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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 AMERLI 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*

**REPLY MEMORANDUM IN SUPPORT
OF DEFENDANTS' RENEWED
MOTION TO DISMISS PLAINTIFFS'
AMENDED COMPLAINT**

Case No. 2:25-cv-01108

Judge Tena Campbell

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.

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Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, the Defendants identified in the above caption file this Reply Memorandum in Support of their Renewed Motion to Dismiss Plaintiffs’ Amended Complaint.

NEW MATTERS ASSERTED IN OPPOSITION

In their Motion, Defendants raised five grounds upon which the Court should dismiss all or parts of Plaintiffs’ claims. Plaintiffs’ Opposition fails to rebut each ground.

First, the Court should dismiss Plaintiffs’ ADA claim because Plaintiffs’ alleged disability—gender dysphoria—is excluded from the ADA’s coverage. In Opposition, Plaintiffs argue that gender dysphoria is not excluded by the ADA (a law enacted in 1990) because, in 2026, the medical community treats “gender dysphoria” as something distinct from “gender identity disorders” (the term used in the ADA’s exclusion provision). But, in so arguing, Plaintiffs acknowledge that, when the ADA was enacted in 1990, Plaintiffs’ alleged disability would have been included within the meaning of the term “gender identity disorders.” This is fatal to Plaintiffs’ ADA claim.

Second, the Court should dismiss the ADA claim because Plaintiffs fail to allege a substantial limitation to a major life activity—a prerequisite for an ADA-covered “disability.” In Opposition, Plaintiffs confirm that this is so by failing to identify any factual allegations in their Complaint that satisfy what is required to plead in an ADA claim.

Third, Defendants argued that the Court should dismiss Plaintiffs’ facial Eighth Amendment challenge to H.B. 252 because, even under Plaintiffs’ theory, there are situations in which the law could be constitutionally applied. Plaintiffs attempt to rebut this by arguing that H.B. 252’s application is unconstitutional as to anyone who is affected by it. But this argument

fails because Plaintiffs overlook multiple categories of people to whom the law can be constitutionally applied.

Fourth, the Court should dismiss Plaintiffs' Eighth-Amendment claim due to a failure to plead sufficient facts to establish standing. In Opposition, Plaintiffs don't seriously contest Defendants' characterization of Plaintiffs' allegations. Instead, they argue only that the declaratory relief sought is sufficient. But this argument fails to correctly apply standing principles in the context of an Eighth-Amendment claim.

Finally, the Court lacks jurisdiction to issue retroactive injunction relief as to two policies identified in Plaintiffs' Complaint because those policies are no longer operative. In Opposition, Plaintiffs fail to address the specifics of this argument, instead arguing only that they are seeking relief as to some laws and policies that are ongoing. Thus, Plaintiffs fail to rebut Defendants' argument as to the policies that are no longer operative.

ARGUMENT

I. Gender Dysphoria is Not a Disability Under the ADA.

First, the Court should dismiss Plaintiffs' ADA claim because the ADA does not cover Plaintiffs' alleged disability for two reasons that Plaintiffs fail to rebut.

A. ADA's Text Precludes "Gender Identity Disorders."

As explained in the Motion, the ADA expressly excludes "gender identity disorders" as a category of disorders. Dkt. 54 at 7-16. Significantly, Plaintiffs acknowledge that, when the ADA was enacted (1990), the phrase "gender identity disorders" would have been understood to include people experiencing an "incongruence between a person's gender identity and sex assigned at birth." Dkt. 81 at 9. That matches the disability alleged by Plaintiffs. Dkt. 52 at ¶2

(alleging a disability “resulting from the incongruence between [their] gender identity and the sex they were assigned at birth”). Accordingly, Plaintiffs’ alleged disability falls within the category of disorders identified as “gender identity disorders” *as that term was understood in 1990*. See *Williams*, 45 F.4th at 782 (“[G]ender dysphoria . . . falls precisely under the DSM-III-R’s description of, and diagnostic criteria for, gender identity disorders.” (Quattlebaum, J., dissenting)).

Nevertheless, Plaintiffs resist dismissal relying on a “significant shift in medical understanding” since 1990 that has led to the creation of a new and distinct diagnosis—“gender dysphoria”—that is not exempted from the ADA. Dkt. 81 at 8 (*quoting Williams*, 45 F.4th at 767-69); *id.* at 10 (“But by 2013, science had advanced.”). In so doing, Plaintiffs largely echo the Fourth Circuit’s majority opinion in *Williams v. Kincaid*, 45 F.4th 759, 766-69 (4th Cir. 2022).

So, according to Plaintiffs and the majority in *Williams*, there are currently two potential disorders at play: “gender dysphoria” and a “gender identity disorder.” Dkt. 81 at 9-10 (emphasis added); *Williams*, 45 F.4th at 767. According to Plaintiffs, the currently prevailing view is that “gender identity disorders” are distinct from “gender dysphoria” because “gender identity disorders . . . focused *only* on the incongruence between a person’s gender identity and sex assigned at birth” whereas a diagnosis of “gender dysphoria” requires “presenting features” of “*clinically significant distress* . . . that a person experiences because of the incongruence between their gender identity and their sex assigned at birth.” Dkt. 81 at 9-10 (emphasis added); *Williams*, 45 F.4th at 767.

So the only distinction between the two disorders is that a diagnosis of a “gender identity disorder” in 1990 did not require a determination of “clinically significant distress” whereas a diagnosis of “gender dysphoria” in 2026 allegedly requires that determination. Indeed, as the

majority in *Williams* acknowledged, this additional factor makes the people diagnosed with “gender dysphoria” a “subset” of the population who would have been diagnosed with a “gender identity disorder” in 1990. *Williams*, 45 F.4th at 768.

Based on this distinction, Plaintiffs argue that “gender dysphoria” is not excluded from the ADA’s coverage. But Plaintiffs (and the majority in *Williams*) answer the wrong interpretive question. Their argument is premised on the assertion that the medical community *today* has not diagnosed Plaintiffs with a disability that the *current medical community* refers to as a “gender identity disorder.” Dkt. 81 at 10 (the “diagnosis of ‘gender dysphoria’ . . . did not exist in 1990”); *id.* at 11 (“gender identity disorders” do not “remain present in the DSM-V”). But the current medical understanding of these terms is irrelevant to determining *what the 1990 Congress understood* when it excluded “gender identity disorders” from the ADA’s coverage. *New Prime Inc. v. Oliveria*, 586 U.S. 105, 113 (2019) (“It’s a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time Congress enacted the statute.”) (cleaned up).

As Plaintiffs and the majority in *Williams* concede, in 1990 the term “gender identity disorders . . . focused only on the incongruence between a person’s gender identity and sex assigned at birth.” Dkt. 81 at 9-10; *Williams*, 45 F.4th at 767. Thus, in 1990, the term would have applied to any person who experienced an incongruence between his or her gender identity and sex assigned at birth, including when that person *suffered distress as a result*.¹ So individuals who would be diagnosed with “gender dysphoria” today would have been diagnosed with a

¹ Although ultimately irrelevant, Plaintiffs misconstrue the understanding of “gender identity disorder” in 1990, arguing that a finding of distress was not needed. *See Williams*, 45 F.4th at 783 (4th Cir. 2022) (“Gender identity disorders, as understood in 1990, included distress and discomfort from identifying as a gender different from the gender assigned at birth.” (Quattlebaum, J., dissenting)).

“gender identity disorder” in 1990. Because there is no reasonable dispute that Plaintiffs’ alleged disability falls within the meaning of the term “gender identity disorders,” as understood in 1990, it is *unambiguously* excluded from the ADA’s coverage.²

B. Plaintiffs Have Not Alleged a Disability Resulting From a Physical Impairment.

Plaintiffs’ ADA claim is also not saved by allegations of a disability caused by physical impairment. The ADA exempts “gender identity disorders *not resulting from physical impairments*.” 42 U.S.C. § 122211(b)(1) (emphasis added)). But Plaintiffs have not alleged that their disability resulted from physical impairments. Dkt. 54 at 12.

In Opposition, Plaintiffs identify only two paragraphs that purportedly allege such impairments. Dkt. 81 at 11 (citing “FAC ¶¶ 2, 40”). But neither paragraph sufficiently alleges a physical impairment under the ADA. Instead, both paragraphs allege that, according to “medical and scientific research . . . gender incongruence has a biological basis.” Dkt. 52, ¶ 40; *id.* ¶ 2 (same).

The Court should reject this argument because, under Plaintiffs’ position, “all gender identity disorders *must* result from physical impairments since, by definition, gender identity disorders involve such gender incongruence.” *Williams*, 45 F.4th at 788 (4th Cir. 2022) (Quattlebaum, J., dissenting). Under that interpretation, the phrase “not resulting from physical impairments” would have no effect, thereby, violating the “duty to give effect, if possible, to every clause and word of a statute.” *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

Instead of interpreting the ADA in a way that would render the term “not resulting from physical impairments” superfluous, the Court should interpret it to refer to those with actual

² Plaintiffs also argue that the Court should construe the ADA in their favor as a matter of policy and to avoid constitutional concerns. Dkt. 81 at 13-15. But these canons of construction apply only where there is ambiguity in the statute’s text.

physical impairments resulting in a gender identity disorder, such as those who are intersex or those who developed this disorder by suffering an injury. Dkt. 54 at 12 n.4.

In sum, because Plaintiffs’ alleged disability is exempt from ADA coverage, Plaintiffs’ ADA claim fails.

II. Plaintiffs Have Not Sufficiently Alleged a Substantial Limitation to a Major Life Activity.

Plaintiffs’ ADA claim also fails because they have not sufficiently alleged a substantial limitation to a major life activity—a prerequisite for an ADA-covered “disability.” 42 U.S.C. § 12102(1)(A); *see also* Dkt. 54 at 16-19. As explained in Defendants’ Motion, under controlling case law, Plaintiffs have not pled sufficient factual allegations to support an inference of a substantial limitation to a major life activity. Dkt. 54 at 17-18. Although Plaintiffs have made conclusory allegations that certain life activities are impacted, they have not alleged how those activities are limited by their alleged disabilities, including through allegations of the “frequency, duration, or severity of any symptom.”

In response, Plaintiffs don’t identify any *specific* factual allegations to satisfy this ADA pleading requirement. Instead, in only three paragraphs they double down on the conclusory allegations of impairment in their Complaint, arguing that “Plaintiffs have each pleaded that their gender dysphoria causes them ‘anxiety, depression, self-harm, and suicide, which may substantially limit one or more life activities’ including but not limited to eating, sleeping, learning, reading, concentrating, thinking, communicating, and working.” Dkt. 81 at 16. This does not solve the inadequacy of Plaintiffs’ pleading because it does not explain how the alleged symptoms impair the allegedly affected activities.

Accordingly, Plaintiffs’ “purely conclusory [ADA] allegations are . . . exactly the sort of ‘[t]hreadbare recitals of the elements’ that the Supreme Court has explained will not survive a motion to dismiss.” *Braccia v. Northwell Health Sys.*, No. 24-2665-CV, 2025 WL 2610704, at *4 (2d Cir. Sept. 10, 2025) (citing *Iqbal*, 556 U.S. at 678).

III. Plaintiffs’ Facial Challenge Fails.

Next, Plaintiffs’ facial Eighth-Amendment challenge to H.B. 252 should be dismissed. As explained in the Motion, Plaintiffs’ facial challenge is deficient because Plaintiffs cannot show that H.B. 252 is “unconstitutional in all its applications.” Dkt. 54 at 19 (*quoting Bucklew v. Precythe*, 587 U.S. 119, 138 (2019)). Plaintiffs fail to rebut this.

Plaintiffs argue that their facial challenge can succeed because the challenged law is unconstitutional to every person to which it applies (or “in which it actually authorizes or prohibits conduct”). Dkt. 81 at 16-19. This is so, they say, because where a doctor has determined 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.” *Id.* at 17. But this does not support a facial challenge for at least two reasons.

First, Plaintiffs’ proposed group of people affected by H.B. 252 is incomplete. H.B. 252 prohibits the Department of Corrections from “initiat[ing]” sex-hormone therapy or sex characteristic surgical procedures. UT Code § 26B-4-1003. In addition to Plaintiffs’ proposed group, the law would also prohibit inmates from obtaining elective treatment as well as treatments in situations in which a doctor has identified multiple options for adequate medical

treatment, some of which are prohibited by H.B. 252.³ In these cases, the law would prohibit conduct an inmate might otherwise engage in but not in an unconstitutional way. *Compare Johnson*, 121 F.4th at 93 (“[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.”) *with Bucklew*, 587 U.S. at 138 (a facial challenge is “a claim that the law or policy at issue is unconstitutional in *all* its applications” (emphasis added)).⁴

Second, Plaintiffs’ facial challenge also fails because the constitutional standard is unlikely to lead to a uniform result for all inmates even in Plaintiffs’ proposed group. Again, State actors violate the Eighth Amendment when they act with “deliberate indifference to the *serious* medical needs of prisoners.” *Johnson*, 121 F.4th at 88 (emphasis added). It’s axiomatic that the medical needs of people with gender dysphoria will vary from case to case. And it’s also certainly true that medical professionals may disagree regarding the medical needs of someone with gender dysphoria. Ultimately, it is the Court’s duty to apply the constitutional standard to the facts of each case based on the evidence (including competing expert medical testimony, if presented). This fact-intensive process will inevitably lead to situations in which members of Plaintiffs’ identified group were denied their preferred treatment, including treatment recommended by one doctor, but that do not amount to Eighth-Amendment violations, either

³ The Tenth Circuit has identified four potential treatment options for gender dysphoria that can be provided by a prison: “changes in gender expression and role, hormone therapy to make the body feminine or masculine, surgery to change primary or secondary sex characteristics, and psychotherapy.” *Johnson*, 121 F.4th 80, 92 (10th Cir. 2024).

⁴ Plaintiffs argue that the Tenth Circuit “has repeatedly treated gender dysphoria as a ‘serious medical need’ for the purposes of the Eighth Amendment.” Dkt. 81 at 18. In support, they cite the Tenth Circuit’s decision in *Johnson*, 121 F. 4th at 89. But Plaintiffs seriously mischaracterize the statement in *Johnson*. In *Johnson*, the Court made it clear that it was not deciding the issue and it had not been decided previously. *Id.* at 89.

because of differences of medical opinion as to medical necessity or because of a lack of “a substantial risk of serious harm” for a specific inmate. *See, e.g., Thompson v. Gibson*, 289 F.3d 1218, 1222 (10th Cir. 2002) (denying inmate claim where doctors disagreed over treatment, because “a medical difference of opinion . . . is not actionable under the Eighth Amendment”); *McLean v. Clough*, 248 F. App’x 937, 940 (10th Cir. 2007) (a finding of deliberate indifference requires that “the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and [s]he must also draw the inference” (alteration in original)). Indeed, in this case it’s conceivable that one Plaintiff could prevail in his or her Eighth-Amendment claim while the claims of other Plaintiffs fail based on the differing facts established through discovery.

Because a facial challenge seeks a facial remedy—in this case, a determination that H.B. 252 is unconstitutional *in all its applications*—facial challenges fail where there are conceivable constitutional applications. As discussed above, that is the case for H.B. 252. Accordingly, Plaintiffs’ facial challenge should be dismissed.

IV. Plaintiffs Lack Standing for Eighth Amendment Claim.

Additionally, Plaintiffs Tucker, Dombroski, and Phillips lack standing to pursue their Eighth-Amendment claim. As explained in the Motion, these Plaintiffs lack standing because, even if they were to succeed in striking down H.B. 252 as unconstitutional, they have not pled facts showing an increased likelihood of redressing their injuries through the specific hormonal interventions they seek. Dkt. 54 at 21.

In Opposition, Plaintiffs don’t seriously dispute Defendants’ characterization of their pleadings. Instead, they argue that “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 . . . regardless of the Plaintiffs’ individualized medical needs and interference with medical judgment.” Dkt. 81 at 21. But Plaintiffs’ argument on this point misconstrues what is required to establish standing for Plaintiffs’ Eighth-Amendment claim.

As the Supreme Court recently explained, “causation and redressability are usually ‘flip sides of the same coin.’” *Diamond Alternative Energy, LLC v. Env’t Prot. Agency*, 606 U.S. 100, 111 (2025). “Causation requires the plaintiff to show ‘that the injury was likely caused by the defendant’” and “redressability requires the plaintiff to demonstrate ‘that the injury would likely be redressed by judicial relief.’” *Id.* Applying these standing requirements to Plaintiffs’ Eighth-Amendment claim, Plaintiffs must allege that H.B. 252 deprived them of medical care to which they are constitutionally entitled and that, by striking down H.B. 252, they are likely to receive that constitutionally mandated care. For the reasons explained in the Motion, Plaintiffs have failed to plead this.

V. The Court Lacks Subject Matter Jurisdiction to Issue Requested Relief Related to AG37 and the Gender Dysphoria Committee.

Finally, the Court lacks subject matter to issue the relief requested related to the now-inoperative AG37 and the Gender Dysphoria Committee because the declaratory and injunctive relief sought as to those inoperative policies are necessarily retrospective and, thus, barred by sovereign immunity. Dkt. 54 at 24-26.

Plaintiffs raise two points in opposition, but neither point actually addresses Defendants’ argument. First, Plaintiffs argue that sovereign immunity does not bar their actions because “Plaintiffs are challenging still ongoing enforcement of numerous policies, procedures, and committees that discriminate against Plaintiffs.” Dkt. 81 at 23. But, with this argument, Defendants are not seeking dismissal of Plaintiffs’ claims as to ongoing laws or practices (such

as H.B. 252), they are challenging the claims specifically as they relate to AG37 and the Gender Dysphoria Committee, which are inoperative. For the reasons explained in the Motion, sovereign immunity bars Plaintiffs' claims as to those policies.

Second, Plaintiffs argue that sovereign immunity does not apply under the Supreme Court's decision in *U.S. v. Georgia*, 546 U.S. 151 (2006). Dkt. 81 at 24. But the principle espoused in *Georgia* relates solely to tort claims for "money damages"—something that is not at issue here. *See* Dkt. 52 at Prayer for Relief.

Accordingly, Plaintiffs' Opposition fails to rebut Defendants' arguments on this point.

CONCLUSION

For the foregoing reasons and the reasons set forth in the Renewed Motion, the Court should dismiss the Amended Complaint.

Respectfully submitted April 17, 2026.

Derek Brown
Utah Attorney General

/s/ Joshua Cutler
Joshua Cutler
Assistant Solicitor General
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2026, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF RENEWED MOTION TO DISMISS** to be filed using the Court's electronic filing system, which effectuated service of such filing upon all counsel who have entered an appearance.

/s/ Joshua B. Cutler
Joshua Cutler
Assistant Solicitor General
Counsel for Defendants

CERTIFICATE OF COMPLIANCE

I, Joshua B. Cutler, certify that this **REPLY IN SUPPORT OF RENEWED MOTION
TO DISMISS** contains 3,094 words and complies with DUCivR 7-1(a)(4).

/s/ Joshua B. Cutler
Joshua Cutler
Assistant Solicitor General
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