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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE 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 DEPARMENT OF HEALTH AND HUMAN SERVICES, *in her official capacity*; *and* DR. MARCUS

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Case No. 2:25-cv-01108

Honorable Judge Tena Campbell

Magistrate Judge Jared C. Bennett

WISNER, DIRECTOR OF CORRECTIONAL HEALTH SERVICES, UTAH DEPARTMENT OF HEALTH AND HUMAN SERVICES, *in his official capacity*, *Defendants*.	

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Defendants Utah Department of Corrections ("UDC"), Jared Garcia, Executive Director of UDC, Sharon D'Amico, Warden of the Utah State Correctional Facility, Utah Department of Health and Human Services ("UDHHS"), Tracy Gruber, Executive Director of UDHHS, Dr. Stacey Bank, Executive Medical Director of Clinical Services of UDHHS, and Dr. Marcus Wisner, Director of Correctional Health Services of UDHHS (collectively "Defendants") hereby submit this Opposition to Plaintiffs Virginia Tucker, Stephanie Dombroski, Sandy Phillips, Dakota Grunwald, and Amberli K. Morrigan (collectively "Plaintiffs") Motion for Preliminary Injunction ("Motion").

INTRODUCTION

A preliminary injunction is not warranted. Defendants have not acted with deliberate indifference considering ongoing medical debate and disagreement surrounding cross-sex hormones. The conduct Plaintiffs challenge here is consistent with that of dozens of states and federal agencies that have enacted laws and rules regulating the medical interventions at issue. Thus, the Utah Legislature acted reasonably in enacting HB252 to prevent the use of controversial medical interventions. Further, Defendants acted reasonably and appropriate in their medical treatment of Plaintiffs and in crafting policies and procedures to treat the medical needs of those with gender dysphoria. Therefore, the Court should deny Plaintiffs' Motion.

Here, Plaintiffs, three inmates in custody of Utah Department of Corrections suing under § 1983, seek to: (1) enjoin Defendants from enforcing HB252; (2) enjoin Defendants from enforcing policies and practices that "have caused serious delays and denials in care;" and, (3) compel Defendants to provide controversial sex-change interventions for the inmate Plaintiffs. (Motion at 1-2.) In doing so, Plaintiffs mount a facial and as-applied challenge claiming that HB252 is unconstitutional because it does not comport with treatment protocols endorsed by

advocacy organizations. Plaintiffs argue that prohibiting them from receiving hormone therapy violates the Eighth Amendment's prohibition on cruel and unusual punishments. While Plaintiffs present this as a medical question, it is ultimately a legal one: Does the Constitution require a State to provide controversial cross-sex hormones that allow an incarcerated individual to present and live as the opposite sex? The answer is no.

The Tenth Circuit in *Lamb v. Norwood*, 899 F.3d 1159 (10th Cir. 2018) and *Supre v. Ricketts*, 792 F.2d 958 (10th Cir. 1986) has already addressed this situation. Deliberate indifference does not arise in areas of medical controversy and disagreement in the specific context of not providing hormone therapy treatment to those with gender dysphoria. The Utah Legislature justifiably acted in response to developing, and ever-increasing, evidence questioning the benefits of these interventions by passing HB252. In short, the legislature reasonably chose to adopt a clear, uniform rule on a hotly contested question of public policy, and that choice should be given deference.

In addition, even if the Utah Legislature is not afforded deference in passing HB252, Defendants' treatment provided to Plaintiffs and the present policies adopted by Defendants do not exhibit deliberate indifference. Even if they did, Plaintiffs' requested scope for its injunctive relief is replete with broad generalizations, riddled with impracticalities, seeks disfavored remedies, and exceeds the bounds allowed by controlling Tenth Circuit precedent and the express language of the Prison Litigation Reform Act ("PLRA"). Moreover, by asserting a facial challenge, Plaintiffs face the additional hurdle of showing no set of circumstances under which HB252 is constitutional, something they cannot do.

In short, the justified decision of Utah's duly elected representatives to prohibit controversial medical treatments for inmates should be respected. And if this Court were to

enjoin HB252, it would have to either ignore or misapply *Lamb* and *Supre* while turning a blind eye to the controversies and disputes surrounding the support for cross-sex hormones and the attempts to effectively incorporate the World Professional Association for Transgender Health ("WPATH") standards into constitutional law.

BACKGROUND

1. Procedural History

On February 20, 2026, Plaintiffs filed their First Amended Complaint asserting a claim for violation of the Americans with Disabilities Act and a claim under 42 U.S.C. § 1983 that Utah Code § 26B-4-903's ("HB252") prohibition of cross-sex hormone treatment, and Defendants' discontinued policies surrounding such treatments contained in AG37 and the Gender Dysphoria Committee ("GD Committee"), constitutes deliberate indifference to Plaintiffs' gender dysphoria in violation of the Eighth Amendment. (*See* ECF No. 52 at ¶¶ 1-15.) Plaintiffs argue that Hormone Replacement Therapy ("HRT") is sometimes necessary to treat gender dysphoria, particularly as it pertains to Plaintiffs Tucker, Dombroski, and Phillips. (*See* Plaintiffs' Motion at 1) (arguing "Defendants have acted with deliberate indifference); *see id.* at ¶ 3 (alleging that when "inadequately treated, gender dysphoria *can* cause" a host of issues).

Plaintiffs seek a judgment declaring that Defendants' policies and practices and HB252 violate the Eighth Amendment, "both facially and as applied to Plaintiffs," by "mandating that Defendants remain deliberately indifferent to Plaintiffs' serious medical need of gender dysphoria," among other things. (*See* ECF No. 52 at pp. 77-79.) On January 16, 2026, after filing their Complaint, but previous to filing their Amended Complaint, Plaintiffs moved the Court for a preliminary injunction seeking injunctive relief: (1) barring Defendants from implementing HB252, (2) "directing Defendants to provide Plaintiffs . . . hormone therapy for their gender

dysphoria," and (3) enjoining "Defendants from enforcing the policies, customs, or practices that have caused constitutional violations. . . ." (Motion at 25.)

2. Controversy and Disagreement Surrounding Cross-Sex Interventions as Treatment for Gender Dysphoria.

High doses of cross-sex hormones bring "serious concerns for risk of harm." (*See* Expert Report of Michael K. Laidlaw, M.D. ("Laidlaw Decl.") at ¶ 235, attached hereto at Exhibit 1.) In the informed medical judgment of Defendants' medical expert, "it is not healthy for . . . adults to receive supraphysiologic doses of cross sex hormones to attempt to alter secondary sex characteristics" because of the potential cross-sex hormone interventions present to an individual's health. (*Id.* at ¶ 235.) The known serious risks for adults undergoing HRT treatments include "cardiovascular disease, thromboembolism cancer, [and] deficiencies in ultimate bone density," while long-term studies demonstrate "increased risks of suicide, psychiatric hospitalization, and mortality compared to the general population." (*Id.* at ¶ 233; Declaration of Dr. Stephen B. Levine ("Levine Decl.") at ¶ 96, attached hereto as Exhibit 2.)

Unsurprisingly, then, there exists significant national and international disagreement within the medical community surrounding administration of sex-cross hormones in treating gender dysphoria. (Laidlaw Decl. at ¶¶ 141-152.) Multiple systematic reviews of medical evidence have been sharply critical of the low-quality evidence underlying treatment guidelines offered by advocacy groups (such as WPATH) and relied on by Plaintiffs regarding the necessity of HRT, especially considering the significant risks associated with the same. (*See* Levine Decl. at ¶¶ 44-46 (systematic reviews rate the evidence for cross-sex hormones no higher than low certainty, and guideline processes like WPATH SOC are fashion-based, not evidence-based).)

Indeed, extensive and "considerable controversy exists within the medical community as to the optimal treatment for gender dysphoria." (Laidlaw Decl. at ¶ 233.) There is no medical

consensus supporting treating gender dysphoria by administering cross-sex hormones. (*Id.* at ¶ 232.) The gender affirmative therapy model and guidelines espoused by WPATH, the Endocrine Society, and Plaintiffs "suffers from serious deficiencies in logic, lacks scientific foundation, is built upon a poor-quality evidence base," and is significantly influenced by political considerations. (*Id.* at ¶¶ 95-122, 231; *see also* Levine Decl. at ¶ 20 (observing how WPATH suppressed contrary publications).) Specifically, medical professionals and reviews have publicly challenged Endocrine Society and WPATH guidelines endorsing HRT, concluding that evidence for medical transition treatments is limited, uncertain, and inconclusive, and have recommended mental health treatment as appropriate care. (*Id.* at ¶¶ 142-145.)

For instance, WPATH's Standard of Care Version 8 ("SOC-8") contains major methodological flaws. (*Id.* at ¶¶ 103-105; *see also* Levine Decl. at ¶ 20.) SOC-8 "is not a trustworthy guide for clinicians to follow when treating gender dysphoria" as it has been shown to be a "document of consensus produced by a narrow, ideologically homogenous, politically influenced group of experts and stakeholders" with ulterior motives. (*Id.* at ¶¶ 103-105, 232.) The Endocrine Society guidelines, heavily influenced by WPATH, have received criticism from Society members, specifically in that they should not be treated as clinical standards of care, are closely entangled with WPATH, and are primarily based on low and very low-quality evidence or have no evidence grade at all. (*Id.* at ¶¶ 106-112.)

Further, substantial evidence suggests significant risks with HRT, casting doubt on flawed studies of HRT's purported long-term benefits and improved outcomes. (*Id.* at ¶ 123; Levine Decl. at ¶¶ 93-96.) When scrutinized by independent clinicians and researchers, pro-HRT studies reveal serious methodological defects and do not support claimed mental-health benefits. (Laidlaw Decl. at ¶ 132.) While proponents of sex-change interventions continue to tout long-

term benefits, close review fails to support those claims. (*Id.* at ¶¶ 134-140 (studies have not demonstrated a reduction in suicidality from hormone therapy, and some studies may indicate increased risk); Levine Decl. at ¶¶ 47-48, 95 (there are no published studies on long-term estrogen outcomes among inmates and evidence does not show hormones prevent suicide).) Some studies even show elevated suicide risk and psychiatric morbidity for gender-dysphoric individuals despite receiving HRT. (Laidlaw Decl. at ¶¶ 135-140 (suggesting untreated psychological comorbidities, possible negative psychological effects of high-dose hormones, or post-operative regret as possible contributing factors).)

Research teams recently applied systematic reviews of the available research to determine whether sex change interventions result in the claimed benefits. The results speak for themselves. A 2021 systematic review by Dr. Kellan Baker and a team of physicians from Johns Hopkins found that it could not "draw any conclusions . . . about whether hormone therapy affects death by suicide among transgender people." (*See* Baker Review, attached hereto at Exhibit 3.) The Baker Review also found that the "strength of evidence" for purported benefits to quality of life, depression, and anxiety "is low." (*Id.* at 8.) Similarly, the high-profile Cass Review (cited by numerous appellate courts), found "no good evidence on the long-term outcomes of interventions to manage gender-related distress."[1] The Supreme Court recently relied on the Cass review in its landmark *Skrmetti* decision. The majority directly cited and discussed the Cass Review "to demonstrate the open questions regarding basic factual issues before medical authorities and other regulatory bodies." 605 U.S. 495, 524-25 (2025). So did Justice Thomas. *Id.* at 539, 544 (Thomas, J., concurring); *cf. id.* at 582 n.5 (Sotomayor, J.,

[1]*See* The Cass Review at p. 13, available at https://webarchive.nationalarchives.gov.uk/ukgwa/20250310143933/https://cass.independent-review.uk/home/publications/final-report/.

dissenting) (noting that Justice Thomas's concurrence "referenc[es] the Cass Review [and] peer-reviewed medical journals").

With systematic reviews contesting purported benefits of SOC-8, and acknowledging the risk of bodily harm HRT causes, there's "ongoing debate among medical experts regarding the risks and benefits" of sex-change interventions recognized by courts. *Skrmetti*, 605 U.S. 495, 523 (2024); *see also* *Eknes-Tucker v. Governor of Alabama*, 114 F.4th 1241, 1261 (11th Cir. 2024) (Lagoa, J., concurring). In short, these reviews, reports, and expert opinions confirm that "[t]he quality of the evidence base for interventions for gender incongruence and gender dysphoria is [at minimum] a source of debate and contention." (The Cass Report at p. 47.) Therefore, "a policy such as H.B. 252's, which prohibits HRT and sex reassignment surgeries while allowing for psychotherapy, mental health care, or any other necessary and appropriate treatment of Gender Dysphoria and any co-occurring mental health disorders, is a sound medical policy." (Laidlaw Decl. at ¶ 235.)

3. Policymakers Have Enacted Numerous Laws Regulating Sex Change Interventions.

Faced with "an ongoing debate among medical experts regarding the risks and benefits associated with administering . . . hormones to treat gender dysphoria, gender identity disorder, and gender incongruence," many state legislatures "respond[ed] directly to [the] uncertainty" by banning the interventions outright, at least in certain circumstances (*e.g.*, for minors and young adults). *See* *Skrmetti*, 605 U.S. at 523. The Supreme Court acknowledged this trend, noting that in the last three years alone "more than 20 States enacted laws banning the provision of sex transition treatments to minors, while two have enacted near total bans." *Id.* at 504. Put differently, more than twenty states banned administration of the precise hormonal interventions

at issue here for sex reassignment purposes in at least some circumstances.[2] Many of these states' laws expressly prohibit the use of public funds to facilitate the banned interventions.[3]

In addition, at least one state law explicitly applying to prisons has been upheld against a similar Eighth Amendment challenge. *See* Ky. Rev. Stat. Ann. §197.280 (implementing S.B. 2 (2025)); *Marcum v. Crews*, 2025 WL 2630922 (E.D. Ky. Sept. 12) (denying motion for preliminary injunction in Eighth Amendment challenge); *Marcum v. Crews*, No. 25-5840, Dkt.26 (6th Cir. Oct. 23, 2025) (denying plaintiff's motion for an injunction pending appeal). The federal government has also taken significant steps to restrict the use of public funding to facilitate sex-change interventions. In 2024, Congress prohibited Tricare, the U.S. military's health insurance program, from paying claims for the provision of cross-sex hormonal interventions to minors. *See* National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118-159 §708, 138 Stat. 1945 (2024).

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[2]*See,* S.B. 184, 2022 Ala. Reg. Sess. (Ala. 2022); H.B. 1570, 93d Gen. Assemb., 2021 Ark. Reg. Sess. (Ark. 2021); S.B. 254, 2023 Fla. Reg. Sess. (Fla. 2023); S.B. 140, 2023-2024 Ga. Reg. Sess. (Ga. 2023); H.B. 71, 67th Leg., 1st Idaho Reg. Sess. 2023 (Idaho 2023); H.B. 668, 67th Leg., 2d Idaho Reg. Sess. (Idaho 2024); S.B. 480, 123d Gen. Assemb., 2023 Ind. Reg. Sess. (Ind. 2023); S.F. 538, 90th Gen. Assemb., 2023-2024 Iowa Reg. Sess. (Iowa 2023); S.B. 63, 2025-2026 Kan. Reg. Sess. (Kan. 2025); S.B. 150, 2023 Ky. Reg. Sess. (Ky. 2023); H.B. 495, 2025 Ky. Reg. Sess. (Ky. 2025); H.B. 501, 2025 Ky. Reg. Sess. (Ky. 2025); S.B. 2, 2025 Ky. Reg. Sess. (Ky. 2025); H.B. 648, 2023 La. Reg. Sess. (La. 2023); H.B. 1125, 2023 Miss. Reg. Sess. (Miss. 2023); S.B. 49, 2023 Mo. Reg. Sess. (Mo. 2023); H.B. 377, 2025 N.H. Reg. Sess. (N.H. 2025); H.B. 808, 2023-2024 N.C. Reg. Sess. (N.C. 2023); H.B. 1254, 68th Leg. Assemb., 2023-2024 N.D. Reg. Sess. (N.D. 2023); H.B. 68, 135th Gen. Assemb., 2023-2024 Ohio Reg. Sess. (Ohio 2024); S.B. 613, 2023 Okla. Reg. Sess. (Okla. 2023); H.B. 4624, 125th Gen. Assemb., 2023-2024 S.C. Reg. Sess. (S.C. 2024); H.B. 1080, 2023 S.D. Reg. Sess. (S.D. 2023); S.B. 1, 113th Gen. Assemb., 2023-2024 Tenn. Reg. Sess. (Tenn. 2023); S.B. 2861, 113th Gen. Assemb., 2023-2024 Tenn. Reg. Sess. (Tenn. 2023); S.B. 14, 88th Leg. Sess., (Tex. 2023); H.B. 2007, 2023 W. Va. Reg. Sess. (W. Va. 2023); S.F. 99, 67th Wyo. Leg., 2024 Budget Sess. (Wyo. 2024).

[3]*See, e.g.,* Ark. H.B. 1570 (2021); Fla. S.B. 254 (2023); Kan. S.B. 63 (2025); Ky. H.B. 495 & 501 (2025); Ky. S.B. 2 (2025); Mo. S.B. 49 (2023); Miss. H.B. 1125 (2023); N.C. H.B. 808 (2023); Ohio H.B. 68 (2024); S.C. H.B. 4624 (2024); Tex. S.B. 14 (2023).

National policy has shifted overwhelmingly towards stricter regulation of sex-change and hormone interventions. A key driver of this shift has been a growing awareness among policymakers that the purported benefits of these interventions are unproven and rest on what even their proponents concede to be low-quality evidence (such as studies with biased designs, small sample sizes, and potential confounding factors). *See, e.g.*, *Skrmetti*, 605 U.S. at 523.

4. The Utah Legislature Enacted HB252 as a Reasonable and Rationale Response to Medical Controversy by Preventing the Effectuation of Controversial and Disputed Sex-Change Interventions for Incarcerated Individuals.

Utah Legislature passed, and Governor Spencer Cox signed, HB252 into law, which went into effect May 7, 2025. (*See* Motion at Ex. 1.) HB252 amended Utah Code to prohibit the UDC from initiating cross-sex hormone treatments, primary sex characteristic surgical procedure, or secondary sex characteristic procedures for inmates. *See* Utah Code § 26B-4-903(1). In doing so, HB252 specifically allows for psychotherapy, mental health care, or any other necessary and appropriate treatment" to "treat an inmate's gender dysphoria and any co-occurring mental health disorder. . . ." Utah Code § 26B-4-903(2). In addition, the prohibition on cross-sex hormone treatment is limited to the "administering, prescribing, or supplying for effectuating or facilitating [of] an individual's attempted sex change." Utah Code § 26B-4-901(2).[4]

5. Defendants' Discontinued and Present Policies and Procedures.

Plaintiffs contend "Defendants have been deliberately indifferent to [Plaintiffs' medical need in their gender dysphoria] through their delays and denials of care" under AG37 and the Gender Dysphoria Committee ("GD Committee") resulting in an "unconstitutional deprivation" of Plaintiffs' gender dysphoria treatment. (Motion at 16, 19, 22.) Accordingly, Plaintiffs seek to

[4] Like in *Eknes-Tucker* and *Skrmetti*, HB252 differentiates based on medical use of interventions at issue. HB252's application turns on whether a covered intervention is administered to "effectuat[e] or facilitate[e] an individual's attempted sex change."

enjoin Defendants from enforcing these policies. However, prior to Plaintiffs' initiation of this lawsuit, Defendants replaced AG37 and discontinued the GD Committee.[5] On January 7, 2025, Defendants rescinded AG37 and its authorization for the GD Committee and adopted Gen-29.00 as the current policy guiding diagnoses and care for inmates seeking treatment for gender dysphoria. (*See* Declaration of Amanda Alkema ("Alkema Decl.") at ¶¶ 9-10, attached hereto at Exhibit 4.) There have been two versions of GEN29. The first went into operation January 7, 2025 ("1GEN29"). (*See id.*) The current version went into operation on May 7, 2025 ("2GEN29"), incorporating the HB252 criteria for prescribing HRT. (*See id.* at ¶¶ 11-12.)

2GEN29 contains significant features assisting Defendants in appropriately treating an inmate's gender dysphoria and does not exhibit deliberate indifference. For instance, mental health staff: 1) conduct comprehensive initial health procedures and assessments regarding gender dysphoria diagnosis, treatment, and eligibility for HRT continuation (*see id.* at ¶¶ 14-19); 2) provide health services orientation (*see id.* at ¶¶ 5-7); 3) conduct clinical interviews and psychological evaluations for medical and psychiatric comorbidities (*see id.* at ¶¶ 20-24); 4) provide gender dysphoria diagnosed inmates with necessary individual psychotherapy, mental health medications, psychoeducational group therapy, and social transitioning materials (*see id.* at ¶ 25); 5) respond to health crisis with face-to-face interaction (*see id.* at ¶¶ 6-7).

[5] Although Plaintiffs' Amended Complaint added allegations regarding GEN29, Plaintiffs chose not to include those in their Motion or requested scope of relief. Plaintiffs must show specific entitlement to injunctive relief. Yet Plaintiffs' Motion fails to provide notice regarding which provisions/policies Plaintiffs want enjoined. Accordingly, Plaintiffs waive this argument and any request for injunctive relief pertaining to GEN29. *M.G. through Garcia v. Armijo*, 117 F.4th 1230 (2024) ("[a]rguments inadequately briefed in the opening brief are waived"). And doing so for the first time in their Reply is precluded. *United States v. Harrell,* 642 F.3d 907, 918 (10th Cir.2011) ("[a]rguments raised for the first time in a reply brief are generally deemed waived").

6. Defendants Provided Plaintiffs with Adequate Medical Care and Treatment for Gender Dysphoria Considering Plaintiffs' Underlying Conditions, Thereby Contradicting Plaintiffs' Alleged Medical Experience.

[redacted]

6.1. [redacted]

[redacted]

[redacted]

6.2. [redacted]

[redacted]

6.3. [redacted]

[redacted]

LEGAL STANDARD

Seeking a preliminary injunction under Fed. R. Civ. P. 65(a) is an extraordinary and drastic remedy never awarded as a matter of right. *State v. U.S. Envt'l Prot. Agency*, 989 F.3d 874, 883 (10th Cir. 2021). The movant bears a heavy burden to "make a 'clear and unequivocal' showing it is entitled to" this extraordinary relief. *Id.* (quoting *Port City Props. v. Union Pac. R.R. Co.*, 518 F.3d 1186, 1190 (10th Cir. 2008)); *see also Diné Citizens Against Ruining Our Env't v. Jewell*¸839 F.3d 1276, 1281 (10th Cir. 2016) ("Because a preliminary injunction is an extraordinary remedy, the movant's right to relief must be clear and unequivocal.")

To meet this heavy burden, a movant must establish: "(1) a substantial likelihood that they will ultimately succeed on the merits of their suit; (2) that they are likely to suffer irreparable harm in the absence of preliminary relief; (3) this threatened harm outweighs the harm a preliminary injunction may pose to the opposing party; and (4) if issued, the injunction will not adversely affect the public interest." *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 112 (10th Cir. 2024) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)).

Likelihood of success on the merits and irreparable harm are the most critical factors. *Nken v. Holder*, 556 U.S. 418, 434 (2009). The possibility of relief or irreparable injury are not sufficient. *Id.*; *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (issuing preliminary injunction based on possibility of irreparable harm is "inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that

the plaintiff is entitled to such relief"). The third and fourth factors—balance of harm and effect on the public interest—merge when the government is the opposing party. *Rocky Mountain*, 121 F.4th at 112. Notably, *as is the case here*, preliminary injunctions altering the status quo are considered "disfavored" and require movant to satisfy an even heavier burden to establish all preliminary injunction factors. *See O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975 (10th Cir. 2004). Here, Plaintiffs fail to carry this heavy burden.

ARGUMENT

I. PLAINTIFFS HAVE NOT DEMONSTRATED A STRONG LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR EIGHTH AMENDMENT CLAIM [6]

Plaintiffs' Amended Complaint alleges an Eighth Amendment violation of cruel and unusual punishment. (Am. Compl. at ¶ 252.) Plaintiffs argue that Defendants' refusal to administer hormone therapies to Plaintiffs because of HB252's so-called "blanket ban" and their alleged "pre-existing pattern and practice of delaying and denying [HRT]" constitutes deliberate indifference. (Motion at 14.) Plaintiffs fail to carry their burden to establish a substantial likelihood of success on this claim. And Plaintiffs cannot do so in light of controlling Tenth Circuit precedent. The Tenth Circuit has held that inmates with gender dysphoria are not constitutionally entitled to receive hormone therapies.

A two-part test guides in determining if the government met its obligation in providing medical care to prisoners under the Eighth Amendment. The first part is an objective analysis, considering whether the alleged harm is "sufficiently serious to be cognizable under the Cruel and Unusual Punishment Clause." *Prince v. Sheriff of Carter Cnty.*, 28 F.4th 1033 (10th Cir.

[6] As an initial matter, Plaintiffs cannot rebut the presumption of constitutionality owed to HB252. "[A]n act of a state legislature is generally taken to be constitutional, and the burden is on the plaintiff to demonstrate how the statute transgresses the requirements of the United States Constitution." *Hopkins v. Okla. Public Empls. Retirement Sys.*, 150 F.3d 1155, 1160 (10th Cir. 1998). It is Plaintiffs' burden to rebut this presumption, and Plaintiffs have not done so here.

2022).[7] The second part is a subjective analysis, considering whether a defendant's "subjective mental state" showed they did not "kn[ow] of and disregard the serious risk to the inmate's health." *Id.* Plaintiffs have not demonstrated that HB252, Defendants' treatment of Plaintiffs, or Defendants' existing policies rise to this level.

The subjective prong focuses on the "mental state" by requiring Plaintiffs to establish that Defendants "knew [the plaintiff] faced a substantial risk of harm and disregarded that risk by failing to take reasonable measures to abate it." *Oxendine v. Kaplan*, 241 F.3d 1272, 1276 (10th Cir. 2001). This prong is akin to a recklessness standard in criminal law, "where to act recklessly, a person must consciously disregard a substantial risk of serious harm." *Self v. Crum*, 439 F.3d 1227, 1231-1232 (10th Cir. 2006) (the "subjective component is not satisfied[ ] absent an extraordinary degree of neglect"). And it "presents a high evidentiary hurdle to the plaintiffs: a prison official must know about and disregard a substantial risk of serious harm." *Id*. at 1232. Further, medical care only qualifies as "cruel and unusual," thereby violating the Eighth Amendment, when it is "so grossly incompetent, inadequate, or excessive as to 'shock the conscience or be intolerable to fundamental fairness.'" *Taylor v. Roberts*, No. 2:16-CV-00097-JNP, 2017 WL 4232557, at *3 (D. Utah Sept. 22, 2017) (citation omitted).

A. The Tenth Circuit Has Held that an Inmate with Gender Dysphoria is Not Entitled to Hormone Therapies, or any Particular Form of Treatment the Inmate Requests or Prefers.

On several occasions, the Tenth Circuit addressed when existing treatment constitutes deliberate indifference under the subjective prong in the gender dysphoria context. The Tenth

[7] Plaintiffs argue that multiple "courts [have] repeatedly treated gender dysphoria as a 'serious medical need' for purposes of the Eighth Amendment." (Motion at 17.) Plaintiffs' cases do not establish that gender dysphoria is an objectively serious medical need. For example, although the Tenth Circuit may have treated gender dysphoria as a "serious medical need" in *Johnson*, such wasn't based on a decision from the court. *Johnson v. Sanders*, 121. F4th 80, 89 (10th Cir. 2024).

Circuit has "identified four currently available modes of treatment for gender dysphoria:" 1) changes in gender expression and role [*i.e.*, social transition]; 2) psychotherapy; 3) hormone therapy to make the body feminine or masculine; and 4) surgery to change primary or secondary sex characteristics. *Johnson v. Sanders*, 121 F.4th 80, 92 (10th Cir. 2024).

The Tenth Circuit has long held that while prison officials must provide some form of treatment to an inmate with gender dysphoria, the Eighth Amendment does not require prison officials to provide any particular form of treatment, let alone those mired in controversy and debate such as hormone therapies. *See Supre*, 792 F.2d at 963; *Brown v. Zavaras*, 63 F.3d 967, 970 (10th Cir. 1995). Under the Tenth Circuit's framework for inmates with gender dysphoria, prison officials do not act with deliberate indifference when they provide some form medical treatment, even if it is subpar, different from what the inmate wants, different from what some gender dysphoria experts recommend, or different from WPATH's guidelines. *See Lamb*, 899 F.3d at 1162. The Tenth Circuit has repeatedly held that a prisoner with gender dysphoria is not constitutionally entitled to the form of treatment the prisoner prefers. *Johnson*, 121 F.4th at 93.

Start with *Supre*. The plaintiff in that case, a biological male, was a transgender prisoner. Supre "engaged in various forms of mutilation of his sex organs" and "requested to be treated with estrogen, a female hormone." 792 F.2d at 960. Two doctors that examined Supre "recommended estrogen treatment." *Id.*[8] However, Supre's request for estrogen "was denied." *Id.* Instead, the prison provided Supre with a "program of counseling by psychologists and psychiatrists." *Id.*

[8] While Plaintiffs rely on out of circuit authority to argue "Defendants have been deliberately indifferent by denying that treatment despite the diagnoses by their own practitioners," (Motion at 19), the Tenth Circuit's holding in *Supre*, which recognized that Supre's own practitioners recommended estrogen, *see Supre*, 792 F.2d at 960, proves Plaintiffs' argument meritless.

At issue before the Tenth Circuit was whether declining to give one specific form of treatment–estrogen–constituted deliberate indifference. The Tenth Circuit held that the Eighth Amendment does not require prison officials to administer hormone therapy to a transgender inmate. *Id.* at 963. It reasoned that there are "a variety of options available for the treatment of" gender dysphoria. *Id.* It further noted that "the medical community may disagree among themselves as to the best form of treatment for" gender dysphoria, and noted "the controversial nature of such therapy." *Id.* Accordingly, the Tenth Circuit concluded that the decision to not treat the plaintiff with hormone therapy, particularly estrogen, "does not represent cruel and unusual punishment," and therefore does not constitute deliberate indifference. *Id.*

A decade later, the Tenth Circuit reaffirmed its holding from *Supre*. In *Brown*, the Tenth Circuit succinctly explained the holding of *Supre*: "although prison officials must provide treatment to address the medical needs of transsexual prisoners, the law did not require prison officials to administer estrogen or provide any other particular treatment." 63 F.3d at 970 (citing *Supre*, 792 F.2d at 963). The *Brown* court again noted that "the provision of estrogen was medically controversial." *Id.* The Tenth Circuit could not have been clearer in *Brown*. Inmates with gender dysphoria are not constitutionally entitled to a particular type of treatment for gender dysphoria. Although the Eighth Amendment requires prison officials to provide some form of treatment for gender dysphoria, it does not require prison officials to provide hormone therapies. This is the controlling law here.

More recently, the Tenth Circuit again confirmed that *Supre* is the controlling standard regarding treating inmates with gender dysphoria. In *Lamb*, 899 F.3d at 1161, the plaintiff ("Lamb") was a biological male inmate with gender dysphoria. Lamb was receiving hormone therapies and weekly counseling sessions. *Id.* However, Lamb wanted other forms of treatment,

including greater doses of hormones, as well as surgery. *Id.* at 1162. Lamb claimed that denial of these specific forms of requested treatment violated the Eighth Amendment.

In support, Lamb relied on "gender dysphoria experts" and WPATH. *Lamb v. Norwood*, 262 F. Supp. 3d 1151, 1155 (D. Kan. 2017), aff'd, 899 F.3d 1159. Lamb argued that the current treatment "falls short" of WPATH's guidelines. *Id.* Lamb requested the court order "Defendants provide Lamb with treatment conforming to the WPATH's standard of care." *Id.* And Lamb argued to the Tenth Circuit "that *Supre* is too old to provide guidance because it rested on outdated medical assumptions," further arguing that "science has advanced since 1986, resulting in new forms of treatment for gender dysphoria." 899 F.3d at 1162 (footnote omitted). The Tenth Circuit declined to reconsider the medical assumptions in *Supre*. *Id.*

Contrary to Lamb's arguments, the Tenth Circuit explicitly concluded that *Supre* continues to provide the "analytical framework" for the Court on this issue. *Id.* Under that framework for treating inmates with gender dysphoria, "prison officials do not act with deliberate indifference when they provide medical treatment even if it is subpar or different from what the inmate wants." *Id.* The Tenth Circuit thus held that prison officials were not deliberately indifferent by not authorizing surgery or the hormone dosages that Lamb wanted. *Id.* at 1163.

Lamb again recognized "disagreement within the medical community" regarding the appropriate forms of treatment for gender dysphoria. *Id.* at 1162. The Tenth Circuit declined to let WPATH define the obligations enshrined in the Constitution, noting that "disagreement alone cannot create a reasonable inference of deliberate indifference. *Id.* at 1163. Squarely before the Tenth Circuit in *Lamb* was the issue of WPATH's guidelines. Lamb argued that prison officials were deliberately indifferent because they did not act in accordance with WPATH's guidelines.

The Tenth Circuit rejected this argument, refusing to determine whether prison officials were deliberately indifferent based on whether WPATH itself recommended a specific form of treatment. In short, Tenth Circuit law is that prison officials must conform to constitutional standard, not WPATH's standards. *Cf. Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 272-73 (2022) (criticizing use of "the 'position of the American Medical Association'" to indicate "the meaning of the Constitution").

Finally, in *Johnson*, the plaintiff was a transgender prisoner who brought a § 1983 claim for deliberate indifference. *See* 121 F.4th at 92. Johnson claimed that prison employees' decision to discontinue Johnson's hormone therapies was deliberately indifferent. The Tenth Circuit reiterated that prison officials can be liable for *entirely withholding* treatment for gender dysphoria, but Johnson failed to demonstrate such. *See id.* The Tenth Circuit concluded that "this record is devoid of facts to suggest that Defendants denied or were otherwise unwilling to provide" Johnson with *any* treatment for gender dysphoria at all. *Id.* at 93.

Rather, Johnson had "requested *one* form of" treatment for gender dysphoria – hormone therapy. *Id.* at 93. The Tenth Circuit concluded that the denial of hormone therapy did not violate the Eighth Amendment "because a convicted prisoner is not constitutionally entitled to their preferred treatment, and a prisoner's disagreement with a course of treatment is insufficient to establish a constitutional violation." *Id.*

B. Plaintiffs Do Not Show a Substantial Likelihood of Success under Tenth Circuit Precedent.

Considering the clear, controlling, and repeated Tenth Circuit precedent, Plaintiffs cannot establish a substantial likelihood of success on the merits of their deliberate indifference claim. Plaintiffs argue that "Defendants have acted with deliberate indifference by refusing to provide these Plaintiffs with hormone therapy." (Motion at 1.) However, this argument has been

repeatedly rejected by the Tenth Circuit. Plaintiffs are not constitutionally entitled to hormone therapies as their preferred treatment for gender dysphoria. Here, Defendants were not deliberately indifferent under the subjective prong. In the Tenth Circuit, if an inmate's desired medical care is subject to controversy and debate, deliberate indifference does not occur when a state or state official exercises informed medical judgment. In other words, Defendants did not act with deliberate indifference through HB252 by prohibiting use of cross-sex hormones that are subject to significant medical controversy.

Plaintiffs do not make any substantial effort to grapple with the clear holdings of the numerous Tenth Circuit cases on this specific issue. Nor do Plaintiffs make any persuasive arguments as to how their claims have a substantial likelihood of success in light of those cases. Instead, Plaintiffs attack the democratic process, contending that the Utah Legislature cannot enact a statute prohibiting prison officials from administering hormone therapies as treatment for gender dysphoria. Plaintiffs argue that HB252's prohibition on hormone therapy for the treatment of inmates with gender dysphoria without regard to individual need is deliberate indifference and unconstitutional.

Plaintiffs' argument fails for three reasons. First, in the Tenth Circuit, an inmate with gender dysphoria is not entitled to the specific form of treatment the inmate wants or prefers. True, HB252 precludes Plaintiffs from receiving hormone therapies as treatment for their gender dysphoria. But Plaintiffs are not constitutionally entitled to such treatment anyway, regardless of whether the decision to withhold the treatment is made by the Utah Legislature, the Utah Department of Corrections, or the Utah Department of Health and Human Services. Thus, Plaintiffs cannot establish a constitutional violation.

Second, the Tenth Circuit previously upheld an outright ban on administering hormone therapies to inmates with gender dysphoria similar to the one at issue here. In *Qz'etax v. Ortiz*, 170 F. App'x 551, 552 (10th Cir. 2006), an inmate challenged Colorado Department of Corrections Administrative Regulation 700–14 ("A.R.700–14") as being deliberately indifferent to transgender inmates' needs for medical treatment. (*See* Colorado Department of Corrections Administrative Regulation 700-14 at Section IV(C), attached hereto as Exhibit 7 ("Treatment with hormonal medications for the purpose of sexual reassignment treatment will not be initiated while the offender is incarcerated.").) The Tenth Circuit found that the plaintiff's claim had no merit because a mere difference in opinion regarding the proper course of treatment is not tantamount to deliberate indifference. *Id.* at 553.

Third, the Supreme Court recognizes that state governments may regulate medical treatments in the face of ongoing debate regarding appropriate forms of treatment. Gender dysphoria treatment is such an area. And "[r]ecent developments only underscore the need for legislative flexibility in this area." *United States v. Skrmetti*, 605 U.S. 495, 524 (2025).

The Supreme Court "afford[s] States wide discretion to pass legislation in areas where there is medical and scientific uncertainty." *Id.* at 524 (citation omitted). There are "several problems with appealing and deferring to the authority of the expert class" and sidelining state legislatures, as Plaintiffs seek to do here. *Id.* at 530 (Thomas, J., concurring). Instead, "[t]here is a long tradition of permitting state governments to regulate medical treatments for adults and children." *L. W. by & through Williams v. Skrmetti*, 83 F.4th 460, 474 (6th Cir. 2023), *aff'd sub nom. United States v. Skrmetti*, 605 U.S. 495 (2025). "[T]he fact the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration." *Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 179 (1980). "[T]he democratic branches are better suited

to decide the proper balance between the uncertain risks and benefits of medical technology, and are entitled to deference in doing so." *L.W.*, 83 F.4th at 474 (citation omitted).

Here, there exist significant national and international controversy and disagreement within the medical community surrounding administration of sex-cross hormones in treating gender dysphoria. (*See supra*, 4-9.)[9] The Supreme Court acknowledged an "ongoing debate" on the relative risks and benefits of using "hormones to treat gender dysphoria, gender identity disorder, and gender incongruence." *Skrmetti*, 605 U.S. at 523. The Tenth Circuit has repeatedly recognized "disagreement within the medical community" regarding appropriate forms of treatment. *See Lamb*, 899 F.3d at 1162-63. A substantial number of states laws outright banned, explicitly defunded, permit insurers to deny coverage, and specifically prohibit use of these interventions in certain circumstances, including prisons. (*See supra* nn.2-3; *see also* Ky. Rev. Stat. Ann. §197.280; *Marcum*, 2025 WL 2630922.)

Plaintiffs' essentially contend that the Constitution prohibits the Utah Legislature from making an informed judgment in an area where there exists significant disagreement within the medical community. However, Plaintiffs' theory contravenes a long history of deference. This Court should defer to the Utah Legislature as to substantial risks and harmful effects of these cross-sex hormones when it exercised its "broad power to establish and enforce standards of conduct within its borders relative to the health of everyone." *Barsky v. Bd. of Regents of Univ.*, 347 U.S. 442, 449 (1954). Indeed, HB252 is a reasonable response to a contested policy question over the use of hormones and sex-change surgeries characterized by "fierce . . . debates." *Skrmetti*, 605 U.S. at 525. This Court therefore should be reluctant to "[p]rohibit[] citizens and

[9] Studies found that many of the claimed benefits of such interventions were unproven or overstated, and that many studies cited by proponents had biased designs, small sample sizes, potential confounding factors, and other flaws. (*See id.)*.

legislatures from offering their perspectives on high-stakes medical policies." *L.W.*, 83 F.4th at 472. Given those extremely problematic issues, it would be remarkable to hold that cross-sex hormonal interventions are so indispensable to treating inmates, and the failure to provide them is so obviously reckless, that the implementation of HB252's provisions rise to the level of cruel and unusual punishment.

In sum, under *Lamb* and *Supre*, when evaluating whether HB252 constitutes deliberate indifference, the issue is not to determine which parties' doctors, experts, and assertions regarding HRT are correct. Tenth Circuit precedent doesn't focus on deciding between medical experts. Rather, disagreement within the medical community on a significant issue is sufficient to defeat a deliberate indifference claim. Indeed, even if the doctor recommending against surgery in *Lamb* "had been wrong, prison officials could not have been deliberately indifferent by implementing the course of treatment recommended by a licensed medical doctor like [the one at issue there]." *Lamb*, 899 F.3d at 1163. The same is true here. There is a guiding framework for when a medical disagreement and controversy exist over treatment options. Disagreement in a controversial area alone is enough to defeat allegations of deliberate indifference and provide legislative deference, especially here where HB252 allows multiple forms of treatment for Plaintiffs' gender dysphoria as proscribed by a medical doctor, and Plaintiffs received that treatment.

C. Defendants' Treatment of Plaintiffs and Defendants' Existing Policies Do Not Constitute Deliberate Indifference.

Plaintiffs assert that HB252, Defendants treatment of Plaintiffs, and Defendants' policies operate as a complete denial of treatment. Plaintiffs essentially argue that Defendants engaged in conscience-shocking Eighth Amendment violations because providing inmates counseling and mental health treatment without cross-sex hormones is per se constitutionally inadequate and

akin to "the *total absence* of gender affirming care. . . ." (Motion at 18.) Plaintiffs are wrong. The Tenth Circuit repeatedly rejects claims of deliberate indifference when prison officials provide at least some form of gender dysphoria treatment relating to the underlying distress. Further, "[w]hen the only dispute about a prisoner's medical treatment regards adequacy, 'courts are generally reluctant to second guess [professional] medical judgments.'" *Taylor*, 2017 WL 4232557 at *3 (citation omitted).

Again, it is not deliberate indifference for prison officials to provide medical treatment "different from what the inmate wants" or even subpar. *Lamb*, 899 F.3d at 1162. Though an inmate or the inmate's doctor may disagree with a prison's medical opinion, diagnosis, and course of treatment, "disagreement alone cannot create a reasonable inference of deliberate indifference." *Lamb*, 899 F.3d at 1162-63 (finding an inmate's "existing treatment" precluded an inference of deliberate indifference); *see also Self*, 439 F.3d at 1232-33 (offering treatment based on "considered medical judgment," even if different from an inmate's desired treatment, does not constitute deliberate indifference); *Perkins v. Kansas Dep't of Corr.*, 165 F.3d 803, 811 (10th Cir. 1999) (stating that "a prisoner who merely disagrees with a diagnosis or a prescribed course of treatment does not state a constitutional violation"). Clearly, the Eighth Amendment does not allow an inmate to second-guess that choice based on a difference in medical opinion or demand for different treatment.

Here, Defendants' medical judgment about treatment options for Plaintiffs, as well as Defendants' policies and procedures for treating gender dysphoria, did not constitute deliberate indifference**.** HB252 and Defendants' policies do not bar the use of other treatments for gender dysphoria recognized by the Tenth Circuit in *Johnson*, including psychotherapy, mental health care, and social transitioning. And Defendants provided such treatment.

1. Prison Officials Cannot Be Considered Deliberately Indifferent by Providing at Least Some Form of Acceptable Medical Care Even When an Inmate Disagrees with that Care.

Given the disagreements surrounding HRT, Defendants' treatment of Plaintiffs does not rise to the level of being criminally reckless or conscience-shocking and thus is not deliberate indifference. First, it was not deliberately indifferent for Defendants to not treat Plaintiffs with HRT, because such treatments would not provide benefits outweighing the risks, [redacted]

Second, mental health, social transitioning, and other treatment provided by Defendants meets the standard of adequate medical care for treating individuals with gender dysphoria under Tenth Circuit law. (*See supra*, 11-15; *see Johnson*, 121 F.4th at 92.) [redacted] (*Id.*)

Third, Plaintiffs' testimony regarding the care they received reflects numerous inaccuracies, painting a picture for the Court of a scene that doesn't actually exist. (*See generally* Forbush Decl.; *see also* Audu Decl.; *supra* 11-15.) Thus, Plaintiffs' argument that Defendants exhibited deliberate indifference by an alleged "complete failure to provide adequate treatment" for Plaintiffs' gender dysphoria, including denial of HRT, is meritless. (Motion at 18.)

2. Defendants' Policies and Procedures Cannot Be Considered Deliberately Indifferent Because They Allow for Acceptable Medical Care.

Similarly, 2GEN29 does not rise to the level of criminally recklessness or conscience-shocking, and therefore not deliberately indifferent. Plaintiffs' Motion ignores services provided by Defendants' current policies, instead reverting to outdated and discontinued resources (AG37 and the GD Committee), and fails to specifically argue how Defendants' current policy

encapsulated in 2GEN29 violates the Eighth Amendment. Plaintiffs knew of 2GEN29 but declined to dispute the quality of services or efficaciousness of Defendants' policies designed to protect all inmates' health and well-being. For that reason alone, this Court should consider Plaintiffs' arguments against Defendants' policies waived. (*See supra* at n. 5.) Instead, Plaintiffs assert "the total absence of gender affirming care" and allege Defendants failed "to provide *any* adequate treatment" in violation of the Eighth Amendment, because Plaintiffs argue anything less than HRT is insufficient. (PI Motion at 18.) The Tenth Circuit rejected this *precise* argument in *Supre, Lamb*, and *Johnson*.

Regardless, Defendants have not acted with deliberate indifference towards Plaintiffs by implementing a reasonable policy approach and [redacted] through 2GEN29, even if Plaintiffs desired a different form of treatment. (*See supra*, 11-15.) In short. Defendants' policies constitute an informed judgment as to how best to treat Plaintiffs' gender dysphoria given their individual circumstances. (*See supra*, 11-15.) This is especially true considering the several different forms of treatment available and allowed for under HB252, which Defendants have provided. *See* Utah Code § 26B-4-903(2) (UDC "may provide psychotherapy, mental health care, or any other necessary and appropriate treatment").

All told, Defendants' policies and actual treatment of Plaintiffs' gender dysphoria are well outside the extremely deferential standard for what is considered deliberate indifference to a serious medical need. At their core, Plaintiffs' allegations are nothing more than differing opinions as to judgments made by medical professionals who evaluated and treated Plaintiffs. While there exists significant disagreement within the medical community "as to the best form of treatment for [gender dysphoria]," Defendants' treatment constituted "an informed judgment as

to the appropriate form of treatment and did not deliberately ignore [Plaintiffs'] medical needs." (*Supre*, 964.) And Plaintiffs cannot show that relying on and administering treatment according to the informed judgment of medical professionals, providers, and specialists subject to HB252 violates the Eighth Amendment. *See Lamb*, 1163 (stating that even if the treating medical professional is "wrong, prison officials [cannot be seen as] deliberately indifferent by implementing the course of treatment recommended by a licensed medical doctor").

II. DEFENDANTS INCORPORATE BY REFERENCE ARGUMENTS IN THEIR MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

A. Plaintiffs Cannot Show a Likelihood of Success on the Merits Given Their Failure to Exhaust Under the PLRA.

Defendants hereby incorporate by reference the arguments in their Summary Judgment Motion on Plaintiffs' Failure to Exhaust ("MSJ"). (*See* ECF No. 55.) As a mandatory precondition to filing suit under the PLRA, Plaintiffs must exhaust their administrative remedies for each issue alleged in support of a claim. *See id.*; *see also* 42 U.S.C. § 1997e(a). However, both Phillips and Dombroski failed to exhaust any issue relating to their Eighth Amendment claim, and Tucker exhausted the finite issue of HRT denial in a specific context, leaving all other issues unexhausted. (*See id.*)[10] Here, Plaintiffs' failure to exhaust under the PLRA's mandatory requirements precludes Plaintiffs from establishing a likelihood of success on the merits and thereby receiving injunctive relief.

B. Plaintiffs Have Not Proven a Facial Challenge

Defendants hereby incorporate by reference arguments within their Motion to Dismiss Plaintiffs' claim on Plaintiffs' facial challenge. (*See* ECF No. 45 at p. 20.) Plaintiffs do not possess a likelihood of success on their facial challenge to HB252. (*See* Motion at 25 (Plaintiffs

[10] Defendants' MSJ also argues that Plaintiffs failed to exhaust their ADA claim. However, Plaintiffs' Motion does not seek injunctive relief on that claim.

seek to enjoin implementation of HB252 because "it is unconstitutional on its face").) Facial challenges "frustrate[] the intent of the elected representatives of the people." *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 329 (2006). To prevent sweeping and unnecessary invalidations, Plaintiffs have "a very heavy burden to carry, and must show that [the statutory scheme] cannot operate constitutionally under *any* circumstance." *H.B. Rowe Co. v. Tippett*, 615 F.3d 233, 243 (4th Cir. 2010) (emphasis added). 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). Thus, Plaintiffs must "establish that no set of circumstances exists under which" the challenged statute "would be valid." *Id.*

Here, Plaintiffs cannot succeed on their facial challenge because there are individuals diagnosed with gender dysphoria who are not prescribed HRT and do not need HRT. (Complaint at ¶ 48 (stating that hormone therapy is not administered unless it is "medically necessary").) Further HB252 does not allow sex reassignment surgeries, and Plaintiffs do not challenge this as unconstitutional. This demonstrates that HB252 is constitutional in at least some applications, even with respect to inmates diagnosed with gender dysphoria. Further, Plaintiffs must demonstrate that psychotherapy is not an adequate alternative, and cross-sex hormones are medically necessary to *all* transgender individuals within the reach of HB252. Therefore, because there are constitutionally valid applications of HB252, Plaintiffs' facial challenge fails.

III. PLAINTIFFS CANNOT DEMONSTRATE IRREPARABLE HARM

The second factor also weighs against granting injunctive relief. In preliminary injunction analysis, the irreparable harm "must be both certain and great," not "merely serious or substantial." *State v. U.S. Env't Prot. Agency*, 989 F.3d 874, 884 (10th Cir. 2021) (citation

omitted). "[A] speculative or theoretical injury will not suffice." *Id.* Here, Plaintiffs have not demonstrated any imminent and irreparable injury necessitating a preliminary injunction.

Plaintiffs argue irreparable harm absent an injunction based on three reasons. First, Plaintiffs claim a range of risks of potential harm based on SOC-8 clinical guidelines. (Motion at 22-23.) Second, Plaintiffs argue they've "experienced a total absence of adequate treatment for their gender dysphoria" allegedly causing mental health suffering, lost ability to "perform day-to-day activities," and some suicide attempts. (Motion at 23.) Third, Plaintiffs assert that an alleged constitutional violation "is *per se* sufficient to show likelihood" of irreparable harm. ("Motion at 14.) Plaintiffs fail to demonstrate any of these.

As already discussed, Plaintiffs fail to demonstrate an Eighth Amendment violation. (*See supra,* Section I.) Thus, finding irreparable injury is not mandated. Nor is such warranted based on Plaintiffs' conclusory allegations that they will suffer harm absent being provided HRT while in custody. To merit a preliminary injunction, harm "must be both certain and great," not "speculative or theoretical.'" *State v. U.S. Env't Prot. Agency*, 989 F.3d 874, 884 (10th Cir. 2021) (citation omitted).

In addition, [redacted]

[redacted] Let alone that those symptoms will be so severe as to constitute cruel and unusual punishment.

Without more, Plaintiffs' alleged injuries are too speculative or theoretical for the Court to find irreparable harm absent a preliminary injunction. "[A]llegations are not enough to warrant preliminary injunctive relief. The party seeking that extraordinary remedy faces a high bar—it must make a clear and unequivocal showing" of irreparable harm absent preliminary relief. *State v. U.S. Env't Prot. Agency*, 989 F.3d 874, 886 (10th Cir. 2021). Because Plaintiffs failed to demonstrate certain irreparable harm, the Court should deny Plaintiffs' Motion.

IV. PUBLIC INTEREST AND BALANCE OF EQUITIES

The remaining two factors—whether other parties or the public interest will be harmed if the preliminary injunction is granted—also weigh against granting a preliminary injunction. Plaintiffs assert that Defendants will not suffer harm if the challenged statutory provisions are enjoined. Incorrect. Any time "a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012). And while Plaintiffs assert that it is in the public interest to prevent the violation of constitutional rights, they fail to demonstrate a likelihood of success on their allegations of constitutional violation. Therefore, absent any constitutional violation, the public interest does not weigh in the Plaintiffs' favor. Moreover, the Utah Legislature, acting on behalf Utah citizens, clearly believed HB252 to be in the public interest. And it is well within the legislature's authority to make such decisions. *See Skrmetti*, 605 U.S. at 531 (Thomas, J., concurring) (the Supreme Court has "acknowledged the importance of reserving to the democratic process the right to decide controversial medical questions").

V. PLAINTIFFS SEEK RELIEF BEYOND THAT ALLOWED UNDER THE PLRA

Even if Plaintiffs could meet their heavy burden to show that they are entitled to a preliminary injunction, Plaintiffs' requested relief violates the PLRA by going too far. The PLRA requires any "preliminary injunctive relief," "with respect to prison conditions," be "narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm." 18 U.S.C. § 3626(a)(2). And if the relief is prospective, it "shall extend no further than necessary to correct" the alleged violation for the "particular plaintiff or plaintiffs." *Id.* § 3626(a)(1)(A). Further, courts must give "substantial weight to any adverse impact" such relief will have on "public safety" or "the operation of a criminal justice system." *Id.* § 3626(a)(2). If requested relief goes beyond what PLRA requires—being overbroad, overly intrusive, or vague, for example—such relief cannot be provided. *See Stephens v. Jones*, 494 F. App'x 906, 911-12 (10th Cir. 2012) (affirming denial of an inmate's motion for a temporary restraining order because such "would have been overbroad and more intrusive than necessary").

Here, Plaintiffs seek to enjoin Defendants from implementing H.B. 252. However, the PLRA prohibits the scope of this relief because it extends beyond the Plaintiffs in this matter. Under PLRA, the relief "shall extend no further than necessary to correct" the alleged violation for the "particular plaintiff or plaintiffs." 18 U.S.C. § 3626(a)(1)(A). Courts thus require that the "relief must be limited to the particular plaintiffs." *Ball v. LeBlanc*, 792 F.3d 584, 599 (5th Cir. 2015). Calling for prison-wide enjoining of enforcement of H.B. 252, affecting all inmates presently or subsequently incarcerated, goes further than necessary to correct the alleged harm for these Plaintiffs. *See Lindell v. Frank*, 377 F.3d 655, 660 (7th Cir. 2004) (relief is "too broad" when "it applies to all inmates rather than just" the plaintiff inmate).

Plaintiffs' requested relief goes too far in another way. HB252 prohibits sex reassignment surgeries and HRT. However, Plaintiffs identify the denial of HRT as their alleged violation. (*See* Motion at 1.) They do not argue that their alleged harm is also the denial of sex reassignment surgeries. (*See* Motion at 1; *see also id.* at 18.) Because denial of sex reassignment surgeries is not the alleged constitutional violation, requesting that HB252—in its entirety—be enjoined from enforcement would "extend . . . further than necessary" to correct the alleged constitutional harm. *See* 18 U.S.C. § 3626(a)(1)(A).

Plaintiffs next ask the Court to enjoin any "pre-existing policies and practices that have delayed and denied medically necessary treatments for gender dysphoria." (Motion at 2.) The phrase "pre-existing policies and practices" is undefined and open-ended. It does not identify which specific policies or practices are at issue, nor does it specify what constitutes "delay" or "denial" of care. Such vagueness would leave Defendants subject to contempt or sanctions for conduct they cannot reasonably predict or control.

Importantly, the PLRA does not allow requests for relief that amount to "obey the law" or "do not violate the constitution." *See, e.g.*, *Stephens v. Jones*, 494 F. App'x 906, 909, 912 (10th Cir. 2012) (rejecting as "overbroad" a request for injunction that prison officials not "tak[e] actions that will result in irreparable harm to [the plaintiff's] right and ability to litigate actions before the Courts."); *Smith v. Crockett*, No. 20-CV-00841-WJM-MEH, 2022 WL 3225119 (D. Colo. Aug. 10, 2022), R&R adopted, 2022 WL 20527332 (D. Colo. Dec. 7, 2022) (denying request for injunctive relief to "prohibit future retaliation" and require a sergeant "to respect the rights of others and follow the rules" as too vague). Likewise, here, Plaintiffs' requested relief amounts to little more than "do not violate the constitution." Such relief is not "narrowly drawn" and does not provide the specificity required for compliance or judicial oversight.

Moreover, Plaintiffs seek to require Defendants to "provide the Plaintiffs with adequate medical care, including hormone therapy." (Motion at 2-3.) Prospective relief of this kind is permitted under PLRA only if supported by specific findings that such relief is "precisely tailored to what is needed to remedy the violation of" the alleged constitutional violation. *See Miller v. French*, 530 U.S. 327, 347 (2000) (describing how PLRA "restrict[s]" prospective relief). However, the Court's findings need to be more than "particular words to justify an otherwise untenable injunction"; rather, the findings must show the relief is "necessary" and "extend[s] no further to correct the violation of the federal right," and "is the least intrusive means to correct the violation." *Alloway v. Hodge*, 72 F. App'x 812, 816 (10th Cir. 2003). If Plaintiffs intend "adequate medical care" to include placing them on a pathway toward sex-reassignment surgeries, that treatment is something they have not alleged as a constitutional violation. In sum, Plaintiffs' requested relief cannot be reconciled with the PLRA's demand for tailored, individualized orders that go no further than necessary to remedy the specific constitutional injury. Therefore, it cannot be granted.

CONCLUSION

For the reasons stated above, the Court should deny Plaintiffs' Motion for Preliminary Injunction.

DATED: April 3rd, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2026, the foregoing, *Opposition to Plaintiffs' Motion for Preliminary Injunction,* was filed using the Court's electronic filing system, which gave notice to the following:

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