UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

EMMA KOE,

3. SB 140 provides in part that none of the following

pursuant to Code Section 31-7-3. § 2(c). And the Georgia Composite

Medical Board is responsible for adopting rules and regulations regarding SB

for Georgia-licensed physicians. § 3(b). Under the new

law, a

§ 3(c).

In enacting SB 140, the Georgia General Assembly made the following

legislative findings:

- (1) There has been a massive unexplained rise in diagnoses of gender dysphoria among children over the past ten years, with most of those experiencing this phenomenon being girls;
- (2) Gender dysphoria is often comorbid with other mental health and developmental conditions, including autism spectrum disorder;
- (3) A significant portion of children with gender dysphoria do not persist in their gender dysphoric conditions past early adulthood;
- (4) Certain medical treatments for gender dysphoria, including hormone replacement therapies and surgeries, have permanent and irreversible effects on children;
- (5) No large-scale studies have tracked people who received genderrelated medical care as children to determine how many remained satisfied with their treatment as they aged and how many eventually regretted transitioning; on the contrary, the General Assembly is aware of statistics showing a rising number of such individuals who, as adults, have regretted undergoing such treatment and the permanent physical harm it caused;

(6)

-and-see

approach to minors with gender dysphoria, providing counseling, and allowing the child time to mature and develop his or her own identity is preferable to causing the child permanent physical damage; and

(7) The General Assembly has an obligation to protect children, whose brains and executive functioning are still developing, from undergoing unnecessary and irreversible medical treatment.

2023 Ga. Laws 4 § 1(1) (7).

We turn next to definitions for certain terms used in this order. The

them consistently with one another in their declarations and testimony.

At birth, infants are generally assigned a sex either male or female based on the appearance of their external genitalia, their internal reproductive organs, and their chromosomal makeup. (Doc. 93, Laidlaw Decl. ¶¶ 14 15; Doc. 2 Doc. 2-8, Shumer Decl. 37; Doc. 93, Laidlaw Decl. ¶ 55; (DSM-5 TR) (APA 2022).)

Plaintiffs are three transgender children, four parents of transgender children, and an organization called TransParent.

Amy Koe is a 12-year-old transgender girl and the daughter of Emma Koe. (Doc. 2-2, Koe Decl. \P 4.) Amy and her family live in the Atlanta area, where Emma Koe was born and raised. (\P 3.) From an early age, Amy began to express persistently

a girl. ($\P\P$ 5, 7.) Amy presented gender incongruencies for two to three years preferring to wear girls clothing, gravitating toward female friends, and stating her desire to look physically like a girl as she grew older. ($\P\P$ 5, 10, 12.) From ages five to seven, Amy began experiencing sleep difficulties, waking up repeatedly throughout the night, every night, and not being able to return to sleep. (\P 12.) At age seven, Amy began mental health treatment and was diagnosed with gender dysphoria. (\P 14.) She then began to

s

() Tori has consistently expressed her female gender identity for eight years. ($\P\P 4$ 6.) Her mother states that Tori has always considered herself a girl, and since Tori was in fifth grade, she has represented herself as a girl to anyone who asks. ($\P\P 7$ 9.) Last year, therapist diagnosed her with gender dysphoria. (\P 11.) For Tori, the thought of going through puberty as a male Mia Voe is an 11-year-old transgender girl and the daughter of Paul Voe.⁵ (Doc. 2-4, Voe Decl. ¶ 4.) They live in Athens, Georgia. (\P 5.) Mia

with gender dysphoria. () Her primary care pediatrician diagnosed her with the same in February 2023. ()

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will deteriorate if he cannot access gender-affirming care, including hormone therapy. (\P 23.)

D

prohibition on hormone therapy for minors.

Defendant Caylee Noggle, sued in her official capacity, is the former commissioner of the Georgia Department⁶

(Doc. 1, Compl. \P 16.) DCH is responsible for establishing sanctions, by rule

prohibitions. (); 2023 Ga. Laws 4 § 2(c).

Community Health

policy to be followed by DCH. (Doc. 1, Compl. ¶ 17); O.C.G.A. §§ 31-2-2, 31-2-

3(a). The Community Health

are sued in their official

capacities. (Doc. 1, Compl. ¶¶ 18 26.)

⁶ It appears that Noggle recently stepped down from her role as commissioner of DCH. Katherine Landergan and Ariel Hart,

[,] ATLANTA J.-CONST. (May 5, 2023), https://www.ajc.com/news/atlanta-news/georgia-commissioner-overseeing-medicaid-to-step-down/TQREI3BPMNEZDCMGILBHM5TQKA/.

tasked

prohibitions as they relate to licensed physicians. (Doc. 1, Compl. ¶ 27); 2023 Ga. Laws 4 § 3(b). The Composite Medical Board has the authority to enforce violations of rules and regulations by taking disciplinary action, including (Doc. 1, Compl.

¶ 27); O.C.G.A. § 43-34-8(a) (b). The Composite Medical Board are sued in their official capacities. (Doc. 1, Compl. ¶¶ 28 43); O.C.G.A. § 43-34-2(a). Defendant Daniel Dorsey is the executive director of the Composite Medical Board and is sued in his official capacity as such. (Doc. 1, Compl. ¶ 44.) appropriate treatment for gender dysphoria and that, for some adolescents, gender-affirming medical interventions are necessary

further assert that the treatment protocols for gender dysphoria are set forth in established, evidence-based clinical guidelines: (1) the World Professional

WPATH

Standards of Care for the

Health of Transsexual, Transgender, and Gender-Nonconforming People; and (2) the Endocrine Society Clinical Practice Guideline for Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons.⁸ (Doc. 70-1, McNamara Decl. ¶ 18; Doc. 105 at 9.)

The WPATH and Endocrine Society guidelines **exactline** the record of this **OaTse**,7 and they are voluminous. A few of the guidelines discussed by the experts and amici,

Puberty-blocking medications serve only a temporary purpose. (Doc. 2-8, Shumer Decl. $\P\P$ 71, 97; Doc. 70-

All parties agree that hormone therapy, like all medical interventions, carries certain risks. It can, for example, affect fertility. (Doc. 93, Laidlaw Rep. ¶ 45; Doc. 2-8, Shumer Decl. ¶ 85.) And hormones may ⁹ (Doc. 2-

8, Shumer Decl. ¶ 90; Doc. 92, Laidlaw Decl. ¶¶ 20, 204, 254.) With respect to these latter risks, Pla

minimized with proper clinical supervision. (Doc. 2-8, Shumer Decl. ¶ 89; Doc.

a risk exists, but they state that the standards of care require extensive consultation regarding effects of treatment on fertility and options to preserve future fertility, such as sperm and oocyte cryopreservation. (Doc. 70-1, McNamara Decl. ¶ 45; Doc. 2-8, Shumer Decl. ¶ 85.) And they emphasize that risk for fertility changes and other risks should be balanced with the risk of withholding treatment. (Doc. 2-8, Shumer Decl. ¶ 85.)

therapy when the proper standards of care and guidelines are followed. (Tr. 28:20 29:9; Doc. 2-8, Shumer Decl. ¶ 77.)

Dr. Meredithe McNamara is a pediatrician, adolescent medicine physician, and assistant professor of pediatrics at the Yale School of Medicine. (Doc. 70-1, McNamara Decl. \P 3.) She treats

To satisfy the injury-in-fact requirement, Plaintiffs must show that their

, 504 U.S. 555, 560

(1992). While no plaintiff has yet been prescribed hormone replacement

injury-in-

, 522 F.3d 1153, 1160 61 (11th Cir. 2008) (citing

allegation of future injury may suffice if the threatened injury is certainly

F.3d 1255, 1267 (11th Cir. 2003) (quoting , 504 U.S. at 564 n.2). No such likelihood exists here. Plaintiffs have adequately alleged both present and future injury sufficient to comply with Article III.

Physicians have recommended treatment that will include hormone

-2, Koe Decl.

¶¶ 16 18; Doc. 2-3, Moe Decl. ¶¶ 12 15; Doc. 2-4, Voe Decl. ¶ 16; Doc. 2-5, Zoe Decl. ¶¶ 18 19.) Puberty blockers and hormone replacement therapy are generally part of a single course of treatment (Doc. 70-1, McNamara Decl. ¶¶ 4_3^3 44; Doc. 2- agreed that remaining on puberty blockers until 18 would be medically inadvisable. (Doc. 2)

s, arguing

in the future, not that it happen in the colloquial sense of soon or precisely , 522 F.3d at

1161 (citing , 515 U.S. 200, 211 12 (1995)).

Plaintiffs have adequately shown that they will seek hormone therapy and will do so imminently. The best example is that of Amy Koe, who is 12 years old and has begun puberty.¹³ (Doc. 2-2, Koe Decl. ¶ 16.) Amy has been taking puberty-blocking medication since 2022. (

Amy wishes to do so. (Doc. 2-2, Koe Decl. ¶ 17.) Her mother will decide exactly

¶ 18) (emphasis added). While

there is no date certain on which Emma Koe intends to obtain hormone therapy

14

¹³ Tori Moe has also begun puberty-suppressing medication, and her -in-fact. (Doc.
2-3, Moe Decl. ¶¶ 12 13.)

, 329 F.3d at 1267;

25

occur.

, 38 F.4th 86, 95 (11th Cir.

2022) (quotation marks omitted). Plaintiffs seek treatment that has been recommended by their doctors, but that treatment is now banned by statute.

conduct in the near

At least one of the child/adolescent plaintiffs has adequately alleged an injury-

in-fact. , 143 S. Ct. at 2365.

Emma Koe, Hailey Moe, Paul Voe, and Anna Zoe, the parent plaintiffs,

Ark. June 20, 2023) (holding plaintiffs had standing where,

Parent Plaintiffs would have to watch their children suffer the loss of care or endure severe personal and financial hardship to access care for their children , 60 F.4th 642, 648 (11th Cir.

ing sanctions

for violations of O.C.G.A. § 31-7-3.5. 2023 Ga. Laws 4 § 2(c). And Defendant Georgia Composite Medical Board is tasked with adopting rules and § 3(b). The

injuries Plaintiffs seek to avoid are fairly traceable to the challenged statutes and the entities and persons responsible for enforcing the statutory prohibitions. , 42 F.4th 1298, 1316 (11th Cir. 2022) (arrestee re fairly traceable to defendant sheriff who had authority to enforce a challenged bail policy). Defendants do not argue otherwise.

significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injur , 536 U.S. 452, 464 (2002); , 69 F.4th 809, 820 (11th Cir. 2023). Here, Plaintiffs have sued state officials explicitly ban under both of its provisions. O.C.G.A. §§ 3-7-3.5(c), 43-34-15(b) (c). An injunction against

likelihood that Plaintiffs can access hormone therapy that would otherwise be

Defendants argue in passing that a separate statute, O.C.G.A. § 31-5-8, makes it a misdemeanor to violate any provision under Title 31 of the Georgia Code, where a portion of ¹⁶ (Doc. 41

of the law, non-party state officials might nevertheless be free to bring prosecutions for violations of the hormone therapy ban, and this would prevent

First, throughout Title 31, the Department of Community Health is the

entity given aut

provisions.17

unconstitutional and enjoined the DCH official defendants from enforcing it, it

¹⁶ O.C.G.A. § 31-5-

therapy for the treatment of gender dysphoria in minors is codified, in part, at O.C.G.A. § 31-7-3.5.

¹⁷ So, for example, DCH is

private property at reasonable times for the purpose of inspecting same to determine the presence of conditions deleterious to health or to determine compliance with applicable laws and rules, regulations, and standards -2-1(6), and it has various powers that enable it to do so, such as the ability to obtain inspection warrants. O.C.G.A. § 31-2-13.

by the Code in a particular way, and the term2 (ular)-28.9

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Plaintiff TransParent is a community-based support and resource organization that serves parents and caregivers of transgender children. (Doc. 1, Compl. ¶ 15.) It asserts its claims in this lawsuit on behalf of its members. An organization can establish associational standing to enforce its , 57 F.4th 879, 886 (11th Cir.

2023).

would otherwise have standing to sue in their own right; (b) the interests [the lawsuit] seeks to protect are germane to the organization s purpose; and (c) neither the claim asserted nor the relief requested requires the participation

(quoting

, 992 F.3d 1299, 1316 (11th Cir. 2021)).

enough for the representative entity to allege that one of its members or constituents has suffered an injury that would allow it to bring suit in its own , 175 F.3d 879, 885 (11th Cir. 1999).

Here, TransParent has satisfied the standing test. First, TransParent has provided evidence that at least one of its members would have standing to sue in her own right. , 175 F.3d at 885. Rita Soe is a member of TransParent and is the mother of Brent Soe, a 16-year-old boy who is transgender. (Doc. 2-6, Soe Decl. ¶¶ 2, 6.) Brent has been diagnosed with

his male gender identity in all aspects of . ¶ 14.) Rita Soe and her

ental

. ¶ 23.) Despite

their strong family and community ties to Georgia, the Soes are now considering a move out of state because of the ban. ($.\P\P$ 4, 22.) For the reasons discussed in Section III(A)(1)(b) above, Rita Soe has sufficiently alleged an injury in fact that is concrete and particularized, as well as actual and imminent. , 504 U.S. at 560. She has likewise satisfied the traceability and redressability requirements for the reasons discussed in Sections III(A)(2) (3). Because at least one of its members has standing to sue in her own right, TransParent satisfies the first associational standing requirement.

Second, the interests this lawsuit seeks to protect are germane to Tra

provide its members with educational materials about raising transgender children. (Doc. 2-7, Halla Decl. ¶ 4 organization is to connect parents with experts who provide gender-affirming care, including hormone therapy. (¶ 12(b).) TransParent has spent over a

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decade compiling and organizing resources for its members about how to access such care. (.) Its Board President asserts that SB 140 hampers the) This

its interests. , 430 F.3d 1337, 1345 (11th

Cir. 2005).

parties to this suit in order to advance the instant [claims] or to fashion the sort of prospective injunctive r

, 324 F.3d 1229, 1244 (11th Cir. 2003). It is wellestablished that an organization may seek prospective injunctive relief on behalf of its members without their individual participation.

constitutional and voting rights claims asserted, or the declaratory or injunctive relief requested, require the participation of the individual members

claim or relief requested by the Sierra Club or the Alabama Environmental Council requires the participation of Farned, Marshall, or any other member satisfies all three requirements for

associational standing.

substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public , 234 F.3d 1163, 1175 (11th Cir. 2000) (en banc) (per

, 556 U.S.

curiam)

, 840 F.3d 1244,

1247 (11th Cir. 2016) (citing , 234 F.3d at 1176).

To obtain a preliminary injunction, Plaintiffs must establish that they are substantially likely to prevail on the merits of their claims.

likelihood of success on the merits requires a showing of only or probable, rather than , 978 F.3d 1266,

1271 n.12 (11th Cir. 2020) (quotation marks omitted) (emphases in original).

that the chance of success on the merits be better

, 556 U.S. at 434.

Plaintiffs contend that portions of SB 140 violate the Fourteenth

Equal Protection and Due Process clauses. To secure a preliminary injunction, they need only establish a substantial likelihood of success on one claim.

, No. 1:22-CV-05065-ELR, 2023 WL 4401541, at *4 (N.D. Ga. May 15,

otation marks

,

omitted);

389 F. Supp. 3d 1291,

and will be sustained if the classification drawn by the statute is rationally

classification based on a suspect or quasi-suspect class. at 440 41.

-based

government action must demon

, 518 U.S. 515, 531 (1996);

, 582 U.S. 47, 57 58 (2017); , 663

F.3d 1312, 1321 (2011).

Because SB 140 draws distinctions based on both natal sex and gender nonconformity, it is subject to intermediate scrutiny.

, 57 F.4th 791, 803 (11th Cir. 2022);

2023 WL 4054086, at *9 (S.D. Ind. June 16, 2023) (same, with respect to comparable Indiana law); , 73 F.4th

ate scrutiny

should apply to comparable Tennessee law).

First, SB 140 triggers heightened scrutiny because it classifies on the basis of birth sex. In , the Eleventh Circuit considered an equal

function in the same manner, and both trigger heightened scrutiny. Most other courts to consider laws comparable to SB 140 have regarded them in the same essential way.¹⁹

patient is the basis on which the law distinguishes between those who may receive certain types of medical care and those who may not. The Act is therefore

short, without sex-based classifications, it would be impossible for S.E.A. 480 to define whether a puberty-blocking or hormone treatment involved transition

that a physician wishes to treat with testosterone. Under the challenged statute, is the treatment legal or illegal? To know the answer, one must know

If the adolescent is a natal female, the treatment is illegal. This is a line drawn

, 57 F.4th at 801; , 513 F. Supp. 3d 1309,

1314 (M.D. Ala. 2021)

to the same intermediate scrutiny. The State need not favor or disfavor men

There is a second reason that SB 140 is subject to heightened scrutiny.

or her gender non-conformity constitutes sex-based discrimination under the

individual because of her gender-

that precisely because of the perception , 663 F.3d at

1316 17.

SB 140 places a special burden on transgender minors, like the minor plaintiffs, and it does so on the basis of their gender nonconformity.²⁰ By its terms, the law bans the use of cross-sex hormo(93.001 (2eiTf308.45 269.45 Td[(s)-8.002 begin

the use of cross-sex hormones

A person is defined as tran

discrimination. Indeed in the logical structure of this reasoning, is in

, 57 F.4th at 808 (quoting

140 S. Ct. 1731, 1747 (2020)).

To be sure, concerned the employment context and it implicated

relevant to whether SB 140 can survive heightened scrutiny, not whether it applies in the first place.

Defendants raise one additional argument pertinent to the application of intermediate scrutiny. They suggest that and show that intermediate scrutiny does not apply to SB 140. They note that , in dismissing the arguments of that the equal protection clause protected regulation of a medical procedure that

only one sex can undergo does not trigger heightened constitutional scrutiny

, 142 S. Ct. 2228, 2245 46 (2022) (quoting

, 417 U.S. 484, 496, n.20 (1974)).²² Here, however, the medical

passage of SB 140, any child could if medically indicated receive hormone therapy with either estrogen or testosterone. Changing that is what the bill aims to achieve. Secondly, neither nor says anything about laws that place special burdens on gender nonconformity, as SB 140 does. These cases do not compel a different conclusion than that reached here.

Accordingly, SB 140 is subject to intermediate scrutiny both because it classifies on the basis of natal sex, like the policy at issue in , and because it places a special burden on nonconformity with sex stereotypes, like the action challenged in . Seen either way, intermediate scrutiny applies.²³

become pregnant[,] it does not follow that every legislative classification concerning pregnancy is a sex-based classification like those considered in , 417 U.S. at 496 n.20.

²³ Plaintiffs also argue that transgender people constitute a quasi-suspect class. Because SB 140 discriminates on the basis of sex, the Court need not reach this argument and declines to do so at this preliminary stage.

of care is effective

through regulation of the medical profession is, of course, an important one.

, 981 F.3d at

psychological well-

, 458 U.S. 747, 756 57 (1982));

Here, then, the question is whether Defendants can make this showing not in some abstract sense, but with respect to the legislative scheme the state

[t]he Court

scrutiny,

retains an independent constitutional duty to review factual findings where ;

, 488 U.S. 469, 500 01 (1989) (stating, in race-based equal protection case,

o a

presumption of regularity and deferential review by the judiciary. . . . [b]ut when a legislative body chooses to employ a suspect classification, it cannot

l citation omitted).24

First, the preliminary record evidence of the medical risks and benefits of hormone therapy shows that a broad ban on the treatment is not

parties ack

decision about whether a given course of treatment is indicated depends on a balancing of risks with the benefits of the treatment. Hormone therapy is no

at 2245 46; , 2023 WL 4054086, at *11 (distinguishing on same basis).

²⁴ Similarly, while Defendants contend that that the Court should adhere to what

¹⁴² S. Ct. at 2268, that is not the inquiry required by heightened scrutiny. Nor does say otherwise.

Beyond these possible adverse effects, Defendants also suggest that banning hormone therapy is justified by the risk that physical changes spurred by hormone replacement therapy may later be regretted if gender dysphoria desists later in life. Before this Court, however, the state has presented little in the way of reliable evidence of desistance or regret in those who would qualify for hormone therapy pursuant to the applicable standard of care.²⁶ Indeed, the record shows the contrary: that when gender-affirming care involving hormone therapy is provided in accordance with the WPATH standards of care, rates of regret are low. (Doc. 70-1, McNamara Decl. ¶ 58; Doc. 2-8, Shumer Decl. ¶

eceiving

gender-affirming care, as is required by the WPATH standards of care).)²⁷

treatment is medically necessary for a given patient depends on a balancing of risks with the benefits of the treatment. (, Doc. 70-1, McNamara Decl. ¶(

34; Tr. 112:16

of hormone therapy significantly understates the benefits with which it is associated. These principally include improved mental health outcomes caused by the relief of distress including but not limited to reduced suicidality and self-harm, reduced anxiety and depression, and improved social and psychological functioning. (Doc. 70treatment is medically necessary in each case, and to manage the risks as treatment progresses. (, Doc. 70-1, McNamara Decl. $\P\P$ 29 34.)

nclusions

about its safety or effectiveness.²⁸ (Doc. 92, Cantor Decl.)

Plaintiffs, for their part, argue that the Defendants overstate the degree to which hormone therapy is controversial. They argue and indeed it appears undisputed on this record that essentially every major American professional medical and mental health association has endorsed the WPATH and Endocrine Society standards of care for the treatment of gender dysphoria in adolescents. (Doc. 105 at 8; Doc. 2-8, Shumer Decl. ¶ 56; Doc. 70-1, McNamara Decl. ¶ 21.) Twenty of such groups have filed an amicus brief in support of

precluding healthcare providers from providing adolescent patients with treatments for gender dysphoria in accordance with the accepted standard of

²⁹ (Doc. 105

²⁸ The Court credits

of the international systematic reviews, but

views less weight as to the medical conclusions that can reasonably be drawn from the evidence for the treatment of gender dysphoria in minors.

Standards of Care 8) is itself the result of consensus among expert practitioners and was produced according to authoritative standards

-ends

record shows that clinical medical decision-making, including in pediatric or adolescent medicine, often is not guided by evidence that would qualify as ³⁰ (Doc. 70-1,

McNamara Decl. ¶¶ 23 28; Tr. 74:11 75:1 (McNamara Testimony); Tr. 133:6 14 (Hruz Testimony).) In fact, the record shows that less than 15 percent of

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that 85 percent of evidence that guides clinical care, across all areas of -qualit

-1, McNamara Decl. ¶ 25; Tr. 74:11 75:1.)

³¹ (Tr. 217:16

0 55; Doc. 70-

³⁰ Dr. Cantor and Dr. McNamara both di

little in itself.³² The Endocrine Society has produced clinical recommendations

evidence supports other treatments that are uncontroversial.33

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context of claims about

hand their tolerance of a much lower threshold of evidence for claims about its risks, the likelihood of desistance and/or regret, and their notions about the ideological bias of a medical establishment that largely disagrees with them. That is cause for some concern about the weight to be assigned to their views, characterize the results of the various European systematic reviews as

Most significantly as several other courts have observed there have been no bans on cross-sex hormone treatment for adolescents. (Doc. 92, Cantor Decl. $\P\P$ 21 34); , 2023 WL 4054086 at *11 12; , 2023 WL 3833848 at *14; , 603 F. Supp. 3d at 1146. On the contrary, it appears that these countries continue to adhere to treatment protocols not much different from the WPATH standards of care endorsed by the American

closely mirror the standards of care laid out by the World Professional Association for Transgender Health (WPATH) and the Endocrine Society, two organizations the State repeatedly Like WPATH, the Finnish council concluded that criticizes. puberty-suppressing hormones might be appropriate for adolescents at the onset of puberty who have exhibited persistent gender nonconformity and who are already addressing any coexisting psychological issues. Similarly, the WPATH Standards of Care and the Finnish council both recommend that cross-sex hormones be considered only where the adolescent is experiencing persistent gender dysphoria, other mental health conditions are well-managed, and the minor is able to meet the standards to consent to the treatment.

, 47 F.4th

United States. , 47 F.4th at 671. This matters not because Georgia is constitutionally required to follow Finland. It matters, rather, because it

singling out the treatment for a ban. Medical authorities, in this country and elsewhere, have not drawn that conclusion from the systematic reviews. That

gives the State unfettered discretion to choose how to regulate gender transition procedures for minors up to and including a broad prohibition. But that d -

scrutiny requires of sex-, 582

U.S. at 59, 68).

In other words, there is less daylight than Defendants suggest between the prevailing consensus in the United States namely, that when indicated under the WPATH standards of care, hormone therapy is adequately safe and effective and the approach to the same care elsewhere. Neither the systematic reviews from Finland, et al., nor critiques of the quality of the evidence supporting hormone therapy, offer an exceedingly persuasive justification for an outright ban on care.

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That brings the Court to the final set of arguments, which have not been emphasized by the Defendants, but which are worth comment. These are arguments to the effect that hormone therapy or other gender-affirming care

279:3.) The record does not support

this notion, however.³⁵ Nor have Defendants introduced evidence that providers in Georgia are not following the standards of care described elsewhere in this order. Perhaps more to the point, it is difficult to see how these concerns even if they could be substantiated could justify a full ban on hormone therapy; the means-

, 582 U.S. at 68. To the extent that Defendants claim that medical providers may be failing to treat in accordance with the applicable standard of care by pushing treatments on patients or failing to secure adequate informed consent, any number of regulatory means exist to, for example, address medical malfeasance or mandate informed consent or consultation protocols. , 2023 WL 4054086 at *11 (noting availability

-affirming care).

³⁵ four nonparty parents, none of which describes events that took place in Georgia, and

At oral argument, Defendants pointed to the ways in which SB 140 is

2023 WL 4073727 at *32 35 (finding for plaintiffs in equal protection challenge to gender-affirming care ban after full bench trial).

Plaintiffs have, therefore, shown a substantial likelihood of success on their equal protection claim.

Next, Plaintiffs must demonstrate that they will suffer irreparable harm

is the

, 896

nor speculative, but actual

, 234 F.3d at 1176.

Plaintiffs have established that they will suffer irreparable harm in the absence of a preliminary injunction. Without an injunction, the middle-schoolage plaintiffs will be unable to obtain in Georgia a course of treatment that has been recommended by their health care providers in light of their individual diagnoses and mental health needs.

As discussed above (§III(A)(1)), the risk of harm is sufficiently imminent. It is also both serious and irreparable. The harm in question will be experienced by minors, ages 10 to 12, all of whom have been diagnosed with

-harm absent this course of treatment. (Doc. 2-

3, Moe Decl. ¶ 15.)

Defendants, citing 840 F.3d 1244, 1248 49 (11th Cir. 2016), contend that Plaintiffs fail to satisfy the irreparable

harm requirement because they waited until two days bef

date to file suit. is distinguishable. There, the Court of Appeals found that a plaintiff who delayed in seeking a preliminary injunction for five months after filing suit could not show irreparable injury. . at 1248–49. In this case, SB 140 was signed by the Governor on March 23, and Plaintiffs filed suit on June 29. They simultaneously moved for a TRO and preliminary injunction. A three-

motion is not unreasonable, especially when considering the amount of preparatory work required, the heavy involvement of expert witnesses, and the

impossible to fairly consider the issues

1. But this is not a case in which Plaintiffs sat on their rights.

, 559 F. Supp. 3d 1238, 1285-86 (N.D. Fla. 2021) (finding irreparable harm despite three- date and the motion for preliminary injunction); 840 F.3d at 1248 49. Plaintiffs have satisfied the second preliminary-injunction element.

The third and fourth preliminary-injunction requirements that the threatened injury to the movant outweighs any harm to the non-movant and that an injunction is not adverse to the public interest merge when, as here, the government is the party opposing the motion. , 958 F.3d 1081, 1091 (11th Cir. 2020).

a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury

, 567 U.S. 1301, 1303 (2012) (quoting

434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)) (internal quotation marks omitted).

nor the public has any legitimate interest in enforcing an unconstitutional , 981 F.3d 854, 870 (11th Cir. 2020);

, 715 F.3d 1268, 1290

the public has no interest in the enforcement of what is very likely an

-therapy

cular circumstances.

, 561 U.S. 186, 194 (2010);

., No. 4:22-CV-304-MW/MAF, 2022 WL 16985720, at *50 (N.D. Fla. Nov. 17, 2022).

When, as here, a plaintiff brings a facial challenge to a statute,

establish that no set of circumstances exists under which the Act would be

481 U.S. 739, 745 (1987). Noting that the

rule[

-based objection to scope of injunction);

, 746 F.3d 811, 819 (7th Cir. 2014)

applied only to a particular plaintiff. Facial unconstitutionality as to one means facial unconstitutionality as to all, regardless of the fact that the injunctive portion of the judgment directly adjudicated the dispute of only the

no more burdensome to the defendant than necessary to provide complete relief

, 442 U.S. 682, 702 (1979);

, 342 F.3d 126

relief should be limited in scope to the extent necessary to protect the interests

is dictated by the extent of the violation establis

, 614 F.3d 1288, 1317

ensure that the scope of the awarded relief does not exceed the identified

, 442 U.S. at 702).

It cannot be denied that there is, a

, 73 F.4th at

415. This is particularly so in the debate over the so-called nationwide injunction.³⁸

, 942 F.3d 451, 458 (8th Cir. 2019). And the Eleventh Circuit

³⁸, 73 F.4th at 415 (citing , 54 F.4th 398, 439 (6th Cir. 2022); , U.S. , 138 S. Ct. 2392, 2424 29 (2018) (Thomas, J., concurring); , U.S. , 140 S. Ct. 599, 599 601 (2020) (Mem) (Gorsuch, J., concurring)); , 46 F.4th 1283, 1303 08 (11th Cir. 2022).

has permitted statewide injunctions in cases not involving class actions.

, 115 F.3d 904, 906 (11th Cir. 1997);

505, 505 (11th Cir. 2020)

(Mem.). Other courts do the same.³⁹

In , the Eighth Circuit considered the appropriateness of a

statewide injunction in the context of an anti-loitering law. 942 F.3d at 955.

There, as here, the state defendants sought

plaintiffs, arguing that a wider injunction would violate the principles set forth

in . at 457 58. The Eighth Circuit disagreed, stating:

supports the entirely opposite conclusion: that injunctive relief should extend statewide because the violation established

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injunction is no broader than the constitutional violation, the district court , No. 22-CV- $\,$

24156, 2023 WL 3478450, at *2 (S.D. Fla. May 16, 2023) (denying motion to stay a statewide preliminary injunction of a Florida statute that was substantially likely to violate the First Amendment); , No. 3:23-CV-00141-SPM, 2023 WL 3160285, at *12 (S.D. III. Apr. 28, 2023) (issuing statewide preliminary injunction prohibiting enforcement of Illinois statute dment right to bear arms);

, 460 F. Supp. 3d 651, 664 (E.D.N.C. 2020) (issuing statewide preliminary injunction against COVID-19 gathering restriction that

, 265 F. Supp. 3d 1106, 1139 40 (S.D. Cal. 2017),

^{, 47} F.4th at 672 (affirming statewide injunction prohibiting -affirming care for minors);

-loitering law impacts the entire state of Arkansas. Moreover, Arkansas's reading of would, in effect, require every plaintiff seeking statewide relief from legislative overreach to file for class certification. That cannot be the law.

Whilea

court should be skeptical of injunctions premised on the need to protect

nonparties, , 46 F.4th at 1306, the mere fact that nonparties might be

affected by a facial injunction does not bar the Court from issuing one. That

is, a statewide injunction is appropriate where its scope is principally

, 442 U.S. at principally

In other words, the members of TransParent who require but now cannot access hormone therapy for their transgender children are entitled to relief. But such relief would be hampered by the practical difficulties that would

. (Doc. 2.)

seeking to enjoin the

statute before it went into effect, is . () Defendants and all other persons identified in Fed. R. Civ. P. 65(d)(2) are from enforcing the prohibition on hormone replacement therapy for the treatment of gender dysphoria in minors, as set forth in O.C.G.A. § 31-7-3.5(a)(2) and O.C.G.A. § 43-34-15(a)(2), pending trial, or until further order of the Court.

this 20th day of August, 2023.

SARAH E. GERAGHTY

United States District Judge