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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

VIRGINIA TUCKER, STEPHANIE
DOMBROSKI, SANDY PHILLIPS,
DAKOTA GRUNWALD, and AMBERLI K.
MORRIGAN,

Plaintiffs,

v.

UTAH DEPARTMENT OF CORRECTIONS;
JARED GARCIA, EXECUTIVE DIRECTOR
OF THE UTAH DEPARTMENT OF
CORRECTIONS, *in his official capacity*;
SHARON D'AMICO, WARDEN OF THE
UTAH STATE CORRECTIONAL
FACILITY, *in her official capacity*; UTAH
DEPARTMENT OF HEALTH AND HUMAN
SERVICES; TRACY GRUBER,
EXECUTIVE DIRECTOR OF THE UTAH

**DEFENDANTS' RENEWED MOTION
TO DISMISS PLAINTIFFS' AMENDED
COMPLAINT PURSUANT TO FED. R.
CIV. P. 12(b)(1) AND 12(b)(6)**

Case No. 2:25-cv-01108

Honorable Judge Tena Campbell

DEPARTMENT OF HEALTH AND HUMAN SERVICES, *in her official capacity*; DR. STACEY BANK, EXECUTIVE MEDICAL DIRECTOR OF CLINICAL SERVICES UTAH DEPARMENT OF HEALTH AND HUMAN SERVICES, *in her official capacity*; *and* DR. MARCUS WISNER, DIRECTOR OF CORRECTIONAL HEALTH SERVICES, UTAH DEPARTMENT OF HEALTH AND HUMAN SERVICES, *in his official capacity*.

Defendants.

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Pursuant to [Federal Rules of Civil Procedure 12\(b\)\(6\) and 12\(b\)\(1\)](#), Defendants Utah Department of Corrections (“UDC”), Jared Garcia, Executive Director of the Utah Department of Corrections, Sharon D’Amico, Warden of the Utah State Correctional Facility, Utah Department of Health and Human Services (“DHHS”), Tracy Gruber, Executive Director of UDHHS, Dr. Stacey Bank, Executive Medical Director of Clinical Services Utah Department of Health and Human Services, and Dr. Marcus Wisner, Director of Correctional Health Services of UDHHS (“Dr. Wisner”) (“Defendants”) hereby submit this Renewed Motion to Dismiss (“Motion”) Plaintiffs Virginia Tucker (“Tucker”), Stephanie Dombroski (“Dombroski”), Sandy Phillips (“Phillips”), Dakota Grunwald (“Grunwald”), and Amberli K. Morrigan (“Morrigan”) (“Plaintiffs”) Complaint for failure to state a claim upon which relief can be granted and lack of subject matter jurisdiction.

Plaintiffs assert violations of the Americans with Disabilities Act (“ADA”) based on Defendants’ alleged discrimination deriving from the alleged disability of gender dysphoria. However, gender dysphoria is not a disability under the ADA. Plaintiffs further allege Eighth Amendment violations based on Defendants’ denial of hormone replacement therapy (“HRT”) and implementation and enforcement of HB252.¹ Yet, even if this Court struck down HB252, Plaintiffs fail to allege that they would receive the HRT they seek. Thus, their requested remedy will not address their alleged harms. Plaintiffs also allege HB252 is facially unconstitutional but have not overcome the high bar in showing it is facially invalid. Finally, Plaintiffs request

¹ HB252 restricts initiation of cross sex-hormones and gender reassignment surgeries for inmates. *See* HB252, 2025 Gen. Sess. (Ut. 2025).

declaratory relief regarding former policies no longer in effect. Such relief is retroactive and cannot be granted. For these reasons, Defendants request that the Court grant their Motion.

INTRODUCTION

Plaintiffs assert that Defendants violated the ADA by discriminating against them based on their alleged gender dysphoria. However, gender dysphoria is not a disability under the ADA. The Act expressly excludes “gender identity disorders not resulting from physical impairments” as disabilities. And when Congress enacted the ADA in 1990 with this exclusion, the term “gender identity disorders” *included gender dysphoria* as that condition is currently described by Plaintiffs. Accordingly, Plaintiffs’ ADA claim must be dismissed.

Dismissing Plaintiffs’ ADA claim would not demean Plaintiffs or discount their situation. Defendants have been, and are, doing everything reasonably necessary to properly treat and accommodate Plaintiffs within the context of all penological interests. Clearly, Plaintiffs ignore the complexity of the overall situation and the extent of Defendants’ past, present, and ongoing efforts to reasonably address Plaintiffs’ concerns.

More broadly, dismissing Plaintiffs’ ADA claim would not constitute a derogatory statement about gender dysphoria generally. Dismissal would simply reflect the Court’s duty, under separation-of-powers principles, to interpret and apply the ADA as Congress wrote it. The bigger policy question of whether gender dysphoria should be covered by the ADA is best left to the legislative branch. As it should be. Only they have constitutional authority to amend the ADA in the manner Plaintiffs request. The Amended Complaint provides a quintessential example of a party trying to get the judiciary to make law in the face of legislative inaction. The Court should decline the invitation and dismiss Plaintiffs’ ADA claim.

Plaintiffs' Eighth Amendment claim also fails the basic Article III standing requirement of redressability. To invoke this Court's jurisdiction, Plaintiffs must show more than speculation that a favorable ruling would redress their alleged injuries. Here, they offer only the hope that success might lead to Plaintiffs receiving HRT. This is insufficient. Even if this Court declared HB252 unconstitutional, Plaintiffs are unlikely to obtain the relief sought. Tucker, Dombroski, and Phillips were not receiving HRT when HB252 took effect, and they allege no facts showing entitlement to this treatment under Defendants' pre-HB252 policies. At most, Plaintiffs speculate that invalidating HB252 might create the possibility of future treatment. But jurisdiction cannot derive from conjecture—it requires Plaintiffs' relief be likely, real, and immediate.

Yet, Plaintiffs' redressability depends on a chain of uncertain events: discretionary medical decisions, application of pre-HB252 criteria, and assumptions about future policy implementation. This cannot support standing. Accordingly, because Plaintiffs' alleged injuries are unlikely to be remedied by the relief sought, their Eighth Amendment claim should be dismissed.

BACKGROUND, STATEMENT OF FACTS, AND ALLEGATIONS²

1. Plaintiffs “are transgender people with the disability of gender dysphoria incarcerated at the Utah State Correctional Facility (the “USCF” or the “prison”) within the custody of [Defendant UDC].” (ECF. No. 52 (“Am. Compl.”) ¶ 1.) Gender dysphoria is a diagnostic category in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (“DSM”) (*Id.* ¶¶ 39-41.)

² For this motion, Plaintiffs' well-pleaded factual allegations are taken as true. See *Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1105 (10th Cir. 2017).

2. Plaintiffs allege “[g]ender dysphoria is a serious medical condition characterized by clinically significant distress resulting from the incongruence between a person’s gender identity and the sex they were assigned at birth.” (*Id.* ¶¶ 2, 39, 44.)
3. Plaintiffs allege gender dysphoria only constitutes a disability “[f]or some people,” but not all people with gender dysphoria. (*Id.*)
4. Plaintiffs allege that Defendants UDC and DHHS “discriminate[d] against Plaintiffs in violation of the ADA [and] its implementing regulations [because] Plaintiffs are qualified people with a disability of gender dysphoria.” (*Id.* ¶¶ 11, 19-23.)
5. Plaintiffs further allege that through “enforcement of AG37 and the [Gender Dysphoria Committee’s (“GD Committee”)] practices, enforcement of GEN-29.00 (“GEN 29”) and its committees’ practices, and implementation of HB252, Defendants have denied Plaintiffs meaningful equal access to services, programs and activities that are available to non-disabled people or those with medical impairments and disabilities other than gender dysphoria in UDC’s custody.” (*Id.*)
6. Plaintiffs allege that “Defendants have denied reasonable accommodations and modifications to policies and practices to ensure meaningful equal access subjecting Plaintiffs to continued harm and discrimination.” (*Id.*)
7. Plaintiffs allege that “Defendants have denied or limited Plaintiffs’ equal access to healthcare by, among other things, providing a lack of timely and accurate assessments, and failing to provide condition-specific mental health services, hormone therapy, and individualized assessments of the need for surgery, all due to disability or suspected disability of gender dysphoria.” (*Id.* ¶ 12.)

8. Plaintiffs broadly allege general disruptions in “major life activities” because of their alleged disability. Specifically, Plaintiffs allege disruptions in “emotional regulation,” “sleeping,” “caring for oneself,” “personal hygiene,” “social interaction, thinking, working, and concentrating.” (*Id.* ¶¶ 179, 200, 220, 244, 271.)
9. On December 9, 2025, Plaintiffs brought their ADA claim “to vindicate their rights to be free from discrimination on the basis of [their] disability.” (*Id.* ¶ 13.)
10. Plaintiffs assert the legal conclusion—which need not be taken as true—that gender dysphoria is a disability under the ADA. (*Id.* ¶¶ 11-12.) Based on that tenuous legal hook, Plaintiffs allege that Defendants violated the ADA “by failing to provide Plaintiffs with reasonable accommodations, and modifications of policies and practices, despite knowing of Plaintiffs’ protected rights under the ADA.” (*Id.* ¶¶ 300-02.)
11. Plaintiffs also brought a claim for violation of the Eighth Amendment’s prohibition on cruel and unusual punishment based on Defendants’ alleged failure to provide Tucker, Dumbroski, and Phillips “with adequate treatment for gender dysphoria[,] including medically necessary” HRT. (*Id.* ¶ 291; *id.* ¶¶ 283-87 (alleging Defendants “denied [HRT] to these Plaintiffs” and refused to provide “medically necessary care”).)
12. Plaintiffs’ Eighth Amendment claim primarily derives from HB252 which went into effect May 7, 2025, and which Plaintiffs allege caused Defendants to deny them “adequate and medically necessary treatment for gender dysphoria,” including “a blanket ban on the initiation of hormone therapy.” (*Id.* ¶¶ 7-9; *see also id.* ¶¶ 288-89 (alleging that HB252 “established a blanket ban on initiating [HRT] to Plaintiffs . . . in violation of

the Eighth Amendment” and Defendants refuse “to initiate appropriate and effective treatment for gender dysphoria”).)

13. Plaintiffs do not allege that Tucker, Dombroski, and Phillips were receiving HRT as of HB252’s effective date, or at any other time. (*See id.* ¶¶ 156-162 (alleging Tucker was “orally told that hormone therapy was a necessary type of medical care for her” but was never actually approved to begin receiving the treatment); ¶¶ 188-94 (alleging Dombroski was told that she did not meet Defendants’ criteria for HRT and her request for the same was denied); and, ¶¶ 210-11 (alleging Phillips was approved for HRT under pre-HB252 policies, but admits never having received the treatment).)

LEGAL STANDARD

To survive a motion to dismiss for failure to state a claim under 12(b)(6), a plaintiff must allege “enough facts to state a claim for relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In determining whether a plaintiff meets this standard, the court “must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff.” *Sylvia v. Wisler*, 875 F.3d 1307, 1313 (10th Cir. 2017) (cleaned up). But only well-pleaded facts—“that is, plausible, non-conclusory, and non-speculative” facts—need be taken as true. *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008). A complaint is insufficient “if it tenders naked assertions devoid of further factual enhancement.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). And mere conclusions “will not suffice; a plaintiff must offer specific factual allegations to support each claim.” *Kansas Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011).

To withstand a motion to dismiss, a complaint must include sufficient factual allegations to state a claim that is plausible, not merely conceivable. *Khalik v. United Air Lines*, 671 F.3d 1188, 1190 (10th Cir. 2012) (cleaned up). As with a 12(b)(1) motion, in determining whether the complaint validly states a claim, courts disregard mere labels and conclusions, and “formulaic recitation[s] of the elements of a cause of action.” *Id.* 1190-91. A 12(b)(1) motion to dismiss permits a defendant to challenge a court’s subject matter jurisdiction both facially and factually. *United States v. Rodriguez–Aguirre*, 264 F.3d 1195, 1203 (10th Cir. 2001). In resolving factual challenges to subject matter jurisdiction, the court “does not presume the truthfulness of the complaint’s factual allegations, but has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1).” *Valdez v. National Security Agency*, 228 F.Supp.3d 1271, 1279, & n.24 (D. Utah 2017).

ARGUMENT

I. GENDER DYSPHORIA IS NOT A DISABILITY UNDER THE ADA

Plaintiffs’ claim of an ADA violation must be dismissed. The ADA does not cover Plaintiffs’ alleged disability—gender dysphoria. The statute’s plain text and context compel this conclusion.

A. ADA’s Plain Text Precludes Including Gender Dysphoria as a Disability.

Plaintiffs allege Defendants violated the ADA by excluding or discriminating against Plaintiffs’ “in the provision of healthcare services because of [their] disability, and [Plaintiffs have] been denied meaningful equal access to all services, programs, and benefits and reasonable accommodations while in UDC’s custody,” as well as participation in or benefit from prison

programs or services “by reason of [their] disability.” (Am. Compl. ¶¶ 19-23; *see* 42 U.S.C. § 12132.)

The ADA defines disability as “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12102(1)(A). If that’s all the ADA said about what disability means, Plaintiffs’ claim may survive Rule 12(b)(6)’s requirements. But the ADA goes on to say that “the term ‘disability’ shall *not* include . . . *gender identity disorders* not resulting from physical impairments.” 42 U.S.C. § 12211(b)(1) (emphasis added). So, the question becomes whether “gender identity disorders” includes gender dysphoria.

Statutory interpretation always starts with the text at issue. *See Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004); *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997); *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (“[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.”). The ADA does not define “gender identity disorders,” so the Court must give the term its “ordinary” meaning. *See Clark v. Rameker*, 573 U.S. 122, 127 (2014); *Hamilton v. Lanning*, 560 U.S. 505, 513 (2010). To guard against changing meanings over time, statutory terms must be given their ordinary meaning as understood “at the time Congress enacted the statute.” *New Prime Inc. v. Oliveria*, 586 U.S. 105, 113 (2019) (cleaned up). Otherwise, judges would be free to essentially amend older statutes with new meanings outside the legislative process the constitution requires. *See id.* at 113. And public reliance interests in a statute’s settled meaning would be at risk every time a court interpreted the statute. *Id.*

The Tenth Circuit has not determined whether gender dysphoria is excluded from the ADA. But many district courts, within different circuits, have determined the ADA does not

cover gender dysphoria. *See, e.g., Duncan v. Jack Henry & Assocs., Inc.*, 617 F. Supp. 3d 1011, 1056 (W.D. Mo. 2022) (concluding that “the plain language indicates Congress intended to exclude from ADA-covered disabilities gender identity disorders not resulting from physical impairment as a general category”); *Lange v. Houston Cnty., Georgia*, 608 F. Supp. 3d 1340, 1362-63 (M.D. Ga. 2022) (gender dysphoria not resulting from physical impairment is excluded from the ADA); *Doe v. Northrop Grumman Sys. Corp.*, 418 F. Supp. 3d 921, 929 (N.D. Ala. 2019) (concluding that a condition of gender dysphoria “that does not result from a physical impairment is expressly excluded from the definition of disabilities” under the ADA); *Parker v. Strawser Constr., Inc.*, 307 F. Supp. 3d 744, 754 (S.D. Ohio 2018); *Michaels v. Akal Sec., Inc.*, No. 09-CV-01300-ZLW-CBS, 2010 WL 2573988, at *6 (D. Colo. June 24, 2010) (“[g]ender dysphoria, as a gender identity disorder, is specifically exempted as a disability by the Rehabilitation Act”).

This Court should also adopt the ordinary meaning of the ADA’s text. Specifically, Congress enacted the ADA, including the “gender identity disorders” exclusion, in 1990. *See Pub. L. 101-336, § 511* (July 26, 1990), 104 Stat. 327. At that time, the term’s ordinary meaning included what society now calls gender dysphoria. From at least 1990 to well into this century, “gender identity disorder has been understood to include distress and discomfort from identifying as a gender different from the gender assigned at birth.” *Williams v. Kincaid*, 45 F.4th 759, 783 (4th Cir. 2022) (Quattlebaum, J., dissenting) (citing numerous sources, including dictionaries and medical publications).

Gender dysphoria falls squarely within the 1990 ordinary meaning of “gender identity disorders not resulting from physical impairment” and is thus expressly excluded from the

ADA’s coverage. *Id.* at 780-90; *see also Kincaid v. Williams*, 143 S. Ct. 2414, 2414-19 (2023) (Alito, J., dissenting from denial of certiorari) (critiquing Fourth Circuit’s reasoning). The public would understand “disorder” to mean, in relevant part, “a disturbance in physical or mental health,” *Random House Webster’s College Dictionary* (1990) or “an abnormal physical or mental condition,” <https://www.merriam-webster.com/dictionary/disorder#synonyms>. Therefore, a gender identity disorder, as defined, would include any mental health disturbance or abnormal mental condition involving gender identity. *See In re Mallo*, 774 F.3d 1313, 1321 (10th Cir. 2014) (“[d]ictionary definitions are useful touchstones to determine the ‘ordinary meaning’ of an undefined statutory term” (citing *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012))). Such ordinary public meaning would certainly include Plaintiffs’ description of (and DSM-V’s use of the term) gender dysphoria as significant distress resulting from the incongruence between gender identity and assigned sex, (*see* Am. Compl. ¶¶ 2, 38, 42, 44, 123), and Plaintiffs’ alleged symptoms of “physical or mental impairment” causing “significant psychological distress.” (*Id.* ¶¶ 179, 200, 220, 244, 271.)

Turning to medical-field definitions from the DSM leads to the same conclusion. *See Hall v. Fla.*, 572 U.S. 701, 704 (2014) (describing the DSM as “one of the basic texts used by psychiatrists and other experts”). In 1990, the DSM explained that the “essential feature” of gender identity disorders “is an incongruence between assigned sex (*i.e.*, the sex that is recorded on the birth certificate) and gender identity.” *Williams*, 45 F.4th at 782 (dissent) (quoting DSM-III-R at 71). And “even in mild cases, gender identity disorders involve ‘discomfort and a sense of the inappropriateness about the assigned sex.’” *Id.* at 783 (dissent) (quoting DSM-III-R at 71).

As noted, the DSM-III-R “was no outlier on this issue”—various medical publications define gender identity disorder the same way. *Id.* (cleaned up). Indeed, gender identity disorder and gender dysphoria “are often cross-referenced or referred to as synonyms.” *Id.* at 783 n.4. Thus, the ADA’s “exclusion of gender identity disorders, as that phrase was understood at the time, included an alleged disability involving discomfort or distress caused by a discrepancy between one’s gender identity and the sex assigned at birth.” *Id.* at 784. Here, this squarely describes Plaintiffs’ allegations of being “transgender people” with “gender dysphoria” causing “physical or mental impairment that limits one of more major life activity,” as well as “significant psychological distress” and “long-standing efforts to self-harm.” (Am. Compl. ¶¶ 180, 200, 220, 249, 271, 277.)

Though Plaintiffs’ complaint includes the current definition of gender dysphoria from the DSM-V-TR, that definition is irrelevant to an ordinary meaning analysis. In other words, the meaning of the exclusions in 42 U.S.C. § 12211(1) were fixed at the time the provision was enacted in 1990, long before the DSM-V-TR was published. Subsequent meanings, to the extent they differ, are irrelevant. Interpretation of the term “disability” under the ADA is a question of law—not fact. *Scanlon White, Inc., v C.I.R.*, 472 F.3d 1173, 1175 (10th Cir. 2006) (“interpretation of a federal statute is a question of law”). Thus, despite the DSM’s shifting use of terminology over time, this Court’s legal analysis must focus on the meaning of the ADA’s exclusionary language when passed in 1990.

Long after 1990, the term gender dysphoria replaced the term gender identity disorder. In 2014, the First Circuit noted that “the term ‘gender identity disorder’ ha[d] recently been replaced with the term ‘gender dysphoria’ in the medical community.” *Kosilek v. Spencer*, 774

F.3d 63, 68 n.1 (1st Cir. 2014). Similarly, in 2019, the Ninth Circuit noted that, “[u]ntil recently, the medical community commonly referred to gender dysphoria as ‘gender identity disorder.’” *Edmo v. Corizon, Inc.*, 935 F.3d 757, 768 n.4 (9th Cir. 2019). And the American Psychiatric Association’s 2013 statement accompanying the release of the DSM’s fifth edition directly states that it “replace[d] the diagnostic name ‘gender identity disorder’ with ‘gender dysphoria.’”³

Thus, the proper inquiry is whether Plaintiffs’ condition is a gender identity disorder as understood in 1990, not whether their condition meets the new definition of gender dysphoria contained in the DSM’s fifth edition. Given the plain meaning of 42 U.S.C. § 12211(1), the answer is yes.

Even then, the inquiry looks further—under the plain language of the ADA’s exclusions—to whether the gender identity disorder “result[ed] from physical impairments.” 42 U.S.C. § 12211(1). The answer to this question is no. The issue is not whether a gender identity disorder in the abstract might possibly result from a physical impairment, but whether the Amended Complaint plausibly alleges that Plaintiffs’ gender identity disorder is the result of physical impairment. None of Plaintiffs’ factual allegations plausibly allege this. Significantly, the Amended Complaint contains no causal facts alleging that Plaintiffs’ gender identity disorders result from a physical impairment.⁴ Indeed, it fails to offer “specific factual

³ Am. Psychiatric Ass’n: DSM-5 Development, Gender Dysphoria (2013), *available at* https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Gender-Dysphoria.pdf (last visited Jan. 23, 2026).

⁴ Note, this ADA definition does not leave those with actual physical impairments resulting in a gender identity disorder without recourse, such as the small portion of the population who are intersex, or those who developed this disorder by suffering an injury.

allegations” to support such an inference. *Kansas Penn*, 656 F.3d at 1214; *see also Dudnikov*, 514 F.3d at 1070 (conclusory and speculative allegations need not be taken as true).

Therefore, this Court should conclude, as other district courts have done, that Plaintiffs’ respective conditions are excluded from the ADA because they are gender identity disorders not resulting from physical impairments. *Duncan*, 617 F.Supp.3d at 1056 (“Congress intended to exclude from ADA-covered disabilities gender identity disorders”); *see also Lange*, 608 F. Supp. 3d at 1362-63 (gender dysphoria not resulting from physical impairment is excluded from ADA); *Northrop Grumman Sys. Corp.*, 418 F. Supp. at 930 (gender dysphoria that does not result from a physical impairment is expressly excluded from ADA’s definition of disabilities); *Parker*, 307 F. Supp. 3d at 755 (plaintiff failed to allege gender dysphoria was caused by a physical impairment or always results from a physical impairment); *Michaels v. Akal Sec., Inc.*, No. 09-CV-01300-ZLW-CBS, 2010 WL 2573988, at *6 (D. Colo. June 24, 2010) (“[g]ender dysphoria, as a gender identity disorder, is specifically exempted as a disability by the Rehabilitation Act”).

Also, Congress’s use of the plural gender identity *disorders* in the exclusions further supports the conclusion that Plaintiffs’ conditions are excluded from the ADA. Even if gender dysphoria were a newly invented diagnosis, and not merely the renaming of gender identity disorder, it still comes under the scope of “gender identity disorders” as used in the ADA. “Congress commonly formulate[s] categories . . . without knowing all the items that may fit—or may later, once invented, come to fit—within those categories.” Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 100 (2012); *see also Pa. Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998).

Judge Quattlebaum likewise emphasized that “plural use of the term [disorders] should not be overlooked.” *Williams*, 45 F.4th at 784. This language shows “Congress considered this class to include more than one diagnosis,” which is consistent with the DSM-III-R’s specification of multiple gender identity disorders. *Id.* (citing DSM-III-R at 71–78). But the DSM-III-R “also contains a category of ‘Gender Identity Disorder Not Otherwise Specified.’” *Id.* (citing DSM-III-R at 77–78). So “whether gender dysphoria is a new diagnosis or a replacement for gender identity disorder is not the point.” *Id.* The point remains that section “12211(b)(1)’s exclusion of gender identity disorders, as that phrase was understood at the time, included an alleged disability involving discomfort or distress caused by a discrepancy between one’s gender identity and the sex assigned at birth.” *Williams*, 45 F.4th at 784.

In the alternative, this Court can also conclude that Plaintiffs’ condition falls within the catchall phrase “other sexual behavior disorders,” and is therefore excluded from the ADA. This “catchall category suggests that Congress sought to prohibit the ADA’s application to conditions that are sufficiently similar to the more specific categories of conditions that precede.” *Kincaid*, 143 S. Ct. at 2417 (Alito, J., dissenting from denial of certiorari).

Defendants recognize that Congress wants “disability” construed broadly, but that guidance is expressly limited to “the extent permitted by the” ADA’s terms. 42 U.S.C. § 12102(4)(A). And those terms exclude “gender identity disorders,” which includes gender dysphoria, from disability status under the ADA. Congress tellingly has never amended those exclusions. *Duncan v. Jack Henry Assocs., Inc.*, 617 F.Supp.3d 1011, 1056-57 (W.D. Mo. 2022) (Congress could “amend § 12211(b)(1) or the ADA more broadly to specifically encompass gender identity disorders like gender dysphoria. It has not yet chosen to do so, however.”)

B. Context Confirms Gender Dysphoria is not a Disability under the ADA.

Beyond ordinary meaning of the text itself, the context within which Congress placed “gender identity disorders” further confirms that the term includes gender dysphoria. *See First Nat’l Bank of Durango v. Woods (In re Woods)*, 743 F.3d 689, 694 (10th Cir. 2014) (stating “the meaning of statutory language, plain or not, depends on context” (cleaned up)); *United States v. Villa*, 589 F.3d 1334, 1343 (10th Cir. 2009) (noting that to give a statute’s language its “most natural reading,” courts “consider not only the bare meaning of the [text] but also its placement and purpose in the statutory scheme”).

In relevant part, the ADA forbids disability status for “transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.” 42 U.S.C. § 12211(b)(1). This “broad brush used by Congress” bars disability status “not only to ‘transsexualism’ and ‘gender identity disorders not resulting from physical impairments,’ but also to ‘other sexual behavior disorders.’” *Kincaid*, 143 S. Ct. at 2417 (Alito, J., dissenting from denial of certiorari) (quoting 42 U.S.C. § 12211(b)(1) (emphasis removed)). Combining all these related terms in the same provision serves to reinforce the plain language reading: Congress prohibited “the ADA’s application to conditions that are sufficiently similar to the more specific categories of conditions that precede.” *Id.* Indeed, it’s incomprehensible that Congress would exclude as disabilities conditions like “transvestism, transsexualism, . . . gender identity disorders”—plural, not singular—and any “other sexual behavior disorders” but not gender dysphoria. That kind of implied hair splitting between related conditions would make no sense.

Likewise, calling “gender identity disorders” an obsolete diagnosis does not negate context or somehow turn gender dysphoria into an ADA disability. *See, e.g., Williams*, 45 F.4th at 769. Regardless of whether medical books still use the phrase, it remains in the statute and must be given meaning. Otherwise, courts could read the term out of the ADA contrary to the statutory interpretation canon requiring that each term have meaning. *Leocal v. Ashcroft*, 543 U.S. 1, 12 (2004) (“[W]e must give effect to every word of a statute wherever possible.”); *Fuller v. Norton*, 86 F.3d 1016, 1024 (10th Cir.1996) (“We avoid interpreting statutes in a manner that makes any part superfluous.”). In short, context supports the conclusion that “gender identity disorders” includes gender dysphoria.

II. PLAINTIFFS FAIL TO PROPERLY ALLEGE HOW A MAJOR LIFE ACTIVITY HAS BEEN SUBSTANTIALLY LIMITED

Even if Plaintiffs somehow surmount the statutory exclusion within the ADA, Plaintiffs’ ADA claim still should be dismissed. Under the ADA, “disability” is defined as “a physical or mental impairment that substantially limits one or more major life activities” of the individual. 42 U.S.C. § 12102(1)(A). “Thus, to be disabled for purposes of the [ADA], a person must have an impairment, that impairment must limit a major life activity, and the limitation on the major life activity must be substantial.” *E.E.O.C. v. United Parcel Serv., Inc.*, 306 F.3d 794, 801 (9th Cir.), *opinion amended on denial of reh’g*, 311 F.3d 1132 (9th Cir. 2002); *Sorensen v. Univ. of Utah Hosp.*, 194 F.3d 1084, 1086 (10th Cir. 1999). Impairment must be significant, and not merely trivial. *Welsh v. City of Tulsa, Okl.*, 977 F.2d 1415, 1417 (10th Cir. 1992).

Regulations define “major life activities” to include, but not limited to, “[c]aring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking,

communicating, interacting with others, and working.” 29 C.F.R. §1630.2(i)(1)(i). To determine whether someone is substantially limited in a major life activity, Plaintiffs must allege three factors: “(1) the nature and severity of the impairment; (2) the duration or expected duration of the impairment; and (3) the permanent long term impact, or the expected permanent or long term impact of or resulting from the impairment.” *Sutton v. United Air Lines, Inc.*, 130 F.3d 893, 900 (10th Cir. 1997), *aff’d*, 527 U.S. 471 (1999), overturned due to legislative action (2009).

Moreover, Courts routinely dismiss disability claims where plaintiffs fail to “include adequate factual support concerning ‘the nature of the disability and purported limitations, as well as details regarding the *frequency, duration, or severity* of his or her limitations.’” *Puranik v. Children’s Place Servs. Co., LLC*, No. 24-CV-4441 (AT) (VF), 2025 WL 2522442, at *5 (S.D.N.Y. Aug. 1, 2025) (cleaned up) (emphasis added). For example, to demonstrate that an impairment “substantially limits the major life activity of working, an individual must show significant[] restrict[ion] in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities.” *Bolton v. Scrivner, Inc.*, 36 F.3d 939, 942-43 (10th Cir. 1994) (cleaned up). “[T]he inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.” *Sutton v. United Air Lines, Inc.*, 130 F.3d 893, 904 (10th Cir. 1997) (citations omitted). In short, an alleged “inability to perform a particular job does not constitute a substantial limitation in the major life activity of working.” *Woolf v. Strada*, 949 F.3d 89, 94 (2d Cir. 2020).

Here, Plaintiffs fail to allege with required specificity *how* their major life activities have been significantly restricted and substantially impaired. In fact, they have not even alleged *how*

their disability specifically limits their activities. Plaintiffs generally allege disruption in functions such as “emotional regulation,” social interaction, work and personal hygiene,⁵ but provide no relevant and specific factual allegations detailing *how* these activities are affected, let alone the frequency, duration, or severity.

Yet, Plaintiffs’ allegations must “detail the frequency, duration, or severity of any symptom.” *Puranik*, 2025 WL 2522442 at *6. Broad allegations of so-called disruptions in a few activities, without more, are merely conclusory. Plaintiffs must offer a specific, factual “description of *how often or how severely* [Plaintiffs’ alleged] conditions impacted [their] sleep patterns, [their] ability to think clearly, or [their] capacity to concentrate.” *Id.* (emphasis added); see also *Abramov v. Northwell Health Sys.*, No. 22-CV-06687, 2024 WL 4276171, at *9 (E.D.N.Y. Sept 24, 2024 (cleaned up) (plaintiff must allege “nature and severity” as well as “duration and effects”). In short, Plaintiffs fail to “specifically explain how frequently [their] symptoms occurred, for how long they lasted, or what they prevented [them] from doing.” *Puranik*, 2025 WL 2522442 at *6. They must allege with specificity how their alleged disability prevented them from major life activities.

⁵ Tucker alleges disruption in “social interaction, thinking, working, and concentrating.” (Compl. ¶ 149 (Tucker also alleges “not leaving her bed,” “difficulty eating,” and “sleeping”). Dombroski alleges disruption in “emotional regulation,” “distress and pain,” “sleeping and her ability to care for herself and interact with others.” (*Id.* ¶ 200.) Phillips also alleges disruption in “emotional regulation,” as well as the “ability to care for herself, social interaction, and ability to maintain work,” and alleges “never [getting] in trouble at work” (unless “told she could not start hormone therapy”) despite the alleged disability (*Id.* ¶ 220.) Similarly, Grunwald alleges a disruption in “caring for himself,” “maintaining personal hygiene,” in addition to “emotional regulation,” and “social interaction.” (*Id.* ¶ 244.) And, finally, Morrigan also alleges disruption in the “ability to work, emotional regulation[,], ability to care for herself, [social interactions, and sleep].” (*Id.* ¶ 271.)

Plaintiffs’ “purely conclusory allegations are insufficient; they are exactly the sort of ‘[t]hreadbare recitals of the elements’ that the Supreme Court has explained will not survive a motion to dismiss.” *Braccia v. Northwell Health Sys.*, No. 24-2665-CV, 2025 WL 2610704, at *4 (2d Cir. Sept. 10, 2025) (citing *Iqbal*, 556 U.S. at 678). Consequently, Plaintiffs’ bare assertions of a disability substantially limiting major life activities amount to nothing more than “threadbare recitals” of an ADA claim insufficient to plausibly allege existence of a disability.

III. PLAINTIFFS CANNOT MEET THE HEAVY BURDEN REQUIRED FOR A FACIAL CHALLENGE

Plaintiffs request a declaration that HB252 is facially unconstitutional because it “mandat[es] that Defendants remain deliberately indifferent to Plaintiffs’ serious medical need of gender dysphoria.” (Am. Compl., 77.) But Plaintiffs have not met their heavy burden. A facial challenge is “the most difficult challenge to mount successfully” because the challenger must “establish that no set of circumstances exists under which the Act would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987). “A facial challenge is really just a claim that the law or policy at issue is unconstitutional in all its applications.” *Bucklew v. Precythe*, 587 U.S. 119, 138 (2019). Even if a conceivable set of circumstances exists where a challenged statute “might operate unconstitutionally,” those circumstances “[are] insufficient to render it wholly invalid.” *United States v. Jackson*, 138 F.4th 1244, 1250 (10th Cir. 2025).

Accordingly, Plaintiffs must demonstrate that HB252 causes deliberate indifference in every application. But Plaintiffs have not alleged that every individual unable to access desired HRT or a sex-change intervention (“SRS”) would necessarily experience a level of care below the minimum required by the Constitution. Nor have they alleged that what HB252 does allow for—case by case and individualized mental health counseling, psychotherapy, and approval for

gender-affirming clothing and makeup—is completely inadequate, such that Defendants must be deliberately indifferent by providing those forms of treatment in place of HRT or SRS. At most, Plaintiffs allege that HRT may be necessary for them, but that is the essence of an as-applied claim—not a facial one. Thus, Plaintiffs’ facial challenge should be denied.

IV. PLAINTIFFS CANNOT MEET ARTICLE III STANDING FOR THEIR EIGHTH AMENDMENT CLAIM BASED ON LACK OF REDRESSABILITY

Tucker, Dombroski, and Phillips lack standing to request a declaration that HB252 violates the Eighth Amendment.⁶ Plaintiffs’ requested relief exceeds this Court’s Article III authority because they have not properly alleged they were receiving HRT before HB252 went into effect and have not alleged they would be entitled to receive HRT even if this Court concluded HB252 violated the Eighth Amendment.

Plaintiffs “must demonstrate standing separately for each form of relief sought.” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000) (notwithstanding plaintiff possessed standing to pursue damages, he lacked standing to pursue injunctive relief). Standing addresses whether Plaintiffs “suffered a concrete injury that could be redressed by action of the court.” *Utah Animal Rights Coal. v. Salt Lake City Corp.*, 371 F.3d 1248, 1263 (10th Cir. 2004). Plaintiffs bear the burden to demonstrate, among other things, “a likelihood that a favorable decision will redress the injury.” *Jordan v. Sosa*, 654 F.3d 1012, 1019 (10th Cir. 2011). “To demonstrate redressability, a party must show that a favorable court judgment is likely to relieve the party’s injury.” *City of Hugo v. Nichols (Two Cases)*, 656 F.3d 1251, 1264 (10th Cir. 2011). In other words, “showing that the relief requested *might* redress the plaintiff’s

⁶ Only those three Plaintiffs allege an Eighth Amendment violation. (See Am. Compl., 72.)

injuries is generally insufficient to satisfy the redressability requirement.” *WildEarth Guardians v. Pub. Serv. Co. of Colorado*, 690 F.3d 1174, 1182 (10th Cir. 2012) (cleaned up).

Here, Tucker, Dombroski, and Phillips lack standing to assert an Eighth Amendment claim premised on denial of HRT. (Am. Compl. ¶¶ 283-87 (alleging that Defendants “denied [HRT] to these Plaintiffs” and refused to provide “medically necessary care”).) Specifically, Plaintiffs’ request that HB252 be found unconstitutional based on the theory that the Eighth Amendment requires, in all circumstances and without exception, providing HRT to satisfy an inmate’s desire to live as the opposite sex, even in the face of a state legislature’s policy judgment that taxpayers should not fund controversial interventions of questionable medical value. (*See id.* ¶¶ 288-89 (alleging that HB252 and Defendants’ GEN-29 policy “established a blanket ban on initiating hormone therapy to Plaintiffs . . . in violation of the Eighth Amendment” and Defendants refuse “to initiate appropriate and effective treatment for gender dysphoria”).) Even if Plaintiffs’ Eighth Amendment theory were correct, which it isn’t, to possess standing to seek a declaration against the enforcement of HB252 and GEN 29, Tucker, Dombroski, and Phillips must demonstrate that their alleged Eighth Amendment injuries would likely be redressed by a favorable decision on the merits.

Here, Plaintiffs do not allege that declaring HB252 and GEN 29 unconstitutional would significantly increase the likelihood of redressing their injuries by Defendants ultimately providing them with the specific hormonal interventions they seek. Tucker, Dombroski, and Phillips do not allege that they were receiving HRT as of HB252’s effective date—or at any other time. (*Id.* ¶¶ 156-62 (Tucker only alleges being “orally told that hormone therapy was a necessary type of medical care for her” but was never actually approved to begin receiving the

treatment); ¶¶ 188-194 (Dombroski alleges being told that she did not meet Defendants’ criteria for HRT and her request for the same was denied); and, ¶¶ 210-12 (Phillips alleges approval for HRT under pre-HB252 policies, despite also alleging a UDC provider note stating “no indication for meds,” and alleges never having received it).)

This Court cannot rely on threadbare and unsupported allegations regarding Plaintiffs’ previous interactions with medical professionals to conclude that Defendants would likely provide HRT today, or at any point in the future, to these three Plaintiffs absent enforcement of HB252. Nothing about Plaintiffs’ handful of conclusory allegations establishes that they are “‘likely, as opposed to merely speculative[ly],” to be approved for the interventions they seek under Defendants’ pre-HB252 policies. *See Friends*, 528 U.S. at 181 (to satisfy Article III standing, a plaintiff must show it is “‘likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision”). At best, Plaintiffs allege that striking down HB252 would make it “possible” that their distinct Eighth Amendment allegations might eventually be redressed.

But mere implication that redress is “possible, instead of significantly more likely,” cannot support a grant of prospective relief. *Id.* Indeed, such a theory of redressability is especially weak because it relies on both “‘a series of speculative events” involving Plaintiffs’ individual doctors, and speculation about Defendants’ discretionary application of pre-HB252 policies. This includes being diagnosed with gender dysphoria, the identification, treatment, and stabilization of other medical and psychiatric comorbidities, evaluation of alternative courses of treatment, consideration of both long- and short-term negative effects of HRT, need to address

co-occurring mental health disorders, availability and cost of treatment, among other things. (*See* GEN-29.00 (1/7/25 version) at § III(B), § IV(A)-(C), attached as Ex. A, Tab A.)

In short, Plaintiffs lack Article III standing because they fail to allege that their Eighth Amendment injuries will be redressed by a declaration that HB252 is unconstitutional and by prohibiting its enforcement.

V. THE COURT LACKS SUBJECT MATTER JURISDICTION TO ISSUE A DECLARATORY JUDGMENT CONCERNING AG37 AND THE GENDER DYSPHORIA COMMITTEE BECAUSE THOSE ARE NO LONGER IN EFFECT

Plaintiffs request declaratory relief concerning the constitutionality of AG37 and the Gender Dysphoria Committee (“GD Committee”). (Am. Compl., 77-78, ¶ B.) They allege AG37’s purpose “was to establish a procedure by which UDC ‘shall diagnose and treat offenders with gender dysphoria.’” (*Id.* ¶ 59; *see also id.* ¶ 105.) They further allege that Defendants “established the [GD Committee] to delay and deny evaluations, mental health services, and hormone therapy for people with gender dysphoria like Plaintiffs.” (*Id.* ¶ 4.) They also allege that AG37 described the GD Committee and that the GD Committee’s practices are causing them harm. (*Id.* ¶¶ 62, 75-76, 78-80, 100-104 (Plaintiffs “are subject to Defendants’ GD Committee”).) And Plaintiffs further allege that “the GD Committee under AG37 [has] not changed and remain in place at this time.” (*Id.* ¶ 105.) However, any allegations that AG37 is currently in effect or that the GD Committee is in existence are incorrect. AG37 has been replaced by a new policy, and the GD Committee is no longer operating. Thus, declaratory relief on those aspects would constitute relief retroactive relief barred by sovereign immunity.

A. Rule 12(b)(1) Sovereign Immunity Challenges May Bring Forth Additional Facts Outside Complaint Allegations.

“States enjoy sovereign immunity from suit under the Eleventh Amendment.” *Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159, 1166 (10th Cir. 2012). Sovereign immunity limits the Court’s subject matter jurisdiction and must be addressed under Rule 12(b)(1). See *Keenan-Coniglio v. Cumbres & Toltec Scenic Operating Comm’n*, 769 F. Supp. 3d 1216, 1229-30 (D.N.M. 2025); *Garling v. EPA*, 849 F.3d 1289, 1294 (10th Cir. 2017) (“Sovereign immunity precludes federal court jurisdiction.”); *Chilcoat v. San Juan Cnty.*, 41 F.4th 1196, 1215, n.21 (10th Cir. 2022) (“Sovereign immunity, like standing, presents a threshold question of the district court’s subject matter jurisdiction.”). Rule 12(b)(1) empowers a court to dismiss aspects of a complaint over which it lacks jurisdiction. See *Gosselin v. Kaufman*, 656 F. App’x 916, 918 (10th Cir. 2016).

A 12(b)(1) motion to dismiss may “challenge the actual facts upon which subject matter jurisdiction is based.” *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002). “When reviewing a factual attack on subject matter jurisdiction, a district court may not presume the truthfulness of the complaint’s factual allegations. A court has wide discretion to allow affidavits [and] other documents. . . .” *Holt v. United States*, 46 F.3d 1000, 1002 (10th Cir.1995). “In such instances, a court’s reference to evidence outside the pleadings does not convert the motion to a Rule 56 motion.” *Id.* Here, Defendants bring a factual attack under 12(b)(1) as to subject matter jurisdiction based on sovereign immunity. As such, Defendants provide facts showing that sovereign immunity bars Plaintiffs’ requested relief concerning declaratory judgment on AG37 and the GD Committee. (See Am. Compl., 77-78, ¶ B.)

B. Sovereign Immunity Precludes Requests for Relief Regarding Alleged Past Violations.

Generally, sovereign immunity bars lawsuits against the state or state officials acting in their official capacities. *Harris v. Owens*, 264 F.3d 1282, 1289 (10th Cir. 2001). The *Ex parte Young* doctrine provides a “narrow exception” to that jurisdictional bar. *Buchwald v. Univ. of New Mexico Sch. of Med.*, 159 F.3d 487, 495 (10th Cir. 1998). That exception permits “prospective” equitable relief, but not “retroactive relief.” *Frazier v. Simmons*, 254 F.3d 1247, 1253 (10th Cir. 2001). For that reason, the exception cannot be used “to obtain a declaration that a state officer has violated a plaintiff’s federal rights in the past.” *K.A. v. Barnes*, 134 F.4th 1067, 1075 (10th Cir. 2025) (cleaned up).

The Tenth Circuit will not allow a plaintiff to obtain declaratory relief concerning past behavior. See *Collins*, 916 F.3d at 1302. In *Collins*, the plaintiff challenged a set of bail laws that previously applied to her. *Id.* at 1310-11. However, when the plaintiff’s appeal occurred, the plaintiff was no longer subject to those laws. *Id.* at 1314. Thus, the plaintiff’s request for declaratory relief was retrospective, and the court held “she cannot proceed under *Ex parte Young*.” *Id.*; *Chilcoat v. San Juan Cnty.*, 41 F.4th 1196, 1214 (10th Cir. 2022) (affirming denial of declaratory relief because it was retrospective—plaintiff “use[d] the past tense throughout her complaint to describe” the alleged unlawful activity).

C. Sovereign Immunity Bars Plaintiffs’ Request for Relief Concerning AG37 and the GD Committee Because Both are No Longer in Effect.

Plaintiffs seek a declaration that “Defendants practices and policies [are unconstitutional and violate the Eighth Amendment and the ADA by] delaying and denying Plaintiffs adequate and necessary medical care for the treatment of gender dysphoria including “through their

enforcement of AG37 and their GD Committee’s practices. . . .” (Am. Compl. p. 77-78, ¶ B.) That request is retrospective. On January 7, 2025, AG37 was rescinded, and along with it, the authorization for the GD Committee. (See Declaration of Dr. Wisner (“Wisner Decl.”) ¶¶ 6-11, attached hereto as Exhibit A.) While Plaintiffs have alleged that the GD Committee is still in effect (see Am. Compl. ¶¶ 57-80, 105 (alleging that “the GD Committee [and] practice of using committees to delay and deny care in UDC have not changed and remain in place at this time”)), this is no longer the case. (See Wisner Decl., ¶¶ 6-11.) Rather, Gen-29.00 is the current policy guiding the “diagnoses and care for inmates seeking treatment for gender dysphoria.” (*Id.* ¶ 9.) It does not authorize a GD Committee, and it has replaced AG37. (*Id.* ¶¶ 7-11.)

Thus, Plaintiffs’ request for declaratory relief is no different from *Collins*, where the plaintiff could not obtain declaratory relief because the challenged policy could not affect her. Likewise, since AG37 and the GD Committee are no longer established policies, Plaintiffs are no longer affected by them. Thus, regardless of whether those prior policies would be found unconstitutional, any declaratory relief concerning them would be “a declaration that a state officer has violated a plaintiff’s federal rights in the past.” See *K. A.*, 134 F.4th at 1075. This is not allowed under *Ex parte Young*. The Court therefore lacks subject matter jurisdiction for that requested relief and should dismiss any of Plaintiffs’ allegations and request for declaratory judgment concerning AG37 and the GD Committee.

CONCLUSION

Defendants respectfully request that this Court grant their Motion to Dismiss. For the foregoing reasons, gender dysphoria is not a protected disability under the ADA. Therefore, Plaintiffs’ ADA claim must be dismissed for failure to state a claim upon which relief may be

granted. Further, three of the Plaintiffs lack standing to assert claims under the 8th Amendment because their claims are not redressable, nor have they cleared the high bar in showing HB252 is facially unconstitutional. And finally, retrospective declaratory relief concerning AG37 and the GD Committee, which no longer exist, is barred.

DATED: March 6, 2026

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I, Keith W. Barlow, certify that this Motion to Dismiss contains 7,725 words (excluding the caption, table of contents, table of authorities, and signature block) and complies with DUCivR7-1(a)(4).

/s/ Keith W. Barlow

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CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2026, the foregoing, **RENEWED MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO **FED. R. CIV. P. 12(b)(1) AND 12(b)(6)****, was filed using the Court's electronic filing system, giving notice to:

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