

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

Brianna Boe, <i>et al.</i> ,)	
)	
<i>Plaintiffs</i> ,)	
)	
United States of America,)	
)	
<i>Intervenor Plaintiff</i> ,)	
)	
v.)	Civil Action No. 2:22-cv-184-LCB
)	
Hon. Steve Marshall, in his official)	
capacity as Attorney General,)	
of the State of Alabama, <i>et al.</i> ,)	
)	
<i>Defendants</i> .)	

**DEFENDANTS' MOTION TO COMPEL PRODUCTION OF
PLAINTIFFS' MEDICAL RECORDS**

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INTRODUCTION

After bringing an action premised on “obtaining appropriate” and “essential” “medical care for” the Minor Plaintiffs (Doc. 159 ¶¶ 2-3 (“Compl.”)), Plaintiffs refuse to turn over the medical records necessary to assess their claims. That is perplexing because Plaintiffs’ refrain—from their experts, favored guidelines, and studies—has always been that “to determine if and what medical care is essential,” “medical providers utilize a multidisciplinary approach for monitoring and assessment of transgender youth patients” that “includ[es] behavioral and physical health specialists.” Pls’ PI Reply, Doc. 89, at 20, 27. That assertion (and many, many others like it, *see* pp. 2-10, *infra*) makes the records from those specialists highly relevant to this litigation. And it makes them outright critical to Plaintiffs’ as-applied challenge.

Defendants thus requested medical records related to the diagnosis, assessment, and treatment of the Minor Plaintiffs for gender dysphoria. Yet after extolling the benefits and safeguards of their purported “comprehensive assessment” and treatment guidelines (as Dr. Hawkins told this Court at the preliminary injunction hearing, PI Tr. 27, 31¹), Plaintiffs now refuse to produce comprehensive medical records. Without them, Defendants, their experts, and this Court have little way of

¹ All references to the preliminary injunction hearing are to the continuously paginated transcript, Docs. 104 & 105.

assessing Plaintiffs' claims that they require certain treatments or that Alabama's law prohibits them from receiving the care they need.

Accordingly, this Court should compel Plaintiffs to provide to Defendants their medical records related to gender dysphoria, including records that reflect past mental health diagnosis or treatment and any side effects from the transitioning treatments. The requested medical records easily clear the low bar for relevancy and are thus discoverable under Rule 26(b)(1). And Plaintiffs have no other grounds to withhold these highly relevant documents, which are already subject to protective orders entered by the Court. Docs. 137 & 138. Plaintiffs cannot put their medical conditions at issue and then refuse to provide records necessary to assess their claims.

BACKGROUND

A. Plaintiffs' Claims and Reliance on Medical Records

Plaintiffs—minors, their parents, and medical providers—challenge Alabama's Vulnerable Child Compassion and Protection Act on two bases. First, they allege that the Act "prohibit[s] parents from seeking and obtaining appropriate medical care for their children." Compl. ¶ 2. Second, they allege that the Act "targets transgender minors by imposing criminal penalties on any individuals . . . who obtain or provide medical treatments essential to the minors' health care needs." *Id.* ¶ 3. As these descriptions suggest, a fundamental underlying question is what constitutes "appropriate" or "essential" medical care. *See also id.* ¶¶ 98, 101 (due

process claim limited to “medical treatments” that are “medically necessary” or “essential”); ¶¶ 105, 106, 111 (equal protection claim likewise limited).

Plaintiffs have defined their favored medical care, at least in part, by reference to the “standards of care” “developed by the World Professional Association for Transgender Health (‘WPATH’)” and other organizations like the Endocrine Society. *Id.* ¶ 29; *see id.* ¶ 30; Pls’ PI Reply, Doc. 89, at 15 (describing WPATH standards as “authoritative”). WPATH’s standards, in turn, state that “health care professionals working with gender diverse adolescents [should] undertake a comprehensive biopsychosocial assessment of adolescents who present with gender identity-related concerns.” E. Coleman et al., *WPATH Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 INT’L J. OF TRANSGENDER HEALTH S1 (Sept. 15, 2022) Statement 6.3, <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644>. Indeed, the standards explain that “there are no studies of the long-term outcomes of gender-related medical treatments for youth who have not undergone a comprehensive assessment,” and that “[t]reatment in this context (e.g., with limited or no assessment) has no empirical support.” *Id.*

The WPATH standards also suggest than an extended assessment process “may be useful” when youth present “with more complex presentations (e.g., complicating mental health histories), co-occurring autism spectrum characteristics, and/or an absence of experienced childhood gender incongruence.” *Id.* (citations

omitted); *see also id.* Statement 6.12d (“[I]t is critical to differentiate gender incongruence from specific mental health presentations, such as obsessions and compulsions, special interests in autism, rigid thinking, broader identity problems, parent/child interaction difficulties, severe developmental anxieties (e.g., fear of growing up and pubertal changes unrelated to gender identity), trauma, or psychotic thoughts.”); *id.* (“[I]t is important any mental health concerns are addressed sufficiently so that gender-affirming medical treatment can be provided optimally”).

The Endocrine Society’s guidelines likewise “expressly require,” by Plaintiffs’ own telling, “multiple, staged assessments and reassessments before moving patients from one step in medical treatment to the next.” Pls’ PI Reply, Doc. 89, at 19; *see id.* at 25-26. And the foundational Dutch studies, relied on by these guidelines and by Plaintiffs’ experts (*e.g.*, Rosenthal Decl., Doc. 8-3 ¶ 53), “repeatedly and consistently emphasize the need for extensive mental health assessment, including clinical interviews, formal psychological testing with validated psychometric instruments, and multiple sessions with the child and the child’s parents.” Cantor Decl., Doc. 69-2 ¶ 49; *see id.* ¶ 58.

Accordingly, to prove that transitioning treatments are “appropriate” or “necessary” for these Minor Plaintiffs, a central focus of Plaintiffs’ case has been the minors’ medical histories, particularly their mental health histories but also physical issues. Compl. ¶¶ 43-47 (“His therapist recently recommended that Michael be

evaluated for additional medical treatment to address the mismatch between his body and his gender identity.”), 50-56 (“About seven months ago, just as Allison was beginning high school, she was evaluated for and eventually started on estrogen. Her mental health has improved dramatically”), 58-63 (“Kathy took Christopher to a physician to begin the evaluation for hormone-replacement therapy.”), 66-72 (“With puberty approaching, Melissa is starting to show signs of distress in anticipation of the physical changes that accompany puberty and is concerned that she will be perceived by others as a boy.”), 75-83 (“April has also been under the care of a mental health provider who specializes in working with transgender youth for about three years.”).

Likewise, Plaintiffs presented extensive testimony at the preliminary injunction hearing about both the holistic analysis that is purportedly a prerequisite to transitioning treatments and the Minor Plaintiffs’ own histories. All of the Parent Plaintiffs’ declarations and testimonies referenced health diagnoses and treatments. *E.g.*, Doc. 8-5 ¶ 9 (“The therapist confirmed that Michael has gender dysphoria and recommended that he be evaluated for medical treatment.”); Doc. 8-7 ¶¶ 10-12, 19, 21; Doc. 8-8 ¶ 14 (“The endocrinologist reviewed Christopher’s medical history, the recommendation of Christopher’s counselor, and Christopher’s lab results.”).

Plaintiffs’ experts claimed *ad nauseam* that “we will not prescribe any treatment unless the full multidisciplinary team agrees that treatment is appropriate.”

Ladinsky Decl., Doc. 8-2 ¶ 11; *see* Hawkins Decl., Doc. 8-1 ¶¶ 32-37 (same); Rosenthal Decl., Doc. 8-3 ¶¶ 48-51 (same). As Dr. Hawkins put it at the preliminary injunction hearing, “[t]he assessment process” is “a 360 assessment” that “involves multiple visits and multiple professionals who are trained in this care,” starting with “developmental specialists, mental health specialists, including psychologists and psychiatrists, [and] social workers.” PI Tr. 22.

Dr. Hawkins then assured the Court that mental health issues are “100 percent” part of the assessment and “usually where we start,” to purportedly ensure that a child’s “gender identity is not somehow a symptom of something else, or something else masking . . . gender dysphoria.” *Id.* at 23. According to her, “mental health struggles or significant chronic mental health conditions” must be considered “to make sure that we don’t move a child down the road of assessment into gender care when that’s really not the right care.” *Id.*; *see id.* at 19 (noting concern about “falsely . . . perceiv[ing] a child as transgender when there’s really something else going on”). Thus, Dr. Hawkins testified that “[w]e look very closely at trauma, neurological development, our kids with autism or ASD, any type of childhood or youth mental health or neurological condition that could have them not really understanding who they are because of that trauma or mental health.” *Id.* She concluded: “The assessment process we use, we try to assure we are 180 percent sure that the right kids are getting the right medicine.” *Id.* at 69.

Dr. Hawkins also stated that patients are considered “ready to start” transitioning treatments “[w]hen psychosocially there is confirmation of the diagnosis of gender dysphoria, and that the distress that a young person or an adolescent is experiencing meets criteria psychosocially or mental health-wise.” *Id.* at 57. This confirmation relies on “the 360 evaluation of the other people who are involved in the young person’s life, including pediatricians, other mental health providers.” *Id.* at 59. “[B]ased on the guidelines,” Dr. Hawkins testified, only after such thorough assessment might medical care be “appropriate.” *Id.* at 25; *see id.* at 41 (“[W]e then bring all of the assessments back into one room and make a collective determination about what would be the best medical mental health care for a child.”); *id.* at 62 (asserting “a multidisciplinary longitudinal systemic assessment process”); *id.* at 69-70 (“The assessment process that includes longitudinal assessments with multidisciplinary team of the multi-systemic areas of a child is the ideal assessment process to determine that, to determine the appropriateness of what medical and mental health care a child or an adolescent with dysphoria experiences.”).

Dr. Ladinsky offered similar testimony. She testified that the “first step” in seeing a patient was conducting “a robust assessment of the information coming to us from their pediatrician, their mental health provider, and in-depth time spent with their family and them, a physical examination to assess and confirm that Tanner 2 staging by our pediatric endocrinologist, as well as the input from everyone on the

team.” *Id.* at 105. And she explained that to provide cross-sex hormones, “[w]e request a written letter from their mental health provider attesting to not just their capacity to assent to hormones and to the potential risk-benefit analysis, but as well as a decision that’s made by the entire team.” *Id.* at 108.

Plaintiffs’ experts also testified that “[o]nce a patient begins medical treatment, their progress is monitored at regular intervals, typically every six months, to assess the efficacy of the prescribed treatment through a physical examination or laboratory tests.” Doc. 8-2 ¶ 13 (Ladinsky). The monitoring is also necessary because the side effects of the transitioning treatments can be many and severe—ranging from risks of diminished bone density, infertility, and loss of sexual function to cancers, stroke, and heart disease. *See* UAB Informed Consent Form, Doc. 78-41. According to Plaintiffs’ experts, “[t]his ongoing monitoring also ensures ongoing evaluation of a patient’s mental health.” *Id.*; *see* Doc. 8-10 ¶ 9 (Plaintiff Koe: “these patients would come to me for regular blood tests and lab work, the results of which would be sent to the UAB gender clinic so their medical providers could monitor their progress.”). And—according to Plaintiffs’ experts—mental health providers “100 percent” “stay involved” by “constantly assessing and reassessing the appropriateness of every treatment plan.” PI Tr. 25 (Hawkins).

At every stage of this litigation, Plaintiffs have thus built their case around the alleged facts that transitioning treatments are only provided after and guided by an

exhaustive assessment by all relevant medical professionals and that the Minor Plaintiffs require these treatments. At the preliminary injunction stage, they argued that the decision to provide transitioning treatments “is a three-dimensional assessment that takes into account the parents, the child, the network, the child’s background, the history of gender dysphoria that the child may have presented with.” PI Tr. 366. They asserted that “Alabama medical providers utilize a multidisciplinary approach for monitoring and assessment of transgender youth patients to determine if and what medical care is essential at each stage of adolescence.” Pls’ Reply, Doc. 89, at 20. The purpose of that assessment, according to Plaintiffs, is “to (1) ensure that treatment is medically necessary and appropriate to the individual, and that (2) any ‘co-existing psychological, medical, or social problems’ have been addressed.” *Id.* at 15. And the “authoritative protocols,” Plaintiffs argued, “require multiple, staged assessments and reassessments.” *Id.* at 15, 19.

In its preliminary injunction order, this Court relied on the Plaintiffs’ testimony about the guidelines and their individual diagnoses. The Court held that “Parent Plaintiffs are substantially likely to show that the Act violates their fundamental right to treat their children with transitioning medications *subject to medically accepted standards.*” *Eknes-Tucker v. Marshall*, No. 2:22-CV-184-LCB, 2022 WL 1521889, at *8 (M.D. Ala. May 13, 2022) (emphasis added); *see id.* at *5 (discussing testimony of Megan Poe about her child’s mental health diagnosis and outcomes).

And the Court stated “that at least twenty-two major medical associations in the United States endorse these medications as well-established, evidence-based methods for treating gender dysphoria in minors.” *Id.* at *10; *see id.* at *2 (stating that these associations “endorse” WPATH’s “guidelines for treating gender dysphoria in minors with these medications”).² As shown, those guidelines allegedly require a complete assessment.

B. Defendants’ Requests for Production and Plaintiffs’ Responses

On July 18, 2022, Defendants served their first requests for production under Rule 34 on Plaintiffs. *See* Bowdre Decl., Exhibit 1. As relevant here, Defendants requested the following from the Parent Plaintiffs:

5. All medical records in your possession of any child of yours which relates to treatment for Gender Dysphoria or a Related Condition.
6. All Documents in your possession of . . . of any mental health treatment provided to a child of yours who has been treated for Gender Dysphoria or a Related Condition.
7. All Documents between you and any medical provider or mental health professional who has treated a child of yours for Gender Dysphoria or a Related Condition.
8. All calendars, notes, or other Documents, reflecting the dates of any treatment of a child of yours for Gender Dysphoria or a Related Condition.

² A new version of WPATH’s guidelines (cited above) has since been released and may be relevant to other issues, but no changes appear to be relevant to the extensive medical assessment emphasized by Plaintiffs.

9. All forms, disclosures, or other Documents provided to you by any Health Care Provider or mental health provider who has treated a child of yours for Gender Dysphoria or a Related Condition.

Id. at 7-8.

On August 22, Plaintiffs responded to these requests, objecting that “Plaintiffs[] challenge on its face the constitutionality of the Act” and that “Documents called for in this Request are not relevant to the parties’ claims or defenses.” Bowdre Decl., Exhibit 2, at 6-7. Plaintiffs also objected that the requests were broad and sought material protected by a mental health provider-patient privilege. *See id.* at 7-13. Plaintiffs declined to produce any responsive documents.

For four months, the parties have met and conferred, by telephone conference and email. *See generally* Bowdre Decl., Exhibit 3. As the correspondence reflects, Defendants were open to limitations on medical record production “if Plaintiffs agreed that they are arguing only that the challenged provisions are facially unconstitutional and are not, in contrast, arguing that the Act is unconstitutional as applied to Plaintiffs.” *Id.* at 18. If Plaintiffs had so agreed, offered “evidence sufficient to establish standing,” and refrained from “go[ing] into their medical history on summary judgment or at trial since that history would be irrelevant to the facial challenge” and prejudicial, Defendants expressed willingness to limit their requests for medical records. *Id.* at 18-19.

Plaintiffs, however, decided that they will press both facial and as-applied challenges to the Act. *Id.* at 2. As a result, Defendants explained that they would need all medical records involving gender dysphoria or related issues, including “materials relating to comorbidities with gender dysphoria” and “side effects of the drugs at issue.” *Id.* at 10.

Plaintiffs again refused, insisting on limiting production to certain categories chosen by Plaintiffs’ counsel, with production subject to redaction by counsel. *Id.* at

8. Plaintiffs proposed:

To resolve the State’s discovery requests concerning medical records for minor plaintiffs, private plaintiffs will agree to produce the following categories of medical records:

- (1) medical records that reflect an evaluation and diagnosis of gender dysphoria for each of the minor plaintiffs;
- (2) medical records that assess the medical need for treatment of gender dysphoria for each of the minor plaintiffs; and
- (3) medical records that reflect the provision of medical treatment for gender dysphoria and ongoing monitoring and evaluation of the condition for each of the minor plaintiffs.

...

To ensure that no irrelevant medical records are produced, private plaintiffs propose the following procedure:

- (1) For Records in Private Plaintiffs’ Possession: private plaintiffs’ lawyers have obtained copies of medical records for the minor plaintiffs and will produce those medical records that fall within the three categories above; and

(2) For Additional Records: if the State wishes to obtain additional medical records for the minor plaintiffs, the State will provide the name of the medical provider to private plaintiffs' counsel who (a) will obtain copies of the medical records (through authorization or subpoena), (b) will redact any information that does not fall within the three categories above, and (c) will produce copies of the redacted medical records to the State. The State will agree not to issue subpoenas for medical records so that the parties can avoid needless motion practice.

Id.

Defendants explained that the problem with Plaintiffs' proposal is that it encompasses only some, but not all, of the relevant medical records. Defendants "noted that the medical records relevant to Plaintiffs' as-applied challenges would go well beyond the [categories] listed in [Plaintiffs'] proposal" and would include, for instance, "medical records related to potential side effects of these treatments," "history of gender expression and identity," and "mental health comorbidities." *Id.* at 4.

As for potential side effects, Defendants noted that "a central issue in this case is whether the use of these treatments can be justified given the risk of harm." *Id.*

They continued:

The known harms caused by puberty blockers include greater risks of diminished bone density, cognitive impairment, infertility, mood changes (including depression, suicidal ideation, and irritability), and pseudotumor cerebri. For males, the known harms caused by cross-sex hormones include increased risk of thromboembolic disease, cholelithiasis, coronary artery disease, macroprolactinoma, cerebrovascular disease, hypertriglyceridemia, breast cancer, infertility, pulmonary embolism, stroke, heart attack, diabetes, prolactinomas, and loss of sexual function. For females, the known harms include increased risk of erythrocytosis, thrombophlebitis, liver dysfunction, coronary artery disease,

depression, hypertension, infertility, loss of sexual function, mood disorders, weight gain, stroke, insulin resistance, vaginal atrophy, swelling of hands, feet, and legs, and breast, cervical, and uterine cancers. Thus, medical records related to potential side effects of these treatments are highly relevant to the case.

Id.

Defendants also explained why Plaintiffs' mental health care records are relevant to assessing their as-applied challenge:

It is critical to know the Plaintiffs' history of gender expression and identity; if they have suffered from mental health comorbidities, such as anxiety, depression, ADHD, and autism; whether they experienced and were treated for past psychiatric illness or trauma; and what their school, community, and family environments are and have been like. There are several reasons for this. As just one example, the WPATH standards recommend a "comprehensive biopsychosocial assessment" (SOC8 at S48), which necessarily entails a "360"-degree understanding of the patient (as Dr. Hawkins put it at the PI hearing). Thus, these medical records, including mental health records, would demonstrate the process that medical and healthcare professionals undertook before diagnosing Plaintiffs with gender dysphoria and prescribing puberty blockers or cross-sex hormones. The comprehensiveness of this process is relevant to Plaintiffs' claims. In addition, there is some literature suggesting that, if transitioning treatments are permissible at all, they should be offered only after other mental health issues are resolved. There is also a risk that autism (or other mental health issues) can be misdiagnosed as gender dysphoria, meaning that treatments for gender dysphoria were completely unnecessary in the first place.

Id. at 4.

"In short," Defendants concluded, "we think all of Plaintiffs' mental healthcare records are relevant to the as-applied challenge." *Id.*

Plaintiffs continue to refuse to produce all their relevant records, “main-
tain[ing] that the State does not need extensive medical records because the State’s
position has been that there are no circumstances where transitioning medications
are justified for minors with gender dysphoria.” *Id.* at 2. Plaintiffs thus reason that it
is “irrelevant” whether “Plaintiffs [we]re misdiagnosed” or if “harms [of the treat-
ments] to [the] individual Plaintiffs outweigh the benefits.” *Id.*

LEGAL STANDARD

Federal Rule of Civil Procedure 37(a)(3)(B)(iv) permits a party to move to
compel discovery responses.³ Under Federal Rule of Civil Procedure 26(b)(1),
“[p]arties may obtain discovery regarding any nonprivileged matter that is relevant
to any party’s claim or defense and proportional to the needs of the case.” Relevant
factors include “the importance of the issues at stake in the action, the amount in
controversy, the parties’ relative access to relevant information, the parties’ re-
sources, the importance of the discovery in resolving the issues, and whether the
burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R.
Civ. P. 26(b)(1).

Under Federal Rule of Evidence 401, evidence is relevant if it has “any ten-
dency to make a fact more or less probable than it would be without the evidence,

³ Pursuant to Rule 37(a)(1), the undersigned counsel certifies that Defendants have in good faith
conferred with Plaintiffs in an effort to obtain the requested documents without court action.

and the fact is of consequence in determining the action.” In the discovery context, relevance is “construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case,” no matter if the material itself would be admissible. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). The scope of discovery is broad “in order to provide parties with information essential to the proper litigation of all relevant facts, to eliminate surprise and to promote settlement.” *Coker v. Duke & Co., Inc.*, 177 F.R.D. 682, 685 (M.D. Ala. 1998) (citations omitted).

The Federal Rules “strongly favor full discovery whenever possible.” *Moore v. Armour Pharm. Co.*, 927 F.2d 1194, 1197 (11th Cir. 1991). “The party resisting production of information bears the burden of establishing lack of relevancy or undue burden in supplying the requested information.” *Rosen v. Provident Life & Accident Ins. Co.*, 308 F.R.D. 670, 680 (N.D. Ala. 2015) (cleaned up). “Where there is a doubt over relevancy, the court should still permit discovery.” *Coker*, 177 F.R.D. at 685.

ARGUMENT

I. The Requested Medical Records Are Highly Relevant.

The centerpiece of Plaintiffs’ claims is that the Minor Plaintiffs are being denied “appropriate” or “essential” medical treatments. Compl. ¶¶ 2-3. Plaintiffs, their experts, and their favored “guidelines” have all said—over and over—that the way

to determine the “appropriate” or “essential” treatment is through a multidisciplinary assessment that considers all aspects of an individual’s physical and mental health, including underlying conditions that may mean “something else” accounts for signs of gender dysphoria. PI Tr. 23; *see supra* at 2-9. And they have said that the only way to determine whether to continue such treatment is through thorough and complete reassessments of an individual’s ongoing physical and mental health. *Supra* at 7-8.

Accordingly, medical records that reflect the inputs into this assessment—including mental and physical health records—are essential to a proper resolution of this case. Indeed, Plaintiffs themselves have repeatedly referred to and relied on individuals’ medical histories in discussing the diagnosis of gender dysphoria and the provision and assessment of transitioning treatments. *See supra* at 4-5. Without those records, neither Defendants nor the Court can fully assess Plaintiffs’ claims that they are entitled to transitioning treatments. Again, Plaintiffs’ own experts and the guidelines that this Court emphasized at the preliminary injunction stage all say that this evidence is *critical* to an individual’s care. That necessarily means the evidence is relevant, in at least three respects.

First, Plaintiffs have now confirmed that they are bringing an as-applied challenge. “[A] factual, as-applied challenge asserts that a statute cannot be constitutionally applied in particular circumstances.” *Schultz v. Alabama*, 42 F.4th 1298, 1319

(11th Cir. 2022) (cleaned up). “[I]t necessarily requires the development of a factual record for the court to consider.” *Id.* In particular, the “court addresses whether a statute is unconstitutional” “in its application to a particular party.” *McGuire v. Marshall*, 50 F.4th 986, 1003 (11th Cir. 2022) (cleaned up).

Applied here, Plaintiffs have already told the Court what they think is relevant to their as-applied challenge. According to Plaintiffs’ own experts and guidelines, the only way to determine whether the medical treatments that Plaintiffs claim are “appropriate” and “essential” (Compl. ¶¶ 2-3) are indeed “appropriate” and “essential” *for them* is by reviewing all relevant medical histories and records, including those reflecting mental and physical health. Plaintiffs’ medical records are thus extremely relevant, if not central, to their as-applied challenge.

This is true not only for the limited categories of medical records Plaintiffs have agreed to produce, but also for those they won’t. For instance, medical records that reflect side effects of the transitioning treatments are relevant to assessing the risks and benefits of the treatments. And past mental health records are necessary to understand Plaintiffs’ history of gender expression; whether they have suffered from mental health comorbidities, such as anxiety, depression, ADHD, or autism; whether they experienced and were treated for past psychiatric illness or trauma; and what their social and family surroundings are like.

These are all relevant considerations not just for meeting WPATH’s own standard of care, *see WPATH Standards of Care 8, supra*, Statement 6.3 (suggesting “a comprehensive biopsychosocial assessment”), but also for determining whether the foundational Dutch Study on which those standards rely can be applied to Plaintiffs’ circumstances, *cf., e.g., id.* at S46 (repeatedly citing to the Dutch Study). The participants in the Dutch Study were carefully chosen: all of them had childhood-onset gender dysphoria; all of them received a “comprehensive psychological evaluation with many sessions over a longer period of time,” none of them had any “psychosocial problems interfering with assessment or treatment,” and all of them had “adequate family or other support” and a “good comprehension of the impact of medical interventions.” Doc. 78-33, Annelou de Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 130 *Pediatrics*, No. 4, 696, 697 (Oct. 2014). In other words, “the subjects were selected because they were free from significant mental health problems”—so much so that “there was little opportunity” for their mental health “to meaningfully improve.” Doc. 69-8, Stephen B. Levine et al., *Reconsidering Informed Consent for Trans-Identified Children, Adolescents, and Young Adults*, *J. OF SEX & MARITAL THERAPY* 10 (Mar. 17, 2022). In fact, “[f]rom the 196 adolescents initially referred, 111 were considered eligible to start puberty blockers, and of this group, only the 70 most mature and mentally stable who proceeded to cross-sex hormones were included in the study.”

Id. at 12. Since this study is the one on which Plaintiffs’ proposed standard of care ultimately rests, it behooves to ask: Are the Minor Plaintiffs like the subjects of that study? The only way to answer that question is by reviewing the entirety of their relevant medical and mental health records.

Second, Plaintiffs are also bringing a facial challenge. “[A] plaintiff can only succeed in a facial challenge by establishing that no set of circumstances exists under which the Act would be valid, *i.e.*, that the law is unconstitutional in all of its applications.” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008); *see Am. Fed’n of State, Cnty. & Mun. Emps. Council 79 v. Scott*, 717 F.3d 851, 863 (11th Cir. 2013). By definition, if the Act is constitutional as applied to Plaintiffs, their facial challenge fails; and, because the medical records are relevant to the as-applied challenge, they are also relevant to the facial challenge. The records are further relevant to the facial challenge in that they will enable testing of Plaintiffs’ claims about how transitioning treatments are prescribed and monitored in Alabama, and may potentially lead to additional discovery on these issues.

Third, Plaintiffs must establish standing under Article III. *E.g.*, *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 996 (11th Cir. 2020). If Plaintiffs cannot prove a redressable injury-in-fact—for instance, if the Act would not in fact limit Plaintiffs’ receipt of necessary medical treatments because Plaintiffs have not yet received the type of comprehensive evaluation that Plaintiffs’ own experts teach is

essential before any invasive hormonal intervention could be medically indicated—
this case must be dismissed for lack of jurisdiction

For all these reasons, the requested medical records are highly relevant.

II. Plaintiffs Lack A Valid Reason To Withhold The Medical Records.

In resisting production of the medical records in dispute, Plaintiffs asserted that the records are not “need[ed]” “because the State is saying there are no circumstances which can justify providing transitioning medications to a minor.” Bowdre Decl., Exhibit 3, at 2. According to Plaintiffs, this position somehow makes it “irrelevant whether an individual minor has a correct diagnosis[, a] particularized need,” or “harms” from treatments—unless “the State is conceding that the treatments are necessary or appropriate for minors who are properly diagnosed.” *Id.*

This objection fundamentally misunderstands how an as-applied challenge works. Plaintiffs have the burden of proof to prove their case, and the State does not have to defend its laws in the abstract. After all, “[u]nder Article III, federal courts do not adjudicate hypothetical or abstract disputes.” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021). Instead, the only “constitutional role” of the federal courts is to “resolv[e] ‘Cases’ and ‘Controversies’—i.e., discrete disputes between parties.” *MSPA Claims 1, LLC v. Tenet Fla., Inc.*, 918 F.3d 1312, 1317 (11th Cir. 2019). Here, Plaintiffs assert that certain treatments are “appropriate” or “essential” *for the individual Minor Plaintiffs*. Whether that assertion is true is, by their own

telling, of central relevance. *See* Bowdre Decl., Exhibit 3, at 2 (describing their as-applied challenge as whether “our Plaintiffs fall within th[e] category” of minors “prevent[ed] . . . from getting the transitioning medications they need”). And the records remain relevant too to Plaintiffs’ facial challenge and to standing, as explained above.

Moreover, it is fully consistent for the State to argue both that “there are no circumstances where transitioning medications are justified for minors with gender dysphoria” (Bowdre Decl., Exhibit 3, at 2) and that these treatments are not justified for *these* Plaintiffs. Like any defendant, the State may offer multiple defenses, whether jurisdictional (*e.g.*, standing) or on the merits (*e.g.*, that the Plaintiffs are not entitled to as-applied relief). Plaintiffs may not hamstring the State’s defenses up-front by declining to produce highly relevant medical records—particularly after Plaintiffs themselves chose to make this an as-applied challenge. They cannot have it both ways: if they, for example, wish to present medical histories via Parent Plaintiff declarations and testimony about the Minor Plaintiffs’ mental and physical health, Defendants have a right to test that testimony. So too if they wish to present experts who promise that transitioning treatments are only administered after complete assessment of the patient’s mental and physical health. PI Tr. 22. “When a plaintiff’s claims rise to this level, giving a defendant access to the records is a matter of fairness.” *J.P. as Next Friend of A.W. v. Elmore Cnty. Bd. of Educ.*, 2021 WL

6926819, at *4 (M.D. Ala. Aug. 26, 2021). In short, because the requested records are “relevant to any party’s *claim or defense*,” they are discoverable. Fed. R. Civ. P. 26(b)(1) (emphasis added).

Plaintiffs also cannot show that the requested production is disproportionate “to the needs of the case.” *Id.* In a case where the central question is the propriety of certain medical treatments, the medical records that Plaintiffs themselves say are necessary to provide such treatments are crucial. Defendants have no other way of obtaining the medical records of anonymous Plaintiffs. *Cf. id.* (“the parties’ relative access to relevant information” is one factor).

Nor is this production likely to be particularly burdensome. The Plaintiffs have alleged that they see a limited number of providers—generally one or two therapists, a pediatrician, and the UAB team. *E.g.*, Compl. ¶¶ 47, 52-53, 69-70. Electronic medical records, now standard and legally required, *see* 42 U.S.C. § 300jj–11(c)(3)(A)(ii), are easy to reproduce.

Last, while the requested documents will contain an individual’s medical information—and the State Defendants recognize the general privacy of such information—“information collected through discovery . . . is not a matter of public record.” *In re Alexander Grant & Co. Litig.*, 820 F.2d 352, 355 (11th Cir. 1987). Plus, relevant protective orders are already in place. *See* Docs. 137, 138. Even more to the point, “ha[ving] placed [their] physical health and mental state at issue,” Plaintiffs

cannot now refuse “discovery of medical records to determine if those records support” their claims. *Barlow v. Dupree Logistics, LLC*, 2015 WL 4646812, at *4 (N.D. Ala. Aug. 5, 2015). For the same reason, no privilege protects these documents from disclosure through discovery. *See J.P.*, 2021 WL 6926819, at *2-3 (“[D]istrict courts in this circuit have agreed with other federal courts that the [psychotherapist-patient] privilege is impliedly waived when a plaintiff puts his mental or emotional state at issue.”); *see also Oldaker v. Giles*, 2021 WL 3412551, at *3 (M.D. Ga. Aug. 4, 2021) (collecting cases); *Hansen v. Uber Techs., Inc.*, 2018 WL 7361084, at *3 (M.D. Fla. Aug. 13, 2018) (same).

CONCLUSION

For these reasons, the Court should compel production of the relevant medical records requested by Defendants.

Respectfully submitted,

Steve Marshall
Attorney General

Christopher Mills (*pro hac vice*)
SPERO LAW LLC
557 East Bay Street, #22251
Charleston, South Carolina
29413
(843) 606-0640
CMills@Spero.law

David H. Thompson (*pro hac vice*)
Peter A. Patterson (*pro hac vice*)

Edmund G. LaCour Jr. (ASB-9182-U81L)
Solicitor General
s/ A. Barrett Bowdre
A. Barrett Bowdre (ASB-2087-K29V)
Thomas A. Wilson (ASB-1494-D25C)
Deputy Solicitors General
James W. Davis (ASB-4063-I58J)
Deputy Attorney General
Benjamin M. Seiss (ASB-2110-O00W)

Brian W. Barnes (*pro hac vice*)
John D. Ramer (*pro hac vice*)
COOPER & KIRK, PLLC
1523 New Hampshire Ave., NW
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com
bbarnes@cooperkirk.com
jrager@cooperkirk.com

Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA
501 Washington Avenue
Post Office Box 300152
Montgomery, Alabama 36130-0152
Telephone: (334) 242-7300
Facsimile: (334) 353-8400
Edmund.LaCour@AlabamaAG.gov
Barrett.Bowdre@AlabamaAG.gov
Thomas.Wilson@AlabamaAG.gov
Jim.Davis@AlabamaAG.gov
Ben.Seiss@AlabamaAG.gov

CERTIFICATE OF SERVICE

I certify that I electronically filed this document using the Court's CM/ECF system on January 5, 2023, which will serve all counsel of record.

s/ A. Barrett Bowdre
Counsel for Defendants

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

Brianna Boe, <i>et al.</i> ,)	
)	
<i>Plaintiffs</i> ,)	
)	
United States of America,)	
)	
<i>Intervenor Plaintiff</i> ,)	
)	
v.)	Civil Action No. 2:22-cv-184-LCB
)	
Hon. Steve Marshall, in his official)	
capacity as Attorney General,)	
of the State of Alabama, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**DECLARATION OF A. BARRETT BOWDRE IN SUPPORT OF
DEFENDANTS’ MOTION TO COMPEL PRODUCTION**

I, A. Barrett Bowdre, hereby declare as follows:

1. I am one of the attorneys representing Defendants in the above case. I am over the age of 21 and am capable of making this declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or crime involving dishonesty, and the facts contained herein are within my personal knowledge.

2. Attached as **Exhibit 1** is a true and correct copy of Defendants’ First Requests for Production to Plaintiffs, which were served on Plaintiffs in this case on July 18, 2022.

3. Attached as **Exhibit 2** is a true and correct copy of Plaintiffs' Responses to Defendants' First Requests for Production, which were served by Plaintiffs in this case on August 22, 2022.

4. Attached as **Exhibit 3** is a true and correct copy of the parties' email correspondence about Defendants' First Requests for Production. The parties had numerous telephonic meet-and-confers in addition to this correspondence about the Requests.

5. I declare under penalty of perjury that the foregoing is true and correct.
Executed on January 5, 2023.

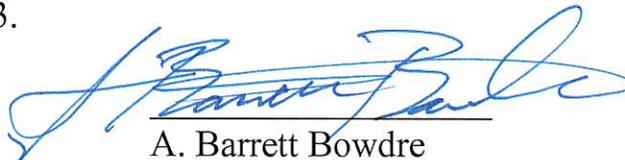

A. Barrett Bowdre
Counsel for Defendants

EXHIBIT 1

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

Rev. Paul A. Eknes-Tucker, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	
United States of America,)	
)	
<i>Intervenor Plaintiff,</i>)	
)	
v.)	No. 2:22-cv-00184-LCB-SRW
)	
Hon. Steve Marshall, in his official)	
capacity as Attorney General of the)	
State of Alabama, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

DEFENDANTS’ FIRST REQUESTS FOR PRODUCTION TO PLAINTIFFS

Pursuant to Fed. R. Civ. P. 26 and Fed. R. Civ. P. 34, Alabama Attorney General Steve Marshall, Montgomery County District Attorney Daryl D. Bailey, Cullman County District Attorney C. Wilson Blaylock, Lee County District Attorney Jessica Ventiere, Twelfth Judicial Circuit District Attorney Tom Anderson, and Jefferson County District Attorney Danny Carr, collectively the Defendants, hereby propound the following Requests for Production to Plaintiffs.

DEFINITIONS

1. “**Act**” refers to the Alabama Vulnerable Child Compassion and Protection Act, Ala. Code §§22-12E-1 *et seq.*

2. “**Any**” and “**All**,” as used herein, shall mean “any and all,” and shall be construed so as to bring within the scope of the request any information that otherwise might be construed to be outside its scope.

3. “**Communication**” is used in the broadest sense and includes every conceivable manner or means of disclosure, transfer or exchange of oral or written information between one or more persons, entities, devices, platforms or systems, or by other perceptible means, including later memorialization of such transmission in a document, including e-mail, memoranda of conversations, correspondence, data processing, pictures, or recordings.

4. “**Concerning**,” “**Reflecting**,” “**Regarding**,” and “**Relating to**” are used in the broadest possible sense and mean, in whole or in part, addressing, analyzing, constituting, containing, commenting, in connection with, dealing with, discussing, describing, embodying, evidencing, identifying, pertaining to, referring to, reporting, stating, or summarizing.

5. “**Cross-sex Hormones**” shall mean hormones administered to induce the physical characteristics of a sex or gender profile other than the Biological Sex of the patient (including non-cross-sex gender identities such as “non-binary”). It includes, but is not limited to, administering androgenic hormones such as testosterone, fluoxymesterone, and methyltestosterone to a biological female and estrogenic hormones such as estrogen and estradiol to a biological male. It also includes

the administration of hormone blockers and anti-androgens such as flutamide, spironolactone, and cyproterone if used as part of Transitioning.

6. “**Document**” is used in the broadest possible sense to mean anything which may be within the meaning of Federal Rule of Civil Procedure 34 and Federal Rule of Evidence 1001, and includes, without limitation, any written, printed, typed, photocopied, photographed, recorded or otherwise reproduced or stored communication or representation, whether comprised of letters, words, numbers, data, pictures, sounds or symbols, or any combination thereof. “Document” includes, without limitation, correspondence, memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers, accounts, analytical records, reports and/or summaries of investigations, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes of minutes of meetings or communications, electronic mail/messages and/or “e-mail,” text messages, social media communications, list-serv postings, Tweets, voice mail messages, instant messaging, questionnaires, surveys, charts, graphs, photographs, films, tapes, disks, data cells, print-outs of information stored or maintained by electronic data processing or word processing equipment, all other data compilations from which information can be obtained (by translation, if necessary, by or through detection devices into usable form), including, without limitation,

electromagnetically sensitive storage media such as CDs, DVDs, memory sticks, floppy disks, hard disks and magnetic tapes, and any preliminary versions, as well as drafts or revisions of any of the foregoing, whether produced or authored by a plaintiff or anyone else. The term “Document(s)” includes the defined term “Electronically Stored Information,” which is defined below.

7. **“Electronically Stored Information”** or “ESI” includes, but is not limited to, all electronic data or information stored on a computing device. This term includes but is not limited to databases; all text file and word-processing Documents (including metadata); presentation Documents; spreadsheets; graphics, animations, and images (including but not limited to JPG, GIF, BMP, PDF, PPT, and TIFF files); email, email strings, and instant messages (including attachments, logs of email history and usage, header information and “deleted” files); email attachments; calendar and scheduling information; cache memory; Internet history files and preferences; audio; video, audiovisual recordings; voicemail stored on databases; networks; computers and computer systems; computer system activity logs; servers; archives; backup or disaster recovery systems; hard drives; discs; CDs; diskettes; removable drives; tapes; cartridges and other storage media; printers; scanners; personal digital assistants; computer calendars; handheld wireless devices; cellular telephones; pagers; fax machines; and voicemail systems. This term includes but is not limited to onscreen information, system data, archival data, legacy data, residual data, and

metadata that may not be readily viewable or accessible, and all file fragments and backup files.

8. **“Gender Dysphoria”** includes the diagnosis of Gender Dysphoria under the DSM-5. **“Related Conditions”** include, but are not limited to, any issues concerning gender identity, gender incongruence, transgender identity, or non-binary identity. These include, but are not limited to, ICD diagnostic codes for transsexualism (including all sub-categories); gender identity disorder in adolescents or adults; gender identity disorder in children; transvestic fetishism; disorder of gender identity or role; transsexualism; dual role transvestism; gender identity disorder of childhood; other gender identity disorders; and gender identity disorder, unspecified.

9. **“Health care providers”** means professionals who provide medical health care or mental health care. “Health care providers” includes, but is not limited to, pediatricians, doctors of medicine, doctors of osteopathy, physicians, obstetricians, gynecologists, surgeons, plastic surgeons, urologists, endocrinologists, neurologists, psychologists, psychiatrists, psychotherapists, mental health professionals, clinicians, speech-language pathologists, social workers, counselors, therapists, and bioethicists. “Health care providers” includes a nurse or nurse practitioner if that person is the primary person providing services but not if he or she acts only as

support staff for another health care provider. The following professionals are specifically excluded from the definition of “health care providers”: pharmacists, dentists, orthodontists, endodontists, optometrists, ophthalmologists, and podiatrists.

10. “**Minor**” shall mean a person under the age of 19.

11. “**Puberty Blockers**” shall mean medication administered to minors to delay or prevent the onset or continuation of puberty, or otherwise to prevent the formation or maturation of secondary sex characteristics consistent with the patient’s Biological Sex. This includes, but is not limited to, common puberty blockers such as histrelin acetate and leuprolide acetate if administered for the purpose of Transitioning. For purposes of this request, it does not include GnRH agonists administered to young children (7 and younger) for the treatment of central precocious puberty or to adult men (19+) for the treatment of prostate cancer.

12. “**Sex**” or “**Biological Sex**” shall mean the biological state of being male or female, based on the individual’s sex organs at birth, chromosomes, and endogenous hormone profiles.

13. “**Transitioning**” shall mean surgical interventions as well as the administration of medicines such as Puberty Blockers and Cross-Sex Hormones to change the physical appearance of a patient in a way that is not consistent with the patient’s Biological Sex. This includes changing the appearance to appear as a cross-sex identification as well as non-cross-sex identifications such as “non-binary.”

REQUESTS FOR PRODUCTION TO ALL PLAINTIFFS

1. All Documents between or among you and any person or persons, other than counsel for the Plaintiffs in this lawsuit, concerning the Act.
2. All Documents between or among you and any person or persons, other than counsel for the Plaintiffs in this lawsuit, concerning any legal challenge to the Act.
3. All Documents between or among you and any plaintiff in prior litigation concerning the Act.
4. All Documents that Plaintiffs may rely upon in summary judgment briefing or introduce at trial.

REQUESTS FOR PRODUCTION TO BRIANNA BOE, JAMES ZOE, MEGAN POE, AND KATHY NOE (“PARENT PLAINTIFFS”) ONLY

5. All medical records in your possession of any child of yours which relates to treatment for Gender Dysphoria or a Related Condition.
6. All Documents in your possession of mental health treatment of any mental health treatment provided to a child of yours who has been treated for Gender Dysphoria or a Related Condition.
7. All Documents between you and any medical provider or mental health professional who has treated a child of yours for Gender Dysphoria or a Related Condition.

8. All calendars, notes, or other Documents, reflecting the dates of any treatment of a child of yours for Gender Dysphoria or a Related Condition.

9. All forms, disclosures, or other Documents provided to you by any Health Care Provider or mental health provider who has treated a child of yours for Gender Dysphoria or a Related Condition.

**REQUESTS FOR PRODUCTION TO HEATHER AUSTIN, PH.D., AND
RACHEL KOE, M.D. (“DOCTOR PLAINTIFFS”)**

10. All medical bills related to the allegations in your Complaint.

11. All patient intake forms used by you within the past 5 years.

12. All forms or Documents used by you to disclose to patients, potential patients, or parents or guardians of Minor patients, the risks of Puberty Blockers, Cross-sex Hormones, or Transitioning.

13. All forms or Documents used by you to obtain, record, or memorialize informed consent for the administration of Puberty Blockers, Cross-sex Hormones, or other Transitioning treatments.

14. All forms or Documents used by you to provide information to patients, or the parents or guardians of patients, concerning any coverage by Medicaid or medical insurance carriers for the provision of Puberty Blockers, Cross-sex Hormones, or other Transitioning treatments.

15. All Documents containing, disclosing, or setting forth any of your policies concerning any requirement for a diagnosis of gender dysphoria, gender incongruence, or a related condition, before the administration of Puberty Blockers, Cross-sex Hormones, or other Transitioning treatments.

16. All documents containing, disclosing, or setting forth any information you provide to patients, or the parents or guardians of patients, concerning treatments for Gender Dysphoria or a Related Condition, other than the administration of Puberty Blockers or Cross-sex Hormones.

17. All Documents containing, disclosing, or setting forth any of your policies concerning any requirement for counseling or other mental-health treatments before the administration of Puberty Blockers, Cross-sex Hormones, or other Transitioning treatments.

18. All Documents containing, disclosing, or setting forth any of your policies or procedures for requiring follow-up examinations of Minors who are receiving Puberty Blockers, Cross-sex Hormones, or other Transitioning treatments, or who received Puberty Blockers, Cross-sex Hormones, or Transitioning treatments in the past.

19. All Documents reflecting the results of any follow-up with patients or former patients who received Puberty Blockers, Cross-sex Hormones, or Transitioning treatments in the past.

20. All Documents reflecting any incidents of desistance or detransition— i.e., when a patient who has been diagnosed with Gender Dysphoria or a Related Condition is no longer gender dysphoric and/or no longer sought to Transition.

21. All Documents reflecting any complaint or concern by a patient, former patient, or parent or guardian of a patient or former patient, regarding the treatment provided for gender dysphoria or a related condition.

22. All Documents reflecting how many, or rates of, patients who began Puberty Blockers went on to receive Cross-sex Hormones.

23. All Documents containing, disclosing, or setting forth any of your policies concerning mastectomies or other surgical interventions for Minors, which have the purpose of altering the Minor's body for the purpose of Transitioning.

24. All Documents reflecting the aggregate number of your Minor patients who, in the past 5 years, received Puberty Blockers, Cross-sex Hormones, or other Transitioning treatments, either from your providers or elsewhere.

25. All Documents reflecting Health Care Providers you refer patients to regarding Transitioning.

26. All Documents regarding care or services offered by the Magic City Wellness Center related to Gender Dysphoria or a Related Condition.

27. All Documents regarding care or services offered by any other provider in Alabama, or whose services may be accessed by patients in Alabama, related to Gender Dysphoria or a Related Condition.

28. All Documents, including list-serv postings, emails, or message board postings, affiliated with the World Professional Association for Transgender Health (“WPATH”) concerning Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

29. All Documents, including list-serv postings, emails, or message board postings, affiliated with the United States Professional Association for Transgender Health (“USPATH”) concerning Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

30. All Documents, including list-serv postings, emails, or message board postings, affiliated with the American Academy of Pediatrics (“AAP”) concerning Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

31. All Documents, including list-serv postings, emails, or message board postings, affiliated with the Endocrine Society concerning Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

32. All Documents concerning the organizational stance regarding the treatment of Gender Dysphoria or a Related Condition from WPATH, USPATH, AAP, or the Endocrine Society.

33. All Documents concerning any conference related to Gender Dysphoria or a Related Condition that WPATH, USPATH, AAP, or the Endocrine Society has hosted.

34. All Documents reflecting, regarding, or otherwise related to any data or financial impact analysis you have conducted to determine the projected number of Transitioning procedures which you or your clinic(s) would have to cancel, reject, or decline to perform as a result of the Act.

Respectfully submitted,

Steve Marshall

Attorney General

s/ James W. Davis

Edmund G. LaCour Jr. (ASB-9182-U81L)

Solicitor General

A. Barrett Bowdre (ASB-2087-K29V)

Thomas A. Wilson (ASB-1494-D25C)

Deputy Solicitors General

James W. Davis (ASB-4063-I58J)

Deputy Attorney General

Benjamin M. Seiss (ASB-2110-O00W)

Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL

Christopher Mills
(SC Bar No. 101050)
SPERO LAW LLC
557 East Bay Street, #22251
Charleston, South Carolina
29413
Telephone: (843) 606-0640
CMills@Spero.law

STATE OF ALABAMA
501 Washington Avenue
Post Office Box 300152
Montgomery, Alabama 36130-0152
Telephone: (334) 242-7300
Facsimile: (334) 353-8400
Edmund.LaCour@AlabamaAG.gov
Barrett.Bowdre@AlabamaAG.gov
Thomas.Wilson@AlabamaAG.gov
Jim.Davis@AlabamaAG.gov
Ben.Seiss@AlabamaAG.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

The parties have agreed to electronic service of discovery documents. I hereby certify that I electronically served a copy of the foregoing document on Melody H. Eagan (meagan@lightfootlaw.com), Jeffrey P. Doss (jdoss@lightfootlaw.com), Amie A. Vague (avague@lightfootlaw.com), J. Andrew Pratt (apratt@kslaw.com), Misty L. Peterson (mpeterson@kslaw.com), Adam Reinke (areinke@kslaw.com), Gilbert Oladeinbo (goladeinbo@kslaw.com), Brent P. Ray (bray@kslaw.com), Abigail Hoverman Terry (ahoverman@kslaw.com), Michael B. Shortnacy (mshortnacy@kslaw.com), Asaf Orr (aorr@nclrights.org), Jennifer L. Levi (jlevi@glad.org), Scott D. McCoy (scott.mccoy@splcenter.org), Diego A. Soto (diego.soto@splcenter.org), Jessica L. Stone (jessica.stone@splcenter.org), Sarah Warbelow (sarah.warbelow@hrc.org), Cynthia Weaver (cynthia.weaver@hrc.org), John Powers (john.powers@usdoj.gov), Coty Montag (coty.montag@usdoj.gov); Eliza Dermody (eliza.dermody@usdoj.gov); Alyssa C. Lareau (alyssa.lareau@usdoj.gov), Renee Williams (renee.williams3@usdoj.gov), Kaitlin Toyama (kaitlin.toyama@usdoj.gov), Lane Woodke (lane.woodke@usdoj.gov), Jason R. Cheek (jason.cheek@usdoj.gov), Sandra J. Stewart (sandra.stewart@usdoj.gov), and Stephen D. Wadsworth (Stephen.wadsworth@usdoj.gov) via email on this the 18th day of July 2022.

s/ James W. Davis
Counsel for Defendants

EXHIBIT 2

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

REV. PAUL A. EKNES-TUCKER, *et al.*,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STEVE MARSHALL, *et al.*,

Defendants.

Case No. 2:22-cv-00184-LCB-
SRW

Honorable Liles C. Burke

**RESPONSES OF PLAINTIFFS AUSTIN, PhD; BOE; EKNES-TUCKER;
KOE, M.D.; NOE; & POE TO DEFENDANTS' FIRST REQUESTS FOR
PRODUCTION**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiffs Heather Austin, PhD.; Briana Boe; Reverend Paul A. Eknes-Tucker; Dr. Rachel Koe; Kathy Noe; and Megan Poe (collectively, the “Plaintiffs”),¹ through undersigned counsel,

¹ On August 9, 2022, Plaintiffs filed an Amended Complaint that omitted James and Zachary Zoe as parties, and added Plaintiffs Rebecca Roe, Melissa Roe, Robert Voe, and April Voe. (Dkt. No. 146.) Because James Zoe is no longer a party to this litigation, Plaintiffs do not provide responses to the Defendants’ Requests that requested information as to James Zoe. Because Defendants served these Requests on Plaintiffs before the Roe and Voe Plaintiffs were named as Plaintiffs, these new Plaintiffs will respond to all Requests directed at all Plaintiffs within 30 days of their initial appearance in the case.

hereby object and respond to Defendants' First Requests for Production (1-34) ("Requests").

By making these responses, Plaintiffs do not concede that the information given is properly discoverable or admissible. Plaintiffs reserve the right to object to further discovery regarding the subject matter of the Requests. Plaintiffs' discovery and investigation of facts relevant to this litigation is ongoing. Plaintiffs' responses herein are given without prejudice to Plaintiffs' right to amend or supplement in accordance with the Federal Rules of Civil Procedure, the local rules of this Court, the Scheduling Order (Dkt. No. 135), or any other schedule or ruling that may be entered by the Court. Plaintiffs expressly reserve the right to supplement these responses and objections as necessary.

DEFINITIONS

1. Plaintiffs use the definitions of capitalized terms as defined by Defendants in their First Set of Requests for Production unless otherwise noted.
2. "Parent Plaintiffs" means Briana Boe, Kathy Noe, and Megan Poe.
3. "Transgender Plaintiffs" means Michael Boe, Christopher Noe, and Allison Poe.

RESPONSES AND OBJECTIONS TO REQUESTS

Requests Directed to All Plaintiffs

REQUEST FOR PRODUCTION NO. 1:

All Documents between or among you and any person or persons, other than counsel for the Plaintiffs in this lawsuit, concerning the Act.

RESPONSE:

Plaintiffs object to this Request to the extent it calls for protected and privileged communications, including communications with Plaintiffs' clergy, spouses, or mental health providers. Plaintiffs also object that this request is overly broad, unduly burdensome, disproportionate to the needs of this case, without any timeframes, and seeks documents unrelated to any claims or defenses in this matter. Plaintiffs also object to the phrase "Documents between or among you and any person or persons" as vague and ambiguous and interpret this phrase to mean documents exchanged between Plaintiffs and another person (excluding legal counsel) concerning the Act. Plaintiffs further object to this Request as redundant to Request Nos. 2 and 3.

Subject to these objections, Plaintiffs will provide documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 2:

All Documents between or among you and any person or persons, other than counsel for the Plaintiffs in this lawsuit, concerning any legal challenge to the Act.

RESPONSE:

Plaintiffs object to this Request to the extent it calls for protected and privileged communications, including communications with Plaintiffs’ clergy or spouses. Plaintiffs also object to the phrase “Documents between or among you and any person or persons” as vague and ambiguous. Plaintiffs interpret this phrase to mean documents exchanged between Plaintiffs and another person (excluding legal counsel) concerning legal challenges to the Act. Plaintiffs also object that this request is overly broad, unduly burdensome, disproportionate to the needs of this case, and seeks documents unrelated to any claims or defenses in this matter. Plaintiffs further object to this Request as redundant to Request Nos. 1 and 3.

Subject to these objections, Plaintiffs will provide documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 3:

All Documents between or among you and any plaintiff in prior litigation concerning the Act.

RESPONSE:

Plaintiffs Object to this Request because the phrase “any plaintiff in prior litigation” is undefined. Further, to the extent Defendants are referring to *Walker v. Marshall* (N.D. Ala.) and *Ladinsky v. Ivey* (N.D. Ala.), Plaintiffs object that many plaintiffs in both *Walker* and *Ladinsky* appeared in these lawsuits under pseudonyms

or by initials only, and Plaintiffs do not have knowledge of all of these plaintiffs' identities. Accordingly, Plaintiffs construe "any plaintiff in prior litigation concerning the Act" to refer to publicly named plaintiffs in *Walker* or *Ladinsky*. Plaintiffs further object to this Request to the extent it seeks protected and confidential medical information of transgender minor patients, which is irrelevant to this lawsuit. Plaintiffs also object to the phrase "Documents between or among you and any plaintiff in prior litigation" as vague and ambiguous. Plaintiffs interpret this phrase to mean documents exchanged between Plaintiffs and any publicly named plaintiffs in *Walker* or *Ladinsky* concerning the Act. Plaintiffs also object that this request is overly broad, unduly burdensome, disproportionate to the needs of this case, and seeks documents unrelated to any claims or defenses in this matter. Plaintiffs further object that this Request is redundant to Request Nos. 1 and 2.

Subject to these objections, Plaintiffs will provide documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 4:

All Documents that Plaintiffs may rely upon in summary judgment briefing or introduce at trial.

RESPONSE:

Plaintiffs object that this Request as premature as discovery has only just begun. Plaintiffs further object to this Request as vague and ambiguous, overly

broad, and to the extent it seeks to impose obligations on Plaintiffs beyond what is required by the Federal Rules of Civil Procedure. Plaintiffs also object to this Request to the extent it seeks information or documents protected from disclosure by the work-product doctrine or other applicable privileges or doctrines.

Subject to these objections, Plaintiffs have not decided what documents they will rely upon at the summary judgment stage or at trial. Further responding, Plaintiffs refer Defendants to their Initial Disclosures and any documents produced in response to these and any forthcoming Requests. Plaintiffs will supplement their Initial Disclosures and discovery responses and will submit their Exhibit List in accordance with the Court's Scheduling Order and the Federal Rules of Civil Procedure.

Requests Directed to Parent Plaintiffs

REQUEST FOR PRODUCTION NO. 5:

All medical records in your possession of any child of yours which relates to treatment for Gender Dysphoria or a Related Condition.

RESPONSE:

Plaintiffs object to production of medical records sought by this Request. Plaintiffs' challenge on its face the constitutionality of the Act, a law that subjects anyone who causes any minor to receive transitioning medications to criminal penalties. Documents called for in this Request are not relevant to the parties' claims

or defenses. Plaintiffs further object to the extent the Request is overly broad, unduly burdensome, unbounded as to the timeframe for materials sought, and seeks materials protected by the mental health provider-patient privilege.

Plaintiffs also object to this Request to the extent the Request calls for documents related to children other than the Transgender Plaintiffs. Any responsive medical records for children other than the Transgender Plaintiffs would contain protected and confidential medical information that is irrelevant to any of the parties' claims or defenses in this lawsuit. Plaintiffs object to the term "Related Condition" as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies "issues" and "diagnos[es]" outside the DSM-5 that would not be made by healthcare providers in Alabama, and because "transvestic fetishism" and "dual role transvestism" are not related to gender dysphoria. Plaintiffs further object to this Request as redundant to Request Nos. 6-9.

Plaintiffs stand on their objections.

REQUEST FOR PRODUCTION NO. 6:

All Documents in your possession of mental health treatment of any mental health treatment provided to a child of yours who has been treated for Gender Dysphoria or a Related Condition.

RESPONSE:

Plaintiffs object to production of records sought by this Request. Plaintiffs' challenge on its face the constitutionality of the Act, a law that subjects anyone who

causes any minor to receive transitioning medications to criminal penalties. Documents called for in this Request are not relevant to the parties' claims or defenses. Plaintiffs further object to the extent the Request is overly broad, unduly burdensome, unbounded as to the timeframe for materials sought, and seeks materials protected by the mental health provider-patient privilege.

Plaintiffs further object to this Request to the extent the Request calls for documents related to children other than the Transgender Plaintiffs. Any responsive documents for children other than the Transgender Plaintiffs would contain protected and confidential medical information that is irrelevant to any of the parties' claims or defenses in this lawsuit and is disproportionate to the needs of the case. Plaintiffs also object that the request for "All Documents . . . of mental health treatment of any mental health treatment" is unintelligible. Plaintiffs also object to the term "Related Condition" as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies "issues" and "diagnos[es]" outside the DSM-5 that would not be made by healthcare providers in Alabama, and because "transvestic fetishism" and "dual role transvestism" are not related to gender dysphoria. Plaintiffs further object to this Request as redundant to Request Nos. 5 and 7-9.

Plaintiffs stand on their objections.

REQUEST FOR PRODUCTION NO. 7:

All Documents between you and any medical provider or mental health professional who has treated a child of yours for Gender Dysphoria or a Related Condition.

RESPONSE:

Plaintiffs object to this Request to the extent it seeks mental health or medical records. Plaintiffs' challenge on its face the constitutionality of the Act, a law that subjects anyone who causes any minor to receive transitioning medications to criminal penalties. Documents called for in this Request are not relevant to the parties' claims or defenses. Plaintiffs further object to the extent the Request is overly broad, unduly burdensome, unbounded as to the timeframe for materials sought, and seeks materials protected by the mental health provider-patient privilege.

Plaintiffs also object to this Request to the extent the Request calls for documents related to children other than the Transgender Plaintiffs. Any responsive documents for children other than the Transgender Plaintiffs could contain protected and confidential medical information and would be irrelevant to any of the parties' claims or defenses in this lawsuit. Plaintiffs further object to this Request as redundant to Request Nos. 5, 6, 8, and 9. Plaintiffs also object to this request as irrelevant, disproportionate to the needs of the case, overly broad, and unduly burdensome, as the Request seeks "[a]ll" documents and communications between Parent Plaintiffs and Transgender Plaintiffs' healthcare providers, including documents and communications that are unrelated to the claims and defenses in this

lawsuit. Plaintiffs object to the term “Related Condition” as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies “issues” and “diagnos[es]” outside the DSM-5 that would not be made by healthcare providers in Alabama, and because “transvestic fetishism” and “dual role transvestism” are not related to gender dysphoria.

Plaintiffs stand on their objections.

REQUEST FOR PRODUCTION NO. 8:

All calendars, notes, or other Documents, reflecting the dates of any treatment of a child of yours for Gender Dysphoria or a Related Condition.

RESPONSE:

Plaintiffs object to this Request to the extent it seeks mental health or medical records. Plaintiffs’ challenge on its face the constitutionality of the Act, a law that subjects anyone who causes any minor to receive transitioning medications to criminal penalties. Documents called for in this Request are not relevant to the parties’ claims or defenses. Plaintiffs further object to the extent the Request is overly broad, unduly burdensome, unbounded as to the timeframe for materials sought, and seeks materials protected by the mental health provider-patient privilege.

Plaintiffs object to this Request to the extent the Request calls for documents related to children other than the Transgender Plaintiffs. Any responsive documents for children other than the Transgender Plaintiffs could contain protected and

confidential medical information and would be irrelevant to any of the parties' claims or defenses in this lawsuit and that would be disproportionate to the needs of the case. Plaintiffs further object to this Request as redundant to Request Nos. 5-7 and 9. Plaintiffs further object to the request for "[a]ll" such documents as overly broad, unduly burdensome, duplicative, and disproportionate to the needs of the case; Defendants do not need every document reflecting a single date of treatment. Plaintiffs object to the term "Related Condition" as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies "issues" and "diagnos[es]" outside the DSM-5 that would not be made by healthcare providers in Alabama, and because "transvestic fetishism" and "dual role transvestism" are not related to gender dysphoria.

Plaintiffs stand on their objections.

REQUEST FOR PRODUCTION NO. 9:

All forms, disclosures, or other Documents provided to you by any Health Care Provider or mental health provider who has treated a child of yours for Gender Dysphoria or a Related Condition.

RESPONSE:

Plaintiffs object to this Request to the extent it seeks mental health or medical records. In addition, Plaintiffs' challenge on its face the constitutionality of the Act, a law that subjects anyone who causes any minor to receive transitioning medications to criminal penalties. Documents called for in this Request are not

relevant to the parties' claims or defenses. Plaintiffs further object to the extent the Request is overly broad, unduly burdensome, unbounded as to the timeframe for materials sought, and seeks materials protected by the mental health provider-patient privilege.

Plaintiffs also object to this Request to the extent the Request calls for documents related to children other than the Transgender Plaintiffs. Any responsive documents for children other than the Transgender Plaintiffs would contain protected and confidential medical information that is irrelevant to any of the parties' claims or defenses in this lawsuit and that would be disproportionate to the needs of the case. Plaintiffs also object to production of all documents provided by a Health Care Provider or mental health provider to the extent the documents are unrelated to a Transgender Plaintiff's treatment for Gender Dysphoria, as these documents would be irrelevant to any of the parties' claims or defenses in this lawsuit and disproportionate to the needs of the case. Plaintiffs further object to this Request as redundant to Request Nos. 5 and 7-9. Finally, Plaintiffs object to the term "Related Condition" as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies "issues" and "diagnos[es]" outside the DSM-5 that would not be made by healthcare providers in Alabama, and because "transvestic fetishism" and "dual role transvestism" are not related to gender dysphoria.

Plaintiffs stand on their objections.

Requests Directed to Plaintiffs Heather Austin, PhD and Rachel Koe, M.D.

REQUEST FOR PRODUCTION NO. 10:

All medical bills related to the allegations in your Complaint.

RESPONSE:

Plaintiffs object to this Request to the extent it seeks mental health or medical records. Plaintiffs' challenge on its face the constitutionality of the Act, a law that subjects anyone who causes any minor to receive transitioning medications to criminal penalties. Documents called for in this Request are not relevant to the parties' claims or defenses; Dr. Koe's and Dr. Austin's billing has no relevance to any claims or defenses in this case. Plaintiffs further object to the extent the Request is overly broad, unduly burdensome, disproportionate to the needs of the case, unbounded as to the timeframe for materials sought, and seeks materials protected by the mental health provider-patient privilege. Plaintiffs also object to term "medical bills" as undefined and vague and ambiguous. Plaintiffs further object to this Request as calling for irrelevant, protected medical information of minor patients as irrelevant to this lawsuit.

Plaintiffs stand on their objections.

REQUEST FOR PRODUCTION NO. 11:

All patient intake forms used by you within the past 5 years.

RESPONSE:

Plaintiffs object to this Request to the extent the request calls for “[a]ll” patient intake forms used for treatment of any patients, whether or not those patients are minors seeking or receiving treatment for Gender Dysphoria. Plaintiffs further object to the use of the term “you” as undefined; without definition, it is unclear whether the Request seeks intake forms used individually by Dr. Austin or Dr. Koe, or if the Request seeks intake forms used generally by the medical practices or institutions where Dr. Austin or Dr. Koe have practiced in the past five years.

Subject to these objections, Plaintiffs will produce blank intake forms that Dr. Austin or Dr. Koe personally have used with minor patients seeking or receiving care related to Gender Dysphoria in the past five years.

REQUEST FOR PRODUCTION NO. 12:

All forms or Documents used by you to disclose to patients, potential patients, or parents or guardians of Minor patients, the risks of Puberty Blockers, Cross-sex Hormones, or Transitioning.

RESPONSE:

Plaintiffs object to the Request’s use of the term “you” as undefined; without definition, it is unclear whether the Request seeks forms or Documents used individually by Dr. Austin or Dr. Koe, or if the Request seeks forms used generally

by the medical practices or institutions where Dr. Austin or Dr. Koe have practiced in their careers. Plaintiffs further object that the Request is redundant to Request No. 13. Plaintiffs further object that the Request is overly broad and disproportionate to the needs of this case, as it has no defined time range, and Drs. Austin and Koe have each practiced for decades. Plaintiffs object to this Request to the extent it seeks protected and confidential medical information of minor patients not involved in this lawsuit. It also seeks documents that are irrelevant to the claims or defenses in this case.

Subject to these objections, Plaintiffs will produce responsive documents without specific patient information for the past five years as to Dr. Austin. Plaintiffs also refer Defendants to the two UAB Patient Information for Informed Consent forms filed in this case at Dkt. No. 78-41 as responsive to this request.

As to Dr. Koe, no responsive documents exist.

REQUEST FOR PRODUCTION NO. 13:

All forms or Documents used by you to obtain, record, or memorialize informed consent for the administration of Puberty Blockers, Cross-sex Hormones, or other Transitioning treatments.

RESPONSE:

Plaintiffs object to the Request's use of the term "you" as undefined; without definition, it is unclear whether the Request seeks forms or Documents used individually by Dr. Austin or Dr. Koe, or if the Request seeks forms used generally

by the medical practices or institutions where Dr. Austin or Dr. Koe have practiced in their careers. Plaintiffs further object that the Request is redundant to Request No. 12. Plaintiffs further object that the Request is overly broad and disproportionate to the needs of this case, that the Request has no defined time range, and that the Request seeks information irrelevant to any claims or defenses in the case. Plaintiffs object to this Request to the extent it seeks protected and confidential medical information of minor patients not involved in this lawsuit. Plaintiffs further object to the term “other Transitioning treatments” as undefined, vague, and ambiguous.

Subject to these objections, Plaintiffs will produce responsive documents related to informed consent for the administration of Puberty Blockers and Cross-sex Hormones, without specific patient information for the past five years, as to Dr. Austin. Plaintiffs also refer Defendants to the two UAB Patient Information for Informed Consent forms filed in this case at Dkt. No. 78-41 as responsive to this request.

As to Dr. Koe, no responsive documents exist.

REQUEST FOR PRODUCTION NO. 14:

All forms or Documents used by you to provide information to patients, or the parents or guardians of patients, concerning any coverage by Medicaid or medical insurance carriers for the provision of Puberty Blockers, Cross-sex Hormones, or other Transitioning treatments.

RESPONSE:

Plaintiffs object to the Request's use of the term "you" as undefined; without definition, it is unclear whether the Request seeks forms or Documents used individually by Dr. Austin or Dr. Koe, or if the Request seeks forms used generally by the medical practices or institutions where Dr. Austin or Dr. Koe have practiced in their careers. Documents called for in this Request are not relevant to the parties' claims or defenses. Plaintiffs further object that the Request is overly broad and disproportionate to the needs of this case, as it has no defined time range, and Drs. Austin and Koe have each practiced for decades. Plaintiffs object to this Request to the extent it seeks protected and confidential medical information of minor patients as irrelevant to this lawsuit. Plaintiffs further object to the term "other Transition treatments" as undefined, vague, and ambiguous.

Subject to these objections, Plaintiffs state that no responsive documents exist.

REQUEST FOR PRODUCTION NO. 15:

All Documents containing, disclosing, or setting forth any of your policies concerning any requirement for a diagnosis of gender dysphoria, gender incongruence, or a related condition, before the administration of Puberty Blockers, Cross-Sex Hormones, or other Transitioning treatments.

RESPONSE:

Plaintiffs object to the Request's use of the term "your policies" as undefined; without definition, it is unclear whether the Request seeks forms or Documents

related to policies individually of Dr. Austin or Dr. Koe, or if the Request seeks information related to policies generally held by the medical practices or institutions where Dr. Austin or Dr. Koe have practiced in their careers. Plaintiffs further object that the Request is redundant to Request No. 13. Plaintiffs further object that the Request is overly broad, is disproportionate to the needs of this case, seeks information irrelevant to any claims or defenses, and has no defined time range. Plaintiffs object to this Request to the extent it seeks protected and confidential medical information of minor patients as irrelevant to this lawsuit. Plaintiffs further object to the term “other Transition treatments” as undefined, vague, and ambiguous. Plaintiffs object to the term “Related Condition” as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies “issues” and “diagnos[es]” outside the DSM-5 that would not be made by healthcare providers in Alabama, and because “transvestic fetishism” and “dual role transvestism” are not related to gender dysphoria.

Subject to these objections, Plaintiffs will produce responsive documents without specific patient information for the past five years as to Dr. Austin. Plaintiffs also refer Defendants to the two UAB Patient Information for Informed Consent forms filed in this case at Dkt. No. 78-41 as responsive to this request.

As to Dr. Koe, no responsive documents exist.

REQUEST FOR PRODUCTION NO. 16:

All documents containing, disclosing, or setting forth any information you provide to patients, or the parents or guardians of patients, concerning treatments for Gender Dysphoria or a Related Condition, other than the administration of Puberty Blockers or Cross-sex Hormones.

RESPONSE:

Plaintiffs object to the Request's use of the term "you" as undefined; without definition, it is unclear whether the Request seeks documents used individually of Dr. Austin or Dr. Koe, or if the Request seeks documents generally used by the medical practices or institutions where Dr. Austin or Dr. Koe have practiced in their careers. Plaintiffs further object that the Request is redundant to Request Nos. 12 and 13. Plaintiffs further object that the Request is overly broad and disproportionate to the needs of this case, as it has no defined time range, and Drs. Austin and Koe have each practiced for decades. Plaintiffs object to this Request to the extent it seeks protected and confidential medical information of minor patients as irrelevant to this lawsuit. Plaintiffs further object to the use of the phrase "treatments for Gender Dysphoria or a Related Condition, other than the administration of Puberty Blockers or Cross-sex Hormones" as vague and ambiguous. Relatedly, Plaintiffs object to the term "Related Condition" as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies "issues" and "diagnos[es]" outside the DSM-5 that would not be made by healthcare providers in

Alabama, and because “transvestic fetishism” and “dual role transvestism” are not related to gender dysphoria.

Subject to these objections, Plaintiffs will produce responsive documents without specific patient information for the past five years as to Dr. Austin.

As to Dr. Koe, no responsive documents exist.

REQUEST FOR PRODUCTION NO. 17:

All Documents containing, disclosing, or setting forth any of your policies concerning any requirement for counseling or other mental-health treatments before the administration of Puberty Blockers, Cross-sex Hormones, or other Transitioning treatments.

RESPONSE:

Plaintiffs object to the Request’s use of the term “your policies” as undefined; without definition, it is unclear whether the Request seeks forms or Documents related to policies individually of Dr. Austin or Dr. Koe, or if the Request seeks information related to policies generally held by the medical practices or institutions where Dr. Austin or Dr. Koe have practiced in their careers. Plaintiffs further object that the Request is overly broad and disproportionate to the needs of this case, as it has no defined time range, and Drs. Austin and Koe have each practiced for decades. Plaintiffs object to this Request to the extent it seeks protected and confidential medical information of minor patients as irrelevant to this lawsuit.

Subject to these objections, Plaintiffs will produce responsive documents without specific patient information for the past five years as to Dr. Austin. Dr. Austin also refers Defendants to the WPATH Standards of Care filed in this case at Dkt. No. 78-17 as responsive to this request.

As to Dr. Koe, no responsive documents exist.

REQUEST FOR PRODUCTION NO. 18:

All Documents containing, disclosing, or setting forth any of your policies or procedures for requiring follow-up examinations of Minors who are receiving Puberty Blockers, Cross-sex Hormones, or other Transitioning treatments, or who received Puberty Blockers, Cross-sex Hormones, or Transitioning treatments in the past.

RESPONSE:

Plaintiffs object to the Request's use of the term "your policies" as undefined; without definition, it is unclear whether the Request seeks forms or Documents related to policies individually of Dr. Austin or Dr. Koe, or if the Request seeks information related to policies generally held by the medical practices or institutions where Dr. Austin or Dr. Koe have practiced in their careers. Plaintiffs further object that the Request is overly broad and disproportionate to the needs of this case, as it has no defined time range, and Drs. Austin and Koe have each practiced for decades. Plaintiffs object to this Request to the extent it seeks protected and confidential medical information of minor patients as irrelevant to this lawsuit. Plaintiffs further object that the undefined term "follow up examinations" is vague and ambiguous

and interpret the term to refer to required monitoring by medical doctors during or after the administration of Puberty Blockers or Cross-Sex Hormones.

Subject to these objections, Plaintiffs will produce responsive documents without specific patient information for the past five years as to Dr. Austin. Plaintiffs also refer Defendants to the Endocrine Society Clinical Practice Guideline and WPATH Standards of Care filed in this case at Dkt. No. 78-14 and 78-17 as responsive to this request.

As to Dr. Koe, no responsive documents exist.

REQUEST FOR PRODUCTION NO. 19:

All Documents reflecting the results of any follow-up with patients or former patients who received Puberty Blockers, Cross-sex Hormones, or Transitioning treatments in the past.

RESPONSE:

Plaintiffs object to this Request to the extent it seeks mental health or medical records. Plaintiffs' challenge on its face the constitutionality of the Act, a law that subjects anyone who causes any minor to receive transitioning medications to criminal penalties. Documents called for in this Request are not relevant to the parties' claims or defenses. Plaintiffs further object to the extent the Request is overly broad, unduly burdensome, unbounded as to the timeframe for materials sought, and seeks materials protected by the mental health provider-patient privilege. Plaintiffs further object that the undefined term "follow-up" is vague and ambiguous.

Plaintiffs stand on their objections.

REQUEST FOR PRODUCTION NO. 20:

All Documents reflecting any incidents of desistance or detransition— i.e., when a patient who has been diagnosed with Gender Dysphoria or a Related Condition is no longer gender dysphoric and/or no longer sought to Transition.

RESPONSE:

Plaintiffs object to this Request to the extent it seeks mental health or medical records. Plaintiffs’ challenge on its face the constitutionality of the Act, a law that subjects anyone who causes any minor to receive transitioning medications to criminal penalties. Documents called for in this Request are not relevant to the parties’ claims or defenses. Plaintiffs further object to the extent the Request is overly broad, unduly burdensome, unbounded as to the timeframe for materials sought, and seeks materials protected by the mental health provider-patient privilege. Plaintiffs further object to the term “Related Condition” as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies “issues” and “diagnos[es]” outside the DSM-5 that would not be made by healthcare providers in Alabama, and because “transvestic fetishism” and “dual role transvestism” are not related to gender dysphoria.

Subject to these objections, Plaintiffs will produce responsive documents in Dr. Austin’s possession related to “desistance or detransition” generally but will not provide patient medical records or other patient-specific documents.

As to Dr. Koe, no responsive documents exist.

REQUEST FOR PRODUCTION NO. 21:

All Documents reflecting any complaint or concern by a patient, former patient, or parent or guardian of a patient or former patient, regarding the treatment provided for gender dysphoria or a related condition.

RESPONSE:

Plaintiffs object to this Request to the extent it seeks mental health or medical records. Plaintiffs' challenge on its face the constitutionality of the Act, a law that subjects anyone who causes any minor to receive transitioning medications to criminal penalties. Documents called for in this Request are not relevant to the parties' claims or defenses. Plaintiffs further object to the extent the Request is overly broad, unduly burdensome, unbounded as to the timeframe for materials sought, and seeks materials protected by the mental health provider-patient privilege. Plaintiffs further object that the undefined terms "complaint" or "concern" are vague and ambiguous. The request is also overly broad because it seeks information related to treatments of adult patients for Gender Dysphoria. Plaintiffs object to the term "Related Condition" as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies "issues" and "diagnos[es]" outside the DSM-5 that would not be made by healthcare providers in Alabama, and because "transvestic fetishism" and "dual role transvestism" are not related to gender dysphoria.

Plaintiffs stand on their objections.

REQUEST FOR PRODUCTION NO. 22:

All Documents reflecting how many, or rates of, patients who began Puberty Blockers went on to receive Cross-sex Hormones.

RESPONSE:

Plaintiffs object to this Request to the extent it seeks mental health or medical records. Plaintiffs' challenge on its face the constitutionality of the Act, a law that subjects anyone who causes any minor to receive transitioning medications to criminal penalties. Documents called for in this Request are not relevant to the parties' claims or defenses. Plaintiffs further object to the extent the Request is overly broad, unduly burdensome, unbounded as to the timeframe for materials sought, and seeks materials protected by the mental health provider-patient privilege. Plaintiffs also object to the Request's use of the term "patients" as undefined; without definition, it is unclear whether the Request seeks information related to patients personally treated by Dr. Austin or Dr. Koe, or if the Request seeks information about patients more generally (i.e., groups of patients in an academic study or all patients treated by a medical practice or institution).

Subject to these objections, Plaintiffs will produce responsive documents in Dr. Austin's possession related to rates of adolescents with gender dysphoria who

take Hormone Blockers or Cross-Sex Hormones generally but will not provide patient medical records or other patient-specific documents.

As to Dr. Koe, no responsive documents exist.

REQUEST FOR PRODUCTION NO. 23:

All Documents containing, disclosing, or setting forth any of your policies concerning mastectomies or other surgical interventions for Minors, which have the purpose of altering the Minor's body for the purpose of Transitioning.

RESPONSE:

Plaintiffs object that this Request seeks information irrelevant to this lawsuit and disproportionate to the needs of the case, which does not involve surgical interventions in minors for the purpose of transitioning. Plaintiffs further object to the Request's use of the term "your policies" as undefined; without definition, it is unclear whether the Request seeks forms or Documents related to policies individually of Dr. Austin or Dr. Koe, or if the Request seeks information related to policies generally held by the medical practices or institutions where Dr. Austin or Dr. Koe have practiced in their careers. Plaintiffs further object that the Request is overly broad, as it has no defined time range, and Drs. Austin and Koe have each practiced for decades. Plaintiffs object to this Request to the extent it seeks protected and confidential medical information of minor patients not involved in this lawsuit.

Subject to these objections, Plaintiffs state that no documents exist because neither Dr. Austin nor Dr. Koe have any involvement with transition surgeries

performed on minors. Generally, Dr. Austin refers Defendants to the WPATH Standards of Care filed in this case at Dkt. No. 78-17 as responsive to this request.

REQUEST FOR PRODUCTION NO. 24:

All Documents reflecting the aggregate number of your Minor patients who, in the past 5 years, received Puberty Blockers, Cross-sex Hormones, or other Transitioning treatments, either from your providers or elsewhere.

RESPONSE:

Plaintiffs object to the Request's use of the term "your Minor patients" as undefined; without definition, it is unclear whether the Request seeks information related to patients personally treated by Dr. Austin or Dr. Koe, or if the Request seeks information about patients treated by their medical practice or institution more generally. Documents sought by this request are not in the possession, custody, or control of Dr. Koe or Dr. Austin. Plaintiffs similarly object to the term "your providers" as vague and ambiguous. Plaintiffs object to this Request to the extent it seeks protected and confidential medical information of minor patients as irrelevant to this lawsuit.

Subject to these objections, Plaintiffs state no responsive documents exist.

REQUEST FOR PRODUCTION NO. 25:

All Documents reflecting Health Care Providers you refer patients to regarding Transitioning.

RESPONSE:

Plaintiffs object to the Request's use of the term "you" as undefined; without definition, it is unclear whether the Request seeks documents used individually of Dr. Austin or Dr. Koe, or if the Request seeks documents generally used by the medical practices or institutions where Dr. Austin or Dr. Koe have practiced in their careers. Plaintiffs further object that the Request is overly broad, as it has no defined time range, and Drs. Austin and Koe have each practiced for decades. Plaintiffs object to this Request to the extent it seeks protected and confidential medical information of minor patients as irrelevant to this lawsuit. Plaintiffs further object to the use of the phrase "treatments for Gender Dysphoria or a Related Condition, other than the administration of Puberty Blockers or Cross-sex Hormones" as vague and ambiguous.

Subject to these objections, Plaintiffs state that they refer minor patients with gender dysphoria to UAB's gender clinic.

REQUEST FOR PRODUCTION NO. 26:

All Documents regarding care or services offered by the Magic City Wellness Center related to Gender Dysphoria or a Related Condition.

RESPONSE:

Plaintiffs object that the Request is overly broad, as it has no defined time range. Plaintiffs further object that the Request seeks information irrelevant to the

claims or defenses in this lawsuit and disproportionate to the needs of the case, as Magic City Wellness Center is not a party to this lawsuit. Plaintiffs object that this Request is unduly burdensome on Dr. Koe and Dr. Austin, particularly in light of Defendants' service of a subpoena on the Magic City Center in this case. Plaintiffs object to the term "Related Condition" as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies "issues" and "diagnos[es]" outside the DSM-5 that would not be made by healthcare providers in Alabama, and because "transvestic fetishism" and "dual role transvestism" are not related to gender dysphoria. Plaintiffs further object that the Request is overly broad, as it has no defined time range.

Subject to these objections, Plaintiffs will produce responsive documents without specific patient information for the past five years as to Dr. Austin.

As to Dr. Koe, no responsive documents exist.

REQUEST FOR PRODUCTION NO. 27:

All Documents regarding care or services offered by any other provider in Alabama, or whose services may be accessed by patients in Alabama, related to Gender Dysphoria or a Related Condition.

RESPONSE:

Plaintiffs object that the Request is overly broad, as it has no defined time range. Further, because this Request seeks information about healthcare providers that provide medical services that "may be accessed by patients in Alabama" related

to gender dysphoria, the request is also overly broad because it seeks information related to any healthcare provider in the country or the world that any transgender minor in Alabama “may” see for medical or mental healthcare related to Gender Dysphoria. Plaintiffs object to this Request to the extent it seeks protected and confidential medical information of minor patients as irrelevant to this lawsuit. Plaintiffs further object that the request seeks information irrelevant to the claims or defenses in this lawsuit and disproportionate to the needs of the case, including because it seeks information about healthcare treatment for gender dysphoria outside of Alabama. Documents sought by this request are not in the possession, custody, or control of Dr. Koe or Dr. Austin. Plaintiffs object to the term “Related Condition” as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies “issues” and “diagnos[es]” outside the DSM-5 that would not be made by healthcare providers in Alabama, and because “transvestic fetishism” and “dual role transvestism” are not related to gender dysphoria. Plaintiffs further object that the Request is overly broad, as it has no defined time range.

Subject to these objections, Plaintiffs will produce responsive documents without specific patient information for the past five years.

REQUEST FOR PRODUCTION NO. 28:

All Documents, including list-serv postings, emails, or message board postings, affiliated with the World Professional Association for Transgender Health (“WPATH”) concerning Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

RESPONSE:

Plaintiffs object that the Request is overly broad, as it has no defined time range. Plaintiffs further object that the Request seeks message board postings and other documents that are publicly available and that are not in the possession, custody, or control of Dr. Koe or Dr. Austin. Plaintiffs further object that the Request seeks information irrelevant to the claims or defenses in this lawsuit and that is disproportionate to the needs of the case. Plaintiffs object to the term “Related Condition” as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies “issues” and “diagnos[es]” outside the DSM-5 that would not be made by healthcare providers in Alabama, and because “transvestic fetishism” and “dual role transvestism” are not related to gender dysphoria. Plaintiffs further object that the Request is overly broad, as it has no defined time range.

Subject to these objections, Plaintiffs will produce responsive documents for the past five years.

REQUEST FOR PRODUCTION NO. 29:

All Documents, including list-serv postings, emails, or message board postings, affiliated with the United States Professional Association for Transgender Health (“USPATH”) concerning Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

RESPONSE:

Plaintiffs object that the Request is overly broad, as it has no defined time range. Plaintiffs further object that the Request seeks message board postings and other documents that are publicly available and that are not in the possession, custody, or control of Dr. Koe or Dr. Austin. Plaintiffs further object that the Request seeks information irrelevant to the claims or defenses in this lawsuit that is disproportionate to the needs of the case. Plaintiffs object to the term “Related Condition” as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies “issues” and “diagnos[es]” outside the DSM-5 that would not be made by healthcare providers in Alabama, and because “transvestic fetishism” and “dual role transvestism” are not related to gender dysphoria. Plaintiffs further object that the Request is overly broad, as it has no defined time range.

Subject to these objections, Plaintiffs state that no responsive documents exist.

REQUEST FOR PRODUCTION NO. 30:

All Documents, including list-serv postings, emails, or message board postings, affiliated with the American Academy of Pediatrics (“AAP”) concerning

Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

RESPONSE:

Plaintiffs object that the Request is overly broad, as it has no defined time range. Plaintiffs further object that the Request seeks message board postings and other documents that are publicly available and that are not in the possession, custody, or control of Dr. Koe and Dr. Austin. Plaintiffs further object that the Request seeks information irrelevant to the claims or defenses in this lawsuit that is disproportionate to the needs of the case, particularly in light of Defendants' service of a subpoena on AAP. Plaintiffs object to the term "Related Condition" as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies "issues" and "diagnos[es]" outside the DSM-5 that would not be made by healthcare providers in Alabama, and because "transvestic fetishism" and "dual role transvestism" are not related to gender dysphoria. Plaintiffs further object that the Request is overly broad, as it has no defined time range.

Subject to these objections, Plaintiffs will produce responsive documents for the past five years.

REQUEST FOR PRODUCTION NO. 31:

All Documents, including list-serv postings, emails, or message board postings, affiliated with the Endocrine Society concerning Transitioning or the treatment of Minors for Gender Dysphoria or a Related Condition.

RESPONSE:

Plaintiffs object that the Request is overly broad, as it has no defined time range. Plaintiffs further object that the Request seeks message board postings and other documents that are publicly available and that are not in the possession, custody, or control of Dr. Koe or Dr. Austin. Plaintiffs further object that the Request seeks information irrelevant to the claims or defenses in this lawsuit that is disproportionate to the needs in the case. Plaintiffs object to the term “Related Condition” as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies “issues” and “diagnos[es]” outside the DSM-5 that would not be made by healthcare providers in Alabama, and because “transvestic fetishism” and “dual role transvestism” are not related to gender dysphoria. Plaintiffs further object that the Request is overly broad, as it has no defined time range.

Subject to these objections, Plaintiffs state that no responsive documents exist.

REQUEST FOR PRODUCTION NO. 32:

All Documents concerning the organizational stance regarding the treatment of Gender Dysphoria or a Related Condition from WPATH, USPATH, AAP, or the Endocrine Society.

RESPONSE:

Plaintiffs object that the Request is redundant to Request Nos. 27-31. Plaintiffs also object that the Request seeks documents that are publicly available

and that are not in the possession, custody, or control of Dr. Koe or Dr. Austin. Plaintiffs also object that the Request is overbroad, as it has no timeframe. Plaintiffs further object to the use of the term “organizational stance” as undefined, vague, and unintelligible. Plaintiffs object to the term “Related Condition” as defined because the definition is inaccurate and seeking irrelevant information because the definition identifies “issues” and “diagnos[es]” outside the DSM-5 that would not be made by healthcare providers in Alabama, and because “transvestic fetishism” and “dual role transvestism” are not related to gender dysphoria. If Defendants will clarify what documents or information they are seeking, Plaintiffs will endeavor to respond, subject to objections.

REQUEST FOR PRODUCTION NO. 33:

All Documents concerning any conference related to Gender Dysphoria or a Related Condition that WPATH, USPATH, AAP, or the Endocrine Society has hosted.

RESPONSE:

Plaintiffs object that the Request is redundant to Request Nos. 27-31. Plaintiffs also object that the Request seeks documents that are publicly available and that are not in the possession, custody, or control of Dr. Koe or Dr. Austin. Plaintiffs also object that the Request is overbroad, as it has no timeframe. Documents called for in this Request are not relevant to the parties’ claims or defenses. Plaintiffs object to the term “Related Condition” as defined because the

definition is inaccurate and seeking irrelevant information because the definition identifies “issues” and “diagnos[es]” outside the DSM-5 that would not be made by healthcare providers in Alabama, and because “transvestic fetishism” and “dual role transvestism” are not related to gender dysphoria.

Subject to these objections, Plaintiffs will produce responsive documents for the past five years that are in their possession or control.

REQUEST FOR PRODUCTION NO. 34:

All Documents reflecting, regarding, or otherwise related to any data or financial impact analysis you have conducted to determine the projected number of Transitioning procedures which you or your clinic(s) would have to cancel, reject, or decline to perform as a result of the Act.

RESPONSE:

Plaintiffs object to the Request’s use of the term “you” as undefined; without definition, it is unclear whether the Request seeks documents used individually of Dr. Austin or Dr. Koe, or if the Request seeks documents generally used by the medical practices or institutions where Dr. Austin or Dr. Koe have practiced in their careers. Documents called for in this Request are not relevant to the parties’ claims or defenses. Plaintiffs further object that the Request is overly broad and disproportionate to the needs of this case, as it has no defined time range, and Drs. Austin and Koe have each practiced for decades. Plaintiffs object to this Request to the extent it seeks protected and confidential medical information of minor patients

not involved in this lawsuit. Plaintiffs further object to the use of the phrase “Transitioning procedures” as vague and ambiguous.

Subject to these objections, Plaintiffs state that no responsive documents exist.

Dated: August 22, 2022

Respectfully submitted,

/s/ Melody H. Eagan

Melody H. Eagan
Jeffrey P. Doss
Amie A. Value
LIGHTFOOT, FRANKLIN & WHITE
LLC
The Clark Building
400 20th Street North
Birmingham, AL 35203
meagan@lightfootlaw.com
jdoss@lightfootlaw.com
avague@lightfootlaw.com

J. Andrew Pratt
Misty L. Peterson
Adam Reinke
KING & SPALDING LLP
1180 Peachtree Street Northeast, Suite
1600
Atlanta, GA 30309
apratt@kslaw.com
mpeterson@kslaw.com
areinke@kslaw.com

Brent P. Ray
Abigail Hoverman Terry
KING & SPALDING LLP
110 North Wacker Drive, Suite 3800
Chicago, IL 60606
bray@kslaw.com

Michael B. Shortnacy
KING & SPALDING LLP
633 West Fifth Street, Suite 1600
Los Angeles, CA 90071
mshortnacy@kslaw.com

Asaf Orr
NATIONAL CENTER FOR LESBIAN
RIGHTS
870 Market Street, Suite 370
San Francisco, CA 94102
aorr@nclrights.org

Sarah Warbelow
Cynthia Weaver
HUMAN RIGHTS CAMPAIGN
FOUNDATION
1640 Rhode Island Ave., NW
Washington, DC 20036
sarah.warbelow@hrc.org
cynthia.weaver@hrc.org

Jennifer L. Levi
GLBTQ LEGAL ADVOCATES &
DEFENDERS
18 Tremont, Suite 950
Boston, MA 02108
jlevi@glad.org

ahoverman@kslaw.com

Scott D. McCoy
SOUTHERN POVERTY LAW
CENTER
P.O. Box 12463
Miami, FL 33101
scott.mccoy@splcenter.org

Diego A. Soto
SOUTHERN POVERTY LAW
CENTER
400 Washington Avenue
Montgomery, AL 36104
diego.soto@splcenter.org

Counsel for Plaintiffs

Jessica L. Stone
SOUTHERN POVERTY LAW
CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, GA 30030
jessica.stone@splcenter.org

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2022, I caused to be sent via electronic mail the foregoing Initial Disclosures to the following counsel of record:

Coty Montag
Alyssa C. Lareau
Renee Williams
Kaitlyn Toyama
John Michael Powers
U.S. DEPARTMENT OF JUSTICE
Coty.Montag@usdoj.gov
Alyssa.Lareau@usdoj.gov
Renee.Williams3@usdoj.gov
Kaitlin.Toyama@usdoj.gov
john.powers@usdoj.gov
Jason R. Cheek
Margaret Lester Marshall
Lane Hines Woodke
U.S. ATTORNEY'S OFFICE
NORTHERN DISTRICT OF ALABAMA
jason.cheek@usdoj.gov
mmarshall2@usa.usdoj.gov
lane.woodke@usdoj.gov

Stephen D. Wadsworth
Sandra Jean Stewart
U.S. ATTORNEY'S OFFICE
MIDDLE DISTRICT OF ALABAMA
Stephen.Wadsworth@usdoj.gov
sandra.stewart@usdoj.gov

Elizabeth Prim Formby Escalona
MAYNARD COOPER & GALE, P.C.
pescalona@maynardcooper.com
Counsel for Plaintiff-Intervenor

Edmund G. LaCour Jr.
A. Barrett Bowdre
James W. Davis
Benjamin M. Seiss
OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA
501 Washington Avenue
P.O. Box 300152
Montgomery, AL 36130-0152
Edmund.LaCour@AlabamaAG.gov
Barrett.Bowdre@AlabamaAG.gov
Jim.Davis@AlabamaAG.gov
Ben.Seiss@AlabamaAG.gov
Christopher E. Mills
Spero Law LLC
557 East Bay Street
Charleston, SC 29413
cmills@spero.law

John D. Ramer
Peter A. Patterson
Brian W. Barnes
David H. Thompson
COOPER & KIRK, PLLC
jrmer@cooperkirk.com
ppatterson@cooperkirk.com
bbarnes@cooperkirk.com
dthompson@cooperkirk

Counsel for Defendants

Respectfully submitted,
/s/ Melody H. Eagan
Counsel for Plaintiffs

EXHIBIT 3

Bowdre, Barrett

From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Wednesday, January 4, 2023 2:51 PM
To: Melody H. Eagan; Montag, Coty (CRT); Bowdre, Barrett; Adam Reinke; John Ramer
Cc: Cheek, Jason (USAALN); LaCour, Edmund; Wilson, Thomas; Davis, Jim; Seiss, Ben; Christopher Mills; Pete Patterson; David Thompson; Jeffrey P. Doss; Amie A. Vague; AOrr; Jennifer Levi; Sarah Warbelow; Cynthia Weaver; Andy Pratt; Misty Peterson; Brent Ray; Abigail Terry; Michael Shortnacy; Scott McCoy; Diego Soto; Jessica Stone; Marshall, Margaret (USAALN); Williams, Renee (CRT); Toyama, Kaitlin (CRT); Murphy, Amie (CRT)
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- Follow up to 12/15 call

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Hi Melody,

Thank you for your note, and I hope your new year is off to a great start. Unfortunately, I think we are at an impasse on the medical records issue. My email of December 20 explains our position about why it's essential that Plaintiffs produce mental health records and medical records that would reveal any side effects the private plaintiffs have experienced as a result of the medical treatments at issue. I've also attempted to articulate our position and explain why we see these records as critical to the case during multiple phone calls.

We're planning to tee this issue up for the Court in a motion that we anticipate filing around the end of the day tomorrow. But if you think there's room for further compromise or some other negotiated path forward, please let me know – we're of course happy to hop on another call before then to the extent that you think doing so might be productive.

Best regards,

Brian

From: Melody H. Eagan <meagan@lightfootlaw.com>
Sent: Monday, December 26, 2022 10:35 PM
To: Brian Barnes <BBarnes@cooperkirk.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <AReinke@KSLAW.com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <AOrr@nclrights.Org>; Jennifer Levi <jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <MShortnacy@KSLAW.com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>
Subject: Re: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- Follow up to 12/15 call

Dear Brian,

I hope you had a nice Christmas. With the holiday, I still need to confirm your proposals outlined in points 1-4 below are acceptable at this time to our team and counsel for the United States. I believe we are close if not there, and I will confirm as soon as I can with counsel for the United States, who I understand will be available on January 3 from your email communication with them.

As to #5 and following up on our discussions regarding the discoverability of the minor Plaintiffs' medical records, we maintain our initial offer of medical records concerning the Plaintiffs, outlined in my December 12 email. Based on the claims in this case, however, we believe that offer is more than sufficient.

First, we are challenging the constitutionality of SB 184 to the extent that it prevents minors with gender dysphoria from getting the transitioning medications they need or could possibly need. Our challenge has characteristics of a facial challenge (i.e., SB 184 is unconstitutional because on its face it prevents transgender minors with gender dysphoria from getting the transitioning medications they need or could possibly need) and an as-applied challenge (i.e., our Plaintiffs fall within that category).

Second, we maintain that the State does not need extensive medical records because the State's position has been that there are no circumstances where transitioning medications are justified for minors with gender dysphoria. That's why the State passed a categorical ban and not something more narrowly tailored to its purported concerns of either individual misdiagnoses or individual harms from treatment.

Third, because of the State's position, it is irrelevant whether an individual minor has a correct diagnosis or particularized need because the State is saying there are no circumstances which can justify providing transitioning medications to a minor. To support its professed interest in a categorical ban – as opposed to a case-by-case determination – the State doesn't need any medical records beyond what Plaintiffs have offered, which we think is already more than is required under Rule 26.

Fourth, if the State wants to change its position and argue that our Plaintiffs are misdiagnosed, that's irrelevant unless the State is conceding that the treatments are necessary or appropriate for minors who are properly diagnosed. We have not understood the State to have made that concession, but please tell us if that is incorrect.

Finally, and related to the fourth point, if the State is trying to demonstrate that the harms to our individual Plaintiffs outweigh the benefits, that is also irrelevant because our understanding is the State's case is that the harms always outweigh the benefits and that the only justified treatment is psychotherapy – hence, a categorical ban rather than a case-by-case determination.

Please let me know if you would like to discuss further. I am out for the rest of this week on a family vacation, but I will be back on January 3.

Hope you have a happy New Year!

Best,
Melody



Melody H. Eagan
Attorney



205-581-0700 main
205-581-0777 direct
205-581-0799 fax
meagan@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203



lightfootlaw.com



From: Brian Barnes <BBarnes@cooperkirk.com>

Date: Tuesday, December 20, 2022 at 7:21 AM

To: Melody Eagan <meagan@lightfootlaw.com>, "Montag, Coty (CRT)" <Coty.Montag@usdoj.gov>, "Bowdre, Barrett" <Barrett.Bowdre@AlabamaAG.gov>, Adam Reinke <AReinke@KSLAW.com>, John Ramer <jramer@cooperkirk.com>

Cc: "Cheek, Jason (USAALN)" <Jason.Cheek@usdoj.gov>, "LaCour, Edmund" <Edmund.LaCour@AlabamaAG.gov>, "Wilson, Thomas" <Thomas.Wilson@AlabamaAG.gov>, "Davis, Jim" <Jim.Davis@AlabamaAG.gov>, "Seiss, Ben" <Ben.Seiss@AlabamaAG.gov>, Christopher Mills <cmills@spero.law>, Pete Patterson <ppatterson@cooperkirk.com>, David Thompson <dthompson@cooperkirk.com>, Jeffrey Doss <jdoss@lightfootlaw.com>, "Amie A. Vague" <avague@lightfootlaw.com>, AOrr <Aorr@nclrights.Org>, Jennifer Levi <jlevi@glad.Org>, Sarah Warbelow <Sarah.Warbelow@hrc.Org>, Cynthia Weaver <cynthia.Weaver@hrc.Org>, Andy Pratt <Apratt@kslaw.Com>, Misty Peterson <Mpeterson@kslaw.Com>, Brent Ray <Bray@kslaw.Com>, Abigail Terry <ATerry@kslaw.com>, Michael Shortnacy <MShortnacy@KSLAW.com>, Scott McCoy <Scott.Mccoy@splcenter.Org>, Diego Soto <Diego.Soto@splcenter.Org>, Jessica Stone <Jessica.Stone@splcenter.Org>, "Marshall, Margaret (USAALN)" <Margaret.Marshall@usdoj.gov>, "Williams, Renee (CRT)" <Renee.Williams3@usdoj.gov>, "Toyama, Kaitlin (CRT)" <Kaitlin.Toyama@usdoj.gov>, "Murphy, Amie (CRT)" <Amie.Murphy2@usdoj.gov>

Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- Follow up to 12/15 call

CAUTION: External Sender.

Melody,

Thank you to you and your team for speaking with us on Thursday regarding each side's respective requests for production. I believe we are making progress but that we each have a few loose ends to tie up.

1. **Documents That May Be Used:** With respect to your discovery requests, our understanding from the call was that, for RFPs 4, 19, 22, 24, 28, and 30, plaintiffs are only seeking disclosure of documents that defendants may use to support their defenses. And more specifically, it seemed your concern was about the timing of that disclosure. We agree that each side should disclose documents it may use to support its claims or defenses, and we also agree that both sides should produce such documents before the end of fact discovery to the extent that such materials are already in their possession. We anticipate being able to produce most if not all documents responsive to these requests currently in our possession by the end of January.

2. Third-Party Subpoenas: Relatedly, you raised the issue of disclosing documents received in response to third-party subpoenas. I can represent that we've received none so far. But we agree to your proposal that parties must disclose these documents within seven days of receipt assuming that the party receives the documents in a form that can be easily forwarded. In the event a party receives hardcopy documents or something that cannot be easily forwarded, the parties agree to notify the other within seven days of receipt and attempt to forward the documents within a reasonable time.
3. "Complaints": We had discussed the issues of complaints submitted to the Attorney General's office. Specifically, for RFPs 3 and 16, you had explained that you could not agree to search in the particular email inbox we proposed unless you knew that is where the relevant complaints would be found. As I stated on the call, any relevant complaints would be found in that particular email inbox if submitted electronically. And if a complaint was submitted by regular mail, there are two places where those complaints would be held, and we agree to search for complaints there as well.
4. Defendants' Custodians: As we explained on the call, we maintain our position that it would be disproportional to the needs of the case to search ESI held by attorneys at the Attorney General's office. The burden of logging all privileged responsive documents found in an attorney's ESI vastly outweighs the likelihood of finding any non-privileged relevant information.
5. Plaintiffs' Medical Records: On the call, we stated that we could not agree to your proposed limitation with respect to plaintiffs' medical records. In particular, we noted that the medical records relevant to Plaintiffs' as-applied challenges would go well beyond the records listed in your proposal. For example, a central issue in this case is whether the use of these treatments can be justified given the risk of harm. The known harms caused by puberty blockers include greater risks of diminished bone density, cognitive impairment, infertility, mood changes (including depression, suicidal ideation, and irritability), and pseudotumor cerebri. For males, the known harms caused by cross-sex hormones include increased risk of thromboembolic disease, cholelithiasis, coronary artery disease, macroprolactinoma, cerebrovascular disease, hypertriglyceridemia, breast cancer, infertility, pulmonary embolism, stroke, heart attack, diabetes, prolactinomas, and loss of sexual function. For females, the known harms include increased risk of erythrocytosis, thrombophlebitis, liver dysfunction, coronary artery disease, depression, hypertension, infertility, loss of sexual function, mood disorders, weight gain, stroke, insulin resistance, vaginal atrophy, swelling of hands, feet, and legs, and breast, cervical, and uterine cancers. Thus, medical records related to potential side effects of these treatments are highly relevant to the case.

We also discussed the Plaintiffs' mental health records and, again, we think these are highly relevant to Plaintiffs' as-applied challenges. It is critical to know the Plaintiffs' history of gender expression and identity; if they have suffered from mental health comorbidities, such as anxiety, depression, ADHD, and autism; whether they experienced and were treated for past psychiatric illness or trauma; and what their school, community, and family environments are and have been like. There are several reasons for this. As just one example, the WPATH standards recommend a "comprehensive biopsychosocial assessment" (SOC8 at S48), which necessarily entails a "360"-degree understanding of the patient (as Dr. Hawkins put it at the PI hearing). Thus, these medical records, including mental health records, would demonstrate the process that medical and healthcare professionals undertook before diagnosing Plaintiffs with gender dysphoria and prescribing puberty blockers or cross-sex hormones. The comprehensiveness of this process is relevant to Plaintiffs' claims. In addition, there is some literature suggesting that, if transitioning treatments are permissible at all, they should be offered only after other mental health issues are resolved. There is also a risk that autism (or other mental health issues) can be misdiagnosed as gender dysphoria, meaning that treatments for gender dysphoria were completely unnecessary in the first place. In short, we think all of Plaintiffs' mental healthcare records are relevant to the as-applied challenge.

Best regards,

Brian W. Barnes
Cooper & Kirk, PLLC
(202) 220-9623

From: Melody H. Eagan <meagan@lightfootlaw.com>

Sent: Monday, December 19, 2022 5:06 PM

To: Brian Barnes <BBarnes@cooperkirk.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <AREinke@KSLAW.com>; John Ramer <jramer@cooperkirk.com>

Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>;

David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <MShortnacy@KSLAW.com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>

Subject: Re: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- Follow up to 12/15 call

Dear Brian,

Following up on our call last week, Plaintiffs (both Private Plaintiffs and the United States) will agree at this time to limit the scope of RFPs 4, 19 22, 24, and 28 to responsive materials that the Defendants may or will rely upon or use in connection with this litigation. We have previously agreed to Barrett's proposal for RFP 29 and 31. I believe Defendants have agreed verbally to production of materials in response to RFP 30; please correct me if I am wrong. We look forward to receiving clarification today regarding RFPs 3, 14, 15, and 16 and the scope of defendants' proposed search.

The timeline for production of Defendants' responsive documents is still pending; I refer Defendants back to the timeline proposed in my December 12 email, as I think that is a workable proposal and look forward to receiving your response.

Second, Private Plaintiffs plan to produce the materials that we agreed to produce in our written responses to Defendants' Request for Production before the end of January and are aiming to produce them by mid-January. We still need to work through the medical records issue; I will be getting you an email later this week regarding that topic.

Finally, I attach a redlined version of the ESI protocol for your consideration. This draft includes suggestions by both Private Plaintiffs and the United States.

Please let me know if you have any questions, and happy holidays!

Best,
Melody



Melody H. Eagan
Attorney



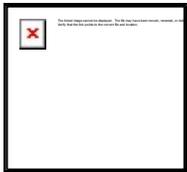
205-581-0700 main
205-581-0777 direct
205-581-0799 fax
meagan@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203



[Confidentiality Notice](#)

lightfootlaw.com



From: Brian Barnes <BBarnes@cooperkirk.com>
Date: Tuesday, December 13, 2022 at 10:35 AM
To: Melody Eagan <meagan@lightfootlaw.com>, "Montag, Coty (CRT)" <Coty.Montag@usdoj.gov>, "Bowdre, Barrett" <Barrett.Bowdre@AlabamaAG.gov>, Adam Reinke <AReinke@KSLAW.com>, John Ramer <jramer@cooperkirk.com>
Cc: "Cheek, Jason (USAALN)" <Jason.Cheek@usdoj.gov>, "LaCour, Edmund" <Edmund.LaCour@AlabamaAG.gov>, "Wilson, Thomas" <Thomas.Wilson@AlabamaAG.gov>, "Davis, Jim" <Jim.Davis@AlabamaAG.gov>, "Seiss, Ben" <Ben.Seiss@AlabamaAG.gov>, Christopher Mills <cmills@spero.law>, Pete Patterson <ppatterson@cooperkirk.com>, David Thompson <dthompson@cooperkirk.com>, Jeffrey Doss <jdoss@lightfootlaw.com>, "Amie A. Vague" <avague@lightfootlaw.com>, AOrr <Aorr@nclrights.Org>, Jennifer Levi <jlevi@glad.Org>, Sarah Warbelow <Sarah.Warbelow@hrc.Org>, Cynthia Weaver <cynthia.Weaver@hrc.Org>, Andy Pratt <Apratt@kslaw.Com>, Misty Peterson <Mpeterson@kslaw.Com>, Brent Ray <Bray@kslaw.Com>, Abigail Terry <ATerry@kslaw.com>, Michael Shortnacy <MShortnacy@KSLAW.com>, Scott McCoy <Scott.Mccoy@splcenter.Org>, Diego Soto <Diego.Soto@splcenter.Org>, Jessica Stone <Jessica.Stone@splcenter.Org>, "Marshall, Margaret (USAALN)" <Margaret.Marshall@usdoj.gov>, "Williams, Renee (CRT)" <Renee.Williams3@usdoj.gov>, "Toyama, Kaitlin (CRT)" <Kaitlin.Toyama@usdoj.gov>, "Murphy, Amie (CRT)" <Amie.Murphy2@usdoj.gov>
Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- Discovery Proposals

CAUTION: External Sender.

Hi Melody,

Thank you for your note. Is there a time on Thursday or Friday when we could schedule a call to discuss some of the issues below? Any time on either day would work on our end.

Best regards,

Brian

From: Melody H. Eagan <meagan@lightfootlaw.com>

Sent: Monday, December 12, 2022 4:17 PM

To: Brian Barnes <BBarnes@cooperkirk.com>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <areinke@kslaw.com>; John Ramer <jramer@cooperkirk.com>

Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <aorr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <apratt@kslaw.com>; Misty Peterson <mpeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <mshortnacy@kslaw.com>; Scott McCoy <scott.mccoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>

Subject: Re: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- Discovery Proposals

Dear Brian and Barrett,

Following up on our call last week, I write to convey a written offer on behalf of the Private Plaintiffs and the United States (collectively, "Plaintiffs"), to address the issues related to Defendants' responses to Plaintiffs' RFPs, as well as Defendants' discovery requests seeking medical records for the minor Private Plaintiffs. I include some additional aspects relating to Defendants' responses to the RFPs not specifically discussed during the call, although I believe they are still generally within the spirit of the concepts we discussed.

Plaintiffs' RFPs: First, thank you for Barrett's November 4, 2022 offer to produce a limited subset of materials in response to Plaintiffs' RFPs. We agree to Barrett's proposal for RFPs 29 and 31. We also appreciate your willingness to search certain accounts in response to RFPs 3, 14, 15, and 16, but cannot agree to limit our requests to those listed accounts without additional information. For example, for RFPs 3 and 16, we do not have information on how constituents typically communicate or file complaints with the Attorney General's Office. If written complaints are received by the AG's Office, we believe we are entitled to copies of those communications in response to these requests. We welcome further discussion about these four RFPs.

Plaintiffs also ask that Defendants provide complete responses (with proposed limitations as noted) to:

- RFP 4: Limited to responsive materials regarding puberty blocking medications and hormone replacement therapy (including testosterone and estrogen) that Defendants may use to support their case,
- RFP 19: Limited to the claims pending in the case at this point, which are Due Process and Equal Protection,
- RFP 22,
- RFP 24: Limited to responsive materials that Defendants may use to support their case,
- RFP 28, and
- RFP 30.

Non-privileged responsive documents to these requests that are in the possession, custody or control of Defendants or their counsel should be produced now. In the case of documents received from non-party subpoenas that are

responsive to RFP 30 or the other RFPs referenced above, the parties can agree to produce the documents within an agreed time after receipt (we suggest seven days after receipt). To the extent any responsive documents are relied upon by experts but not in the possession of the Defendants or their counsel at this time, the parties shall disclose such materials in accordance with the requirements of Fed. R. Civ. P. 26(a)(2)(B). If experts are deposed, the parties agree to produce expert files a certain number of days before the deposition, such as seven days (one week). Of course, to the extent Defendants obtain any other materials responsive to these requests outside of these categories, Defendants would need to supplement their document production in a timely fashion, in accordance with the Federal Rules. We also ask that to the extent that Defendants withhold documents from production responsive to RFPs 4, 19, 22, 24, 28 and 30 based upon a claimed privilege, a privilege log be produced in accordance with Rule 26(b)(5) of the Federal Rules of Civil Procedure.

Medical Records: To resolve the State's discovery requests concerning medical records for minor plaintiffs, private plaintiffs will agree to produce the following categories of medical records:

- (1) medical records that reflect an evaluation and diagnosis of gender dysphoria for each of the minor plaintiffs;
- (2) medical records that assess the medical need for treatment of gender dysphoria for each of the minor plaintiffs; and
- (3) medical records that reflect the provision of medical treatment for gender dysphoria and ongoing monitoring and evaluation of the condition for each of the minor plaintiffs.

As to your request regarding documents relating to "co-morbidities" of gender dysphoria or purported side effects of treatments, we believe it would be beneficial to obtain concrete specifics of the conditions about which you seek medical records, which may help us reach an agreement about scope of production with certain temporal limitations.

To ensure that no irrelevant medical records are produced, private plaintiffs propose the following procedure:

- (1) For Records in Private Plaintiffs' Possession: private plaintiffs' lawyers have obtained copies of medical records for the minor plaintiffs and will produce those medical records that fall within the three categories above; and
- (2) For Additional Records: if the State wishes to obtain additional medical records for the minor plaintiffs, the State will provide the name of the medical provider to private plaintiffs' counsel who (a) will obtain copies of the medical records (through authorization or subpoena), (b) will redact any information that does not fall within the three categories above, and (c) will produce copies of the redacted medical records to the State. The State will agree not to issue subpoenas for medical records so that the parties can avoid needless motion practice.

Lastly, I have been asked to convey that the Department of Justice is open to discussing whether, in the interest of compromise and efficiency, there are specific documents from agencies other than the Department that may be produced and desires a better understanding of what Defendants are seeking.

Please let us know some days and times that work for you to discuss this proposal, as well as the items outlined in this email where further discussion/clarification is desired. We look forward to hearing from you, and I hope that we can resolve these issues without Court intervention.

Best,
Melody



Melody H. Eagan
Attorney

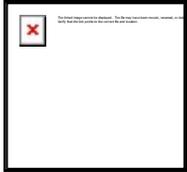


205-581-0700 main
205-581-0777 direct
205-581-0799 fax
meagan@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203



lightfootlaw.com



From: Brian Barnes <BBarnes@cooperkirk.com>

Date: Friday, December 9, 2022 at 7:13 AM

To: "Montag, Coty (CRT)" <Coty.Montag@usdoj.gov>, Melody Eagan <meagan@lightfootlaw.com>, "Bowdre, Barrett" <Barrett.Bowdre@AlabamaAG.gov>, Adam Reinke <areinke@kslaw.com>, John Ramer <jramer@cooperkirk.com>

Cc: "Cheek, Jason (USAALN)" <Jason.Cheek@usdoj.gov>, "LaCour, Edmund" <Edmund.LaCour@AlabamaAG.gov>, "Wilson, Thomas" <Thomas.Wilson@AlabamaAG.gov>, "Davis, Jim" <Jim.Davis@AlabamaAG.gov>, "Seiss, Ben" <Ben.Seiss@AlabamaAG.gov>, Christopher Mills <cmills@spero.law>, Pete Patterson <ppatterson@cooperkirk.com>, David Thompson <dthompson@cooperkirk.com>, Jeffrey Doss <jdoss@lightfootlaw.com>, "Amie A. Vague" <avague@lightfootlaw.com>, AOrr <aorr@nclrights.org>, Jennifer Levi <jlevi@glad.org>, Sarah Warbelow <sarah.warbelow@hrc.org>, Cynthia Weaver <cynthia.weaver@hrc.org>, Andy Pratt <apratt@kslaw.com>, Misty Peterson <mpeterson@kslaw.com>, Brent Ray <bray@kslaw.com>, Abigail Terry <ATerry@kslaw.com>, Michael Shortnacy <mshortnacy@kslaw.com>, Scott McCoy <scott.mccoy@splcenter.org>, Diego Soto <diego.soto@splcenter.org>, Jessica Stone <jessica.stone@splcenter.org>, "Marshall, Margaret (USAALN)" <Margaret.Marshall@usdoj.gov>, "Williams, Renee (CRT)" <Renee.Williams3@usdoj.gov>, "Toyama, Kaitlin (CRT)" <Kaitlin.Toyama@usdoj.gov>, "Murphy, Amie (CRT)" <Amie.Murphy2@usdoj.gov>

Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- ESI Protocol

CAUTION: External Sender.

Hi Everyone,

I'm writing to follow up on our call of last week on various discovery issues. The parties have been negotiating over these issues for several months now, and we think it's important to bring these negotiations to a close one way or another by the end of the year so that we can take any unresolvable disputes to the Court in a timely fashion.

In terms of Defendants' discovery obligations, we are broadly amenable to what we understood the plaintiffs to propose during our last call. That said, and as we also discussed during the call, it would be very helpful to see the proposal in writing so that we can fully assess it and work through any remaining issues.

During last week's call, we also asked whether the United States will stand by its position that it will not use document custodians outside the Department of Justice when searching for documents responsive to our requests. While we're

open to a broader discussion about custodians, we continue to think that it's critical for the United States to use custodians in agencies that actually work on the scientific and medical issues that are in dispute. To the extent the United States is unwilling to yield on this issue, we would like to know sooner rather than later so that we can tee the question up for the Court.

Finally, there is the private plaintiffs' proposal on which medical records they will produce. As with the proposal on our discovery obligations, it would be very helpful to see this proposal in writing so that we can fully assess it. But one question we have is whether the proposal would include production of materials relating to comorbidities with gender dysphoria (e.g., depression, autism, etc.). We aren't sure from last week's call whether the private plaintiffs propose to produce such materials and are hoping they can clarify that point. Relatedly, we aren't sure whether the private plaintiffs propose to produce medical records and other information that could reveal side effects of the drugs at issue in this case (e.g., bone density scans). On that point as well, clarification would be helpful.

Please respond to this note by Monday (December 12). Given the approaching holidays and the schedule in this case, we think it's critical to make headway on these issues over the next couple of weeks.

Best regards,

Brian W. Barnes
Cooper & Kirk, PLLC
(202) 220-9623

From: Montag, Coty (CRT) <Coty.Montag@usdoj.gov>

Sent: Friday, December 2, 2022 6:04 PM

To: Brian Barnes <BBarnes@cooperkirk.com>; Melody H. Eagan <meagan@lightfootlaw.com>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <areinke@kslaw.com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <aorr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <apratt@kslaw.com>; Misty Peterson <mpeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <mshortnacy@kslaw.com>; Scott McCoy <scott.mccoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; Murphy, Amie (CRT) <Amie.Murphy2@usdoj.gov>

Subject: RE: Boe v. Marshall, No. 22-184 (M.D. Ala.) -- ESI Protocol

Thanks, Brian. I am adding Amie Murphy to this email chain and removing Alyssa Lareau and the incorrect email address for Stephen Wadsworth.

Have a nice weekend.

From: Brian Barnes <BBarnes@cooperkirk.com>

Sent: Friday, December 2, 2022 5:56 PM

To: Melody H. Eagan <meagan@lightfootlaw.com>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <areinke@kslaw.com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <JCheek@usa.doj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>;

David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <aorr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <apratt@kslaw.com>; Misty Peterson <mpeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <mshortnacy@kslaw.com>; Scott McCoy <scott.mccoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com

Subject: [EXTERNAL] Boe v. Marshall, No. 22-184 (M.D. Ala.) -- ESI Protocol

Hi Everyone,

As discussed during our call earlier this afternoon, please find attached a proposed ESI protocol.

Best regards,

Brian W. Barnes
Cooper & Kirk, PLLC
(202) 220-9623

From: Brian Barnes

Sent: Monday, November 28, 2022 4:59 PM

To: Melody H. Eagan <meagan@lightfootlaw.com>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <areinke@kslaw.com>; John Ramer <jramer@cooperkirk.com>

Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>;

David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <aorr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <apratt@kslaw.com>; Misty Peterson <mpeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <mshortnacy@kslaw.com>; Scott McCoy <scott.mccoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com

Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

Hi Melody,

3.30pm Central on Friday works for us. See below for a dial-in number everyone can use at the new time.

Best regards,

Brian

Date: Friday, December 2, 2022
Time: 4:30 PM EST / 3:30 PM CT
Dial-in No.: +1 800-567-5900
Access code: 2359207

From: Melody H. Eagan <meagan@lightfootlaw.com>
Sent: Monday, November 28, 2022 4:47 PM
To: Brian Barnes <BBarnes@cooperkirk.com>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <areinke@kslaw.com>; John Ramer <jramer@cooperkirk.com>
Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <aorr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <apratt@kslaw.com>; Misty Peterson <mpeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <mshortnacy@kslaw.com>; Scott McCoy <scott.mccoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com
Subject: Re: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

Dang it, Brian, I just realized that Jeff can't do 2:00. Can you do 3:30 p.m. Friday? I would like to have Jeff on the phone, as he was involved with the last call.



Melody H. Eagan
Attorney



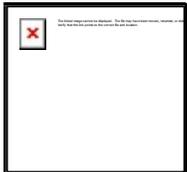
205-581-0700 main
205-581-0777 direct
205-581-0799 fax
meagan@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203



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From: Brian Barnes <BBarnes@cooperkirk.com>
Date: Monday, November 28, 2022 at 3:34 PM
To: Melody Eagan <meagan@lightfootlaw.com>, "Bowdre, Barrett" <Barrett.Bowdre@AlabamaAG.gov>, Adam Reinke <areinke@kslaw.com>, John Ramer <jramer@cooperkirk.com>
Cc: "Cheek, Jason (USAALN)" <Jason.Cheek@usdoj.gov>, "LaCour, Edmund" <Edmund.LaCour@AlabamaAG.gov>, "Wilson, Thomas" <Thomas.Wilson@AlabamaAG.gov>, "Davis, Jim"

<Jim.Davis@AlabamaAG.gov>, "Seiss, Ben" <Ben.Seiss@AlabamaAG.gov>, Christopher Mills <cmills@spero.law>, Pete Patterson <ppatterson@cooperkirk.com>, David Thompson <dthompson@cooperkirk.com>, Jeffrey Doss <jdoss@lightfootlaw.com>, "Amie A. Vague" <avague@lightfootlaw.com>, AOrr <aorr@nclrights.org>, Jennifer Levi <jlevi@glad.org>, Sarah Warbelow <sarah.warbelow@hrc.org>, Cynthia Weaver <cynthia.weaver@hrc.org>, Andy Pratt <apratt@kslaw.com>, Misty Peterson <mpeterson@kslaw.com>, Brent Ray <bray@kslaw.com>, Abigail Terry <ATerry@kslaw.com>, Michael Shortnacy <mshortnacy@kslaw.com>, Scott McCoy <scott.mccoy@splcenter.org>, Diego Soto <diego.soto@splcenter.org>, Jessica Stone <jessica.stone@splcenter.org>, "Montag, Coty (CRT)" <Coty.Montag@usdoj.gov>, "Marshall, Margaret (USAALN)" <Margaret.Marshall@usdoj.gov>, "Lareau, Alyssa (CRT)" <Alyssa.Lareau@usdoj.gov>, "Williams, Renee (CRT)" <Renee.Williams3@usdoj.gov>, "Toyama, Kaitlin (CRT)" <Kaitlin.Toyama@usdoj.gov>, "stephen.wadsworth@usdoj.com" <stephen.wadsworth@usdoj.com>
Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

CAUTION: External Sender.

Thanks, Melody. 2pm Central on Friday works for us. I'll send around a dial-in number that everyone can use at that time.

Best regards,

Brian

From: Melody H. Eagan <meagan@lightfootlaw.com>

Sent: Monday, November 28, 2022 4:31 PM

To: Brian Barnes <BBarnes@cooperkirk.com>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <areinke@kslaw.com>; John Ramer <jramer@cooperkirk.com>

Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <aorr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <apratt@kslaw.com>; Misty Peterson <mpeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <mshortnacy@kslaw.com>; Scott McCoy <scott.mccoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com

Subject: Re: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

Brian,

I hope you and your team had a nice Thanksgiving as well. After comparing our schedules, we could do Friday at 2:00 Central. Does that work?

Thanks,
Melody



Melody H. Eagan
Attorney



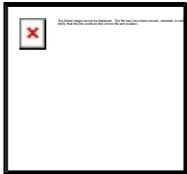
205-581-0700 main
205-581-0777 direct
205-581-0799 fax
meagan@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203



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From: Brian Barnes <BBarnes@cooperkirk.com>
Date: Monday, November 28, 2022 at 10:26 AM
To: Melody Eagan <meagan@lightfootlaw.com>, "Bowdre, Barrett" <Barrett.Bowdre@AlabamaAG.gov>, Adam Reinke <areinke@kslaw.com>, John Ramer <jramer@cooperkirk.com>
Cc: "Cheek, Jason (USAALN)" <Jason.Cheek@usdoj.gov>, "LaCour, Edmund" <Edmund.LaCour@AlabamaAG.gov>, "Wilson, Thomas" <Thomas.Wilson@AlabamaAG.gov>, "Davis, Jim" <Jim.Davis@AlabamaAG.gov>, "Seiss, Ben" <Ben.Seiss@AlabamaAG.gov>, Christopher Mills <cmills@spero.law>, Pete Patterson <ppatterson@cooperkirk.com>, David Thompson <dthompson@cooperkirk.com>, Jeffrey Doss <jdoss@lightfootlaw.com>, "Amie A. Vague" <avague@lightfootlaw.com>, AOrr <aorr@nclrights.org>, Jennifer Levi <jlevi@glad.org>, Sarah Warbelow <sarah.warbelow@hrc.org>, Cynthia Weaver <cynthia.weaver@hrc.org>, Andy Pratt <apratt@kslaw.com>, Misty Peterson <mpeterson@kslaw.com>, Brent Ray <bray@kslaw.com>, Abigail Terry <ATerry@kslaw.com>, Michael Shortnacy <mshortnacy@kslaw.com>, Scott McCoy <scott.mccoy@splcenter.org>, Diego Soto <diego.soto@splcenter.org>, Jessica Stone <jessica.stone@splcenter.org>, "Montag, Coty (CRT)" <Coty.Montag@usdoj.gov>, "Marshall, Margaret (USAALN)" <Margaret.Marshall@usdoj.gov>, "Lareau, Alyssa (CRT)" <Alyssa.Lareau@usdoj.gov>, "Williams, Renee (CRT)" <Renee.Williams3@usdoj.gov>, "Toyama, Kaitlin (CRT)" <Kaitlin.Toyama@usdoj.gov>, <stephen.wadsworth@usdoj.com> <stephen.wadsworth@usdoj.com>
Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

CAUTION: External Sender.

Hi Melody,

I hope you had a nice Thanksgiving. We're available for another call on the outstanding discovery issues any time tomorrow, Thursday morning, or any time on Friday. Please let us know when would work best on your end.

Best regards,

Brian

From: Melody H. Eagan <meagan@lightfootlaw.com>

Sent: Friday, November 18, 2022 4:42 PM

To: Brian Barnes <BBarnes@cooperkirk.com>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <areinke@kslaw.com>; John Ramer <jramer@cooperkirk.com>

Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <aorr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <apratt@kslaw.com>; Misty Peterson <mpeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <mshortnacy@kslaw.com>; Scott McCoy <scott.mccoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com

Subject: Re: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

Brian,

My apologies for the delayed response. With the holidays and folks being off (including me), next week is a problem for our team. Let's look to the following week, the week of November 28. What works for you that week? If you send us available dates, we will get with DOJ and figure out a time that works for you and the folks essential to the call.

Thanks, and have a nice Thanksgiving holiday.

Best,
Melody



Melody H. Eagan
Attorney



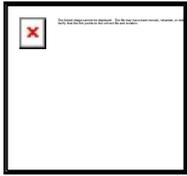
205-581-0700 main
205-581-0777 direct
205-581-0799 fax
meagan@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203



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From: Brian Barnes <BBarnes@cooperkirk.com>

Date: Friday, November 18, 2022 at 2:15 PM

To: Melody Eagan <meagan@lightfootlaw.com>, "Bowdre, Barrett" <Barrett.Bowdre@AlabamaAG.gov>, Adam Reinke <areinke@kslaw.com>, John Ramer <jramer@cooperkirk.com>

Cc: "Cheek, Jason (USAALN)" <Jason.Cheek@usdoj.gov>, "LaCour, Edmund" <Edmund.LaCour@AlabamaAG.gov>, "Wilson, Thomas" <Thomas.Wilson@AlabamaAG.gov>, "Davis, Jim" <Jim.Davis@AlabamaAG.gov>, "Seiss, Ben" <Ben.Seiss@AlabamaAG.gov>, Christopher Mills <cmills@spero.law>, Pete Patterson <ppatterson@cooperkirk.com>, David Thompson <dthompson@cooperkirk.com>, Jeffrey Doss <jdoss@lightfootlaw.com>, "Amie A. Vague" <avague@lightfootlaw.com>, AOrr <aorr@nclrights.org>, Jennifer Levi <jlevi@glad.org>, Sarah Warbelow <sarah.warbelow@hrc.org>, Cynthia Weaver <cynthia.weaver@hrc.org>, Andy Pratt <apratt@kslaw.com>, Misty Peterson <mpeterson@kslaw.com>, Brent Ray <bray@kslaw.com>, Abigail Terry <ATerry@kslaw.com>, Michael Shortnacy <mshortnacy@kslaw.com>, Scott McCoy <scott.mccoy@splcenter.org>, Diego Soto <diego.soto@splcenter.org>, Jessica Stone <jessica.stone@splcenter.org>, "Montag, Coty (CRT)" <Coty.Montag@usdoj.gov>, "Marshall, Margaret (USAALN)" <Margaret.Marshall@usdoj.gov>, "Lareau, Alyssa (CRT)" <Alyssa.Lareau@usdoj.gov>, "Williams, Renee (CRT)" <Renee.Williams3@usdoj.gov>, "Toyama, Kaitlin (CRT)" <Kaitlin.Toyama@usdoj.gov>, "stephen.wadsworth@usdoj.com" <stephen.wadsworth@usdoj.com>

Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

CAUTION: External Sender.

Hi Melody,

Just following up on the note below – is there a time Monday or Tuesday after 10.30am when we could schedule a call to talk about the path forward on discovery?

I hope you have a nice weekend.

Brian

From: Brian Barnes

Sent: Wednesday, November 16, 2022 12:43 PM

To: Melody H. Eagan <meagan@lightfootlaw.com>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <areinke@kslaw.com>; John Ramer <jramer@cooperkirk.com>

Cc: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <aorr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <apratt@kslaw.com>; Misty Peterson <mpeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <mshortnacy@kslaw.com>; Scott McCoy <scott.mccoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT)

<Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com

Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

Hi Melody,

Thanks for your note. We're fine with deferring these discovery issues until after Friday's argument. In the interest of keeping the ball rolling, can we schedule another call on discovery for early next week? Our team is available any time on Monday and any time after 10.30am Central on Tuesday. Please let me know when would be convenient on your end.

Best regards,

Brian W. Barnes
Cooper & Kirk, PLLC
(202) 220-9623

From: Melody H. Eagan <meagan@lightfootlaw.com>

Sent: Monday, November 14, 2022 5:21 PM

To: Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Adam Reinke <areinke@kslaw.com>; John Ramer <jramer@cooperkirk.com>

Cc: Brian Barnes <BBarnes@cooperkirk.com>; Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <aorr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <apratt@kslaw.com>; Misty Peterson <mpeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <mshortnacy@kslaw.com>; Scott McCoy <scott.mccoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <jessica.stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com

Subject: Re: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

Barrett,

Jim and I had a call on Thursday, to discuss some concepts to see if we can resolve the pending discovery issues. I still need to discuss with our team, and I know you do as well. In the meantime, I know folks are busy getting ready for Friday. Can we please agree to table the discovery issues until next week, after we get past the 11th Circuit argument? Jim and I discussed some ideas that I hope may resolve most of the pending issues without court intervention, but it would be helpful for us to just table everything until after we get through the oral arguments.

Good with y'all?

Thanks,
Melody



Melody H. Eagan
Attorney

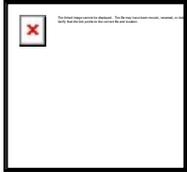


205-581-0700 main
205-581-0777 direct
205-581-0799 fax
meagan@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203



lightfootlaw.com



From: "Bowdre, Barrett" <Barrett.Bowdre@AlabamaAG.gov>

Date: Friday, November 4, 2022 at 11:21 AM

To: Adam Reinke <areinke@kslaw.com>, John Ramer <jramer@cooperkirk.com>, Melody Eagan <meagan@lightfootlaw.com>

Cc: Brian Barnes <bbarnes@cooperkirk.com>, "Cheek, Jason (USAALN)" <Jason.Cheek@usdoj.gov>, "LaCour, Edmund" <Edmund.LaCour@AlabamaAG.gov>, "Wilson, Thomas" <Thomas.Wilson@AlabamaAG.gov>, "Davis, Jim" <Jim.Davis@AlabamaAG.gov>, "Seiss, Ben" <Ben.Seiss@AlabamaAG.gov>, Christopher Mills <cmills@spero.law>, Pete Patterson <ppatterson@cooperkirk.com>, David Thompson <dthompson@cooperkirk.com>, Jeffrey Doss <jdoss@lightfootlaw.com>, "Amie A. Vague" <avague@lightfootlaw.com>, AOrr <aorr@nclrights.org>, Jennifer Levi <jlevi@glad.org>, Sarah Warbelow <sarah.warbelow@hrc.org>, Cynthia Weaver <cynthia.weaver@hrc.org>, Andy Pratt <apratt@kslaw.com>, Misty Peterson <mpeterson@kslaw.com>, Brent Ray <bray@kslaw.com>, Abigail Terry <ATerry@kslaw.com>, Michael Shortnacy <mshortnacy@kslaw.com>, Scott McCoy <scott.mccoy@splcenter.org>, Diego Soto <diego.soto@splcenter.org>, Jessica Stone <jessica.stone@splcenter.org>, "Montag, Coty (CRT)" <Coty.Montag@usdoj.gov>, "Marshall, Margaret (USAALN)" <Margaret.Marshall@usdoj.gov>, "Lareau, Alyssa (CRT)" <Alyssa.Lareau@usdoj.gov>, "Williams, Renee (CRT)" <Renee.Williams3@usdoj.gov>, "Toyama, Kaitlin (CRT)" <Kaitlin.Toyama@usdoj.gov>, <stephen.wadsworth@usdoj.com> <stephen.wadsworth@usdoj.com>

Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

CAUTION: External Sender.

Counsel,

Thank you for taking the time to speak with us last week. We are writing follow up about a few loose ends from the call.

1. First, we had discussed the possibility of reaching an agreement on the production of medical records if Plaintiffs agreed that they are arguing only that the challenged provisions are facially unconstitutional and are not, in contrast, arguing that the Act is unconstitutional as applied to Plaintiffs. Defendants agree as a general matter assuming that we can agree on a few specifics. First, the parties agree that they will submit a joint filing (whether it's labeled a stipulation, notice, or something else) to notify the district court that Plaintiffs' challenge is limited to a facial challenge and that Plaintiffs are not bringing an as-applied challenge and waive any right to as-applied relief. Second, Plaintiffs agree that they will produce evidence sufficient to establish standing to challenge the Act. And third, Plaintiffs agree that they will not go into their medical history on summary

judgment or at trial since that history would be irrelevant to the facial challenge and it would be prejudicial for Plaintiffs to do so if Defendants were not permitted discovery into the issue.

2. Second, we had discussed Defendants' objection to Plaintiffs' first set of RFPs—that the requests were disproportionate on their face because they were highly unlikely to lead to relevant, non-privileged documents. Plaintiffs asked if Defendants would reconsider their position with respect to any of the RFPs. Defendants have considered Plaintiffs' request and, in the hopes of reaching a compromise, are able as part of a global compromise to offer to produce in response to the following RFPs on the following grounds:
 - a. RFP 3: Defendants agree to produce responsive, non-privileged documents located after a search of the Attorney General's Office's constituent affairs email account.
 - b. RFP 14: Defendants agree to produce responsive, non-privileged documents located after a search of the Attorney General's Office's published opinions and press releases.
 - c. RFP 15: Defendants agree to produce responsive, non-privileged documents located after a search of the Attorney General's Office's published opinions and press releases.
 - d. RFP 16: Defendants agree to produce responsive, non-privileged documents located after a search of the Attorney General's Office's constituent affairs email account.
 - e. RFP 17: Defendants represent that no such documents exist because there was no contemplated or attempted enforcement by any of the Defendants.
 - f. RFP 29: Defendants agree to produce the documents listed in our initial disclosures.
 - g. RFP 31: Defendants have already agreed to produce responsive, non-privileged documents.

We look forward to hearing your thoughts regarding both the proposed agreement in point (1) and our proposed production in point (2).

Thanks,
Barrett

Barrett Bowdre
Deputy Solicitor General
Office of the Attorney General
State of Alabama
501 Washington Avenue
Post Office Box 300152
Montgomery, AL 36130
334.353.8892 Office
334.353.8400 Fax

From: Adam Reinke <AREinke@KSLAW.com>

Sent: Monday, October 24, 2022 10:45 AM

To: John Ramer <jramer@cooperkirk.com>; Melody Egan <MEagan@lightfootlaw.com>

Cc: Brian Barnes <BBarnes@cooperkirk.com>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <JDoss@lightfootlaw.com>; Amie Vague <AVague@lightfootlaw.com>;

AOrr <AOrr@nclrights.org>; Jennifer Levi <JLevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <APratt@KSLAW.com>; Misty Peterson <MPeterson@KSLAW.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <MShortnacy@KSLAW.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <Jessica.Stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com
Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Thanks, John. That works both for private plaintiffs and DOJ. I will send a calendar invite with dial-in information and a link to a Teams meeting.

Best,
Adam

Adam Reinke
Senior Associate

T: +1 404 572 2774 | E: areinke@kslaw.com | [Bio](#) | [vCard](#)

King & Spalding LLP
1180 Peachtree Street, NE
Suite 1600
Atlanta, GA 30309



kslaw.com

From: John Ramer <jramer@cooperkirk.com>
Sent: Sunday, October 23, 2022 6:36 PM
To: Adam Reinke <AREinke@KSLAW.com>; Melody Egan <MEagan@lightfootlaw.com>
Cc: Brian Barnes <BBarnes@cooperkirk.com>; Bowdre, Barrett <Barrett.Bowdre@alabamaag.gov>; Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@alabamaag.gov>; Wilson, Thomas <Thomas.Wilson@alabamaag.gov>; Davis, Jim <Jim.Davis@alabamaag.gov>; Seiss, Ben <Ben.Seiss@alabamaag.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <JDoss@lightfootlaw.com>; Amie Vague <AVague@lightfootlaw.com>; AOrr <AOrr@nclrights.org>; Jennifer Levi <JLevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <APratt@KSLAW.com>; Misty Peterson <MPeterson@KSLAW.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <MShortnacy@KSLAW.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <Jessica.Stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com
Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

CAUTION: MAIL FROM OUTSIDE THE FIRM

Adam,

Would 5:20 eastern/4:20 central on Tuesday work on your end? As we mentioned before, we're just trying to navigate trial hours through the end of this week. Please let us know if this time would work for plaintiffs.

All the best,

John

John D. Ramer
COOPER & KIRK, PLLC
1523 New Hampshire Ave., NW
Washington, D.C. 20036
202.220.9621

From: Adam Reinke <AReinke@KSLAW.com>

Sent: Thursday, October 20, 2022 5:31 PM

To: Melody Egan <MEagan@lightfootlaw.com>; John Ramer <jramer@cooperkirk.com>

Cc: Brian Barnes <BBarnes@cooperkirk.com>; Bowdre, Barrett <Barrett.Bowdre@alabamaag.gov>; Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; LaCour, Edmund <Edmund.LaCour@alabamaag.gov>; Wilson, Thomas <Thomas.Wilson@alabamaag.gov>; Davis, Jim <Jim.Davis@alabamaag.gov>; Seiss, Ben <Ben.Seiss@alabamaag.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <JDoss@lightfootlaw.com>; Amie Vague <AVague@lightfootlaw.com>; AOrr <AORr@nclrights.org>; Jennifer Levi <JLevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <APratt@KSLAW.com>; Misty Peterson <MPeterson@KSLAW.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <MShortnacy@KSLAW.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <Jessica.Stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com

Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

John:

Can you please let us know some times on Monday or Tuesday when Defendants are available for our next meet and confer call? I will then coordinate on our end and with DOJ to find a time that works for everyone who needs to be on.

Thanks,
Adam

Adam Reinke
Senior Associate

T: +1 404 572 2774 | E: areinke@kslaw.com | [Bio](#) | [vCard](#)

King & Spalding LLP
1180 Peachtree Street, NE
Suite 1600
Atlanta, GA 30309



kslaw.com

From: Melody H. Eagan <meagan@lightfootlaw.com>

Sent: Wednesday, October 19, 2022 2:17 PM

To: John Ramer <jramer@cooperkirk.com>

Cc: Brian Barnes <BBarnes@cooperkirk.com>; Bowdre, Barrett <Barrett.Bowdre@alabamaag.gov>; Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; Adam Reinke <AREinke@KSLAW.com>; LaCour, Edmund <Edmund.LaCour@alabamaag.gov>; Wilson, Thomas <Thomas.Wilson@alabamaag.gov>; Davis, Jim <Jim.Davis@alabamaag.gov>; Seiss, Ben <Ben.Seiss@alabamaag.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <JDoss@lightfootlaw.com>; Amie Vague <AVague@lightfootlaw.com>; AOrr <AOrr@nclrights.org>; Jennifer Levi <JLevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <APratt@KSLAW.com>; Misty Peterson <MPeterson@KSLAW.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <MShortnacy@KSLAW.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <Jessica.Stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com

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CAUTION: MAIL FROM OUTSIDE THE FIRM

I stand corrected. I misunderstood and thought DOJ was available, but they are not. I am headed to a retreat and will be off the grid pretty much until Monday afternoon. I will let others handle rescheduling, and thank you.

Sent from my iPhone

Melody H. Eagan
Attorney



205-581-0700 main
205-581-0777 direct
205-581-0799 fax
meagan@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203



lightfootlaw.com



On Oct 19, 2022, at 1:14 PM, Melody H. Eagan <meagan@lightfootlaw.com> wrote:

Yes, that is fine. King and Spalding, can you please circulate a call in number/link?

Sent from my iPhone



Melody H. Eagan
Attorney



205-581-0700 main
205-581-0777 direct
205-581-0799 fax
meagan@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203



lightfootlaw.com



On Oct 19, 2022, at 1:12 PM, John Ramer <jramer@cooperkirk.com> wrote:

CAUTION: External Sender.

Melody,

Thank you for accommodating the later time. Just to clarify, you are saying that 5:30 central/6:30 eastern on Friday works for plaintiffs, correct? Also, we'd be grateful if you could send dial-in information, but we will have to dial in by phone rather than videoconference since we're not currently working out of our office due to trial.

All the best,

John

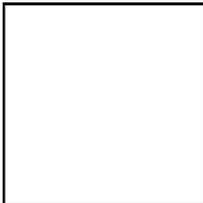
John D. Ramer
COOPER & KIRK, PLLC
1523 New Hampshire Ave., NW
Washington, D.C. 20036
202.220.9621

From: Melody H. Eagan <meagan@lightfootlaw.com>
Sent: Tuesday, October 18, 2022 1:15 PM
To: Brian Barnes <BBarnes@cooperkirk.com>; John Ramer <jramer@cooperkirk.com>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>
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Subject: Re: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

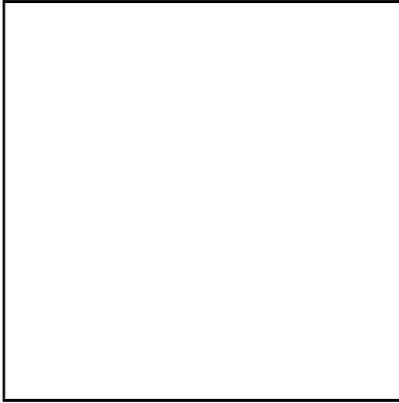
Brian,

That times works for plaintiffs and DOJ. Do you want to circulate a calendar invite/Zoom link, or should we?

Thanks,
Melody

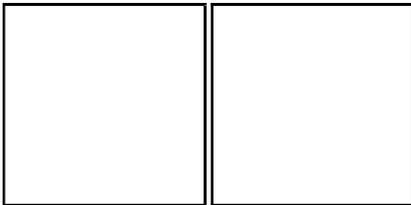


Melody H. Eagan
Attorney



205-581-0700 main
205-581-0777 direct
205-581-0799 fax
meagan@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203



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From: Brian Barnes <BBarnes@cooperkirk.com>
Date: Monday, October 17, 2022 at 8:32 PM
To: Melody Eagan <meagan@lightfootlaw.com>, John Ramer <jramer@cooperkirk.com>, "Bowdre, Barrett" <Barrett.Bowdre@AlabamaAG.gov>, "Cheek, Jason (USAALN)" <Jason.Cheek@usdoj.gov>
Cc: Adam Reinke <Areinke@kslaw.Com>, "LaCour, Edmund" <Edmund.LaCour@AlabamaAG.gov>, "Wilson, Thomas" <Thomas.Wilson@AlabamaAG.gov>, "Davis, Jim" <Jim.Davis@AlabamaAG.gov>, "Seiss, Ben" <Ben.Seiss@AlabamaAG.gov>, Christopher Mills <cmills@spero.law>, Pete Patterson <ppatterson@cooperkirk.com>, David Thompson <dthompson@cooperkirk.com>, Jeffrey Doss <jdoss@lightfootlaw.com>, "Amie A. Vague" <avague@lightfootlaw.com>, AOrr <Aorr@nclrights.Org>, Jennifer Levi <Jlevi@glad.Org>, Sarah Warbelow <Sarah.Warbelow@hrc.Org>, Cynthia Weaver <cynthia.Weaver@hrc.Org>, Andy Pratt <Apratt@kslaw.Com>, Misty Peterson <Mpeterson@kslaw.Com>, Brent Ray <Bray@kslaw.Com>, Abigail Terry <ATerry@kslaw.com>, Michael Shortnacy <Mshortnacy@kslaw.Com>, Scott McCoy <Scott.Mccoy@splcenter.Org>, Diego Soto <Diego.Soto@splcenter.Org>, Jessica Stone <Jessica.Stone@splcenter.Org>,

"Montag, Coty (CRT)" <Coty.Montag@usdoj.gov>, "Marshall, Margaret (USAALN)" <Margaret.Marshall@usdoj.gov>, "Lareau, Alyssa (CRT)" <Alyssa.Lareau@usdoj.gov>, "Williams, Renee (CRT)" <Renee.Williams3@usdoj.gov>, "Toyama, Kaitlin (CRT)" <Kaitlin.Toyama@usdoj.gov>, "stephen.wadsworth@usdoj.com" <stephen.wadsworth@usdoj.com>

Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

CAUTION: External Sender.

Melody,

Thank you very much for your message. Later this week works, but we are in the midst of a two-week trial that began today. Would you be able to speak later in the day on either Thursday or Friday? 5:30 central/6:30 eastern should give us enough time to get out of trial for the day and be ready for the call. Please let me know if either time would work for plaintiffs.

Best regards,

Brian

From: Melody H. Eagan <meagan@lightfootlaw.com>

Sent: Friday, October 14, 2022 2:44 PM

To: John Ramer <jramer@cooperkirk.com>; Brian Barnes <BBarnes@cooperkirk.com>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>

Cc: Adam Reinke <Areinke@kslaw.Com>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <Aorr@nclrights.Org>; Jennifer Levi <jlevi@glad.Org>; Sarah Warbelow <Sarah.Warbelow@hrc.Org>; Cynthia Weaver <cynthia.Weaver@hrc.Org>; Andy Pratt <Apratt@kslaw.Com>; Misty Peterson <Mpeterson@kslaw.Com>; Brent Ray <Bray@kslaw.Com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <Mshortnacy@kslaw.Com>; Scott McCoy <Scott.Mccoy@splcenter.Org>; Diego Soto <Diego.Soto@splcenter.Org>; Jessica Stone <Jessica.Stone@splcenter.Org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com

Subject: Re: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

Dear John and Brian,

Would Friday, October 21 at 3:00 p.m. Central work for a follow up call? I understand that time works for counsel for Private plaintiffs and the United States. I also am attaching a letter, following up on some of the issues with Defendants' Responses to Plaintiffs' Request for Production, for consideration before the call.

Regards,
Melody Eagan

Melody H. Eagan
Attorney

205-581-0700 main The Clark Building
205-581-0777 direct 400 20th Street North
205-581-0799 fax Birmingham, AL 35203
meagan@lightfootlaw.com

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From: John Ramer <jramer@cooperkirk.com>
Date: Thursday, October 13, 2022 at 11:27 AM
To: Brian Barnes <BBarnes@cooperkirk.com>, "Bowdre, Barrett" <Barrett.Bowdre@AlabamaAG.gov>, "Cheek, Jason (USAALN)" <Jason.Cheek@usdoj.gov>, Melody Eagan <meagan@lightfootlaw.com>
Cc: Adam Reinke <Areinke@kslaw.Com>, "LaCour, Edmund" <Edmund.LaCour@AlabamaAG.gov>, "Wilson, Thomas" <Thomas.Wilson@AlabamaAG.gov>, "Davis, Jim" <Jim.Davis@AlabamaAG.gov>, "Seiss, Ben" <Ben.Seiss@AlabamaAG.gov>, Christopher Mills <cmills@spero.law>, Pete Patterson <ppatterson@cooperkirk.com>, David Thompson <dthompson@cooperkirk.com>, Jeffrey Doss <jdoss@lightfootlaw.com>, "Amie A. Vague" <avague@lightfootlaw.com>, AOrr <Aorr@nclrights.Org>, Jennifer Levi <jlevi@glad.Org>, Sarah Warbelow <Sarah.Warbelow@hrc.Org>, Cynthia Weaver <cynthia.Weaver@hrc.Org>, Andy Pratt <Apratt@kslaw.Com>, Misty Peterson <Mpeterson@kslaw.Com>, Brent Ray <Bray@kslaw.Com>, Abigail Terry <ATerry@kslaw.com>, Michael Shortnacy <Mshortnacy@kslaw.Com>, Scott McCoy <Scott.Mccoy@splcenter.Org>, Diego Soto <Diego.Soto@splcenter.Org>, Jessica Stone <Jessica.Stone@splcenter.Org>, "Montag, Coty (CRT)" <Coty.Montag@usdoj.gov>, "Marshall, Margaret (USAALN)" <Margaret.Marshall@usdoj.gov>, "Lareau, Alyssa (CRT)" <Alyssa.Lareau@usdoj.gov>, "Williams, Renee (CRT)" <Renee.Williams3@usdoj.gov>, "Toyama, Kaitlin (CRT)" <Kaitlin.Toyama@usdoj.gov>, "stephen.wadsworth@usdoj.com" <stephen.wadsworth@usdoj.com>
Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

CAUTION: External Sender.

All,

Defendants just wanted to follow up on the email below to try to find a time for our next call. Please let us know if there are times late next week that would work on your end. Thank you very much.

All the best,

John

John D. Ramer
Cooper & Kirk, PLLC
(202) 220-9621

From: Brian Barnes <BBarnes@cooperkirk.com>
Sent: Tuesday, September 20, 2022 8:41 PM
To: Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; Melody H. Eagan <meagan@lightfootlaw.com>
Cc: Adam Reinke <AReinke@kslaw.com>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Pete Patterson <ppatterson@cooperkirk.com>; John Ramer <jramer@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <AORr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <APratt@kslaw.com>; Misty Peterson <MPeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <MShortnacy@kslaw.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <Jessica.Stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com
Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

All,

Thanks for taking the time last week to meet and confer on the parties' respective RFPs. I'm writing to follow up on a few things that we discussed and to propose a time for our next call.

1. First, with respect to Plaintiffs' RFP 31 that we had inadvertently overlooked, that request seeks "[a]ll legislative history of the subject legislation." Defendants do not possess any legislative history material that is not publicly available, and even the documents that are publicly available are limited, such as the Vimeo recordings of floor debate that the federal government cited in its preliminary-injunction briefing ([House Part 1 - 4/7/2022, 9:32:05 AM \(vimeo.com\)](https://www.vimeo.com/684848484)) and [House Judiciary Committee - 3/2/2022, 1:34:28 PM \(vimeo.com\)](https://www.vimeo.com/684848484)). Apart from those, the only other material Defendants are aware of is the Vimeo

recording the Walker plaintiffs cited in their complaint ([Committee Recording - 12 pm - 2/9/2022, 12:00:37 PM \(vimeo.com\)](#)). As you likely know, the Alabama Legislature does not record and compile legislative history like Congress does.

2. We had discussed Plaintiffs' RFP 15, which seeks "[a]ll documents concerning any guidance to medical providers concerning the subject legislation." I can represent that Defendants do not have any documents responsive to this RFP.
3. You had asked about Defendants' General Objection 4, which states that Defendants object to producing documents that are publicly available on the ground that it would be unduly burdensome to produce such documents since Plaintiffs can easily attain such documents in another manner. Specifically, you asked whether this objection would permit Defendants to refuse to produce something and then surprise Plaintiffs with it at trial because it was "publicly available" somewhere on the internet. The purpose of the objection is not to support that type of gamesmanship—which Defendants have no intention of doing. The point of this objection, which Defendants stand on, is that it would be unduly burdensome for someone at Defendants' offices to catalog all responsive publicly available documents that are easily attainable by Plaintiffs.
4. We discussed the topic of a privilege log. Defendants stand on the objection that Plaintiffs' requests seek documents that would be in the heartland of attorney-client privilege—such as legal advice given to other entities within the Alabama government. Defendants are the State's lawyers, and so these discovery requests are the equivalent of seeking DOJ's communications in a legal challenge to a federal statute or agency regulation, which would be both privileged and irrelevant. The requests also seek documents that would be subject to the work-product doctrine. Given the range of material that would be privileged and the unlikelihood that these Defendants (who, in reality, are defendants here simply due to the legal fiction of *Ex parte Young*) would have anything relevant to Plaintiffs' claims, Defendants stand on the objection that the process of gathering documents and communications from the State's lawyers simply for the purpose of logging them would be unduly burdensome. *See, e.g., Dell Inc. v. DeCosta*, 233 F. Supp. 3d 1, 3-4 (D.D.C. 2017) (holding that discovery requests "would impose an undue and disproportionate burden on Defendants to prepare a privilege log of the thousands of documents that Defendants could reasonably be [holding] but most of which would be protected by the attorney-client privilege or attorney work-product doctrine").
5. Finally, in terms of scheduling another meet and confer, we are available any time on Thursday afternoon. If that won't work for Plaintiffs, please let us know some alternative times that would be better.

Best regards,

Brian W. Barnes
Cooper & Kirk, PLLC
(202) 220-9623

From: Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>

Sent: Thursday, September 8, 2022 2:18 PM

To: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; Melody H. Eagan

<meagan@lightfootlaw.com>

Cc: Adam Reinke <AREinke@kslaw.com>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; Brian Barnes <BBarnes@cooperkirk.com>; Pete Patterson <ppatterson@cooperkirk.com>; John Ramer <jramer@cooperkirk.com>; David Thompson <dthompson@cooperkirk.com>; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <AORr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <APratt@kslaw.com>; Misty Peterson <MPeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <MShortnacy@kslaw.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <Jessica.Stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com
Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

Thanks Jason. Let's aim for **3pm Tuesday, 9/13**, if that still works.

Here is call-in information:

1-888-822-7517

When prompted, enter the access code—836372—followed by #.

Look forward to speaking with you Tuesday.

Thanks,
Barrett

Barrett Bowdre
Deputy Solicitor General
Office of the Attorney General
State of Alabama
501 Washington Avenue
Post Office Box 300152
Montgomery, AL 36130
334.353.8892 Office
334.353.8400 Fax

From: Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>

Sent: Wednesday, September 7, 2022 2:34 PM

To: Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Melody H. Eagan <meagan@lightfootlaw.com>

Cc: Adam Reinke <AREinke@kslaw.com>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; bbarnes@cooperkirk.com; ppatterson@cooperkirk.com; jramer@cooperkirk.com;

dthompson@cooperkirk.com; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <AOr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <APratt@kslaw.com>; Misty Peterson <MPeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <MShortnacy@kslaw.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <Jessica.Stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com
Subject: RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

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Barrett,

Apologies for the delayed response. We have spoken to counsel for Private Plaintiffs and we all have availability during the times below:

Tuesday, September 13: 10-12 CT or 3-5 CT
Wednesday, September 14: after 2:15 CT

Thanks,
Jason

.....
Jason R. Cheek
Deputy Chief, Civil Division
Assistant United States Attorney
Northern District of Alabama
(205) 244-2104

From: Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>
Sent: Friday, September 2, 2022 4:26 PM
To: Melody H. Eagan <meagan@lightfootlaw.com>
Cc: Adam Reinke <AReinke@kslaw.com>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; bbarnes@cooperkirk.com; ppatterson@cooperkirk.com; jramer@cooperkirk.com; dthompson@cooperkirk.com; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <AOr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <APratt@kslaw.com>; Misty Peterson <MPeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <MShortnacy@kslaw.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <Jessica.Stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Cheek,

Jason (USAALN) <JCheek@usa.doj.gov>; Marshall, Margaret (USAALN) <mmarshall2@usa.doj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com
Subject: [EXTERNAL] RE: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

Counsel,

Please find attached Defendants' Responses and Objections to Plaintiffs' First Requests for Production.

After you have a chance to review, we think it makes sense to start the meet-and-confer process to discuss your objections to our RFPs and vice versa (as needed). We are available for a phone call next Thursday afternoon (9/8). If that doesn't work, please let us know some times the following week that would.

Thanks, and have a good weekend.

Barrett

Barrett Bowdre
Deputy Solicitor General
Office of the Attorney General
State of Alabama
501 Washington Avenue
Post Office Box 300152
Montgomery, AL 36130
334.353.8892 Office
334.353.8400 Fax

From: Melody H. Eagan <meagan@lightfootlaw.com>
Sent: Wednesday, August 24, 2022 7:49 PM
To: Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>
Cc: Adam Reinke <AReinke@kslaw.com>; LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; bbarnes@cooperkirk.com; ppatterson@cooperkirk.com; jramer@cooperkirk.com; dthompson@cooperkirk.com; Jeffrey P. Doss <jdoss@lightfootlaw.com>; Amie A. Vague <avague@lightfootlaw.com>; AOrr <AOrr@nclrights.org>; Jennifer Levi <jlevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <APratt@kslaw.com>; Misty Peterson <MPeterson@kslaw.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <MShortnacy@kslaw.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <Jessica.Stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com

Subject: Re: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

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Barrett,

That is fine.

Best,
Melody

Sent from my iPhone

Melody H. Eagan
Attorney

205-581-0700 main
205-581-0777 direct
205-581-0799 fax
meagan@lightfootlaw.com

The Clark Building
400 20th Street North
Birmingham, AL 35203

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On Aug 24, 2022, at 7:32 PM, Bowdre, Barrett
<Barrett.Bowdre@alabamaag.gov> wrote:

CAUTION: External Sender.

Counsel,

Defendants request an additional seven days (to September 2) to serve our written objections and responses to the RFPs. Please let me know if that is agreeable.

Thanks,
Barrett

Barrett Bowdre
Deputy Solicitor General
Office of the Attorney General
State of Alabama
501 Washington Avenue
Post Office Box 300152
Montgomery, AL 36130
334.353.8892 Office

334.353.8400 Fax

From: Adam Reinke <AReinke@KSLAW.com>
Sent: Wednesday, July 27, 2022 7:11 PM
To: LaCour, Edmund <Edmund.LaCour@AlabamaAG.gov>; Bowdre, Barrett <Barrett.Bowdre@AlabamaAG.gov>; Wilson, Thomas <Thomas.Wilson@AlabamaAG.gov>; Davis, Jim <Jim.Davis@AlabamaAG.gov>; Seiss, Ben <Ben.Seiss@AlabamaAG.gov>; Christopher Mills <cmills@spero.law>; bbarnes@cooperkirk.com; ppatterson@cooperkirk.com; jramer@cooperkirk.com; dthompson@cooperkirk.com
Cc: Melody Egan <MEagan@lightfootlaw.com>; Jeffrey P. Doss <JDoss@lightfootlaw.com>; Amie Vague <AVague@lightfootlaw.com>; AOrr <AORr@nclrights.org>; Jennifer Levi <JLevi@glad.org>; Sarah Warbelow <sarah.warbelow@hrc.org>; Cynthia Weaver <cynthia.weaver@hrc.org>; Andy Pratt <APratt@KSLAW.com>; Misty Peterson <MPeterson@KSLAW.com>; Brent Ray <bray@kslaw.com>; Abigail Terry <ATerry@kslaw.com>; Michael Shortnacy <MShortnacy@KSLAW.com>; Scott McCoy <Scott.McCoy@splcenter.org>; Diego Soto <diego.soto@splcenter.org>; Jessica Stone <Jessica.Stone@splcenter.org>; Montag, Coty (CRT) <Coty.Montag@usdoj.gov>; Cheek, Jason (USAALN) <Jason.Cheek@usdoj.gov>; Marshall, Margaret (USAALN) <Margaret.Marshall@usdoj.gov>; Lareau, Alyssa (CRT) <Alyssa.Lareau@usdoj.gov>; Williams, Renee (CRT) <Renee.Williams3@usdoj.gov>; Toyama, Kaitlin (CRT) <Kaitlin.Toyama@usdoj.gov>; stephen.wadsworth@usdoj.com
Subject: Eknes-Tucker, et al. v. Marshall, et al. - No. 2:22-cv-00184-LCB-CWB (M.D. Ala.)

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Counsel:

Pursuant to the parties' agreement to e-mail service of discovery, attached please find Plaintiffs' First Set of Requests for Production to Defendants in the above-captioned matter.

Adam Reinke
Senior Associate

T: +1 404 572 2774 | E: areinke@kslaw.com | [Bio](#) | [vCard](#)

King & Spalding LLP
1180 Peachtree Street, NE
Suite 1600
Atlanta, GA 30309

kslaw.com

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

Brianna Boe, <i>et al.</i> ,)	
<i>Plaintiffs,</i>)	
)	
United States of America,)	
<i>Intervenor Plaintiff,</i>)	
)	
v.)	Civil Action No. 2:22-cv-184-LCB
)	
Hon. Steve Marshall, in his official)	
capacity as Attorney General,)	
of the State of Alabama, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**[PROPOSED] ORDER GRANTING DEFENDANTS’ MOTION
TO COMPEL PRODUCTION OF
PLAINTIFFS’ MEDICAL RECORDS (DOC. __)**

Upon consideration of Defendants’ motion to compel production of Plaintiffs’ medical records (Doc. __), it is hereby ORDERED that the motion is GRANTED and Plaintiffs are ORDERED to provide responsive documents to Defendants’ First Requests for Production 5-9, including all mental health records. The objections stated by Plaintiffs are OVERRULED.

Dated: _____

BY THE COURT:

LILES C. BURKE
UNITED STATES DISTRICT JUDGE