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CLERK OF THE DOUGLAS COUNTY DISTRICT COURT
CASE NUMBER: DG-2025-CV-000241
PII COMPLIANT

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL COURT DEPARTMENT

LILY LOE, by and through her parent and next friend Lisa Loe; LISA LOE; RYAN ROE, by and through his parent and next friend Rebecca Roe; REBECCA ROE,

Plaintiffs,

v.

STATE OF KANSAS, *ex rel* KRIS KOBACH, Attorney General of the State of Kansas,

Defendants.

Case No. DG-2025-CV-000241
Division No. 7
K.S.A. Chapter 60

DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE

Kansas Senate Bill 63, the "Help Not Harm Act," prohibits the provision of experimental chemical and surgical interventions to minors for the purpose of gender transition. Plaintiffs claim that the Act violates the constitutional guarantees of equal protection (by discriminating on the basis of sex and transgender status) and parental rights (by precluding particular interventions for children). Plaintiffs are mistaken. The Act prohibits certain procedures in minors for a specific issue (gender-related distress), while allowing these procedures for adults and for other medical conditions in children. The Act therefore classifies only based on medical use and age, not sex or transgender status. Nor has any court found that parental rights unlock access to medicalized

interventions validly prohibited by a state. This is especially true when, like here, the overwhelming weight of evidence counsels against gender-transition interventions for children.

Since Plaintiffs filed suit, the Supreme Court of the United States decided *United States v. Skrmetti*. *Skrmetti* concerned identical legal theories in a challenge to a similar Tennessee law. The Court in *Skrmetti* concluded minors have no constitutionally protected access to gender-transition interventions. Because Kansas courts follow federal precedent on equal protection, *Skrmetti* is dispositive of Plaintiffs' claims here. Their petition must be dismissed with prejudice.

BACKGROUND

The Help Not Harm Act prohibits healthcare providers from performing surgical procedures and administering puberty blockers and cross-sex hormones to treat children "for distress arising from" the child's belief that their gender[1] does not match their biological sex. These interventions, promoted to affirm gender identity in children inconsistent with their biologic sex, face growing scrutiny as medical research reveals substantial risk and limited efficacy. In the wake of such evidence, the Kansas legislature enacted the Help Not Harm Act to protect children from these experimental and risky interventions which are driven by ideology, not science.

I. The interventions which cannot be provided to minors are beset with serious and often irreversible side effects to which children cannot consent.

The Act prohibits three interventions often used to treat childhood onset gender dysphoria: puberty blockers, cross-sex hormone therapy, and "sex-change" type surgeries. *See* The Help Not Harm Act, S.B. 63 § (3)(a)-(b), 2025-2026 Leg. Reg. Sess. ("S.B. 63"). These interventions have

[1] Although Kansas law uses the terms "sex" and "gender" interchangeably to refer to biological sex, common parlance recently has sometimes ascribed a different meaning to the term "gender." *See, e.g.*, K.S.A. 65-6710(a)(3) ("Gender, eye color and other traits are determined at fertilization."). *See* Def. Resp. Opp'n Temp. Inj. at 2-4. For the purposes of this brief, the phrase "gender identity" will be used in distinction to biological sex.

serious and often irreversible side effects and limited efficacy. *United States v. Skrmetti*, 145 S.Ct. 1816, 1841-44 (2025) (Thomas, J., concurring).

Puberty blockers are "powerful synthetic drugs 'designed to slow the development of male and female physical features.'" *Skrmetti*, 145 S.Ct. at 1841 (Thomas, J., concurring). These drugs have been approved by the FDA for treating prostate cancer, endometriosis, and precocious puberty, but not for gender dysphoria. *Id.* Unlike their use in treating precocious puberty, where blockers are given until the child reaches normal puberty age, when administered to children with gender dysphoria, they suppress puberty throughout its typical duration. *Id.* at 1841-42. These drugs prevent girls from "develop[ing] breasts and menstruation" and boys from developing "facial hair, a pronounced 'Adam's apple,' and a deepening voice." Pet. ¶ 42. Current research suggests that these drugs "may lead to decreased bone density and impacts on brain development." *Skrmetti*, 145 S.Ct. at 1842 (Thomas, J., concurring). "And, [d]espite widespread assertions that puberty blockers are fully reversible, it is unclear whether patients ever develop normal levels of fertility if puberty blockers are terminated after a prolonged delay of puberty." *Id.* (citation modified).

Cross-sex hormones (testosterone for girls and estrogen for boys) are often prescribed after puberty blockers to induce "physical characteristics of the opposite sex." *Id.* at 1825 (majority opinion). Girls typically receive testosterone in an amount "6 to 100 times higher than native female testosterone levels" and boys receive estrogen "2 to 43 times above the normal range." *Id.* at 1842 (Thomas, J., concurring). Giving such high testosterone doses to girls can cause hyperandrogenism, which is associated with "increased cardiovascular risk, irreversible changes to the vocal cords, clitoromegaly and atrophy of the lining of the uterus and vagina, as well as ovarian and breast cancer." *Id.* (citation modified). Boys face the risk of similar "severe side effects including, among

other things, increased cardiovascular risk, breast cancer, and sexual dysfunction." *Id.* Following the recommended cross-sex hormone regimen can cause children to suffer irreversible fertility loss. *Id.* at 1843.

Surgery is the final step in transitioning a minor. For girls, this includes removal of the breasts and the creation of a "pseudo-penis" by removing "the uterus, ovaries, and vagina, and creation of a neophallu[s] and scrotum with scrotal prostheses" using "'a roll of skin and subcutaneous tissue' from another area of the body." *Id.* Surgical interventions for boys include "removal of the testicles alone to permanently lower testosterone levels" and creating a "pseudo-vagina" by surgically opening the penis, removing "erectile tissue," and then "closing and inverting" the penis into a newly created cavity to simulate a vagina. *Id.* Not surprisingly, such extreme measures are irreversible and accompanied by the risk of "significant complications," including, but not limited to, "permanent infertility." *Id.*

Given the severe and, potentially irreversible, side-effects associated with these procedures, there is substantial "reason to question whether children are capable of providing informed consent … and thus whether these treatments can be ethically administered." *Id.* at 1845.

II. Proponents of gender-transition interventions for minors are driven by ideology, not science.

The gender-transition interventions prohibited by the Help Not Harm Act were "not available for minors until just before the millennium," when Dutch practitioners created what later became referred to as the "Dutch Protocol." *Skrmetti*, 145 S.Ct. at 1843 (Thomas, J., concurring). The Dutch Protocol "permitted puberty blockers for minors during the early stages of puberty, allowed hormone therapy at 16, and allowed genital surgery at 18." *Id.* In 1998, the World Professional Association for Transgender Health (WPATH) endorsed the Dutch Protocol, only to relax

its hormone-therapy recommendation once in 2012 and again in 2022, when it "endorse[d] using puberty blockers and cross-sex hormones at the onset of puberty and allowing children to receive many surgical treatments previously reserved for adults." *Id.* at 1843-44.

During this time, "the number of children identifying as transgender has surged," and more public health authorities have assessed the efficacy of these interventions. *Skrmetti*, 145 S.Ct. at 1844 (Thomas, J., concurring). In April 2024, "after witnessing a 40-fold increase in the number of referrals" for these interventions, England's National Health Service published the Cass Review, which provided a "thorough independent review of the use of puberty blockers and cross-sex hormones" to treat children with gender dysphoria. *Id.* at 1845 (citing H. Cass, Independent Review of Gender Identity Services for Children and Young People: Final Report, https://cass.independent-review.uk/home/publications/final-report/). The Cass review found that "the evidence concerning the use of puberty blockers and hormones to treat transgender minors [w]as remarkably weak, concluding that there is no good evidence on the long-term outcomes of interventions to manage gender-related distress." *Id.* at 1836-37 (majority opinion) (citation modified). Medical professionals in other countries, including Norway, the Netherlands, France, and Sweden, have similarly concluded "that early research on medical interventions for childhood gender dysphoria was either faulty or incomplete." *Id.* at 1844 (Thomas, J., concurring). This evidence has caused many developed countries to "limit[] such treatments [for children], in some cases by allowing them to go forward only in a research setting." *Id.* at 1852 (Barrett, J., concurring).

Despite this lack of scientific support, Plaintiffs claim there is "medical consensus" supporting transgender interventions for minors. But the "consensus" Plaintiffs tout is ideological, not evidence-based. *Id.* at 1848 (Thomas, J., concurring); Pet. ¶ 22. "[N]ewly released documents

suggest that WPATH tailored its Standards of Care in part to achieve legal and political objectives." *Skrmetti*, 145 S.Ct. at 1848 (Thomas, J., concurring). For example, the head of WPATH's guidelines committee testified that he believed it was "ethically justifiable" to alter language in the guidelines to "strengthen [their] position in court." Alabama Amicus Br., 2024 WL 4525181, at *11, *United States v. Skrmetti*, 145 S.Ct. 1816 (2024). Another WPATH contributor expressed hope that the guidelines would "have serious effect in the law and policy settings." *Id.* Recent reports show WPATH removed age requirements for adolescent surgeries in its revised guidelines after pressure from a Biden administration official, who argued that age limits for treatment, "under 18, will result in devastating legislation for trans care." *Id.* at *17. But none of these revelations should be surprising: over a decade ago, a WPATH contributor admitted that WPATH aims to be both "a scientific organization and an advocacy group," and that its Standards of Care is therefore "not a politically neutral document." *Skrmetti*, 145 S.Ct. at 1849 (Thomas, J., concurring). Put simply, WPATH's guidelines and those like them rely on "self-referencing consensus rather than evidence-based research." *Id.* at 1848.

III. The Kansas legislature enacted the Help Not Harm Act to prevent children from being harmed by these experimental interventions.

In March 2024, the Kansas legislature considered similar legislation to the Help Not Harm Act, but it lacked the supermajority support necessary to overcome Governor Kelly's veto to enact the 2024 bill. *See* Pet. ¶ 61. After the publication of the Cass Review and similar studies, however, the legislature passed the Act with a supermajority vote and bi-partisan support in February 2025, this time overcoming Governor Kelly's veto. *See* Pet. ¶¶ 62-68.

The Help Not Harm Act prohibits Kansas-licensed healthcare providers from "knowingly perform[ing]" certain "surgical procedures or prescrib[ing], dispens[ing] or administer[ing

certain] medications to a female child for the purpose of treatment for distress arising from such female child's perception that such child's gender or sex is not female." S.B. 63 § 3(a). The Act similarly prohibits healthcare providers from "knowingly perform[ing]" "surgical procedures or prescrib[ing], dispens[ing] or administer[ing certain] medications to a male child for the purpose of treatment for distress arising from such male child's perception that such child's gender or sex is not male." S.B. 63 § 3(b). The Act excludes from its prohibition treatments for children "born with a medically verifiable disorder of sex development" or "of any infection, injury, disease or disorder that has been caused or exacerbated by the performance of a procedure listed in subsections (a) or (b)." S.B. 63 § 3(c). The Act restricts the use of state funds for gender-transition interventions for children, designates the provision of these interventions for minors as unprofessional conduct, and provides statutory causes of action to children and parents who have been harmed by these experimental interventions. S.B. 63 §§ 2, 4. The Act includes a sunset provision for children, like Plaintiffs, who are actively undergoing gender-transition interventions. S.B. 63 § 3(d). Such children may continue their course of treatment until December 31, 2025, as long as the child's "healthcare provider [d]evelops a plan to systematically reduce the child's use of such" interventions and "documents in the child's medical record that immediately terminating the child's use of such drug would cause harm to the child." *Id.* § 3(d).

The Help Not Harm Act does not prevent adults from accessing these interventions to address gender-related psychological conditions. Nor does it prohibit doctors from utilizing these interventions to address other medical conditions. *See* S.B. 63.

LEGAL STANDARD

In ruling on a motion to dismiss, courts "accept the facts alleged in the petition as true, along with any inferences that can be reasonably drawn therefrom." *Bd. of Cnty. Commissioners of Sumner Cnty. v. Bremby*, 286 Kan. 745, 751, 189 P.3d 494, 500 (2008). "However, this does not mean the court is required to accept conclusory allegations on the legal effects of events the plaintiff has set out if these allegations do not reasonably follow from the description of what happened or if these allegations are contradicted by the description itself." *Gatlin v. Hartley, Nicholson, Hartley & Arnett, P.A.*, 29 Kan. App. 2d 318, 319, 26 P.3d 1284, 1286 (2001). Dismissal with prejudice for failure to state a claim is warranted where it is clear that the petition's "deficiency cannot be eliminated through the pleading of additional facts." *Brull v. Sec'y of Kansas Dep't for Aging & Disability Servs.*, 557 P.3d 1237 (Kan. App. 2024) (unpublished opinion).

ARGUMENT

I. Plaintiffs have failed to state a claim for violation of the Equal Protection Clause.

The minor Plaintiffs claim S.B. 63 violates the constitutional guarantee of equal protection of the laws by discriminating against them on the basis of sex and transgender status. But neither claim is valid under Kansas law. Plaintiffs' equal protection claims must be dismissed.

a. Plaintiffs face a heavy burden under the Kansas equal protection framework.

"[T]he textual grounding of equal protection guarantees contained in the Bill of Rights of the Kansas Constitution is rooted in the language of section 2." *Rivera v. Schwab*, 315 Kan. 877, 894, 512 P.3d 168, 180 (2022). Section 2 declares that "[a]ll political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit." Kan. Const. Bill of Rights, § 2. Courts employ a three-part analysis to assess whether a statute violates this guarantee.

At step one, the court must determine "the nature of the legislative classifications and whether the classifications result in arguably indistinguishable classes of individuals being treated differently." *Miami Cnty. Bd. of Comm'rs v. Kanza Rail-Trails Conservancy, Inc.*, 292 Kan. 285, 315, 255 P.3d 1186, 1207 (2011). At step two, the court must select the appropriate level of scrutiny. A court must apply rational basis review unless it "target[s] a suspect class or burden[s] a fundamental right." *Downtown Bar & Grill, LLC v. State*, 294 Kan. 188, 194, 273 P.3d 709, 715 (2012). At step three, the court must evaluate whether the classification's link to the legislative goal withstands the applicable scrutiny. *Miami Cnty. Bd. of Comm'rs*, 292 Kan. at 316, 255 P.3d at 1208.

For facial challenges like this case, *see* Pet. at 29 (asserting the law is "unconstitutional and therefore unenforceable" in all applications), Plaintiffs must plead and prove that "no set of circumstances exist" in which the law survives the applicable level of scrutiny. *Injured Workers of Kansas v. Franklin*, 262 Kan. 840, 850, 942 P.2d 591, 601 (1997). When the challenged law does not implicate suspect classifications, this heavy burden is coupled with "a presumption of constitutionality," *Barrett ex rel. Barrett v. Unified Sch. Dist. No. 259*, 272 Kan. 250, 256, 32 P.3d 1156, 1162 (2001), which demands that if "there is any reasonable way to construe a statute as constitutionally valid, the court must do so." *State v. Scherzer*, 254 Kan. 926, 938, 869 P.2d 729, 737 (1994). Plaintiffs thus have the burden to plead *beyond a reasonable doubt* that the Acts infringes a constitutional right in all applications. *State v. Engles*, 270 Kan. 530, 531 (2001); *State v. Robinson*, 303 Kan. 11, 278 (2015).

Of decisive importance in this case is the fact that the scope and application of the equal protection clause in the Kansas Constitution is the same as that of the United States Constitution. The equal protection guarantees of the Kansas Constitution are "coextensive with the equal

protection guarantees afforded under the Fourteenth Amendment," Kansas courts follow federal precedent when assessing equal protection claims. *Rivera*, 315 Kan. at 894, 512 P.3d at 180 ("Kansas courts shall be guided by United States Supreme Court precedent interpreting and applying the equal protection guarantees of the Fourteenth Amendment of the federal Constitution when we are called upon to interpret and apply the coextensive equal protection guarantees of section 2 of the Kansas Constitution Bill of Rights."). With that interpretive rule in mind, this Court need look no further than the Supreme Court's recent decision in *United States v. Skrmetti* to dispose of Plaintiffs' equal protect claims.

b. The Act classifies on the basis of age and medical use.

"[M]ost legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons." *Romer v. Evans*, 517 U.S. 620, 631 (1996). But such classifications do not trigger heightened constitutional scrutiny unless the law "burdens a fundamental right []or targets a suspect class." *Id.* Here, Plaintiffs do not claim that the Help Not Harm Act burdens a fundamental right. They instead assert it violates the Equal Protection Clause by discriminating on the basis of sex and transgender status. But that argument is incorrect. The Act classifies on the basis of medical use and age. It is therefore subject to rational basis review.

The Help Not Harm Act prohibits clinicians from "knowingly perform[ing] … [certain] surgical procedures or prescrb[ing], dispens[ing], or administer[ing] [puberty blockers and cross-sex hormones] to a [] child for the purpose of treatment for distress arising from such [] child's perception that such child's gender or sex [does] not" match their biological sex. S.B. § 63(3)(a)-(b). The Act, however, still allows clinicians to provide children with these interventions for "treatment provided for other purposes." S.B. § 63(3)(c). The Act does not prevent clinicians from offering any of these interventions to adults, regardless of medical use. *See generally* S.B. 63. In short,

the Act prohibits chemical and surgical gender-transition interventions for children while allowing them for adults and the treatment of other conditions. In doing so, the law mentions sex but only because the proscribed treatments depend on it. *See* S.B. § 63(3)(a)-(b) (prohibiting vaginoplasties and "supraphysiologic doses of estrogen" for "male child[ren]" and phalloplasties and "supraphysiologic doses of testosterone" for "female child[ren]"). Indeed, boys and girls alike are prohibited from utilizing the proscribed interventions for the purpose of treating "distress arising from" the belief that their gender does not match their biological sex.

Similarly, even if Kansas law recognized transgender status as a suspect class (and it does not) the Act would still not be subject to heightened scrutiny because it does not classify based on transgender status. Rather, the Help Not Harm Act distinguishes between children who are given surgical and chemical interventions for a prohibited purpose (for gender-transition) and those children who would use the interventions for an approved purpose (such as for precocious puberty). *See* S.B. § 63(3)(a)-(c). Children who identify as transgender fall into both categories. All children can access these interventions for the specified, allowable medical uses.

Given what is known—and unknown—about the safety and efficacy of the banned interventions for resolving childhood gender-related distress, protecting children from these experimental procedures is a proper exercise of the State's police powers. *Gilbert v. Mathews*, 186 Kan. 672, 676–77, 352 P.2d 58, 63 (1960) ("[T]he police power of the state . . . extends not only to the protection of the public health, safety and morals, but also to the preservation and promotion of the public welfare."); *see also Zahl v. Harper*, 282 F.3d 204, 211 (3d Cir. 2002) ("The state regulation of the medical profession is in the public interest; power to establish and enforce health standards 'is a vital part of a state's police power.' ").

This conclusion is firmly supported by the Supreme Court's recent decision interpretating the federal Equal Protection Clause. In *Skrmetti*, the Supreme Court addressed nearly identical claims against a Tennessee law that was worded very similarly to Kansas's S.B. 63[2] and reached the same conclusion. The Court held that Tennessee's law prohibiting healthcare providers from administering to minors puberty blockers, cross-sex hormones, and mutilating surgeries to treat gender dysphoria, gender identity disorder, or gender incongruence—while allowing these treatments for other medical purposes—did not classify based on sex, as it applied uniformly to all minors. *Skrmetti*, 145 S.Ct. at 1829-30. The Court found that the "mere reference to sex" did not trigger heightened scrutiny, particularly in medical contexts where treatments relate to biology. *Id.*

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[2] Indeed, in many respects, the language used in Tennessee S.B. 1 (the law challenged in *Skrmetti*) and Kansas S.B. 63 is identical, *compare* S.B. 63 *with* Tenn. Code Ann. § 68-33-103 (emphasis added to highlight identical and similar language):

Tennessee's S.B. 1

- **A healthcare provider shall not knowingly perform** or offer to perform on a minor, or **administer** or offer to administer **to a minor**, a medical procedure if the performance or administration of the procedure is **for the purpose of** . . . . **Treating** purported discomfort or **distress from a discordance between the minor's sex and asserted identity**.

- **It is not a violation of subsection (a) if** a healthcare provider knowingly performs, or offers to perform, a medical procedure on or administers, or offers to administer, a medical procedure to a minor if . . . . The performance or administration of the medical procedure is to treat a minor's **congenital defect**, **precocious puberty**, **disease**, **or physical injury**[.]

Kansas's S.B. 63

- **[A] healthcare provider shall not knowingly perform** the following surgical procedures or prescribe, dispense or **administer** the following medications **to a** female/male **child for the purpose of** treatment for **distress** arising **from such female/male child's perception that such child's gender or sex is not female/male**.

- **The treatments prohibited by subsections (a) and (b) shall not apply to treatment provided for other purposes, including** . . . . Treatment for individuals **born with a medically verifiable disorder of sex development** . . . **injury**, **disease** or **disorder**[.]

at 1829. The Court also rejected claims of sex-based stereotyping, noting the law aimed to protect minors from the experimental treatments' physical and emotional harms, not enforce gender norms. *Id.* at 1832.

The *Skrmetti* Court also declined to recognize transgender status as a suspect class. In her concurrence, Justice Barrett explained that transgender individuals lack the immutable traits, historical discrimination, or political powerlessness required to qualify for status as a suspect class. *Id.* at 1851-55 (Barrett, J., concurring). The Court further held that even if such a status were to exist, the law still did not target transgender individuals because it based its classification on medical use, not children's identities. *Id.* at 1832-33 (majority opinion).

So too here. The Help Not Harm Act classifies based on age and medical use. It prohibits certain interventions for children while allowing them for adults and the treatment of other conditions. The Act mentions sex, but only because the proscribed treatments depend on it. Indeed, boys and girls alike are prohibited from accessing the proscribed interventions for the purpose of treating "distress arising from" the belief that their gender does not match their natal sex. The Act says nothing about transgender status. Rather, it distinguishes between children who would use the listed interventions for a prohibited purpose (to treat gender-related distress) and those children who would use the interventions for an approved purpose (such as for precocious puberty). "Thus, although only transgender individuals seek treatment for gender dysphoria, gender identity disorder, and gender incongruence—just as only biological women can become pregnant—there is a 'lack of identity' between transgender status and the excluded medical diagnoses." *Id.* Because S.B. 63 does not target a suspect class or burden a fundamental right, it is subject to rational basis review.

c. S.B. 63 bears a rational relationship to the valid legislative purpose of protecting children from experimental and harmful medical interventions.

Rational basis review is a "very lenient standard," under which a court must uphold a statute if any set of facts rationally related to a legitimate government interest. *State v. Genson*, 59 Kan. App. 2d 190, 212, 481 P.3d 137, 154 (2020), *aff'd*, 316 Kan. 130, 513 P.3d 1192 (2022). The government "has no obligation to produce evidence or empirical data," and the challenger must "negative every conceivable basis" to uphold the statute. *Id.* S.B. 63 easily clears this low bar. *See Hettinga v. United States*, 677 F.3d 471, 479 (D.C. Cir. 2012) (affirming grant of motion to dismiss based on finding that the law easily survived rational basis review).

The interventions prohibited by S.B. 63, when used to treat children for "gender dysphoria, gender identity disorder, or gender incongruence 'can lead to the minor becoming irreversibly sterile, having increased risk of disease and illness, or suffering from adverse and sometimes fatal psychological consequences.'" *Skrmetti*, 145 S.Ct. at 1826; *see also* Hearing Before the Kan. S. Comm. on Pub. Health & Welfare, 2025-2026 Reg. Sess. (Kan. 2025) (statement of Brittany Jones, Kansas Family Voice), available at http://bit.ly/46GCL6W (informing the Legislature of the risks associated with the proscribed interventions).[3] These severe side effects are imposed on children unable to give informed consent, despite the interventions' lack of proven benefit. *See Skrmetti*, 145 S.Ct. at 1835-36; *see also* Hearing Before the Kan. S. Comm. on Pub. Health & Welfare, 2025-2026 Reg.

[3] The Court may take judicial notice of this legislative history without converting Defendants' motion to dismiss into a motion for summary judgment. "[W]hen matters outside the face of the pleadings are proper objects for judicial notice, a motion to dismiss need not be treated as a summary judgment motion." *Rodina v. Castaneda*, 60 Kan. App. 2d 384, 387, 494 P.3d 172, 175 (2021). Courts may take judicial notice of "specific facts 'capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy,'" *id.* (quoting K.S.A. 60-409(b)), including "everything which may affect the validity or meaning of such constitution or statute," *City of Topeka v. Gillett*, 32 Kan. 431, 4 P. 800, 803–04 (1884), and "what the journals of the legislature contain," *In re Div. of Howard Cnty.*, 15 Kan. 194, 213 (1875).

Sess. (Kan. 2025) (statement of Jay W. Richards, PhD), available at http://bit.ly/4lLm52D ("The 2024 Cass Review in the UK included nine studies, eight of which were systematic reviews, showing the poor quality of evidence for the benefits of these medical interventions."). In circumstances of such "medical and scientific uncertainty" courts must "afford States 'wide discretion to pass legislation.'" *Id.*; *see also* Hearing Before the Kan. S. Comm. on Pub. Health & Welfare, 2025-2026 Reg. Sess. (Kan. 2025) (statement of Quentin L. Van Meter, M.D., F.C.P.), available at http://bit.ly/40eggSZ (providing evidence rebutting the specific claims of proponents of the proscribed interventions). After considering this evidence, the legislature of Kansas determined the public interest with respect to exposing minors to these treatments, and it did so emphatically, with supermajorities in both legislative chambers.

Kansas has a legitimate interest in "protecting children" and "particularly from all forms of cruelty neglect, degradation, and inhumanity," *State v. Wilson*, 267 Kan. 550, 559, 987 P.2d 1060, 1067 (1999), and "protecting the integrity and ethics of the medical profession." *Washington* v. *Glucksberg*, 521 U. S. 702, 731 (1997). The Help Not Harm Act's restrictions rationally advance these goals by shielding children from unproven treatments with severe, lifelong consequences. *See* Hearing Before the Kan. S. Comm. on Pub. Health & Welfare, 2025-2026 Reg. Sess. (Kan. 2025) (statement of Chloe Cole, Do No Harm Action), available at http://bit.ly/4lKvhUT (de-transitioner explaining the harm she suffered by being subjected to these interventions as a minor). Because the Act satisfies rational-basis review, Plaintiffs' facial challenge to S.B. 63 must be dismissed with prejudice.

II. Plaintiffs do not have a fundamental right to obtain puberty blockers, cross-sex hormones, or sex-change surgery for their children.

Plaintiffs claim that S.B. 63 violates Lisa Loe and Rebecca Roe's "fundamental right to parenting." *See* Pet. ¶¶ 122–126. This claim lacks legal basis, relies on flawed reasoning, and, with respect to Ryan Roe, contradicts Kansas statute.

a. Parental rights do not unlock experimental medical treatments.

No Kansas or federal court holding recognizes a fundamental right of a parent to choose a child's medication, let alone the right to subject a child to puberty blockers, cross-sex hormones, or sex-change procedure. To the contrary, Plaintiffs' theory has been repeatedly rejected by courts.

The Constitution of Kansas protects the fundamental right of parents to direct the care and upbringing of their children. *See, e.g., In re Adoption of Baby Girl P.*, 291 Kan. 424, 430, 242 P.3d 1168, 1173 (2010); *Int. of B.H.*, 64 Kan. App. 2d 480, 488, 550 P.3d 1274, 1283 (2024). This includes the right to raise and maintain custody of one's child, *see In re Baby Girl B.*, 46 Kan. App. 2d 96, 96, 261 P.3d 558, 559 (2011), but the Kansas courts have never extended this right to include the right to obtain particular medical interventions for one's child in the face of an otherwise valid ban. It is the opposite. The Court has concluded that "[t]he 'state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare.'" *State v. Ross*, 568 P.3d 877 (Kan. Ct. App. 2025) (quoting *Prince v. Massachusetts*, 321 U.S. 158, 167 (1944)). Parental rights have never reached the right that Plaintiffs now assert.

The result is the same under federal substantive due process precedent. The Supreme Court of the United States has recognized a fundamental right to the care, custody, and control of one's child, *see Troxel v. Granville*, 530 U.S. 57, 66 (2000), but that does not include a right to obtain particular medical interventions for one's child, *see Eknes-Tucker v. Governor of Alabama*, 80 F.4th

1205, 1220 (11th Cir. 2023) (surveying Supreme Court precedent). Federal courts have also rejected a fundamental right to obtain specific medical treatment for oneself. *See L. W. by & through Williams v. Skrmetti*, 83 F.4th 460, 475 (6th Cir. 2023) (no right to obtain puberty blockers and cross-sex hormones); *Pickup v. Brown*, 740 F.3d 1208, 1222 (9th Cir. 2014) (no right to "sexual orientation change efforts" or "conversion therapy"); *Abigail All. for Better Access to Developmental Drugs v. von Eschenbach*, 495 F.3d 695, 711 (D.C. Cir. 2007) (no right to procure and use experimental drugs); *Raich v. Gonzales*, 500 F.3d 850, 864 (9th Cir. 2007) (no right to medical marijuana); *Sammon v. New Jersey Bd. of Med. Examiners*, 66 F.3d 639, 645 (3d Cir. 1995) (no right to select a midwife); *Rutherford v. United States*, 616 F.2d 455, 457 (10th Cir. 1980) (no right to select non-FDA-approved cancer treatment). If a person does not have a right to obtain specific medical treatment for themselves, they perforce have no right to obtain them for their children. *See Prince*, 321 U.S. at 168 ("'The state's authority over children's activities is broader than over like actions of adults.").

These cases are uniform in their reasoning: the history and tradition of the United States do not reflect a right to access any particular medicine or medical treatment. The Supreme Court's opinion in *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), sets out the two-element test for identifying fundamental rights protected by substantive due process. The right must be "deeply rooted in this Nation's history and tradition," and there must be a "careful description" of the right to be recognized. Neither is present here. The right Plaintiffs assert is sprawling, not carefully described. Indeed, it would upend an entire field of state power over the regulation of the medical profession. *See* II.b. *infra*. More carefully described, Plaintiffs seek a fundamental right to obtain puberty blockers, cross-sex hormones, and sex-change surgeries for their children. *See Raich*, 500

F.3d at 864 (holding that careful description of the right required naming the particular medical treatment sought); *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261 (1990) (describing the relevant right as the right to "refuse lifesaving hydration and nutrition" rather than "the right to die."). There is no history of allowing parental objections to overcome state regulation of medicine in the United States. Certainly not with respect to gender transition procedures, which have only been available for 25 years. *See* Pet. ¶ 30.

Plaintiffs attempt to overcome the dearth of caselaw supporting their position by citing *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 644, 440 P.3d 461, 483 (2019), arguing that Section 1 of the Kansas Constitution contains a "natural right to make decisions about parenting and procreation." Pet. ¶ 124. But *Hodes* was a decision about bodily autonomy and held that that right required women to be able to access abortion in certain circumstances. *Hodes* did not address the fundamental rights of parents. *Hodes*, 309 Kan. at 638–45. The passage quoted by the Petition comes in an extended portion of *dicta* about Lockean principles of personal autonomy and "conjugal society" and concerns the right to choose to become a parent (via obtaining or abstaining from an abortion), not the right to make decisions for one's child. *See Hodes*, 309 Kan. at 638–45. Moreover, *Hodes*'s right to bodily autonomy applies to adults, not children. "The state's authority over children's activities is broader than over like actions of adults." *Prince*, 321 U.S. at 168. *Hodes* does not mandate access to these interventions for plaintiffs' children.

b. Plaintiffs' theory would destroy Kansas's ability to regulate the medical profession.

Creating a right to obtain medical treatment for one's child to overcome an otherwise legitimate ban on that treatment would potentially subject every medical regulation concerning minors in Kansas to strict scrutiny. As the *Skrmetti* court observed, "If parents could veto legislative and

regulatory policies about drugs and surgeries permitted for children, every such regulation—there must be thousands—would come with a springing easement: It would be good law until one parent in the country opposed it." *Skrmetti*, 83 F.4th at 475. Parents could circumvent state law to obtain opioids to control their children's pain or marijuana to alleviate their child's anxiety.

At bottom, Plaintiffs want their children to have something the state has banned. While the Petition invokes parental rights, the allegations are not tied to any specific interference with the parent-child relationship. Holding that such a claim triggers strict scrutiny—or really, analyzing it any differently than a claim for violation of the child's rights—would distort the entire inquiry.

c. Rebecca Roe's right to parent claim is undermined by Kansas statute

Finally, Rebecca Roe's claim for violation of her right to parent is undermined by Kansas statute. Though she claims a right to "exercis[e] decision-making authority on behalf of" Ryan Roe, he has a statutory right to direct his own healthcare. Under Kan. Stat. § 38-123b, a child sixteen or older is competent to consent to "hospital, medical or surgical treatment or procedures" without their parent. *See also M.T. as next friend of M.K. v. Walmart Stores, Inc.*, 63 Kan. App. 2d 401, 403, 528 P.3d 1067, 1071 (2023), *review denied* (Aug. 25, 2023) ("Kansas law requires parental consent for medical treatment or procedures if the minor is under the age of 16."). Roe cannot plausibly claim a fundamental right to obtain care on behalf of her child when he has a statutory right to direct his own care.

CONCLUSION

Plaintiffs have not only failed to state claims for which relief can be granted, but the fundamental defect in their claims cannot be corrected through the pleading of additional facts. For the foregoing reasons, the Court should dismiss Plaintiffs' claims with prejudice.

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CERTIFICATE OF SERVICE

I certify that on July 10, 2025, the above and foregoing were electronically filed with the Clerk of the Court using the Court's Electronic Filing System, which will send notice of electronic filing to all counsel of record.

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