No. 23A763

IN THE SUPREME COURT OF THE UNITED STATES

RAÚL LABRADOR,
IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF IDAHO,
APPLICANT

v.

PAM POE,
BY AND THROUGH HER PARENTS AND NEXT FRIENDS, *ET AL.*,
RESPONDENTS

RESPONSE IN OPPOSITION TO THE APPLICATION FOR A STAY

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To the Honorable Elena Kagan, Associate Justice of the United States and Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pam Poe, by and through her next friends, Penny and Peter Poe; Penny Poe; Peter Poe; Jane Doe, by and through her next friends Joan and John Doe; Joan Doe; and John Doe, submit the following response to Attorney General Raúl Labrador's Emergency Application for Stay Pending Appeal.

INTRODUCTION

This case asks whether Idaho's law making it a crime for healthcare providers to provide gender-affirming medical care to transgender adolescents (House Bill 71 (engrossed), codified at Idaho Code § 18-1506C ("HB 71")) violates the Constitution. That merits question is currently being briefed on an expedited basis before the Ninth Circuit. But that question is not before this

Court in this emergency stay application seeking an order narrowing the scope of the preliminary injunction issued by the district court. Here, Applicant asks the Court to answer a different question—whether a court may enjoin the enforcement of a law against non-parties. See Emergency Application for Stay Pending Appeal ("Stay App.") 1. Applicant does not appear to dispute that courts may issue injunctive relief that benefits non-parties if necessary to provide relief to the plaintiffs. That is what the district court did here when it found that, on the particular facts and circumstances of this case, it was necessary to enjoin Idaho's criminal ban on healthcare providers providing gender-affirming medical care in order to ensure that the Plaintiffs can continue to receive their medical care. Applicant may believe the district court got that determination wrong here, but that fact-bound question is not a vehicle for this Court to resolve broader legal questions about whether courts have the power to issue relief in order to benefit non-parties.

While an emergency stay is always an "extraordinary" request "rarely" granted," Applicant has an "especially heavy burden" here "[b]ecause the matter is pending before the Court of Appeals"—and proceeding on an expedited basis in the Ninth Circuit and will be fully briefed in a matter of weeks[1]—and "because the Court of

[1] See Supp.App.39a; 9th Cir. R. 3-3; id. R. 31-2.1(a).

Appeals denied his motion for a stay." Packwood v. Senate Select Comm. on Ethics, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers). Applicant has not come close to satisfying that burden because he cannot establish *any* of the criteria for obtaining the extraordinary relief he seeks, let alone all of them.

To obtain a stay pending appeal from this Court, "a stay applicant must show, among other things, 'a reasonable probability' that this Court would eventually grant certiorari on the question presented in the stay application." Griffin v. HM Fla.-ORL, LLC, 144 S. Ct. 1 (2023) (Kavanaugh, J., respecting denial of stay) (citation omitted); see also Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (setting out standard for a stay). A grant on the question presented in this application, which concerns the propriety of "universal injunctions," as Applicant puts it, is unlikely because this case is simply not a vehicle for resolving that question. Applicant does not suggest that there is anything improper about injunctive relief that benefits non-parties when incidental to providing relief to the plaintiffs. And the district court expressly found that the injunction it issued—which enjoined the Defendants (the Idaho Attorney General and the Ada County prosecutor) from enforcing HB 71 statewide during the pendency of the litigation—was necessary to provide the Plaintiffs relief. App.A.53. Specifically, it found that limiting the injunction to the two minor Plaintiffs would require these

pseudonymous plaintiffs to disclose their identities as the transgender plaintiffs in this litigation to staff at doctors' offices and pharmacies every time they visited a doctor or sought to fill their prescriptions. Id. Moreover, HB 71 criminalizes healthcare providers' conduct rather than that of their patients. Thus, absent an injunction that enjoins Defendants from generally enforcing the law against doctors and pharmacists—who face up to ten years in prison for violating the law—it is unlikely that providers would feel willing or able to provide care to Plaintiffs. This application presents a highly fact-bound question about whether the injunction was necessary to afford full relief to the Plaintiffs under the facts of this particular case. It does not provide a vehicle for this Court to answer the broader legal question of whether a "universal injunction" issued in order to extend benefits to non-parties is ever appropriate.

This case is also a poor vehicle because this Court's precedents and the relevant scholarship have focused on the particular concerns presented by *nationwide* injunctions. The same concerns are not present when a district court enjoins enforcement of a *state* law. That is especially true in Idaho, where there is a single district court and any other cases that might arise challenging the same law would likely be before the same judge. See Fed. R. Civ. P. 42(a) (permitting consolidation of matters that "involve a common question of law or fact"). As a result,

the injunction here does not tie the hands of any other judge in any other district, much less all judges nationwide.

Given that emergency relief is not appropriate absent a showing that the issue presented in an application is worthy of certiorari, Does 1–3 v. Mills, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in denial of application), and this case would not be a vehicle through certiorari for the Court to resolve the question of the propriety of "universal injunctions," the requested relief should be denied.

Applicant also fails to make the required showing of a fair prospect that the Court would reverse and narrow the scope of the injunction to apply only to the two minor Plaintiffs if certiorari were granted. The district court appropriately exercised its discretion in determining that, given the circumstances of this case, the equities warranted a statewide injunction against Defendants' enforcement of the law to provide relief to Plaintiffs. Even if this Court ultimately disagreed with that factual determination, the district court would still have equitable powers to grant broader relief. *See* § I.A., infra.

Nor will there be irreparable harm to Applicant or third parties if the stay is denied. The premise of Applicant's asserted irreparable harm—that gender-affirming medical care is harmful to minors because it is dangerous, ineffective, and those treated are likely to later come to identify with their birth-assigned sex—

was rejected by the district court as contrary to the evidence, which was the same conclusion reached by nearly every other court to consider evidence and making findings of fact on this issue.[2]

While denying the stay would cause no harm, granting it would cause severe harm to Plaintiffs by jeopardizing their ability to continue receiving the medical care that they, their parents, and their doctors all agree is medically necessary for their health and well-being, and requiring them to give up their anonymity as transgender plaintiffs in this case to try to access that care. This is also contrary to the public interest.

Applicant has failed to meet the heavy burden required for this Court to short-circuit the normal appellate process.

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[2] See Eknes-Tucker v. Marshall, 603 F. Supp. 3d 1131 (M.D. Ala. 2022) (granting preliminary injunction), rev'd on other grounds, Eknes-Tucker v. Governor of Ala., 80 F.4th 1205 (11th Cir. 2023); Brandt v. Rutledge, 551 F. Supp. 3d 882 (E.D. Ark. 2021) (granting preliminary injunction), aff'd, 47 F.4th 661 (8th Cir. 2022); Brandt v. Rutledge, No. 4:21-CV-00450, 2023 WL 4073727 (E.D. Ark. June 20, 2023) (granting permanent injunction), appeal filed, No. 23-2681 (8th Cir. Jul. 21, 2023), hearing en banc granted Oct. 6, 2023; Koe v. Noggle, No. 1:23-CV-2904-SEG, 2023 WL 5339281 (N.D. Ga. Aug. 20, 2023) (granting preliminary injunction), stayed, No. 1:23-CV-2904-SEG (N.D. Ga. Sept. 5, 2023); K.C. v. Individual Members of Med. Licensing Bd. Of Ind., No. 1:23-cv-00595, 2023 WL 4054086 (S.D. Ind. June 16, 2023) (granting preliminary injunction), appeal filed, No. 23-2366 (7th Cir. Jul. 12, 2023); Doe v. Ladapo, No. 4:23-CV-114-RH-MAF, 2023 WL 3833848 (N.D. Fla. June 6, 2023) (granting preliminary injunction), appeal filed, No. 23-12159 (11th Cir. June 27, 2023); L.W. v. Skrmetti, No. 3:23-CV-00376, 2023 WL 4232308 (M.D. Tenn. June 28, 2023), rev'd, 83 F.4th 460 (6th Cir. 2023); Doe 1 v. Thornbury, No. 3:23-CV-230-DJH, 2023 WL 4230481 (W.D. Ky. June 28, 2023), rev'd, 83 F.4th 460 (6th Cir. 2023); but see Poe v. Drummond, No. 23-CV-177-JFH-SH, 2023 WL 4560820 (N.D. Okla. July 17, 2023) (denying preliminary injunction), appeal filed, No. 23-5110 (10th Cir. Oct. 10, 2023).

STATEMENT OF THE CASE

A. Factual Background

As noted above, while the underlying case concerns the constitutionality of a ban on gender-affirming medical care for minors, that issue is not before the Court in this emergency application, which concerns only the distinct question of the permissible scope of injunctive relief. However, Plaintiffs provide this background on the treatment of transgender adolescents with gender dysphoria and the law criminalizing certain treatments for them because it is relevant to Applicant's claimed irreparable harm absent the requested stay, and the harm to Plaintiffs and the public interest should the stay be granted. Applicant offers a statement of the case that makes a range of assertions about the purported danger and ineffectiveness of gender-affirming medical care that are in direct conflict with the district court's findings of fact based on its review of the evidence and that grossly mischaracterizes the record evidence. Plaintiffs, therefore, offer a summary of the evidence that supports the court's findings of fact.

1. The Treatment of Adolescents with Gender Dysphoria

Gender dysphoria is the clinically significant distress that can result from the incongruence transgender people experience between their gender identity and their birth-assigned sex. Supp.App. 127a. To meet the criteria for gender dysphoria in the

Diagnostic and Statistical Manual of Mental Disorders (5th Ed.)("DSM"), the incongruence must be present for at least six months, and cause clinically significant distress or impairment in social, occupational, or other important areas of functioning. Id. at 129a. If left untreated, gender dysphoria can result in severe anxiety and depression, self-harm, and suicidality. Id. at 131a–32a.

The Endocrine Society and the World Professional Association for Transgender Health ("WPATH") have published widely accepted clinical guidelines for treating gender dysphoria. Supp.App. 144a–45a; Supp.App. 132a. These guidelines are recognized as authoritative by all of the major medical organizations in the United States. Id. at 145a–46a; 133a.

Under the WPATH and Endocrine Society guidelines, the appropriate treatment for gender dysphoria varies based on an individualized assessment of each patient's needs. Supp.App. 145a. Prior to puberty, no medical treatments are indicated or provided. Id. at 145a; 134a. After puberty starts (adolescence), the changes that come with puberty can exacerbate gender dysphoria and cause extreme distress, and there is broad consensus in the medical community that after the onset of puberty, transgender youth are very unlikely to come to identify with their birth-

assigned sex. Id. at 129a, 134a; 182a.[3] Thus, for adolescents with gender dysphoria, medical interventions may be indicated in appropriate cases after a comprehensive psychosocial assessment of the patient. Id. at 133a–136a; 149a.

Puberty delaying medications pause endogenous puberty to prevent the worsening of gender dysphoria that can come with the physical changes of puberty. Supp.App. 134a. If puberty delaying medication is discontinued, endogenous puberty will resume. Id. at 146a, 154a. In some cases, hormone therapy—testosterone for adolescent transgender boys and testosterone suppression and estrogen for adolescent transgender girls—may be indicated to alleviate the distress of gender dysphoria by allowing the patient to go through puberty consistent with their gender identity. Id. at 134a. In rare cases, surgeries are indicated for individuals under 18. Almost all such surgeries are chest surgeries for transgender males. Id. at 149a.[4]

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[3] A body of research, sometimes referred to as "desistance" studies, assessed gender non-conforming children who, under an earlier DSM diagnosis of Gender Identity Disorder, did not need to identify as a sex that differed from their birth-assigned sex to meet the diagnostic criteria. Unsurprisingly, many of those youth did not identify as transgender at follow up. Additionally, those studies evaluated prepubertal children and say nothing about the likelihood of desistance among adolescents. Supp.App. 130a, 181a–83a, 218a–19a; see also id. 342a (Applicant's expert stating that desistance is less likely to occur after age 12).

[4] Contrary to Applicant's characterization (Stay App. 7), WPATH does not "promot[e]" genital surgeries for minors; rather, it provides strong cautionary language regarding the need to assess a patient's cognitive and emotional maturity to make such a decision. Supp.App. 232a. Plaintiff's expert Dr. Connelly testified that at her clinic, which saw nearly 1000 patients in 2022,

Under the guidelines, gender-affirming medical care may be recommended for an adolescent only when i) they have met the diagnostic criteria for gender dysphoria; (ii) their gender incongruence has been sustained over time; (iii) they have sufficient emotional and cognitive maturity to understand and provide informed assent; (iv) they have no other mental health conditions that interfere with diagnostic clarity or ability to consent; and (v) the patient and their family is fully informed of potential risks and fertility preservation options. Supp.App. 134a–35a. For minors, parental consent— in addition to the minor's assent—is required to prescribe these medical treatments. Id. at 136a.

Gender-affirming medical treatments can significantly alleviate gender dysphoria. Supp.App. 136a–37a. The efficacy of gender-affirming medical care in improving mental health outcomes for adolescents suffering from gender dysphoria has been demonstrated by decades of clinical experience and a body of scientific research. Id. at 137a, 151a–52a, 154a, 157a–58a, 168a-70a.[5]

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id. at 143a, only one patient has had genital surgery prior to turning eighteen. App.D.27.

[5] Applicant points to recent studies from Europe that he says show "no difference in mental-health outcomes between [gender] dysphoric people who did and did not" receive gender-affirming medical care. Stay App. 10. This is not an accurate claim and has not been engaged with by any experts in the case. In any case, looking at the body of research as a whole shows significant benefits of treatment. Supp.App. 170a.

The evidence base supporting gender-affirming medical care for adolescents is comparable to the evidence base supporting other medical treatments for minors. Supp.App. 157a–58a. The research studies include both longitudinal studies (following mental health before and after treatment) and cross-sectional studies (comparing treated and untreated individuals). Id. at 157a, 168a–70a. These types of research studies are commonly relied on in making treatment recommendations in medicine, particularly pediatrics. Id. at 157a, 174a–75a.[6]

The medications used to treat gender dysphoria are often prescribed to adolescents to treat a variety of other medical conditions, including precocious puberty, delayed puberty, premature ovarian failure, polycystic ovarian syndrome, and intersex conditions. Supp.App. 152a–53a.[7] These medications, like all medications, have potential risks. Id. at 154a. Most of the risks identified by Applicant are not unique to treating

[6] Randomized controlled clinical trials ("RCTs") are generally considered the highest quality evidence, and all other study types are categorized, comparatively, as "low quality" evidence in the parlance of the GRADE system of assessing evidence. Supp.App. 130a. RCTs are desirable where possible but often not feasible or ethical, and many medical treatments are not supported by RCTs. Supp.App. 157a; Supp.App. 130a.

[7] These medications have been FDA approved for some indications but not others, including gender dysphoria. Once a medication receives FDA approval for one use, doctors may prescribe it for other uses (referred to as "off-label" use). Off-label use is widespread in medicine. Once a medication is approved for one indication, it is often not worth the expense to pharmaceutical companies to pursue approval for other indications. The lack of FDA approval for a particular indication does not reflect any view of the FDA on the use. Id. at 231a–32a.

transgender patients with gender dysphoria, and all risks can be mitigated and are discussed extensively with patients and families as part of the informed consent process. Id. at 154a, 155a–56a. For example, estrogen therapy can increase a patient's risk of blood clots and high blood pressure, but these risks are rare and do not vary based on the condition they are being prescribed to treat or the birth-assigned sex of the patient. Id. at 154a–55a.[8] As with other medical treatments families may pursue to support their minor children's health, hormone therapy (but not puberty-delaying treatment by itself) may affect a patient's fertility, but treatment can be adjusted to preserve fertility. Id. at 227a.

In the past few years, some government health authorities in Europe published systematic reviews of the literature on gender-affirming medical care for adolescents that noted limitations in the research, which is common across medicine.[9] None of the European reviews prompted government health authorities to ban care in those countries. Some made changes to how care is

[8] In addition to citing various risks of these medications that apply regardless of the purpose for which they are used, Applicant makes various assertions about these medications that are refuted by the record, e.g. that puberty-delaying medication "may" affect brain development, Stay App. 8; see Supp.App. 224a, and that treatment causes sexual dysfunction, Stay App. 10; see Supp.App. 228a.

[9] A systematic review is a collection and summary of the literature on a particular topic where the authors use pre-defined search terms when conducting literature reviews in databases. Supp.App. 180a–81a. As Applicant's expert, Dr. Cantor, noted, with systematic reviews there can be "discrepant judgments between intelligent and well-informed review authors." Id. at 386a; see also id. at 180a–81a.

provided, e.g., requiring that that care be provided within clinical research settings where data can be collected. But gender-affirming medical care continues to be available for minors throughout Europe. Supp.App. 146a, 179a—80a.

As with all medical care, families—in consultation with their doctors—weigh the risks and benefits of treatment, as well as the risks of not providing treatment, to determine whether to pursue gender-affirming medical care. The impact of gender dysphoria on adolescents' health and well-being can be severe. For many such adolescents, the benefits of treatment outweigh the risks. See Supp.App. 393a.[10] And treatment regret, due to detransition or other reasons, while taken seriously, see id. at 229a, is extremely rare.[11] Id. at 129a, 189a, 228a–29a, 388a.

With increased visibility of transgender people and greater societal understanding of gender dysphoria, more adolescents—including those assigned female at birth who were previously

[10] Applicant falsely states that one of Plaintiff's experts agreed with the statement that the "for the group of adolescents with gender dysphoria . . . the risks of puberty blockers and gender-affirming treatment are [sic] likely to outweigh the expected benefits of these treatments." Stay App. 23, (citing App.D.23-24). This appears to be a citation error. The relevant testimony appears at Supp.App. 390a–91a , and it is clear that Dr. Turban did not indicate agreement with that proposition.

[11] Research shows that people may discontinue or pause treatment for a variety of reasons such as being satisfied with the changes that have occurred or a change in insurance coverage. Supp.App. 130a–31a, 190a–93a, 228a–29a. But regret and detransition rates are low. Applicant's assertion that there is a rise in detransition among transgender people is unsupported. An op-ed by a newspaper opinion writer (Stay App. 3, 28) is not a reliable source of scientific evidence.

underdiagnosed—have access to evaluation and treatment for gender dysphoria than in the past. Supp.App. 187a–88a

For adolescents for whom gender-affirming medical care is indicated and who are currently receiving care, if treatment is discontinued, it can cause increased depression, anxiety, self-harm, suicidality, and social isolation. Supp.App. 138a–39a, 161a. Additionally, stopping treatment would cause their bodies to undergo permanent changes that would be difficult or impossible to subsequently change, putting them at risk of increased gender dysphoria for the rest of their lives. Supp. App. 138a–39a, 159a-60a.

2. HB 71

HB 71makes it a crime for healthcare providers to provide certain medications or surgery to a minor "for the purpose of attempting to alter the appearance of or affirm the child's perception of the child's sex if that perception is inconsistent with the child's biological sex." I.C. § 18-1506C(3). The same medications and surgeries are not banned if they are provided for any other purposes. That is true even when provided for the purpose of affirming a minor's gender if it is *consistent* with the child's "biological sex." For example, adolescent boys with gynecomastia—enlargement of the breast tissue—may undergo a mastectomy because of the distress related to being a boy with breasts. Supp.App. 137a. HB 71 expressly allows physicians to

provide any of the enumerated treatments for children with intersex conditions, including irreversible cosmetic genital surgeries on newborns with intersex conditions. I.C. § 18-1506C(4)(c).

There is no exception for treatment that is necessary for the adolescent's health—regardless of their prior course of treatment, individual circumstances, or degree of distress—if the treatment's purpose is to affirm a minor's gender "inconsistent with [their] biological sex." Id. § 18-1506C(3).

The penalty for violating the law is up to ten years imprisonment. Id. § 18-1506C(5).

B. Proceedings Below

Plaintiffs Pam Poe and Jane Doe are transgender teenage girls living in Idaho whose gender dysphoria has been dramatically alleviated as a result of puberty blockers and estrogen therapy. App.A.7-9, 50. Pam and Jane, along with their parents, brought this case challenging HB 71 and moved for a preliminary injunction against enforcement of the law while the case proceeds. They filed a motion to proceed pseudonymously to protect their privacy and ensure their safety. Supp.App. 82a–89a. Defendants did not oppose the motion and it was granted by the court.

On December 26, 2023, the district court granted Plaintiffs' motion for preliminary injunction. The court held that Plaintiffs had a likelihood of success on the merits after concluding that heightened scrutiny applied to their claims because the law

classifies based on sex and transgender status and burdened parents' fundamental right to make medical decisions for their minor children, and that the Defendants likely could not meet their burden of establishing that the law was substantially related to the furtherance of an important government interest. That conclusion was based on the court's findings of fact based on voluminous evidence.

The court also held that eliminating access to gender-affirming medical care would cause irreparable harm to Pam and Jane, including "severe psychological distress" and, potentially, their families having to regularly travel out of state or uproot and leave Idaho to access care. App.A.50. And it held that the balance of equities and the public interest support the injunction.

The court issued an injunction enjoining the Defendants—the Idaho Attorney General and the Ada County prosecutor—from enforcing the law during the pendency of this litigation. In considering the scope of the injunction, the court concluded that a statewide injunction was necessary to afford relief to the individual Plaintiffs, finding that because they are proceeding under pseudonym, it would be "administratively burdensome, if even possible," to otherwise fashion an injunction that would provide them relief without compromising their anonymity. App.A.53. The court was "particularly mindful of the privacy interests here, as two plaintiffs are minors." Id.

Applicant filed a notice of appeal and a motion with the district court asking it to "stay the preliminary injunction" pending resolution of the appeal. App.D.2. After the district court denied the motion, Applicant sought a stay from the Ninth Circuit, asking for a stay of the full injunction or, in the alternative, a stay narrowing the scope to cover just the two minor Plaintiffs. The Ninth Circuit denied the motion and a motion for reconsideration en banc. On February 16, 2024, Applicant filed the application with this Court asking it to narrow the district court's preliminary injunction. See Stay. App. 34 (asking Court for a "stay of the district court's injunction pending appeal insofar as it grants relief to non-parties").

Applicant's appeal is proceeding on an expedited schedule pursuant to the Ninth Circuit's rules; thus, briefing is already underway and will be completed by March 26. 9th Cir. R. 3-3 (preliminary injunction appeals); App.B.2; 9th Cir. R. 31-2 (time for service and filing).

ARGUMENT

Applicant bears a "heavy burden" to justify the "extraordinary" relief of a stay of the district court's preliminary injunction. Ruckelshaus v. Monsanto Co., 463 U.S. 1315, 1316 (1983). Only "rarely" is such relief warranted. Heckler v. Lopez, 463 U.S. 1328, 1330 (1983) (Rehnquist, J., in chambers).

The following conditions must be met before the Court can issue a stay pursuant to 28 U.S.C. § 2101: "(1) a reasonable probability that this Court will grant certiorari, (2) a fair prospect that the Court will reverse the decision below, and (3) a likelihood that irreparable harm will result from the denial of a stay." Teva Pharms. USA, Inc. v. Sandoz, Inc., 572 U.S. 1301, 1301 (2014) (Roberts, C.J., in chambers) (internal quotation marks and brackets omitted). Additionally, it is necessary "to balance the equities—to explore the relative harms to applicant and respondent, as well as the interests of the public at large." Rostker v. Goldberg, 448 U.S. 1306, 1307 (1980) (Brennan, J., in chambers) (internal quotation marks omitted). As discussed more fully below, Applicant fails to demonstrate the requirements and the balancing of the equities weighs strongly against granting the stay.

"Because the matter is pending before the Court of Appeals, and because the Court of Appeals denied his motion for a stay, applicant has an especially heavy burden." Packwood v. Senate Select Comm. on Ethics, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers). The Court does "not disturb, 'except upon the weightiest considerations, interim determinations of the Court of Appeals in matters pending before it.'" Certain Named and Unnamed Noncitizen Child. v. Texas, 448 U.S. 1327, 1330 (1980) (Powell, J., in chambers) (quoting *O'Rourke* v. *Levine*, 80 S. Ct. 623, 624

(1960) (Harlan, J., in chambers)); see also Edwards v. Hope Med. Grp. for Women, 512 U.S. 1301, 1302 (1994) (Scalia, J., in chambers). The Court's "[r]espect for the assessment of the Court of Appeals is especially warranted when that court is proceeding to adjudication on the merits with due expedition." Doe v. Gonzales, 546 U.S. 1301, 1308 (2005) (Ginsburg, J., in chambers); see also Yeshiva Univ. v. Yu Pride All., 143 S. Ct. 1, 1 (2022) (declining to grant a stay pending appeal when applicants could seek "expedite[d] consideration of the merits of their appeal"). Moreover, both the district court and the Ninth Circuit denied the requested stay, making a stay under the circumstances especially disfavored.

I. There is Not a Reasonable Probability that this Court Will Grant Certiorari

A. This Case Does Not Present the Question Applicant Raises

Applicant contends that the Court would grant review in this case of the question of whether a district court can issue an injunction to afford relief to non-parties. But here, the district court did not do that; it granted relief to the Plaintiffs, but found that to do so, the court needed to enjoin enforcement of the law statewide. Accordingly, this case doesn't present the question Applicant raises, but only the distinct question of whether, on these facts, the relief was necessary to protect the parties before

the Court. That routine question is fact-bound and not deserving of certiorari.

The district court agreed with Applicant's position on the law—namely, that "[i]n the absence of class certification, injunctive relief generally should be limited to the named plaintiffs." App.A.52; Stay App. 17–18. It then noted that "an injunction is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action—if such breadth is necessary to give prevailing parties the relief to which they are entitled." App.A.52. Applicant does not appear to dispute this. See Stay App. 14, 16.

Applicant's disagreement with the district court's decision is not with the legal standard applied by the court, but rather, its particular application of that standard here and its conclusion that enjoining Defendants from enforcing HB 71 statewide was necessary to afford relief to the plaintiffs. But the district court found that because plaintiffs are proceeding under pseudonym, it would be "administratively burdensome, if even possible," to otherwise fashion an injunction that would provide them relief without compromising their anonymity. App.A.53. The court was "particularly mindful of the privacy interests here, as two plaintiffs are minors." Id.

Applicant suggests that Plaintiffs could continue to receive care by presenting a sealed court order to healthcare providers. But this would require them to disclose their identities as transgender plaintiffs in this lawsuit to staff in doctors' offices and pharmacy employees every time they need their prescriptions filled, undermining the purpose of proceeding under a pseudonym.

In addition to the harms to Plaintiffs that would flow from having to reveal their identities as transgender plaintiffs in this litigation to get care or their prescriptions filled, without an injunction that prevents enforcement of the law against healthcare providers, there is no way for the individual Plaintiffs to get relief at all. Applicant frames the issue in his application as "whether a district court may facially enjoin a state law and prohibit its enforcement against non-parties." Stay App. 1. But the law is directed at doctors and pharmacists, making it a crime for them to provide certain medical treatments to transgender adolescents with gender dysphoria. Plaintiffs' injuries cannot be redressed without an injunction protecting healthcare providers from prosecution so that they can continue to treat Plaintiffs and dispense the medication they need. And given that the penalty for violating the law is a felony punishable by up to ten years in prison, Applicant's assertion that providing Plaintiffs a sealed court order will ensure Plaintiffs' continued care is naïve at best. It is implausible that doctors or

pharmacists would take the risk of relying on a document presented by an individual claiming to be one of the plaintiffs in this case.[12]

This is not a case in which the court entered an injunction in order to provide relief to non-parties. Rather, the dispute is about whether the relief afforded was warranted to provide full relief to the Plaintiffs. There is no reasonable likelihood that this Court would grant certiorari to review that fact-bound question.

B. This Case is a Poor Vehicle for Resolving the Question Presented by Applicant Because it Involves an Injunction Prohibiting State Officials from Enforcing State Law in a Single-District Jurisdiction

This case is also a poor vehicle to resolve the question presented by Applicant because it does not involve a nationwide injunction. In recent years, some members of the Court have raised concerns about "nationwide injunctions." Some of the concerns cited are that such injunctions may prevent percolation of the law on important issues by different judges before this Court decides them, see Trump v. Hawaii, 585 U.S. 667, 713 (2023) (Thomas, J.,

[12] Ultimately, if this Court were to conclude that a narrower injunction could fully redress Plaintiffs' injuries, any version of that injunction would have to extend to non-parties because at a minimum some doctors and pharmacists would need to be covered, thus making this case an inappropriate vehicle for addressing the legal question Applicant raises about the court's power to enjoin enforcement of laws against non-parties. Applicant previously argued to the district court that "if the Court enters an injunction, it should limit the scope of that injunction to Plaintiffs and their providers." Supp.App. 50a.

concurring); create the risk of conflicting decrees that create chaos and confusion, see United States v. Texas, 599 U.S. 670, 694 (2023) (Gorsuch, J., concurring), and promote forum shopping, allowing litigants to go outside of their home state to search for what they perceive to be a friendlier forum. See, e.g., id.; Dep't of Homeland Sec. v. New York, 140 S. Ct. 599, 601 (2020) (Gorsuch, J., concurring).

But the injunction here applies only to one state, in a state with only one district. As one commentator opposed to nationwide injunctions has observed, the concerns are far less pronounced in the case of statewide injunctions. Samuel L. Bray, Multiple Chancellors: Reforming the National Injunction, 131 Harv. L. Rev. 417, 424 n.29 (2017). "Because a state government is within only one federal court of appeals, plaintiffs suing state defendants have less incentive to forum shop," and "there is less risk of conflicting injunctions from different courts." Id.

Because Idaho has only one district, there is no other federal court that could hear a constitutional challenge to HB 71 and thus, no risk of conflicting orders or forum shopping. There is not even a significant risk of preventing different individual judges from reaching different conclusions on a point of law, since any

other cases that might be brought challenging the Idaho law would likely be heard by the same judge. See Fed. R. Civ. P. 42(a).[13]

Other litigants have raised the propriety of universal injunctions in their petitions for certiorari where concerns regarding nationwide injunctions were present, and the Court declined to grant certiorari. See, e.g., Petition for Writ of Certiorari, Apple Inc. v. Epic Games, Inc., No. 23-344 (U.S. Jan. 16, 2024). Applicant does not offer any reason why in this case—where none of the concerns about such injunctions exist—the Court is likely to grant review.

II. Applicant Does Not Have a Fair Prospect of Reversal of the Scope of the Injunction

If the Court were to grant certiorari to address the question presented by Applicant, it is unlikely to reverse and limit the injunction as Applicant requests because the scope of the injunction is necessary to afford full relief to the Plaintiffs. See § I.A, supra. "An injunction remedying a plaintiff's harm may "affect[] nonparties[] [if] it does so only incidentally." *Texas*, 599 U.S. at 693 (Gorsuch, J., concurring). As this Court has made clear, "[c]rafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents."

[13] In these circumstances, the district court appropriately considered the "needless and repetitive litigation" of "follow-on lawsuits by similarly situated plaintiffs" if it "were to issue a plaintiffs-only injunction," in crafting the scope of the injunction. App.A.53.

Trump v. Int'l Refugee Assistance Project, 582 U.S. 571, 579 (2017).

Even if the Court were to disagree with the district court's determination that a statewide injunction is necessary to afford relief to the Plaintiffs, it would have been within the court's equitable power to grant broader relief. Issuing relief that extends beyond what is required to protect the parties is not outside the scope of a court's power. See, e.g., W. Va. Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943) (affirming an injunction against enforcement of West Virginia statute that required saluting the American flag, thereby extending relief beyond the plaintiff class of Jehovah's Witnesses). This Court has long recognized that "breadth and flexibility are inherent in equitable remedies." Hutto v. Finney, 437 U.S. 678, 687 n.9 (1978) (quoting Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15 (1971)); see also Brown v. Plata, 563 U.S. 493, 538 (2011) (noting that "[c]ourts have substantial flexibility" in determining appropriate remedies).

Here, because HB 71 is facially unconstitutional, even if a statewide injunction were not necessary to provide relief to Plaintiffs, such an injunction would not be improper.

Applicant contends that a facial injunction is inappropriate because gender-affirming medical interventions for minors are not appropriate for every person. Stay App. 21,

23. As Applicant acknowledges, facial relief is warranted when there is no set of circumstances where the challenged law would be valid. Id. at 21; United States v. Salerno, 481 U.S. 739, 745 (1987). The district court correctly concluded that banning gender-affirming medical care for adolescents is not substantially related to an important governmental interest. App.A.41-42. HB 71 lacks a close means-end fit, which does not become closer depending on the factual circumstances to which it is applied; it is unconstitutional in all circumstances.

While a minor for whom the banned care is not medically indicated—whether, for example, because they have not been diagnosed with gender dysphoria, are prepubertal, or, because surgery is typically not indicated until adulthood—would likely not have standing to challenge the law, that does not change the proper scope of relief for Plaintiffs, whose claims are properly before the court. There are no factual circumstances in which a minor has a medical need for the prohibited treatments where the law could constitutionally be applied. That an intervention would not be appropriate where it is not medically indicated is not an example of a circumstance where the law would be validly applied; it's an example where the law would be irrelevant.

Applicant additionally argues that the district court lacked jurisdiction to enjoin the law except as applied to the specific

treatments Plaintiffs are currently receiving. Stay App. 24-27.[14] HB 71's operative clause states that a medical provider shall not engage in certain practices for the purpose of affirming a minor's sex if their sex is inconsistent with their "biological sex," I.C. § 18-1506C(3), and then contains several subparts listing the practices, id. § 18-1506C(3)(a)-(d). Plaintiffs claim that § 18-1506C(3)'s prohibition on medical practices for the purpose of affirming a minor's sex inconsistent with their "biological sex" violates the Constitution, Supp. App. 27a-29a, and the district court held that it likely does. App.A.4. That the enumerated banned treatments include some that Plaintiffs are not currently receiving is irrelevant. There is no question that Plaintiffs have alleged an injury sufficient to establish standing to challenge the prohibition because each minor plaintiff alleges that she is currently receiving treatments to affirm her sex inconsistent with her "biological sex." Under Applicant's reasoning, the 15 surgical procedures listed in Idaho Code § 18-1506C(3)(a)-(b) could only be challenged one by one, by individuals seeking each specific procedure. See Stay. App. 26. He cites no authority for such a narrow (and judicially burdensome) understanding of standing, particularly

[14] Plaintiff Jane Doe is receiving estrogen. App.D.144. Plaintiff Pam Poe is receiving both puberty blockers and estrogen. App.D.139.

where the legal basis for banning the named treatments do not differ based on the particular treatment sought.[15]

Applicant argues that "every regulated procedure is not the same" because each has different risks. Stay App. 26-27. Plaintiffs agree, but HB 71 does not treat specific treatments differently based on their risks; it prohibits treatment if and only if it affirms a minor's sex if it is inconsistent with their "biological sex," regardless of risk. He cannot fault the district court for enjoining the prohibition of treatment that affirms a minor's sex if inconsistent with their "biological sex."

III. There Will be no Irreparable Harm to Applicant or Third Parties if the Requested Stay is Denied

Applicant has not demonstrated any irreparable harm that warrants disrupting the status quo and implementing HB 71 before the Court of Appeals decides his appeal of the preliminary injunction.

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[15] Lewis v. Casey and DaimlerChrysler Corp. v. Cuno do not support this narrow understanding. Lewis involved the question of meaningful access to the courts in the Arizona corrections system and the propriety of systemwide changes across all prisons, where the plaintiff class could only show two inmates who suffered actual harm. See 589 U.S. 343, 346, 356 (1996). But here, plaintiffs challenge a statewide law itself, and it is not disputed that the law sufficiently harms Plaintiffs for purposes of standing. In DaimlerChrysler Corporation v. Cuno, the plaintiffs challenged two separate tax provisions—one of which the plaintiffs admitted they likely did not have standing to pursue. 547 U.S. 332, 338-39 (2006). The Court's refusal to extend the doctrine of supplemental jurisdiction to allow those plaintiffs to challenge state taxes merely by piggybacking on their standing to challenge municipal taxes is inapplicable to this case. Id. at 352.

Applicant maintains that a stay is necessary to protect Idaho youth from the harm of what he calls dangerous and unproven treatments that youth are likely to come to regret. Stay App. 4, 26-27. But that claim rests on assertions about gender-affirming medical care that were *rejected* as a factual matter by the district court as contrary to the evidence.[16] The district court found that the voluminous scientific evidence presented showed that gender-affirming medical care is safe, effective, and "can be a crucial part of treatment for adolescents with gender dysphoria, and necessary to preserve their health," App.A.50; it is "accepted by every major medical organization in the United States," App.A.12"; the potential risks posed by this care are comparable to those of other medical treatments that families may seek for minors, App.A.13; and "delaying or withholding such care can be harmful, potentially increasing depression, anxiety, self-harm, and suicidal ideation," id. The district court specifically found that though "the State is arguing that the minor plaintiffs and others who receive gender-affirming medical care will be harmed if the law does *not* take effect, . . . *the evidence shows the opposite*." App.A.51(second emphasis added).

[16] Applicant's irreparable harm argument focuses significantly on an asserted need to protect minors from "permanent sterilizing surgeries." Stay App. 27. Yet there is no evidence in the record that such surgeries on transgender minors, which are rare anywhere, see A.1, supra, are even happening in Idaho.

Applicant offers no argument that any of the court's findings of fact on these matters were clearly erroneous. See Glossip v. Gross, 576 U.S. 863, 881-86 (2015) (applying clear error standard in reviewing factual findings regarding the scientific evidence of the impact of lethal injection drug in a constitutional challenge to its use). The court's findings were strongly supported by the record evidence and are consistent with the findings of virtually every federal district court that reviewed the evidence in a challenge to a ban on gender-affirming medical care for minors. See n.7, supra. Based on these findings, the court concluded that HB 71 "undermines, rather than serves, the asserted goal of protecting children." App.A.39.

Moreover, the preliminary injunction maintains the status quo—that the decision about whether to pursue gender-affirming medical care for adolescents with gender dysphoria is made by their parents, in consultation with the children's doctors. With the advice of their doctors, parents weigh the risks and benefits of treatment just as they do for other medical decisions. Applicant has identified no emergency requiring this medical decision to be taken out of the hands of parents and doctors while the Court of Appeals resolves his appeal.

The absence of irreparable harm, by itself, is enough to deny the application. Teva Pharms. USA, Inc. v. Sandoz, Inc., 572 U.S. 1301 (2014) (Roberts, C.J., in chambers).

IV. There Would Be Severe and Immediate Irreparable Harm to Plaintiffs and the Public Interest if the Stay is Granted

The harm to the Plaintiffs and the public interest if the stay is granted would be immediate and severe. Plaintiffs are in the midst of ongoing necessary medical care, and HB 71 would disrupt that treatment. As discussed above, the narrow injunction sought by Applicant would jeopardize Plaintiffs' continued access to care.

The treatment Pam and Jane are currently receiving has positively transformed their lives. Supp.App. 95a, 119a–120a. Both Pam and Jane had experienced severe distress from gender dysphoria before starting gender-affirming medical care. Pam suffered from depression, anxiety, and self-harm that led to her being admitted to a residential treatment facility after telling her mom she "didn't want to be alive anymore". Id. 93a. She could not see a future for herself. Id. 104a. For Jane, when puberty caused masculinizing changes to her body, her mental health deteriorated, she isolated herself, and her grades suffered. Id. 109a. Sometimes the pain was so bad she "did not want to exist." Id.

For both Pam and Jane, the decision to start treatment was made by their parents in consultation with their doctors. Supp.App. 118a–119a. And for both, gender-affirming medical care has dramatically alleviated their gender dysphoria and enabled them to become healthy, thriving teenagers. Pam has gone from a

"very dark place" to feeling happy, confident, and excited about the future she sees for herself. Supp.App. 100a, 104a. As her mother put it, "[w]e have our child back and she is flourishing." Id. 95a. For Jane, her "whole life has turned around" as a result of treatment. Id. 112a. Her mental health and academics have improved, she is no longer isolating herself, and she is "excited about what comes next" in life. Id. Her family has seen her go from being withdrawn and in "so much pain" to a "vibrant, happy, outgoing, beautiful young woman." Id. 117a, 119a.

They would risk losing all of that—in addition to their ability to maintain their anonymity—were this Court to narrow the injunction as Applicant requests.

The Poe and Doe families have been terrified about the impact on their daughters' health and lives if they are unable to continue gender-affirming medical care. Id. 96a, 120a–121a. As Pam's mother put it, "the thought of my child going back to feeling like she does not want to live or wants to hurt herself is just something I cannot even think about." Id. 96a.

These families have struggled with what they would do if Pam and Jane could no longer receive care in Idaho. As Pam's mother explained, regularly travelling out of state for care would be financially and logistically difficult, but moving would mean disrupting their lives, leaving schools, leaving jobs that give them financial stability, and leaving behind family and

"everything we have ever known." Supp.App. 96a. Both options "would result in significant hardship on everyone in our family, but these are our only options if [HB 71] goes into effect." Id.

If the stay were granted, relief for Pam and Jane would be illusory and the state would be allowed to enforce a law found to likely be unconstitutional. Such a result is not in the public interest. And separately, because this is a law that has no constitutional applications, the harms to Pam, Jane, and their parents are just the tip of the iceberg. Many Idaho families would confront the painful choices facing the Poes and Does, assuming they have the resources to travel or move. For those families that don't have those options, a stay would mean they would have to watch their children's mental health and well-being deteriorate as care is withdrawn or withheld. *See* App.A.50; Supp.App. 138a–139a; 161a–162a. Such an outcome is not in the public interest.[17]

CONCLUSION

Applicant has failed to establish any of the criteria he must in order to get the extraordinary relief he seeks, and has thus

[17] Applicant suggests that if the Court does not grant the stay to narrow the injunction, the Court should grant certiorari on the merits question prior to judgment. There is no basis for doing so. To the extent the Court is inclined to address the constitutionality of laws banning gender-affirming medical care for minors, there are already petitions pending that have the benefit of fulsome majority and dissenting opinions from a circuit court. See, e.g., Petition for Writ of Certiorari, L.W. v. Skrmetti, No. 23-466 (U.S. Nov. 1, 2023). In light of that fact, there is no justification whatsoever for short-circuiting the usual process in this case and not allowing the court of appeals to hear the pending appeal in the ordinary course.

not come close to meeting his "especially heavy burden" in light of the fact that the case is proceeding on an expedited schedule before a court of appeal that has already twice denied him this very same intervention. This case is not a vehicle to resolve the question he poses and thus there is not a reasonable probability that the Court would grant certiorari in this case to address it. And Applicant has shown no irreparable harm warranting a stay, but granting the stay would cause serious harm to both Plaintiffs and the public interest. The Application should be denied.

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