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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA

14 **OUR WATCH WITH TIM THOMPSON, a**
California Non-Profit Organization,

15 Plaintiff,

16 v.

18 **ROB BONTA, the Attorney General of**
California,

19 Defendant.

Case No. 2:23-cv-00422-DAD-DB

**DEFENDANT’S MEMORANDUM OF
 POINTS AND AUTHORITIES IN
 OPPOSITION TO PLAINTIFF’S
 MOTION FOR A PRELIMINARY
 INJUNCTION**

Date: June 20, 2023
 Time: 1:30 p.m.
 Dept: Courtroom 4
 Judge: Hon. Dale A. Drozd
 Date Filed: 4/13/2023

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INTRODUCTION

Several states have recently imposed civil and criminal liability on anyone who allows a minor to obtain gender-affirming health care. Doctors, parents, and transgender youth can face investigations, felony charges, prison time, and exorbitant fines for seeking medical treatment based on well-accepted standards of care. In that context, the California Legislature enacted Senate Bill (SB) 107. *See* S.B. 107, 2021-2022 Reg. Sess. (Cal. 2022) (SB 107). SB 107 protects families who come to California to obtain gender-affirming health care, as well as doctors and staff providing such care which is legal in California and often lifesaving.

Plaintiff Our Watch with Tim Thompson (Plaintiff) seeks to enjoin SB 107 because that law purportedly allows teenagers to receive gender-affirming health care in California without their parents’ consent. But Plaintiff cannot establish any—let alone all—of the requirements for obtaining that extraordinary remedy. First, Plaintiff is unlikely to succeed on the merits. Plaintiff lacks Article III standing because SB 107 does not impede any of Plaintiff’s organizational activities or functions. And Plaintiff lacks prudential standing to assert third party claims on behalf of out-of-state parents and other states. Plaintiff’s constitutional claims fail on the merits because SB 107 does not alter existing parental consent laws in California, modify the ability of parents to access their children’s medical records, supplant the “home state” jurisdiction of any other state, or allow California courts to ignore other states’ custody determinations. Second, Plaintiff’s vague claims about diverting resources—which are not supported by a single affidavit—are wholly insufficient to demonstrate irreparable harm.

Finally, the equities and public interest strongly favor denying the injunction. California’s elected representatives enacted SB 107 to ensure that transgender youth and their families can safely obtain medically necessary health care in our state without fear of repercussion. Protecting transgender youth, their families, and their medical providers is manifestly in the public interest. The Court should deny the motion for a preliminary injunction.

1 **FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. SB 107 Provides Legal Safeguards for Transgender Minors and Their**
3 **Parents Seeking Gender-Affirming Care in California**

4 The California Legislature passed SB 107 against a national backdrop of proliferating state
5 actions targeting transgender youth and their families and doctors. It enacts various safeguards to
6 protect California residents, providers, and people traveling to our state against the enforcement
7 of other states’ laws that penalize individuals for obtaining gender-affirming care that is legal in
8 California. *See, e.g.*, SB 107 (Wiener) Sen. Jud. Com. Analysis, at 11 (Aug. 29, 2022) (discussing
9 “regressive transphobic laws and executive orders” from other states which put “parents and
10 doctors in the position of risking sentences of up to ten years in prison for simply getting their
11 child the medical care they need”); *see also* SB 107 (Wiener) Assembly Jud. Com. Analysis at 1,
12 6-7 (June 5, 2022). SB 107’s protections operate in three main ways by: (1) barring compliance
13 with foreign subpoenas that are based on other states’ laws penalizing the provision of gender-
14 affirming care; (2) clarifying situations when California courts retain jurisdiction over family law
15 matters; and (3) limiting state law enforcement assistance with out-of-state criminal actions
16 involving gender-affirming care.¹

17 **1. SB 107 bars compliance with foreign subpoenas that are based on**
18 **out-of-state laws penalizing the provision of gender-affirming care**

19 SB 107 limits the ability of litigants in other states to obtain civil discovery from
20 California entities to prosecute an out-of-state action that would penalize an individual for
21 obtaining (or helping their child or patient obtain) gender-affirming health care and gender-
22 affirming mental health care in California. SB 107 §§ 1-3.5.² Section 1 states that:

23 ¹ For ease of reference, this brief generally refers to the various sections of SB 107 in
24 shorthand and does not always note the codes that were amended or added. Those sections added
25 or amended other statutory provisions as follows. Cal. S.B. 107 §§ 1 (adding Cal. Civ. Code
26 § 56.109); 2 (amending Cal. Code Civ. Proc. § 2029.300); 2.5 (amending Cal. Code Civ. Proc.
27 § 2029.300); 3 (amending Cal. Code Civ. Proc. § 2029.350); 3.5 (amending Cal. Code Civ. Proc.
28 § 2029.350); 4 (amending Cal. Fam. Code § 3421); 5 (amending Cal. Fam. Code § 3424); 6
(amending Cal. Fam. Code § 3427); 7 (amending Cal. Fam. Code § 3428); 8 (amending Cal. Fam.
Code § 3453.5); 9 (adding Cal. Pen. Code § 819); & 10 (amending Cal. Pen. Code § 1326).

² SB 107 adopts the definitions of “gender-affirming health care” and “gender-affirming
mental health care” found in California Welfare & Institutions Code section 16010.2. Gender-

1 [A] provider of health care, health care service plan, or contractor shall not release medical
2 information related to a person or entity allowing a child to receive gender-affirming health
3 care or gender-affirming mental health care in response to any civil action, including a
foreign subpoena, based on another state’s law that authorizes a person to bring a civil
action against a person or entity [permitting such care].

4 SB 107 § 1. Section 1 also provides that the same entities cannot release gender-affirming health
5 care information to people who are authorized to receive it when “the information is being
6 requested pursuant to another state’s law that authorizes a person to bring a civil action against a
7 person or entity” permitting such care. *Id.* Sections 2 and 2.5 similarly prohibit a Superior Court
8 clerk from issuing a domestic subpoena in response to a foreign subpoena that “is based on a
9 violation of another state’s laws that interfere with a person’s right to allow a child to receive
10 gender-affirming health care.” SB 107 §§ 2, 2.5. Sections 3 and 3.5 impose similar limitations on
11 California attorneys, prohibiting them from issuing subpoenas pursuant to foreign subpoenas
12 based on out-of-state laws that interfere with providing gender-affirming care. SB 107 §§ 3, 3.5.

13 **2. SB 107 clarifies situations when California courts retain jurisdiction**
14 **over family law matters**

15 SB 107 also modifies several provisions of the Family Code that codify the Uniform Child
16 Custody Jurisdiction and Enforcement Act (UCCJEA)³ to ensure that California courts can
17 protect families that come to California for gender-affirming health care. The UCCJEA, which
18 nearly all states have adopted, promotes uniform jurisdiction and enforcement provisions in inter-
19 state child custody cases.⁴ The UCCJEA governs state courts’ jurisdiction to make and modify

20 _____
21 affirming health care is defined as “medically necessary health care that respects the gender
22 identity of the patient, as experienced and defined by the patient” and may include: (1)
23 interventions to suppress the development of endogenous secondary sex characteristics; (2)
24 interventions to align the patient’s appearance or physical body with the patient’s gender identity;
25 and (3) interventions to alleviate symptoms of clinically significant distress resulting from gender
26 dysphoria. Cal. Welf. & Inst. Code § 16010.2(b)(3)(A). Gender-affirming mental health care is
“mental health care or behavioral health care that respects the gender identity of the patient, as
experienced and defined by the patient,” and may include developmentally appropriate
exploration and integration of identity, reduction of distress, adaptive coping, and strategies to
increase family acceptance. *Id.* at § 16010.2(b)(3)(B). Unless stated otherwise, references to
“gender-affirming health care” refer to both medical and mental health care.

26 ³ See Cal. Fam. Code section 3400 *et seq.*

27 ⁴ See generally Patricia M. Hoff, The Uniform Child-Custody Jurisdiction and
28 Enforcement Act, U.S. Dep’t of J., Off. of J. Progs (Dec. 2001),
<https://www.ojp.gov/pdffiles1/ojjdp/189181.pdf> (last visited Apr. 18, 2023).

1 child custody determinations and requires state courts to enforce valid child custody
2 determinations made by sister state courts.⁵ Importantly, however, the UCCJEA is not a
3 substantive custody statute; it does not dictate legal standards for making or modifying child
4 custody decisions.⁶ It merely outlines which states have jurisdiction to decide the merits and
5 requires uniform enforcement of such determinations.⁷

6 SB 107 amended UCCJEA provisions relating to: (a) jurisdiction over initial child custody
7 determinations; (b) emergency jurisdiction; (c) determining whether California is an inconvenient
8 forum; and (d) declining jurisdiction due to unjustifiable conduct. Each are addressed in turn.

9 Consistent with the UCCJEA, the California Family Code provides four bases for
10 asserting jurisdiction in initial child custody determinations: (1) home state; (2) significant
11 connection; (3) more appropriate forum; and (4) vacuum.⁸ Cal. Fam. Code § 3421(a)(1)-(4).
12 Home state jurisdiction has statutory priority. *Id.* A California court has jurisdiction to make an
13 initial child custody determination if California is the home state of the child on the date that
14 custody proceedings commence, or was the home state of the child within six months before
15 proceedings commenced and the child is absent from this state but a parent continues to live here.
16 Cal. Fam. Code § 3421(a)(1).

17 If California lacks home state jurisdiction, it can assert significant connection jurisdiction.
18 Cal. Fam. Code § 3421(a)(2). However, it can only do so if: (1) the child has no home state (or
19 the home state declines jurisdiction); (2) the child and the child’s parents, or the child and at least
20 one parent, have a significant connection to this state other than mere physical presence; and (3)
21 substantial evidence is available in this state concerning the child’s care, protection, training, and
22 personal relationships. *Id.* at (a)(2)(A)-(B). SB 107 amends the requirements for significant
23 connection jurisdiction. It establishes that the “presence of a child in this state for the purposes of
24 obtaining gender-affirming health care” (SB 107, § 4) meets the requirements for having a
25 significant connection with this state. Cal. Fam. Code § 3421(a)(2).

26 ⁵ *Id.* at 1.

27 ⁶ *Id.*

27 ⁷ *Id.*

28 ⁸ SB 107 did not change the legal standards for home state, more appropriate forum, or vacuum jurisdiction (bases 1, 3, and 4 above). 4

1 The UCCJEA also recognizes the need to protect children in emergencies, no matter
2 where they are located when the emergency arises. The UCCJEA gives courts temporary
3 emergency jurisdiction when a child is in the state and has been abandoned, and when an
4 emergency makes it necessary to protect the child because the child, or a sibling or parent of the
5 child, is subjected to, or threatened with, mistreatment or abuse. UCCJEA § 204; *see also* Cal.
6 Fam. Code § 3424(a).⁹ SB 107 added two emergency situations to this list: cases involving
7 domestic violence, and cases where the child has been unable to obtain gender-affirming health
8 care in another state. SB 107 § 5. However, even though emergency jurisdiction can be invoked
9 in these limited circumstances, numerous safeguards protect the home state’s authority.

10 First, in any child custody proceeding, each party’s first pleading must state under oath
11 whether there has been any other proceeding concerning the custody of the child and provide the
12 court with the relevant information. Cal. Fam. Code § 3429. Thus, a California court would
13 immediately know if another state has initiated a child custody proceeding or made a child
14 custody determination. *Id.* Second, aside from emergency jurisdiction, a California court “may
15 not exercise jurisdiction” if a child custody proceeding has been commenced in another state as
16 long as those proceedings substantially conformed with the UCCJEA. Cal. Fam. Code § 3426.
17 Third, before the court determines custody, notice and an opportunity to be heard must be given
18 to all persons entitled to such notice, including any parent whose parental rights have not been
19 terminated and any person having physical custody of the child. Cal. Fam. Code § 3425. This
20 includes notice to persons outside California. Cal. Fam. Code § 3408. Fourth, if another state has
21 commenced child custody proceedings or made a child custody determination, any emergency
22 order issued by a California court must limit the length of the order to allow the petitioner to seek
23 an order from the other state (typically the home state). Cal. Fam. Code § 3424(c). Fifth, if
24 another state has commenced child custody proceedings or made a child custody determination,
25 the California court “shall immediately communicate with the court of that state to resolve the
26

27 ⁹ Emergency jurisdiction is the only exception to the exclusive, continuing jurisdiction of
28 the state that made the initial child custody determination, which is typically the home state. Cal.
Fam. Code § 3422.

1 emergency, protect the safety of the parties and the child, and determine a period for the duration
2 of the temporary order.” Cal. Fam. Code § 3424(d).

3 Emergency jurisdiction is temporary and it does not—and cannot—modify or supplant a
4 child custody determination from a child’s home state. Cal. Fam. Code § 3424(c)-(d); *see also*
5 Cal. Fam. Code § 3423 (“a court of this state may not modify a child custody determination made
6 by a court of another state”).

7 As with all courts, family courts must determine if they are the appropriate forum for the
8 matter before them. Consistent with the UCCJEA, a California court that has jurisdiction to make
9 a child custody determination may decline to exercise that jurisdiction if it determines that it is an
10 inconvenient forum and that another court is a more appropriate forum. Cal. Fam. Code
11 § 3427(a). There are several factors that a family court must consider. *Id.* at (b). SB 107 augments
12 section 3427 to include that, when gender-affirming health care for the child is an issue, “a court
13 of this state shall not determine that it is an inconvenient forum where the law or policy of the
14 other state that may take jurisdiction limits the ability of a parent to obtain gender-affirming
15 health care or gender-affirming mental health care for their child.” SB 107 § 6. In other words,
16 SB 107 provides that a California court cannot decline jurisdiction on the ground that it is an
17 inconvenient forum in one specific circumstance: when a parent’s ability to obtain gender-
18 affirming health care for their child in another state is at issue and is constrained because of that
19 state’s law or policy. *Id.*

20 The UCCJEA also requires a court to decline jurisdiction if the person seeking to invoke
21 the court’s jurisdiction has engaged in “unjustifiable conduct.” UCCJEA § 208; *see also* Cal.
22 Fam. Code § 3428(a). Neither the UCCJEA nor the Family Code defines “unjustifiable conduct.”
23 Nonetheless, even when unjustifiable conduct has occurred, courts may retain jurisdiction if: (1)
24 the parents have acquiesced in the exercise of jurisdiction; (2) a court of a state otherwise having
25 jurisdiction determines that California is a more appropriate forum; or (3) no court of any other
26 state would have jurisdiction. Cal. Fam. Code § 3428(a)(1)-(3). SB 107 amends this section by
27 stating that when making a jurisdiction determination:

1 [A] court shall not consider as a factor weighing against the petitioner any taking of the
2 child, or retention of the child after a visit . . . from the person who has legal custody, if
3 there is evidence that the taking or retention of the child was a result of domestic violence
4 against the petitioner . . . or for the purposes of obtaining gender-affirming health care . . .
5 for the child and the law or policy of the other state limits the ability of a parent to obtain
6 gender-affirming health care or gender-affirming mental health care for their child.

7 SB 107 § 7. In other words, SB 107 provides two examples of what is *not* unjustifiable conduct
8 requiring a court to decline jurisdiction, one of which is bringing a child to California for gender-
9 affirming care when a parent is unable to obtain such care for their child in another state. *Id.* SB
10 107 also adds a section stating that:

11 A law of another state that authorizes a state agency to remove a child from their parent or
12 guardian based on the parent or guardian allowing their child to receive gender-affirming
13 health care or gender-affirming mental health care is against the public policy of this state
14 and shall not be enforced or applied in a case pending in a court in this state.

15 SB 107 § 8.

16 Beyond establishing rules for jurisdiction, the UCCJEA requires states to recognize and
17 enforce child custody determinations made by other states. Pursuant to those provisions,
18 California courts “shall recognize and enforce a child custody determination of a court of another
19 state.” Cal. Fam. Code § 3443; *see also* Cal. Fam. Code § 3446 (“A court of this state shall
20 recognize and enforce, but may not modify . . . a registered child custody determination of a court
21 of another state.”). Consistent with the UCCJEA, California law requires California courts to
22 “accord full faith and credit to an order issued by another state” and “enforce a child custody
23 determination made by a court of another state unless the order has been vacated, stayed, or
24 modified by a court having jurisdiction to do so.” Cal. Fam. Code § 3453. SB 107 did not change
25 any of these recognition and enforcement provisions.

26 **3. SB 107 limits California law enforcement’s ability to assist with out-
27 of-state criminal actions involving gender-affirming care**

28 SB 107 adds to, and amends, sections of the Penal Code to limit (and in some cases to
prevent) California’s law enforcement agencies from assisting other states’ prosecutions of people
involved in providing or seeking gender-affirming care. First, SB 107 declares that “[i]t is the
public policy of the state that an out-of-state arrest warrant for an individual based on violating

1 another state’s law against providing, receiving, or allowing their child to receive gender-
2 affirming health care or gender-affirming mental health care is the lowest law enforcement
3 priority.” SB 107 § 9. Second:

4 California law enforcement agencies shall not knowingly make or participate in the arrest
5 or participate in any extradition of an individual pursuant to an out-of-state arrest warrant
6 for violation of another state’s law against providing, receiving, or allowing a child to
7 receive gender-affirming health care . . . if that care is lawful under the laws of this state, to
8 the fullest extent permitted by federal law.

9 *Id.* Third, “[n]o state or local law enforcement agency shall cooperate with or provide information
10 to any individual or out-of-state agency or department regarding the provision of lawful gender-
11 affirming health care or gender-affirming mental health care performed in this state.” *Id.* Fourth,
12 SB 107 amends the Penal Code section addressing subpoenas in criminal actions, stating that:

13 [A] provider of health care, health care service plan, or contractor shall not release medical
14 information related to a person or entity allowing a child to receive gender-affirming health
15 care . . . in response to any foreign subpoena that is based on a violation of another state’s
16 laws authorizing a criminal action against a person or entity that allows a child to receive
17 gender-affirming care or gender-affirming mental health care.

18 *Id.* at § 10. SB 107 also includes a severability clause. *Id.* at § 11.

19 **B. Plaintiff’s Challenge to SB 107**

20 On March 7, 2023, Plaintiff filed a verified Complaint against Defendant Rob Bonta, the
21 California Attorney General (Defendant), challenging the constitutionality of SB 107. *See* ECF
22 No. 1. The Complaint asserted three causes of action under the U.S. Constitution, alleging that SB
23 107 violates: (1) the Due Process Clause; (2) the right to familial association; and (3) the Full
24 Faith and Credit Clause. *Id.* at ¶¶ 47-74. The Complaint sought damages, declaratory and
25 injunctive relief, and costs and fees. *Id.* at Prayer for Relief. On March 30, 2023, Defendant filed
26 a motion to dismiss. *See* ECF No. 6. On April 13, 2023, Plaintiff filed a verified First Amended
27 Complaint (FAC) asserting the same causes of action and seeking the same relief. *See* ECF No.
28 10 at ¶¶ 63-98; Prayer for Relief. On April 27, 2023, Defendant filed another motion to dismiss.
See ECF No. 12. Later that day, Plaintiff moved for a preliminary injunction. *See* ECF No. 13.

LEGAL STANDARD

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The party seeking a preliminary

1 injunction must establish that: (1) they are likely to succeed on the merits; (2) they are likely to
2 suffer irreparable harm absent preliminary relief; (3) the balance of equities tips in their favor;
3 and (4) an injunction is in the public interest. *Id.* at 20. If a movant fails to establish a likelihood
4 of success, the court need not consider the other three factors. *Garcia v. Google, Inc.*, 786 F.3d
5 733, 740 (9th Cir. 2015) (en banc).

6 Plaintiff, as the movant here, bears the burden of proving each of these elements. *Klein v.*
7 *San Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009); *see also Mazurek v. Armstrong*, 520 U.S.
8 968, 972 (1997) (“It frequently is observed that a preliminary injunction is an extraordinary and
9 drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the
10 burden of persuasion.”) (emphasis in original) (internal citation omitted).

11 ARGUMENT

12 I. PLAINTIFF IS NOT LIKELY TO SUCCEED ON THE MERITS

13 A. Preliminary Relief is Unavailable Because the Status Quo Has Changed

14 As a preliminary matter, this Court should deny the motion for a preliminary injunction
15 because the status quo changed four months ago when SB 107 went into effect. The “purpose of a
16 preliminary injunction is to preserve the status quo ante litem pending a determination of the
17 action on the merits.” *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 2016)
18 (internal citations omitted).¹⁰ Here, the status quo changed on January 1, 2023 when SB 107 went
19 into effect.¹¹ Plaintiff did not file a Complaint until more than two months after SB 107 became
20 effective, and did not seek preliminary relief until nearly four months afterwards. *See* ECF Nos. 1,
21 12. Because the status quo changed, Plaintiff cannot seek a prohibitory injunction, which
22 “preserve[s] the status quo pending a determination of the action on the merits” *Marlyn*
23 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878-79 (9th Cir. 2009).

24 To the extent that Plaintiff seeks a mandatory injunction, that request too is unavailing.
25 “Mandatory preliminary relief, which goes well beyond maintaining the status quo Pendente lite,
26 is particularly disfavored, and should not be issued unless the facts and law clearly favor the

27 ¹⁰ “Status quo ante litem” refers to “the last uncontested status which preceded the
pending controversy.” *Id.* (internal citations omitted).

28 ¹¹ *See* footnote 1, *infra*.

1 moving party.” *Anderson v. U.S.*, 612 F.2d 1112, 1114 (9th Cir. 1979) (internal citations omitted).
2 Mandatory injunctions “are not granted unless extreme or very serious damage will result and are
3 not issued in doubtful cases.” *Id.* at 1115; *see also Garcia*, 786 F.3d at 740 (the burden when
4 seeking a mandatory injunction is “doubly demanding”). As discussed below, Plaintiff has not
5 identified any organizational injury at all, let alone the type of extreme damage that would justify
6 a mandatory preliminary injunction. Plaintiff’s months-long delay in filing suit and seeking
7 emergency relief is an adequate basis for the Court to deny this motion. *See id.* at 746.

8 **B. Plaintiff Lacks Standing**

9 Plaintiff is unlikely to succeed on the merits because it lacks standing to assert its
10 constitutional claims. Plaintiff lacks Article III standing because SB 107 did not impede any of its
11 organizational activities or functions. And Plaintiff lacks prudential standing to assert third party
12 claims on behalf of out-of-state parents and other states.

13 **1. Plaintiff lacks Article III standing**

14 When evaluating whether an organization has standing, the court conducts “the same
15 inquiry as in the case of an individual” and asks whether the plaintiff has “alleged such a personal
16 stake in the outcome of the controversy as to warrant his invocation of federal court jurisdiction.”
17 *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982) (internal citations omitted). An
18 organization suing on its own behalf can establish an injury when it has suffered “both a diversion
19 of its resources and a frustration of its mission.” *La Asociacion de Trabajadores de Lake Forest v.*
20 *City of Lake Forest*, 624 F.3d 1083, 1087-88 (9th Cir. 2010) (internal citation omitted)
21 (hereinafter *La Asociacion*). “Frustration of mission cannot be just a setback to an organization’s
22 values or interests, it must result in an actual impediment to the organization’s real world efforts
23 on behalf of such principles.” *In Defense of Animals, et al. v. Sanderson Farms, Inc.*, 2021 WL
24 4243391, at *3 (N.D. Cal. 2021); *see also Havens*, 455 U.S. at 379 (distinguishing between injury
25 to an “organization’s activities” and “simply a setback to the organization’s abstract social
26 interests”). And an organization must “show that it would have suffered some other injury if it
27 had not diverted resources to counteracting the problem.” *La Asociacion*, 624 F.3d at 1088. In
28 other words, an organization has standing to sue if it “could not avoid suffering one injury or the

1 other.” *Id.*

2 Importantly, an organization “cannot manufacture the injury by incurring litigation costs
3 or simply choosing to spend money fixing a problem that otherwise would not affect the
4 organization at all.” *La Asociacion*, 624 F.3d at 1088 (internal citation omitted).¹² “An
5 organization may sue only if it was *forced* to choose between suffering an injury and diverting
6 resources to counteract the injury.” *Id.* at 1088 n.4 (emphasis added); *see also Rodriguez v. City*
7 *of San Jose*, 930 F.3d 1123, 1136 (9th Cir. 2019) (organizations representing gun owners and
8 providing them with legal advice lacked standing because they were not required to divert
9 resources to oppose the city’s refusal to return confiscated guns to their owner). Put differently,
10 the “challenged conduct must harm the organization’s activities specifically, not merely frustrate
11 their mission in a general sense.” *In Defense of Animals*, 2021 WL 4243391, at *4; *see also*
12 *Havens*, 455 U.S. at 379.

13 In this case, Plaintiff has not met the requirements for organizational standing because it
14 has not identified any actual injury—in the form of a real-world impediment to Plaintiff’s
15 activities—caused by SB 107. Plaintiff alleges that it is a 501(c)(3) organization “dedicated to
16 protecting family and parental rights in California.” FAC ¶ 8. Plaintiff claims that it
17 “accomplishes its mission through legislative advocacy, education of California citizens, and
18 mobilization of California citizens to get involved in community events.” *Id.* ¶ 11. Although
19 Plaintiff asserts that SB 107 has caused it to “divert[] resources from other focus areas like critical
20 race theory and abortion rights,” that puts the cart before the horse. *Id.* ¶ 13. Plaintiff must first
21 “show that it would have suffered some other injury if it had *not* diverted resources to
22 counteracting the problem.” *La Asociacion*, 624 F.3d at 1088 (emphasis added); *see also La*
23 *Clinica de la Raza v. Trump*, 2020 WL 6940934, at *4 (N.D. Cal. 2020) (plaintiff must
24 “demonstrate that they will be injured by the Rule if they do nothing”). Yet the FAC provides no
25 details describing how SB 107 impeded Plaintiff’s activities and operations. Plaintiff does not
26 offer a single example describing how its pre-existing advocacy, education, and mobilization

27 ¹² It is well-accepted that “standing must be established independent of the lawsuit filed
28 by the plaintiff.” *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d
936, 943 (9th Cir. 2011) (internal citations omitted).

1 efforts were hindered by SB 107. *See, e.g., Havens*, 455 U.S. at 379 (challenged conduct must
2 “have perceptively impaired” the “organization’s activities”).

3 Plaintiff’s FAC fails to address this fatal flaw in its organizational standing theory. And
4 Plaintiff’s preliminary injunction motion merely cross-references the FAC. *See* ECF No. 13.
5 Neither provide any examples of how SB 107 purportedly harmed Plaintiff’s pre-existing
6 advocacy, education, and mobilization activities. Plaintiff’s persistent failure to identify any
7 injury that it would have suffered “if it had not diverted resources to counteracting the problem,”
8 *La Asociacion*, 624 F.3d at 1088, dooms its organizational standing. Plaintiff cannot create
9 standing by “simply choosing to spend money fixing a problem that otherwise would not affect
10 the organization at all.” *Id.*; *see also In Defense of Animals*, 2021 WL 4243391, at *4 (an
11 organization cannot “gin up standing” by “investigating conduct or starting a new campaign
12 against someone who frustrates its general mission”). Allowing an organization to “start[] a new
13 campaign against someone who frustrates its general mission . . . would effectively nullify the
14 constitutional requirements for standing.” *In Defense of Animals*, 2021 WL 4243391, at *4.

15 In sum, courts routinely deny organizational standing where, as here, the challenged
16 policy does not concretely impede the organization’s activities. *See, e.g., In Defense of Animals*,
17 2021 WL 4243391, at *4–6 (non-profit organizations dedicated to animal rights lacked standing
18 to challenge a poultry processing company’s allegedly fraudulent advertising because they failed
19 to plead “any concrete way” in which their missions were frustrated, and because they spent
20 money and staff time “trying to manufacture standing” rather than being forced to divert those
21 resources); *Rodriguez*, 930 F.3d at 1136 (gun rights organizations lacked standing because they
22 “offered no theory explaining their organizational harm” that purportedly required them to divert
23 resources to oppose a city’s confiscation and retention of an owner’s guns).

24 The Ninth Circuit’s decision in *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640 (9th
25 Cir. 2021) exemplifies a challenged action that actually impeded an organization’s activities.
26 Legal services organizations that represent asylum seekers challenged a federal rule that
27 eliminated asylum eligibility for migrants crossing into the United States other than at a port of
28 entry. *Id.* at 658–59. The legal service organizations had standing because the rule: (1) made 80%

1 of their prospective clients ineligible for asylum; (2) prevented the organizations from
2 representing migrants who were still eligible for asylum by detaining those migrants at ports of
3 entry, which were hundreds of miles away from the organizations' offices; and (3) decreased the
4 funding that the organizations relied upon to represent asylum seekers. *Id.* at 663–64. That
5 fundamental impairment of the organizations' core activities stands in stark contrast to this case.

6 Unlike the plaintiff organizations in *E. Bay Sanctuary Covenant*, Plaintiff has not
7 described how any of its services, activities, operations, functions, or funding would have been
8 hampered by SB 107 had it done nothing in response. Plaintiff has not been injured, lacks Article
9 III standing, and therefore is unlikely to succeed on the merits.

10 **2. Plaintiff lacks prudential standing to assert the claims of third parties**

11 Prudential limitations on third party standing also make Plaintiff unlikely to succeed on
12 the merits. The Supreme Court has held that a plaintiff generally must assert his own legal rights
13 and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.
14 *Warth v. Seldin*, 422 U.S. 490, 499-500 (1975) (internal citations omitted). Prudential limitations
15 on third party standing represent a “healthy concern that if the claim is brought by someone other
16 than one at whom the constitutional protection is aimed . . . the courts might be called upon to
17 decide abstract questions of wide public significance even though other governmental institutions
18 may be more competent to address the questions and even though judicial intervention may be
19 unnecessary to protect individual rights.” *Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004) (internal
20 citations omitted). Although the bar on third party standing is not absolute, a party invoking the
21 legal rights of others must demonstrate that: (1) “the party asserting the right has a close
22 relationship with the person who possesses the right”; and (2) “there is a hindrance to the
23 possessor’s ability to protect his own interests.” *Id.* at 129-30 (internal citations omitted). In
24 *Kowalski*, for example, the Supreme Court concluded that the criminal defense attorney plaintiffs
25 did not have standing to assert the constitutional rights of unidentified future clients because they
26 lacked a close relationship with their hypothetical future clients, and there was no hindrance to
27 indigent criminal defendants asserting their own constitutional rights. *Id.* at 131-32.

28 This case represents precisely the type of lawsuit properly barred by the third party

1 standing rule. Plaintiff’s due process, familial association, and full faith and credit constitutional
 2 claims rest entirely on the premise that SB 107 violates the rights of: (1) hypothetical out-of-state
 3 parents; and (2) other states. *See* FAC ¶¶ 63-98. But Plaintiff has no relationship with other states,
 4 nor has it shown a close relationship with out-of-state parents. Plaintiff’s organizational mission
 5 centers on “protecting family and parental rights in California.” FAC ¶ 8. Merely creating
 6 educational programs directed at out-of-state parents does not establish a close relationship with
 7 those parents, especially where the organization’s mission is educating and mobilizing
 8 “California citizens.” *See* FAC ¶ 11. More importantly, Plaintiff has not identified any
 9 “hindrance” to out-of-state parents or other states protecting their own interests. *Kowalski*, 543
 10 U.S. at 129-130. There is no reason at all to permit a California-based advocacy organization to
 11 assert the constitutional rights of hypothetical out-of-state parents and states that have banned
 12 gender-affirming health care. Constitutional claims should be raised by the “one at whom the
 13 constitutional protection is aimed.”¹³ *Kowalski*, 543 U.S. at 129. That is not this Plaintiff.
 14 Constitutional and prudential standing limitations preclude Plaintiff from prevailing on the merits.

15 **C. Plaintiff’s Due Process and Familial Association Claims are Unlikely to**
 16 **Succeed**

17 Plaintiff’s constitutional due process and familial association claims are based on several
 18 inaccurate assertions. Plaintiff avers that SB 107: (1) “allows children to flee to California to
 19 obtain life-altering gender reassignment treatment without parental consent”; (2) “explicitly
 20 grants minors the authority to define what medical interventions are appropriate for them”; (3)
 21 “allow[s] doctors to waive medical consent requirements”; (4) “den[ies] parents access to their
 22

23 _____
 24 ¹³ Plaintiff’s due process and familial association claims may properly be raised only by
 25 parents and children; they do not even extend to siblings, let alone to third parties. *See, e.g., Ward*
 26 *v. City of San Jose*, 967 F.2d 280, 283 (9th Cir. 1991) (holding that only parents and children, but
 27 not siblings, could assert a “constitutionally protected liberty interest in the companionship and
 28 society of his or her child”). Plaintiff’s authorities are in agreement. *See, e.g., FAC* ¶ 76 (citing
Lee v. City of L.A., 250 F.3d 668, 685 (9th Cir. 2001) (“It is well established that a *parent* has a
 fundamental liberty interest in the companionship and society of his or her child” and this
 constitutional interest “extends to protect *children* from unwarranted state interference with their
 relationships with their parents”) (emphases added) (internal citations omitted).

1 child’s medical information”; and (5) “overrides the jurisdiction of courts in a family’s home
2 state.” ECF No. 13 at 1, 13. None of these claims are accurate.

3 First, even assuming that Plaintiff could raise due process claims despite the lack of
4 parental relationship to any affected children (*see infra* n.14), SB 107 does not change parental
5 consent laws surrounding gender-affirming health care.¹⁴ In California, a minor is a person under
6 18 years of age.¹⁵ With limited exceptions, minors need parental consent for medical care.¹⁶
7 Parental or legal guardian consent is required for most medical care, including surgery, hormone
8 therapy, puberty blockers, and non-mental health related medical interventions to treat gender
9 dysphoria.¹⁷ Similarly, although minors in foster care have a right to receive medically necessary
10 gender-affirming care, that right “is subject to existing laws governing consent to health care for
11 minors and nonminors and does not limit, add, or otherwise affect applicable laws governing
12 consent to health care.”¹⁸ In line with California’s parental consent laws, health care providers,
13 such as the UCLA Gender Health Program, require parental consent for gender-affirming medical
14 treatment.¹⁹ Nothing in SB 107 addresses—let alone modifies—longstanding parental consent
15 requirements in this state.²⁰ Plaintiff’s cases establishing the right of parents to make important

16 ¹⁴ Plaintiff admits that “California law generally requires parents to consent to medical
17 treatment for minors.” FAC ¶ 54 n.16.

18 ¹⁵ Cal. Code Regs. Tit. 9, § 782.14 (“Client means a person, 18 years of age or older,
19 admitted to a mental health rehabilitation center for evaluation, observation, diagnosis,
20 rehabilitation and treatment.”).

21 ¹⁶ Cal. Code Regs. Tit. 9, § 784.29(a) (requiring medical providers to obtain informed
22 consent from a client to provide medical treatment); Cal. Fam. Code § 6910 (“The parent,
23 guardian, or caregiver of a minor who is a relative of the minor and who may authorize medical
24 care and dental care under Section 6550, may authorize in writing an adult into whose care a
25 minor has been entrusted to consent to medical care or dental care, or both, for the minor.”); *see*
26 *also Am. Acad. of Pediatrics v. Lungren*, 16 Cal.4th 307, 315 (1997) (“The requirement that
27 medical care be provided to a minor only with the consent of the minor’s parent or guardian
28 remains the general rule, both in California and throughout the United States.”).

¹⁷ In California, emancipated minors at least 15 years of age and financially independent
minors living apart from their parents may consent to their own medical care. Cal. Fam. Code
§§ 7050(e)(1); 6922(a).

¹⁸ Cal. Welf. & Inst. Code §16010.2(b)(1).

¹⁹ *See* UCLA Gender Health Program, *Health Insurance FAQ*, UCLA (2023),
<https://www.uclahealth.org/medical-services/gender-health/patient-resources/health-insurance-faq>
(last visited March 29, 2023) (“Due to California state law, our primary care team cannot provide
gender affirming medical treatments without parent/legal caregiver consent. If a patient is legally
emancipated or turns 18, they can consent to their own care without parent consent.”).

²⁰ California law allows minors to consent to their own mental health care in certain
circumstances, none of which were affected by SB 107. *See* Cal. Fam. Code § 6924(b) (a minor

1 medical decisions for their children are therefore inapposite. ECF No. 13 at 12-14 (citing, *e.g.*,
2 *Wallis v. Spencer*, 202 F.3d 1126 (2000).)

3 Second, SB 107 does not “explicitly grant[] minors the authority to define what medical
4 interventions are appropriate for them.” ECF No. 13 at 13. SB 107 adopts the pre-existing
5 definitions of “gender-affirming health care” and “gender-affirming mental health care” found in
6 California Welfare and Institutions Code section 16010.2. SB 107 § 1. In relevant part, that
7 section defines “gender-affirming health care” as “medically necessary health care that respects
8 the gender identity of the patient, as experienced and defined by the patient,” and provides
9 examples of medical interventions. Cal. Welf. & Inst. Code §16010.2(b)(3)(A). This definition
10 gives patients the right to define their “*gender identity*.” *Id.* It does not give them the right to
11 define what is “*medically necessary*.” *Id.* Plaintiff improperly conflates the two. Clinical
12 standards for treating gender dysphoria determine medical necessity. None of those standards,
13 which follow the recommendations of major medical organizations, were changed by SB 107.

14 For example, the Endocrine Society recommends that pharmaceutical interventions should
15 not be provided until puberty and then only for “adolescents who meet diagnostic criteria for
16 [gender dysphoria]/gender incongruence” and fulfill criteria for treatment. Wylie C. Hembree et
17 al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons*, 102(11) J. Clin.
18 Endocrinology & Metabolism 3869, 3871 (Nov. 2017). Gender dysphoria in adolescents should
19 only be diagnosed by mental health professionals using diagnostic tools like the Diagnostic and
20 Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric
21 Association. *Id.* at 3870. Hormone therapy should only be initiated under rigorous safety
22 monitoring “after a multidisciplinary team of medical and [mental health professionals] has
23 confirmed the persistence of [gender dysphoria]/gender incongruence and sufficient mental
24 capacity to give informed consent.” *Id.* at 3871. The Endocrine Society recommends that
25 _____
26 who is 12 years or older may consent to mental health treatment or counseling on an outpatient
27 basis if: (1) the minor, in the opinion of the attending professional person, is mature enough to
28 participate intelligently in the outpatient services; and (2) the minor would present a danger of
serious physical or mental harm to self or to others without the mental health treatment or
counseling or is the alleged victim of incest or child abuse); *see also* Cal. Health & Saf. Code
§ 124260(b)(1).

1 “clinicians delay gender-affirming genital surgery involving gonadectomy and/or hysterectomy
2 until the patient is at least 18 years old or legal age of majority.”²¹ *Id.* at 3872. SB 107 did not
3 change any standard of care for treating gender dysphoria or give minors the right to decide for
4 themselves what medical interventions they should receive.

5 Third, SB 107 does not “allow[] doctors to waive medical consent requirements.” ECF
6 No. 13 at 13. Plaintiff cites no authority for this proposition and none exists. Parental or legal
7 guardian consent—as well as informed consent by the patient—is generally required for medical
8 care such as surgery, hormone therapy, or puberty blockers. (*See infra* n.17).

9 Fourth, SB 107 does not change California law regarding the right of parents to access
10 their child’s medical records. In California, parents are generally entitled to their child’s medical
11 records and they do not need a subpoena to obtain them. *See* Cal. Health & Saf. Code §§ 123105,
12 123110; *see also* Cal. Civ. Code § 56.10(b)(7).²² Nothing in SB 107 changes these rights.²³
13 Section 1 of SB 107 addresses an entirely different situation: when medical information is sought
14 from a medical provider “based on another state’s law that authorizes a person to bring a civil
15 action” against the person or entity that allowed or provided gender-affirming care. SB 107 § 1.
16 Section 1 only prevents a provider from releasing medical information in one narrow
17 circumstance: when the request is based on out-of-state laws authorizing a civil action against a
18 person or entity that provided gender-affirming care. *Id.* This limitation is unrelated to a parent’s
19 general right to access their child’s medical records.

20 ²¹ The World Professional Organization for Transgender Health, which Plaintiff cites in
21 the Complaint (FAC ¶ 25), similarly recommends a direct assessment of gender dysphoria by
22 trained mental health professionals, family counseling and supportive psychotherapy, and
23 assessing and treating any coexisting mental health concerns before referring adolescents for
24 physical interventions. Any “referral should include documentation of an assessment of gender
25 dysphoria and mental health, the adolescent’s eligibility for physical interventions . . . [and] the
26 mental health professional’s relevant expertise.” *See* The World Professional Organization for
27 Transgender Health: Standards of Care for the Health of Transsexual, Transgender, and Gender
28 Nonconforming People at 14, available at
https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?_t=1613669341.

²² There are exceptions to this rule, such as when “the health care provider determines that
access to the patient records requested by the representative would have a detrimental effect on
the provider’s professional relationship with the minor patient or the minor’s physical safety or
psychological well-being.” Cal. Health & Saf. Code § 123115(a)(2).

²³ Plaintiff admits that “California law generally gives parents access to their children’s
medical records.” *See* FAC ¶ 45 n.13.

1 Lastly, there is no merit to Plaintiff’s claim that SB 107 “overrides the jurisdiction of
2 courts in a family’s home state.” ECF No. 13 at 1. SB 107 did not change the standard for home
3 state jurisdiction or alter the home state priority established by the statutory scheme. *See* Cal.
4 Fam. Code § 3421(a)(1); SB 107 § 4. Section 4 merely amended the requirements for “significant
5 connection” jurisdiction, which is only relevant when there is no home state or the home state has
6 declined to exercise jurisdiction. *See* Cal. Fam. Code § 3421(a)(2). Home states that have made
7 child custody determinations maintain exclusive, continuing jurisdiction (except in emergencies),
8 and their child custody determinations cannot be modified by a court of another state (excepting
9 emergencies). *See* Cal. Fam. Code §§ 3422, 3423. And even emergency situations require
10 deference to home state jurisdiction; any emergency order is temporary, the courts must
11 immediately communicate, and the court claiming emergency jurisdiction gives the petitioner a
12 limited period of time to seek a custody order from the home state court. Cal. Fam. Code § 3424.
13 Temporary emergency jurisdiction does not—and cannot—supplant a child custody
14 determination from a child’s home state. *Id.*

15 A hypothetical may help illustrate why Plaintiff’s legal claims rest on unfounded
16 speculation about the real-world effects of SB 107. Assume, for example, that a minor comes to
17 California seeking gender-affirming care without her parent’s consent.²⁴ If someone files an
18 initial child custody proceeding in California on behalf of that minor, the first pleading must state
19 under oath whether there has been any other proceeding and/or determination concerning the
20 custody of the child. Cal. Fam. Code § 3429. If another state made a child custody determination
21 in conformance with the UCCJEA, the California court must recognize and enforce it. *See* Cal.
22 Fam. Code § 3443; *see also id.* § 3453 (California courts “shall accord full faith and credit to an
23 order issued by another state”). If another state has commenced a child custody proceeding (but
24 not yet made a final determination), the California court “may not exercise its jurisdiction.” Cal.
25 Fam. Code § 3426. Instead, “the court of this state shall stay its proceeding and communicate
26 with the court of the other state.” *Id.* SB 107 did not change any of these provisions.

27
28 ²⁴ Minors generally cannot receive medical care without parental consent. *See infra* n.17.

1 If child custody proceedings have not been commenced or completed in another state, the
2 California court will evaluate the petition. But before doing so, notice and an opportunity to be
3 heard must be given to all parents whose rights have not been terminated and any person having
4 physical custody of the child. Cal. Fam. Code § 3425. This includes notice to persons outside
5 California. *Id.* § 3408. Upon receiving notice, an out-of-state parent could then file for an initial
6 custody determination in his home state, and that home state would have statutory priority
7 because the California court could not assert significant connection jurisdiction unless there was
8 no home state (or the home state declined jurisdiction).²⁵ *Id.* § 3421(a)(1). The out-of-state parent
9 could seek dismissal of the California proceedings for lack of jurisdiction, and the jurisdictional
10 question “must be given priority on the calendar and handled expeditiously.” *Id.* § 3407. The out-
11 of-state parent could also fully participate in the California proceedings. Importantly, nothing in
12 the UCCJEA or SB 107 dictate the substantive legal standards that the California court would use
13 to make a child custody determination.

14 The process unfolds similarly if someone files a petition for temporary emergency
15 jurisdiction over a child who is seeking gender-affirming care in California. All affected parents
16 and custodians, including out-of-state parents, would receive notice and an opportunity to be
17 heard. Cal. Fam. Code §§ 3408, 3425. The duration of any emergency order would depend on
18 whether custody has been, or is being, litigated elsewhere. If no child custody proceeding or
19 determination has occurred in another state, any emergency order remains in effect only until an
20 order is obtained from a court of a state having jurisdiction to make an initial child custody
21 determination (usually the home state). *Id.* § 3424(b). An out-of-state parent could therefore
22 promptly file a petition in her home state, and any order issued by the home state court would
23 supersede the temporary, emergency order. *Id.*²⁶ However, if another state has commenced child

24 ²⁵ “Home state means the state in which a child lived with a parent or a person acting as a
25 parent for at least six consecutive months before the commencement of a child custody
proceeding.” Cal. Fam. Code § 3402(g).

26 ²⁶ Under the UCCJEA, a temporary emergency order can become a final determination
27 only if: (1) no other state has commenced a child custody proceeding or made a child custody
28 determination; (2) no other state makes such an order after a parent in that state receives notice of
the temporary order; (3) the temporary order provides that it will become a final determination;
and (4) the state that issued the emergency order becomes the home state of the child. UCCJEA,
§ 204(b). SB 107 did not change this provision. *See* Cal. Fam. Code § 3424(b).

1 custody proceedings or made a child custody determination, any emergency order must be limited
2 to a period of time that the court considers adequate to allow the petitioner to seek an order from
3 the other state (typically the home state). *Id.* § 3424(c). In addition, the California court “shall
4 immediately communicate with the court of that state to resolve the emergency, protect the safety
5 of the parties and the child, and determine a period for the duration of the temporary order.” *Id.*
6 § 3424(d). No emergency order can take away custody without due process or override a home
7 state’s jurisdictional priority.

8 In short, SB 107 does not violate the right to due process or familial association. Plaintiff
9 is unlikely to succeed on those claims.

10 **D. Plaintiff’s Full Faith and Credit Claim is Unlikely to Succeed**

11 Plaintiff’s assertion that SB 107 violates the Full Faith and Credit Clause is also unlikely
12 to succeed. According to Plaintiff, SB 107 violates the Full Faith and Credit Clause because it: (1)
13 “is a ‘policy of hostility’ towards the public acts of other states”; and (2) “ignores the rightful
14 jurisdiction and judgments of other states.”²⁷ ECF No. 13 at 16-20. Both claims lack merit.

15 **1. SB 107 does not violate the Full Faith and Credit Clause’s obligation**
16 **to respect the final judgments of other states**

17 The Constitution’s Full Faith and Credit Clause provides: “Full Faith and Credit shall be
18 given in each State to the public Acts, Records, and judicial Proceedings of every other State.
19 And the Congress may by general Laws prescribe the Manner in which such Acts, Records and
20 Proceedings shall be proved, and the Effect thereof.” Art. IV, § 1.²⁸ Supreme Court jurisprudence
21 “differentiates the credit owed to laws (legislative measures and common law) and to judgments”
22 under the Full Faith and Credit Clause. *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 232 (1998).
23 With respect to judgments, “the full faith and credit obligation is exacting. A final judgment in
24 one State . . . qualifies for recognition throughout the land.” *Id.* at 233. Subpoenas are not
25 considered final judgments under the Full Faith and Credit Clause. *See, e.g., Hyatt v. State*

26 _____
27 ²⁷ Plaintiff’s claim that SB 107 ignores the rightful jurisdiction of other states is addressed
in section I.C., *infra*.

28 ²⁸ Congress implemented the Full Faith and Credit Clause in 28 United States Code
section 1738.

1 *Franchise Tax Bd.*, 105 A.D.3d 186, 198 (N.Y. Supr. Ct. App. Div. 2013) (“the subpoenas are not
2 judgments of the California courts to which full faith and credit must be granted,” particularly
3 where “the propriety of the subpoenas was never determined by the courts of California”).

4 SB 107 does not use the word judgment, nor does it require California to ignore a final
5 judgment from a sister state. On the contrary, SB 107 did not change California’s legal
6 obligations to recognize and enforce child custody determinations made by other states. *See, e.g.*,
7 Cal. Fam. Code § 3443 (California courts “shall recognize and enforce a child custody
8 determination of a court of another state”); *see also id.* § 3446 (“A court of this state shall
9 recognize and enforce, but may not modify . . . a registered child custody determination of a court
10 of another state.”); § 3453 (California courts “shall accord *full faith and credit* to an order issued
11 by another state” and “enforce a child custody determination made by a court of another state
12 unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so”)
13 (emphasis added). SB 107 does not violate California’s obligation under the Full Faith and Credit
14 Clause to respect the final judgments of other states.

15 **2. SB 107 permissibly furthers California’s legitimate public policy**

16 In contrast to final judgments, the Full Faith and Credit Clause gives states some
17 flexibility when it comes to recognizing out-of-state statutes. The Full Faith and Credit Clause
18 “does not require a State to substitute for its own statute, applicable to persons and events within
19 it, the statute of another State reflecting a conflicting and opposed policy.” *Franchise Tax Bd. of*
20 *Cal. v. Hyatt*, 578 U.S. 171, 176 (2016) (internal citation omitted) (*Hyatt*). States need not “apply
21 another State’s law that violates its “own legitimate public policy.” *Id.* at 177 (internal citations
22 omitted). This is the public policy exception, which is well established in Supreme Court
23 jurisprudence. *Id.*; *see also Alaska Packers Ass’n v. Indus. Acc. Comm’n of Cal.*, 294 U.S. 532,
24 549-50 (1935) (acknowledging the importance of a state’s public policy and holding that “[n]o
25 persuasive reason is shown for denying to California the right to enforce its own laws in its own
26 courts” and that “the full faith and credit clause does not require that the statutes of Alaska” trump
27 California’s laws); *Baker*, 522 U.S. at 233 (“A court may be guided by the forum State’s ‘public
28 policy’ in determining the *law* applicable to a controversy.”) SB 107 properly establishes

1 California’s public policy of protecting transgender youth and their families receiving medically
2 necessary (and lawful) health care in our state.

3 One limit to the public policy exception is that states may not evince “a policy of hostility
4 toward” another state. *Hyatt*, 578 U.S. at 176 (internal quotation marks and citations omitted). In
5 *Hyatt*, for example, the Nevada Supreme Court applied a “special and discriminatory rule” by
6 awarding one million dollars in damages to a Nevada taxpayer in a lawsuit against a California
7 agency. *Id.* at 175, 178. That award far exceeded the maximum damages of \$50,000 that could
8 have been awarded in similar circumstances against a Nevada agency, and the ruling ignored both
9 Nevada’s and California’s rules for immunity. *Id.* at 178. Because the Nevada Supreme Court
10 treated a California agency differently than it would have treated a Nevada agency in similar
11 circumstances, Nevada exhibited a “policy of hostility” towards California. *Id.* at 176; *see also*
12 *Broderick v. Rosner*, 294 U.S. 629, 642-43 (1935) (finding a policy of hostility when a state
13 statute would permit enforcement of certain claims in that state but deny enforcement of similar,
14 valid claims under a sister state’s law); *Hughes v. Fetter*, 341 U.S. 609, 611-12 (1951)
15 (invalidating a Wisconsin statute that barred wrongful death actions when the death occurred in
16 other states but permitted them for deaths that occurred in Wisconsin).

17 SB 107 does not remotely resemble the actions challenged in *Hyatt*, *Broderick*, or *Hughes*.
18 It does not create a “special and discriminatory rule” towards a specific sister state while
19 simultaneously disregarding California’s own legal standards (*Hyatt*). It does not treat similar
20 claims differently, depending on which state is asserting the claim (*Broderick*). Nor does it bar an
21 action arising under another state’s law while permitting similar actions under its own laws
22 (*Hughes*). On the contrary, California has consistently permitted gender-affirming care for
23 minors, and SB 107 merely creates legal safeguards for transgender youth and their families who
24 come to California for such care.²⁹ SB 107 establishes California’s public policy of protecting

25 ²⁹ Plaintiff points to statements issued by State Senator Scott Wiener and Governor Gavin
26 Newsom—statements mentioning other states that criminalized gender-affirming care—as
27 evidence that SB 107 was passed as an act of hostility towards those states. ECF No. 13 at 17. But
28 Plaintiff cites no authority for the proposition that the subjective intent of certain lawmakers
impacts the legal analysis under the Full Faith and Credit Clause. In any event, California is not
applying a discriminatory rule to specific states, or barring compliance with other states’ laws

1 individuals within our borders from being penalized or prosecuted by other states for providing or
2 receiving lawful health care. The California Legislature’s considered determination is well within
3 the Full Faith and Credit Clause’s public policy exception. *See, e.g., Pink v. A.A.A. Highway Exp.*,
4 314 U.S. 201, 210 (1941) (The Full Faith and Credit Clause is not a “means for compelling one
5 state wholly to subordinate its own laws and policy concerning its peculiarly domestic affairs to
6 the laws and policy of others.”).

7 **3. The Full Faith and Credit Clause does not require California to**
8 **apply an out-of-state law that violates California’s public policy in**
9 **California court proceedings**

10 Plaintiff singles out section 8 in particular as running afoul of the Full Faith and Credit
11 Clause. ECF No. 13 at 18. That section states:

12 A law of another state that authorizes a state agency to remove a child from their parent or
13 guardian based on the parent or guardian allowing their child to receive gender-affirming
14 health care or gender-affirming mental health care is against the public policy of this state
15 and shall not be enforced or applied in a case pending in a court in this state.

16 SB 107 § 8. Plaintiff claims that section 8 “unlawfully prohibits the enforcement of an *order*
17 based upon another state’s law authorizing a child to be removed from their parent because the
18 parent allowed the child to undergo gender transitioning surgery.” ECF No. 13 at 18 (emphasis
19 added). But another state’s *law* is different from a state court *order* enforcing that law. For nearly
20 a century, the Supreme Court has consistently held that the Full Faith and Credit Clause permits
21 states to apply their own laws in their courts, and does not require subordinating their domestic
22 laws to those of other states. *See Franchise Tax Bd. of Cal.*, 578 U.S. at 176; *Baker*, 522 U.S. at
23 233; *Pink*, 314 U.S. at 210; *Alaska Packers Ass’n*, 294 U.S. at 549-50. Section 8’s application to
24 other states’ laws—and not to final judgments premised on those laws—falls squarely within this
25 line of precedent.

26 In support of this argument, Plaintiff cites an out-of-circuit case, *Finstuen v. Crutcher*, 496
27 F.3d 1139 (10th Cir. 2007). ECF No. 13 at 20. But that case does not help Plaintiff. In *Finstuen*,
28 the Tenth Circuit confirmed that “[i]n applying the Full Faith and Credit Clause, the Supreme
while permitting the enforcement of similar California laws. It is merely creating legal safeguards
for everyone who comes to California seeking gender-affirming care that is legal within our
borders, no matter where they hail from.

1 Court has drawn a distinction between statutes and judgments.” *Finstuen*, 496 F.3d at 1152. The
2 Full Faith and Credit Clause “applies unequivocally to the judgments of sister states, [but] it
3 applies with less force to their statutory laws.” *Id.* In light of that critical distinction, the Tenth
4 Circuit held that “final adoption orders and decrees are judgments that are entitled to recognition
5 by all other states under the Full Faith and Credit Clause.” *Id.* at 1156. Nothing in *Finstuen*
6 suggests that California must apply another state’s laws in its own court proceedings.

7 Because SB 107 furthers California’s legitimate public policy and does not impact
8 California’s recognition of final judgments from other states, it does not run afoul of the Full
9 Faith and Credit Clause. Plaintiff is unlikely to succeed on the merits, and therefore the Court
10 need not consider the remaining preliminary injunction factors.³⁰ *Garcia*, 786 F.3d at 740.

11 **II. PLAINTIFF HAS NOT SHOWN IRREPARABLE HARM**

12 Under the second preliminary injunction factor, a plaintiff must show that it “is likely to
13 suffer irreparable harm in the absence of preliminary relief.” *See Winter*, 555 U.S. at 20.
14 “[S]peculative injury does not constitute irreparable injury sufficient to warrant granting a
15 preliminary injunction. A plaintiff must do more than merely allege imminent harm sufficient to
16 establish standing; a plaintiff must *demonstrate* immediate threatened injury as a prerequisite to
17 preliminary injunctive relief.” *Boardman*, 822 F.3d at 1022 (internal citation omitted).

18 Plaintiff falls far short of demonstrating irreparable harm. For starters, Plaintiff’s months-
19 long delay in seeking a preliminary injunction undercuts any claim of irreparable harm. *See*
20 *Garcia*, 786 F.3d at 746. Plaintiff claims that “it will have to continue diverting resources to
21 address the numerous harms of SB 107.” ECF No. 13 at 21. But as discussed in part I.B.1, *infra*,
22 Plaintiff cannot establish Article III standing (let alone irreparable harm) by voluntarily spending
23 money opposing a law that does not impede its advocacy, mobilization, or educational activities
24 in any way. Nor does Plaintiff offer any *evidence* to support its claim. Plaintiff provides no
25 information about how much money it has purportedly spent opposing SB 107, or how much less
26 money it is spending on other focus areas because it has diverted resources from them. Vague,

27 ³⁰ Plaintiff is also unlikely to succeed on the merits of the relief it seeks (invalidating SB
28 107 on its face) because Plaintiff cannot “establish that no set of circumstances exists under
which the Act would be valid.” *U.S. v. Salerno*, 481 U.S. 739, 745 (1987).

1 conclusory, and unsupported claims about diverting resources are insufficient to “*demonstrate*
2 immediate threatened injury.” *Boardman*, 822 F.3d at 1022; *see also* L.R. 231(d)(2) (requiring
3 preliminary injunction motions to include “affidavits on the question of irreparable injury.”)

4 Plaintiff also claims that a constitutional infringement alone can constitute irreparable harm.
5 ECF No. 13 at 21. But there is no merit to any of Plaintiff’s constitutional claims. *See* part I.C &
6 I.D, *infra*. Moreover, even setting the merits aside, Plaintiff’s claims rest on the constitutional
7 rights of *others*—out-of-state parents and sovereign states that have banned gender-affirming care
8 for minors. Plaintiff cites no authority for the proposition that a party can obtain the extraordinary
9 and drastic remedy of a preliminary injunction when standing in the shoes of third parties.
10 Plaintiff has not shown a likelihood of suffering irreparable harm.

11 **III. THE EQUITIES AND PUBLIC INTEREST WEIGH AGAINST AN INJUNCTION**

12 Where, as here, the government is the opposing party, the last two factors of the preliminary
13 injunction analysis—the balance of equities and public interest—merge. *Drakes Bay Oyster Co.*
14 *v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (internal citations omitted). To analyze these
15 factors, the Court “balance[s] the competing claims of injury and must consider the effect on each
16 party of the granting or withholding of the requested relief,” paying “particular regard for the
17 public consequences in employing the extraordinary remedy of injunction.” *Winter*, 555 U.S. at
18 24.

19 Here, the final two factors weigh heavily in favor of denying the injunction. Plaintiff’s
20 injuries are vague and unsupported. In contrast, “any time a State is enjoined by a court from
21 effectuating statutes enacted by representatives of its people, it suffers a form of irreparable
22 injury.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (internal
23 citations omitted). California’s elected representatives passed SB 107 to protect families who
24 come to California to obtain gender-affirming health care that is lawful in our state. Offering legal
25 protections to transgender teenagers and their families seeking medically necessary healthcare
26 that they cannot obtain elsewhere is plainly in the public interest.

27 **CONCLUSION**

28 The motion for a preliminary injunction should be denied.

1 Dated: May 11, 2023

Respectfully submitted,

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