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

REV. PAUL A. EKNES-TUCKER; BRIANNA BOE, individually and on behalf of her minor son, MICHAEL BOE; JAMES ZOE, individually and on behalf of his minor son, ZACHARY ZOE; MEGAN POE, individually and on behalf of her minor daughter, ALLISON POE; KATHY NOE, individually and on behalf of her minor son, CHRISTOPHER NOE; JANE MOE, Ph.D.; and RACHEL KOE, M.D.

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STATE OF ALABAMA; KAY IVEY, in her official capacity as Governor of the State of Alabama; STEVE MARSHALL, in his official capacity as Attorney General of the State of Alabama; DARYL D. BAILEY, in his official capacity as District Attorney for Montgomery County; C. WILSON BAYLOCK, in his official capacity as District Attorney for Cullman County; JESSICA VENTIERE, in her official capacity as District Attorney for Lee County; TOM ANDERSON, in his official capacity as District Attorney for

Case No.
2:22-cv-184-LCB-SRW

Honorable Liles C. Burke

the 12th Judicial Circuit; and DANNY CARR, in his official capacity as District Attorney for Jefferson County.

Defendants.

UNITED STATES' MOTION TO INTERVENE

The United States, under Federal Rule of Civil Procedure ("Rule") 24, respectfully moves the Court for leave to intervene in this action and for permission to file the attached complaint in intervention. Counsel for the United States has spoken to counsel in the Alabama Attorney General's Office, who indicated that the Defendants would reserve taking a position on the relief requested in this Motion until they have had an opportunity to review it.

As grounds for its motion to intervene, the United States asserts the following facts, which are more fully set forth in the accompanying memorandum of law:

1. On April 19, 2022, the *Eknes-Tucker* Plaintiffs filed this lawsuit challenging Act No. 2022-289, Senate Bill ("S.B.") 184, the "Alabama Vulnerable Child Compassion and Protection Act." Section 4 of S.B. 184 is a felony ban on providing medical care to transgender minors to affirm their gender identity. S.B. 184 goes into effect on May 8, 2022.

2. The *Eknes-Tucker* Plaintiffs are four Alabama transgender minors and their parents, a pediatrician, child psychologist, and a pastor. The *Eknes-Tucker*

Plaintiffs assert that S.B. 184, *inter alia*, discriminates on the basis of sex and transgender status in violation of the Equal Protection Clause of the Fourteenth Amendment.

3. The United States seeks to intervene in this lawsuit against the Defendants and the State of Alabama under Rule 24.

4. Rule 24(a)(1) provides that, on timely motion, a court must permit anyone to intervene who "is given an unconditional right to intervene by a federal statute."

5. Section 902 of the Civil Rights Act of 1964, as amended, grants the United States an unconditional right to intervene in cases seeking relief from the alleged denial of equal protection of the laws under the Fourteenth Amendment to the United States Constitution on account of sex, if the Attorney General certifies that the case is of general public importance. 42 U.S.C. § 2000h-2. The United States' complaint in intervention alleges that S.B. 184 violates the Equal Protection Clause of the Fourteenth Amendment on account of sex and transgender status.

6. The Attorney General certifies that this is a case of public importance. A Certificate of Public Importance is attached hereto as Exhibit 1.

7. Alternatively, Rule 24(b) provides for permissive intervention upon a timely motion when a potential party has a claim or defense that shares with the main action a common question of law or fact, and when intervention will not

unduly delay or prejudice the adjudication of the original parties' rights. The United States has satisfied the requirements for permissive intervention here.

8. A complaint in intervention is attached hereto as Exhibit 2.

WHEREFORE, the United States respectfully requests that this Court grant its motion to intervene in this action.

Dated: April 29, 2022

Respectfully submitted,

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Middle District of Alabama

PRIM F. ESCALONA
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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record, in accordance with Rules 24(c) and 5(b)(2)(E).

Respectfully submitted,

s/ *Jason R. Cheek*
Jason R. Cheek
Assistant U.S. Attorney

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

REV. PAUL A. EKNES-TUCKER; BRIANNA BOE, individually and on behalf of her minor son, MICHAEL BOE; JAMES ZOE, individually and on behalf of his minor son, ZACHARY ZOE; MEGAN POE, individually and on behalf of her minor daughter, ALLISON POE; KATHY NOE, individually and on behalf of her minor son, CHRISTOPHER NOE; JANE MOE, Ph.D.; and RACHEL KOE, M.D.

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Case No.
2:22-cv-184-LCB-SRW

Honorable Liles C. Burke

District Attorney for the 12th Judicial Circuit; and DANNY CARR, in his official capacity as District Attorney for Jefferson County.

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF UNITED STATES' MOTION TO INTERVENE

Under Federal Rule of Civil Procedure ("Rule") 24, the United States respectfully submits this brief in support of its motion to intervene in this lawsuit as Plaintiff-Intervenor. This lawsuit challenges the felony ban on certain types of gender-affirming medical care for transgender youth contained in Section 4 of Act No. 2022-289, Senate Bill ("S.B.") 184 (2022), the "Alabama Vulnerable Child Compassion and Protection Act."

Two purposes of Rule 24 are "to foster economy of judicial administration and to protect non-parties from having their interests adversely affected by litigation conducted without their participation." *Stallworth v. Monsanto Co*., 558 F.2d 257, 265 (5th Cir. 1977).[1] The United States has a statutory right to intervene in this litigation under Rule 24(a). *See* Fed. R. Civ. P. 24(a)(1). Section 902 of the Civil Rights Act of 1964, as amended, grants the United States an unconditional

[1] Decisions by the former Fifth Circuit issued before October 1, 1981 are binding as precedent in the Eleventh Circuit. *See Bonner v. City of Prichard, Ala*., 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

right to intervene in certain cases seeking relief from the alleged denial of equal protection of the laws under the Fourteenth Amendment if the Attorney General certifies that the case is one of general public importance. 42 U.S.C. § 2000h-2. Here, the United States alleges that S.B. 184's felony ban on certain types of gender-affirming medical care for transgender youth violates the Equal Protection Clause of the Fourteenth Amendment. Further, the Attorney General has certified that this case is one of general public importance and the United States' motion to intervene is timely.

For these reasons, the Court should grant the United States' motion to intervene.

BACKGROUND

S.B. 184 was signed into law by Governor Kay Ivey on April 8, 2022. The law will become effective on May 8, 2022. Section 4 of S.B. 184 states that "no person shall engage in or cause any of" specified types of medical care to be performed on a minor if "the purpose of attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent" with sex assigned at birth. Alabama S.B. 184, § 4(a). The prohibited practices include administering puberty blockers, administering hormone therapy, and surgical interventions (including the removal of "any healthy or non-diseased body part or tissue, except for a male circumcision"). *Id.* § 4(a)(1)-

(6). There is an exception for procedures "undertaken to treat a minor born with a medically verifiable disorder of sex development." *Id.* § 4(b). Violation of Section 4 of S.B. 184 is a Class C felony, *id.* § 4(c), which is punishable by up to 10 years of imprisonment and a fine of up to $15,000. *See* Ala. Crim. Code §§ 13-A-5-6(a)(3), 13A-5-11(a)(3).

The *Eknes-Tucker* Plaintiffs, who include four Alabama transgender minors and their parents, a pediatrician, child psychologist, and a pastor, initiated this lawsuit on April 19, 2022 against Alabama Governor Kay Ivey, Attorney General Steve Marshall, and five district attorneys. In their lawsuit, the *Eknes-Tucker* Plaintiffs allege, *inter alia*, that S.B. 184 discriminates on the basis of sex and transgender status in violation of the Equal Protection Clause of the Fourteenth Amendment. Defendants answered the Complaint on April 21, 2022.

On April 21, 2022, the *Eknes-Tucker* Plaintiffs filed a motion for a temporary restraining order and preliminary injunction. Defendants' response is due on May 2, 2022, and the motion will be heard on May 5 and 6, 2022.

The United States' complaint in intervention, which adds the State of Alabama as a Defendant, challenges Section 4 of S.B. 184. The United States alleges that S.B. 184's felony ban on certain forms of medically necessary gender-affirming care for transgender minors discriminates on the basis of sex and

transgender status in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

THE UNITED STATES HAS A RIGHT TO INTERVENE UNDER RULE 24(a)(1)

The United States' motion to intervene should be granted under Rule 24(a)(1) because the United States satisfies the requirements for intervention as of right. Under that rule on timely motion, a court must permit anyone to intervene who "is given an unconditional right to intervene by a federal statute." Fed. R. Civ. P. 24(a)(1). Where an intervenor timely files a motion to intervene and has an unconditional statutory right to intervene in the lawsuit, a court has no discretion to deny the intervention. *Equal Emp. Opportunity Comm'n v. STME, LLC*, 938 F.3d 1305, 1322 (11th Cir. 2019).

The United States is given an unconditional right to intervene in this lawsuit by a federal statute. Section 902 of the Civil Rights Act of 1964 ("Section 902"), as amended, explicitly states that:

> Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

42 U.S.C. § 2000h-2. Numerous courts, including the Supreme Court, have recognized that this statute entitles the United States to intervene in equal protection cases. *See, e.g.*, *Fitzgerald v. Barnstable School Comm.*, 555 U.S. 246, 247-48 (2009) (acknowledging that Section 902 allows the Attorney General to intervene in private equal protection suits alleging sex discrimination); *Pasadena City Bd. of Ed. v. Spangler*, 427 U.S. 424, 430 (1976) (Section 902 authorizes the United States to continue as a party plaintiff despite the disappearance of the original plaintiffs); *Fuel Oil Supply & Terminaling v. Gulf Oil Corp.*, 762 F.2d 1283, 1286 n.5 (5th Cir. 1985); *Strain v. Philpott*, 331 F. Supp. 836, 837 (M.D. Ala. 1971).

Section 902 applies here. The United States alleges that S.B. 184 discriminates on the basis of sex and transgender status in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution—one of the claims brought in this matter by the *Eknes-Tucker* Plaintiffs. As required by Section 902, the Attorney General has certified that this is a case of public importance. U.S. Mot. to Intervene, Ex. 1.

The United States' motion is timely. In *United States v. Jefferson County*, 720 F.2d 1511 (11th Cir. 1983), the Eleventh Circuit established four factors to consider when evaluating the timeliness of a motion to intervene: (1) the length of time during which the movant actually knew or reasonably should have known of

its interest in the case before petitioning for leave to intervene; (2) the extent of the prejudice that the existing parties to the litigation may suffer as a result of the movant's failure to apply for intervention as soon as it actually knew or reasonably should have known of its interest in the case; (3) the extent of the prejudice that the movant may suffer if its petition for leave to intervene is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the application is timely. *Jefferson Cnty.*, 720 F.2d at 1516; *see also Comm'r, Ala. Dep't of Corrs. v. Advance Local Media, LLC*, 918 F.3d 1161, 1171 (11th Cir. 2019); *Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d 1242, 1259 (11th Cir. 2002) (holding that delay of six months does not in itself constitute untimeliness) (citing *Chiles v. Thornburgh*, 865 F.2d 1197, 1215 (11th Cir. 1989)).

The United States has met those requirements. The United States is petitioning the Court for leave to intervene as quickly as possible after learning of its interest. The United States is moving to intervene only 11 days after Plaintiffs' initiation of their lawsuit and only three weeks after S.B. 184 was signed into law. S.B. 184 has not yet gone into effect. Second, the existing parties to the litigation will not suffer any prejudice if the United States' motion is granted. The case is in a preliminary phase and discovery has not yet commenced.

Moreover, granting intervention will not have any negative effect on the pending preliminary injunction proceedings. The *Eknes-Tucker* Plaintiffs filed their

motion for a temporary restraining order and preliminary injunction on April 21, 2022. Granting intervention to the United States here will not prejudice any party with respect to the resolution of the pending motion. The United States will imminently file its own motion for a preliminary injunction, which does not raise new claims or arguments. The government is prepared to argue this motion on May 5 and 6, 2022.

Conversely, the United States will suffer prejudice if its motion to intervene is denied. This case implicates the United States' ability to protect its sovereign interest in ensuring that all persons, including transgender youth, are afforded equal protection of the laws in accordance with the Fourteenth Amendment to the U.S. Constitution. Granting intervention here will conserve resources and best serve judicial economy. It will ensure that the United States' interests are protected without requiring the filing of a separate lawsuit that would delay the adjudication of this matter and, ultimately, the constitutionality of S.B. 184. Such efficiency is particularly critical here given that S.B. 184 goes into effect on May 8.

Thus, the United States has met the requirements for intervention as of right under Rule 24(a)(1).[2]

[2] In the alternative, the Court should permit the United States to intervene in this litigation because the requirements for permissive intervention under Rule 24(b)(1)(B) are met here. First, the United States' putative claims share common questions of law and fact with the *Eknes-Tucker* Plaintiffs' claims. *See* Fed. R. Civ. P. 24(b)(1)(B). Both Plaintiffs and the United States claim violations of the Equal Protection Clause of the Fourteenth Amendment and these claims

CONCLUSION

For the foregoing reasons, the Court should grant the United States' motion to intervene and order its intervention in this action.

Dated: April 29, 2022

Respectfully submitted,

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United States Attorney
Middle District of Alabama

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are based on the same facts. Both lawsuits challenge Section 4 of S.B. 184's ban on certain types of gender-affirming care for transgender youth. Second, because the United States' motion is timely, intervention will not unduly delay or prejudice the adjudication of the original parties' rights. *Id.* at (b)(3). Given that the United States has promptly moved to intervene, intervention will not unduly delay or prejudice the original parties' rights.

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Attorneys for Plaintiff-Intervenor United States of America

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record, in accordance with Rules 24(c) and 5(b)(2)(E).

Respectfully submitted,

s/ *Jason R. Cheek*
Jason R. Cheek
Assistant U.S. Attorney

EXHIBIT 1

Attorney General's Certification

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
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REV. PAUL A. EKNES-TUCKER; BRIANNA BOE, individually and on behalf of her minor son, MICHAEL BOE; JAMES ZOE, individually and on behalf of his minor son, ZACHARY ZOE; MEGAN POE, individually and on behalf of her minor daughter, ALLISON POE; KATHY NOE, individually and on behalf of her minor son, CHRISTOPHER NOE; JANE MOE, Ph.D.; and RACHEL KOE, M.D. Plaintiffs, and UNITED STATES OF AMERICA, Plaintiff-Intervenor, v. STATE OF ALABAMA; KAY IVEY, in her official capacity as Governor of the State of Alabama; STEVE MARSHALL, in his official capacity as Attorney General of the State of Alabama; DARYL D. BAILEY, in his official capacity as District Attorney for Montgomery County; C. WILSON BAYLOCK, in his official capacity as District Attorney for Cullman County; JESSICA VENTIERE, in her official capacity as District Attorney for Lee County; TOM ANDERSON, in his official capacity as District Attorney for the 12th Judicial Circuit; and DANNY CARR,	Case No. 2:22-cv-184-LCB-SRW Judge Liles C. Burke

in his official capacity as District Attorney for Jefferson County.

Defendants.

CERTIFICATE OF THE ATTORNEY GENERAL

I, Merrick B. Garland, Attorney General of the United States, pursuant to 42 U.S.C. § 2000h-2, hereby certify that the case of *Eknes-Tucker v. Ivey, et al.*, No. 2:22-cv-184-LCB-SRW (M.D. Ala.), is a case of general public importance.

Signed this 29th day of April, 2022, at Washington, DC.

MERRICK B. GARLAND
Attorney General of the United States

EXHIBIT 2

Complaint in Intervention

IN THE UNITED STATES DISTRICT COURT
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REV. PAUL A. EKNES-TUCKER; BRIANNA BOE, individually and on behalf of her minor son, MICHAEL BOE; JAMES ZOE, individually and on behalf of his minor son, ZACHARY ZOE; MEGAN POE, individually and on behalf of her minor daughter, ALLISON POE; KATHY NOE, individually and on behalf of her minor son, CHRISTOPHER NOE; JANE MOE, Ph.D.; and RACHEL KOE, M.D.

Plaintiffs,

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UNITED STATES OF AMERICA,

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v.

STATE OF ALABAMA; KAY IVEY, in her official capacity as Governor of the State of Alabama; STEVE MARSHALL, in his official capacity as Attorney General of the State of Alabama; DARYL D. BAILEY, in his official capacity as District Attorney for Montgomery County; C. WILSON BLAYLOCK, in his official capacity as District Attorney for Cullman County; JESSICA VENTIERE, in her official capacity as District Attorney for Lee County; TOM ANDERSON, in his official capacity as District Attorney for

Case No.
2:22-cv-184-LCB-SRW

Honorable Liles C. Burke

the 12th Judicial Circuit; and DANNY CARR, in his official capacity as District Attorney for Jefferson County.

Defendants.

COMPLAINT IN INTERVENTION

Plaintiff-Intervenor, the United States of America ("United States"), alleges:

PRELIMINARY STATEMENT

1. This lawsuit challenges a state statute that denies necessary medical care to children based solely on who they are.

2. All people, including transgender youth, deserve to be treated with dignity and respect. And the Fourteenth Amendment demands that Alabama not "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

3. The United States accordingly files this complaint in intervention to enforce the Constitution's guarantee of equal protection, and to challenge Section 4 of Act No. 2022-289, Senate Bill ("S.B.") 184 (2022), the "Alabama Vulnerable Child Compassion and Protection Act."

4. S.B. 184 criminalizes certain forms of medically necessary care for transgender minors. Specifically, S.B. 184 makes it a felony to "engage in or cause" specified types of medical care for minors, if performed for "the purpose of

attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent" with sex assigned at birth.

5. S.B. 184 thus allows a minor to receive certain medical procedures or treatment only if they will be used to affirm the sex that the minor was assigned at birth.

6. The law discriminates against transgender minors by unjustifiably denying them access to certain forms of medically necessary care.

7. While criminalizing certain forms of medically necessary gender-affirming care for transgender minors, S.B. 184 permits all other minors to access the same procedures and treatments.

8. As a result of S.B. 184, medical professionals, parents, and minors old enough to make their own medical decisions are forced to choose between forgoing medically necessary procedures and treatments or facing criminal prosecution.

9. S.B. 184's felony ban on various forms of medically necessary gender-affirming care for transgender minors discriminates on the basis of both sex and transgender status in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

JURISDICTION AND VENUE

10. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345.

11. The United States is authorized to intervene in this action pursuant to 42 U.S.C. § 2000h-2. The Attorney General of the United States has certified that this case is of general public importance.

12. Venue is proper pursuant to 28 U.S.C. §§ 81(b) and 1391(b).

13. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, and 28 U.S.C. §§ 2201 and 2202.

PARTIES

14. Plaintiff-Intervenor is the United States of America.

15. Defendant, the State of Alabama, is a State of the United States. The State of Alabama includes all of its officers, employees, and agents.

16. Defendant Kay Ivey is the Governor of the State of Alabama. Governor Ivey is sued in her official capacity.

17. Defendant Steve Marshall is the Attorney General of the State of Alabama. Attorney General Marshall is sued in his official capacity.

18. Defendant Daryl D. Bailey is the Montgomery County District Attorney. Mr. Bailey is sued in his official capacity.

19. Defendant C. Wilson Blaylock is the District Attorney for the 32nd Judicial Circuit, which oversees Cullman County. Mr. Blaylock is sued in his official capacity.

20. Defendant Jessica Ventiere is the Lee County District Attorney. Ms. Ventiere is sued in her official capacity.

21. Defendant Tom Anderson is the District Attorney for the 12th Judicial Circuit, which oversees Coffee County and Pike County. Mr. Anderson is sued in his official capacity.

22. Defendant Danny Carr is the Jefferson County District Attorney. Mr. Carr is sued in his official capacity.

FACTUAL ALLEGATIONS

23. Transgender people are individuals whose gender identity does not conform with the sex they were assigned at birth.

24. The American Psychiatric Association has stated "[b]eing transgender or gender diverse implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."

A. Standard of Care for Treating Transgender Youth

25. According to the American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders ("DSM-V"), an authoritative source for psychiatric conditions, "Gender Dysphoria" is the diagnostic term for the condition

experienced by some transgender people of clinically significant distress resulting from the lack of congruence between their gender identity and the sex assigned to them at birth.

26. As the DSM-V explains, to be diagnosed with gender dysphoria, the individual must experience the incongruence for at least six months and experience clinically significant distress or impairment in social, occupational, or other important areas of functioning.

27. The American Psychiatric Association recognizes that not all transgender persons have gender dysphoria. A diagnosis of gender dysphoria is currently required in order to receive many forms of gender-affirming care, including hormone therapy and surgery.

28. The DSM-V notes that medical treatment for gender dysphoria addresses the clinically significant distress created by gender dysphoria by helping people who are transgender live in alignment with their gender identity.

29. The precise treatment for gender dysphoria depends on each person's individual needs. According to clinical guidelines from the World Professional Association for Transgender Health ("WPATH"), the number and type of interventions to treat gender dysphoria may differ from person to person. The medical standards of care differ depending on whether the treatment is for a pre-pubertal child, an adolescent (i.e., minors who have entered puberty), or an adult.

30. The American Academy of Pediatrics agrees that gender-affirming care is safe, effective, and medically necessary treatment for the health and wellbeing of some children and adolescents suffering from gender dysphoria.

31. Before puberty, the American Academy of Pediatrics recommends treatment for gender dysphoria that does not include any pharmaceutical or surgical intervention and is limited to "social transition," which means allowing a transgender child to live and express themselves in ways consistent with their gender identity.

32. As transgender youth reach puberty, puberty delaying therapy may become medically necessary and appropriate for some minors according to the Endocrine Society's clinical practice guidelines.

33. According to the American Academy of Pediatrics, gender dysphoria may emerge or worsen with the onset of puberty. For many transgender adolescents, going through puberty in accordance with the sex assigned to them at birth, can cause extreme distress.

34. According to WPATH, refusing timely and necessary medical interventions for adolescents may prolong gender dysphoria and lead to an appearance that provokes abuse and stigmatization; such gender-related abuse is in turn associated with psychiatric distress.

35. The Endocrine Society's clinical guidelines recognize that puberty delaying hormone treatment (also referred to as puberty blockers or puberty suppressing treatment) allows transgender youth to avoid experiencing heightened gender dysphoria and permanent physical changes that puberty would cause. Before providing such therapy, pediatric endocrinologists work in close consultation with qualified mental health professionals experienced in diagnosing and treating gender dysphoria.

36. Under the Endocrine Society's clinical guidelines, transgender adolescents may be eligible for puberty-blocking hormone therapy only if the following steps have been taken:

- A qualified mental health professional confirms the adolescent has demonstrated a long-lasting and intense pattern of gender nonconformity or gender dysphoria, gender dysphoria worsened with the onset of puberty, and any coexisting psychological, medical, or social problems that could interfere with treatment have been addressed, such that the adolescent's situation and functioning are stable enough to start treatment;

- The adolescent has sufficient mental capacity to give informed consent to this treatment, has been informed of the effects and side effects of treatment (including potential loss of fertility) and options to preserve fertility; and has given informed consent and the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process; and

- A pediatric endocrinologist or other clinician experienced in pubertal assessment agrees with the indication for treatment, has confirmed that puberty has started in the adolescent, and has confirmed that there are no medical contraindications to treatment.

37. According to WPATH, during puberty suppression, an adolescent's physical development should be carefully monitored, preferably by a pediatric endocrinologist, so that any necessary interventions can occur.

38. WPATH also recognizes that for some transgender adolescents, it may be medically necessary and appropriate to provide hormone therapy to initiate puberty consistent with gender identity.

39. Under WPATH's clinical guidelines, adolescents who are transgender may receive medically necessary chest reconstructive surgeries prior to the age of majority if they have severe gender dysphoria, provided they have been living consistent with their gender identity for a significant period of time.

40. According to WPATH, while some transgender individuals find comfort with their gender identity without surgery, for others surgery is essential and medically necessary to alleviate gender dysphoria. Surgery is often the last and most considered step in treatment for gender dysphoria.

B. Senate Bill 184

1. Bill Text

41. S.B. 184 was signed into law by Governor Kay Ivey on April 8, 2022. The law will become effective on May 8, 2022.

42. Section 2 of the bill includes various legislative findings suggesting that sex is an immutable characteristic that cannot be changed. The findings reject

the need for interventions to treat gender dysphoria, describing such treatments as "unproven" and "experimental" and causing "numerous harmful effects." The findings characterize a "discordance between sex and identity" as a state that resolves itself over time in most cases.

43. Section 3 of the bill defines "sex" as the "biological state of being male or female, based on the individual's sex organs, chromosomes, and endogenous hormone profiles."

44. Section 4 of the bill identifies a set of medical practices, including administering puberty blockers, administering hormone therapy, and surgical interventions (including the removal of "any healthy or non-diseased body part or tissue, except for a male circumcision"). It further provides that "no person shall engage in or cause any of" these practices to be performed on a minor for "the purpose of attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent" with sex assigned at birth.

45. Section 4 contains an exception for procedures "undertaken to treat a minor born with a medically verifiable disorder of sex development."

46. By its terms, the prohibition in S.B. 184 necessarily implicates parents of transgender minors as well as health care providers and other medical professionals. And because S.B. 184 prohibits any person from causing the

prohibited treatment, a transgender minor may face prosecution for seeking out their own medically necessary care. *See* Ala. Code § 22-8-4 ("Any minor who is 14 years of age or older, or has graduated from high school, or is married, or having been married is divorced or is pregnant may give effective consent to any legally authorized medical, dental, health or mental health services for himself or herself, and the consent of no other person shall be necessary.").

47. Violation of Section 4 of S.B. 184 is a Class C felony, which is punishable by up to 10 years of imprisonment and a fine of up to $15,000. *See* Ala. Crim. Code §§ 13-A-5-6(a)(3), 13A-5-11(a)(3).

2. Impact of S.B. 184

48. S.B. 184's felony ban on various forms of gender-affirming care prohibits transgender minors from accessing certain medical procedures or treatment if they will be used to affirm a gender identity inconsistent with the sex assigned at birth.

49. The law discriminates against transgender minors by unjustifiably denying them access to certain forms of medically necessary care. S.B. 184 prohibits transgender minors from obtaining care that is well recognized within the medical community as medically appropriate and necessary, while imposing no comparable limitation on medically necessary care by cisgender minors.

50. In addition, the law allows children to access the exact same medical procedures or treatment if they will be used to reinforce the gender they were assigned at birth.

51. With respect to medical care, S.B. 184 permits a doctor, for example, to prescribe testosterone for a cisgender male minor suffering from delayed pubertal development or a condition such as hypogonadism, but the law makes it a felony for the same doctor to prescribe the same testosterone to a transgender male youth to affirm his gender identity.

52. With respect to surgical procedures, for example, the law permits a cisgender girl to undergo a voluntary non-cancer related breast augmentation procedure to make her feel more accepting of her body, but forbids a transgender girl from receiving the same procedure even when recommended as medically appropriate by her physician. The law also permits a cisgender boy with gynecomastia to have excess breast tissue surgically removed to give him a more "male" physique, but does not permit a transgender boy to obtain the same treatment.

53. In other words, the sex a minor was assigned at birth determines the legality and availability of medically necessary treatments.

54. In restricting who may receive medically prescribed care based on the individual's sex assigned at birth, S.B. 184 threatens health care providers with

criminal sanctions for exercising their independent medical judgment and expertise and threatens parents and others with criminal sanctions for acting on their judgment of what is in their child's best interest.

55. Further, the law prevents transgender minors from accessing gender-affirming care that is widely recognized within the medical community as the only effective treatment for some individuals diagnosed with gender dysphoria. S.B. 184 prevents healthcare providers from considering the recognized standard of care for gender dysphoria and from providing medically necessary gender-affirming care for improving the physical and mental health of their patients.

CAUSE OF ACTION

COUNT ONE
Violation of Equal Protection
U.S. Constitution, Amendment XIV
Plaintiff-Intervenor United States against All Defendants

56. The United States re-alleges and re-pleads all the allegations of the preceding and subsequent paragraphs of this Complaint and incorporates them herein by reference.

57. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits state and local governments from denying to any person within their jurisdiction the equal protection of the laws.

58. Section 4 of S.B. 184 discriminates both on the basis of sex and on the basis of transgender status, each in violation of the Equal Protection Clause.

59. Under the Equal Protection Clause, government classifications based on sex or on transgender status are subject to heightened scrutiny and are presumptively unconstitutional.

60. Section 4 of S.B. 184 cannot survive heightened scrutiny because it is not substantially related to achieving Alabama's articulated important governmental interests.

61. In the alternative, Section 4 of the statute could not survive any level of scrutiny because it is not rationally related to a legitimate government interest.

62. The above conduct of Defendants has been taken under color of state and local law.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court:

a. Enter a judgment declaring that Section 4 of S.B. 184 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

b. Temporarily restrain, and issue a preliminary and permanent injunction restraining, Defendants from enforcing Section 4 of S.B. 184; and

c. Grant such additional relief as the needs of justice may require.

Dated: April 29, 2022

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