Mariah Gondeiro, Esq., CA Bar No. 323683
mgondeiro@faith-freedom.com
Julianne Fleischer, Esq., CA Bar No. 337006
jfleischer@faith-freedom.com
ADVOCATES FOR FAITH & FREEDOM
25026 Las Brisas Road
Murrieta, California 92562
Telephone: (951) 600-2733
Facsimile: (951) 600-4996

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

OUR WATCH, a California non-profit organization;

Plaintiff,

vs.

ROB BONTA, the attorney general of California;

Defendants.

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

REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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

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I. INTRODUCTION

Attorney General Rob Bonta's ("State" or "Defendant") opposition brief attempts to confuse and distract from the grave reality that Senate Bill (SB) 107 is a radical assault on fundamental parental rights and the comity between states. The Defendant's arguments are unpersuasive for the following reasons.

First, Plaintiff seeks a prohibitory injunction, not a mandatory injunction. It is entitled to a prohibitory injunction because it seeks to prohibit the enforcement of a new law or policy.

Second, Plaintiff has standing under a diversion-of-resources theory, not third-party standing. It satisfies the standing requirements because it has diverted resources to counteract the harmful effects of SB 107 – activity that aligns with its mission of preserving parental rights.

Third, Plaintiff is likely to succeed on the merits. The State proffers various statutes regarding parental consent laws and access to medical records that have little bearing on Plaintiff's parental rights' claims. SB 107 violates the fundamental right of parents to direct the care and upbringing of their child by allowing minors to obtain reassignment treatment without parental consent, while denying parents access to their child's medical information. SB 107 also violates the Full Faith and Credit Clause to the United States Constitution, by overriding the jurisdiction of courts in a family's home state, which are usually the proper forum for custody determinations.

Finally, Plaintiff will suffer irreparable harm absent injunctive relief because SB 107 interferes with Plaintiff's mission of preserving parental rights. Defendant has no legitimate public interest in enforcing a law that usurps the Constitution. Thus, Plaintiff is entitled to a preliminary injunction.

II. ARGUMENT

A. Plaintiff Is Entitled To A Prohibitory Injunction

As a preliminary matter, the Defendant erroneously claims a preliminary injunction is unavailing because "the status quo changed four months ago when SB 107 went into effect." (State's Opp'n to Plf's Mot. for Preliminary Injunction ("Opp'n Br.") at 9, ECF No. 14). Plaintiff

requests a prohibitory injunction, not a mandatory injunction, because Our Watch seeks to enjoin a new law or policy.

The Ninth Circuit has held that preliminary injunctions "that prohibit enforcement of a new law or policy ... [are] prohibitory," not mandatory. *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1061 (9th Cir. 2014); *accord Regents of Univ. of California v. United States Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011, 1025-26, 1048 n.20 (N.D. Cal. 2018), (where plaintiffs did not file their complaint for three months after DHS terminated the DACA program, court nonetheless held that its injunction vacating DHS's rescission of DACA and ordering DHS to continue processing DACA renewal applications was prohibitory, not mandatory, as it simply preserved the status *quo ante litem*).

Defendant further argues that the Court should deny Plaintiff's injunction because Plaintiff did not seek injunctive relief until four months after SB 107 went into effect and thus cannot preserve the status quo. Opp'n at 9. Defendants confuse what the status quo is. *Id.* Contrary to the Defendant's claim, the status quo ante litem "is not measured from the moment the plaintiffs filed their complaint but "instead to the 'last uncontested status which preceded the pending controversy.'" *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (citation omitted). Given this context, the status quo ante litem is the point before SB 107 went into effect on January 1, 2023, when parental rights remained intact, and the Full Faith and Credit Clause was not in jeopardy.

Additionally, "courts are loath to withhold relief solely because of delay, which is not particularly probative in the context of ongoing, worsening injuries." *Disney Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848, 866 (9th Cir. 2017) (citation omitted). The delay is not suggestive of the plaintiffs' "sleeping on [their] rights," as opposed to the plaintiffs' possibly "waiting to file for preliminary relief until a credible case for irreparable harm can be made." *Arc of California v. Douglas*, 757 F.3d 975, 991 (9th Cir. 2014). Thus, Plaintiff's insignificant delay does not preclude a prohibitory injunction.

B. Plaintiff Has Standing

The State "conflates organizational standing with third-party standing." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 664 (9th Cir. 2021) (rejecting Defendants third-party standing argument when Plaintiff had established injury in fact based on organizational standing); Opp'n at 13-14. Third-party standing does not apply here because Plaintiff is asserting its "own legal rights" via organizational standing, not the "legal rights or interests of third parties. Oppo. at 13 (citing *Warth v. Seldin*, 422 U.S. 490, 499-500 (1975)).

Moreover, the State erroneously contends that Plaintiff's allegations are insufficient to establish standing "because it has not identified any actual injury—in the form of a real-world impediment to Plaintiff's activities – caused by SB 107." Opp'n at 11. But the diversion of resources to counteract the frustration of Our Watch's mission is itself the actual or imminent injury to Our Watch. *See Animal Legal Def. Fund v. United States Dep't of Agric.*, 223 F. Supp. 3d 1008, 1017 (C.D. Cal. 2016) ("[T]he frustration of an organization's mission is the personalized injury that 'forces' the organization to spend money to alleviate the frustration…." (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013)); *see also Smith v. Pac. Properties & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir. 2004) (allegations that the organization had to "divert its scarce resources from other efforts to promote awareness of federal and state accessibility laws and to benefit the disabled community in other ways" to "monitor[ing] the violations and educat[ing] the public regarding the discrimination at issue" are sufficient to allege standing).

The State relies on two cases for the contention that courts routinely deny organizational standing where "the challenged policy does not concretely impede the organization's activities." Opp'n at 12 (citing *In Defense of Animals, et al. v. Sanderson Farms, Inc.*, 2021 WL 4243391, at *3 (N.D. Cal. 2021); *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1136 (9th Cir. 2019)). These cases are distinguishable.

The court in *In Defense of Animals* ("IDA") found that the organizational plaintiff did not have standing because the organization began diverting resources only after a court held that another plaintiff did not have standing. 2021 WL 4243391, at *1. The organizational plaintiff then

attempted to manufacture standing to bring a new lawsuit challenging the same policy challenged in the prior lawsuit alongside the plaintiff who initially lacked standing. *Id.* The organizational plaintiff failed to plead any frustration of mission and pled only how it had diverted resources after failing to take any action for months after the challenged conduct. *Id.* at *5.

Unlike the IDA plaintiff, Our Watch began diverting resources as soon as SB 107 became law due to the grave dangers presented by the bill – not for purposes of manufacturing standing. *Id.* Additionally, unlike the IDA plaintiff, Our Watch has pled a frustration of mission. Verified Complaint ("VC"), ¶¶ 11-15, ECF No. 1. Our Watch was committed to preserving parental rights prior to SB 107. *Id.*, ¶ 11. SB 107 frustrated this mission by infringing upon fundamental parental rights which then forced the organization to divert resources away from other efforts like legislative advocacy. *Id.*, ¶¶ 11-15.

In *Rodriguez*, city police confiscated Mr. Rodriguez's firearms during a welfare check. 930 F.3d at 1128. Mr. Rodriguez's wife attempted to recover the firearms but was unsuccessful. *Id.* Mrs. Rodriguez, the Second Amendment Foundation, Inc., and the Calguns Foundation, Inc., sued the city alleging violations of Mrs. Rodriguez's Second, Fourth, Fifth, and Fourteenth Amendment rights. *Id.* at 1128-1129. The court found that the organizational plaintiffs did not have standing because plaintiffs could not demonstrate that they were diverting resources due to the city's actions or that the organization was assisting Mrs. Rodriguez outside of litigation. *Id.* at 1135-36.

Rodriguez is also distinguishable, as Our Watch was already assisting and educating parents outside of litigation to protect fundamental parental rights. VC, ¶¶ 11-15. Once SB 107 was enacted, Our Watch immediately began new educational outreach programs both inside and outside of California and even funded de-transitioning teenagers to come on the organization's podcast to speak on the issue. *Id.*, ¶ 13.

In fact, despite the State's arguments that Our Watch's injury is too vague to confer standing, courts have routinely found organizational standing on the basis of similar organizational harms. *See Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC*, 666 F.3d 1216, 1219 (9th Cir. 2012) (finding standing at the preliminary injunction stage based on FHC's

statements that it "investigated Roommate's alleged violations and, in response, started new education and outreach campaigns targeted at discriminatory roommate advertising"); *see also Smith v. Pac. Props & Dev. Corp.*, 358 F.3d 1097, 1105 (9th Cir .2004) (finding standing where an organization alleged that "in order to monitor the violations and educate the public regarding the discrimination, [it] has had ... to divert its scarce resources from other efforts ... to benefit the disabled community in other ways"); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013) (finding organizational standing where the plaintiffs "had to divert resources to educational programs to address its members' and volunteers' concerns about the [challenged] law's effect").

Notably, the Supreme Court and the Ninth Circuit have held that an organization alleges an injury in fact where it "expended additional resources that they would not otherwise have expended" to accomplish its mission. *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1040 (9th Cir. 2015); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) ("Such concrete and demonstrable injury to the organization's activities – with the consequent drain on the organization's resources – constitutes far more than simply a setback to the organization's abstract social interests."). The Supreme Court has unambiguously rejected the argument that such expenditure is merely an "abstract" injury. *Id.*

Here, Our Watch alleges that its mission is "committed to tackling major cultural issues," including family and parental rights, religious liberty, the sexual indoctrination of children, critical race theory, abortion rights, and transgender issues through "legislative advocacy, education of California citizens, and mobilization of California citizens." VC, ¶¶ 11-12. SB 107 harmed this mission by allowing the State of California to remove children from parental custody when in pursuit of gender-affirming healthcare in violation of the very rights Our Watch advocates to protect. This is a "substantial setback" to Our Watch's goal of preserving and protecting parental rights and thus a frustration of its mission. *Animal Legal Def. Fund*, 223 F. Supp. 3d at 1018.

As for diversion of resources, Our Watch alleges that it has educated and assisted parents, spent time discussing potential outcomes of SB 107, and spoke with parents and churches both inside and outside of California about protecting parental rights in the wake of SB 107. VC, ¶¶ 11-

13. While Our Watch was educating parents about parental rights and transgender rights prior to the passage of SB 107 via podcasts, education efforts, mobilization efforts, etc., the dangers posed by SB 107 caused the organization to focus its resources nearly exclusively on parental rights and transgender issues. *Id.,* ¶ 15. These allegations suffice to show that Our Watch's resources were "diverted." *See, e.g., Fair Hous. Council*, 666 F.3d at 1219; *Valle del Sol Inc*, 732 F.3d at 1018. Because SB 107 frustrates Our Watch's mission and because it has diverted resources as a result, Plaintiff has standing to challenge the bill.

C. Plaintiff Is Likely To Prevail On The Merits

1. Plaintiff alleges facts that show SB 107 violates parental rights and the right to familial association

Defendant's reliance on laws pertaining to medical records access and informed consent to suggest that SB 107 does not infringe upon parental rights is unpersuasive. Opp'n at 15-17. Laws and regulations regarding consent to medical treatment for dependents are somewhat complicated, in that the rules regarding this consent can vary according to several factors, including the type of care being sought, whether or not a minor is in temporary custody, certain court determinations, the age of the youth, and whether or not there is an emergency situation. SB 107 labels gender-affirming health care an "emergency," such that emergency treatment may then be provided to the minor without parental consent[1], or the court may place the minor in foster care or with a guardian who can then consent to medical treatment for the minor.[2] If a parent then sues to right these wrongs, SB 107 protects the persons and entities that provided gender-affirming care by concealing

[1] Medical providers may provide necessary emergency care without obtaining prior consent. Cal. Bus. & Prof. Code 2397(a)(3). County social workers can also consent to medical treatment in emergency situations. Cal. Welf. & Inst. Code § 369(d).

[2] Generally, children in foster care have a right to receive medical treatment, including transgender healthcare. *See* California Welfare and Institutions Code §§ 16001.9(a), 16010.2 Parents may generally consent to medical treatment; however, the juvenile court has the authority to remove a parent's right to consent to medical care once a minor is declared a dependent child. California Welfare and Institutions Code §361(a) .The court may then place primary consent rights with someone else, such as the child welfare agency. *Id.* California law also allows certain people, in addition to the child's parents, to consent for a dependent's health care at times, including the social workers, the court, adult caregivers, and established guardians. *See* Cal. Fam. Code §§ 6550, 6552, 6910, 6911. In addition, one parent can consent to treatment for the minor, in defiance of the other parent, and be protected under SB 107.

the child's medical records from discovery – making no exception for parents.[3] SB 107 §§ 1, 2. Any denial of access to a parent of their child's medical records is inappropriate.

Additionally, SB 107's adopted definition of "gender-affirming health care" permits the patient – a child – to determine the interventions that are medically necessary for the child, as well as the minor's gender identity. Opp'n at 16; *see also* Cal. Welf. & Inst. Code §16010.2(b)(3)(A). The statutory text defines gender-affirming health care "to mean health care that respects the gender identity of the patient, as experienced and defined by the patient, that may include…a) Interventions to suppress the development of endogenous secondary sex characteristics; b) Interventions to align the patient's appearance or physical body with the patient's gender identity; and c) Interventions to alleviate the symptoms of clinically significant distress resulting from gender dysphoria, as specified." Cal. Welf. & Inst. Code §16010.2(b)(3)(A)

This definition leaves parents out of the conversation in violation of medical recommendations. Specifically, the World Health Professional Association for Transgender Health ("WPATH"), a transgender advocacy organization, recommends that health professionals defer to parents "as they work through the options and implications," even if they ultimately "do not allow their young child to make a gender-role transition."[4]

Further, the State's arguments regarding the UCCJEA do not impact the veracity of Plaintiff's parental rights claims, as an exercise of emergency jurisdiction allows the court to enter emergency orders that remain in effect until a determination is made by another court regardless of home state jurisdiction – giving the child ample time to receive gender-affirming treatment in defiance of parental rights. Opp'n at 18-20; Cal. Fam. Code § 3424(b-c). Even if parents are given

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[3] Although not challenged in this lawsuit, Cal. Health & Saf. Code § 123115(a)(2) allows health care providers to withhold medical records from parents 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." SB 107 labels gender-affirming healthcare an "emergency" for minors, incentivizing medical providers to utilize this exception to consent laws to withhold medical information from parents.

[4] World Professional Association for Transgender Health, Standards of Care for the Health of Transexual, Transgender, and Gender-Nonconforming People at 17 (version 7, 2012) ("WPATH Guidelines"), available at https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?_t=613669341 .

notice and an opportunity to be heard at the emergency jurisdiction hearing, SB 107 labels a parent's refusal to consent to gender-affirming health care or mental health care sufficient reason to retain jurisdiction over a child. Opp'n at 19; S.B. 107 §§ 4, 5. Nothing about this scenario is "unfounded speculation," as it is all found in the textual operation of the UCCJEA. Opp'n at 18.

Additionally, home state and emergency courts must communicate only if there exists a current custody arrangement in another state. Cal. Fam. Code § 3424(d). Notably, this intra-court communication does not hinder the emergency court's ability to issue emergency orders, which remain in effect until the home state issues a differing order. Cal. Fam. Code § 3424(b-d). If no state has issued a prior custody determination, California courts do not have to communicate with any other court and its temporary custody determination can ripen into a permanent determination. Cal. Fam. Code § 3424(b).

In sum, SB 107 does not require a parent to consent to their child's medical procedure and treats gender-affirming care as an emergency, thereby allowing California to assert emergency jurisdiction over the child. VC, ¶¶ 50-54. Gender-affirming care is not just limited to a physical examination as in other cases, *Wallis v. Spencer*, 202 F.3d 1126, 1131 (9th Cir. 2001), but experimental and irreversible medical procedures that could cause permanent scars and disfigurement and permanently alter neurodevelopment, sexual function, and bone development in children. VC, ¶¶ 26-28. SB 107 also treats any parent who denies their child gender-affirming care as unfit, even if the parent is trying to help their child work through their insecurities and vulnerabilities to avoid a potentially irreversible and regrettable decision. *Id.*, ¶¶ 25-26, 30-33, 50-54. Plaintiff has shown that SB 107 is an extreme and unwarranted interference on parental rights and the right to familial association in violation of the First and Fourteenth Amendments.

2. Plaintiff's Full Faith and Credit claim is likely to succeed

a. *SB 107 ignores the rightful jurisdiction and judgments of other states*

Defendant's claim that SB 107 "does not affect California's legal obligations to recognize and enforce child custody determinations made by other states" is disingenuous and misconstrues Plaintiff's argument. Opp'n at 21. Defendants cite a string of family code statutes reflecting that

California courts must recognize the custody determinations of other states. *Id.* SB 107 amends California's version of the UCCJEA to directly conflict with the nationally accepted UCCJEA and the Full Faith and Credit Clause by overriding the rightful jurisdiction and judgments of courts in a family's home state. The UCCJEA is unique precisely because its provisions are uniform among the states. SB 107 disrupts this uniformity and erodes the UCCJEA's efficacy.

Section 4 of the bill amended the California Family Code to state that "the presence of a child" in California "for the purpose of obtaining gender-affirming health care" is sufficient for California courts to exercise jurisdiction over custody decisions for the child. SB 107 § 4. Section 8 of the bill prohibits the enforcement of another state's law authorizing a child to be removed from their parent or guardian based on that parent or guardian allowing their child to receive gender-affirming health care or gender-affirming mental health care. SB 107 § 8.

Section 6 of SB 107 further compounds these problems by stating that, even if California is an "inconvenient forum" compared to another state based on factors like how long the child has lived outside the state, where evidence for the case is located, and where the parties to the case are located, California courts must disregard these important considerations and claim sole jurisdiction if the child's case involves gender identity issues. *Id.*, § 6.

Case law is clear that California cannot disregard the custody jurisdiction and judgments of sister states, as this fails to meet the "exacting" standard of the Full Faith and Credit Clause. Regarding judgments, "the full faith and credit obligation is exacting." *Baker by Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998). Even if California disagrees with the legal principles underlying a judgment, it still cannot ignore the bounds of the Full Faith and Credit Clause. *See id.* at 232-33 ("[O]ur decisions support no roving 'public policy exception' to the full faith and credit due judgments."); *Fauntleroy v. Lum*, 210 U.S. 230, 236 (1908) ("[T]he judgment of a state court has the same credit, validity, and effect in every other court in the United States, which it had in the state where it was pronounced.").

Finstuen v. Crutcher, 496 F.3d 1139 (10th Cir. 2007) is instructive. Opp'n at 23. In *Finstuen*, the court held that an Oklahoma statute preventing recognition of adoptions by same-

sex couples was unconstitutional because the Full Faith and Credit Clause required Oklahoma to recognize adoptions, including same-sex couples' adoptions, that were validly decreed in other states, despite the state being opposed to the practice as a matter of policy. 496 F.3d at 1153. *Finstuen* makes clear that while California may disagree with the policies of other states seeking to protect minors from irreversible gender transition procedures, it cannot interfere with or prohibit the enforcement of the custody determinations of those states that were validly decreed. *Id*.

SB 107 also prohibits California courts from enforcing subpoenas seeking information about gender-affirming medical care issued by out-of-state courts. SB 107 §§ 1, 2. Yet again, SB 107 permits California to impede the judicial proceedings of other states, including subpoenas.

SB 107 violates the Full Faith and Credit Clause because California has decided that its courts—not those of the family's home state—should be the final arbiters of whether parents are fit to raise their child. Plaintiff will likely succeed on the merits.

b. *SB 107 is a "policy of hostility" towards the public acts of other states*

Defendant improperly argues that SB 107 falls under the public policy exception to the Full Faith and Credit Clause. Opp'n at 21-22. The U.S. Supreme Court has explained that the Full Faith and Credit Clause demands that state court judgments be accorded full effect in the courts of other states and precludes states from adopting any policy of hostility toward the public acts (i.e. statutes) of another state – regardless of any public policy exception. *Franchise Tax Board v. Hyatt*, 578 U.S. 171, 176 (2016) ("Hyatt II"); *Franchise Tax Bd. of California v. Hyatt*, 139 S. Ct. 1485, 1497 (2019) ("Hyatt III"); Opp'n at 21-22.

For example, in *Hyatt II*, the Court found that Nevada had adopted a policy of hostility when it applied a special rule of applicability to California but not the principles of Nevada law ordinarily applicable to suits against Nevada's own agencies. 578 U.S. at 178-80. In applying its own rules, Nevada cited concerns that California's conflicting statute failed to provide "adequate recourse" to Nevada's citizens. *Id.* at 178. The Court noted that this concern was not sufficient to overcome the full faith and credit obligation and held that, "in devising a special – and hostile –

rule for California, Nevada has not sensitively applied principles of comity with a healthy regard for California's sovereign status." *Id.* at 180 (internal quotation omitted).

SB 107 was passed as a policy of hostility toward transgender statutes and polices of other states, as evidenced by the statements of both State Senator Scott Wiener and Governor Gavin Newsom. State Senator Wiener, the sponsor of SB 107, stated that he drafted SB 107 "in response to recent executive and legislative action in states like Alabama and Texas." VC, ¶¶ 35, 38, Ex. 1. Governor Newsom similarly commented that he was signing SB 107 into law because "[s]tates across the country [were] passing laws to demonize the transgender community." *Id.*, ¶ 38.

True to word, California specifically exempted children obtaining gender-affirming care from its general rule that the state should not consider the taking or retention of a child from a person who has legal custody. *Id.*, ¶ 56. Thus, just like in *Hyatt II*, where Nevada applied a special rule of applicability to California, California has created a special carve-out from its general jurisdiction rule to allow the "taking of a child" if done to pursue gender transition procedures in California, while overlooking other egregious violations that could warrant the "taking of a child", such as sexual abuse. SB 107 § 7. This rule unjustifiably ignores the proper and rightful jurisdiction of the child's home state. VC, ¶¶ 49-56.

Further, SB 107 attempts to impermissibly trump the laws of other states regarding gender-reassignment treatment and custody determinations. For example, South Dakota HB 1080 and Utah SB 16 ban gender reassignment surgery and hormone treatments for minors. SB 107 will allow California doctors to provide gender reassignment treatments to minors who still live in another state. California doctors, via telehealth appointments, will be able to prescribe cross-sex hormones to a child in South Dakota or Utah in hostile disregard of the full faith and credit obligation that a state defer to other states' laws and jurisdictions. Further, if South Dakota or Utah parents seek to hold California doctors accountable pursuant to their state's laws, SB 107 would shield medical professionals from the reaches of South Dakota's and Utah's conflicting laws.

SB 107 "close[s] the door of [California's] courts to the cause of action" created by other state statutes in favor of its own policies. *Hughes v. Fetter*, 341 U.S. 609, 611-612 (1951)

(invalidating a Wisconsin statute that "close[d] the doors of its courts" to an Illinois cause of action); *Broderick v. Rosner*, 294 U.S. 629, 642–43 (1935) (finding a policy of hostility when a state statute would permit enforcement of certain claims in that state but deny enforcement of similar claims under a sister state's law). In the same vein as *Hughes* and *Broderick*, SB 107 unlawfully prohibits causes of actions based upon another state's law authorizing a child to be removed from their parent because the parent allowed the child to undergo gender transitioning surgery. SB 107 § 8. The bill also prevents law enforcement from carrying out their duties by executing an out-of-state warrant, and hospitals cannot respond to a subpoena requesting medical information of a child receiving gender-affirming care. *Id.*, §§ 2, 9, 10.

California's policy might pass constitutional muster if the state applied the same rules consistently. But similar to the special carve-out rule regarding jurisdiction, SB 107 also exempts law enforcement from its general duty to facilitate out-of-state warrants if the warrant relates to gender-affirming care. *Id.*, § 9. California "cannot escape th[e] constitutional obligation to enforce the rights and duties validly created under the laws of other states…." *Hughes*, 341 U.S. at 611.

Finally, when statutes conflict, the Full Faith and Credit Clause often affords states the right to implement their own statutes; however, when a state's statute infringes on a constitutional provision, upends rules of comity, or the "governmental interest" of one jurisdiction far outweighs that of another, a state must subordinate its statute to that of the other state. *See Alaska Packers Ass'n v. Indus. Acc. Comm'n*, 294 U.S. 532, 547 (1935); *see also Broderick v. Rosner*, 294 U.S. 629, 643 (1935) ("For the States of the Union, the constitutional limitation imposed by the full faith and credit clause abolished, in large measure, the general principle … by which local policy is permitted to dominate rules of comity.").

Here, SB 107 infringes upon parental rights and violates the governmental interests of other states. California claims the bill is intended to protect minors by "creat[ing] legal safeguards for transgender youth and their families", but it actually harms children. State Br. at 22. Research shows that social transitions of minors are significant psychotherapeutic interventions that merit parental involvement. VC, ¶¶ 24-28. Research shows that these procedures have life-altering side-

effects. *Id.*, ¶¶ 26-28. It has also been reported that children regretted undergoing life-altering gender reassignment treatment. *Id.*, ¶¶ 30-33. The interests of states like Alabama and Texas therefore preempt the interests of California.

In sum, SB 107 was passed in direct hostility to the laws of other states, rendering California law sovereign over other states on issues of transgenderism and closing the doors of California courts to the causes of action created by other states to protect minors from experimental transgender treatments. Plaintiff will likely succeed on the merits of its claim because SB 107 directly disregards the principles of comity which lie at the heart of the Full Faith and Credit Clause.

D. Plaintiff Has Demonstrated Irreparable Harm

Defendant alleges that Plaintiff's four-month delay in seeking injunctive relief evidences a lack of irreparable harm. Opp'n at 24. This argument is untenable. While delay in seeking a preliminary injunction is a factor to be considered in weighing the propriety of relief, the Ninth Circuit has noted that delay in seeking injunctive relief is often insufficient on its own to refute a determination of irreparable harm. *See Cuviello v. City of Vallejo,* 944 F.3d 816 (9th Cir. 2019) ("Usually, delay is but a single factor to consider in evaluating irreparable injury; indeed, courts are loath to withhold relief solely on that ground.") Additionally, the delay has to be significant – not mere months. *See Lydo Enterprises, Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984) (Finding no irreparable harm where plaintiff "delayed five years before taking any action.").

Additionally, Defendant's arguments concerning standing have no merit. Opp'n at 24-25. As shown above, Plaintiff has pled facts sufficient to establish organizational standing[5] via a diversion of resources and frustration of mission. *See* Part II(A)(2), *infra*. Plaintiff is not required to quantify its diversion of resources to allege standing. Plaintiff may establish irreparable harm by showing "ongoing harms to their organizational missions…," which it has done. *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Defendants cannot refute that constitutional infringement can alone constitute irreparable harm. *See Assoc. Gen. Contractors v. Coal for Econ.*

[5] Because Plaintiff has alleged organizational standing, it need not establish third-party standing. *See infra* Part II(A)(2).

Equity, 950 F.2d 1401, 1412 (9th Cir. 1991) ("[A]n alleged constitutional infringement will often alone constitute irreparable harm."). Plaintiff has alleged multiple constitutional violations which are sufficient to show irreparable harm. *See* Part II(A)(3-4), *infra.*

E. The Equities And Public Interest Favor An Injunction

Rather than countering Plaintiff's legal authorities holding that the public interest and the balance of the equities tip sharply in favor of "prevent[ing] the violation of a party's constitutional rights," *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012), Defendant inadequately claims Plaintiff's constitutional injuries are "vague" and "unsupported." Opp'n at 25. But as demonstrated above, Plaintiff has shown that SB 107 exceeds its intended purpose of "protect[ing] families who come to California to obtain gender-affirming health care…," instead waging an explicit and radical assault on sacred parental rights and the comity between states. *Id.* The State does not have the authority to enact statutes cart blanche. The State's governing authority must yield to the Constitution, and the State exceeded its authority. An injunction is therefore warranted here because the public has an interest in ensuring its elected officials follow the Constitution.

III. CONCLUSION

For the foregoing reasons, this Court should grant Plaintiff's motion to preliminary enjoin Defendant's enforcement of SB 107.

Respectfully submitted,

ADVOCATES FOR FAITH & FREEDOM

Dated: May 22, 2023

/s/Mariah R. Gondeiro
Mariah R. Gondeiro
Attorney for Plaintiff