IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

L.W., *by and through her parents and next friends, Samantha Williams and Brian Williams*, et al. *Plaintiffs,* v. JONATHAN SKRMETTI, *in his official capacity as the Tennessee Attorney General and Reporter*, et al., *Defendants.*	)	No. 3:23-cv-00376 JUDGE RICHARDSON JUDGE NEWBERN

JOINT MOTION FOR DISCOVERY CONFERENCE

Defendants Jonathan Skrmetti, in his official capacity as Tennessee Attorney General and Reporter, Tennessee Department of Health ("TDH"), Ralph Alvarado, in his official capacity as Commissioner of TDH, Tennessee Board of Medical Examiners ("BME"), Melanie Blake, in her official capacity as President of BME, Stephen Lloyd, in his official capacity as Vice President of BME, Randall E. Pearson, Phyllis E. Miller, Samantha McLerran, Keith G. Anderson, Deborah Christiansen, John W. Hale, John J. McGraw, Robert Ellis, James Diaz-Barriga, and Jennifer Claxton, all in their official capacities as members of BME, and Logan Grant, in his official capacity as Executive Director of the Tennessee Health Facilities Commission (collectively "Defendants"), by and through counsel, and pursuant to Fed. R. Civ. P. 26, Local Rule 37.01 and Practice and Procedure Manual (III)(D)(3), respectfully move for a discovery conference regarding a dispute between the parties regarding Plaintiff L.W., Plaintiff John Doe, and Plaintiff Ryan Roe's responses to Defendants First Set of Interrogatories.

Counsels for Plaintiffs and Defendants ("Parties") engaged in good faith negotiations to resolve the dispute through multiple phone calls and emails. The Parties have reached an impasse requiring the involvement of the Magistrate Judge and request a discovery conference at the Magistrate's earliest convenience. In support of this motion and in accordance with Practice and Procedure Manual (III)(D)(3), the Parties will file a Joint Statement of Discovery Dispute.

Dated: May 11, 2023

Respectfully submitted,

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I hereby certify that on May 11, 2023, the undersigned filed the foregoing document via this Court's electronic filing system, which sent notice of such filing to the following counsel of record:

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L.W., *by and through her parents and next friends, Samantha Williams and Brian Williams*, et al. *Plaintiffs*, v. JONATHAN SKRMETTI, *in his official capacity as the Tennessee Attorney General and Reporter*, et al., *Defendants.*	)	No. 3:23-cv-00376 JUDGE RICHARDSON JUDGE NEWBERN

JOINT STATEMENT OF DISCOVERY DISPUTE

Defendants served Plaintiffs L.W., Ryan Roe, and John Doe, by and through their parents and next friends ("Minor Plaintiffs") with Interrogatories and Requests for Production of Documents ("Discovery Requests"). Minor Plaintiffs, by and through counsel, have objected to production of certain information requested. Defendants request that this Court compel Minor Plaintiffs to produce educational information relevant to, *inter alia*, their standing to maintain this suit and the irreparable harm alleged in Plaintiffs' Motion for Preliminary Injunction (the "Motion") and in the Declarations submitted by Minor Plaintiffs and their parents in support thereof.

PARTIES' GOOD FAITH DISCUSSIONS

Plaintiffs filed the Complaint that instigated this action on April 20, 2023, and, the next day, sought preliminary injunctive relief from enforcement of the Act. ECF Nos. 1 and 21. Defendants were served on April 24, 2023. Defendants served Discovery Requests to each Minor Plaintiff on May 2, 2023, and they requested expedited responses due to the pending Motion. Counsel for all parties attended a telephonic conference on May 3, 2023, to discuss scheduling and discovery issues related to the Motion. The parties agreed to limited, pre-hearing discovery tailored to the relief

sought in Plaintiffs' Motion. However, the parties disagreed as to whether certain of Defendants' Discovery Requests fit within the agreed upon scope. Defendants asserted these initial Discovery Requests, which include four interrogatories and two requests for production, were appropriate for the preliminary injunction phase. Plaintiffs agreed to provide some documents and interrogatory responses but asserted that the discovery requests were overbroad. Plaintiffs also stated they could not provide documents and responses until after the Court entered a protective order and entered an order allowing two of the Minor Plaintiffs and their parents to proceed by a pseudonym. Thereafter, the parties exchanged several emails attempting to resolve the dispute. A compromise could not be reached.

On May 8, 2023, the Court entered a protective order. *Agreed Protective Order Regarding Confidential Information* [ECF No. 87]. On May 9, 2023, Plaintiff L.W., who is not proceeding by a pseudonym, served formal responses to Defendants' initial Discovery Requests and produced 92 pages of responsive documents. Plaintiffs have stated they continue to collect responsive documents from medical providers and that production remains ongoing. However, the Minor Plaintiffs have objected to providing any information in response to Defendants' Interrogatory No. 4—which states: "Identify each public or private school in which Plaintiff [ ] has been enrolled from 2013 to the present"—asserting that this request is irrelevant to the relief sought in the Motion.

PARTIES' POSITIONS

I. Defendants' Position

Plaintiffs moved this Court for extraordinary, injunctive relief based in part on their argument that Minor Plaintiffs will face irreparable harm if the Act goes into effect on July 1, 2023. ECF No. 33 at 23 – 24. The alleged harm, which broadly includes "loss of care" and "emotional distress" and specifically addresses potential injuries unique to each Plaintiff, necessitates fact discovery

related to each Minor Plaintiffs' diagnoses, recommendations for continued treatment, and overall mental and medical health. *Id*.

Defendants directed their First Set of Interrogatories and Requests for Production of Documents to each Minor Plaintiff. While several requests sought information regarding the Minor Plaintiffs' medical history,[1] Defendants' Interrogatory No. 4 requests each Minor Plaintiff to "[i]dentify each public or private school in which Plaintiff [] has been enrolled from 2013 to present." (Exhibit A.) Minor Plaintiffs have objected to this interrogatory and refuse to provide any information in response to the same.

Schools, teachers, and classmates are prominently featured in the declarations submitted by Minor Plaintiffs and their parents regarding the Minor Plaintiffs' alleged experience with gender dysphoria, mental distress, and related treatment. ECF No. 22 at ¶ 6 ("did not feel comfortable using the boy's bathroom at school"), ("[L.W.'s] school was super supportive" after L.W. requested use of preferred name and pronouns in eighth grade); ECF No. 23 at ¶¶ 5 ("at the end of [L.W.'s] third grade, [L.W.'s] teacher in the Gifted & Talented Section at her school encouraged me and Brian to take L. for an evaluation at Vanderbilt Children's Hospital"), 6 (L.W. "started getting sick at school" and "was not using the restroom at school"), 21 (L.W.'s "school was extremely supportive" in use of L.W.'s preferred pronouns and L.W.'s "teachers and administrators supported her"); ECF No. 24 at ¶ 6 ("When I came back to school as myself (a boy), [in second grade] after Thanksgiving break, all my teachers were supportive …"), 11 (without medication John Doe "would have an incredibly difficult time wanting to be around other people and go to school, which would have a terrible effect on my grades"); ECF No. 25 at ¶¶ 11 (Jane Doe "spoke with the principal of [John Doe's] school"

[1] Patient Plaintiffs have objected to providing certain relevant information regarding their medical history requested by Defendants through Interrogatory Nos. 2 and 3 and Request for Production No. 1. However, the parties continue to confer as it pertains to these requests in an effort to resolve their dispute in that regard.

prior to second grade year about fear of needing to transfer to more affirming environment), 12 ("principal met with the staff to facilitate" John Doe's social transition in second grade); ECF No. 26 at ¶¶ 15 (Ryan would "throw-up before school every morning because I was so anxious"), 16 (Ryan in seventh grade had an "amazing science teacher who made me feel safe to come out to more people; "decided that year to fully come out to the whole school"; "thought maybe if I was out to more of the staff they could help me manage the bullying"), 18 "never wanted to participate in class").

The events that occur in school, and Minor Plaintiffs' emotional and physical reaction to those events, is one of the factual cornerstones upon which Minor Plaintiffs base the assertion that they will "experience [irreparable] anxiety, distress" should the Act be enforced starting July 1, 2023. *See* ECF No. 33 at 1. Minor Plaintiffs' school teachers, counselors, advisors, and social workers, including those referred to in Minor Plaintiffs' declarations, are likely to have relevant information regarding the Minor Plaintiffs' experiences, behavior, and mental health. Plaintiffs should not be permitted to curtail Defendants' ability to test the veracity of Plaintiffs' assertions as to irreparable harm—and have their preliminary injunction motion considered on as thin of a factual record as possible—by withholding the name of the educational institutions in which Plaintiffs have been enrolled. Accordingly, Defendants move this Court to compel each Minor Plaintiff to provide a full and complete response to Interrogatory No. 4.

II. Minor Plaintiffs' Position

As Plaintiffs have communicated to Defendants, Plaintiffs are working diligently to collect, review, and produce information and documents in response to the Discovery Requests—which, in addition to the education information discussed in this Statement, seek information and documents

with respect to all of the Minor Plaintiffs' medical providers[2] for the past 10 years—on the expedited schedule that Defendants have requested.

In each Discovery Request issued to a Minor Plaintiff, Interrogatory No. 4 states the following:

> **INTERROGATORY NO. 4:** Identify each public or private school in which Plaintiff L.W. has been enrolled from 2013 to the present.

Defendants take the position that mere mention of the Minor Plaintiffs' personal feelings, perceptions, and experiences at school in the Complaint and declarations supporting the pending Motion is enough to justify third-party discovery from their "school teachers, counselors, advisors, and social workers." Defendants are mistaken. The information that Defendants seek (the names of the Minor Plaintiffs' schools) is irrelevant to the relief sought in the Motion. The Act bans the provision of gender-affirming care to minors suffering from gender dysphoria; it has nothing to do with education.

The statements Defendants reference to support their request do not advance their argument. These statements are about the Minor Plaintiffs' personally experienced emotions and perceptions, such as the anxiety they experienced before accessing gender-affirming care, coming out to certain of their friends and teachers as transgender, and/or their fears about what life (to include school, naturally) will be like if they are proscribed by law from continuing treatment for gender dysphoria. Defendants seek discovery to test the veracity of Minor Plaintiffs' statements about their personal emotional processes and perceptions, or (potentially) to evaluate Defendants' assessment of how Minor Plaintiffs' *should* have experienced their emotions at school beyond what they have testified

[2] Plaintiffs disagree with Defendants' claim in footnote 1 that the Minor Plaintiffs' medical history as "requested by Defendants through Interrogatory Nos. 2 and 3 and Request for Production No. 1" are relevant. Defendants' Discovery Requests are exceedingly broad and the information and documents they seek are irrelevant to their need to respond to the Motion. Nevertheless, Plaintiffs agree that the parties continue to confer regarding the scope of these requests to avoid the need for this Court's intervention.

to in their declarations. But such an exercise will not further Defendants' response to the pending Motion. Nevertheless, to the extent that Defendants seek discovery regarding specific statements made in Plaintiffs' declarations, Plaintiffs remain willing to discuss narrower discovery requests specifically tailored to those statements.

Defendants' Discovery Requests also raise significant privacy concerns. Plaintiffs stated in the Record and have explained to Defendants that, for some Minor Plaintiffs, their status as transgender is not universally known at school. Plaintiffs communicated that they were concerned that Defendants' discovery requests to third parties could result in the Minor Plaintiffs' transgender status being revealed, leaving them vulnerable to harassment, discrimination, mistreatment, or worse. Indeed, Defendants have started issuing third-party subpoenas to the Minor Plaintiffs' medical providers using the Minor Plaintiffs' former names, and plan to serve similar subpoenas to all of the Minor Plaintiffs' "school teachers, counselors, advisors, and social workers." Defendants have not offered any rationale for their requests sufficient to justify exposing the Minor Plaintiffs to the potential harm that might follow revelation of their transgender status to those at their schools with whom the Minor Plaintiffs have not shared the information.

Certification

Counsels for Plaintiffs and Defendants met and conferred and made a good faith effort to resolve each discovery dispute presented in the statement.

Dated: May 11, 2023

Respectfully submitted,

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