

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE, FLORIDA

JANE DOE, et al.,	)	
	)	
Plaintiffs,	)	Case No: 4:23cv114
	)	
vs.	)	Tallahassee, Florida
	)	May 19, 2023
JOSEPH A. LADAPO, et al.,	)	8:30 A.M.
	)	
Defendants.	)	
_____	)	

TRANSCRIPT OF PLAINTIFFS' PRELIMINARY INJUNCTION AND  
TEMPORARY RESTRAINING ORDER HEARING  
BEFORE THE HONORABLE ROBERT L. HINKLE,  
UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S

2 *(Call to order; parties present.)*

3 THE COURT: Good morning. Please be seated.

4 We're here on Doe versus Ladapo, and the plaintiffs'  
5 motion for temporary restraining order or preliminary  
6 injunction. I'll hear from the plaintiffs first.

7 MS. LEVI: Yes, Your Honor.

8 Good morning, Your Honor. I'm Jennifer Levi, and I  
9 represent the plaintiffs in this case who, as you said, are  
10 seeking a TRO to prevent SB-254, a law that criminalizes the  
11 provision of medical treatment that transgender minors need to  
12 live as transgender minors, that went into effect just two  
13 days ago. We're asking the Court to issue an order that  
14 enjoins the law from remaining in effect.

15 As you know we've also filed a preliminary injunction  
16 seeking to halt the effect of the Board of Medicine's rules  
17 that prevent doctors from prescribing puberty blockers and  
18 hormones to transgender adolescents, like SB-254 in a  
19 different form, barring transgender adolescents from living  
20 consistent with their gender identity.

21 I'll be happy to turn to the argument regarding the  
22 likelihood of success on the merits, but I wanted to start by  
23 addressing the irreparable harms that these plaintiffs face in  
24 the absence of a TRO being issued by this Court.

25 The movants in this case are three transgender

1 adolescents, all of whom have been diagnosed with gender  
2 dysphoria, all of whom are either on the cusp of puberty or  
3 actually have had confirmation that they have entered Tanner  
4 Stage 2, pubertal development, and all are not able to  
5 initiate puberty blockers because of the bans on treatment.

6 I want to speak just specifically to a couple of  
7 their circumstances.

8 Gavin Goe is a transgender boy, lived for years as a  
9 boy, and he was referred by his pediatrician in June of 2022  
10 to pediatric endocrine specialist for continued assessment to  
11 determine whether he has entered into Tanner Stage 2. He had  
12 an appointment scheduled for March, just a couple months ago,  
13 that was cancelled because of the Board of Medicine bans.

14 THE COURT: What's going to happen if I enter the  
15 injunction?

16 MS. LEVI: Your Honor, if you enter the injunction,  
17 doctors, we have confirmed this, will continue to provide the  
18 treatment that the patients need. And I will say, we have  
19 seen in similar cases in Alabama and in Arkansas where there  
20 were immediate orders that were entered by federal district  
21 courts enjoining those laws from remaining in effect, that the  
22 care the transgender adolescents need was continued.

23 THE COURT: Those states probably don't have the  
24 resent history Florida does of retaliating against individuals  
25 who took a position adverse to the State. But your doctors

1 are willing to go forward.

2 MS. LEVI: We have confirmation from doctors that the  
3 reason they wouldn't provide care is because of SB-254, and  
4 that if there was an injunction issued by this Court, that  
5 they would go forward in providing that care.

6 And just to say, I do understand your point about the  
7 history of retaliation, but in Alabama there also was criminal  
8 penalties associated with the law and, you know, a similar  
9 response and knowledge from the clinic that the law was  
10 coming, and the issuance of a very swift order was essential  
11 to the continuation of care.

12 In any case, as I said, Gavin Goe had an appointment  
13 cancelled in March. Lisa Loe, who also was referred to a  
14 pediatric endocrine specialist, had an appointment that took  
15 place in March that confirmed the fact that she has entered in  
16 pubertal development of Tanner Stage 2. And Susan Doe, who  
17 has had ongoing medical monitoring by the U.S. Health Youth  
18 Gender Program has submitted documentation from her doctor  
19 that she is on the cusp of puberty, could enter puberty any  
20 day.

21 So I know Your Honor has been hearing for the last  
22 week and a half the serious harms that adolescents with gender  
23 dysphoria that's untreated will experience; and, of course,  
24 these plaintiffs are experiencing that as well as the  
25 disruption of their peer social interactions, the impact on

1 their body image, their sense of self that will have long  
2 lasting repercussions if they can't get the care that they  
3 need.

4 But in addition I want to address, to highlight the  
5 fact that the plaintiffs are seeking a TRO because of the  
6 draconian and sweeping punitive measures that are incorporated  
7 within SB-254, including of course the criminal penalties, the  
8 potential civil penalties up to 20 years after the completion  
9 of treatment, as well as the professional discipline threats  
10 to not just the M.D.s who are regulated by the Board of  
11 Medicine, but also to the advanced practice registered nurses  
12 and physician assistants who also can, under Florida law,  
13 prescribe care.

14 And we are asking for a TRO in this case for the very  
15 classic reasons of preserving the edifice of the health care  
16 institutions that are currently in place designed to provide  
17 this care. It is, you know, likely, it's predictable, without  
18 a swift order from this Court, doctors will be assigned to  
19 other areas of practice; these clinics will accept different  
20 patients; endocrinologists who have specialties to treat  
21 gender dysphoria, but also other specialized pediatric  
22 conditions like diabetes, will be transferred, patient rolls  
23 will change. And that could happen so swiftly that by the  
24 time that this Court could rule on the merits, these  
25 plaintiffs won't have the opportunity and the health care

1 infrastructure won't exist as it does prior to today.

2 THE COURT: Is that already ongoing? I mean, my  
3 understanding, I guess, is that the clinics aren't taking  
4 patients now.

5 MS. LEVI: Well, my understanding is that, as of two  
6 days ago, that clinics were continuing to accept patients to  
7 do the monitoring and the assessment. It's absolutely true  
8 that after the Board of Medicine's rule passed, some clinics  
9 turned patients away. We saw that in the case of Gavin Goe.  
10 But there are other clinics that are looking to this Court to  
11 see what happens, and those are the doctors who have said to  
12 us that they would continue to provide care; that if SB-254  
13 and, of course, the Board of Medicine rules as well, were  
14 enjoined, that they will be able to maintain the practices  
15 that they have held.

16 THE COURT: When I say my understanding, that's what  
17 I gather from the evidence in instances like Gavin Goe.

18 MS. LEVI: Well, that's correct.

19 THE COURT: Give me some background on what there is.  
20 There's the clinic at University of Florida, a clinic at  
21 University of Miami.

22 MS. LEVI: Yes.

23 THE COURT: A Johns Hopkins clinic in, I guess it's  
24 St. Petersburg, somewhere there in the Bay Area.

25 MS. LEVI: That's correct. Nicklaus Children's

1 Hospital had been providing care and is no longer providing  
2 care.

3 THE COURT: Where else in the state does one get this  
4 care?

5 MS. LEVI: There are individual endocrinologists,  
6 there are individual doctors who -- I know you heard testimony  
7 this week who have referred, work in collaboration with the  
8 multidisciplinary centers, but also may have specialties to  
9 provide practice for adolescents. The plaintiffs that we  
10 represent have been referred to specialty practices by their  
11 pediatricians. Pediatricians have worked in close  
12 collaboration with those speciality clinics. So my  
13 understanding, those are the primary centers, but not  
14 exclusively the places where people are seeking care.

15 THE COURT: Part of the defense express concern is --  
16 expressed concern is not everybody practices at the level that  
17 should be required or should be followed for treatment of  
18 this. Not everybody has a multidisciplinary team. There's  
19 testimony about a 20-minute interview and then straight to  
20 these drugs. I don't know that anybody had instances where it  
21 happened.

22 What does the record show about whether, in fact,  
23 that goes on?

24 MS. LEVI: It's not demonstrated in the case of the  
25 plaintiffs that I represent who, as I've said, have either had

1 ongoing care and coordination between their pediatrician and  
2 multidisciplinary speciality practices. I haven't seen  
3 anything in the record that demonstrates as you said that what  
4 the State's fear has been carried out.

5 But more significantly, to the extent that that's the  
6 concern, the sweeping ban, criminalization, civil liability  
7 for 20 years is hardly tailored to that specific concern. I  
8 mean, to say there is a recognition that nobody disputes the  
9 fact that transgender dysphoria is a real and serious  
10 condition, and that without treatment adolescents will suffer,  
11 and this ban is far from tailored to the concerns that the  
12 Court was raising -- that the defense is raising, I guess.

13 I'm happy to turn to the merits.

14 THE COURT: Please.

15 MS. LEVI: Plaintiffs argue that, because the medical  
16 rules and SB-254 facially discriminate on the basis of  
17 transgender status; and, therefore, because of sex, that they  
18 are subject to strict scrutiny or at least heightened review.

19 The laws, both the Board of Medicine's rule and  
20 SB-254, facially target transgender people, transgender  
21 adolescents, by prohibiting the treatments that are integral  
22 to transgender identity -- that is to the conduct, gender  
23 transition that defines the group -- the prohibited treatments  
24 are precisely those that a transgender person needs to  
25 transition and thus live and thrive as a transgender person.

1 SB-254 couldn't be clearer in the language of the statute by  
2 prohibiting -- this is the statutory text -- *treatments that*  
3 *affirm a person's perception of his or her sex if that*  
4 *perception is inconsistent with the person's birth sex.* In  
5 other words, if a person is transgender. That's the  
6 classification that is baked into it. And the same treatments  
7 are prohibited under the Board of Medicine rules.

8 Defendants argue that the analysis of *Geduldig* or  
9 *Dobbs* applies; and rather than being a transgender  
10 classification, the laws regulate a medical condition, but as  
11 I said, you could look through SB-254, and you won't see a  
12 medical condition specifically identified that doesn't refer  
13 to the underlying condition of gender dysphoria.  
14 Specifically, it refers to a prohibition, as I said, of the  
15 treatments that affirm a person's gender identity, or somebody  
16 has a gender identity that's inconsistent with their birth  
17 sex.

18 And so it couldn't be clearer on the face of the  
19 statute itself, and by targeting the specific treatments in  
20 the Medical Board's bans, that the laws create a facial  
21 classification targeting transgender people; therefore,  
22 discriminates both on the basis of transgender status and also  
23 sex.

24 I can speak more specifically to the reasons why  
25 *Geduldig*, *Dobbs*, and *Adams*, in those cases the court and other

1 courts explaining those decisions have explained that you  
2 don't have to be pregnant or have an abortion to be a woman.

3 Here, the prohibited treatments are precisely those  
4 treatments that individuals need to be transgender. I don't  
5 think there is any real argument that you can't, on the face  
6 of the statute, determine the class that it's focused on.  
7 That's what the courts in Alabama and Arkansas found as well.

8 So it's not that the bans prohibit treatment that  
9 happen to be used by transgender minors, they prohibit  
10 treatments because they are used by transgender minors. And  
11 so we argue that strict scrutiny, at minimum, heightened  
12 review applies to the statute and the medical ban.

13 THE COURT: What do you do with -- one of the things  
14 they argue is, they basically tell me, go listen to the  
15 argument. There was an oral argument in the Alabama case. I  
16 haven't gone to listen to the argument. But I take it it  
17 didn't go well for the plaintiffs, and we live in the world we  
18 live in, and the panel will do as it will.

19 Of course, the *Adams* case wound up *en banc*, and it's  
20 a -- it will be a long time before this is settled. But it's  
21 likely that whatever the Circuit does in the Alabama case,  
22 it's going to control what happens in this case between the  
23 time of that decision and the time of any *en banc* decision or  
24 Supreme Court review, Supreme Court review in this case or  
25 Arkansas or somewhere else. Tell me how you think this is

1 going to play out over time.

2 I enter an injunction and the doctors provide this  
3 treatment, and next week or next month or three months from  
4 now, but probably not much more than three months from now,  
5 there is a Circuit decision. What's going to happen?

6 MS. LEVI: I was at that argument, Your Honor. I  
7 take a very different view than the State in this case. The  
8 bench said to the oralist to please address equal protection  
9 argument initially because of the existence of *Glenn v. Brumby*  
10 and the recognition that the Eleventh Circuit actually was a  
11 forerunner to establishing the law that the Supreme Court  
12 later recognized, which is that discrimination against  
13 transgender status is sex discrimination, and asked my  
14 co-counsel in Alabama, Jeff Doss, to start by addressing the  
15 equal protection argument because of the panel's purported  
16 view of that being very strong under *Glenn v. Brumby*.

17 Mr. Doss actually said, you know, appreciate the  
18 bench's, at least, consideration of the parental rights  
19 argument, which we make here as well, explained to the court  
20 that it's a parental right to medical decision-making to  
21 ensure that a child can get well-established, evidence-based  
22 medication and treatment. That's been endorsed by major  
23 medical associations, as you know. The trial I know has  
24 reflected all of that information. I think Mr. -- Mr. Doss  
25 made the argument, and actually my perception, which might

1 have been harder to -- I mean, this is just to answer your  
2 question, I don't know how the Eleventh Circuit is going to  
3 rule.

4 THE COURT: I learned a long time ago, you can't  
5 watch an argument and know how a case is going to come out.

6 MS. LEVI: Absolutely. All I want to say is my  
7 perception is that there is a very real possibility that the  
8 Eleventh Circuit decides to affirm the District Court's  
9 opinion on the basis of equal protection -- it may be on the  
10 basis of equal protection or parental rights. I can't  
11 predict, I don't know.

12 But, again, I think that's an important example where  
13 at least at the moment the controlling precedent is the  
14 District Court's decision, and the care has been ongoing. Of  
15 course, I don't know how the Eleventh Circuit is going to  
16 rule. I do think that *Glenn v. Brumby* is controlling. I also  
17 think that *Adams* is distinguishable.

18 In the *Adams* case the court said that there was a  
19 policy that applied to all students, didn't depend on how  
20 students looked or acted. This law is completely distinct  
21 from this. I mean, this law is a law that only applies to  
22 transgender minors and denies them the treatment that they  
23 need to affirm a gender identity.

24 So I think there is a very strong possibility that  
25 the Eleventh Circuit affirms the Alabama decision. It maybe

1 does so on both equal protection, parental rights. I can't  
2 speak to that. But given the established law in the Eleventh  
3 Circuit, I think it will be really important for this Court to  
4 enjoin the law as the District Court did, and then, yes, it  
5 will be revolved in the future as it is.

6 I'm happy to address the parental argument, if that  
7 would be helpful.

8 THE COURT: Whatever you wish. You've got a few  
9 minutes left and --

10 MS. LEVI: I'm happy to. I also want to make sure I  
11 have answered all of your questions, Your Honor.

12 THE COURT: I think that's what I had on my list to  
13 make sure I asked you.

14 MS. LEVI: Okay. Well, then with the few minutes  
15 remaining, we do argue that -- plaintiffs' also argue that  
16 strict scrutiny applies because these bans interfere with  
17 well-established parental rights, not in a high level of  
18 generality, but a very specific articulation of parents'  
19 rights to obtain established medical care for their children  
20 where it is well established, recognized, demonstrated to be  
21 effective. It's one of the oldest fundamental rights that's  
22 been recognized by the Supreme Court.

23 The State argues that the plaintiffs haven't argued  
24 it at the level of generality addressing the very specific  
25 medical treatment that would be requested. To require that

1 kind of demonstration of the right would really eviscerate the  
2 right. It's not the approach that the Eleventh Circuit has  
3 taken in *Vendenberg*, which it has not walked away from. And  
4 we do think by sweepingly preventing parents from being able  
5 to secure the medical care that their children need, that it  
6 sweeps more broadly than the State has authority to do so.

7 I know that the State has also argued that there  
8 can't be a right that isn't otherwise secured to adults, but  
9 in the foundational cases *Meyer versus Nebraska*, *Pierce versus*  
10 *Society of Sisters*, where the Supreme Court established that  
11 right. It was about parental rights, you know, different  
12 aspect of a parental right, but it was about educational --  
13 making decisions about educating one's children. There is no  
14 right to education, and yet the interpretation, the disruption  
15 of the State on parents being able to exercise that autonomy  
16 was recognized as a right.

17 We think that also triggers heightened scrutiny as  
18 did the Alabama and the Arkansas courts as well. And then  
19 looking at the statute and the medical bans and applying  
20 heightened scrutiny, we think it's crystal clear. Going to  
21 your earlier question that, where you have no dispute over the  
22 existence of the underlying medical condition, the seriousness  
23 of that medical condition when it's untreated, the only  
24 established treatment is that which is being enjoined, no  
25 alternative treatment has been demonstrated to be effective in

1 care, that the State hasn't demonstrated that the treatment is  
2 experimental and can't demonstrate that it's experimental.  
3 But even if that were to be the case, it doesn't justify a  
4 categorical ban on the treatment for all adolescents for whom  
5 we know it to be an effective treatment.

6 And just to kind of return to where I started, we do  
7 ask this Court to issue a TRO because people have been  
8 looking, including the health care providers, looking at the  
9 potentiality of this law getting passed, which just happened  
10 two days ago, and a swift order from this Court will preserve  
11 the health care institutions and the edifice that exists to  
12 provide care so that it's still there once the Court has the  
13 opportunity to resolve the case on the merits.

14 THE COURT: I do have a couple of questions. One  
15 goes to the TRO aspect of this.

16 Where do you stand on letting the other defendants  
17 know that we are here, and what do you want to do about it?

18 MS. LEVI: So we have the summonses ready to go and  
19 to be served. We are moving as expeditiously as possible to  
20 notify all of the defendants. We would ask you to issue the  
21 TRO ex parte while we can make that happen as quickly as  
22 possible. And we are prepared to move to the merits phase as  
23 quickly as possible. We believe and appreciate the full  
24 record that the Court has been developing over the course of  
25 the week and a half.

1 THE COURT: When can you try the case?

2 MS. LEVI: We can try the case as quickly as the  
3 defendants would agree to it. We have very few additional  
4 witnesses that we would want to put on. It would include a  
5 couple of our plaintiffs. We have an additional medical  
6 provider from the University of Florida, Health Care System.  
7 We have a bioethicist from the University of Miami who we  
8 think can provide an important perspective to this Court,  
9 but --

10 THE COURT: But you can do that, if I set a trial in  
11 June, you say you would be there.

12 MS. LEVI: Yes, we would, Your Honor.

13 THE COURT: I had a specific question about  
14 Dr. Bruggeman -- I'm not sure I said the name correctly.

15 MS. LEVI: Yes, that's right.

16 THE COURT: Is Dr. Bruggeman doing research at UF or  
17 treating -- I know doing research, but doing research on this  
18 or just treating these patients?

19 MS. LEVI: She's treating these patients, yes. She's  
20 a clinician, yes.

21 THE COURT: All right. You said you have summonses  
22 ready to go, but you haven't had any contact with the Attorney  
23 General's Office or the State Attorneys' Offices or --

24 MS. LEVI: We haven't yet. We honestly have been  
25 doing all we could to get the TRO on file and are moving -- I

1 mean, we have the summonses ready to go.

2 THE COURT: And if I entered a preliminary injunction  
3 against the Secretary, do you know whether that's enough for  
4 your doctors? I mean, if I did that, it would be a clear  
5 indication of my view of the merits and, frankly, it would  
6 make it pretty clear what's going to happen next; although, as  
7 always, the new party comes in, I give the new party a chance  
8 to be heard, and then it sometimes happens that a new party  
9 has something new to say and persuades me of its position. So  
10 it wouldn't be a guarantee that the same result would follow  
11 against the Attorney General or against the State Attorney,  
12 but there would be some indication.

13 I would think that that would be enough to keep a  
14 university from dismantling its program, but whether that  
15 would be enough to lead a doctor to say, I'm going to provide  
16 this care, even though there's a threat of criminal  
17 prosecution out there, I don't know.

18 MS. LEVI: I believe it would be a powerfully  
19 important decision that, as you said, would indicate the  
20 likely outcome, that would be the standard in the assessment.  
21 I can't, without confirming, represent what the doctors will  
22 do. There's obviously a tremendous concern about the criminal  
23 prosecution. That's why we had to bring in the State  
24 Attorneys, but I think that would be powerfully important, but  
25 I can't represent, you know.

1 THE COURT: All right.

2 Let me hear from the other side. Mr. Jazil?

3 Before you get into the merits, tell me where you are  
4 on representation. Who do you represent and what do you know  
5 about the co-defendants?

6 MR. JAZIL: Good morning, Your Honor. I represent  
7 the Boards of Medicine and the individual board members. I do  
8 not represent the State Attorneys.

9 And, Your Honor, because of that, the Boards of  
10 Medicine don't have jurisdiction over the criminal liability  
11 provision that's being challenged. I'm happy to answer the  
12 Court's questions regarding those provisions; however, I don't  
13 have authority to --

14 THE COURT: Is the Attorney General a defendant? Do  
15 you represent the Attorney General?

16 MR. JAZIL: I do not, Your Honor.

17 THE COURT: And I guess, while we are still dealing  
18 with things that really aren't in your bailiwick, is this a  
19 statewide prosecutor issue?

20 I know they passed a law recently to give the  
21 statewide prosecutor additional jurisdiction. And we may be  
22 beyond what is in your bailiwick or what you want to speak to.  
23 I know they expanded the jurisdiction of the statewide  
24 prosecutor. I don't know whether anybody has challenged that  
25 under the Florida Constitution. State Attorneys are elected

1 constitutional officers. I'm not sure the legislature can  
2 just take their jurisdiction away, but maybe so. That's a  
3 Florida issue I certainly don't know the answer to.

4           Some of this probably does involve more than one  
5 county. Some of these individual plaintiffs are crossing  
6 county lines to get to their providers.

7           Do you know whether it's a statewide prosecutor issue  
8 or just a State Attorney issue?

9           MR. JAZIL: Your Honor, I believe it can become a  
10 statewide prosecutor issue as you described it, if they are  
11 crossing jurisdictional boundaries from circuit to circuit. I  
12 do not believe that this issue would be subsumed within the  
13 changes that have been made to the statewide prosecutor  
14 jurisdiction. I think those deal with election-related  
15 issues, under the theory that elections have a statewide  
16 impact beyond one circuit.

17           THE COURT: All right. Back to the real issues.

18           MR. JAZIL: Your Honor, I'm happy to begin with  
19 whichever issue you would like for me to address first. I  
20 know my friend talked about the irreparable harm issues, the  
21 equal protection issues, and the due process issues. I can  
22 address those in any order that Your Honor would prefer or  
23 comment on --

24           THE COURT: Probably do briefly on irreparable harm.  
25 These plaintiffs' doctors certainly think they're going to

1 suffer irreparable harm.

2 MR. JAZIL: Yes, Your Honor. I know my friend  
3 provided the Court some information about what the doctors may  
4 or may not do, but just looking at the record and the  
5 affidavits that have been provided, we've got an affidavit  
6 from Dr. Rachel Roe, who is Susan Doe's physician. She last  
7 saw Susan Doe in November of 2022 and said that the onset of  
8 puberty was imminent. She then provided a declaration --  
9 pardon me -- a letter or declaration in April of 2023 saying  
10 that *She may have already begun puberty based on my last*  
11 *assessment*, which again was in November of 2022.

12 I don't think it tells us whether or not the patient  
13 has started Tanner Stage 2 puberty. So I make that note, Your  
14 Honor.

15 The other physician's note that is in the record is  
16 from Nicole Bruno. She is the physician for Gavin Goe. She  
17 last saw Gavin Goe in 2022, it's unclear when, and says that  
18 puberty may begin now or within the next few years.

19 Those are the two physicians who provided letters.  
20 We don't have the medical records for these patients in the  
21 record.

22 So, Your Honor, I would simply note that irreparable  
23 harm is a high standard. Irreparable harm based on doctors'  
24 notes alone, which are a little unclear about whether or not  
25 Tanner Stage 2 puberty has begun and treatments must be

1 administered, is a little vague. All we are left with then  
2 are the affidavits from the parents who are then speculating  
3 about whether or not Tanner Stage 2 has or has not begun.

4 So I would submit to the Court that that in and of  
5 itself is not enough for irreparable harm.

6 And if we look at the Dekker case by analog, when we  
7 got the medical records for these individuals in the Dekker  
8 case, the medical records cut both ways. The medical records  
9 include material that supports the prescription of puberty  
10 blockers, cross-sex hormones, and surgeries, but then it also  
11 supports the perspective of the State, where you have someone  
12 who has seen a patient once, that someone is a mental health  
13 intern with ten hours of training, and diagnosed someone. You  
14 have testimony where someone with lots of both mental and  
15 physical comorbidities had a 20-minute consultation about  
16 whether or not to use puberty blockers and cross-sex hormones.

17 And, Your Honor, I note that that experience that we  
18 are seeing from the Dekker case is inconsistent with even what  
19 the WPATH and Endocrine Society folks suggested the  
20 appropriate way to treat these issues. It's broad  
21 multidisciplinary teams who take a thorough examination of a  
22 person, sometimes over time, weeks, months, years, and then  
23 prescribe these treatments.

24 So, Your Honor, I would submit on the irreparable  
25 harm prong, my friends for the plaintiffs have not satisfied

1 their burden.

2           Moving on -- well, Your Honor, I would also like to  
3 touch briefly on the physician issue. We're speculating at  
4 this point that physicians with a PI would or would not issue  
5 treatments. I don't know what in the records support that  
6 contention. So I would leave it there.

7           Your Honor, moving on --

8           THE COURT: Of course, it's clear the only reason  
9 they wouldn't provide treatment is because of the State  
10 action. Surely, the State can't hold off otherwise  
11 appropriate injunctive relief by saying, we're going to  
12 prosecute you, and we don't care whether a district judge  
13 enters an injunction. It's not quite standing in the  
14 schoolhouse door, but it's the same idea, isn't it?

15           I mean, you really, the State -- I'm right that the  
16 State has -- well, you can understand how a doctor would be  
17 concerned about the approach the State of Florida has taken to  
18 those who oppose the State's position including on gay rights  
19 or transgender issues. You got a State Attorney that was  
20 fired in an Executive Order that said in so many terms that  
21 his position on transgender issues was a reason for the  
22 firing. This morning's news -- yesterday's just full of the  
23 ongoing spat between the Governor and Disney. There's a  
24 lawsuit pending in this court where Disney says, look at all  
25 of the changes because we took a position on gay rights or

1 transgender issues. Just took a position. And the governance  
2 of Disney has changed dramatically.

3 So you can see how a doctor would be concerned and  
4 might not think that just a district judge's injunction would  
5 be enough to alleviate the concern; isn't that right?

6 MR. JAZIL: That's true, Your Honor. I think there's  
7 a slight little complication in that analysis.

8 One, Your Honor, "the State" is too broad a phrase as  
9 the recent League of Women Voters' case from the Eleventh  
10 Circuit pointed out. One can say that the legislature is  
11 doing what the governor would like them to do, but the  
12 legislature is a separate entity with separate authorities.  
13 The constitutional officers who would be charged with  
14 implementing the criminal provisions are also separate  
15 constitutional officers and as --

16 THE COURT: Colleagues of the one that got fired.

17 MR. JAZIL: Yes, Your Honor.

18 THE COURT: Held the same constitutional position as  
19 the one that got fired.

20 MR. JAZIL: Yes, Your Honor. And the Attorney  
21 General is also a separate officer who's separately elected,  
22 has separate powers and authorities. The fact that I can't  
23 speak for all three of them is indicative of that as well,  
24 Your Honor.

25 THE COURT: Fair enough. But, look, if the problem

1 is that -- I raise the question, are the doctors really going  
2 to do this, we can deal with that. If the conclusion is, on  
3 the merits, the plaintiffs are entitled to win; and if they  
4 don't get care, they are going to suffer irreparable harm,  
5 then we can deal with the so what after that.

6 I mean, one thing the State has sought to do is to  
7 make sure that, even if there is not a doctor in Florida that  
8 will provide care, these people can't go anywhere else in the  
9 country to get care, right? The State of Florida is trying to  
10 make sure that they can't go to Boston and get care.

11 MR. JAZIL: Your Honor, I will confess, I don't  
12 recall reading that in the bill, but --

13 THE COURT: Well, here's what the bill says, if they  
14 just threaten, and I think that means talk about, getting  
15 care, we'll take the children away from the parents. Tell me  
16 what's the reason for that other than animus. These kids who  
17 probably need parental support as much as any kid in the  
18 state, and the State of Florida passes a law that says, if the  
19 parents even seek out good medical advice, we'll take them  
20 away from their parent. What would support that other than  
21 just flat animus?

22 MR. JAZIL: Your Honor, two points there:

23 One, I am getting up to speed on some of the language  
24 in this bill.

25 Two, that is in Section 1 of the bill which isn't

1 being challenged here, which deals with child custody issues.

2 THE COURT: Because these parents aren't going to be  
3 intimidated, apparently, and so they haven't come forward and  
4 said, oh, we're scared to do what's in the best interest of  
5 our children because of this. So it's not challenged here,  
6 but it's part of the statute that can certainly be analyzed on  
7 the question of animus. And part of what you do to analyze  
8 animus is look at this statute and what could support it and  
9 what could the State have been thinking. So that's my  
10 question:

11 What could the State have been thinking to say that,  
12 if a parent -- it's kind of written in the passive voice  
13 backwards and it has the word "threat," but I don't know what  
14 that quite means, but it seems to me that, if the parent talks  
15 with a doctor, maybe one of these doctors who's testified who  
16 provides gender care and is considering thinking about,  
17 proposes -- threatens, proposes, in context, I'm not sure what  
18 the difference is -- proposes to get care, we can take the  
19 child away from the parents. I'm not sure that the statute  
20 doesn't say, you can take the kids away just because they  
21 brought the lawsuit.

22 What would be the reason for that?

23 By the way, the State already has a whole dependency  
24 system set up. They've got separate sections in the state  
25 court system. Any parent that's not doing what the parent

1 needs to do, that child can be taken away already.

2 So with all that dependency background already there,  
3 the State passes a statute specifically addressing trans kids  
4 that says, if you seek care, we can take the children away  
5 from the parents. As I say, it seems to me, animus is an  
6 explanation. I'm at a loss to understand what the additional  
7 explanation for that provision could be.

8 MR. JAZIL: Your Honor, a couple of points. As  
9 you're going through your animus analysis, yes, in  
10 consideration of the whole bill language in its entirety is an  
11 appropriate thing for the Court to do.

12 Second, Your Honor, and I'm happy to file an errata  
13 on this, but to the extent that Chapter 61 deals with child  
14 custody disputes, and it's a dispute between one parent and  
15 another about whether or not to provide these services, and  
16 that's the trigger for a child being taken into the custody of  
17 the State, if there is a dispute between the two, one  
18 explanation could be, well, it's dealing with a minor child,  
19 you're dealing with informed consent issues, which are  
20 difficult for minor children, and if you have a dispute  
21 between two parents, the way to preserve the status quo in  
22 that instance, arguably, is to keep the kid from getting  
23 the --

24 THE COURT: So the parents --

25 MR. JAZIL: -- puberty blockers --

1 THE COURT: -- are in dispute about whether the kid  
2 should go to public school or to a private school, and the  
3 State, with its infinite wisdom and better assessment of  
4 what's good for a child, thinks, well, we will just take the  
5 child away and we'll make the decision. Surely not.

6 MR. JAZIL: Your Honor, it's different than the  
7 public school/private school example. This is at its core  
8 whether or not we should have certain treatments for a certain  
9 diagnosis; and if that certain treatment --

10 THE COURT: Parents don't agree about whether to give  
11 a COVID vaccine, what we need to do is just have the State  
12 take the child away.

13 MR. JAZIL: Your Honor, if the point is -- I  
14 understand the Court is making an example to point out the  
15 situation, but, Your Honor, I would posit that if it's a  
16 health, safety, welfare issue, and the State says, we are  
17 going to take the child away and do a certain treatment on the  
18 child because we believe it's in the best interest of the  
19 child, there are some instances where that's appropriate.

20 The due process case from the Eleventh Circuit my  
21 friend mentioned. It was a case where a father opposed the  
22 use of a catheter, and the State took the kid in custody, did  
23 the operation, and then the father sued saying I have  
24 substantive due process rights on the care of my child. And  
25 part of the discussion from the Eleventh Circuit was, well,

1 look, if in an emergency, the State needs to take the kid and  
2 do a surgery and can't get you on the horn to get your  
3 consent, we should be able to do that.

4           Some of the other Eleventh Circuit cases dealing with  
5 mask mandates, the Alabama case that dealt with the mask  
6 mandate. Parents are saying we don't want masks, the State  
7 saying you should have masks. It was allowed. A 1905 case,  
8 shots for influenza, same point, Your Honor, that when it  
9 comes to health, safety, welfare, it's a little different than  
10 the school-choice example.

11           THE COURT: It is. And the State of Florida -- I get  
12 it, the State thinks, by golly, even though your own expert  
13 said, no, no, the State shouldn't be making this decision, the  
14 parents should, they ought to get good medical advice, and  
15 then the parents and child ought to make the decision, that's  
16 what your own expert said, that this care is sometimes the  
17 proper care, and that it ought to be up to the parent. But  
18 the State says, oh, no, no, we know so much better than the  
19 parents and the doctors, we're going to make this decision,  
20 and if we have to, we're going to take the kids away. I get  
21 it, it's a remarkable position.

22           I do understand the question is who gets to make the  
23 decision. Does the legislature get to make the decision? Do  
24 the parents get to make the decision? And then if the  
25 legislature decides it really does know better than the

1 parents, and that the legislature is going to make the  
2 decision one size fits all, we've already decided we are going  
3 to make the decision, then the question becomes, is that a  
4 decision that the legislature is entitled to make? I'm not  
5 the medical person, but I am the one that makes the initial  
6 decision on the constitutional law question.

7 MR. JAZIL: Yes, Your Honor. I would like to address  
8 some of Dr. Levine's testimony.

9 As I understood his testimony, there are three major  
10 frameworks for treatment here. There's the reparative model,  
11 which is sometimes called "conversion therapy," on one end of  
12 the continuum. On the other end you have the gender-affirming  
13 model that says, we're going to support the kid in the chosen  
14 gender, and eventually if the kid needs it, puberty blockers,  
15 cross-sex hormones, surgery. And Dr. Levine was advocating  
16 sort of the middle ground. This may not be his phrase, but  
17 I'll call it the ambivalence model, where you're not trying to  
18 get the kid back into the natal sex and you're not trying to  
19 affirm the kid in their chosen gender.

20 So the middle ground, the ambivalence model, is what  
21 I thought he was advocating for, Your Honor. And he's laying  
22 out choices, and at the end of the day, yes, parents have a  
23 role in how those choices are selected, but so do the  
24 policymakers in the State, Your Honor, is the position I take.  
25 And if at the end of the day, the State is choosing among

1 those points on the continuum, it can draw a line and say that  
2 this is the perspective of the State, and the State in its  
3 efforts to manage the health, welfare, safety of its citizens  
4 is drawing a line in a certain place. And that is what I  
5 would argue the State has done, Your Honor.

6 THE COURT: What is inconsistent with what the State  
7 has done with this view of its action: What the State has  
8 decided is that people should not be trans?

9 MR. JAZIL: Your Honor, I do not think that that is  
10 what the State has decided. If we take a look at --

11 THE COURT: What's inconsistent -- what would the  
12 State do differently if what it decided was, being trans is  
13 immoral or contrary to our religion, just not to be done, we  
14 are flat against trans; these people, in the words of the  
15 legislator, are mutants and basically shouldn't exist, so we  
16 want to see to it that there are no trans individuals. What  
17 would the State have done differently from what it has done?

18 MR. JAZIL: Your Honor, if we begin with the  
19 supposition that every transgender person has gender dysphoria  
20 and, therefore, needs these treatments --

21 THE COURT: That's not true, and your own doctors say  
22 that is not true.

23 MR. JAZIL: That is not true, Your Honor, I agree  
24 that is not true. And, again, for purposes of your question,  
25 I am assuming that is true to make the point that, if every

1 transgender person has gender dysphoria and, therefore, needs  
2 these treatments, then what the State would do is say, okay,  
3 we're going to prohibit these treatments for everyone, not  
4 just minors, everyone. Also what the State could do, which is  
5 what the testimony is in the Dekker case, not every  
6 transgender person has gender dysphoria, what the State could  
7 do is say, okay, look, we're going to do the reparative model.  
8 All of these psychotherapies that are available for all three  
9 models -- reparative, affirmation, and the ambivalence  
10 model -- forget all that, we're going to do just the  
11 reparative model; that is the only therapy that could be  
12 allowed in the State for folks who have transgender health  
13 issues.

14 THE COURT: That would plainly be unconstitutional  
15 under the current law of the Circuit, right?

16 MR. JAZIL: That would, Your Honor, but that is what  
17 the State could do if it were trying to suggest that  
18 transgenderism itself is the issue.

19 THE COURT: The State could do that if it wanted to  
20 overtly violate the constitution as currently interpreted in  
21 the Eleventh Circuit in a case that the anti-trans community  
22 won.

23 MR. JAZIL: Your Honor, states often lay out statutes  
24 to set up test cases to take them up on appeal. That seems to  
25 be a trend. So, if the question the Court is asking is what

1 the State could have done --

2 THE COURT: Fair enough.

3 MR. JAZIL: So, Your Honor, just sticking to the  
4 equal protection issue, the sex-based discrimination argument,  
5 the argument is on its face discriminates based on sex. I  
6 point out the language in *Adams* talks about sex-based  
7 discrimination being discrimination based on biological sex.  
8 That is what *Adams* said. Then the analysis becomes, well,  
9 okay, why is it that we should have heightened scrutiny when  
10 it's not sex-based discrimination or discrimination based on  
11 an immunocal characteristic; again, *Adams* talked about  
12 immunocal characteristics being the trigger for heightened  
13 scrutiny --

14 THE COURT: *Adams* didn't overrule *Glenn versus*  
15 *Brumby*.

16 MR. JAZIL: *Adams* did not overrule *Glenn versus*  
17 *Brumby*, nor did it overrule *Bostock*. Both cases, however,  
18 talk about sex stereotypes in a workplace environment. In a  
19 workplace environment, a man, a woman, a transgender man or  
20 transgender woman in employment context, usually no  
21 difference, and that would be appropriate. But if we're  
22 talking about, again, the health-related aspects, we also had  
23 testimony in *Dekker*, at the chromosomal level, people aren't  
24 changing. So, Your Honor, I note that --

25 THE COURT: Let's use sex to mean sex assigned at

1 birth or sex determined at the chromosomal level. So here's  
2 my question:

3 A doctor determines that two 15-year-olds need to be  
4 treated with testosterone. The doctor prescribes testosterone  
5 for each of the two 15-year-olds. It's legal for one; it's  
6 illegal for the other. How do we know which one it's legal  
7 for and which one it's illegal for? And the answer is, one is  
8 a boy and one is a girl assigned at birth, they have different  
9 sex. That's the only difference that determines under the  
10 Florida statute whether it's legal or illegal; isn't that  
11 right?

12 MR. JAZIL: No, Your Honor. I think under the  
13 Florida statute the question becomes: Is it being given to  
14 affirm a perception of his or her sex that is inconsistent  
15 with the sex that's defined prenatally?

16 THE COURT: But the only way to answer that question  
17 is to know whether it's a boy or a girl. If it's a boy --  
18 using these terms to mean natal sex -- if it's a boy, it's  
19 legal; if it's a girl, it's illegal under the statute a  
20 hundred percent of the time.

21 MR. JAZIL: True.

22 THE COURT: You can't say that in *Adams*, you can't  
23 say that in *Geduldig*. And the same thing about nine-year-olds  
24 treated with GnRHa. Whether it's legal or not depends on  
25 whether it's a natal boy or a natal girl a hundred percent of

1 the time.

2 MR. JAZIL: So I take it Your Honor's point that  
3 based on the *Geduldig* test and the *Adams* test what we are  
4 talking about is sex-based distinctions.

5 THE COURT: Absolutely. I don't think you'll be able  
6 to give me any case where the only difference in the two  
7 classes we're talking about for equal protection purposes  
8 correspond 100 percent with sex, and the scrutiny applied is  
9 not strict. I shouldn't say "strict." Intermediate.

10 MR. JAZIL: Intermediate. Your Honor, that's fair.  
11 A couple of points about that.

12 One, if we do that analysis and we look at the  
13 diagnosis of gender dysphoria rather than sex, and we're doing  
14 the analysis to see, okay, if one group includes -- and the  
15 point has been made that this is targeted to transsexuals. So  
16 if one group includes both gender dysphoria, one group  
17 includes both -- includes trans, and the second category is  
18 not gender dysphoria, it includes both trans and natal males  
19 and natal females, so if it --

20 THE COURT: But it doesn't, and that's the point.  
21 Your doctors said it, and you agreed with it just a minute  
22 ago. This doesn't apply just to people with dysphoria. This  
23 applies to all trans individuals. So you can be a trans  
24 person without dysphoria, but a trans person still in need of  
25 puberty blockers and cross-sex hormones to support your trans

1 identity, and this statute prohibits that. This statute does  
2 not allow treatment of people who are trans but not -- but do  
3 not have dysphoria.

4 MR. JAZIL: Understood, Your Honor. And I was making  
5 the distinction between gender dysphoria and the sex point  
6 that Your Honor made, because the preliminary injunction is  
7 seeking to enjoin two different things here. It is seeking to  
8 enjoin the statutes, which do not mention gender dysphoria,  
9 and the rules, which do mention gender dysphoria.

10 So if we're doing the analysis for the statute, what  
11 Your Honor said, biologic-based sex, intermediate scrutiny, if  
12 we're doing the analysis for the Board of Medicine rules --  
13 pardon me, Your Honor, I'm a little under the weather -- they  
14 talk about gender dysphoria. So, if we're doing the *Geduldig*  
15 and *Adams* analysis for the rule, it would be gender dysphoria  
16 is a --

17 THE COURT: You think under the rule it's okay for a  
18 doctor to prescribe puberty blockers and cross-sex hormones  
19 for a trans child if the trans child does not have dysphoria.  
20 And kind of a follow-up, what planet do you live on? I mean,  
21 really? And, look, if all the plaintiffs really needed was a  
22 doctor to say this child doesn't have gender dysphoria, and  
23 you told these clinics, look, you can treat these kids as long  
24 as they don't technically have gender dysphoria, I just don't  
25 think that's what the Board of Medicine would say is fine, do

1 you?

2 MR. JAZIL: Your Honor, I'm looking at their  
3 language:

4 *The following therapies and procedures performed for*  
5 *the treatment of gender dysphoria in minors are prohibited.*

6 If the minor is identifying as trans and the minor --  
7 and, again, trans is a strongly felt sense of self. If the  
8 minor has, for example, Klinefelter's disease, an extra  
9 chromosome, that would be perfectly appropriate to prescribe  
10 them puberty blockers, cross-sex hormones, right? If a child  
11 is in the process of detransitioning from one gender to the  
12 other, and there could be a tapering off period, a withdrawal  
13 period, that would be perfectly appropriate under the rule.  
14 So I can think of some samples, but I --

15 THE COURT: Yeah. I think it goes back to what  
16 planet do you live on. I think the idea that the Board of  
17 Medicine thought that would be okay is just not it. I think  
18 more likely -- I think all of this is consistent with the view  
19 that trans without more is just not acceptable. There should  
20 not be trans people. They should not be treated. We went  
21 through that discussion.

22 MR. JAZIL: I understand, Your Honor. I would like  
23 to pull the equal protection --

24 THE COURT: Your own expert, I mean, this is some  
25 consistent -- you have an expert on that signs on to an *amicus*

1 brief that says this is a false identity, they are  
2 masquerading as the other sex, that kind of language.

3 MR. JAZIL: I understand, Your Honor. And just to --

4 THE COURT: I have to say, a lawyer of your caliber,  
5 as good as you are, has all of the resources the State has,  
6 that's the expert you can find?

7 Dr. Levine, very helpful I thought. And his  
8 testimony in his view would support substantial restrictions  
9 on how this kind of medical care is provided. And so, if the  
10 concern is, there are people prescribing this stuff after a  
11 20-minute interview, then, by golly, make it illegal to do  
12 that. Nobody is saying you can't require good quality medical  
13 care as a condition to providing this kind of treatment.

14 MR. JAZIL: I understand, Your Honor. And another  
15 way to take a look at Dr. Levine's testimony, as I'm trying to  
16 articulate it as best I can, is, if we agree that there is  
17 room for some restrictions to provide this care in a safe,  
18 effective manner, then who gets to make that choice? Right?

19 That choice at the end of the day should be given to  
20 the policymakers at the Florida legislature. The Florida  
21 legislature decides to draw lines on how to make those  
22 choices. Do these lines need to be perfect? No. What is it  
23 that those lines need to do? Do those lines need to satisfy  
24 the floor set by the constitution? The floor set by the  
25 constitution, depending on the treatment -- let's take

1 abortion for one. It's a highly-charged issue, it's one that  
2 spurs passions. Abortions have been around forever.  
3 Abortions some have said, and a lot of the medical  
4 associations did say in *Dobbs*, is safe, effective, et cetera.  
5 But a State can completely bar abortion as its appropriate  
6 line-drawing exercise.

7 THE COURT: They can. And *Dobbs* is not a case -- and  
8 I don't think there are any cases -- well, we went through the  
9 can you treat the 12-year-old, and *Dobbs* is not an exception  
10 to the analysis there. Look, *Dobbs* is an enormously --  
11 abortion is an enormously difficult subject. There is a fetus  
12 involved, a potential child involved in the *Dobbs* analysis,  
13 and that's not true here.

14 So I get it. *Dobbs* is the law of the land, and it  
15 talks about substantive due process, and on and on, and it  
16 talks about equal protection. But it doesn't compel the  
17 result here where the facts and the two classes in the equal  
18 protection analysis are different.

19 MR. JAZIL: Your Honor, I bring up abortion in part  
20 because the *Geduldig* analysis is also an abortion analysis,  
21 right? This is whole class concept we come up with from  
22 *Geduldig* to *Dobbs* to *Adams* is based in abortion. And Your  
23 Honor made the point, you know, what planet am I living on if  
24 I think this is going to affect someone other than trans  
25 people, but, again, the argument was made in all three of

1 those cases -- well, in *Geduldig* and *Dobbs*, look, at the end  
2 of the day, abortion only affects women. So it's an  
3 intermediate scrutiny --

4 THE COURT: Yeah, I get it. I should not have asked  
5 what planet, that was probably a little too glib. All of this  
6 stuff is very serious, and every now and then something glib  
7 is a pleasant break in an otherwise way serious discussion.

8 But I don't think I said -- I used the phrase in the  
9 way that -- on the issue that you just said. I used it with  
10 respect to the question of whether the rule is different from  
11 the statute in its scope, whether the rule would allow a  
12 doctor to prescribe a puberty blocker or a cross-sex hormone  
13 to a trans child just because the child did not have gender  
14 dysphoria. I just don't think anybody would construe the rule  
15 that way, and I suspect that the explanation for the reference  
16 to gender dysphoria in the rule is because nobody had studied  
17 this issue carefully enough or looked at the actual facts and  
18 medical situation with enough care to understand that there  
19 are trans people who do not have dysphoria. But all of the  
20 evidence in the case is that there are indeed trans people who  
21 do not have gender dysphoria.

22 MR. JAZIL: Yes, Your Honor. I think Your Honor  
23 understands my position. At the end of the day health,  
24 welfare, safety regulations defer to the State.

25 If Your Honor has additional questions, I'm happy to

1 answer them.

2 THE COURT: I did want to ask this:

3 *Carolene Products* was decided decades ago. I haven't  
4 gone back to look at the date, but it was old when I was in  
5 law school, and that was decades ago. But *Carolene Products*  
6 footnote four is there, it refers to discrete and insular  
7 minorities. The phrase has continued to be referred to, and I  
8 don't think anybody has suggested that it's not a construct  
9 that is useful in equal protection analysis. So I guess the  
10 two-part question is:

11 First, am I correct that whether a challenged  
12 distinction works on a discrete and insular minority is still  
13 an appropriate part of the analysis; and, second, aren't trans  
14 individuals a discrete and insular minority?

15 MR. JAZIL: Your Honor, if I could -- you used the  
16 phrase "discrete and insular minority," the argument that's  
17 made in the papers is that they are a quasi-suspect class. I  
18 think functionally the argument is the same.

19 And there, I pivot to *City of Cleburne* case where  
20 Justice Marshall was talking about mentally-handicapped  
21 individuals and whether or not they should be treated as a  
22 quasi-suspect class and given heightened protections under the  
23 constitution; and the Supreme Court said, no. Justice  
24 Marshall in his opinion talks about how, for the mentally  
25 handicapped, they suffered through Jim-Crow-like issues, long

1 history of forced sterilizations, all sorts of abuse,  
2 et cetera. Even with that history, they weren't given  
3 heightened status in an equal protection analysis context.

4 So I would suggest that, you know, I understand the  
5 perspective, but from constitutional tradition, I don't think  
6 it crosses the bar to getting heightened protections.

7 And, Your Honor, I would also point to footnote five  
8 in the *Adams* decision where this issue is -- it's dicta. It  
9 wasn't decided, but it was touched upon.

10 THE COURT: Fair enough. And now that you mentioned  
11 it, I do recall that, and I will go back and visit it again.

12 Let me say this about the *City of Cleburne*. First, I  
13 think it is a relevant case. I suggest to you, it's very  
14 helpful to the plaintiffs, not to the defense. You're right  
15 about part of the discussion. There's a lot more to the  
16 discussion. The plaintiffs won that case. That is a good  
17 example of a case where the Supreme Court said rational basis,  
18 but it really has to be rational. Part of the analysis of  
19 whether mentally disabled -- that's probably as good a term as  
20 any.

21 MR. JAZIL: I was trying to clean it up, Your Honor.

22 THE COURT: I understand. At the time they probably  
23 used the language "retarded," and we don't use that so much  
24 anymore.

25 Part of the discussion was that class of people has

1 been able to garner substantial political support. You would  
2 be hard-pressed at least lately to point out any substantial  
3 political support that the trans community has gotten at least  
4 in this State. It also pointed out, which is an important  
5 part of the suspect class analysis, that it often is true that  
6 treating that class differently makes sense, and so people do  
7 get hired based on how smart they are. There are many things  
8 that mentally-disabled people can do, many things they cannot.

9           And so it's not true as it is, for example, for the  
10 classic suspect class, race, that the characteristic often is  
11 a legitimate basis for different treatment.

12           You turn to trans individuals, it's a lot more like  
13 race. What is the instance where it would be legitimate to  
14 treat a trans individual differently? Maybe choosing a  
15 bathroom, and that's what *Adams* says. There's privacy  
16 concerns of others, and although we don't allow customer  
17 preference to support racial discrimination, for example,  
18 there are privacy concerns, they are legitimate. There was  
19 intermediate scrutiny in the case. But the court held this  
20 survived it.

21           But it's hard to understand why the trans community  
22 wouldn't get intermediate scrutiny if there is hardly ever any  
23 legitimate basis for treating the trans community differently.  
24 What's wrong with that analysis, other than footnote five cuts  
25 against it?

1 MR. JAZIL: Footnote five cuts against it. There's  
2 also discussion in the *en banc* opinion in *Adams*. It talks  
3 about when heightened scrutiny should apply, and the court --  
4 I don't have the pin citation, Your Honor, but -- the court  
5 talks about immutable characteristics. It lays out certain  
6 ones that are immutable, such as sex -- biological sex, race,  
7 national origin. And, again, Your Honor, I simply point out  
8 that the testimony in this case has been, when we're talking  
9 about the transgender identity, the deeply held sense of self,  
10 and it can change over time. And so, Your Honor, I point out  
11 that that discussion would cut against it.

12 THE COURT: The idea that it's not immutable is a  
13 complicated question. It's an easy question if you believe,  
14 as some of the people on your side seem to believe, that it's  
15 just made up and it's not really a thing; that these people  
16 are just masquerading as somebody of the other sex, that it's  
17 a false identity, and that theme runs through some of this.

18 MR. JAZIL: I understand, Your Honor.

19 THE COURT: It's been a good discussion. I think I'm  
20 out of questions, and it's the kind of thing we could talk  
21 about for hours.

22 MR. JAZIL: Your Honor, I would just like to  
23 highlight the second part of your question about treating the  
24 trans people differently and when would that be appropriate.

25 And, Your Honor, again, I would posit that it would

1 be appropriate in the medical context. In an employment  
2 context like *Bostock* and *Brumby*, it would not, and that's been  
3 settled.

4 Your Honor, I know you're referring to Dr. Hruz's  
5 testimony and some of his *amicus* briefs. Again, the point of  
6 his testimony was to talk about the fact that at the  
7 chromosomal level things don't change and he critiqued the  
8 study. So the chromosomal stuff, I would simply urge the  
9 Court to separate from his personal views.

10 Thank you, Your Honor.

11 THE COURT: Fair enough. Thank you.

12 Rebuttal? I think you need to talk to me about the  
13 medical records for the particular plaintiffs.

14 MS. LEVI: Well, I mean, we have, as Mr. Jazil  
15 represented, there are letters from the doctors who referred  
16 them to endocrine specialists. They weren't able to get  
17 appointments, at least the two that had more  
18 longstanding referrals.

19 THE COURT: Here's the concern. I do think that the  
20 record suggests that this treatment ought to be provided with  
21 great care, with a multidisciplinary approach. I don't think  
22 there is anything in the record suggesting that anybody in  
23 Florida has been treated any other way. I don't think -- I  
24 could be wrong -- I don't think the record has any indication  
25 of any actual individual in Florida who has not been

1 appropriately treated or who has come to regret it. At the  
2 earlier administrative stage they had some people from out of  
3 state that had some dramatic testimony about how they  
4 regretted the treatment they got.

5 But the record does suggest that this care ought to  
6 be provided with care, with a multidisciplinary team. And I  
7 do think that, before you get an injunction saying you're  
8 entitled to this care, you probably need to establish that  
9 indeed this has been through that kind of multidisciplinary  
10 approach, and this is not something that was made haphazardly,  
11 but a decision that was made appropriately. And I haven't  
12 gone back and focused on the actual record on this. What do  
13 we have?

14 MS. LEVI: We have one plaintiff who is under the  
15 supervision of the University of Florida, Health Gender  
16 Program; we have one client who was referred to Johns Hopkins'  
17 Child Adolescence Program; and we have one child who was  
18 referred to Nicklaus.

19 So all of these are patients whose parents are doing  
20 what they have been recommended by their pediatricians to do.  
21 And what you have are the letters from the doctors showing the  
22 referrals to those gender health specialty programs and/or  
23 testimony from the parents about the approach that they are  
24 taking.

25 THE COURT: And so when I go back through and

1 flyspeck the record, I'm going to find that there's a record  
2 of long-term care, evaluation? One of the things that  
3 Dr. Levine said, some of it certainly rang true, parents know  
4 more than the doctors, but parents don't always tell the  
5 doctors everything they know. And he was concerned that, if  
6 you didn't see the patient over a substantial period of time,  
7 you wouldn't necessarily develop the level of trust that you  
8 need to make sure you got all of the information, to make sure  
9 you are doing this right.

10 I know the University of Florida because I'm in the  
11 State and I know the reputation the institution has. But  
12 what's in the record that shows that the gender clinic is  
13 providing care at that level, other than just my assumption  
14 that the University of Florida surely is doing this right?

15 MS. LEVI: What you will find in the record is  
16 testimony from the parents about the persistent identification  
17 of the children. You will see in the record the parents'  
18 testimony that they sought care from doctors, that they got an  
19 appropriate diagnosis of gender dysphoria, and they are trying  
20 to take this next step to ensure that comprehensive evaluation  
21 of care. As I said, for one of the plaintiffs, she was able  
22 to actually get the blood work to make a determination that  
23 she's initiated Tanner 2 stage puberty. We have a child who  
24 was turned away, not able to get the blood work done. And so  
25 what the injunction we are asking you to issue would do would

1 not be necessarily an order that's going to, you know, in any  
2 way require the next medical step. That's for the judgment of  
3 the doctors that these plaintiffs are working with. They  
4 can't even get the comprehensive health assessment that would  
5 make the determination of readiness.

6 I mean, what you will see in the record, as I said,  
7 for Gavin Goe, he was referred in June of 2022. He had to  
8 wait that long period of time, nine months. It's not that  
9 atypical to get into the gender specialty health centers in  
10 order to get the assessment and then the determination of  
11 care. I mean, as you are well aware, this is absolutely not  
12 for these parents about just getting an order that then gets  
13 this medication. That's exactly what they want, is to be able  
14 to move into a facility that has the kind of assessment that  
15 would make an appropriate determination for the timeframe for  
16 the initiation of puberty blockers.

17 And so what's in the record is the testimony from the  
18 parents of their continued work with medical professionals and  
19 doctors, the inability to get into a facility, as I said,  
20 except for one who did get the blood work who had the  
21 determination that she had initiated puberty.

22 So it seems to me that would be exactly the kind of  
23 careful ongoing assessment we would want these parents to be  
24 able to get for their children, not a bar from the State  
25 that's going to potentially -- and these parents won't do it

1 but others might -- turn to alternative less. I mean, I think  
2 really what the law does is going to unsettle the ability of  
3 parents to get comprehensive multidisciplinary care.

4 THE COURT: Is there a reason why the defense doesn't  
5 have the medical records? I take it, you have the medical  
6 records.

7 MS. LEVI: We don't actually have the comprehensive  
8 medical records. I mean, the law was passed -- the law was  
9 passed, I understand that we have already challenged the Board  
10 of Medicine rules, but what we have, what we are able to get  
11 within the time that the law passed and filing the case are  
12 the letters from doctors -- two, in this case -- to support  
13 the request for the injunction.

14 But there's evidence to support that the parents  
15 have, as I said, been taking cautious careful steps to get to  
16 appropriate doctors and get the full comprehensive evaluation.  
17 I mean, again, what the law is doing is shutting down the care  
18 that is essential to evaluate the appropriateness for  
19 initiating treatment.

20 THE COURT: Oh, I get it. But what we're dealing  
21 with here is three specific individuals. Shouldn't it be  
22 required as a prerequisite to a preliminary injunction that  
23 they have received the kind of full analysis, the  
24 multidisciplinary analysis, that the standard of care would  
25 require?

1 MS. LEVI: They can't get the full multidisciplinary  
2 analysis. I mean, that's --

3 THE COURT: Well, I mean, up to this point. I don't  
4 know how much of that analysis needs to be done. But I take  
5 it that what you want is you would like an order today, and  
6 you could see the doctor next week, and a week from today you  
7 could have the medicine. Now, maybe that's too fast, maybe  
8 it's not. But what you're asking for essentially is for me to  
9 clear the roadblock so that you can have the medicine  
10 immediately, as soon as you can see the doctor and get  
11 approved.

12 Do you think that, as part of that, there should be a  
13 condition -- or, as part of that, I should evaluate whether  
14 you have actually had the multidisciplinary workup that you  
15 need?

16 MS. LEVI: I don't, Your Honor. We're asking you to  
17 enjoin SB-254 because of the impact that it has on impeding  
18 patients' ability to get ongoing care and because of the  
19 erosion it's going to have on the entire health  
20 infrastructure. If this Court doesn't enjoin the law's  
21 application to doctors, there's not going to be a way for  
22 these plaintiffs to even get into a facility.

23 THE COURT: You understand that any injunction is  
24 going to be in favor of these three individuals, right? I  
25 mean, that's the -- leave out for a minute the general law

1 that applies to federal judges across the board and how one  
2 would analyze this; and, frankly, that's how I have been  
3 analyzing this my whole time here, but there's Eleventh  
4 Circuit law specifically on this. One of these cases was  
5 vacated and remanded. I think it was the Medicaid case, *Rush*  
6 *versus Parham*. I think the injunction in that case -- I think  
7 I'm thinking of the right case -- was vacated and remanded to  
8 limit the injunction to the specific plaintiffs in the case.

9 MS. LEVI: Well, I have a couple of things to say. I  
10 mean, one is, the relief that the plaintiffs are seeking can  
11 really only be gotten with a broad facial injunction, again,  
12 because of the impact that the law has on the entire health  
13 system. In the *Otto* case the order was a facial injunction  
14 upon remand from the Eleventh Circuit enjoin the law, not just  
15 an exception from the provision for the doctors that brought  
16 the particular challenge to the law.

17 THE COURT: Let me tell you how I have dealt with  
18 this, and I'll hear your input on how I ought to deal with it,  
19 but this goes not just for the preliminary injunction but the  
20 long-term.

21 Let me tell you, for example, I had the same sex  
22 case, so I was the first federal judge with the challenge to  
23 same sex marriage in Florida. I entered a preliminary  
24 injunction. I entered the preliminary injunction in favor of  
25 the specific plaintiffs in the case. I think that was the

1 appropriate way to enter the injunction.

2           The Association of Court Clerks -- one of the  
3 defendants was a clerk of court who had to issue the marriage  
4 license -- they had a lawyer that told them, look, it's still  
5 a crime in Florida to issue a marriage license. If you issue  
6 these marriage licenses, we don't really care what Hinkle  
7 said, if you issue these marriage licenses, it's going to be a  
8 crime, you could be prosecuted.

9           Well, the court clerk filed a motion for  
10 clarification that said, I know I have to issue a license to  
11 this couple that wants to get married in Washington County --  
12 a little tiny county out west here in the Panhandle -- do I  
13 have to issue the injunction to the others? And I entered an  
14 order, which I think correctly set out the law. It was just  
15 about a page long, it wasn't much, but I think it correctly  
16 set out the law, and you can go find it if you're interested  
17 in my view on how this ought to work. And I said, look, my  
18 injunction just applies to these plaintiffs, and so you have  
19 to comply with the injunction. But the constitution applies  
20 to everybody, and the class action rule is in the book, and if  
21 we need a defense class, that can be done, too, and there are  
22 attorneys' fees provided in the statute. So do what you want.  
23 And within 24 hours, I think, the lawyers for the Clerks'  
24 Association kind of rethought their position. There's  
25 probably more explanations than that than my persuasive order,

1 but they thought better of it, and everybody complied, and  
2 there was not another problem. From that point forward, I  
3 thing the same sex marriages have gone forward in the State.

4 I stayed the order, by the way, until the Supreme  
5 Court refused to stay the other Circuit decisions around the  
6 country. It was pretty clear to me at that point that the  
7 Supreme Court, which way the wind was blowing, and so it  
8 wasn't stayed beyond that.

9 That's different from here. You can put a marriage  
10 off. You can't put puberty blockers off. So I understand,  
11 the State issue is completely different.

12 But that's what I think the law is in terms of how  
13 the injunction can be framed. So I suspect that, if you get a  
14 preliminary injunction, and you might well, it's going to be  
15 an injunction just in favor of the three plaintiffs. And part  
16 of that is going to be, they need to be able to establish that  
17 they are indeed -- they have indeed done what they need to do  
18 up to the point of going to clinic that can provide this.

19 So, I'll give some thought to how that would need to  
20 be framed, but you should too, and you might want to consider  
21 getting those medical records. The defense is going to get  
22 them, right? There's not any question that they can subpoena  
23 all of those medical records and get them. You can get them a  
24 whole lot faster, and you're the one that's asking to go fast.  
25 You probably ought to get those records and turn them over.

1 You can seal them. They can all be filed under seal. I'll  
2 try to put that in my order.

3 MS. LEVI: I want to correct that we do have the  
4 medical records for Gavin Goe. I apologize. I just learned  
5 from co-counsel that we do have the medical records now.

6 THE COURT: I understand. You're not the one that  
7 got them, but somebody did.

8 MS. LEVI: Absolutely. And I want to clarify that  
9 for the Court. We have them for Gavin Goe, we have them for  
10 Susan Doe, and we will quickly get them for Lisa Loe as well.  
11 There is also a document affirming that treatment that's been  
12 provided to Susan Doe, the one person that we don't have the  
13 medical records for, is provided in a multidisciplinary  
14 setting, and that's provided by the clinical doctor,  
15 Dr. Bruggeman, at the UF Gender Health Program.

16 But I do want to go back to the issue about the scope  
17 of the injunction. I absolutely understand Your Honor's  
18 concern in this context, but I also want to say, there are  
19 some very significant differences between access to health  
20 care and getting a marriage license. As we talked about, the  
21 law is so sweeping in its scope in terms of the threats not  
22 just to doctors, but all of the health care providers that are  
23 involved in this as well, the APRNs, nurse practitioners, and  
24 then -- you know, I appreciate your reference to Section 1,  
25 which we are not challenging at this time, but which I suspect

1 we may challenge in the future, that is so draconian in terms  
2 of the risks that anyone takes in terms of accessing this  
3 care, that I have great concerns that a narrow preliminary  
4 injunction is not going to necessarily effectuate the outcome,  
5 because, as I said --

6 THE COURT: I get it. You don't want the clinic shut  
7 down.

8 MS. LEVI: Or if not shut down, dramatically  
9 transformed. I mean, as you know, they're specialty health  
10 clinics, it's a small population, there's a degree of high  
11 level expertise among the health providers in them. As you  
12 know, as we all know, getting a medical appointment is not,  
13 unfortunately, as easy as picking up the phone and getting it  
14 scheduled, and these are appointments that people waited for  
15 for many months that got cancelled.

16 I feel confident that if we have an injunction, you  
17 know, we can work very closely with these families to ensure  
18 these kids, adolescents, who are in really dire circumstances  
19 that at the moment will provide care, but I don't have the  
20 same confidence about the breadth of the understanding of the  
21 likely outcome in the case when you have a statute that has  
22 20-year criminal penalties, up to 20-year civil liability for  
23 the treatment. And I do think it's more like the outcome in  
24 *Otto* where you have a facially unconstitutional statute that's  
25 going to dramatically impact the provision of the health care

1 system, and I'm happy to forward to the Court the follow-on  
2 order that was issued after the remand from the Eleventh  
3 Circuit in the *Otto* case. And just to say --

4 THE COURT: I can get it.

5 MS. LEVI: I know.

6 THE COURT: I assume it's on the electronic filing  
7 system.

8 MS. LEVI: Yeah. What I want to say is that, the  
9 State has no interest in enforcing an unconstitutional law,  
10 and given the fact that the statute itself anticipates ongoing  
11 continued care even for patients who are receiving care at the  
12 time that the law was passed, pending the 60-day adoption of  
13 the Board of Medicine rules, the difference here is having an  
14 additional small group of adolescents having undisrupted care  
15 while this Court resolves the question of the case on the  
16 merits.

17 And I would suggest, particularly looking at the  
18 balance of equities here, that a broad facial ruling, given  
19 the animus that you focused on, given the language of the  
20 statute, given the impact broadly on the health care  
21 institutions that are responding to the statute, that the  
22 balance of the equities absolutely tips in favor of a broad  
23 facial injunction, and that's what we ask the Court for.

24 THE COURT: All right. Thank you.

25 The motions are submitted. I take them under

1 advisement.

2 I suppose procedurally I should set a deadline for  
3 the other defendants to respond. You think you can get them  
4 served today, I take it.

5 MS. LEVI: We can get them served today. I'm told  
6 that six have already been executed by the clerk. We are  
7 waiting on the other 14. And as soon as that happens, we'll  
8 get them served as quickly as we possibly can. We have no  
9 interest in delay.

10 THE COURT: You are waiting on the clerk's office to  
11 finish 14 of them. I'm sure they are working on that as  
12 quickly as it can be done, but I can assure that they are.  
13 You'll want to get them also some kind of scheduling order  
14 that I will get done pretty quickly. Just make sure they know  
15 that this is pending, so we can get all that done as soon as  
16 they can work out their representation and so forth. That  
17 won't be immediate. If you have 67 State Attorneys, but maybe  
18 not. How many State Attorneys?

19 MS. LEVI: I think there are 20.

20 THE COURT: Oh, I'm sorry. There is not one in each  
21 county, there is one in each circuit, of course. We had that  
22 discussion yesterday.

23 But you have 20 State Attorneys. The ones you care  
24 most about are the three or four or maybe five or six that are  
25 actually involved with these three plaintiffs. So it seems to

1 me what you want is the State Attorney in the circuit where  
2 the care would be provided, and the State Attorney probably  
3 where the plaintiffs live. So, if you're prioritizing these,  
4 get notice to those quickest.

5 MS. LEVI: Okay. For the record, Your Honor, I can  
6 also answer the question you asked me earlier about the  
7 multidisciplinary centers where care is provided just so that  
8 we have that, given that we are focused on the locations.

9 So, they include the University of South Florida,  
10 Endocrinology Clinic; Orlando Health; Joe DiMaggio in Broward  
11 County; Spectrum in Orange County; Nemours in Orange County;  
12 Carruthers in Duval County; University of Florida; and  
13 University of Miami. So there are extensive number of  
14 specialty clinics around the state that are providing the  
15 care, and we will hustle to get all of those State Attorneys.

16 THE COURT: All right. Very good.

17 Those motions are under advisement. Let's take a  
18 15-minute break. We will start back into the trial in Dekker  
19 at 10:20.

20 *(The proceedings concluded at 10:06 a.m.)*

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Any redaction of personal data identifiers pursuant to the Judicial Conference Policy on Privacy are noted within the transcript.

Judy A. Gagnon  
Judy A. Gagnon, RMR, FCRR  
Registered Merit Reporter

5/21/2023  
Date