medical associations in the United States. They provide a framework for the safe and effective treatment of gender dysphoria, which for some adolescent patients includes puberty-delaying treatment and hormone therapy.

On June 2, 2023, Governor Greg Abbott of Texas signed into law Senate Bill 14 ("SB14" or the "Ban"), categorically banning the provision of necessary and often lifesaving medical treatment to transgender adolescents in Texas. The law passed despite the sustained and robust opposition of medical experts and the Texas families that stand to be severely negatively impacted. Absent intervention from this Court, the Ban will take effect on September 1, 2023.

Transgender adolescents in Texas are now faced with the loss of access to safe, effective, and medically necessary treatment, and their parents are faced with the loss of their ability to direct their children's medical treatment. The Ban violates the right to parental autonomy guaranteed by the Due Course of Law Clause of the Texas Constitution because it prevents Texas parents with transgender children suffering from gender dysphoria from accessing the medically necessary treatment that medical providers have recommended for their children. The Ban discriminates against parents seeking care for their transgender adolescent children in the exercise of their fundamental right to make decisions concerning the care, custody, and control of their children, by prohibiting them from seeking and following medical advice to protect the health and wellbeing of their children.

Parents must also contemplate drastic changes under the threat of the Ban, including uprooting their families and moving out of state or splitting up their families—all to ensure the health and safety of their transgender children. Many families already have lived through the impact of untreated gender dysphoria and have seen how treatment has been lifesaving for their children. If the Ban goes into effect, parents will be forced to take emotionally, physically, and financially difficult measures to try to ensure their children can access the medically necessary, safe, and effective treatment they need. Many, if not most, families do not have the resources to uproot their lives or to establish access to out-of-state medical treatment, however, and they are

terrified their children will lose access to the medical treatment they need to address their gender dysphoria.

The Ban also forces Texas physicians either to disregard well-established, evidence-based clinical practice guidelines, thereby significantly and severely compromising the health of their patients with gender dysphoria or, alternatively, to risk their livelihoods. The Ban does so by mandating revocation of licenses along with a panoply of other disciplinary actions if physicians provide transgender adolescent patients with medically necessary treatment. Therefore, the Ban infringes on Texas physicians' right of occupational freedom and deprives them of a vested property interest in their medical licenses.

Critically, puberty-delaying treatment and hormone therapy are also administered to treat minors with a variety of conditions other than gender dysphoria, and the Ban does not prohibit the same medical treatments for minors with all medical conditions; rather, it prohibits the treatments only when used to treat a transgender adolescent's gender dysphoria, even though the risks of the treatments are similar, if not the same, regardless of the condition for which they are prescribed. Texas is endangering the health and wellbeing of transgender adolescents and violating the Texas Constitution's guarantees of equality under the law by enacting a discriminatory and categorical prohibition on medical treatments for transgender youth that remain available to others.

The Ban was passed because of, and not in spite of, its impact on transgender adolescents, depriving them of necessary, safe, and effective medical treatment, thereby interfering with and overriding the clinical and evidence-based judgment of medical providers and the decision-making of loving parents.

If the Ban takes effect, it will have devastating consequences for transgender adolescents in Texas. They will be unable to obtain critical medical treatment that their physicians and other

medical providers have recommended and that their parents agree they need. Further, those already receiving medical treatment will have their treatment halted or otherwise are required to wean off their course of treatment. Many transgender adolescents will face the whiplash of losing their necessary medical treatment and experiencing unwanted and unbearable changes to their body as a result. For many, the prospect of losing the necessary medical treatment that has allowed them to thrive and live as their true selves is agonizing.

Because the Ban is unconstitutional, void, and unenforceable in its entirety, Plaintiffs seek temporary and permanent injunctions to prevent the Ban from taking effect and causing them immediate and irreparable harm.

II. DISCOVERY CONTROL PLAN & RULE 47 STATEMENT

1. Plaintiffs intend for discovery to be conducted under Level 3 of Texas Rule of Civil Procedure 190.

2. In accordance with Texas Rule of Civil Procedure 47(c), Plaintiffs state that they seek only non-monetary relief, excluding costs and attorney's fees. Accordingly, this lawsuit is not governed by the expedited actions process set forth in Texas Rule of Civil Procedure 169.

III. PARTIES

A. PLAINTIFFS

3. Plaintiffs **Lazaro Loe** and his daughter, **Luna Loe**; **Mary and Matthew Moe**, and their daughter, **Maeve Moe**; **Nora Noe** and her son, **Nathan Noe**; **Sarah and Steven Soe**, and their daughter, **Samantha Soe**; and **Gina Goe** and her son **Grayson Goe** (collectively, "Family Plaintiffs") are all residents of Texas.[1] The minors ("Minor Plaintiffs")—Luna, Maeve, Nathan,

[1] Minor Plaintiffs and their respective parents proceed using pseudonyms, rather than their legal names, to protect the privacy rights of the Minor Plaintiffs regarding their transgender status, medical diagnoses, and treatment, and for their safety. The Texas Rules of Civil Procedure recognize the need to protect a minor's identity. *See* Tex. R. Civ. P.

Samantha, and Grayson—are transgender; have been diagnosed with gender dysphoria, a serious medical condition; and have been prescribed and receive or anticipate receiving medical treatment for gender dysphoria, determined by their medical providers to be medically necessary. Plaintiffs Lazaro Loe, Mary and Matthew Moe, Nora Noe, Sarah and Steven Soe, and Gina Goe (collectively, "Parent Plaintiffs") are the parents of the Minor Plaintiffs who have each worked with their child's medical providers to ensure that their child is receiving the medically necessary course of treatment for their individual experience of gender dysphoria. The Parent Plaintiffs assert claims in this lawsuit on their own behalf and on behalf of their respective minor children.

4. Plaintiff **PFLAG** is the first and largest organization for lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") people, their parents and families, and allies. PFLAG has a network of over 350 local chapters throughout the United States, 18 of which are in Texas. Individuals who identify as LGBTQ+ and their parents, families, and allies become PFLAG members by joining the national organization directly or through one of its local chapters. Of approximately 325,000 members and supporters nationwide, PFLAG has a roster of nearly 1,500 members in Texas, including many families of transgender youth who currently receive or will soon need to access the medical treatment for gender dysphoria prohibited by the Ban. PFLAG's

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21c(a)(3). Such goals would not be possible if the identities of Parent Plaintiffs were public. Indeed, not only do Texas rules "require use of an alias to refer to a minor" but courts "may also use an alias 'to [refer to] the minor's parent or other family member' to protect the minor's identity." *Int. of A.M.L.M.*, No. 13-18-00527-CV, 2019 WL 1187154, at *1 (Tex. App.—Corpus Christi Mar. 14, 2019, no pet. h.). Moreover, the disclosure of the Minor Plaintiffs' identities "would reveal matters of a highly sensitive and personal nature, specifically [Minor Plaintiffs'] transgender status and [their] diagnosed medical condition—gender dysphoria." *Foster v. Andersen*, No. 18-2552-DDC-KGG, 2019 WL 329548, at *2 (D. Kan. Jan. 25, 2019). "[O]ther courts have recognized the highly personal and sensitive nature of a person's transgender status and thus have permitted transgender litigants to proceed under pseudonym." *Id.* (collecting cases). Furthermore, as courts have recognized, the disclosure of a person's transgender status "exposes them to prejudice, discrimination, distress, harassment, and violence." *Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 332 (D.P.R. 2018); *see also Foster*, 2019 WL 329548, at *2. Such is the case here.

mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them. Encouraging and supporting parents and families of transgender and gender expansive people in affirming their children and helping them access the supports and care they need is central to PFLAG's mission. PFLAG asserts its claims in this lawsuit on behalf of its members.[2] The Family Plaintiffs are members of PFLAG.

5. Plaintiffs **Richard Ogden Roberts III, M.D.** ("Dr. Roberts"), **David L. Paul, M.D.** ("Dr. Paul"), and **Patrick W. O'Malley, M.D.** ("Dr. O'Malley") (collectively, "Physician Plaintiffs") are physicians licensed to practice medicine in the State of Texas. The Physician Plaintiffs have existing and ongoing physician-patient relationships with transgender youth in Texas diagnosed with gender dysphoria who would be impacted by the Ban. But for the Ban, the Physician Plaintiffs would continue to treat these patients, and perform or prescribe SB14's prohibited procedures and treatments according to generally accepted standard of care for the treatment of gender dysphoria. The Physician Plaintiffs are residents of Texas and assert claims in this lawsuit on their own behalf and on behalf of their respective patients.

6. Plaintiff **GLMA** is a 501(c)(3) national membership nonprofit organization based in Washington, D.C., and incorporated in California. GLMA's mission is to ensure health equity for LGBTQ+ people and equality for LGBTQ+ health professionals in their work and learning environments. GLMA's membership includes approximately 1,000-member physicians, nurses, advanced practice nurses, physician assistants, researchers and academics, behavioral health

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[2] Texas courts recognize that membership organizations may have standing to sue on behalf of their members and determine such standing with a three-prong test. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440 (Tex. 1993); *see also Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333 (1977). The three-prong test set forth in *Texas Association of Businesses* allows an organization to sue on behalf of its members when: (1) the members would otherwise have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requests requires the participation of individual members in the lawsuit. 852 S.W.2d at 447. Each of these prongs is met here.

specialists, health profession students, and other health professionals. GLMA asserts its claims in this lawsuit on behalf of its members. The Physician Plaintiffs are members of GLMA.

B. DEFENDANTS

7. Defendant **The State of Texas** is responsible for the enforcement of Texas laws, including its categorical ban on the provision of necessary and often lifesaving medical treatment to transgender adolescents. The State of Texas may be served with process through the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701.

8. Defendant **Office of the Attorney General of the State of Texas** ("OAG") is an agency of the State of Texas. SB14 empowers the Attorney General to file an action to enforce the subchapter it adds to the Health and Safety Code to restrain or enjoin any person he has reason to believe is committing, has committed, or is about to violate the Ban. SB14 § 2 (proposed Tex. Health & Safety Code §§ 161.702, 161.706). The Attorney General is additionally empowered to institute actions against physicians licensed in Texas who violate or threaten to violate any provision of the Texas Medical Practice Act, including provisions amended by SB14 to deem the provision of medical treatment for gender dysphoria a prohibited practice. Tex. Occ. Code §§ 165.101, 165.152. Defendant OAG may be served with process by serving the Provisional Attorney General, John Scott, at the Office of the Attorney General, 300 West 15th Street, Austin, Texas 78701.

9. Defendant **John Scott** is the Provisional Attorney General ("AG") of the State of Texas and head of the OAG. As noted above, SB14 gives the AG direct enforcement authority of SB14, in addition to preexisting authority to enforce any provision of the Texas Medical Practice

Act. Defendant John Scott is sued in his official capacity and may be served with process at the Office of the Attorney General, 300 West 15th Street, Austin, Texas 78701.[3]

10. Defendant **Texas Medical Board** ("TMB") is the state agency mandated to regulate the practice of medicine in Texas. Among other powers and duties, TMB initiates and enforces disciplinary action against licensed physicians who violate any provision of the Texas Medical Practice Act. *See, e.g.*, Tex. Occ. Code §§ 164.001, 165.001, 165.051. SB14 mandates that TMB "shall revoke the license or other authorization to practice medicine of a physician" who violates the Ban. SB14 § 5 (proposed Tex. Occ. Code § 164.0552); *id.* § 2 (proposed Tex. Health & Safety Code § 161.702). TMB is further authorized to impose a range of disciplinary measures and penalties on a physician who (i) commits a "prohibited practice" as defined in Section 164.052 of the Texas Occupations Code, which SB14 amends to include treating an adolescent's gender dysphoria with any of the prohibited procedures, Tex. Occ. Code § 164.051; SB14 § 2 (proposed Tex. Occ. Code § 164.052(a)(24)); and (ii) violates any state law "connected with the physician's practice of medicine" because such violation constitutes per se "unprofessional or dishonorable conduct." Tex. Occ. Code §§ 164.053(a)(1), 164.052(a)(5); *see also generally* Tex. Occ. Code §§ 165.001 *et seq.*, 165.051, 165.052. TMB may be served with process by serving its Executive Director, Stephen Brint Carlton, at 1801 Congress Avenue, Suite 9.200, Austin, Texas 78701.

11. Defendant **Texas Health and Human Services Commission** ("HHSC") is a state agency. The HHSC Executive Commissioner has "general supervision and control over all matters related to the health of citizens" in Texas and specifically retains all policymaking authority over

[3] Effective 10 a.m. on July 14, 2023, Angela Colmenero will succeed John Scott as Provisional Attorney General of Texas. *See* Press Release, Off. of the Texas Governor, Governor Abbott Appoints Angela Colmenero As Interim Attorney General Of Texas, (July 10, 2023), https://gov.texas.gov/news/post/governor-abbott-appoints-angela-colmenero-as-interim-attorney-general-of-texas/.

the child health plan. Tex. Health & Safety Code §§ 12.001, 62.055(e). HHSC also retains ultimate authority over the Texas medical assistance program. Tex. Hum. Res. Code § 32.021. HHSC will therefore be responsible for enforcing provisions of SB14 that prohibit the use of public money to medically treat transgender adolescents with gender dysphoria. HHSC may be served with process by serving its Commissioner, Cecile Erwin Young, at 4900 N. Lamar Blvd., Austin Texas 78751.

IV. JURISDICTION AND VENUE

12. This Court has jurisdiction over this matter, pursuant to the Texas Uniform Declaratory Judgments Act, Texas Civil Practice and Remedies Code § 37.001, *et seq*. ("UDJA"), Sections 24.007 and 24.008 of the Texas Government Code, and the Texas Constitution, Article V, § 8.

13. This action is brought pursuant to Texas Rules of Civil Procedure 680 to 693, Texas Civil Practice and Remedies Code Chapter 65, and the common law of Texas to obtain declaratory and injunctive relief against Defendants.

14. This Court has jurisdiction over the parties because all Defendants reside or have their principal place of business in Texas.

15. Venue is proper in Travis County because Defendants State of Texas, OAG, TMB, and HHSC have their principal office in Travis County, Tex. Civ. Prac. & Rem. Code § 15.002(a)(3), and because all or a substantial part of the events giving rise to the claims occurred in Travis County, *id*. § 15.002(a)(1).

IV. FACTUAL BACKGROUND

A. Medical Guidelines for Treating Adolescents with Gender Dysphoria

16. Health professionals,[4] including physicians and other health care providers, in Texas use evidence-based, well-researched, and widely accepted clinical practice and medical guidelines to assess, diagnose, and treat adolescents with gender dysphoria. Decades of clinical experience and a large body of research have demonstrated that these treatments are safe and effective at treating gender dysphoria in adolescents, and consequently inform how this treatment is provided.[5]

17. Gender identity refers to a person's internal sense of belonging to a particular gender.

18. Although the precise origin of gender identity is unknown, a person's gender identity is a fundamental aspect of human development. There is a general medical consensus that there is a significant biological component to gender identity.

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[4] SB14 defines the terms "physicians" and "health care providers" distinctly. Throughout this petition, Plaintiffs utilize the terms "health professionals" and "medical providers," which are both meant to be inclusive of "physicians" and "health care providers" as defined within SB 14, as well as other health professionals.

[5] Plaintiffs incorporate the Affidavit of Dr. Daniel Shumer, M.D., the Affidavit of Dr. Aron Janssen, M.D., and the Affidavit of Dr. Johanna Olson-Kennedy, M.D., M.S., attached hereto as Ex. 15-17, by reference as though fully set forth herein.

Dr. Shumer is a pediatric endocrinologist with over 8 years of experience treating transgender adolescents with gender dysphoria, the Clinical Director of the Child and Adolescent Gender Clinic at Mott Children's Hospital at Michigan Medicine, and the Medical Director of the Comprehensive Gender Services Program at Michigan Medicine.

Dr. Janssen is a child and adolescent psychiatrist with over 12 years of experience treating children and adolescents with gender dysphoria and the Vice Chair of the Pritzker Department of Psychiatry and Behavioral Health at the Ann and Robert H. Lurie Children's Hospital of Chicago.

Dr. Olson-Kennedy is a pediatrician and adolescent medicine physician with over 17 years providing health care to transgender youth and gender diverse children as well as conducting clinical research regarding the treatment of gender dysphoria, and the Medical Director of the Center for Transyouth Health and Development at Children's Hospital Los Angeles.

19. Everyone has a gender identity, and a person's gender identity is durable and cannot be altered voluntarily or changed through medical intervention.

20. A person's gender identity usually matches the sex they were designated at birth based on their external genitalia.[6]

21. Most boys are designated male at birth based on their external genital anatomy, and most girls are designated female at birth based on their external genital anatomy. But transgender people have a gender identity that differs from the sex assigned to them at birth.

22. 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. Transgender people cannot simply turn off their gender identity like a switch, just as non-transgender (also known as "cisgender") people cannot turn off their gender identity like a switch. Gender identity is an inherent and core aspect of a person's identity.

23. Some transgender people become aware of having a gender identity that does not match their assigned sex early in childhood. For others, the onset of puberty and the resulting physical changes in their bodies lead them to recognize that their gender identity is not aligned with their sex assigned at birth.

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[6] Plaintiffs use the terms "sex designated at birth" or "sex assigned at birth" because they are more precise than the term "biological sex," used in SB14. There are many biological sex characteristics, and they do not always align with each other. This includes the characteristics that SB14 declares determine "biological sex,"—i.e., "sex organs, chromosomes, and endogenous profiles." For example, some people with intersex characteristics may have a chromosomal configuration typically associated with a male sex designation but genital characteristics typically associated with a female sex designation. For these reasons, the Endocrine Society, an international medical organization of over 18,000 endocrinology researchers and clinicians, warns practitioners that "the terms biological sex and biological male or female are imprecise and should be avoided." Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. CLINICAL ENDOCRINOLOGY AND METABOLISM 3869, 3875 tbl.1 (2017) ("Endocrine Society Clinical Guidelines"), https://academic.oup.com/jcem/article/102/11/3869/4157558.

24. Being transgender is not a medical condition to be treated or cured. But gender dysphoria—the clinically significant distress that some transgender people experience as a result of the incongruence between their gender identity and sex assigned at birth—is a serious medical condition that can cause clinically significant distress and discomfort.[7]

25. According to the American Psychiatric Association's *Diagnostic & Statistical Manual of Mental Disorders, Fifth Edition, Text Revision* ("DSM-5-TR"), "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. 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.[8]

26. If left untreated, gender dysphoria can result in negative mental health outcomes, including severe anxiety and depression, post-traumatic stress disorder, eating disorders, substance abuse, self-harm, and suicidality.

27. Many transgender adolescents with untreated gender dysphoria therefore suffer significant distress and experience depression and anxiety as a result of not being able to obtain medical treatment. Self-harm and suicidal ideation are exceedingly and unfortunately common. Indeed, suicidality among transgender adolescents is a crisis. In one survey, more than half of

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[7] *See* Eric Yarbrough et al., *Gender Dysphoria Diagnosis*, in *A Guide for Working With Transgender and Gender Nonconforming Patients,* Am. Psychiatric Ass'n (Nov. 2017), https://www.psychiatry.org/psychiatrists/diversity/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis.

[8] Am. Psychiatric Ass'n, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, TEXT REVISION ¶64.0 (5th ed. 2022).

transgender youths had seriously contemplated suicide.[9] Studies have found that as many as 40% of transgender people have attempted suicide at some point in their lives.[10]

28. However, when adolescents have access medical treatment for their gender dysphoria, such as puberty-delaying medications and hormone therapy, which prevent them from going through endogenous puberty and allows them to go through puberty more consistent with their gender identity, their dysphoria decreases and their mental health improves.

29. The goal of treatment for gender dysphoria is not to change someone's gender identity, but rather to resolve the distress associated with the incongruence between a transgender person's assigned sex at birth and their gender identity.

30. The World Professional Association for Transgender Health ("WPATH") and the Endocrine Society have published evidence-based and widely accepted clinical practice guidelines for the assessment, diagnosis, and treatment of gender dysphoria.[11] The medical treatment for gender dysphoria seeks to eliminate or alleviate the clinically significant distress by helping a transgender person live in alignment with their gender identity. This treatment is sometimes referred to as "gender transition," "transition-related care," or "gender-affirming care." These clinical practice guidelines are widely accepted as best practices for the treatment of adolescents and adults diagnosed with gender dysphoria and have been recognized as authoritative by leading

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[9] Trevor Project, National Survey on LGBTQ Youth Mental Health 2022 at 6 (2022), https://www.thetrevorproject.org/survey-2022/assets/static/trevor01_2022survey_final.pdf (59 percent of transgender boys, 48 percent of transgender girls, and 53 percent of nonbinary youth considered suicide in the past year).

[10] Sandy E. James Et Al., Nat'l Ctr. for Transgender Equal., Report of the 2015 U.S. Transgender Survey at 5 (2016), https://transequality.org/sites/default/files/docs/usts/USTS-FullReport-Dec17.pdf.

[11] *See* Eli Coleman et al., World Pro. Ass'n for Transgender Health, *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 INT'L J. TRANSGENDER HEALTH (Sept. 15, 2022), at 51 ("WPATH Standards of Care"), https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644; Endocrine Society Clinical Guidelines at 3869.

medical organizations, including the American Academy of Pediatrics, American Medical Association, Academy of Child & Adolescent Psychiatrists, American Psychiatric Association, Pediatric Endocrine Society, and Endocrine Society, among others, which agree that medical treatment of gender dysphoria is safe, effective, and medically necessary for many adolescents suffering from gender dysphoria.

31. Both clinical experience and multiple medical and scientific studies confirm that for many adolescents, this treatment not only is safe and effective, but it also is positively transformative. Indeed, transgender adolescents able to access this medically necessary and evidence-based medical treatment often go from painful suffering to thriving.

32. The precise treatment for gender dysphoria depends upon each person's individualized needs, and the guidelines for medical treatment differ depending on whether the treatment is for an adolescent or an adult.

33. Before the onset of puberty, consistent with the WPATH Standards of Care and the Endocrine Society Clinical Guidelines, no interventions beyond mental health counseling are recommended or provided to any person. In other words, gender transition does not include any medical intervention, such as pharmaceutical or surgical intervention, before puberty. Care is limited to supportive mental health counseling. Any transition before puberty is limited to "social transition," which means allowing a transgender child to live and be socially recognized in accordance with their gender identity. Typically, social transition can include allowing children to wear clothing aligned with their gender identity, cut or grow their hair, use chosen names and pronouns, and use restrooms and other sex-separated facilities aligned with their gender identity instead of the sex assigned to them at birth.

34. Under the WPATH Standards of Care and the Endocrine Society Clinical Guidelines, medical interventions may become medically necessary and appropriate as a transgender person reaches puberty. In providing medical treatment to adolescents with gender dysphoria, qualified medical providers work in close consultation with mental health professionals experienced in diagnosing and treating gender dysphoria.

35. For many transgender adolescents, the onset of puberty leading to physical changes in their bodies that are incongruent with their gender identities can cause severe distress. Puberty-delaying medication allows transgender adolescents to avoid this, therefore minimizing and potentially preventing the heightened gender dysphoria caused by the development of secondary sex characteristics incongruent with their gender identity.

36. Under the Endocrine Society Clinical Guidelines, transgender adolescents who have reached the onset of puberty may be eligible for puberty-delaying treatment 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;
    - 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;

- And the adolescent:
    - Has been informed of the effects and side effects of treatment (including potential loss of fertility if the individual subsequently continues with sex hormone treatment) and options to preserve fertility;
    - 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 gonadotropin-releasing hormone ("GnRH") agonist treatment;
    - Has confirmed that puberty has started in the adolescent; and
    - Has confirmed that there are no medical contraindications to GnRH agonist treatment.[12]

37. Similarly, the WPATH Standards of Care, Version 8 ("SOC") recommend that health professionals, including physicians and other health care providers, assessing transgender adolescents only recommend the provision of puberty-delaying medications as treatment when: (a) the adolescent meets the necessary diagnostic criteria; (b) the experience of gender incongruence is marked and sustained over time; (c) the adolescent demonstrates the emotional and cognitive maturity required to provide informed consent/assent for the treatment; (d) the adolescent's mental health concerns (if any) that may interfere with diagnostic clarity, capacity to

[12] Endocrine Society Clinical Guidelines at 3878 tbl.5.

consent, and treatment have been addressed; (e) the adolescent has been informed of the reproductive effects, including effects on fertility, and these have been discussed in the context of the adolescent's stage of pubertal development; and (f) the adolescent has reached Tanner stage 2 of puberty for pubertal suppression to be initiated.[13] The WPATH SOC further recommend that health professionals, including physicians and other health care providers, working with transgender adolescents undertake a comprehensive biopsychosocial assessment of the adolescent prior to initiating any medical treatment, and that this be accomplished in a collaborative and supportive manner.[14]

38. Puberty-delaying treatment is reversible. If an adolescent discontinues the medication, endogenous puberty resumes. Puberty-delaying treatment does not cause infertility.

39. For some older transgender adolescents, it may be medically necessary and appropriate to treat them with gender-affirming hormone therapy (e.g., testosterone for transgender boys and estrogen and testosterone suppression for transgender girls).

40. Under the Endocrine Society 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 environment and functioning are stable enough to start sex hormone treatment;

[13] WPATH Standards of Care, at S48.

[14] WPATH Standards of Care, at S50-S51.

- 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 partly irreversible effects and side effects of treatment (including potential loss of fertility and options to preserve fertility);
  - 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.[15]

41. As with puberty-delaying medications, the WPATH Standards of Care recommend that health professionals, including physicians and other health care providers, assessing transgender adolescents only recommend the provision of gender-affirming hormones as treatment when: (a) the adolescent meets the necessary diagnostic criteria; (b) the experience of gender incongruence is marked and sustained over time; (c) the adolescent demonstrates the emotional and cognitive maturity required to provide informed consent/assent for the treatment; (d) the adolescent's mental health concerns (if any) that may interfere with diagnostic clarity, capacity to

[15] Endocrine Society Clinical Guidelines at 3878 tbl.5.

consent, and treatment have been addressed; and (e) the adolescent has been informed of the reproductive effects, including the potential loss of fertility and the available options to preserve fertility, and these have been discussed in the context of the adolescent's stage of pubertal development.[16] Again, a comprehensive biopsychosocial assessment of the adolescent prior to initiating any medical treatment is recommended.[17]

42. Gender-affirming hormone therapy does not necessarily result in a loss of fertility, and many individuals treated with hormone therapy can and do still biologically conceive children.

43. As with all medications that could affect fertility, transgender adolescents and their parents or guardians are counseled on the potential risks of the medical intervention, and treatment is only initiated where parents and adolescents are properly informed and consent/assent to the care.

44. Adolescents who first receive treatment later in puberty and are treated only with gender-affirming hormone therapy (and not puberty-delaying treatment) also go through a hormonal puberty consistent with their gender identity. However, they will have undergone physical changes associated with their endogenous puberty that may not be wholly reversed by hormone therapy or even surgery later in life.

45. Under the WPATH Standards of Care, transgender adolescents also may receive medically necessary chest reconstructive surgeries before the age of majority provided that the adolescent has lived in their affirmed gender for a significant period of time.[18]

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[16] WPATH Standards of Care, at S48.

[17] WPATH Standards of Care, at S50-S51.

[18] WPATH Standards of Care, at S66.

46. Medical treatment recommended for and provided to transgender adolescents with gender dysphoria can substantially reduce lifelong gender dysphoria and eliminate the medical need for surgery or other medical interventions later in life.

47. Providing medical treatment for gender dysphoria can be lifesaving treatment and positively change the short- and long-term health outcomes for transgender adolescents.

48. The medical treatments used to treat gender dysphoria are also used to treat other conditions, including conditions for adolescents. The Ban does not prohibit these treatments when used to treat any condition other than gender dysphoria, even though the treatments have comparable risks and side effects to those that can be present when treating gender dysphoria. *See, e.g.*, SB14 § 2 (proposed Tex. Health & Safety Code § 161.703(a)). The use of these treatments for gender dysphoria is not any riskier than for other conditions and diagnoses for which the same treatments are regularly used.

B. The Texas Legislature's Passage of the Ban

49. On May 19, 2023, the Texas State Legislature passed SB14. Governor Abbott signed the Ban into law on June 2, 2023, and it is scheduled to take effect on September 1, 2023.

50. The Ban prohibits physicians and other healthcare providers from providing, prescribing, administering, or dispensing medical procedures and treatments "[f]or the purpose of transitioning a child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex." SB14 § 2 (proposed Tex. Health & Safety Code §§ 161.702, 161.706).

51. Specifically, the Ban prohibits "a physician or health care provider" from "knowingly" providing a range of medical treatments used to treat gender dysphoria, including "puberty suppression or blocking prescription drugs to stop or delay normal puberty,"

"supraphysiological doses of testosterone to females," "supraphysiologic doses of estrogen to males," and various surgeries, including "mastectom[ies]" (the "Prohibited Care"). SB14 § 2 (proposed Tex. Health & Safety Code § 161.702).

52. Notably, the Ban prohibits provision of these medical treatments only "[f]or the purpose of transitioning a child's biological sex" or for "affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex." SB14 § 2 (proposed Tex. Health & Safety Code § 161.702). Under the Ban, the provision of these same medical treatments is permitted for any other medical diagnosis, including but not limited to precocious puberty or "a medically verifiable genetic disorder of sex development," which are specifically identified as exceptions under the Ban. SB14 § 2 (proposed Tex. Health & Safety Code § 161.703).

53. The Ban further bars coverage for and reimbursement of Prohibited Care under a patient's Medicaid or Children's Health Insurance Program ("CHIP") plan and strips state funding of any kind from any medical provider, medical institution, "entity, organization, or individual that provides or facilitates" such care to transgender youth. SB14 § 2 (proposed Tex. Health & Safety Code §§ 161.704, 161.705); *id.* § 3 (proposed Tex. Human Resources Code § 32.024). It also grants the Attorney General carte blanche enforcement authority to bring an action for injunctive relief against "a[ny] person" if the Attorney General has "reason to believe that [the] person is committing, has committed, or is about to commit" a violation of the Ban. SB14 § 2 (proposed Tex. Health & Safety Code § 161.706).

54. Finally, the Ban subjects medical providers who provide or offer to provide Prohibited Care to a range of penalties, including requiring that the Texas Medical Board "shall revoke the license or other authorization to practice medicine" of any physician who violates the

Ban. SB14 § 4 (proposed Tex. Occ. Code § 164.052(a)); *id.* § 5 (proposed Tex. Occ. Code § 164.0552).

55. The legislative history of the Ban demonstrates it has no legitimate justification and was instead motivated and justified by Texas lawmakers' anti-transgender animus and disregard for public input and well-established, evidence-based medical science.

56. At various points during legislative debates, legislators who supported the Ban defended the bill based on general criticisms, stereotypes, and misunderstandings of transgender people. The language that lawmakers used conveyed clear animus towards transgender youth because it intentionally erased and denied their very existence. For example, SB14's lead author, Senator Donna Campbell called gender dysphoria a "social contagion" purposefully perpetuated by mental health professionals during the Senate committee hearing on this bill.[19] In a separate interview, Senator Campbell referred to gender dysphoria as a "mental delusion."[20]

57. The lead House author of SB14, Representative Tom Oliverson, referred to medical care for the treatment of gender dysphoria as "harmful experimentation" and equated the provision of this medical care to the opioid epidemic and to the use of "lobotom[ies] for the treatment of schizophrenia or severe depression."[21] Representative Oliverson admitted during the House floor debate that forcing transgender youth to "wean off" medically necessary care poses a "concern"

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[19] Debate on Tex. S.B. 14 in the Senate Committee on State Affairs, 88th Leg. (Mar. 16, 2023), https://tlcsenate.granicus.com/MediaPlayer.php?view_id=53&clip_id=17404 (at 05:20).

[20] Texas Values (@txvalues), Twitter (May 12, 2023, 2:45 PM), https://twitter.com/txvalues/status/1657109671361105936?s=20.

[21] Debate on Tex. S.B. 14 on the Floor of the House, 88th Leg. (May 12, 2023), https://tlchouse.granicus.com/MediaPlayer.php?view_id=80&clip_id=24872 (at 5:28:35– 5:33:56).

because "there is no . . . scientific guidance as to the process for removing those medications."[22] Despite this acknowledgement, Representative Oliverson and a majority of his colleagues still voted to ban this medically necessary care for all transgender youth who need it.

58. Representative Oliverson called this Ban the "least invasive thing that we can do" and "the least harmful thing that we can do for these patients,"[23] but SB14 is far from narrowly tailored, or even rationally related, to any compelling or legitimate government interest.

59. During the second reading of SB14, the Texas House rejected 19 amendments, including several that would have substantially narrowed the Ban's current scope of prohibiting all medically necessary treatment for transgender youth diagnosed with gender dysphoria.[24] The Texas Senate initially voted to pass a "grandfathering clause" that would have made the Ban "not apply to the provision by a physician or health care provider of a nonsurgical gender transitioning or gender reassignment procedure or treatment to a child if the procedure or treatment is continuing a procedure or course of treatment that began 90 days before the effective date of this Act."[25] The law's enactment date was also pushed back from September 1 to December 1, 2023, and the Texas Senate unanimously voted to approve both of these amendments.[26] A week later, bill author Senator Campbell and her colleagues suspended the Senate rules to reconsider this vote, withdraw

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[22] *Id.* at 6:17:30–6:19:23.

[23] *Id.* at 6:19:00-6:19:20.

[24] H.J. of Tex., 88th Leg. (May 12, 2023), https://journals.house.texas.gov/hjrnl/88r/pdf/88RDAY62FINAL.PDF#page=124.

[25] Floor Amendment No. 1, S.J. of Tex., 88th Leg. (March 29, 2023), https://journals.senate.texas.gov/sjrnl/88r/pdf/88RSJ03-29-F.PDF#page=17.

[26] *Id.*

these amendments, and pass a Ban that was far more stringent and completely barred all medically necessary care for transgender youth who have been diagnosed with gender dysphoria.[27]

60. These amendments show that the Texas Legislature considered (and even provisionally approved) changes to the Ban that would be more narrowly tailored than the ultimate version but ended up rejecting them. The text of SB14, as well as the Ban's legislative history, evinces clear animus towards young transgender Texans and a deliberate disregard of their health, wellbeing, and needs based on evidence-based medical science.

61. In passing this Ban, the Texas Legislature ignored the testimony of hundreds of transgender Texans who have received or someday might need medical care for the treatment for gender dysphoria, and the positive and transformational impact that care has had on their health and overall wellbeing.

62. The Texas Legislature also ignored the testimony of parents of transgender children with gender dysphoria, who pleaded with lawmakers not to risk their children's health by stripping them of the medical treatment that enables them to survive and thrive.

63. The Texas Legislature also ignored testimony from Texas doctors and medical professionals about the damage that the Ban would cause to the health and wellbeing of transgender youth. For example, the Texas Pediatric Society, which represents more than 4,800 pediatricians, pediatric subspecialists, and medical students, testified unequivocally against the bill, stating: "As physicians, we must be able to practice medicine that is informed by our years of medical education, training, experience, and available evidence, which does evolve with time. All medical treatments involve weighing the risks and benefits of both treating a condition and not

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[27] Vote Reconsidered on Senate Bill 14, S.J. of Tex., 88th Leg. (April 3, 2023), https://journals.senate.texas.gov/sjrnl/88r/pdf/88RSJ04-03-F.PDF#page=12.

treating it. Gender affirming care in the treatment of gender dysphoria is no different, and considering the various factors that come into play for individual patients and families is something that is best left to the patients and their families with guidance and consultation from their health care providers—without threat of punishment. A blanket ban on these medical treatments is a very blunt instrument for the state to use and prohibits treatment options that are critical for the health and wellbeing of transgender youth with gender dysphoria."[28]

64. The Texas Legislature also ignored testimony from mental health providers about the catastrophic damage that the Ban would cause to the mental health and wellbeing of transgender youth, including causing an increase in anxiety, depression, suicidal ideation, and suicide attempts. For example, the Texas Psychological Association testified at the Senate committee hearing, "The kind of medical care that SB14 seeks to prohibit for children is literally lifesaving. . . . We have considerable data about the important mental health benefits of medical interventions, including puberty blockers and hormone treatments, for transgender youth. Research has demonstrated that gender-affirming medical care decreases suicidality, depression, and anxiety, as well as increases self-confidence and improves body image."[29]

65. While ignoring this scientific research and testimony of transgender Texans, their families, medical experts, and mental health providers, the Texas Legislature stopped hundreds of Texans from testifying against this bill and its companion legislation. The House Public Health Committee cut off public testimony on a House companion bill to SB14, which prevented over

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[28] Louis Appel on behalf of the Texas Pediatric Society, Testimony before the Texas Senate State Affairs, SB 14 (March 16, 2023), https://txpeds.org/sites/txpeds.org/files/documents/newsletters/sb-14-sen-sa-appel-3-16-23-final.pdf.

[29] Debate on Tex. S.B. 14 in the Senate Committee on State Affairs, 88th Leg. (Mar. 16, 2023), https://tlcsenate.granicus.com/MediaPlayer.php?view_id=53&clip_id=17404 (at 1:36:10-1:38:05).

400 people from testifying. At that hearing, over 2,800 people registered against the bill, while less than 100 people registered in support of it.[30]

C. The State of Texas's Anti-Transgender Agenda

66. The Ban is just one piece of the Texas Legislature's discriminatory agenda for targeting transgender Texans. This year, Texas led the nation in introducing the highest number of anti-LGBTQ+ pieces of legislation, with over 140 bills filed specifically targeting the LGBTQ+ community.[31]

67. The Texas executive branch has also made numerous attempts to target transgender Texans, their medical treatment, and their families. For example, in December 2021, now-suspended Attorney General Ken Paxton initiated an investigation of two pharmaceutical companies that sell puberty-delaying medications, calling the "use of puberty blockers on young teens and minors" to treat gender dysphoria "dangerous and reckless."[32]

68. Just months later, on February 22, 2022, Paxton released a non-binding opinion claiming that necessary, evidence-based gender-affirming medical treatment for transgender youth is per se "child abuse" under Texas law. The next day, Governor Abbott directed the Texas Department of Family Protective Services ("DFPS") to investigate families of transgender youth who receive gender-affirming medical care for the treatment of gender dysphoria. Later that day, DFPS Commissioner Jamie Masters announced that the department would investigate families

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[30] William Melhado and Alex Nguyen, *Transgender Texans and Doctors Say Republican Lawmakers Misconstrue What Science Says About Puberty Blockers and Hormone Therapy*, Tex. Tribune (Mar. 28, 2023), https://www.texastribune.org/2023/03/24/texas-legislature-transgender-health-care/.

[31] *Legislative Bill Tracker,* Equality Texas (2023), https://www.equalitytexas.org/legislature/legislative-bill-tracker-2023/.

[32] *AG Paxton to Investigate Promotion of Puberty Blockers in Children*, Ken Paxton Atty. Gen. of Tex. (Dec. 13, 2021), https://www.texasattorneygeneral.gov/news/releases/ag-paxton-investigate-promotion-puberty-blockers-children.

alleged to be providing this treatment, and the department quickly initiated investigations into multiple families. Families of transgender adolescents subjected to these unlawful investigations filed two lawsuits challenging the Governor's directive and DFPS's operationalization thereof, securing temporary injunctive relief barring further investigations while the litigation proceeds. *See Doe v. Abbott*, Cause No. D-1-GN-22-000977 (in the 353rd District Court of Travis County, Texas); *PFLAG, Inc. v. Abbott,* Cause No. D-1-GN-22-002569 (in the 459th District Court of Travis County, Texas). The families obtained temporary injunctive relief from Judge Amy Clark Meachum, the defendants appealed, and the two lawsuits are currently pending in the Third Court of Appeals. *See In re Abbott*, 645 S.W.3d 276, 284 (Tex. 2022); *Masters v. Voe*, No. 03-22-00420-CV, 2022 WL 4359561 (Tex. App.—Austin, Sept. 20, 2022, no pet.).

69. This May, as the Legislature was debating SB14, the OAG also announced investigations into two hospitals that have provided medical treatment to transgender youth: Dell Children's Medical Center[33] and Texas Children's Hospital.[34] As part of these investigations, the Attorney General demanded that the hospitals turn over sensitive medical documents relating to medical care for the treatment of gender dysphoria and referred to healthcare professionals who provide this care as "unhinged activists."[35] Notably, the OAG's Request to Examine notices and document requests (particularly in the definition of "Gender Transitioning and Reassignment

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[33] Office of the Attorney General, *Request to Examine*, (May 5, 2023) (Dell Children's Medical Center), https://www.texasattorneygeneral.gov/sites/default/files/images/press/RTE.pdf.

[34] Office of the Attorney General, *Request to Examine*, (May 19, 2023) (Texas Children's Hospital), https://www.texasattorneygeneral.gov/sites/default/files/images/press/RTE_0.pdf

[35] *Paxton Announces Second Investiga-tion into Texas Hospital for Potentially Unlawfully Performing "Gender Transitioning" Procedures*, Ken Paxton Atty. Gen. of Tex. (May 19, 2023), https://www.texasattorneygeneral.gov/news/releases/paxton-announces-second-investigation-texas-hospital-potentially-unlawfully-performing-gender.

Procedures and Treatments") mirror the statutory language of SB14, even though at the time, the bill was still being debated at the Texas Legislature. The OAG further sought records with the terms "gender affirmation process," "social affirmation," "gender-affirming surgeries," and "gender dysphoria."[36]

70. These ongoing legislative and executive actions by Texas officials underscore the true motivations underlying the Ban: SB14 has nothing to do with protecting children and everything to do with expressing disapproval of, and stigmatizing, transgender people. These actions also make clear that the Texas officials stand ready to use the full scope of their authority to enforce SB14.

VI. THE IMPACT OF THE BAN ON PLAINTIFFS

A. The Impact of the Ban on Plaintiff Families

71. SB14 threatens the health and wellbeing of Luna Loe, Maeve Moe, Nathan Noe, Samantha Soe, and Grayson Goe, who have been thriving with their families' loving support and, for the four minors who have reached adolescence, medical care to treat their gender dysphoria.

1. The Loe Family

72. Plaintiff Lazaro Loe is the father of Luna Loe, a twelve-year-old transgender girl. Declaration of Lazaro Loe, attached hereto as Ex. 1, ¶¶ 1–33.[37] Lazaro and Luna are Hispanic/Latino. *Id.* ¶ 4. They were both born in Texas, and Luna has lived in Texas her entire life. *Id.* ¶¶ 7–8. They live in Bexar County. *Id.* ¶ 2.

[36] *Id.*

[37] Plaintiffs incorporate the Declaration of Lazaro Loe by reference as though fully set forth herein.

73. Luna has always known she was a girl and expressed her female gender identity from a very early age. *Id.* ¶¶ 10–11. By the time she was five or six, her friends naturally started using female pronouns for her and she went by female nicknames. *Id.* ¶ 11. Many of her friends have consistently known her as a girl since kindergarten. *Id.* ¶ 14. By Luna's fourth-grade year, she started asking everyone she knew to only use she/her/hers pronouns and refer to her by her chosen female name. *Id.*

74. Being fully herself in all areas of her life has allowed Luna to thrive, even during the COVID-19 pandemic. *Id.* ¶ 15. Luna has seen a child psychologist since she was six years old and was diagnosed with gender dysphoria. *Id.* ¶ 16. She does not want to go through puberty in a gender that she is not and cannot fathom that happening. *Id.* ¶ 18. Her parents took her to a clinic to see a pediatric endocrinologist, who determined that puberty blockers would be medically necessary to treat Luna's gender dysphoria. *Id.* ¶ 18. After speaking with the doctor about possible benefits and side effects, Luna and her parents collectively decided that puberty blockers would be beneficial and necessary for her. *Id.*

75. Luna has now been on puberty blockers for a little over a year and they have had a hugely positive effect on her life. *Id.* ¶ 20. She enjoys swimming, art, piano, theater, and tennis, and she has a thriving social life. *Id.* ¶ 26.

76. SB14 threatens to upend Luna's life and deprive her of medically necessary treatment that has helped her thrive. *Id.* ¶¶ 28, 31. If SB14 goes into effect, the Loe family may be forced to move away from Texas—the only home that Luna has ever known. *Id.* at ¶¶ 27, 32.

2. The Moe Family

77. Plaintiffs Matthew and Mary Moe are the parents of Maeve Moe, a nine-year-old transgender girl who has lived in Texas all her life. Mary Moe Decl., attached hereto as Ex. 2, ¶¶ 1–20; Matthew Moe Decl., attached hereto as Ex. 3, ¶¶ 1–14.[38]

78. Maeve has always known she is a girl and expressed it almost as soon as she could speak, only feeling comfortable wearing girls' clothes. Mary Moe Decl. ¶¶ 5–7; Matthew Moe Decl. ¶ 6. At first, Matthew and Mary only allowed Maeve to wear boys' clothes outside of the house, but they saw how upsetting it was for her and eventually let Maeve wear girls' clothes outside the house. Mary Moe Decl. ¶ 7; Matthew Moe Decl. ¶ 6.

79. When she was five years old, Mary took Maeve to see a licensed professional counselor, who recommended that Matthew and Mary affirm Maeve's gender identity to support her mental health and wellbeing. Mary Moe Decl. ¶ 8; Matthew Moe Decl. ¶ 7. Maeve's primary care provider agreed and supported her name change. Mary Moe Decl. ¶ 9. Maeve's parents began to use "she" pronouns and had her name legally changed before she began kindergarten. Mary Moe Decl. ¶¶ 8, 10; Matthew Moe Decl. ¶¶ 7–8. Maeve entered kindergarten as the girl she knows herself to be, and has thrived throughout elementary school, making friends and excelling academically, with a particular passion for geography. Mary Moe Decl. ¶¶ 4, 10, 12; Matthew Moe Decl. ¶ 8.

80. When Maeve was six, she saw an endocrinologist, and she has returned for follow-up visits every year since. Mary Moe Decl. ¶ 11; Matthew Moe Decl. ¶ 9. The endocrinologist diagnosed Maeve with gender dysphoria and has told Maeve's parents that, now that Maeve is

[38] Plaintiffs incorporate the Declaration of Mary Moe and the Declaration of Matthew Moe by reference as though fully set forth herein.

nine, it may only be a matter of months before puberty begins. Mary Moe Decl. ¶¶ 11, 13; Matthew Moe Decl. ¶ 10. Maeve has lived openly as a girl since she was four years old and finds the idea of her body changing, in ways that do not match the girl she knows herself to be, extremely upsetting. Mary Moe Decl. ¶¶ 15–16. Matthew and Mary have discussed the risks and benefits of puberty blockers, considered the advice of medical professionals, and know that Maeve getting a puberty blocker is the best decision to keep their child healthy. Mary Moe Decl. ¶ 11; Matthew Moe Decl. ¶¶ 9, 11.

81. Matthew and Mary have seen how destabilizing it is for Maeve when she is unable to be herself, and they know that SB14 could make it difficult for her to access the treatment she needs to do so. Mary Moe Decl. ¶¶ 15–17; Matthew Moe Decl. ¶¶ 12–13. To ensure their child's safe access to medical treatment, Mary is temporarily moving with Maeve and her sibling to another state, while Matthew will stay behind in their Texas home in Montgomery County. Mary Moe Decl. ¶¶ 18–20; Matthew Moe Decl. ¶¶ 2, 13–14. Mary is heartbroken that she must move her children away from their home and father, even temporarily, and Matthew will miss his family very much, but both know that they must take these drastic measures to keep their daughter healthy and safe. Mary Moe Decl. ¶¶ 19–20; Matthew Moe Decl. ¶¶ 13–14. They hope SB14 is struck down so their family can soon be reunited in Texas. Mary Moe Decl. ¶ 20; Matthew Moe Decl. ¶ 14.

3. The Noe Family

82. Plaintiff Nora Noe is the mother of Nathan Noe, a sixteen-year-old transgender boy. Nora Noe Declaration, attached hereto as Ex. 4, ¶¶ 1–21.[39] Nathan lives in Williamson County with his parents and two younger siblings.

83. Before starting testosterone, Nathan suffered from severe anxiety and had symptoms of obsessive-compulsive disorder. *Id.* ¶ 6. Though he had been a happy and gifted child, Nathan's mother, Nora, noticed a dramatic change in his personality around age eleven. *Id.* ¶¶ 5–6. Nathan became withdrawn, and his grades fell to the point that his parents decided to homeschool him because he could not participate in online school during the COVID-19 pandemic. *Id.* ¶¶ 6–7. The worst came around Nathan's thirteenth birthday, when he started menstruating. Having his period was so distressing to Nathan that he would barely leave his room, and when he did, he would curl up on a couch looking "haunted and empty." *Id.* ¶ 8.

84. A few months later, Nathan came out as transgender. Nora was shocked at first but also knew immediately that Nathan needed specialized medical and mental health care. *Id.* ¶¶ 9–10. Nora and her husband agreed that, as with any medical issue, they would proceed with caution and make sure that they fully understood every step along the way. *Id.* ¶ 11. They took Nathan to his family doctor, who diagnosed him with gender dysphoria, to an OBGYN who prescribed birth control pills to stop his menstruation, to a therapist specializing in adolescent gender dysphoria, and eventually to a doctor with expertise in medical treatment for gender dysphoria. *Id.* ¶¶ 12, 14. Under that doctor's care, Nathan started taking testosterone in November 2021. *Id.* ¶ 15.

[39] Plaintiffs incorporate the Declaration of Nora Noe by reference as though fully set forth herein.

85. Being on testosterone has transformed Nathan's life: he has regained interest in activities he loves, like singing and swimming; he has a newfound confidence that enables him to form and maintain healthy relationships; and he is excelling in school again. *Id.*

86. News of SB14's consideration and passage has already impacted the Noe family. Nathan's concern about the law has made it more difficult for him to focus on school, and his younger siblings are frightened about what could happen to their family. *Id.* ¶ 17. Nathan's previously scheduled consultation for chest surgery, which Nora, Nathan, and Nathan's father had been discussing, and which Nathan's doctor recommended as treatment to further alleviate his gender dysphoria, was cancelled in anticipation of SB14 taking effect. *Id.* ¶ 18. If SB14 does take effect, Nora and Nathan will be forced to travel out of state for Nathan's medical treatment for his gender dysphoria, missing work and school, bearing the expense of travel, and leaving Nora's husband to care for their two younger children and Nora's elderly mother. *Id.* ¶ 19. But Nora says there would be no other option: the Noe family loves Texas and does not want to leave, and she cannot allow Nathan to lose the ground he has gained—emotionally, socially, and academically—since starting testosterone. *Id.* ¶¶ 20–21.

4. The Soe Family

87. Plaintiffs Sarah and Steven Soe are the loving parents of Samantha Soe, a resilient and confident fifteen-year-old transgender girl. Sarah Soe Decl., attached hereto as Ex. 5, ¶¶ 1–20; Steven Soe Decl., attached hereto as Ex. 6, ¶¶ 1–20.[40] They live in Hays County. Sarah Soe Decl. ¶ 4.

[40] Plaintiffs incorporate the Declaration of Sarah Soe and the Declaration of Steven Soe by reference as though fully set forth herein.

88. Samantha loves choir, theater, geography, music, video games, and sports, though she no longer competes on school sports teams due to Texas's law barring transgender athletes from participating in sports in accordance with their gender identity. Sarah Soe Decl. ¶¶ 5–11; Steven Soe Decl. ¶¶ 5–11.

89. Sarah and Steven are both educators who have raised their children to be kind and intelligent people. Sarah Soe Decl. ¶ 20; Steven Soe Decl. ¶ 20. The most important thing in the world for them is to protect their children. Sarah Soe Decl. ¶¶ 9, 20; Steven Soe Decl. ¶¶ 9, 20.

90. Samantha told her parents that she was transgender when she was about twelve years old. Sarah Soe Decl. ¶ 8; Steven Soe Decl. ¶ 8. Samantha never fit stereotypical male gender norms, and as she neared puberty, she became noticeably uncomfortable with being treated as a boy. Sarah Soe Decl. ¶ 10; Steven Soe Decl. ¶ 10.

91. When Samantha was about thirteen years old, her mother asked her pediatrician for a referral, and they went to a pediatric endocrinologist, who diagnosed Samantha with gender dysphoria. Sarah Soe Decl. ¶¶ 13–14; Steven Soe Decl. ¶¶ 13–14. After the pediatric endocrinologist explained all the risks and benefits of the available medical treatment and their own thorough research (including speaking with multiple doctors), Sarah and Steven decided that the benefits of this treatment outweighed the potential risks. Sarah Soe Decl. ¶¶ 14–16; Steven Soe Decl. ¶¶ 14–15. Samantha first received puberty blockers, and estradiol the next year, which she has been taking since December 2022. Sarah Soe Decl. ¶ 14; Steven Soe Decl. ¶ 13. Samantha's mental health has improved significantly, and the prospect of having to stop this treatment is terrifying and upsetting. Sarah Soe Decl. ¶¶ 12, 17, 19; Steven Soe Decl. ¶ 16.

92. Because of SB14, the Soe family is considering whether and how to get Samantha treatment out of state, which would either require them to split up their family or spend thousands

of dollars on out-of-pocket medical treatment and travel, when they are already facing the loss of insurance coverage under Sarah and Steven's state employees' health plan for that treatment. Sarah Soe Decl. ¶¶ 18–20; Steven Soe Decl. ¶¶ 18–20.

5. The Goe Family

93. Plaintiff Gina Goe is the mother of Grayson Goe, a fifteen-year-old transgender boy; they both live in McLennan County. Gina Goe Decl., attached hereto as Ex. 7, ¶¶ 1–23.[41]

94. Grayson was assigned female at birth, but just before he turned twelve years old, he told his mother that he was a boy, something he had known for a while. *Id.* ¶ 9.

95. Prior to coming out as transgender, Grayson experienced extreme emotional distress for many years, including incidents of self-harm, some of which required emergency medical care. *Id.* ¶¶ 10–11. Gina took her son to see an adolescent medicine doctor in 2020, who ultimately diagnosed him with gender dysphoria. *Id.* ¶¶ 13–14. Grayson used a binder to make his chest appear more masculine, and he was prescribed birth control to stop his period. *Id.* ¶¶ 15–16.

96. When Grayson turned fifteen, he was evaluated for hormone therapy, and after a comprehensive review of all the possible side effects and benefits with the medical provider, Gina made the informed decision (with Grayson's assent) to begin testosterone. *Id.* ¶¶ 16–18. Since starting testosterone in April 2023, Gina has seen a massive positive change in Grayson as his gender dysphoria has started to alleviate. *Id.* ¶ 19.

97. Being forced to stop this medical treatment would be devastating to Grayson, and Gina is extremely concerned about the ramifications to Grayson's mental health should he no longer be able to access treatment for his gender dysphoria. *Id.* ¶¶ 20, 23.

[41] Plaintiffs incorporate the Declaration of Gina Goe by reference as though fully set forth herein.

B. The Impact of the Ban on Physician Plaintiffs

1. Dr. Richard Ogden Roberts III

98. Plaintiff Richard Ogden Roberts III, M.D., M.P.H., a member of GLMA, is a pediatric endocrinologist at Texas Children's Hospital in Houston, Texas. Affidavit of Richard Ogden Roberts III, M.D., attached hereto as Ex. 8, ¶¶ 4, 5, 9.[42] Dr. Roberts is suing on behalf of himself and his transgender adolescent patients. *Id.* ¶ 3. Dr. Roberts joined the faculty at Baylor College of Medicine and Texas Children's Hospital in 2020. *Id.* ¶¶ 10, 13. Dr. Roberts serves as Division of Endocrinology Transgender Care Co-Lead, and since 2023, as the co-Medical Director of the Transgender Care Program at Texas Children's Hospital. *Id.* ¶ 13.

99. As a pediatric endocrinologist, Dr. Roberts provides evidence-based medical care as treatment for gender dysphoria, including puberty-delaying medications and hormones, which is informed by widely accepted clinical practice guidelines such as the WPATH Standards of Care and the Endocrine Society Clinical Guidelines. *Id.* ¶¶ 14, 17–18. Dr. Roberts considers medical treatment for gender dysphoria to be evidence-based, safe, and effective. *Id.* ¶ 32. In fact, he provides the same treatments to other patients to treat other health conditions. *Id.* ¶¶ 23–24.

100. Dr. Roberts considers SB14 to be in direct conflict with the oath he swore as a physician and with many of the rules, regulations, and statutes that he is required to follow. *Id.* ¶¶ 31–32. If SB14 takes effect, Dr. Roberts will be required to either fully comply with the Ban and therefore be unable to provide his transgender adolescent patients with the medical treatment they need, in violation of the oath he took as a physician, or to risk losing his medical license and facing other discipline for providing his patients with the medical treatment that they need. *Id.* ¶¶ 28, 31.

[42] Plaintiffs incorporate the Affidavit of Richard Ogden Roberts III, M.D. by reference as though fully set forth herein.

In addition, Dr. Roberts fears that by prohibiting the provision of medical treatment for gender dysphoria for his transgender adolescent patients, and coverage thereof for his patients on Medicaid or CHIP, SB14 will negatively impact the mental health and wellbeing of his patients by, for example, leading to worsening depression, increased anxiety, and possibly suicidal ideation. *Id.* ¶¶ 34, 36. Dr. Roberts is gravely concerned about his patients' ability to survive, much less thrive, if SB14 takes effect. *Id.* ¶ 34.

2. Dr. David Leo Paul

101. Plaintiff David Leo Paul, M.D., a member of GLMA, is a pediatric endocrinologist in Houston, Texas. Affidavit of David Leo Paul, M.D., attached hereto as Ex. 9, ¶¶ 4–5, 8.[43] Dr. Paul is suing on behalf of himself and his transgender adolescent patients. *Id.* ¶ 3. After a 28-year career in the U.S. Air Force, Dr. Paul joined the faculty at Baylor College of Medicine and Texas Children's Hospital in 2012. *Id.* ¶¶ 9–14.

102. Dr. Paul provides medical treatment for gender dysphoria, including puberty-delaying treatment and hormone therapy, to transgender adolescents in Texas in line with the WPATH Standards of Care and the Endocrine Society Clinical Guidelines. *Id.* ¶¶ 16–19. Dr. Paul understands these treatments to be "standard medicine," in large part because he provides the very same treatments to cisgender patients who have various conditions related to abnormal puberty. *Id.* ¶¶ 11, 20.

103. If SB14 is allowed to go into effect, Dr. Paul will face the impossible decision to either violate his oath as a physician by disregarding his patients' medical needs and inflicting needless suffering, or violate the law, putting his medical license and his livelihood at risk. *Id.* ¶

[47] Plaintiffs incorporate the Affidavit of David Leo Paul, M.D. by reference as though fully set forth herein.

21. If his adolescent patients were to lose access to medical treatment for gender dysphoria, regardless of whether they "wean off" their medications, Dr. Paul fears that his patients would backslide on the progress he has routinely seen them make in their mental health, quality of life, and academic performance. *Id.* ¶¶ 23–24.

3. Dr. Patrick W. O'Malley

104. Plaintiff Patrick W. O'Malley, M.D., M.P.H., a member of GLMA, is a psychiatrist specializing in children and adolescents at Texas Children's Hospital, where he runs the Intensive Outpatient Program, and Baylor College of Medicine, where he teaches general psychiatry and child psychiatry. Affidavit of Patrick O'Malley, M.D., M.P.H., attached hereto as Ex. 10, ¶¶ 6–7.[44] Dr. O'Malley is suing on behalf of himself and his transgender adolescent patients. *Id.* ¶ 3.

105. Approximately 20% of Dr. O'Malley's practice involves treating minors with gender dysphoria, including psychotherapy, psychiatric medication management, and family consultation. *Id.* ¶ 11. As a psychiatrist, Dr. O'Malley regularly works in a multidisciplinary manner with colleagues, both within and outside Texas Children's Hospital, who provide medical treatment for gender dysphoria such as puberty-delaying medications and hormones. *Id.* ¶ 15. As such, and among other things, Dr. O'Malley makes assessments, provides consultations, and, if necessary, writes assessment letters documenting a patient's gender dysphoria and suitability for medical treatment for gender dysphoria if required by the patient's insurance or medical provider. *Id.*

106. Because SB14 prohibits a physician or other healthcare provider receiving state public funding from facilitating the provision of medical treatment for gender dysphoria for

[44] Plaintiffs incorporate the Affidavit of Patrick W. O'Malley, M.D., M.P.H. by reference as though fully set forth herein.

adolescents, if SB14 were allowed to take effect, Dr. O'Malley would be incapable of providing his adolescent patients with gender dysphoria with the treatment they need as he would be barred from working collaboratively with other providers to effectively manage and treat an adolescent's gender dysphoria. *Id.* ¶ 19.

107. If SB14 is allowed to take effect, Dr. O'Malley knows that his patients' mental health will suffer, and because his patients have the most acute mental health symptoms, he fears that he will be forced to witness their decline, up to and including their death. *Id.* ¶¶ 21–24. Dr. O'Malley also fears that SB14 will exacerbate health disparities for his patients who receive coverage through Medicaid and CHIP who will lose that coverage if SB14 goes into effect. *Id.* ¶ 25.

C. The Impact of the Ban on the Members of Organizational Plaintiffs

1. PFLAG

108. Founded in 1973, Plaintiff PFLAG is the first and largest organization for LGBTQ+ people, their parents and families, and allies. A 501(c)(3) nonprofit membership organization, PFLAG's mission is "to create a caring, just, and affirming world for LGBTQ+ people and those who love them." PFLAG has chapters in 49 states and the District of Columbia. Affidavit of Brian K. Bond, attached hereto as Ex. 11, ¶¶ 2-3,7.[45]

109. Supporting LGBTQ+ young people and strengthening their families has been central to PFLAG's work since its founding, and that objective includes encouraging and supporting parents and families of transgender and gender expansive people in affirming their children and helping them access the social, psychological, and medical supports they need. *Id.* ¶¶ 4–5.

[45] Plaintiffs incorporate the Affidavit of Brian K. Bond by reference as though fully set forth herein.

110. PFLAG carries out that commitment through supporting the development and work of the PFLAG Chapter Network, engaging in policy advocacy for equitable and protective laws and policies, forming coalitions with organizations who share PFLAG's goals, developing trainings and educational materials, and engaging with the media. More specifically, it includes working with PFLAG families to encourage love for and support of their transgender and gender expansive children and to help them ensure that their children's needs are met. *Id.* ¶¶ 10, 18-19.

111. PFLAG has 18 chapters across the State of Texas with nearly 1,500 members. Those members include families with transgender youth who currently are or soon will be receiving the medical care SB14 prohibits as part of a prescribed course of care for gender dysphoria, including the Plaintiff Loe, Moe, Noe, Soe, and Goe families. *Id.* ¶¶ 7, 11; Lazaro Loe Decl. ¶3; Mary Moe Decl. ¶ 3; Matthew Moe Decl. ¶ 3; Nora Noe Decl. ¶ 3; Sara Soe Decl ¶ 3; Steven Soe Decl. ¶ 3; Gina Goe Decl. ¶ 3.

112. SB14's passage had a dramatic impact on PFLAG families, who began seeking support and resources from their PFLAG chapters, making contingency plans for how to access medical care outside Texas, and pursuing mental health support for the fear, distress, and anxiety they and their children are experiencing at the prospect of being denied this medically necessary care. Some families are already feeling the effects of SB14, as their appointments for scheduled care are being cancelled or they are losing access to medical providers who are leaving Texas. Bond Aff. ¶¶ 13-14.

113. If SB14 is allowed to become effective, the harms will be even more widespread for PFLAG families, who will lose the ability to make medical decisions for their children, lose access to medical treatments their children need solely because they are treatments for gender dysphoria, and lose coverage for care that has been previously paid for under state-funded health

plans. SB14 will put PFLAG families with the resources to do so in the impossible situation of having to flee Texas, split up their family, or travel regularly out of state to obtain medical care. For the vast majority of PFLAG families, however, those costs are too high. SB 14 will force PFLAG families to stop providing the medical care that has helped their transgender children thrive, putting those children at risk of the very serious mental and physical harm those families sought medical care for in the first place. *Id.* ¶¶ 13, 15-16.

2. GLMA

114. Founded in 1981, GLMA is the world's largest and oldest association of LGBTQ+ healthcare professionals. Affidavit of Alex Sheldon, attached hereto as Ex. 12, ¶ 7.[46]

115. GLMA is a 501(c)(3) nonprofit membership organization whose mission is to ensure health equity for LGBTQ+ individuals and equality for LGBTQ+ health professionals in their work and learning environments. *Id.* ¶ 7. GLMA seeks to achieve this mission by utilizing the scientific expertise of its diverse, multidisciplinary membership to inform and drive advocacy, education, and research. *Id.*

116. GLMA's membership includes approximately 1,000 member physicians, nurses, advanced practice nurses, physician assistants, researchers and academics, behavioral health specialists, health profession students, and other health professionals. *Id.* ¶ 10. GLMA's members reside and work across the United States, including Texas, and in several other countries. *Id.* Their practices represent the major health care disciplines and a wide range of health specialties, including endocrinology, internal medicine, family practice, psychiatry, obstetrics/gynecology, emergency medicine, neurology, and infectious diseases. *Id.*

[46] Plaintiffs incorporate the Affidavit of Alex Sheldon by reference as though fully set forth herein.

117. As part of its mission to ensure health equity for the LGBTQ+ community as well as equality for LGBTQ+ health professionals, GLMA is committed to breaking down barriers to comprehensive medical care for the LGBTQ+ community. *Id.* ¶ 15. This includes GLMA's steadfast commitment to ensure that transgender individuals receive the medical treatment for gender dysphoria they want, need, and deserve. *Id.*

118. As such, GLMA adopted in 2018, and later affirmed in 2021, a formal policy statement on "Transgender Healthcare," which states that therapeutic treatments such as hormone therapy and gender-affirming surgeries are medically necessary for the purpose of treatment of gender dysphoria and that they should be covered by all public and private insurance plans. *Id.* ¶ 16. In addition, in 2019, in conjunction with the American Medical Association, GLMA published an issue brief titled "Health insurance coverage for gender-affirming care of transgender patients," which discusses both the positive effects and outcomes of gender-affirming medical care for transgender patients, as well as the negative effects and serious health consequences that transgender patients face when they are denied access to medically indicated treatment for gender dysphoria. *Id.* ¶ 17.

119. GLMA considers laws like SB14 an affront to healthcare ethics and the principles of equality and inclusivity that should govern healthcare practices. *Id.* ¶ 22. GLMA's members and their patients stand to be negatively affected by SB14. *Id.* ¶ 22. SB14 places GLMA's health professional members in the untenable position of choosing to comply with SB14 and endangering the health and wellbeing of their transgender adolescent patients or to follow their medical or professional best judgment and duty to their patients and violate SB14 by providing their adolescent patients with the best care and the care they need. *Id.* ¶ 23. This negative impact to GLMA's members includes Plaintiffs Dr. Roberts, Dr. Paul, and Dr. O'Malley as well as

declarants Dr. Cooper and Dr. Koe, all of whom are GLMA members living and practicing medicine in Texas. Roberts Aff. ¶¶ 4-5; Paul Aff. ¶¶ 4-5; O'Malley Aff. ¶¶ 4-5; Aff. of M. Brett Cooper, M.D, attached hereto as Ex. 13, ¶¶ 3, 6; Decl. of Kathryn Koe, D.O., attached hereto as Ex. 14, ¶¶ 4, 7.[47] For GLMA's physician members, SB14 also mandates the revocation or denial of licensure to any physician who provides medical treatment for gender dysphoria to adolescents and threatens additional disciplinary actions. Sheldon Aff. ¶ 24.

VII. THE TEXAS CONSTITUTION PROTECTS PARENTS, TRANGENDER YOUTH, AND MEDICAL PROVIDERS FROM STATE DEPRIVATION OF THEIR RIGHTS.

A. Parents of Transgender Youth Have Fundamental Rights Under the Texas Constitution.

120. The Texas Constitution guarantees its citizens certain fundamental rights, specifically: "[n]o citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. 1, § 19. This guarantee includes the fundamental rights of parents with regard to their children. *Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976).

121. Under Texas law, "[i]t is axiomatic that parents enjoy a fundamental right to the care, custody, and control of their children . . . This right includes the right of parents to give, withhold, and withdraw consent to medical treatment for their children." *T.L. v. Cook Children's Med. Ctr.,* 607 S.W.3d 9, 43 (Tex. App.—Fort Worth 2020, pet. denied). Texas law recognizes that "parents are presumed to be appropriate decision-makers, giving parents the right to consent to their [child's] medical care[.]" *Miller ex rel. Miller v. HCA, Inc.*, 118 S.W.3d 758, 766 (Tex. 2003). Parents have not only a natural right but a "'high duty' to recognize symptoms of illness

[47] Plaintiffs incorporate the Affidavit of M. Brett Cooper, M.D. and the Declaration of Kathryn Koe, D.O. by reference as though fully set forth herein.

and to seek and follow medical advice" for their child. *Parham v. J.R.*, 442 U.S. 584, 602 (1979); *see also* Tex. Fam. Code § 151.001(a)(3) (parents have the right and duty "to support the child, including providing the child with . . . medical and dental care").

122. Parents do not sacrifice these rights simply because their children are transgender. When a parent provides informed consent, the adolescent assents, and a physician recommends a medically necessary course of treatment that is safe and effective for the adolescent patient, the parent's fundamental right to make medical care decisions for their adolescent is at its apex. *See Brandt v. Rutledge*, No. 4:21-CV-00450, 2023 WL 4073727, at *36 (E.D. Ark. June 20, 2023) (parents of transgender children "have a fundamental right to seek medical care for their children and, in conjunction with their adolescent child's consent and their doctor's recommendation, make a judgment that medical care is necessary").

123. SB14 infringes on those fundamental rights by prohibiting, penalizing, and denying coverage for the provision of the very medical treatment parents seek for their children with gender dysphoria—treatment that their transgender children want and that their children's doctors and medical providers have prescribed as medically necessary in accordance with established standards of care. *See, e.g.*, *Brandt v. Rutledge*, 2023 WL 4073727, at *36; *Doe v. Ladapo*, No. 4:23-CV-114, 2023 WL 3833848, at *11 (N.D. Fla. June 6, 2023); *Eknes-Tucker v. Marshall*, 603 F. Supp. 3d 1131, 1144–45 (M.D. Ala. 2022) (holding that parents were likely to show that a bill prohibiting "medications to treat gender dysphoria in minors, even at the independent recommendation of a licensed pediatrician . . . infringes on their fundamental right to treat their children with transitioning medications subject to medically accepted standards").

124. Preventing Parent Plaintiffs and PFLAG's parent members from making medical care decisions concerning the care, custody, and control of their children violates the fundamental

right to parental autonomy guaranteed by Due Course of Law under the Texas Constitution and cannot survive strict scrutiny.

B. The Ban Classifies and Discriminates Unconstitutionally Based on Sex and Transgender Status.

125. Under the Texas Constitution, all persons "have equal rights," Tex. Const. art. 1, § 3, and "[e]quality under the law shall not be denied or abridged because of sex." *Id.*, art. 1, § 3a. SB14 runs afoul of both equality guarantees because it classifies and discriminates based on both sex and transgender status.

126. The Ban draws a classification based on sex in three distinct ways. First, the Ban speaks in explicitly gendered terms and facially discriminates based on sex. Second, the Ban discriminates based on sex stereotypes relating to a person's sex assigned at birth. Third, the Ban discriminates based on sex because it discriminates based on transgender status.

127. If the legislature cannot "writ[e] out instructions" for determining whether treatment is permitted "without using the words man, woman, or sex (or some synonym)," the law classifies based on sex. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1746 (2020).

128. The Ban prohibits medically necessary treatment when the treatment is provided in a manner the State deems "inconsistent with the minor's biological sex." SB14 § 2 (proposed Tex. Health & Safety Code § 161.702). If one must know the sex of a person to know whether or how a provision applies to the person, the provision draws a line based on sex.

129. Here, "[t]o know whether treatment with any of these medications is legal, one must know whether the patient is transgender. And to know whether treatment with testosterone or estrogen is legal, one must know the patient's natal sex." *Doe v. Ladapo*, No. 4:23CV114-RH-MAF, 2023 WL 3833848, at *10 (N.D. Fla. June 6, 2023); *see also Brandt by & through Brandt v. Rutledge*, 47 F.4th 661, 669 (8th Cir. 2022) (ban on medical treatment for gender dysphoria for

adolescents "discriminates on the basis of sex" insofar as "the minor's sex at birth determines whether or not the minor can receive certain types of medical care"); *Dekker v. Weida*, No. 4:22CV325-RH-MAF, 2023 WL 4102243, at *13 (N.D. Fla. June 21, 2023). By "discriminating against transgender persons," the Ban "unavoidably discriminates against persons with one sex identified at birth and another today." *Bostock*, 140 S. Ct. at 1746.

130. The Ban further discriminates based on sex by allowing medical interventions that reinforce sex stereotypes, but "tether[ing] 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), *aff'd*, 12 F.4th 422 (4th Cir. 2021), *cert. denied*, 142 S. Ct. 861 (2022).

131. SB14 allows medical procedures and treatments to persons with "disorder[s] of sex development" for the purpose of aligning the patient's body with sex stereotypes, while denying the exact same services to transgender persons because as "transgender individual[s they do] not conform to the sex-based stereotypes of the sex . . . assigned at birth." *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017); *accord Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011).

132. The Ban explicitly prohibits masculinizing or feminizing procedures when different from the sex assigned at birth. *See* SB14 § 2 (proposed Tex. Health & Safety Code § 161.702) ("if that perception is *inconsistent* with the child's biological sex") (emphasis added).

133. Permitting interventions to reinforce sex stereotypes while prohibiting the same interventions for challenging them constitutes sex discrimination.

134. By allowing and disallowing medical treatment based on sex designated at birth, the Ban is an impermissible "form of sex stereotyping where an individual is required effectively

to maintain [their] natal sex characteristics." *Boyden v. Conlin*, 341 F. Supp. 3d 979, 997 (W.D. Wis. 2018).

135. Lastly, as the United States Supreme Court explained in *Bostock v. Clayton County*, "it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex." 140 S. Ct. at 1741. In other words, "discrimination based on . . . transgender status necessarily entails discrimination based on sex." *Id.* at 1747; *cf. Tarrant Cnty. Coll. Dist. v. Sims*, 621 S.W.3d 323, 329 (Tex. App.—Dallas 2021, no pet.) ("[W]e must follow *Bostock* and read the [Texas Commission on Human Rights Act's] prohibition on discrimination 'because of . . . sex' as prohibiting discrimination based on an individual's status as a . . . transgender person.").

136. SB14's discrimination based on transgender status not only classifies based on sex, but also violates Tex. Const. art. 1, § 3's guarantee of equal rights independently. Classifications based on transgender status are suspect and warrant strict or heightened scrutiny because (1) transgender people have suffered a long history of discrimination in Texas and across the country and continue to suffer such discrimination to this day; (2) transgender people are a discrete and insular group and lack the political power to protect their rights through the legislative process; (3) a person's transgender status bears no relation to their ability to contribute to society; and (4) gender identity is a core, defining trait so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment. *See In re H.Y.*, 512 S.W.3d 467, 478 (Tex. App.—Houston [1st Dist.] 2016, pet. denied).

137. The overwhelming majority of courts to consider the question have found that transgender people constitute a quasi-suspect class. *See Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 607 (4th Cir. 2020), as amended (Aug. 28, 2020); *see also Karnoski v. Trump*, 926 F.3d

1180, 1200 (9th Cir. 2019); *Dekker*, 2023 WL 4102243 at *12–13; *Brandt*, 2023 WL 4073727 at *31 (E.D. Ark. June 20, 2023); *Ladapo*, 2023 WL 3833848 at *9 (N.D. Fla. June 6, 2023); *Ray v. McCloud*, 507 F. Supp. 3d 925, 937–38 (S.D. Ohio 2020); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719–20 (D. Md. 2018); *Flack v. Wis. Dep't of Health Servs.*, 328 F. Supp. 3d 931, 952–53 (W.D. Wis. 2018); *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1145 (D. Idaho 2018); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *Bd. of Educ. of the Highland Loc. Sch. Dist. v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850, 873 (S.D. Ohio 2016); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 139 (S.D.N.Y. 2015); *cf. Brandt*, 47 F.4th at 670 n.4.

138. SB14 expressly and exclusively targets transgender adolescents by prohibiting medical treatments based on whether they "attempt[] to affirm the minor's perception of his or her gender or biological sex, if that perception is inconsistent with the minor's biological sex." SB14 § 2 (proposed Tex. Health & Safety Code § 161.702); *Eknes-Tucker v. Marshall*, 603 F. Supp. 3d 1131, 1147 (M.D. Ala. 2022) (explaining that Alabama's ban on this treatment for minors "places a special burden on transgender minors because their gender identity does not match their birth sex").

139. SB14 explicitly bans "gender transitioning or gender reassignment procedures" for adolescents. By targeting "gender transition," the Ban necessarily classifies based on transgender status: it is only transgender people who undergo "gender transition" as part of treatment for gender dysphoria. And "a person cannot suffer from gender dysphoria without identifying as transgender." *Fain v. Crouch*, 618 F. Supp. 3d 313, 325 (S.D. W. Va. 2022); *see also C. P. by & through Pritchard v. Blue Cross Blue Shield of Ill.*, 2022 WL 17788148, at *6 (W.D. Wash. Dec. 19, 2022); *Kadel v. Folwell*, 2022 WL 11166311, at *4 (M.D.N.C. Oct. 19, 2022); *Toomey v. Arizona*, 2019

WL 7172144, at *6 (D. Ariz. Dec. 23, 2019); *Flack v. Wis. Dep't of Health Servs.*, 328 F. Supp. 3d 931, 950 (W.D. Wis. 2018). The Ban prohibits the provision of evidence-based, medically necessary treatments—including puberty-delaying treatment, hormone therapy, and reconstructive chest surgery—only when they are provided as part of treatment for gender dysphoria. They permit these same treatments for any other purpose.

140. The Ban prohibits any "physician or health care provider" from "knowingly" "provid[ing], prescribe[ing], administer[ing], or dispens[ing]" certain "procedures and treatments" to a minor "[f]or the purpose of transitioning" a minor's "biological sex as determined by the sex organs, chromosomes, and endogenous profiles" or "affirming the [minor]'s perception" of their sex "if that perception is inconsistent with the [minor]'s biological sex," or sex assigned at birth. SB14 § 2 (proposed Tex. Health & Safety Code § 161.702). Specifically, the Ban categorically bars transgender adolescents experiencing gender dysphoria from (1) specific surgical procedures "that sterilizes the child"; (2) "a mastectomy"; (3) "prescription drugs that induce transient or permanent infertility," which is defined to preclude all puberty-delaying drugs and hormone therapy; and (4) "remov[ing] any otherwise healthy or non-diseased body part or tissue." *Id.* The same services, however, may be provided to treat other conditions.

141. For example, the puberty-delaying treatment provided to transgender adolescents experiencing gender dysphoria is commonly used to treat central precocious puberty. The Ban prohibits providing puberty-delaying treatment to transgender adolescents for gender dysphoria but permits puberty-delaying treatment for central precocious puberty.

142. The Ban also prohibits hormone therapy when the treatment is used to treat transgender adolescents with gender dysphoria. But it permits the same hormone therapy when prescribed to non-transgender patients to treat other serious conditions and/or to help bring their

bodies into alignment with their cisgender gender identity. For example, cisgender boys with delayed puberty may be prescribed testosterone if they have not begun puberty by fourteen years of age. Likewise, cisgender girls with primary ovarian insufficiency, hypogonadotropic 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. And cisgender girls with polycystic ovarian syndrome (a condition that can cause increased testosterone and, as a result, symptoms including facial hair) may be treated with testosterone suppressants.

143. The Ban prohibits chest surgery on transgender adolescents to treat gender dysphoria, but non-transgender adolescents are permitted to undergo comparable surgeries.

C. Texas Physicians and Healthcare Providers Have Property Rights in their Medical Licenses and Liberty Rights to Engage in their Occupations.

144. The Texas Constitution guarantees that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. 1, § 19. The Ban infringes this constitutional guarantee by threatening the licenses and burdening the livelihoods of Physician Plaintiffs and GLMA members who in good faith provide medically necessary treatment to transgender youth suffering from gender dysphoria.

145. Texas law authorizes Defendant TMB to institute disciplinary and licensing proceedings against any physician who provides medical procedures or treatments prohibited by the Ban. *See, e.g.*, Tex. Occ. Code §§ 164.001, 165.001, 165.051; SB14 § 2 (proposed Tex. Occ. Code § 164.052(a)(24)). And SB14 removes any discretion by TMB regarding disciplinary sanctions because the Ban mandates that a physician who provides any prohibited medical

procedures or treatments to transgender youth have their license to practice medicine revoked. SB14 § 5 (proposed Tex. Occ. Code § 164.0552).

146. Disciplinary actions are required to be reported to the National Practitioner Data Bank[48] and may have collateral consequences on a physician's ability to practice in other states.[49] Defendant TMB, for example, requires physicians to make timely reports of any disciplinary actions taken by other jurisdictions against the physician, 22 Tex. Admin. Code § 173.3, and has taken disciplinary action against physicians based on conduct occurring in other states.[50] Upon information and belief, disciplinary sanctions may also result in loss of employment.

147. Texas physicians make a substantial investment to obtain a medical license. According to TMB, to be eligible for a physician's license in Texas, individuals must: graduate from an accredited medical school, having gained admission through a highly competitive application process which often requires incurring significant debt (in 2019, an average of between $94,399 and $142,797 for students at medical schools in Texas);[51] complete at least one continuous year of graduate medical training or a fellowship; pass rigorous state examinations; practice medicine full-time for one year; and, *inter alia*, have no relevant disciplinary or criminal history. 22 Tex. Admin. Code § 163.2.

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[48] *See* 42 U.S.C. § 11132 (requiring state medical boards to report all revocations or suspensions of physician licenses); *see also* Nat'l Practitioner Data Bank, Guidebook, at Ch. E: Reports, Table E-1 (Oct. 2018), https://www.npdb.hrsa.gov/resources/NPDBGuidebook.pdf (explaining that state medical boards and hospitals have mandatory reporting obligations).

[49] *See, e.g.*, Tex. Admin. Code § 173.3(d) (requiring reporting within 30 days of any actions issued by another state); Tex. Med. Bd. Press Release at 4-5, TMB Disciplines 27 Physicians at June Meeting, Adopts Rule Changes (June 30, 2022), https://www.tmb.state.tx.us/dl/2B28AF92-02B2-0425-2295-86E2DEAD1C51 (describing "other states' [disciplinary] actions").

[50] *Id.*

[51] *See, e.g.*, Medical School Debt Keeps Climbing, Tex. Med. Ass'n (April 2020), https://app.texmed.org/tma.archive.search/files/53049/april_20_tm_educationinfographic.pdf.

148. If physicians meet these requirements and incur the substantial associated costs, they are eligible for full licensure in Texas, for which they must apply. *Id.* §§ 163.2, 163.4. Once granted, a physician may practice medicine within Texas and has a vested property interest in their license.

149. SB14's requirement of denying or revoking a physician's license based on providing necessary medical treatment for gender dysphoria is improper interference with the physician's vested property interest in their license and cannot be justified by any legitimate state purpose, let alone a compelling one.

150. Further, prohibiting physicians and healthcare providers from providing timely and appropriate evidence-based medical care to a transgender adolescent and subjecting them to disciplinary actions and civil and other penalties for doing so is improper interference with their liberty interest in their occupation.

151. The Texas Constitution guarantees physicians and healthcare providers the right to practice their professions free from arbitrary or unduly harsh burdens. Tex. Const. art. 1, § 19.

152. To fulfill this guarantee, medical providers must be able to exercise their good faith judgment in the care of their transgender adolescent patients without the State's interference in their ability to do so in accordance with well-established clinical guidelines. In fact, physicians are subject to discipline by TMB for the "failure to treat a patient according to the generally accepted standard of care." 22 Tex. Admin. Code § 190.8(1)(A); *see also Swate v. Texas Med. Bd.*, No. 03-15-00815-CV, 2017 WL 3902621, at *12 (Tex. App.—Austin, Aug. 31, 2017, pet. denied) (mem. op.); *Chalifoux v. Texas State Bd. of Med. Examiners*, No. 03-05-00320-CV, 2006 WL 3196461, at *14 (Tex. App.—Austin, Nov. 1, 2006, pet. denied) (mem. op.). But SB14 demands that physicians do precisely that, interfering in the professional relationship between healthcare

providers and patients in a manner that is clearly arbitrary and so unreasonably burdensome that it is oppressive. Even for laws that only touch on economic rights, § 19 requires a rational relationship to the purpose of the law.

153. The Ban fails to comply with the Texas Constitution. The law does not serve a proper legislative purpose because, far from protecting the health and wellbeing of adolescents, the Ban harms the lives of transgender youth and their parents, without furthering the potential health and wellbeing of transgender adolescents. Texas law also demands that there be a real and substantial connection between a legislative purpose and the language of the law as it functions in practice. *See Patel v. Tex. Dep't of Licensing & Reg.*, 469 S.W.3d 69, 80–81 (Tex. 2015). For SB14 and transgender youth experiencing gender dysphoria, there is none. Instead, the Ban imposes an excessive burden on physicians and healthcare providers treating such patients, relative to the Ban's purported purpose, such that the Ban is oppressive. *See id.*

D. Bans Like SB14 Have Been Enjoined Across the United States

154. Before 2021, neither Texas nor any other state prohibited the medical treatment at issue in this case. For decades, puberty blockers and hormone therapies have been prescribed to minors for a wide range of diagnoses, including for the treatment of gender dysphoria. These treatment protocols are based on evidence-based scientific research and are considered safe and effective by every major medical association, including in Texas and across the country.

155. In the summer of 2021, Arkansas became the first state to try to prohibit this medical treatment solely for transgender youth with gender dysphoria, while allowing the exact same treatment to be provided to minors with other medical diagnoses. A federal court blocked that law from taking effect in a preliminary injunction, which was upheld by the U.S. Court of Appeals for the Eighth Circuit. *Brandt*, 47 F.4th at 672. The same court has now permanently enjoined Arkansas's transgender medical treatment ban and declared it unlawful as violating the

constitutional rights of parents, minors, and healthcare providers. *Brandt*, 2023 WL 4073727, at *38 (E.D. Ark. June 20, 2023).

156. Since Arkansas attempted to ban this medical treatment for transgender youth two years ago, other states have tried to follow suit by enacting policies or legislation designed to restrict access to health care for transgender adolescents with gender dysphoria while allowing the same treatments to continue for minors with other medical diagnoses. This wave of restrictions is part of a political strategy advanced by advocacy organizations who conducted polling and found that many Americans did not understand transgender youth or the health care that they receive. Terry Schilling, the president of American Principles Project, a social conservative advocacy group, said that after the U.S. Supreme Court ruled in favor of equality for LGBTQ+ Americans, "[w]e knew we needed to find an issue that the candidates were comfortable talking about . . . And we threw everything at the wall."[52] Matt Sharp, senior counsel with Alliance Defending Freedom, explained that there is now a "sense of urgency" behind legislative attempts to ban healthcare for transgender youth across the country.[53]

157. To date, trial courts have unanimously ruled against every transgender medical care ban that has been challenged, including in Arkansas, Alabama, Florida, Indiana, Kentucky, Missouri, and Tennessee. *See L.W. by & through Williams v. Skrmetti*, No. 3:23-CV-00376, 2023 WL 4232308, at *36 (M.D. Tenn. June 28, 2023) ("To the Court's knowledge, every court to consider preliminarily enjoining a ban on gender-affirming care for minors has found that such a ban is likely unconstitutional. And at least one federal court has found such a ban to be

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[52] Adam Nagourney & Jeremy W. Peters, *How a Campaign Against Transgender Rights Mobilized Conservatives*, New York Times (Apr. 17, 2023), https://www.nytimes.com/2023/04/16/us/politics/transgender-conservative-campaign.html.

[53] *Id.*

unconstitutional at final judgment."); *Doe 1 v. Thornbury*, No. 3:23-CV-230-DJH, 2023 WL 4230481, at *1–2 (W.D. Ky. June 28, 2023) (granting preliminary injunction against Kentucky statute banning puberty blockers and hormone therapy for transgender minors); *Brandt v. Rutledge*, No. 4:21CV00450, 2023 WL 4073727, at *1–2 (E.D. Ark. June 20, 2023) (holding that Arkansas statute banning "gender transition procedures" for minors was unconstitutional after an eight-day bench trial); *K.C. v. Individual Members of Med. Licensing Bd. of Ind.,* No. 1:23-cv-00595, 2023 WL 4054086, at *1 (S.D. Ind. June 16, 2023) (granting preliminary injunction against Indiana statute banning puberty blockers and hormone therapy for transgender youth); *Doe v. Ladapo*, No. 4:23cv114-RH-MAF, 2023 WL 3833848, at *1 (N.D. Fla. June 6, 2023) (granting preliminary injunction against Florida statute and rules banning puberty blockers and hormone therapy for transgender minors); *Eknes-Tucker v. Marshall*, 603 F. Supp. 3d 1131, 1137–38 (M.D. Ala. 2022) (granting preliminary injunction against Alabama statute banning puberty blockers and hormone therapy for transgender minors); *Brandt v. Rutledge*, 551 F. Supp. 3d 882, 892–93 (E.D. Ark. 2021), *aff'd sub nom. Brandt by & through Brandt v. Rutledge*, 47 F.4th 661 (8th Cir. 2022) ("The Court finds that the Parent Plaintiffs have a fundamental right to seek medical care for their children and, in conjunction with their adolescent child's consent and their doctor's recommendation, make a judgment that medical care is necessary."), *aff'd*, 47 F.4th 661 (8th Cir. 2022); *cf. Dekker v. Weida,* No. 4:22CV325-RH-MAF, 2023 WL 4102243, at *10–11, *19 (N.D. Fla. June 21, 2023) (holding that Florida's prohibition on Medicaid coverage for treatment of gender dysphoria is unconstitutional after two-week bench trial*); Southampton Cmty. Healthcare v. Bailey*, No. 23SL-CC01673 (Mo. Cir. Ct. May 1, 2023) (granting a temporary restraining order

enjoining Missouri Attorney General's emergency rule imposing severe restrictions on the provision of medical treatment for gender dysphoria to transgender adolescents and adults).[54]

VIII. THE BAN WILL CAUSE SEVERE HARM TO TRANSGENDER ADOLESCENTS.

158. Withholding medical treatment from transgender adolescents with gender dysphoria when it is medically indicated puts them at risk of severe harm to their health and wellbeing.

159. If a medical provider is forced to stop puberty-delaying medications or hormone therapy or if state-funded healthcare plans are forced to deny coverage for them due to the Ban, the resulting loss of medical care will cause patients to begin or resume their endogenous puberty. This will result in extreme distress for patients who have been relying on medical treatments to prevent the secondary sex characteristics that come with their endogenous puberty. These bodily

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[54] On July 8, 2023, the Sixth Circuit in a split 2-1 decision after expedited review granted a stay of the preliminary injunction in *L.W.*, pertaining to Tennessee's ban. In so doing, the Sixth Circuit sharply deviated from the majority of federal courts. However, the Sixth Circuit acknowledged its views "are just that: initial" and they "may be wrong." *L.W. v. Skrmetti*, No. 23-5600, slip op. at 15 (6th Cir. July 8, 2023). Its decision is thus of little persuasive value. Indeed, the Sixth Circuit based its decision, in large part, on the notion that lack of FDA approval shows there is no medical consensus regarding this care. *Id.* at 7. But "[t]hat the FDA has not approved these drugs for treatment of gender dysphoria says precisely nothing about whether the drugs are safe and effective when used for that purpose." *Dekker*, 2023 WL 4102243, at *19. "Off-label use of drugs is commonplace and widely accepted across the medical profession." *Id.* Any "contrary implication is divorced from reality." *Id.* "Once a drug has been approved, … the drug can be distributed not just for the approved use but for any other use as well," and "[t]here ordinarily is little reason to incur the burden and expense of seeking additional FDA approval." *Id.* Indeed, Texas law explicitly recognizes the use of "off-label" medications as being permitted within the bounds of generally accepted medical practice. *See* 22 Tex. Admin. Code § 190.8(1)(K); 22 Tex. Admin. Code § 222.4(f); 28 Tex. Admin. Code § 21.3011.

Further, the Sixth Circuit's sex discrimination analysis primarily cites the U.S. Supreme Court's 1971 decision in *Reed v. Reed*, but ignores the Court's more recent declarations that "all gender-based classifications today warrant heightened scrutiny," *United States v. Virginia*, 518 U.S. 515, 555 (1996) (quotation marks omitted); *see also Sessions v. Morales-Santana*, 582 U.S. 47, 57 (2017). And that a particular court may not have recognized (to date) that classifications based on transgender status are quasi-suspect, *L.W.*, No. 23-5600, slip op. at 12, does not mean they are not. A "lack of binding precedent does not require this Court to only apply rational basis review, nor does it prevent this Court from relying on well-reasoned opinions of non-binding courts to inform its opinion." *Ray v. McCloud*, 507 F. Supp. 3d 925, 938 (S.D. Ohio 2020).

changes are extremely distressing for transgender adolescents with gender dysphoria that otherwise had been relieved by medical treatment.

160. Additionally, the effects of undergoing endogenous puberty may not be reversible even with subsequent hormone therapy and surgery in adulthood, thus exacerbating lifelong gender dysphoria in patients who have this evidence-based and medically necessary treatment withheld or withdrawn.

161. For patients currently undergoing treatment with hormones like estrogen or testosterone, withdrawing treatment can result in a range of serious physiological and mental health consequences. The body takes about six weeks to ramp up endogenous hormones. If a medical provider is forced to abruptly stop treatment, a patient will be without sufficient circulating hormones. This can result in depressed mood, hot flashes, and headaches. For patients on spironolactone—a testosterone suppressant—abruptly terminating treatment can cause a patient's blood pressure to spike, increasing an adolescent's risk of heart attack or stroke. But whether treatment is stopped abruptly or over a period of several months, the withdrawal of treatment for gender dysphoria results in predictable and negative mental-health consequences, including returned or worsening gender dysphoria and heightened anxiety and depression.

162. The Ban includes an arbitrary so-called "wean off" provision, under which an adolescent who began Prohibited Care before June 1, 2023, and "attended 12 or more sessions of mental health counseling" for "at least six months before the" course of treatment began, "shall wean off the prescription drug over a period of time and in a manner that is safe and medically appropriate." SB14 § 2 (proposed Tex. Health & Safety Code § 161.703).

163. The "wean off" provision, like the general prohibition set forth in SB14, is of little comfort to adolescent patients who have been undergoing medical treatment as of June 1, 2023.

The "wean off" provision is inconsistent with standards of care and completely arbitrary. For example, some patients for whom medical treatment for gender dysphoria is indicated and appropriate might not have "attended 12 or more sessions of mental health counseling" for "at least six months before the" course of treatment—*e.g.*, because if their mental health provider was able to make a diagnosis of gender dysphoria after fewer than 12 sessions, the patient might not have required and the provider would not have been able to bill for subsequent sessions.

164. The "wean off" provision still requires that transgender adolescents "shall wean off" the prescription drugs determined by their medical providers to be medically necessary "over a period of time." SB14 § 2 (proposed Tex. Health & Safety Code § 161.703). This provision also states that transgender adolescents "may not switch to or begin a course of treatment on another prescription drug" that falls under the Ban, thereby still prohibiting this medically necessary treatment for any transgender young person who needs it in Texas. *Id.*

165. Laws like the Ban that prohibit access to medically necessary treatment in and of themselves gravely and directly threaten the mental health and wellbeing of transgender adolescents in Texas.

166. Gender-affirming medical care can be beneficial and even lifesaving treatment for transgender adolescents experiencing gender dysphoria. The Family Plaintiffs in this action know this intimately, which is why many of them have plans to continue their child's treatment out of state, leaving their homes behind at great financial expense and at the cost of separating spouses and siblings.

167. The major medical and mental health associations in the United States support the provision of such care for the treatment of gender dysphoria. These associations include the

American Academy of Pediatrics,[55] American Medical Association,[56] the Endocrine Society,[57] the Pediatric Endocrine Society,[58] the American Psychological Association,[59] the American Academy of Family Physicians,[60] the American College of Obstetricians and Gynecologists,[61] the National Association of Social Workers,[62] and WPATH.[63]

IX. CAUSES OF ACTION

A. Declaratory Judgment – SB14 Violates the Texas Constitution and is Void

168. Plaintiffs incorporate the foregoing paragraphs in support of the following causes of action.

169. Plaintiffs hereby petition the Court pursuant to the UDJA.

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[55] *See* American Academy of Pediatrics, Policy Statement, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 PEDIATRICS 4 (Oct. 2018) https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for.

[56] *See* Am. Med. Ass'n House of Delegates, Resolution 122: Removing Financial Barriers to at Care for Transgender Patients at 1 (2008), http://www.tgender.net/taw/ama_resolutions.pdf.

[57] *See* Endocrine Soc'y & Pediatric Endocrine Soc'y, Position Statement, *Transgender Health* Position Statement (2020), https://www.endocrine.org/-/media/endocrine/files/advocacy/position-statement/position_statement_transgender_health_pes.pdf.

[58] *Id.*; *see also* Pediatric Endocrine Society, Position Statement, T*he Pediatric Endocrine Society Opposes Bills That Harm Transgender Youth* (Apr. 2021), https://pedsendo.org/news-announcements/the-pediatric-endocrine-society-opposes-bills-that-harm-transgender-youth-2/.

[59] *See* Am. Psych. Ass'n, Position Statement, *Access to Care for Transgender and Gender Diverse Individuals* (2018), https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf.

[60] *See* Am. Acad. of Fam. Physicians, Resolution No. 1004 (2012), http://www.aafp.org/dam/AAFP/documents/about_us/special_constituencies/2012RCAR_Advocacy.pdf.

[61] *See* Am. Coll. of Obstetricians and Gynecologists, Committee Opinion No, 823: Health Care for Transgender Individuals (2021), https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2021/03/health-care-for-transgender-and-gender-diverse-individuals.pdf.

[62] *See* Nat'l Ass'n of Soc. Workers, Press Release, *Gender Affirming Care Saves Lives* (Mar. 28, 2023), https://www.socialworkers.org/News/News-Releases/ID/2642/Gender-Affirming-Health-Care-Saves-Lives.

[63] *See* WPATH, Position Statement, *Medical Necessity of Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A.* (Dec. 21, 2016), https://www.wpath.org/newsroom/medical-necessity-statement.

170. Section 37.002 of the UDJA provides that it is remedial, and its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered. Tex. Civ. Prac. & Rem. Code § 37.002(b).

171. Under Section 37.003 of the UDJA, a court of proper jurisdiction has the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. *Id.* § 37.003(a). The declaration may be either affirmative or negative in form and effect and the declaration has the force and effect of a final judgment or decree. *Id.* § 37.003(b).

172. As explained above, an actual controversy exists between Plaintiffs and Defendants concerning rights and obligations under Texas law, including the Texas Constitution.

173. Plaintiffs hereby seek a declaratory judgment that the Ban violates Article 1, § 19; Article 1, § 3; and Article 1, § 3a of the Texas Constitution and is therefore void.

B. Due Course of Law – Parental Rights with Respect to Minor Children

174. Plaintiffs incorporate the foregoing paragraphs in support of the following causes of action.

175. The Ban prevents parents from making medical care decisions concerning their children in violation of Parent Plaintiffs' and PFLAG parent members' Due Course of Law rights to parental autonomy.

176. The Due Course of Law Clause of the Texas Constitution protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. Tex. Const. art. 1, § 19.

177. That fundamental right of parental autonomy includes the right of parents to seek and follow medical advice to protect the health and wellbeing of their minor children.

178. Parents' fundamental right to seek and to follow medical advice is at its apex when the parents' and child's liberty interests in pursuing a course of medical care align, and the child's medical providers agree and have recommended as appropriate the course of medical treatment.

179. The Ban's prohibition on providing evidence-based and medically necessary treatment for adolescents with gender dysphoria stands directly at odds with parents' fundamental right to make decisions concerning the care of their children, particularly when it aligns with the adolescent's liberty interests and the recommendations of their medical providers. The Ban interferes with Texas families' private decisions and strips Texas parents, including Parent Plaintiffs and PFLAG parent members, of the right to seek, direct, and provide medical care that their children need.

180. The Ban does nothing to protect the health or wellbeing of minors. To the contrary, it gravely threatens the health and wellbeing of adolescents with gender dysphoria by denying their parents, including Parent Plaintiffs and PFLAG parent members, the ability to obtain necessary and often lifesaving medical treatment for their children.

181. The Ban's prohibition against the provision of medically accepted treatments for adolescents with gender dysphoria is not narrowly tailored to serve a compelling government interest. Here, the Ban lacks even a rational relationship to any legitimate government interest. Thus, the Ban violates Plaintiff Parents' and Plaintiff PFLAG parent members' fundamental rights under Article 1, § 19 of the Texas Constitution.

182. Parent Plaintiffs and Plaintiff PFLAG parent members are entitled to a declaratory judgment that the Ban violates Article 1, § 19 of the Texas Constitution.

C. Due Course of Law – Property Rights of Physicians in their Medical Licenses and Liberty Rights of Medical Providers to Engage in their Occupations

183. Plaintiffs incorporate the foregoing paragraphs in support of the following causes of action.

184. The Ban deprives Physician Plaintiffs and Plaintiff GLMA members of their vested property interests in their medical licenses and their rights to occupational liberty without due course of law.

185. Under the Texas Constitution, "[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. 1, § 19.

186. Article 1, Section 19 of the Texas Constitution safeguards Texas-licensed physicians against unwarranted, improper interference with their vested property interests in their medical licenses and protects all medical providers from such interference with their right to practice their profession by providing medically indicated treatment to transgender adolescents according to the generally accepted standard of care to alleviate the patient's gender dysphoria that the physician determines poses a risk to the transgender adolescent's health and wellbeing.

187. The Ban violates Physician Plaintiffs' and GLMA members' rights under Section 19 because it bans them from providing medically indicated treatment to transgender adolescents according to the generally accepted standard of care to alleviate the patient's gender dysphoria, puts physicians' medical licenses in jeopardy if they provide such treatment, and threatens other disciplinary action and penalties under the Texas Medical Practice Act.

188. The Ban does not serve a proper legislative purpose; there is no real and substantial connection between a legislative purpose and the language of SB14, and the Ban works an excessive burden on Texas medical providers treating transgender adolescent patients such that

relative to the purported purpose of SB14, the Ban is oppressive. Here, the Ban lacks even a rational relationship to any legitimate government interest.

189. Physician Plaintiffs and Plaintiff GLMA members seek a declaratory judgment that the Ban deprives Plaintiff physicians of vested property interests in their medical licenses and infringes on Plaintiff medical providers' right to occupational liberty under Article 1, Section 19 of the Texas Constitution.

D. Texas Equal Rights Amendment – Plaintiffs' Equality Denied and Abridged Because of Sex

190. Plaintiffs incorporate the foregoing paragraphs in support of the following causes of action.

191. The Ban discriminates because of sex in violation of all Plaintiffs' rights to equality under the Equal Rights Amendment of the Texas Constitution.

192. Under the Texas Constitution, "[e]quality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin." Tex. Const. art. 1, § 3a. It protects individuals and groups from discrimination by the government.

193. The Ban classifies based on sex on its face. The Ban harms transgender adolescents, including Minor Plaintiffs, Plaintiff PFLAG minor members, and the patients whom Physician Plaintiffs and Plaintiff GLMA members treat, by denying them medically necessary treatment because of their sex assigned at birth.

194. The Ban also discriminates against Parent Plaintiffs and Plaintiff PFLAG parent members by denying them the same ability to secure necessary medical treatment for their children that other parents can obtain, and it does so because of their child's sex assigned at birth.

195. Under the Texas Equal Rights Amendment, government discrimination based on sex is presumptively unconstitutional and subject to strict scrutiny, placing a demanding burden upon the State to show the law is narrowly tailored to serve a compelling government interest.

196. Discrimination on the basis of nonconformity with sex stereotypes, transgender status, gender, gender identity, gender transition, and sex characteristics are all forms of discrimination because of sex.

197. By its very terms, the Ban facially discriminates because of sex. The Ban prohibits any "physician or health care provider" from "knowingly" "provid[ing], prescrib[ing], administer[ing], or dispens[ing]" certain "procedures and treatments" to a minor "[f]or the purpose of transitioning" a minor's "biological sex as determined by the sex organs, chromosomes, and endogenous profiles" or "affirming the [minor]'s perception" of their sex "if that perception is inconsistent with the [minor]'s biological sex." SB14 § 2 (proposed Tex. Health & Safety Code § 161.702).

198. Under the terms of the Ban, whether a person can receive certain medical treatment turns on their assigned sex at birth.

199. Under the terms of the Ban, whether a person can receive certain medical treatment turns on whether they are transgender.

200. Under the terms of the Ban, whether a person can receive certain medical treatment turns on whether the treatment tends to reinforce or disrupt stereotypes associated with the person's sex assigned at birth.

201. Discrimination in the exercise of a fundamental right is also presumptively unconstitutional and is subject to strict scrutiny. The Ban unconstitutionally discriminates against Parent Plaintiffs and Plaintiff PFLAG parent members in the exercise of their fundamental right

to make decisions concerning the care, custody, and control of their children by prohibiting them from seeking and following medical advice to protect the health and wellbeing of their children solely because of their child's sex assigned at birth.

202. The Ban does nothing to protect the health or wellbeing of minors. To the contrary, it gravely threatens the health and wellbeing of adolescents with gender dysphoria by denying them access to evidence-based, medically necessary, and often lifesaving medical treatment.

203. The Ban is not narrowly tailored to achieve a compelling governmental interest. Here, the Ban lacks even a rational relationship to any legitimate government interest.

204. The Ban's targeted prohibition on medically necessary treatment for transgender adolescents with gender dysphoria is based on generalized fears, negative attitudes, stereotypes, and moral disapproval of transgender people, which are not legitimate bases for unequal treatment under any level of scrutiny.

205. The Ban deprives transgender adolescents and their parents or guardians, including Family Plaintiffs, Plaintiff PFLAG members, and the patients of Physician Plaintiffs and Plaintiff GLMA members, of their right to equality under the law because of sex and stigmatizes them as second-class citizens in violation of the Texas Equal Rights Amendment. The Ban also inflicts upon transgender adolescents and their parents or guardians, including Family Plaintiffs, Plaintiff PFLAG members, and the patients of Physician Plaintiffs and Plaintiff GLMA members, distress, humiliation, embarrassment, emotional pain and anguish, violation of their dignity, and harms to their short- and long-term health and wellbeing from being denied access to medically necessary healthcare.

206. Plaintiffs seek a declaratory judgment that the Ban violates Article I, § 3a of the Texas Constitution.

E. Equal Rights for Transgender People

207. Plaintiffs incorporate the foregoing paragraphs in support of the following causes of action.

208. The Ban discriminates because of transgender status in violation of Plaintiffs' equal rights guaranteed to all persons under the law by Article I, § 3 of the Texas Constitution.

209. The Ban classifies based on transgender status on its face. The Ban harms transgender adolescents, including Minor Plaintiffs, Plaintiff PFLAG minor members, and the patients whom Physician Plaintiffs and Plaintiff GLMA members treat, by denying them medically necessary treatment because of their transgender status.

210. The Ban also discriminates against Parent Plaintiffs and Plaintiff PFLAG parents in the exercise of their fundamental right to make decisions concerning the care, custody and control of their children by denying them the same ability to secure necessary medical treatment for their children that other parents can obtain on the basis of their child's transgender status.

211. The equal rights provision of the Texas Constitution protects transgender people as a class from being singled out as a special subject for discriminating or hostile legislation, such as SB14. *See Burroughs v. Lyles*, 181 S.W.2d 570, 574 (Tex. 1944).

212. Government discrimination based on transgender status is presumptively unconstitutional and subject to at least heightened scrutiny.

213. By its very terms, the Ban facially discriminates against transgender adolescents. The Ban prohibits any "physician or health care provider" from "knowingly" "provid[ing], prescrib[ing], administer[ing], or dispens[ing]" certain "procedures and treatments" to a minor "[f]or the purpose of transitioning" a minor's "biological sex as determined by the sex organs, chromosomes, and endogenous profiles" or "affirming the [minor]'s perception" of their sex "if

that perception is inconsistent with the [minor]'s biological sex." SB14 § 2 (proposed Tex. Health & Safety Code § 161.702).

214. Under the terms of the Ban, whether a person can receive certain medical treatment turns on whether they are transgender.

215. Discrimination in the exercise of a fundamental right is also presumptively unconstitutional and is subject to strict scrutiny. The Ban unconstitutionally discriminates against Parent Plaintiffs and Plaintiff PFLAG parent members in the exercise of their fundamental right to make decisions concerning the care, custody, and control of their children by prohibiting them from seeking and following medical advice to protect the health and wellbeing of their children solely because their child is transgender.

216. The Ban does nothing to protect the health or wellbeing of minors. To the contrary, it gravely threatens the health and wellbeing of adolescents with gender dysphoria by denying them access to evidence-based, medically necessary, and often lifesaving medical treatment.

217. The Ban is not narrowly tailored to achieve a compelling governmental interest. It is not substantially related to any important government interest. And it is not rationally related to any legitimate government interest.

218. The Ban's targeted prohibition on medically necessary treatment for transgender adolescents with gender dysphoria is based on generalized fears, negative attitudes, stereotypes, and moral disapproval of transgender people, which are not legitimate bases for unequal treatment under any level of scrutiny.

219. The Ban deprives transgender adolescents and their parents or guardians, including Family Plaintiffs, Plaintiff PFLAG members and the patients of Physician Plaintiffs and Plaintiff GMLA members, of their right to equal rights and stigmatizes them as second-class citizens in

violation of Article I, § 3 of the Texas Constitution. The Ban also inflicts upon transgender adolescents and their parents, including Minor Plaintiffs, Parent Plaintiffs, Plaintiff PFLAG members, and the patients of Physician Plaintiffs and Plaintiff GLMA members, distress, humiliation, embarrassment, emotional pain and anguish, violation of their dignity, and harms to their short- and long-term health and wellbeing from being denied access to medically necessary healthcare.

220. Plaintiffs seek a declaratory judgment that the Ban violates Article I, § 3 of the Texas Constitution.

X. APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

221. In addition to the above-requested relief, pursuant to Texas Civil Practice and Remedies Code Section 65.011 *et seq.* and Texas Rule of Civil Procedure 680 *et seq.*, to preserve the status quo pending a full trial on the merits, *see Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002), Plaintiffs request a temporary injunction against all Defendants that enjoins Defendants from taking any action to enforce SB14 pending the full resolution of the merits.

222. Plaintiffs stated a valid cause of action against Defendants.

223. Plaintiffs have a probable right to relief because, for the reasons stated herein, SB14 is unconstitutional in violation of the Due Course of Law and Equality Clauses of the Texas Constitution.

224. As described above, Plaintiffs will suffer probable, imminent, and irreparable injuries unless this Court grants their request for injunctive relief.

225. The threatened injury to Plaintiffs substantially outweighs the harm, if any, that Defendants would suffer from having to forestall enforcement of the Ban, pending resolution of the action.

226. Plaintiffs have no adequate remedy at law.

227. Accordingly, in order to preserve the status quo, Plaintiffs request that Defendants be cited to appear, and, after a full hearing, further request that the Court enter a temporary injunction.

228. Plaintiffs are willing to post a bond for any temporary injunction, but request that the bond be minimal because Defendants are acting in a governmental capacity, have no pecuniary interest in the suit, and no monetary damages can be shown. Tex. R. Civ. P. 684.

229. Further, Plaintiffs request that this Court set this matter for trial and, upon final hearing, that this Court enter a permanent injunction against all Defendants on each of the grounds asserted by Plaintiffs herein.

XI. CONDITIONS PRECEDENT

230. All conditions precedent have been performed or have occurred.

XII. PRAYER FOR RELIEF

231. For the foregoing reasons, Plaintiffs request the Court grant the following relief:

A. Upon hearing, a temporary injunction enjoining and restraining Defendants, their officers, agents, servants, employees, attorneys, and those in active concert or participation with them from implementing or enforcing any provision of SB14;

B. After trial, a permanent injunction enjoining and restraining Defendants, their officers, agents, servants, employees, attorneys, and those in active concert or participation with them from implementing or enforcing any provision of SB14;

C. A judgment against Defendants declaring that SB14 is unconstitutional, void, and unenforceable in its entirety, as described herein, including:

1. A declaration that SB14 violates Article 1, Section 19 of the Texas Constitution by infringing upon the rights of parents to parental autonomy;

2. A declaration that SB14 violates Article 1, Section 19 of the Texas Constitution by depriving physicians of their vested property interests in their medical licenses and infringing upon medical providers' right to occupational liberty;
3. A declaration that SB14 violates Article 1, Section 3a of the Texas Constitution by discriminating against transgender adolescents and their parents because of sex in violation of their right to equality under the law;
4. A declaration that SB14 violates Article 1, Section 3 of the Texas Constitution by discriminating against transgender adolescents and their parents because of transgender status in violation of their right to equal rights guaranteed to all persons;

D. To retain jurisdiction after judgment for the purposes of issuing further appropriate injunctive relief if the Court's declaratory judgment is violated;

E. To award costs and reasonable and necessary attorney's fees as are equitable and just under Tex. Civ. Prac. & Rem. Code § 37.009; and

F. To grant all other and further relief, general or special, whether in law or equity, as the Court deems just and proper.

Signature page to follow.

Dated: July 12, 2023

Respectfully submitted:

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**pro hac vice* motion forthcoming

TAB D

Texas Constitution Article I (Excerpts)

Texas Constitution

Article I

Sec. 3. EQUAL RIGHTS. All freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Sec. 3a. EQUALITY UNDER THE LAW. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

Sec. 13. EXCESSIVE BAIL OR FINES; CRUEL OR UNUSUAL PUNISHMENT; OPEN COURTS; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Sec. 19. DEPRIVATION OF LIFE, LIBERTY, PROPERTY, ETC. BY DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

TAB E

S.B. No. 14 Enrolled Version

AN ACT

relating to prohibitions on the provision to certain children of procedures and treatments for gender transitioning, gender reassignment, or gender dysphoria and on the use of public money or public assistance to provide those procedures and treatments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 62.151, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) The child health plan may not provide coverage for services prohibited by Section 161.702 that are intended to transition a child's biological sex as determined by the child's sex organs, chromosomes, and endogenous profiles.

SECTION 2. Chapter 161, Health and Safety Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. GENDER TRANSITIONING AND GENDER REASSIGNMENT PROCEDURES AND TREATMENTS FOR CERTAIN CHILDREN

Sec. 161.701. DEFINITIONS. In this subchapter:

(1) "Child" means an individual who is younger than 18 years of age.

(2) "Health care provider" means a person other than a physician who is licensed, certified, or otherwise authorized by this state's laws to provide or render health care or to dispense or prescribe a prescription drug in the ordinary course of business or practice of a profession.

(3) "Medicaid" means the medical assistance program established under Chapter 32, Human Resources Code.

(4) "Physician" means a person licensed to practice medicine in this state.

Sec. 161.702. PROHIBITED PROVISION OF GENDER TRANSITIONING OR GENDER REASSIGNMENT PROCEDURES AND TREATMENTS TO CERTAIN CHILDREN. For the purpose of transitioning a child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex, a physician or health care provider may not knowingly:

(1) perform a surgery that sterilizes the child, including:

(A) castration;

(B) vasectomy;

(C) hysterectomy;

(D) oophorectomy;

(E) metoidioplasty;

(F) orchiectomy;

(G) penectomy;

(H) phalloplasty; and

(I) vaginoplasty;

(2) perform a mastectomy;

(3) provide, prescribe, administer, or dispense any of the following prescription drugs that induce transient or permanent infertility:

(A) puberty suppression or blocking prescription drugs to stop or delay normal puberty;

(B) supraphysiologic doses of testosterone to females; or

(C) supraphysiologic doses of estrogen to males; or

(4) remove any otherwise healthy or non-diseased body part or tissue.

Sec. 161.703. EXCEPTIONS. (a) Section 161.702 does not apply to the provision by a physician or health care provider, with the consent of the child's parent or legal guardian, of:

(1) puberty suppression or blocking prescription drugs for the purpose of normalizing puberty for a minor experiencing precocious puberty; or

(2) appropriate and medically necessary procedures or treatments to a child who:

(A) is born with a medically verifiable genetic disorder of sex development, including:

(i) 46,XX chromosomes with virilization;

(ii) 46,XY chromosomes with undervirilization; or

(iii) both ovarian and testicular tissue; or

(B) does not have the normal sex chromosome structure for male or female as determined by a physician through genetic testing.

(b) Section 161.702 does not apply to the provision of a

prescription drug to a child that is otherwise prohibited by that section if:

(1) the prescription drug is part of a continuing course of treatment that the child began before June 1, 2023; and

(2) the child attended 12 or more sessions of mental health counseling or psychotherapy during a period of at least six months before the date the course of treatment described by Subdivision (1) began.

(c) A child to whom the exception under Subsection (b) applies:

(1) shall wean off the prescription drug over a period of time and in a manner that is safe and medically appropriate and that minimizes the risk of complications; and

(2) may not switch to or begin a course of treatment on another prescription drug that a physician or health care provider is prohibited from providing to the child under Section 161.702 or otherwise receive a procedure or treatment prohibited by that section.

Sec. 161.704. PROHIBITED USE OF PUBLIC MONEY. Public money may not directly or indirectly be used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a procedure or treatment to a child that is prohibited under Section 161.702.

Sec. 161.705. PROHIBITED STATE HEALTH PLAN REIMBURSEMENT. The commission may not provide Medicaid reimbursement and the child health plan program established by Chapter 62 may not provide

reimbursement to a physician or health care provider for provision of a procedure or treatment to a child that is prohibited under Section 161.702.

Sec. 161.706. ATTORNEY GENERAL ENFORCEMENT. (a) If the attorney general has reason to believe that a person is committing, has committed, or is about to commit a violation of Section 161.702, the attorney general may bring an action to enforce this subchapter to restrain or enjoin the person from committing, continuing to commit, or repeating the violation.

(b) Venue for an action brought under this section is in a district court of Travis County or the county where the violation occurred or is about to occur.

SECTION 3. Section 32.024, Human Resources Code, is amended by adding Subsection (pp) to read as follows:

(pp) The medical assistance program may not provide coverage for services prohibited by Section 161.702, Health and Safety Code, that are intended to transition a child's biological sex as determined by the child's sex organs, chromosomes, and endogenous profiles.

SECTION 4. Section 164.052(a), Occupations Code, is amended to read as follows:

(a) A physician or an applicant for a license to practice medicine commits a prohibited practice if that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) presents to the board a license, certificate, or

diploma that was illegally or fraudulently obtained;

(3) commits fraud or deception in taking or passing an examination;

(4) uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(5) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public;

(6) uses an advertising statement that is false, misleading, or deceptive;

(7) advertises professional superiority or the performance of professional service in a superior manner if that advertising is not readily subject to verification;

(8) purchases, sells, barters, or uses, or offers to purchase, sell, barter, or use, a medical degree, license, certificate, or diploma, or a transcript of a license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9) alters, with fraudulent intent, a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma;

(10) uses a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma that has been:

(A) fraudulently purchased or issued;

(B) counterfeited; or

(C) materially altered;

(11) impersonates or acts as proxy for another person in an examination required by this subtitle for a medical license;

(12) engages in conduct that subverts or attempts to subvert an examination process required by this subtitle for a medical license;

(13) impersonates a physician or permits another to use the person's license or certificate to practice medicine in this state;

(14) directly or indirectly employs a person whose license to practice medicine has been suspended, canceled, or revoked;

(15) associates in the practice of medicine with a person:

(A) whose license to practice medicine has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of medicine in this state or elsewhere;

(16) performs or procures a criminal abortion, aids or abets in the procuring of a criminal abortion, attempts to perform or procure a criminal abortion, or attempts to aid or abet the performance or procurement of a criminal abortion;

(17) directly or indirectly aids or abets the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine by the board;

(18) performs an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy unless:

(A) the abortion is necessary to prevent the death of the woman;

(B) the viable unborn child has a severe, irreversible brain impairment; or

(C) the woman is diagnosed with a significant likelihood of suffering imminent severe, irreversible brain damage or imminent severe, irreversible paralysis;

(19) performs an abortion on an unemancipated minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order, as provided by Section 33.003 or 33.004, Family Code, unless the abortion is necessary due to a medical emergency, as defined by Section 171.002, Health and Safety Code;

(20) otherwise performs an abortion on an unemancipated minor in violation of Chapter 33, Family Code;

(21) performs or induces or attempts to perform or induce an abortion in violation of Subchapter C, F, or G, Chapter 171, Health and Safety Code;

(22) in complying with the procedures outlined in Sections 166.045 and 166.046, Health and Safety Code, wilfully fails to make a reasonable effort to transfer a patient to a physician who is willing to comply with a directive; [~~or~~]

(23) performs or delegates to another individual the performance of a pelvic examination on an anesthetized or unconscious patient in violation of Section 167A.002, Health and Safety Code; or

(24) performs a gender transitioning or gender

reassignment procedure or treatment in violation of Section 161.702, Health and Safety Code.

SECTION 5. Subchapter B, Chapter 164, Occupations Code, is amended by adding Section 164.0552 to read as follows:

Sec. 164.0552. PROHIBITED ACTS REGARDING GENDER TRANSITIONING OR GENDER REASSIGNMENT PROCEDURES AND TREATMENTS ON CERTAIN CHILDREN. (a) The board shall revoke the license or other authorization to practice medicine of a physician who violates Section 161.702, Health and Safety Code. The board shall refuse to admit to examination or refuse to issue a license or renewal license to a person who violates that section.

(b) The sanctions provided by Subsection (a) are in addition to any other grounds for revocation of a license or other authorization to practice medicine or for refusal to admit persons to examination under this subtitle or to issue a license or renew a license to practice medicine under this subtitle.

SECTION 6. Section 164.052, Occupations Code, as amended by this Act, and Section 164.0552, Occupations Code, as added by this Act, apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 7. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or

authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 8. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 9. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 14 passed the Senate on April 4, 2023, by the following vote: Yeas 19, Nays 12; and that the Senate concurred in House amendments on May 17, 2023, by the following vote: Yeas 19, Nays 12.

Secretary of the Senate

I hereby certify that S.B. No. 14 passed the House, with amendments, on May 15, 2023, by the following vote: Yeas 87, Nays 56, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

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