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

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

Plaintiffs,

v.

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

Defendants.

Civil Action No. 2:22-cv-00167

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

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INTRODUCTION

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

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

minor to obtain this care.

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

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

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

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

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

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

II. ALABAMA'S FELONY HEALTH CARE BAN.

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

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

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

vasectomy, hysterectomy, oophorectomy, orchiectomy, and penectomy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[10] Savanna Tryens-Fernandes, *Lawmakers Again Consider Alabama Bill to Limit Treatments for Transgender Children*, Ala. News (Feb. 23, 2022), https://bit.ly/37BTkop.

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

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

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

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

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

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

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

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

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

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

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

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

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

The Walker Family

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

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

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

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

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

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

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

The White Family

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

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

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

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

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

* * *

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

LEGAL STANDARD[15]

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

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

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

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

ARGUMENT

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

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

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

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

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

A. The Felony Health Care Ban Triggers Heightened Scrutiny.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In addition to inaccurately representing the nature of the evidence supporting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Felony Health Care Ban Fails Strict Scrutiny.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. A PRELIMINARY INJUNCTION SERVES THE PUBLIC INTEREST.

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

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

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

VII. SECURITY IS NOT NECESSARY IN THIS CASE.

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

CONCLUSION

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

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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