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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,

Defendant.

Case No. DG-2025-CV-000241

Division No. 7

PLAINTIFFS' RESPONSE IN FURTHER SUPPORT OF MOTION FOR TEMPORARY INJUNCTION

Dated: August 21, 2025

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

I. INTRODUCTION

Lily Loe and Ryan Roe ("Minor Plaintiffs") have thrived since receiving puberty blockers and hormone therapy to treat their gender dysphoria. SB 63 irreparably harms them and their parents, Lisa Loe and Rebecca Roe ("Parent Plaintiffs"), by depriving them of healthcare in Kansas and forcing them to travel out of state to continue care. Lily has been living as a girl since she was a young child; without this medical care, she will suffer enormously from untreated gender dysphoria and potential outing of her transgender status to her community. Ryan's family has already moved from Texas to Kansas to ensure that he is in a supportive community. If Ryan cannot continue his care in Kansas, the Roes may be forced to move again. The Kansas Constitution's natural rights guarantees of personal autonomy (including the right to parent one's children) and equal protection apply to all Kansans, including the Loe and Roe families. These families are already harmed by SB 63, but that harm will intensify without a temporary injunction to protect all Plaintiffs' constitutional rights and Minor Plaintiffs' physical and emotional health while this case proceeds.

II. RESPONSE TO DEFENDANT'S "BACKGROUND"

As explained by Plaintiff's' experts,[1] Defendant's experts misrepresent principles of evidence-based medicine and ignore existing research to portray puberty blockers and hormones as uniquely dangerous or experimental, neither of which is true.[2] To do so, Defendant relies on declarants who do not study or treat gender dysphoria in adolescents and believe "really the job is

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[1] Plaintiffs attach the rebuttal declarations of Dr. Sarah Corathers (Ex. 1), Dr. Armand Antommaria (Ex. 2), Dr. Jack Turban (Ex. 3), and Dr. Angela Turpin (Ex. 4).

[2] Defendant also relies extensively on *United States v. Skrmetti*, 145 S. Ct. 1816 (2025) and its concurrences, but this Court must find the facts here.

to tie myself up with dynamite and throw myself on the other expert and neutralize us both," Turban Reb. ¶ 26 (quoting James Cantor), not to assist the trier of fact. *See, e.g.*, K.S.A. 60-456.

Being transgender is not a condition to be treated or cured, but gender dysphoria is a serious medical condition with grave consequences when left untreated. Corathers Reb. ¶ 9. Defendant denigrates transgender people as less than what a "complete man" or "complete woman" should be, Resp. Br. at 4, but transgender people live rich, fulfilling lives. Antommaria ¶ 39, Corathers ¶ 69; Turpin ¶ 49; Turban Reb. ¶ 66. Defendant also denies the medical and scientific reality that **"biological sex"** is complex and multi-faceted, not binary or fixed at conception, and that gender identity has a strong biological basis. Corathers Reb. ¶ 12-19, 35; Antommaria Reb. ¶ 67; Turban Reb. ¶ 43.

Once a transgender youth begins puberty, it is rare for them to later identify as cisgender; the majority of youth affected by SB 63 will not later come to identify with their birth sex. Turban ¶ 30; Turban Reb. ¶ 48. Older studies about desistence rely on outdated diagnostic criteria, and recent research shows the vast majority of even pre-pubertal children continue to identify as transgender. Turban ¶ 29-32. Many people who discontinue medical care to treat gender dysphoria do so because of external factors, like stigma or losing health insurance, and resume care later, while others discontinue because they are satisfied with their results. Turban ¶ 34. While the majority of adolescent patients want to continue their treatment, Kansas practitioners are careful to normalize discontinuing treatment for the small percentage who do. Turpin Reb. ¶ 32. Overall regret rates for this care are low in absolute terms (1% or less) and much less as compared to interventions for intersex infants expressly permitted by SB 63, where caregiver regret is 38% in some instances. Antommaria ¶ 61-62; Corathers ¶ 70; Turban ¶ 35-36, 38; Turban Reb. ¶ 59-64; Turpin ¶ 50.

There is no evidence-based treatment for gender dysphoria other than puberty blockers and hormone therapy; psychotherapy does not resolve gender dysphoria, and untreated gender dysphoria can lead to depression, anxiety, and suicidality. Antommaria ¶ 54; Turban ¶ 25; Turban Reb. ¶ 36, 40, 69. This medical care is not experimental, either in the colloquial or technical sense. Antommaria ¶ 33-35. Defendant's experts make much of the evidence supporting this care as being "low quality," but many interventions are supported by "low quality" evidence, which just refers to the type of study and does not mean poor quality or insufficient to make treatment recommendations, nor do systematic reviews by other countries translate into recommendations against treatment. Antommaria ¶ 21, 25, 28, 65-68. The evidence base supporting this care is comparable to the evidence for many other pediatric treatments, including the use of puberty blockers to treat central precocious puberty, which SB 63 permits. Antommaria ¶ 36-38; Antommaria Reb. ¶ 18-19. Discontinuation of an effective treatment will predictably exacerbate dysphoria and cause harm. Corathers ¶ 77; Corathers Reb. ¶ 8, 111; Turban ¶ 28; Turpin ¶ 51-52.

All medical care involves risks, even routine treatment, but Defendant overstates the risks of this care while ignoring its benefits and the risks of failing to treat gender dysphoria. Antommaria ¶ 48; Turban ¶ 37; Corathers Reb. ¶ 55-75. Puberty blockers and hormone therapy carry the same risks when used to treat gender dysphoria as for other endocrine conditions, and unwanted side effects are rare and well-controllable. Corathers ¶ 56, 58, 65-66, 71-73. The one difference in side effects is fertility, but puberty blockers do not cause sterility, and even with hormone therapy, there are paths to fertility for those who want it. Antommaria ¶ 49-50; Corathers ¶ 57-58. Many other medications that affect fertility are not prohibited by SB 63, which also explicitly ***permits*** sterilizing surgery for intersex infants. Antommaria ¶ 51, 58; Corathers ¶ 58. These medications do not harm adolescents' healthy development, but rather improve mental

health outcomes. Antommaria ¶ 47; Turban ¶ 18-24; Corathers ¶ 62, 74; Turpin ¶ 44-48. Withholding or withdrawing care where it is clinically indicated is extremely harmful. Corathers ¶ 85; Turpin ¶ 51-53. Defendant also fixates on surgical risks, even though Plaintiffs do not challenge that portion of SB 63 and gender-affirming surgeries are not available for minors in Kansas. Turpin Reb. ¶ 39.

Parents can consent and minors can assent to receiving gender-affirming medical care. There is nothing exceptional or unique about the treatment that impedes the informed consent process. Antommaria ¶ 57. Pediatric medicine routinely involves weighing benefits and risks, and in Kansas (as elsewhere) the informed consent/assent process is rigorous to ensure that both before initiating treatment and during treatment, adolescents are experiencing only wanted effects and can stop at any time. Turpin Reb. ¶ 26-33; Corathers Reb. ¶ 97-99. Far from being unethical to provide this care, it violates medical ethics to require doctors to abandon their patients by withdrawing this care. Antommaria ¶ 71-72; Corathers ¶ 77, 86.

The experiences of Kansas adolescents demonstrate SB 63's harms. Lily Loe experienced immediate, immense relief after receiving puberty blockers. Lisa Loe ¶ 22-24; Lily Loe ¶ 11-12. SB 63 forces Lily to seek care out of state: stopping her treatment is not an option, but neither is uprooting the Loe family. Lisa Loe ¶ 25-28, 33; Lily Loe ¶ 13-14. Ryan Roe has already been on testosterone for two years and continues to thrive; it would harm him immensely to stop treatment. Rebecca Roe ¶ 23-27; Ryan Roe ¶ 11-12, 14-18. Their positive experiences are typical of transgender adolescents with gender dysphoria who need and receive puberty blockers and hormone therapy in Kansas. Turpin ¶ 45-47, 49; Turpin Reb. ¶ 40.

III. ARGUMENT

Plaintiffs' natural parental rights and equal protection claims under the Kansas Constitution are not limited by the federal constitution. Both sets of claims have an independent basis in the

Kansas Constitution. SB 63 must be tested under strict or at least heightened scrutiny because it infringes on fundamental rights and classifies based on sex and transgender status, but it cannot survive even rational basis review because animus is not a legitimate justification.

A. Parent Plaintiffs Are Likely to Succeed on Their Section 1 Claims.

Plaintiffs are likely to succeed on their Section 1 claim because SB 63 infringes upon their natural rights to consent to medical care that their minor adolescent children assent to and that medical providers recommend. Section 1 recognizes and protects parents' natural rights. *See, e.g.*, MTD Opp. at Section IV.A.1 (incorporated by reference here). These rights and duties do not turn on the medical intervention at issue, but rather the state's infringement on the parents' decision-making authority. *Cf. Moe v. Yost*, 2025-Ohio-914, ¶ 121, *appeal allowed*, 2025-Ohio-2537 (statute banning gender-affirming care for minors violated parents' substantive due process rights under Ohio Constitution). Defendant's suggestion that "federal courts have repeatedly rejected a fundamental right to obtain specific medical treatment for oneself," Resp. Br. at 20-21, is of no matter in Kansas, where there is a fundamental state constitutional right to seek specific medical treatment for oneself. *See* MTD Opp. at Section IV.A.1.

SB 63 infringes on Parent Plaintiffs' natural rights. *See* MTD Opp. at Section IV.A.2-3 (incorporated by reference here). Defendant's fearmongering about future constitutional challenges to regulations in medicine, Resp. Br. at 21, misses the point: the state can regulate the practice of medicine, but when laws infringe fundamental rights or use suspect classifications, they trigger strict or heightened scrutiny. When the state infringes upon a fundamental right, it bears the burden of demonstrating that the infringement survives strict scrutiny—*i.e.*, that it is narrowly tailored to further a compelling state interest. *See Hodes & Nauser, MDS, P.A. v. Kobach*, 318 Kan. 940, 952 (2024) ("*Hodes II*"). Here, Defendant cannot establish a rational or substantial relation between their proffered interests and SB 63, let alone a narrowly tailored one. In fact,

Defendant does not appear to contest that SB 63 fails to survive strict scrutiny, instead arguing it does not apply by repeatedly insisting that no parental right exists here. Resp. Br. at 20. That is wrong, as is Defendant's standing argument as to Rebecca Roe. *Compare* Resp. Br. at 22 *with* MTD Opp. at Section IV.A.4.

B. Minor Plaintiffs Are Substantially Likely to Prevail on Their Section 1 Claims.

Plaintiffs are likely to succeed on the merits of their equal protection claims under Section 1. Plaintiffs moved for a temporary injunction on their claims only under Section 1, not Section 2. *Contra* Resp. Br. at 15. Because Section 1 affords broader protections than the federal constitution, the U.S. Supreme Court's recent decision in *United States v. Skrmetti*, 145 S. Ct. 1816 (2025), does not control here. But even if *Skrmetti* did apply to Plaintiffs' state constitutional equal protection claim—which it does not—SB 63 contains a sex-based classification under *Skrmetti*'s own terms because it prohibits state support for social transition, not just medical care. The combination of these operative provisions makes clear that SB 63 also contains a transgender status classification that separately triggers heightened scrutiny. Moreover, that SB 63 restricts social transition in addition to medical transition demonstrates that it was passed for the discriminatory purpose of targeting transgender people. As such, SB 63 triggers—and fails—heightened scrutiny based on its suspect classifications and because of its underlying discriminatory purpose, and fails to satisfy both that level of review and even the less exacting rational basis review.

1. The Kansas Constitution Provides Separate and Greater Rights Than the Federal Constitution.

As set forth in MTD Opp., Section IV.C.1, the "Kansas Constitution affords separate, adequate, and greater rights than the federal Constitution," *Farley v. Engelken*, 241 Kan. 663, 670-71 (1987), and the Kansas Supreme Court has refused to interpret Section 1 in lockstep with the U.S. Supreme Court's interpretation of the Fourteenth Amendment. *See State v. Lawson*, 296 Kan.

1084, 1090-91 (2013). It is therefore wrong to say that *Skrmetti* is dispositive of the equal protection claims brought under the Kansas Constitution. Moreover, the Kansas Supreme Court has previously refused to treat an intervening U.S. Supreme Court decision on a similar or parallel federal constitutional provision as controlling of its interpretation of Section 1. *Hodes II*, 318 Kan. At 942; *see also* MTD Opp. Section IV.C.1. This is consistent with the Kansas Supreme Court's multiple departures from the U.S. Supreme Court's interpretation of federal constitutional provisions even when interpreting similar or parallel Kansas constitutional provisions. *See* MTD Opp. fn. 11.

Kansas courts are the ultimate arbiters of the Kansas Constitution. This Court is not bound by the *Skrmetti* decision, which is the U.S. Supreme Court's decision under the federal constitution about another state's different law. Given the Kansas Supreme Court's previous and repeated recognitions of its interpretive independence with respect to the Kansas Constitution, particularly as regarding Section 1, this Court cannot and should not lower state constitutional protections to the federal floor and in the process abrogate rights guaranteed by Section 1.

2. Even if *Skrmetti* Controlled—Which It Does Not—SB 63 Still Triggers and Fails Heightened Scrutiny.

Plaintiffs' claims in this case are specific to SB 63 and the unique protections of Section 1, whereas *Skrmetti* exclusively governs the application of the federal constitution's Fourteenth Amendment to Tennessee's law, a much narrower law than SB 63 here. But even if *Skrmetti* did apply (which it does not), by its own terms, SB 63 would trigger heightened scrutiny. Even though *Skrmetti* held that Tennessee's law contained age and medical use restrictions, not sex-based classifications, *Skrmetti* made clear that other laws, such as ones restricting social transition, would be sex classifications. *See* MTD Opp. Section IV.C.3. SB 63 contains precisely those kinds of

restrictions and was passed for the improper purpose of discriminating based on transgender status. It triggers heightened scrutiny independently on each of these grounds.

a. SB 63 Triggers Heightened Scrutiny.

SB 63 triggers heightened scrutiny in at least three ways. The law features a sex classification, a transgender status classification, and a discriminatory purpose, evidenced by an enactment context marked by disdain for transgender people.

First, SB 63 contains facial sex classifications. There is no dispute that classifications based on sex receive heightened scrutiny under both the Kansas Constitution and the Fourteenth Amendment. *See In re K.M.H.*, 285 Kan. 53, 73 (2007) ("In Kansas, as before the United States Supreme Court, statutory gender classifications . . . are subject to intermediate, or heightened, scrutiny.") (citing *Reed v. Reed,* 404 U.S. 71, 76-77 (1971)); *United States v. Virginia,* 518 U.S. 515, 533 (1996). SB 63 contains a restriction on not only medical care, but also social transition, which even *Skrmetti* recognized as a sex classification. *Skrmetti*, 145 S. Ct. at 1832; *see also* MTD Opp. Section IV.C.3. SB 63 regulates a categorically larger set of behavior than Tennessee's law, which Defendant ignores in its comparison of the two laws. Resp. Br. at 18 n.9. Specifically, SB 63 defines social transitioning as "acts *other than medical or surgical interventions* that are undertaken for the purpose of presenting as a member of the opposite sex, including the changing of an individual's preferred pronouns or manner of dress[,]" SB 63 § (b)(10) (emphasis added), and then restricts state support for social transition. *Id.* §§ (d), (f). This is a paradigmatic sex classification around other forms of social presentation absent from Tennessee's law. *Skrmetti*, 145 S. Ct. at 1859 (Alito, J., concurring). SB 63 categorically regulates a minor's attempts to "identify with a purported identity inconsistent" with a protected status. *Id.* at 1831.

SB 63's categorical restrictions on social and medical transition are also transgender status classifications: only transgender people have and seek to express a gender identity different than

their birth sex. *See* MTD Opp Section IV.B.1; *cf. id.* at Section IV.B.4. By classifying on the basis of transgender status, SB 63 inherently classifies on the basis of sex. *See Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 660 (2020) ("[I]t is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex.");[3] *Griffith v. El Paso Cnty., Colo.*, 129 F.4th 790, 807 (10th Cir. 2025) (jail's policies for transgender inmates were "sex classifications" because "only cisgender females (who were assigned a female sex at birth based on their genitalia)—but not transgender females (who were assigned a male sex at birth based on their genitalia)—live in female housing and receive the products at issue"). Like in *Griffith*, SB 63 similarly uses Kansans' birth sex to determine whether they can receive state support in their social transition or access medical treatment. Such a transgender status classification is necessarily a sex-based classification.

Second, SB 63's transgender status classification independently triggers heightened scrutiny separate and apart from their capacity as a sex classification. Many state and federal courts have recognized transgender people as a quasi-suspect class. *See* MTD Opp. Section IV.B.2 & fn. 9.

[3] *Skrmetti*'s discussion of *Bostock*'s inapplicability to a constitutional analysis of Tennessee's law does not map onto a similar analysis for SB 63. *Skrmetti* found that the key thought experiment in *Bostock* was whether "changing a minor's sex or transgender status" would "alter the application" of the law. 145 S. Ct. at 1834. Such a change would not alter the application of Tennessee's law because "[i]f you change [a transgender boy's] biological sex from female to male, SB1 would still not permit him the hormones he seeks because he would lack a qualifying diagnosis for the testosterone—such as a congenital defect, precocious puberty, disease, or physical injury." *Id.* By contrast, changing a transgender boy's sex assigned at birth from female to male *does* change SB 63's application to him, because he could not access the prohibited care *or* be encouraged in a state facility and/or by a state employee to use male pronouns or dress in a masculine fashion. Meanwhile, such encouragement would be wholesale allowed for boys whose sex assigned at birth is male. His "lack [of] a qualifying diagnosis" has no bearing on SB 63's application to him, but his sex assigned at birth does.

Third, the context in which SB 63 was passed reveals that it was enacted to achieve an invidious discriminatory purpose, which triggers heightened scrutiny even absent any quasi-suspect classification.[4] SB 63 systematically targets transgender youth for differential treatment across multiple domains. Patterns of conduct that repeatedly target a certain class bespeak an impermissible discriminatory purpose that merits heightened scrutiny. *See, e.g.*, *Skrmetti*, 145 S. Ct. at 1832 (if a law is "motivated by an invidious discriminatory purpose," it "trigger[s] heightened review") (collecting cases). Such a discriminatory purpose is clear here: SB 63 was part of a rash of laws introduced, considered, or enacted over the past several legislative sessions that specifically target transgender people.[5] *See Church of Lukumi Babalu Aye, Inc. v. City of*

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[4] *See, e.g.*, *House Chamber Proceedings 01/31/2025*, YOUTUBE (Jan. 31, 2025), https://www.youtube.com/watch?v=lot3vCfgaBo at 15:16-16:49 (argument from SB 63 aye voter that anyone who believes they are not the "gender [they were] assigned at conception" thinks "God did make a mistake," and "God cannot make a mistake"); *cf. Senate Chamber Proceedings 02/18/2025*, YOUTUBE (Feb. 18, 2025), https://www.youtube.com/watch?v=AkKBKKzdIbI (observation by opponent of SB 63 at 4:16:50-4:17:00 that Senator Renee Erickson, who requested SB 63 for introduction, "has talked about these individuals are changing their gender, like they change their nail polish").

[5] *See, e.g.*, *State ex rel. Kobach v. Harper*, 65 Kan. App. 2d 680, 684 (2025) (litigation over directive to Kansas agencies to define women so as to prevent transgender people from obtaining identity documents matching their gender identity); Jack Forrest, *Kansas Lawmakers Override Governor's Veto to Enact Anti-Trans Sports Ban*, CNN (Apr. 6, 2023), https://www.cnn.com/2023/04/05/politics/kansas-veto-override-transgender-sports-ban/index.html (Kansas legislature overrode governor's veto in 2023 to bar transgender girls from playing on girls' sports teams); Associated Press, *Kansas Legislators Impose Sweeping Anti-Transgender Bathroom Law*, NBC News (Apr. 27, 2023), https://www.nbcnews.com/nbc-out/out-politics-and-policy/kansas-legislators-impose-sweeping-anti-transgender-bathroom-law-rcna81802 (Kansas legislature passed 2023 bill that "may be the most sweeping transgender bathroom law in the U.S.," over governor's veto); Tim Carpenter, *Kansas Legislature Sends Democratic Governor Bill Banning Under-18 Transgender Health Care*, KAN. REFLECTOR (Mar. 27, 2024, 8:59 PM), https://kansasreflector.com/2024/03/27/kansas-legislature-sends-democratic-governor-bill-banning-under-18-transgender-health-care (Kansas legislature passed SB 233, a later-vetoed bill which parallels the language of SB 63, wherein "Senate President Ty Masterson . . . said supermajority support for the bill reflected the firm position of Senate Republicans who believed 'radical transgender ideology and the mutilation of minors is not legal nor welcome in Kansas'").

Hialeah, 508 U.S. 520, 535 (1993) (even though series of ordinances viewed individually might advance legitimate government interests, they "considered together disclose an object remote from these legitimate concerns"—there, "an impermissible attempt to target petitioners and their religious practices"); *cf. Sylvia Dev. Corp. v. Calvert Cnty., Md.*, 48 F.3d 810, 819 (4th Cir. 1995) ("evidence of a 'consistent pattern' of actions by the decisionmaking body disparately impacting members of a particular class of persons" bears on intent) (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977)); *cf.* Scott Skinner-Thompson, *Trans Animus*, 65 B.C. L. REV. 965, 977 (2024) (collecting cases demonstrating that courts consider "the degree to which legislative enactments work together to disenfranchise certain groups" to unveil animus).

b. SB 63 Fails Heightened Scrutiny.

To survive heightened scrutiny, a classification "must substantially further a legitimate legislative purpose; the government's objective must be important, and the classification substantially related to achievement of it." *K.M.H.*, 285 Kan. at 73-74. No substantial relationship exists here. Defendant's proffered interests in "protecting children and the medical profession," Resp. Br. at 22, bear *no* connection to SB 63's restrictions on social transition. SB 63 seeks to enforce sex-stereotypes in the precise way that heightened scrutiny does not tolerate, and it is the prohibition of care, not its provision, that endangers children and the medical profession.

First, SB 63's restrictions on social transition cannot be tethered to Defendant's purported interests. SB 63 specifically defines social transition as non-medical, SB 63 § (b)(10), so there can be no relationship between that prohibition and the government's stated interest in "shielding children from unproven *treatments* with severe, lifelong consequences." Resp. Br. at 23 (emphasis added). Defendant makes no attempt to argue otherwise.

Moreover, the social transition prohibitions are evidence of SB 63's reliance on sex-based stereotypes that cannot survive heightened scrutiny. *See, e.g.*, *Skrmetti*, 145 S. Ct. at 1832 ("[A] law that classifies on the basis of sex may fail heightened scrutiny if the classifications rest on impermissible stereotypes.") (citing *J. E. B. v. Alabama ex rel. T. B.*, 511 U.S. 127, 139 n.11 (1994)). Indeed, it is difficult to conceive of sex-based stereotyping more obvious than requiring a person appear or be referred to a certain way based on their sex assigned at birth. *See, e.g.*, *Price Waterhouse v. Hopkins*, 490 U.S. 228, 235 (1989) (finding employer's advice that female employee "dress more femininely" and "talk more femininely" to violate Title VII's prohibition of sex discrimination as impermissible sex-stereotyping).

Even if furthering sex-based stereotypes were a permissible purpose, which it is not, SB 63 will not achieve this purpose because it will not decrease the number of transgender youth. It is not true that "most children desist" from being transgender. Resp. Br. at 7. It is extremely rare for a youth who identifies as transgender to later identify as cisgender, especially once puberty starts; Defendant relies on old studies using outdated diagnostic criteria to argue otherwise. Turban ¶ 30-32. Attempts to change gender identity through therapy are dangerous and unethical. Turban ¶ 27.

Second, SB 63's prohibition of gender-affirming medical care is not substantially related to Defendant's alleged interest in "shielding children from unproven treatments with severe, lifelong consequences." Resp. Br. at 23. SB 63 prohibits care that has long been proven efficacious in treating gender dysphoria and is well-studied over long periods of time, including through longitudinal and cross-sectional studies and through clinical experience. Turban ¶ 20-24; Corathers ¶ 69; Turpin ¶ 49. The prohibited care is not experimental in any sense of the word. Antommaria ¶ 33-35. Existing research demonstrates that this care significantly improves the lives of transgender adolescents who experience gender dysphoria, including decreased anxiety and

decreased suicidality. Antommaria ¶ 47; Turban ¶ 18-24; Corathers ¶ 62, 74; Turpin ¶ 44-48. And Defendant's proffered alternative of "'watchful waiting' or ordinary therapy," Resp. Br. at 8, is not supported by any evidence-based protocols for treating gender dysphoria, let alone by the volume and rigor of evidence demonstrating the efficacy of puberty blockers and hormone therapy. Turban Reb. ¶ 40; Antommaria Reb. ¶ 18.

SB 63 is also under-inclusive: it does not prevent doctors from providing puberty blockers or hormones to non-transgender youth, even when the risks are the same. Corathers ¶ 66. In particular, it is under-inclusive because it explicitly exempts the specified treatments for intersex youth. Defendant offers no evidence to suggest that its concerns about "severe, lifelong consequences" for children do not apply equally in this exempted context—if not more aggressively, given that intersex youth typically undergo these interventions in infancy and before they have any meaningful capacity to consent, despite the comparably poor evidence base for these surgeries. Antommaria ¶ 62; *see also* Ido Katri & Maayan Sudai, *Intersex, Trans, and the Irrationality of Gender-Affirming-Care Bans*, 134 YALE L.J. 1521, 1554 & n.150 (2025).

Nothing in *Skrmetti* undermines the conclusion that, when heightened scrutiny applies, laws like SB 63 do not pass muster. Every court to apply heightened scrutiny to similar medical care bans for youth has struck them down. *See* MTD Opp. at fn. 8 (collecting cases). SB 63 similarly fails heightened scrutiny here.

3. SB 63 Fails to Survive Even Rational Basis.

Even though heightened scrutiny applies because of SB 63's quasi-suspect classifications and invidious discriminatory purpose, SB 63 cannot survive even the rational basis review that would otherwise apply. *State v. Limon*, 280 Kan. 275, 288 (2005) (statute "must implicate legitimate goals" and employ "means [that] bear a rational relationship to those goals" to pass muster under rational basis). First, SB 63 is over-inclusive: it restricts social transition, not just

medical care. Second, it is under-inclusive: it exempts treatments for intersex conditions, even though Defendant's purported concerns about consent and evidence of efficacy have far greater resonance in that context. Taken together, SB 63's over- and under-inclusiveness make clear that it was motivated by animus toward transgender people, which is per se illegitimate under rational basis review.

First, over-inclusiveness: "where the legislation burdens a wider range of individuals than necessary given the State's interest, [it] may be particularly invidious and unconstitutional." *Limon*, 280 Kan. at 288 (describing rational basis standard) (citing *Romer v. Evans*, 517 U.S. 620, 632 (1996)); *compare Skrmetti*, 145 S. Ct. at 1836 (noting that the Tennessee law's rationale is distinct from those at issue in, for example, *Romer*). If Defendant's interest is protecting children from certain medical treatments and placing guardrails on the medical profession, then there is no reason to regulate or restrict non-medical professionals' treatment of individuals *outside* of the medical context. But this is precisely what SB 63 does in both defining and restricting social transition. SB 63 § (b)(10). The only reason to discourage such behavior is to disapprove of it. And "moral disapproval of a group cannot be a legitimate governmental interest." *Limon*, 280 Kan. at 295.

Second, under-inclusiveness, or the "failure to create a classification which is sufficiently broad to effectively accommodate the State's interest, *i.e.*, the creation of an under-inclusive class, may evidence an animus toward those burdened." *Limon*, 280 Kan. at 288 (applying rational basis standard) (citing *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985)). SB 63 is under-inclusive because it prohibits puberty blockers or hormones for transgender youth, but not cisgender youth, despite the same or similar potential risks. Corathers ¶ 66. SB 63 also permits or exempts pediatric treatments with comparable or lesser evidence bases. Antommaria ¶ 38, 62.

The law also expressly *allows* treatments for intersex youth, defined in SB 63 § 3 (c)(1)(A), even though such treatments typically occur much earlier and are much more invasive than the puberty blockers and hormones Plaintiffs seek here. *See* Katri & Sudai, *supra*, at 1546 & n.104 ("Unlike in gender-affirming care, surgical and endourological interventions for intersex minors typically begin at a very young age, usually before the age of two.") (collecting sources). Defendant's stated concerns about irreversibility or fertility, *see* Resp. Br. at 8-9, apply with greater force in this specifically permitted context, given that the majority of these surgeries are performed on intersex infants who are significantly less, if at all, capable of providing consent compared to adolescents. *See* Katri & Sudai, *supra*, at 1553 ("Despite purporting to protect trans minors from interventions that might cause sterility or other harm, the bans expressly permit similar procedures for even younger children who cannot participate in the decision-making process. These intersex exclusions thus reveal the bans' internal incoherence—and their sex-normalizing purposes.").

The law's overbreadth and under-inclusiveness confirm that the real rationale undergirding SB 63 is animus. Such a motivation does not bear a rational relationship to legitimate goals, and therefore the law fails rational basis review.

C. Plaintiffs Will Suffer Irreparable Injury; There is No Adequate Remedy at Law.

Plaintiffs need only establish a "mere probability," as opposed to "*certainty*," of irreparable harm for a temporary injunction to issue. *Bd. of Cnty Comm'rs of Leavenworth Cnty v. Whitson*, 281 Kan. 678, 684 (2006). Deprivation of a constitutional right is itself enough to show irreparable harm. *Hodes & Nauser, MDs, P.A. v. Schmidt*, No. 2015CV000490, 2015 WL 13065200, at *5 (Kan. Dist. Ct. June 30, 2015) ("*Hodes Temp. Inj.*"). As the State of Kansas has itself recently argued, "[h]arms that deprive individuals of their constitutional rights are necessarily irreparable."

Brief of State of West Virginia and 17 Other States as Amici Curiae Supporting Petitioners at 2-3, *Gray v. Jennings*, 145 S. Ct. 1049 (No. 24-309), 2024 WL 4556639.

In addition, losing access to medical care is already causing and will continue to irreparably harm Plaintiffs. Contrary to Defendant's argument, Resp. Br. at 25, Plaintiffs establish through their own declarations and those of their experts both the great benefits of receiving the prohibited care and the enormous harms of losing access. Puberty blockers allow Lily Loe to "stop having to worry every day" about male puberty starting and let her "feel more like [her]self," while not being permitted to continue with her care "will have a bad impact on [her] mental health and social life." Lily Loe ¶¶ 12-14. Lily's mother confirms that "[d]eveloping male characteristics, like facial hair and a deeper voice, would be agony for Lily" and that Lily "experiences more anxiety and fear about her ability to live her life as herself and her light seems to have dimmed because of SB 63's impact on her healthcare." Lisa Loe ¶¶ 32-33. Ryan Roe describes his "consistent anxiety" since SB 63 passed, how he has "felt so much better, so much less distressed, and so much more like the person [he is] supposed to be after starting testosterone," and his worries regarding his "physical and mental health if [he] cannot access" it. Ryan Roe ¶¶ 14-17. His mother describes how Ryan "has been well-regulated on this care and is much happier and healthier since he has had access to it," and how "SB 63 stops [her] from being able to make medical decisions that keep him healthy, happy, and safe." Rebecca Roe ¶¶ 27-28.

Defendant conflates SB 63's tapering period through December 31, 2025, with continued access to care; it is not true that Plaintiffs "have guaranteed access to [gender-affirming care] for the next five months." Resp. Br. at 26. SB 63 only allows care to continue if, among other provisions, the provider "[d]evelop[] a plan to systematically reduce the child's use of such drug"

and "such course of treatment [does] not extend beyond December 31, 2025." SB 63 § 3(d)(1), (3). The harms from delayed or denied care are enormous. Corathers ¶ 85; Turpin ¶ 51-53.

Moreover, even with this provision, Plaintiffs have been forced to seek care out of state to ensure that they do not precipitously lose care now, as Kansas providers wind down care, or in the future, a process that has caused delays. Lisa Loe ¶ 31 (referencing delay in care due to restarting at new clinic); Rebecca Roe ¶ 26 (noting closest alternative options are in Colorado or Minnesota).

That burdensome out-of-state travel is irreparable harm for purposes of the temporary injunction standard. Care outside of Kansas is not a meaningful "alternate remedy" when such care may be delayed, drawn out, or even canceled due to the burdens imposed by extensive travel. Kansas courts have found these effects to constitute irreparable harm even when the law at issue only requires in-state travel. *See Trust Women Found. Inc. v. Bennett*, 509 P.3d 599, at *24 (Kan. Ct. App. May 20, 2022) (finding that "evidence regarding the reasonable probability of harm related to delays in appointments . . . , length of appointments—again requiring delays if a patient could not be away from home or work that long—and cancelations due to the inability of physicians to travel" established irreparable harm for purposes of temporarily enjoining Kansas law requiring all abortion care to be provided in person).

Three months does not constitute a delay relevant to this Court's analysis of the temporary injunction motion. "There is no categorical rule that delay bars the issuance of an injunction," *Fish v. Kobach*, 840 F.3d 710, 753 (10th Cir. 2016), and like the defendant in *Fish*, Defendant fails to explain how the delay here prejudices them in any way. *See id*; Resp. Br. at 27. As in *Fish*, this court should consider that failure as "sufficient . . . to reject [their] delay rationale." *Id.* (affirming grant of preliminary injunction despite 30-month delay in filing); *see also Kan. Health Care Ass'n, Inc. v. Kan. Dep't of Soc. & Rehab. Servs.*, 31 F.3d 1536, 1544 (10th Cir. 1994) (holding that,

because "defendants have not claimed that they are somehow disadvantaged because of the [three-month] delay" in filing, district court properly found plaintiffs had established irreparable harm).

Plaintiffs seek only injunctive and declaratory relief, and here, "damages would be speculative, . . . the violation to be addressed is continuous or ongoing, and . . . damages can't provide adequate compensation" for Plaintiffs' injuries. *Wing v. City of Edwardsville*, 51 Kan. App. 2d 58, 64 (2014). There is no adequate legal remedy, and only equitable injunctive relief can address the irreparable harms at issue.

D. The Balance of Harms and Public Interest Weigh in Favor of an Injunction

"The balance of hardships in this case is in lockstep with irreparable harm." *Hodes Temp. Inj.*, 2015 WL 13065200, at *5. The ongoing injury to Plaintiffs "outweighs whatever damage the preliminary injunction may cause defendants' inability to enforce what appears to be an unconstitutional statute." *Raven Dev. Co. v. Bd. of Cnty. Comm'rs of Shawnee Cnty.*, No. 01C 1306, 2001 WL 34117820, at *5 (Kan. Dist. Ct. Nov. 1, 2001) (quoting *ACLU v. Johnson,* 194 F.3d 1149, 1163 (10th Cir. 1999)).

SB 63 does not serve any interest in "protecting children from harmful and experimental medical interventions." Resp. Br. at 28. Rather, it prevents transgender adolescents from receiving necessary medical care, while expressly allowing harmful interventions on intersex infants. Far from protecting minors, SB 63 harms them. And it is in the public interest to enjoin an unconstitutional law. *See Hodes Temp. Inj.*, 2015 WL 13065200, at *5.

E. This Court Should Issue a Statewide Injunction.

Kansas district courts regularly issue statewide injunctions of unconstitutional state laws, and no court has held that such injunctions are outside the scope of their equitable authority.[6]

[6] *See, e.g.*, *Hodes Temp. Inj.*, 2015 WL 13065200, at *5 (enjoining all enforcement of SB 95 abortion ban based on violation of Kansas State Constitution); *Raven Dev. Co., LLC v. Bd. of*

Trump v. CASA, 145 S. Ct. 2540 (2025), is limited to federal courts and poses no barrier to this Court's ability to enjoin SB 63's enforcement across Kansas. *CASA* did not hold that "equitable relief is generally permitted only for the named parties to a suit." Resp. Br. at 29. Rather, the question it addressed was much narrower: "whether, under the *Judiciary Act of 1789*, *federal courts* have equitable authority to issue universal injunctions." *CASA*, 145 S. Ct. at 2550 (emphasis added). Prior to *CASA*, the Supreme Court had explained that the Judiciary Act of 1789's grant of equitable authority to federal courts only licensed the grant of "equitable remedies 'traditionally accorded by courts of equity' at our country's inception." *CASA*, 145 S. Ct. at 2551 (quoting *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999)).

CASA's interpretation of the Judiciary Act of 1789 has no bearing on the scope of Kansas courts' equitable authority, which derives from an entirely different statute passed at a different time. *See* Kan. Stat. §§ 60-901—60-910. Indeed, *CASA* observes that by the mid-19th Century "some state courts would occasionally 'enjoin the enforcement and collection' of taxes against an 'entire community,' even when a 'single taxpayer su[ed] on his own account.'" *CASA*, 145 S. Ct. at 2556 (citing 1 POMEROY, EQUITY JURISPRUDENCE § 260, at 277-78). *CASA* dismissed this background as irrelevant to "federal courts' equitable authority under the Judiciary Act," but that background is highly relevant to the interpretation of the Kansas statutes endowing Kansas courts

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Cnty. Comm'rs, No. 01C 1306, 2002 WL 32136265, at *3-4 (Kan. Dist. Ct. Apr. 30, 2002) (enjoining state from enforcing statute that defined "adult entertainment business" for unconstitutional overbreadth); *see also League of Women Voters of Kan. v. Schwab*, 318 Kan. 777, 780 (2024) (holding that district court's denial of injunction prohibiting statewide enforcement of election law was in error based on constitutional infirmity); *Dissmeyer v. State*, 292 Kan. 37, 43 (2011) (reversing lower court's denial of statewide injunctive relief that would prevent enforcement of anti-lottery machine statute, based on the law's unconstitutional overbreadth); *Bennett*, 509 P.3d at *41 (Kan. Ct. App. May 20, 2022) (holding that district court erred in denying plaintiffs' request for statewide injunction against a statute that would prevent abortion providers from providing services via telehealth).

with equitable authority, which were also enacted in the mid-19th Century and incorporated at least all equity powers from that time period.[7]

Moreover, ***unlike federal courts, state courts "are not courts of limited jurisdiction organized under Article III."*** *Limetree Bay Terminals, LLC v. Liger*, 2024 VI 26, ¶ 27 (V.I. 2024) (emphasis added). There is not a single Kansas state court decision citing *Grupo Mexicano*, let alone for a similar understanding of Kansas courts' grant of equitable authority. Other state courts agree.[8]

CASA and federal constraints on federal courts' equitable jurisdiction simply do not apply to Kansas state courts, which have equitable authority to enjoin unconstitutional state action, even when suit is brought on behalf of individual plaintiffs rather than a class.

IV. CONCLUSION

Plaintiffs respectfully request that this Court grant their Motion for Temporary Injunction.

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[7] *See* THE STATUTES OF THE TERRITORY OF KANSAS 222-24, ch. 42, § 1 (1855) (giving district courts exclusive jurisdiction in "all cases of equity whatsoever"); 1861 Kan. Sess. Laws 121, ch. 22, §§ 3, 1 (granting Kansas district courts the power to "exercise all judicial functions allowed or required of the District Judges under the statutes of the late Territory" and "issue remedial and all other process"); *see also* 1862 Kan. Sess. Laws 126, ch. 26, § 10 (abolishing the distinction between actions at law and suits in equity and replacing both with the civil action); 1 POMEROY, EQUITY JURISPRUDENCE § 260, at 450-52 (noting the "settled" rule in "a large number of states" that a "single tax-payer suing on his own account" could nonetheless obtain "complete and final relief . . . to an entire community by means of one judicial decree," *i.e.*, a universal injunction, against "every illegal public official action or proceeding of county, town, or city authorities" in order to "prevent[] [] a multiplicity of suits" or "an indefinite amount of separate litigation by individuals").

[8] *See, e.g.*, *H.A. Sand Springs, LLC v. Lakeside Care Ctr., LLC*, 273 P.3d 73, 77 (Okla. Ct. App. Oct. 18, 2011) (*Grupo*, "which recognizes the limits of a federal court's equity jurisdiction, is not dispositive of this state court proceeding"); *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 603 S.E.2d 905, 907 (S.C. 2004) ("This decision limiting a federal court's equitable powers is not dispositive of whether a state court judge may restrain a defendant's assets prior to the attachment of a money judgment.").

Respectfully submitted, this 21st day of August, 2025.

By: 

Monica Bennett, KS Bar 30497
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF KANSAS
10561 Barkley St., Suite 500
Overland Park, KS 66212
Tel: (913) 303-3641
Fax: (913) 490-4119
mbennett@aclukansas.org

Harper Seldin (pro hac vice pending)
Shana Knizhnik (pro hac vice pending)
Alexandra R. Johnson (pro hac vice pending)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad St.
New York, NY 10004
hseldin@aclu.org
sknizhnik@aclu.org
a.johnson@aclu.org

Kristen Broz (pro hac vice pending)
Elizabeth V. Wingfield (pro hac vice pending)
Alexia Chapman (pro hac vice pending)
Helen Hitz (pro hac vice pending)
Ryan Sullivan (pro hac vice pending)
BALLARD SPAHR LLP
1909 K Street, NW
12th Floor
Washington, DC 20006
brozk@ballardspahr.com
wingfielde@ballardspahr.com
chapmana@ballardspahr.com
hitzh@ballardspahr.com
sullivanr@ballardspahr.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2025, the above Plaintiffs' Response in Further Support of Motion for Temporary Injunction was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to registered participants.

/s/ *Alexia C. Chapman*
Alexia C. Chapman