David W. Tufts (Bar No. 8736)
DENTONS DURHAM JONES PINEGAR P.C.
111 South Main Street, Suite 2400
Salt Lake City, UT 84111
Telephone: 801-415-3000
Email: david.tufts@dentons.com

Attorneys for Plaintiffs
[Additional Counsel in Signature Block]

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 DEPARTMENT OF HEALTH AND HUMAN SERVICES, *in her official capacity*; DR. STACEY BANK, EXECUTIVE MEDICAL DIRECTOR OF CLINICAL SERVICES UTAH DEPARTMENT 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.	Civil Case No.: 2:25-cv-01108-TC **PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT** Honorable Judge Tena Campbell

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Regulations

Other Authorities

I. INTRODUCTION

Plaintiffs Virginia Tucker, Stephanie Dombroski, Sandy Phillips, Dakota Grunwald, and Amberli K. Morrigan ("Plaintiffs") are transgender people with the disability of gender dysphoria who have challenged the denial of medically necessary health care and discrimination because of their disability while incarcerated in the Utah State Correctional Facility ("USCF") within custody of the Utah Department of Corrections ("UDC"). Defendants moved to dismiss the First Amendment Complaint under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Defendants' Renewed Motion to Dismiss, ECF 54. Defendants' motion is without merit.

First, Plaintiffs have sufficiently alleged the necessary elements to state a claim pursuant to Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 et seq. ("ADAAA").[1] Plaintiffs are qualified individuals experiencing ongoing discrimination by Defendants[2] because of their disability of gender dysphoria. Contrary to Defendants' claims, gender dysphoria is not excluded by the ADAAA and Plaintiffs have each pleaded that their gender dysphoria substantially limits one or more major life activities.

Second, Plaintiffs have met their burden to facially challenge Utah's H.B. 252, 2025 Gen. Sess. (Ut. 2025), and UDC's GEN-29.00 policy because they are unconstitutional categorical bans on treatments for gender dysphoria for those for whom it is medically necessary, and because their

[1] References to the "ADA" mean the 1990 version of the Americans with Disabilities Act. The Americans with Disabilities Act Amendments Act ("ADAAA") revising the ADA, was signed into law September 25, 2008, and became effective January 1, 2009. Pub. L. No. 110-325, 122 Stat. 3553 (codified as amended in scattered sections of 42 U.S.C.). Plaintiffs' claims seek compliance with the ADAAA, though sometimes courts informally use "ADA" when referring to the ADAAA.

[2] Plaintiffs have sued UDC and Utah Department of Health and Human Services ("DHHS") and their officials Mr. Garcia, Ms. Gruber, Ms. D'Amico, Dr. Bank, and Dr. Wisner (collectively, "Defendants").

categorical bans subject qualified individuals with the disability of gender dysphoria to discrimination contrary to the ADAAA. There is no circumstance in which these categorical bans are lawful.

Third, Plaintiffs Ms. Tucker, Ms. Dombroski, and Ms. Phillips also allege that Defendants have acted with deliberate indifference to their gender dysphoria, a serious medical condition, in violation of the Eighth Amendment to the U.S. Constitution, by failing to provide them with adequate medical care despite knowing that this failure has caused and will continue to cause them serious harm. Plaintiffs have Article III standing because their injuries, caused by Defendants' failure to provide adequate medical care, are redressable by the relief requested.

Fourth, Defendants do not have sovereign immunity from these claims and the relief sought. For these reasons, Defendants' Motion to Dismiss should be denied in its entirety.

II. STATEMENT OF FACTS

Plaintiffs suffer from the disability of gender dysphoria. First Amended Complaint ("FAC") ¶¶ 1, 19-23. Defendants are public entities and officials who have authority over and responsibility for Plaintiffs' medical care and treatment; their meaningful equal access to institutional services, programs, and activities; and reasonable accommodations while incarcerated and have failed to provide Plaintiffs such care and access. FAC ¶¶ 1, 24-30.

Gender 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 and for some people it also constitutes a disability. FAC ¶¶ 2, 19-23, 31-56, 85, 123, 280, 294. Medical and scientific research has identified biological bases for gender incongruence such that gender dysphoria has a physical basis. Treatment for gender dysphoria is

well documented and can involve social transition, hormone therapy, and various surgeries to bring primary and/or secondary sex characteristics into alignment with the person's gender identity. FAC ¶ 51, 54. When left untreated or inadequately treated, gender dysphoria can cause debilitating distress, depression, impairment of function, and risk of self-harm to alter one's genitals or secondary sex characteristics, other self-injurious behaviors, suicide, and death. FAC ¶¶ 3, 56.

Notably, Defendants have recognized gender dysphoria as a serious medical condition requiring treatment since at least December 2018, when UDC adopted "AG37," a policy governing evaluations, mental health services, and hormone therapy as treatment for gender dysphoria, and established the Gender Dysphoria Committee ("GD Committee"). FAC ¶¶ 4, 59-73.

Since 2018, Defendants have used committees to delay and deny care for gender dysphoria, including individualized assessments for surgery and hormone therapy that was recognized as medically necessary. FAC ¶¶ 4, 59-80, 100-105, 236, 245, 272-73.[3] In March 2024, U.S. Department of Justice ("DOJ") notified UDC in a Letter of Findings and Conclusions ("LOF") that UDC's use of the GD committee to deny care and individualized assessments, violated the Americans with Disabilities Act, 42 U.S.C. §§ 12131-34 and its implementing regulations, 28 C.F.R. pt. 35. FAC ¶¶ 4, 106-117. Despite the Letter of Findings regarding the AG37 committee, UDC created the ICST and MDST committees in their new process under GEN 29.00. 28 C.F.R. § 35. FAC ¶¶ 4, 106-117.

[3] Under AG37, the Defendants delayed and denied this care through the GD Committee. FAC ¶¶ 4, 59-80, 100-105, 236, 245, 272-73. Under GEN-29.00, the committees were titled the Interdisciplinary Case Staffing Team ("ICST") and Multidisciplinary Services Team ("MDST"). FAC ¶¶ 4, 106-117. While the names of the committees changed, these committees have substantially similar functions and authority. FAC ¶¶ 6, 86.

Defendants have had a *de jure* ban on the initiation of hormone therapy since at least May 7, 2025. Any person who requests hormone therapy as treatment for gender dysphoria is informed by Defendants that hormone therapy cannot be initiated pursuant to UCA § 26B-4-1003. FAC ¶ 8. Treatment is limited to mental health services, which, on its own, is an inadequate means of treating gender dysphoria and contrary to accepted medical standards of care. FAC ¶¶ 8, 133-34. Additionally, Defendants have had a *de facto* ban on surgery since 2018,[4] and a *de jure* ban since at least May 7, 2025.[5] FAC ¶¶ 4, 8, 78, 102, 125-35, 236, 245, 272-73.

Defendant's policies and practices single out gender dysphoria, a particular disability, for adverse and deferential treatment, specifically prohibiting the initiation of medically necessary care including hormone therapy and surgical interventions, without any consideration of Plaintiffs' individualized medical needs and the medical judgment of Defendants' own medical providers. FAC ¶¶ 9, 126, 172, 194, 214. These policies and practices have denied Plaintiffs meaningful equal access to services, programs and activities that are available to non-disabled people or those with disabilities other than gender dysphoria in UDC's custody. FAC ¶¶ 8, 11, 19-23, 79, 103, 111, 114, 116-117, 137-145, 292-302. Defendants have denied or limited Plaintiffs' equal access to healthcare programs by, among other things, providing a lack of timely and accurate assessments, and failing to provide condition-specific mental health services, hormone therapy, and

[4] AG37 was a *de facto* ban on individualized assessments for surgical interventions as treatment for gender dysphoria as Defendants have never provided individual assessments for surgical interventions as medically necessary treatment for gender dysphoria. FAC ¶¶ 4, 78, 102, 236, 245, 272-73.

[5] While H.B. 252 is a *de jure* prohibition of individualized assessments for surgical interventions as treatment for gender dysphoria, GEN-29.00 is a *de facto* prohibition. FAC ¶¶ 8, 125-35.

individualized assessments of the need for surgery, all due to disability or suspected disability of gender dysphoria. FAC ¶¶ 12, 78, 102, 170, 172, 236, 245.

Defendants have persistently failed and continue to fail to provide Plaintiffs with medically necessary care for their gender dysphoria, specifically in denying them individualized assessments and necessary treatments in accordance with widely accepted clinical guidelines. FAC ¶¶ 3, 5, 9, 12, 78, 102, 170, 172, 236, 245. Plaintiffs are deprived of timely and adequate evaluations, accurate diagnoses, mental health services from qualified providers, hormone therapy, and individualized assessments for surgery. FAC ¶¶ 3, 9, 12, 78, 102, 170, 172, 236, 245, 272-73.

III. LEGAL STANDARD

Fed. R. Civ. P. 12(b)(6) requires the court to assume that all well-pled factual allegations in the complaint are true and to draw all reasonable inferences in the plaintiff's favor. *Spinelli v. Coherus Biosciences, Inc.*, 167 F.4th 1274, 1279 (10th Cir. 2026) (citing *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 181 (2024)). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when its factual content allows the court to draw a reasonable inference that the defendants are liable for the misconduct alleged. *See Ashcroft*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

To establish Article III standing, a plaintiff must show "a causal connection between the injury and the conduct complained of" so that the injury is "fairly . . . trace[able] to the challenged action of the defendant." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). A plaintiff must demonstrate that they "(1) 'ha[ve] suffered or likely will suffer an injury in fact,' (2) 'the injury

likely was caused or will be caused by the defendant,' and (3) 'the injury likely would be redressed by the requested judicial relief.'" *Cline v. Sunoco, Inc. (R&M)*, 159 F.4th 1171, 1197 (10th Cir. 2025) (quoting *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024)). "[G]eneral factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *S. Utah Wilderness All. v. Palma*, 707 F.3d 1143, 1152 (10th Cir. 2013) (citation modified).

IV. ARGUMENT

A. Plaintiffs plausibly state a claim under the ADAAA.

To state a claim under the ADAAA, a plaintiff must show (1) they are a "qualified individual with a disability;" (2) who was "excluded from participation in or denied the benefits of services, programs, or activities;" (3) and that "such exclusion, denial of benefits, or discrimination was by reason of his disability." *Est. of Beauford v. Mesa Cnty., Colorado*, 35 F.4th 1248 (10th Cir. 2022). While Defendants dispute that Plaintiffs are "qualified individuals with a disability," they do not dispute the other prongs, and those should be deemed sufficiently pleaded.

1. Gender dysphoria is not excluded from the ADAAA's protections.

Defendants assert that gender dysphoria is not a disability under the ADAAA because it falls under the ADAAA's Statutory Exclusions, 42 U.S.C. § 12211(b)(1), ("Statutory Exclusions") as a "gender identity disorder not resulting from physical impairments" or "other sexual behavior disorder." Neither the plain language of the statute, medical and scientific understanding of gender dysphoria, nor other Canons of statutory construction support Defendants' interpretation.

Defendants improperly read text into the ADAAA's Statutory Exclusions. Motion To Dismiss ("MTD") at 7-16. The statute reads "the term 'disability' shall not include — (1) 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). It is undisputed the term "gender dysphoria" is not in the statute's exclusionary list. Only the words on the page constitute law adopted by Congress. *Hooper v. City of Tulsa*, 71 F.4th 1270, 1282 (10th Cir. 2023). On a plain reading the Court should find that the impairment of gender dysphoria is not excluded.[6]

While the Tenth Circuit has not addressed this issue, the Fourth Circuit Court of Appeals' decision in *Williams v. Kincaid*, 45 F.4th 759, 766-69 (4th Cir. 2022), holding that gender dysphoria is not excluded from the ADAAA's coverage, and numerous district court decisions holding the same, are instructive.[7]

---

[6] Questions of statutory construction are questions of law. *United States v. Dep't of Health & Env't*, 162 F.4th 1238, 1244 (10th Cir. 2025); *Utah v. Babbitt*, 53 F.3d 1145, 1148 (10th Cir. 1995). The goal of statutory interpretation is to ascertain the congressional intent and give effect to the legislative will, not "replace the actual intent with speculation." *Kan. Nat. Res. Coal. v. U.S. Dep't of Interior*, 971 F.3d 1222, 1235 (10th Cir. 2020). Courts must give undefined terms their ordinary meanings considering both the specific context in which the word is used and the broader context of the statute. *In re Taylor*, 899 F.3d 1126, 1128 (10th Cir. 2018).

[7] *See Helen Doe v. Thomas C Horne*, No. CV-23-00185-TUC-JGZ, 2024 WL 3091984, at *3 (D. Ariz. June 21, 2024), *appeal dismissed*, No. 24-4749, 2024 WL 4732562 (9th Cir. Aug. 29, 2024) (concluding that gender dysphoria does not fall under the category of "gender identity disorders" as conceived at the time of the ADA's enactment and that gender dysphoria does not belong to the category of "other sexual behavioral disorders."); *Doe v. Pa. Dep't of Corrs.*, No. 1:20-cv-00023-SPB-RAL, 2021 WL 1583556, at *7–12 (W.D. Pa. Feb. 19, 2021), *report and recommendation adopted*, No. CV 20-23, 2021 WL 1115373, at *3 (W.D. Pa. Mar. 24, 2021) (denying a motion to dismiss after plaintiff plausibly alleged their gender dysphoria has a physical basis, placing it outside of the ADA's exclusion); *Doe v. Hosp. of Univ. of Pennsylvania*, 546 F. Supp. 3d 336, 350 (E.D. Pa. 2021) (motion to dismiss ADA claim denied as plaintiff alleged her gender dysphoria substantially limited her occupational functioning); *Doe v. Mass. Dep't of Corrs.*, No. 17-12255-

In *Williams*, the Fourth Circuit held, as a matter of statutory construction, that gender dysphoria is not a "gender identity disorder" within the meaning of the Statutory Exclusions because at the time of the statute's adoption, "gender identity disorders" did not include gender dysphoria, which was not then acknowledged as a diagnosis. 45 F.4th at 766-67. The Fourth Circuit based its holding on the "significant shift in medical understanding" of gender incongruence since enactment of the exclusions, drawing upon the American Psychiatric Association's ("APA") removal of "gender identity disorders" from the Diagnostic and Statistical Manual of Mental Disorders (5th ed. rev. 2013) (DSM-V) and its recognition of "gender dysphoria" as a distinct diagnosis. *Id.* at 767-69. And, because of express instruction from Congress to courts to "construe the ADA in favor of maximum protection for those with disabilities," the *Williams* court declined to adopt a restrictive reading that would add to the list of exclusions. *Id.* at 769-70. Additionally, the court held the plaintiff alleged sufficient facts to make plausible the inference that her gender dysphoria "result[s] from physical impairments," looking to both EEOC regulations defining "physical impairments" and the plaintiff's allegations regarding her need for hormone treatment and the medical and scientific research on "possible physical bases of gender dysphoria." *Id.* at 770. This Court should reach the same conclusion.

a) Medical and scientific understandings of gender dysphoria support that it does not fall within the Statutory Exclusions.

Defendants ask the Court to define "gender dysphoria" synonymously with "gender identity disorders" or "other sexual behaviors," but to do so would result in replacing actual

RGS, 2018 WL 2994403, at *6 (D. Mass. Jun. 14, 2018) (finding gender dysphoria is distinct from gender identity disorder and plaintiff's gender dysphoria results from a physical impairment); *Blatt v. Cabela's Retail, Inc.*, No. 5:14-CV-04822, 2017 WL 2178123, at *3 (E.D. Pa. May 18, 2017) (finding it plausible that gender dysphoria is not excluded from the ADA).

statutory intent with speculation. MTD at 7-16. When Congress passed the ADA in 1990 and the ADAAA in 2008, they used terms of art in a familiar learned treatise, the DSM-III-R. *Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders* 71 (3rd ed. rev. 1987) (DSM-III-R) MTD at 10-11.[8] Defendants acknowledge that reference to the DSM-III-R in construing "gender identity disorders" and "sexual behavior disorders" at the time of the ADA is therefore informative. MTD at 10; *see also N.M. Farm & Livestock Bureau v. U.S. Dep't of Interior,* 952 F.3d 1216, 1224 (10th Cir. 2020) ("When Congress has used technical words or terms of art, the term must be given its technical or scientific meaning.").

In 1990 and 2008, under the DSM-III-R, the essential feature of all gender identity disorders was "an incongruence between assigned sex (i.e., the sex that is recorded on the birth certificate) and gender identity." DSM-III-R at 71. So, when the ADA was passed and then amended, the DSM-III-R categorized being transgender as a mental illness in the criteria for "gender identity disorder." *Williams*, 45 F.4th at 767. In 1990 and in 2008, none of the gender identity-related diagnoses set forth in the DSM-III-R for clinical assessment of adults required clinically significant distress or impairment.[9] Instead, gender identity disorders in the DSM-III-R simply focused only on the incongruence between a person's gender identity and sex assigned at birth. *Williams*, 45 F.4th at 767. By excluding "gender identity disorders" from the definition of

[8] The DSM-III-R is available online at https://psychiatryonline.org/doi/epdf/10.1176/appi.books.9780890420188.dsm-iii-r.

[9] *See, e.g.*, DSM-III-R at 76 (identifying that "persistent discomfort," a "sense of inappropriateness" and a "[p]ersistent preoccupation" about one's primary and secondary sex characteristics as criteria for a transsexualism diagnosis); *id.* at 77 (identifying "persistent or recurrent discomfort" and cross-dressing as criteria for a Gender Identity Disorder of Adolescence of Adulthood, Nontranssexual Type (GIDAANT) diagnosis); *cf. id.* at 73 (identifying "[p]ersistent and intense distress" about assigned sex as criterion for gender identity disorder of childhood).

disability in the ADA, Congress concluded that simply identifying as a different gender from one's sex assigned at birth should not be a covered disability.

But by 2013, science had advanced. The DSM-V removed the diagnosis of Gender Identity Disorder ("GID") entirely. FAC ¶ 122. The APA then added a diagnosis of "gender dysphoria," "which did not exist as a diagnosis in 1990" and "differs dramatically from that of the now-rejected diagnosis of 'gender identity disorder.'" *Williams*, 45 F.4th at 767. Gender dysphoria is a medical condition and disability within the DSM-V that is distinct from GID.[10] The presenting feature of gender dysphoria is clinically significant distress, termed "dysphoria," that a person experiences because of the incongruence between their gender identity and their sex assigned at birth. The medical issue in need of treatment is the dysphoria, not simply experiencing incongruence between one's gender identity and sex assigned at birth, the defining feature of the GID diagnosis in the DSM-III-R. FAC ¶ 123. Because gender dysphoria is not simply identifying with a different gender—but is instead characterized by clinically significant distress or impairment in social, occupational, or other important areas of functioning—gender dysphoria is something distinct that obviously falls outside the ADAAA's exclusion of gender identity disorders. FAC ¶¶ 41-46.

Nor does Congress' use of the plural term "gender identity disorders" prove, as Defendants argue, that gender dysphoria is within the scope of the term. "Gender Identity Disorders" is simply the heading of a section of the DSM-III-R, which classifies gender identity disorders into four diagnoses. (DSM-III-R at 71-78). Thus, Congress' use of the plural term—a term of art in the

[10] As Plaintiffs allege, "[a]lthough AG37 and GEN-29.00 refer to gender dysphoria and require diagnoses to be made according to the DSM-5, UDC and DHHS have used and continue to incorrectly use the diagnosis of gender identity disorder ("GID"), which is not within the DSM-5." FAC at ¶ 121.

DSM-III-R—means no more than the grouping of four related diagnoses of gender identity disorders. *N.M. Farm & Livestock Bureau*, 952 F.3d at 1224 ("When Congress has used technical words or terms of art, the term must be given its technical or scientific meaning."). Neither that heading nor any of those diagnoses remain present in the DSM-V.

(1) Gender dysphoria is not excluded from the ADAAA's coverage because it results from a physical impairment.

The plain language of the ADAAA specifically excludes only "gender identity disorders not resulting from physical impairments" from coverage. 42 U.S.C. § 12211(b)(1). Even if, *arguendo*, gender dysphoria could be defined as a gender identity disorder (which the latest DSM does not do), it still would not fall within the exclusion because, as Plaintiffs have alleged, growing medical and scientific research has identified biological bases for gender incongruence such that gender dysphoria has a physical basis. FAC ¶¶ 2, 40.

This understanding of gender dysphoria comports with applicable ADA regulations that broadly define the term "physical impairment" to mean "[a]ny physiological disorder or condition" affecting various body systems including "neurological," "reproductive," or "genitourinary." 28 C.F.R. § 35.104; *see also Williams*, 45 F.4th at 770 (applying the EEOC regulations that define physical impairment as "any physiological disorder or condition…affecting one or more body systems, such as neurological…and endocrine" and citing 28 C.F.R. § 35.108(b)(1)(i)). Several courts have recognized substantial evidence that a physical etiology may underly gender dysphoria, and that this fact places the condition outside the exclusion of "gender identity disorders without a physical impairment" found in 42 U.S.C. § 12211(b)(1). *See, e.g.*, *Williams*, 45 F.4th at 770; *Doe v. Massachusetts Dep't of Correction*, No. CV 17-12255-RGS, 2018 WL 2994403, at *6 (D. Mass. June 14, 2018); *Tay v. Dennison*, No. 19-CV-00501-NJR, 2020 WL 2100761, at *3 (S.D.

Ill. May 1, 2020) (allowing ADA claim to proceed because the "court cannot categorically say that gender dysphoria falls within the ADA's exclusionary language"); *Shorter v. Barr*, No. 4:19CV108-WS/CAS, 2020 WL 1942785, at *9 (N.D. Fla. Mar. 13, 2020), *report and recommendation adopted,* No. 4:19CV108-WS/CAS, 2020 WL 1942300 (N.D. Fla. Apr. 22, 2020); *Guthrie v. Noel*, No. 1:20-CV-02351, 2023 WL 8115928, at *1 (M.D. Pa. Sept. 11, 2023), r*eport and recommendation adopted*, No. CV 1:20-2351, 2023 WL 8116864 (M.D. Pa. Sep. 29, 2023). The court in *Doe v. Massachusetts* explained that "the continuing re-evaluation of [gender dysphoria] underway in the relevant sectors of the medical community is sufficient, for present purposes, to raise a dispute of fact as to whether [plaintiff]'s [gender dysphoria] falls outside the ADA's exclusion of gender identity-based disorders as they were understood by Congress twenty-eight years ago." 2018 WL 2994403, at *7.

The cases on which Defendants rely to exclude gender dysphoria as a disability under the ADAAA are easily distinguishable. MTD at 9. None of the Plaintiffs in the cases Defendants cite pleaded or provided evidence that their gender dysphoria resulted from a physical impairment. *See Duncan v. Jack Henry & Assocs., Inc.*, 617 F. Supp. 3d 1011, 1052 (W.D. Mo. 2022); *Lange v. Houston Cnty., Georgia*, 608 F. Supp. 3d 1340, 1363 (M.D. Ga., 2022), *aff'd*, 101 F.4th 793 (11th Cir. 2024), *reh'g en banc granted, opinion vacated*, 110 F.4th 1254 (11th Cir. 2024), and *on reh'g en banc*, 152 F.4th 1245 (11th Cir. 2025), and *rev'd and remanded*, 152 F.4th 1245 (11th Cir. 2025); *Doe v. Northrop Grumman Sys. Corp.*, 418 F. Supp. 3d 921, 930 (N.D. Ala., 2019); *Parker v. Strawser Constr., Inc.*, 307 F. Supp. 3d 744, 755 (S.D. Ohio, 2018); *Michaels v. Akal Sec., Inc.*, No. 09-CV-01300-ZLW-CBS, 2010 WL 2573988, at *6 (D. Colo. 2010). By contrast, Plaintiffs

here have plausibly pleaded that gender dysphoria has a physical basis sufficient to fall within the disabilities recognized by the ADA. FAC ¶ 2, 38-40.

Defendants assert it is incomprehensible that Congress would exclude as disabilities "other sexual behavior disorders" and not gender dysphoria. MTD 15-16. Gender dysphoria is not a sexual behavior disorder because it is not characterized by sexual desire, sexual functioning, or arousal. DSM-III-R at 279. Gender dysphoria is characterized as the "clinical distress" resulting from an individual's discordant gender identity. DSM-V at 451–53; DSM-V-TR at 512-13. To understand gender dysphoria as falling within the broad category of "sexual behavior disorders" in the ADAAA's Statutory Exclusions would require this court to do what the Tenth Circuit has prohibited: "reading words or elements into a statute that do not appear on its face." *United States v. Sturm*, 673 F.3d 1274 (10th Cir. 2012).

2. The ADAAA's Statutory Exclusions should be read narrowly to ensure broad protections for people with disabilities including gender dysphoria.

The canons of construction require that exceptions to a statute's "general statement of policy," like the Statutory Exclusions, are read sensibly and "narrowly in order to preserve the primary operation of the [policy]." *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 731 (1995) (quoting *Comm'r v. Clark*, 489 U.S. 726, 739 (1989). Congress' intent was that the "question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis." 42 U.S.C. § 12101(b)(1). In enacting the ADAAA in 2008, Congress mandated that the "definition of disability . . . shall be construed in favor of broad coverage of individuals" and "to the maximum extent permitted." 42 USC § 12102(4)(A); *Hawkins v. Schwan's Home Serv., Inc.*, 778 F.3d 877, 883 (10th Cir. 2015). Congress explicitly overturned a series of Supreme Court cases, colloquially known as the *Sutton* Trilogy cases, and stated that the person's

impairment was not to be determined strictly and narrowly. 42 U.S.C. §§ 12101(b)(1)(b)(2)(3)(4)(5); *see Williams*, 45 F.4th at 766 ("Congress expressly directed courts to construe the amended [ADA] as broadly as possible. Moreover, because the 2008 amendments to the ADA were intended to make it easier for people with disabilities to obtain protection under the ADA, courts must construe the ADA's exclusions narrowly.") (citation modified); *see also Trainor v. Apollo Metal Specialties, Inc.*, 318 F.3d 976, 983 (10th Cir. 2002), *as amended on denial of reh'g* (Jan. 23, 2003).

3. The Court's Statutory Construction of the ADAAA's Exclusion Clause should avoid constitutional concerns.

Even if the Court were to conclude that some ambiguity exists regarding whether gender dysphoria could fall within the ADAAA's exclusion, principles of constitutional avoidance urge the Court to reject Defendants' interpretation. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) ("'[I]t is a cardinal principle' of statutory interpretation, however, that when an Act of Congress raises 'a serious doubt' as to its constitutionality, 'this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.'") (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932)); *Ridenour v. Kaiser-Hill Co.*, 397 F.3d 925, 934 (10th Cir. 2005). Defendants' interpretation of 42 U.S.C. § 12211(b)(1) to exclude transgender people with gender dysphoria from the protections of the ADAAA would implicate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because of the discriminatory animus that fueled the initial exclusion in the first place, *see, e.g.*, Kevin M. Barry, *Disabilityqueer: Federal Disability Rights Protection for Transgender People*, 16 Yale Human Rts. & Dev. J. 1 (2014) (detailing how moral disapproval of transgender people led to "gender identity disorders" being excluded), and because a law that "withdraws from [one group], but no others, specific legal

protection from the injuries caused by discrimination" … "raise[s] the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected." *Romer v. Evans*, 517 U.S. 620, 627, 634 (1996). As the Fourth Circuit explained in *Williams*, and as other district courts have similarly concluded, "the ADA's exclusion of "gender identity disorders" *itself* [is] evidence of such discriminatory animus," and there is "no legitimate reason" why Congress would intend to exclude people with gender dysphoria from disability nondiscrimination protections; the only reason to be "glean[ed] from the text and legislative record is 'a bare . . . desire to harm a politically unpopular group,'" which "'cannot constitute a legitimate governmental interest.'" 45 F.4th at 773 (quoting *Romer*, 517 U.S. at 634); *see also Doe*, 2021 WL 1583556, at *11; *Doe*, 2018 WL 2994403, at *8; *Blatt*, 2017 WL 2178123, at *4. Because "a construction of the statute ... by which [this constitutional] question may be avoided" is readily available, *Zadvydas*, 533 U.S. at 689, this Court should reject Defendants' construction.

4. Plaintiffs each sufficiently pleaded that their gender dysphoria substantially limits one or more major life activities.

Each Plaintiff has sufficiently alleged facts to plausibly establish all elements of an ADAAA claim, including that they have a gender dysphoria, a physical impairment, that substantially limits a major life activity. FAC ¶¶ 3, 165, 179, 200, 213, 220, 244. *Jacobs v. Salt Lake City Sch. Dist.*, 154 F.4th 790 (10th Cir. 2025).

In the plain language of the ADAAA, "disability" is defined as "a physical or mental impairment that substantially limits one or more major life activities; have a record of such impairment; or are regarded as having such an impairment." 42 U.S.C. § 12102(1). The applicable regulations further instruct: "[t]he term 'substantially limits' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. 'Substantially

limits' is not meant to be a demanding standard." 29 C.F.R. § 1630.2 (j)(1)(i); *see* ADAAA § 4(a)(2). Defendants' reliance on *Sutton v. United Air Lines, Inc.*, 130 F.3d 893 (10th Cir. 1997), *aff'd,* 527 U.S. 471 (1999), *overturned due to legislative action* (2009), to narrow the definition of "substantially limits a major life activity" has been overturned by Congress, which they acknowledge. MTD at 17.

Gender dysphoria is a disability because functional consequences include "interfere[nce] with daily activities," and this is true for each Plaintiff. DSM-V at 454. Plaintiffs have each pleaded that their gender dysphoria causes them "anxiety, depression, self-harm, and suicide, which may substantially limit one or more major life activities" including but not limited to eating, sleeping, learning, reading, concentrating, thinking, communicating, and working. 29 C.F.R. §1630.2(i)(1)(i); *see also* DSM-V at 451-59; FAC ¶¶ 144-302. Because Plaintiffs suffer from gender dysphoria, and their gender dysphoria manifests in symptoms that interfere with their major life activities, the Court should conclude that Plaintiffs have sufficiently alleged that they are qualified individuals under the ADAAA.

B. Plaintiffs satisfy the burden to bring a facial challenge against H.B. 252.

Plaintiffs' challenge to H.B. 252 satisfies the requirement, at the pleading stage, to bring a facial challenge to the statute because every application of H.B. 252's categorical prohibition on treatments for gender dysphoria deprives every person for whom it is medically necessary of access to that care, failing to consider the individualized medical needs of a person and interfering with medical judgment of the providers; therefore, H.B. 252 will always be unconstitutional under the Eighth Amendment's duty to provide adequate medical care. *See United States v. Salerno*, 481 U.S. 739 (1987) (a statute is unconstitutional on its face if a plaintiff shows that "no set of

circumstances exists under which [it] would be valid."); *Doe v. City of Albuquerque*, 667 F.3d 1111, 1127 (10th Cir. 2012) ("challenged restriction is invalid on its face" when it is "incapable of any valid application").[11]

Defendants' attempt to undermine Plaintiffs' facial challenge by reference to hypothesized people "unable to access desired HRT" or surgical interventions is a red herring. MTD at 19. Under *Salerno*, a plaintiff bringing a facial challenge to a statute is not required to muster every conceivable scenario in their pleadings for the court to analyze; only relevant applications are considered for purposes of the facial challenge. *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409, 418–19 (2015) ("the Court has considered only applications of the statute in which it actually authorizes or prohibits conduct."). H.B. 252 is facially invalid because the statute bars adequate and medically necessary (not merely "desired") treatment for gender dysphoria. FAC ¶¶ 7-9. If qualified medical professionals evaluate transgender adults with gender dysphoria in UDC's custody (such as the Plaintiffs) and find that either hormone therapy or surgical intervention is medically necessary for the treatment of that person's gender dysphoria, then that person is within the group of persons to whom H.B. 252 applies.

Courts considering similar blanket bans on treatments for gender dysphoria have rejected Defendants' argument. For example, in *Fields v. Smith*, 653 F.3d 550, 557 (7th Cir. 2011), the Seventh Circuit upheld the facial invalidity of a similar law, rejecting the argument that the law "bans treatment to all prisoners, even those for whom hormones and surgery are not medically necessary," and noting that the proper constitutional inquiry focuses on "the group for whom the

[11] Plaintiffs ask the court to declare that H.B. 252 facially violates both the Eighth Amendment and the ADAAA, Defendants only dispute that H.B. 252 facially violates the Eighth Amendment. MTD at 20-23.

law is a restriction, not the group for whom the law is irrelevant." (quotation omitted). For the group of people to whom H.B. 252 applies—those for whom the categorically banned treatments are medically necessary, H.B. 252 violates the Eight Amendment.

This is so because enforcing a categorical ban on medically necessary treatments constitutes deliberate indifference to the serious medical need of people with gender dysphoria. *Estelle v. Gamble*, 429 U.S. 97 (1976) ("deliberate indifference to serious medical needs of prisoners" violates the Eighth Amendment's prohibition against cruel and unusual punishment). The text of H.B. 252 is an explicit ban on the initiation of hormone therapy and on assessments for surgical interventions as treatment for gender dysphoria, even in situations where the care is medically necessary. FAC ¶¶ 9, 246-47, 272, 288. The Tenth Circuit has repeatedly treated gender dysphoria as a "serious medical need" for the purposes of the Eighth Amendment, *Johnson v. Sanders*, 121 F.4th 80, 89 (10th Cir. 2024) (collecting cases), and has explained that some treatment is required for gender dysphoria and acknowledged that hormone therapy is within the type of treatments that can be available. *Supre v. Ricketts*, 792 F.2d 958 (10th Cir. 1986); *Hardeman v. Smith*, 764 F.App'x. 658, 663 (10th Cir. 2019); *Lamb v. Norwood*, 899 F.3d 1159, 1161 (10th Cir. 2018). H.B. 252 is a blanket ban on specific types of care regardless of an individualized medical assessment of its necessity to treat this serious medical need. FAC ¶¶ 9, 288. The ban applies despite a medical provider determining the treatment is medically necessary and prescribing it, meaning the statute interferes with and ignores medical judgment. FAC ¶¶ 126-35. As several other courts have concluded, a blanket prohibition of medically necessary care contravenes the obligation to provide adequate medical care because the "blanket, categorical denial of medically indicated [treatments for gender dysphoria] solely on the basis of an administrative policy . . . is

the paradigm of deliberate indifference." *Rosati v. Igbinoso*, 791 F.3d 1037, 1040 (9th Cir. 2015) (quotation omitted); *see also Hicklin v. Precynthe*, No. 4:16-CV-01357-NCC, 2018 WL 806764, at *11 (E.D. Mo. Feb. 9, 2018) ("The denial of hormone therapy based on a blanket rule, rather than an individualized medical determination, constitutes deliberate indifference in violation of the Eighth Amendment."). In every instance, H.B. 252 mandates deliberate indifference to the serious medical need of those for whom the banned treatments are medically indicated to treat their gender dysphoria.

That this includes the serious medical needs of the individual Plaintiffs does not render Plaintiffs' claims as-applied. MTD at 20. As the Supreme Court has noted, the "distinction between facial and as-applied challenges is not so well defined" and this distinction "goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010). The constitutional violation is the same whether the challenge is as-applied or facial; only the "breadth of the remedy" is different. Plaintiffs have successfully pleaded that H.B. 252 and its implementation through GEN-29.00 violate the Eighth Amendment both on its face and as applied to the Plaintiffs.

C. Plaintiffs have standing to challenge H.B. 252 and GEN-29.00 because their injuries are redressable by the relief sought.

Plaintiffs have sufficiently pleaded that the injuries suffered by Ms. Tucker, Ms. Dombroski, and Ms. Phillips are redressable by the relief sought—namely an order finding that H.B. 252 and GEN-29.00 are unconstitutional and an injunction requiring Defendants to provide them with medically necessary hormone therapy.[12] Redressability requires Plaintiffs to

[12] Plaintiffs' First Amended Complaint challenges the statute and its implementation under the ADAAA, and the Defendants have not argued that those claims lack redressability. MTD 20-23.

demonstrate "that the injury would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). It "is satisfied when a favorable decision relieves an injury, not every injury." *Consumer Data Indus. Ass'n v. King*, 678 F.3d 898, 905 (10th Cir. 2012). And even if relief cannot "provide full redress," the ability "to effectuate a partial remedy" satisfies the redressability requirement. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291 (2021). Even if Plaintiffs were only seeking declaratory relief, that would be sufficient to demonstrate redressability. *Consumer Data Industry Ass'n*, 678 F.3d at 906. Notably, "[w]hen a plaintiff is the 'object' of a government regulation, there should 'ordinarily' be 'little question' that the regulation causes injury to the plaintiff and that invalidating the regulation would redress the plaintiff's injuries." *Diamond Alternative Energy, LLC v. Env't Prot. Agency*, 606 U.S. 100, 114 (2025) (quoting *Lujan*, 504 U.S. at 561).

Plaintiffs' pleadings more than suffice to demonstrate that "their Eighth Amendment injuries will be redressed by a declaration that H.B. 252 is unconstitutional and by prohibiting its enforcement." MTD at 21, 23. In suggesting that Plaintiffs must allege they were receiving hormone therapy before H.B. 252 went into effect and they would receive hormone therapy if H.B. 252 and GEN-29.00 are found unconstitutional, MTD at 20, Defendants misconstrue the requirements for establishing redressability at the pleading stage. *Consumer Data Indus. Ass'n*, 678 F.3d at 905. Plaintiffs' allegations that H.B. 252 and Defendants' implementation thereof create the barrier to their receipt of adequate medical care meet those requirements. Removing the barrier is enough to establish redressability.

The defendants in *Murphy v. Derwinski*, made a similar argument to the Defendants here—because the plaintiff could not show she would ultimately get the job she applied for if the allegedly

discriminatory policy was removed, she did not have standing. 990 F.2d 540, 543 (10th Cir. 1993). The Tenth Circuit rejected this argument and determined that whether the plaintiff ultimately obtained the position she was applying for was "irrelevant for standing purposes" and required "speculation" that the court refused to engage in. *Id*. The injury to the plaintiff was not the ultimate denial of the job, but instead the use of an allegedly discriminatory policy to preclude her application from ever being adequately considered. *Id.* Likewise, here, it is not whether Plaintiffs ultimately receive hormone treatment that forms the basis of their injury; the injury stems from Defendants' enforcement of categorical bans, policies, and practices that result in the automatic denial of adequate medical care, regardless of the Plaintiffs' individualized medical needs and interference with medical judgment.

Defendants also assert that Plaintiffs' theory for H.B. 252's unconstitutionality is that hormone therapy is required in all cases to "satisfy an inmate's desire to live as the opposite sex." MTD at 21. Defendants mistake the injury at issue. Plaintiffs' injury under their Eighth Amendment claims is Defendants' failure to provide adequate medical care for a serious medical need. FAC ¶¶ 287, 291, 295, 297. For Plaintiffs, adequate medical care for gender dysphoria *includes* medically necessary hormone therapy. FAC ¶¶ 56, 109, 192, 214. Defendants' enforcement of categorical bans, including as set forth in H.B. 252, is the gravamen of Plaintiffs' injuries. A favorable decision providing the requested declaratory and injunctive relief would redress Plaintiffs' injuries by declaring that GEN-29.00 and H.B. 252's categorical bans on medically necessary care for the treatment of gender dysphoria are unlawful and requiring the Defendants to provide Plaintiffs Ms. Tucker, Ms. Dombroski, and Ms. Phillips with adequate

medical care, including medically necessary hormone therapy for their gender dysphoria under the prevailing clinical guidelines.

D. The Court has subject matter jurisdiction over the claims and to issue declaratory judgment.

Defendants attempt to invoke sovereign immunity pursuant to the Eleventh Amendment. MTD at 23-26. But Plaintiffs' claims fall within two established exceptions to a state's Eleventh Amendment sovereign immunity from suit in federal court: (1) that a plaintiff may bring suit against individual state officers acting in their official capacities pursuant to *Ex parte Young* if a complaint alleges ongoing violations of federal law and the plaintiff seeks prospective relief, and (2) that Congress may abrogate a state's sovereign immunity by appropriate legislation when it acts under Section 5 of Fourteenth Amendment. *Muscogee (Creek) Nation v. Oklahoma Tax Comm'n*, 611 F.3d 1222, 1166 (10th Cir. 2010).

1. The declaratory relief sought is prospective relief and falls squarely within the *Ex parte Young* exception to sovereign immunity.

Because all of Plaintiffs' claims allege ongoing violations of federal law and seek prospective relief, the *Ex parte Young* exception to sovereign immunity applies. To determine if the *Ex parte Young* exception applies, courts "need only conduct a straightforward inquiry into whether (the) complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 296 (1997); *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247 (2011). Thus, "plaintiffs must show that they are: (1) suing state officials rather than the state itself, (2) alleging an ongoing violation of federal law, and (3) seeking prospective relief." *Muscogee (Creek) Nation*, 669 F.3d at 1167; *Teva Pharms. USA, Inc. v. Weiser*, No. 24-1035, 2025 WL 2555552, at *3 (10th Cir. Sept. 5, 2025) (*Ex parte*

Young exception applies to suit against state officials where "no question exists that Plaintiff seeks injunctive relief to prevent enforcement of an allegedly unconstitutional act."); *Free Speech Coal., Inc. v. Anderson*, 685 F.Supp.3d 1299, 1302 (D. Utah 2023), *aff'd*, 119 F.4th 732 (10th Cir. 2024) (under *Ex parte Young* exception "a plaintiff may bring suit to prospectively enjoin state officials from violating federal law" where those officials "have a particular duty to enforce the statute in question and a demonstrated willingness to exercise that duty.") (cleaned up).

Defendants argue that the *Ex parte Young* exception does not apply to Plaintiffs' claims insofar as a portion of the declaratory relief sought is retrospective. MTD at 25-26. Defendants confuse the type of relief sought. Plaintiffs are challenging the *still ongoing enforcement* of numerous policies, procedures, and committees that discriminate against Plaintiffs because of their disability of gender dysphoria under the ADAAA and in violation of the Eighth Amendment for failure to provide adequate medical care. Since the declaratory and injunctive relief Plaintiffs seek would redress the still ongoing constitutional violations, a straightforward inquiry demonstrates this relief is purely prospective. The Tenth Circuit agrees that "a declaratory judgement is generally prospective relief" and that declaratory relief is retrospective *only* "to the extent that it is intertwined with a claim for money damages that requires [the Court] to declare whether a past constitutional violation occurred." *Winsness v. Yocom*, 433 F.3d 727, 735 (10th Cir. 2006) (quoting *PETA v. Rasmussen*, 298 F.3d 1198, 1202–03 n. 2 (10th Cir. 2002) (stating that declaratory relief is retrospective only); *see also Vega v. Semple*, 963 F.3d 259, 282 (2d Cir. 2020) (alleged ongoing constitutional violation—deliberate indifference to serious medical needs of incarcerated persons—is the type of continuing violation for which a remedy may permissibly be fashioned under *Ex parte Young*). The critical factor is whether the plaintiff challenges a continuing violation

rather than seeking merely to have past conduct deemed unconstitutional. *Callahan v. Poppell*, 471 F.3d 1155, 1159 (10th Cir. 2006). Declaratory relief is properly characterized as prospective when a plaintiff's pleadings' "requests for relief begin with the word 'declare' and are followed by requests framed—mostly—in present or future tense," and do not seek monetary damages for a past constitutional violation. *Winsness*, 433 F.3d at 735. Here, the declaratory relief requested by Plaintiffs is framed in the present or future tense and does not seek monetary damages. FAC ¶¶ A-K.

Defendants try to point to the latest iteration of their discriminatory and unconstitutional policies—GEN 29.00—as evidence that the declaratory relief requested regarding AG 37 and the GD Committee is retroactive. But Defendants' actions in replacing one discriminatory policy with yet another discriminatory policy does nothing to alter the continuous and ongoing nature of Defendants' violations. *See Vega*, 963 F.3d at 283 (holding that prison's adoption of a new administrative directive that failed to remedy the constitutional deficiencies did not undermine the continuing nature of the violation). Rather, GEN 29.00 continues the Defendants' discriminatory practices that Plaintiffs seek to redress and helps establish that the violations remain ongoing. Because the declaratory and injunctive relief sought, including the references to AG37 and the GD Committee, is prospective, the *Ex parte Young* exception applies.

2. Sovereign immunity does not apply to Plaintiffs' ADAAA claims because the ADAAA abrogates Eleventh Amendment sovereign immunity by statute.

The Supreme Court has held that Title II of the ADA validly abrogates state sovereign immunity from actions for damages against states. *U.S. v. Georgia*, 546 U.S. 151 (2006). To determine if such abrogation applies here, this Court must consider

> (1) which aspects of the State's alleged conduct violated Title II; (2) to what extent such misconduct also violated the Fourteenth Amendment; and (3) insofar as such misconduct violated Title II but did not violate the Fourteenth Amendment, whether Congress's purported abrogation of sovereign immunity as to that class of conduct is nevertheless valid.

Guttman v. Khalsa, 669 F.3d 1101, 1113 (10th Cir. 2012) (quoting *Georgia*, 546 U.S. at 159). Under *Georgia*, if a Title II claim involving the denial of adequate medical care overlaps with Eighth Amendment violations, state sovereign immunity is validly abrogated because the conduct violates both Title II and the Fourteenth Amendment (which incorporates the Eighth Amendment). 546 U.S. at 157; *see Durham v. Kelley*, 82 F.4th 217, 228 (3d Cir. 2023) (a plaintiff can demonstrate abrogation applies by pleading "a companion constitutional claim arising from the same facts as the ADA claim."); *McDaniel v. Syed*, 115 F.4th 805, 830 (7th Cir. 2024) (finding that when conduct amounts to an Eighth Amendment violation and that same conduct supports an ADAAA, Title II claim, Congress has validly abrogated state sovereign immunity under the Eleventh Amendment).

Here, Title II and the Eighth Amendment claims are both based on the same discriminatory treatment because of Plaintiffs' gender dysphoria, denial of equal access to the Defendants' benefits, programs, and services including health care programs, denial of reasonable accommodations, and Defendants' deliberate indifference to the Plaintiffs' serious medical need of gender dysphoria. None of Plaintiffs' ADAAA claims against Defendants should be dismissed under Rule 12(b)(1) because sovereign immunity does not apply.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Renewed Motion to Dismiss in its entirety.

Respectfully submitted this 3rd day of April, 2026.

/s/ David. W. Tufts

David W. Tufts (Bar No. 8736)
DENTONS DURHAM JONES PINEGAR P.C.
111 South Main Street, Suite 2400
Salt Lake City, UT 84111
Telephone: 801-415-3000
Email: david.tufts@dentons.com

Jacqueline A. Domenella*
Diane O'Connell*
DENTONS US LLP
233 South Wacker Drive, Suite 5900
Chicago, IL 60606-6361
Telephone: 312-876-8000
Email: jacqui.giannini@dentons.com
Email: diane.oconnell@dentons.com

Evan Wolfson*
Hannah Rochford*
DENTONS US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
Telephone: 212-768-6700
Email: evan@freedomtomarry.org
Email: hannah.rochford@dentons.com

Anna Isernia*
DENTONS US LLP
1900 K Street NW
Washington, DC 20006
Telephone: 202-496-7500
Email: anna.isernia@dentons.com

Sonja D. Kerr*
Liz Dankers*
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
3500 Oak Lawn Avenue, Suite 500
Dallas, TX 75219
Telephone: 610-675-7192
Email: skerr@lambdalegal.org
Email: ldankers@lambdalegal.org

Richard Saenz*
Whit Washington*
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, NY 10005
Telephone: 212-809-8585
Email: rsaenz@lambdalegal.org
Email: wwashington@lambdalegal.org

Jason M. Groth (Bar No. 16683)
Abigail Cook (Bar No. 19781)
Tom Ford (Bar No. 19795)
Masami T. Kanegae (Bar No. 20270)
ACLU OF UTAH FOUNDATION, INC.
311 South State St., Suite 310
Salt Lake City, UT 84111
Telephone: 801-521-9862
Email: jgroth@acluutah.org
Email: acook@acluutah.org
Email: tford@acluutah.org
Email: mkanegae@acluutah.org

Attorneys for Plaintiffs
*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 2026 , a true and correct copy of the foregoing was served on Defendants via ECF.

/s/ *David W. Tufts*
Counsel for Plaintiffs