IN THE

SUPREME COURT OF THE UNITED STATES

Case No.: 22-8976

STATE OF LINCOLN,
Petitioner,
v.

JESS MARIANO, ELIZABETH MARIANO, AND THOMAS MARIANO,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Fifteenth Circuit

BRIEF FOR THE RESPONDENT

Team 3109
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QUESTIONS PRESENTED

I. Whether the "serious questions" standard for preliminary injunctions continues to be viable after *Winter v. Natural Resources Defense Council, Inc.*

II. Whether the preliminary injunction was properly granted in regard to the Respondents' Substantive Due Process and Equal Protection claims.

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The Decision and Order of the United States District Court for the District of Lincoln is unreported and set out in the Record. R. at 1–22. The opinion of the United States Court of Appeals for the Fifteenth Circuit is also unreported and provided in the Record. R. at 23–34.

RELEVANT PROVISIONS

This case involves LINC. STAT. §§1201-06, reprinted in Appendix A.

STATEMENT OF THE CASE

STATEMENT OF THE FACTS

Gender dysphoria stems from a disconnect between an individual's biological gender, and the gender they perceive themselves as. R. at 4. In order to be diagnosed with gender dysphoria, in accordance with existing medical guidelines, an individual's treating physician must determine an incongruence between the patient's expressed gender and biological gender. R. at 4. In adolescents, minors twelve and over, gender dysphoria is more likely to persist into adulthood. R. at 7.

Medical guidelines provide that adolescents with gender dysphoria should be evaluated, diagnoses, and treated by a qualified mental health professional. R. at 6. Further, patients should receive only evidence-based, medically necessary, and appropriate treatment, tailored to the patient's individual needs. R. at 6. Gender-affirming care leads to favorable mental health outcomes. R. at 7.

Jess Mariano was diagnosed with gender dysphoria by her psychiatrist after nine months of therapy. R. at 4. Although Jess was born a biological female, from a very young age he has always perceived himself as a male. R. at 4. This condition has caused Jess to suffer from anxiety and depressive episodes throughout his childhood. R. at 4. Things came to a head when, at merely eight years of age, Jess attempted suicide by taking a handful of Tylenol in the hopes that he would "never wake up." R. at 4. Consequently, Elizabeth and Thomas Mariano started Jess on therapy. R. at 4. Jess continues to receive therapy to date.

Jess' situation is common among minors dealing with gender dysphoria. Untreated gender dysphoria may cause or lead to anxiety, depression, eating disorders, substance abuse, self-harm, and suicide. R. at 7. Fortunately for these individuals, the medical community has developed evidence-based treatment for gender dysphoria. R. at 5. Such treatment is directed by an individual's physician, in conjunction with the minor's parents. R. at 6.

Once a minor reaches puberty, medical guidelines suggest they begin pubertal hormone suppression. R. at 6. Puberty blockers are reversible treatments that pause puberty and give adolescents time to decide what to do next. R. at 6. Such medication does not affect fertility. R. at 6. Rather, they have proven to lower the risk of suicide in adolescents with gender dysphoria. R. at 7. Gender-affirming surgery is generally no recommended until adulthood. R. at 6. But in rare cases, transmasculine adolescents may benefit from masculinizing chest surgery to lessen chest dysphoria. R. at 6.

All leading medical organizations in the United States oppose denying gender-affirming care to adolescents with gender dysphoria. R. at 7. Yet, that is exactly what the State of Lincoln seeks to do. The Stop Adolescent Medical Experimentations Act (the "SAME Act"), 20 LINC. STAT. §§ 1201-06, bars adolescents with gender dysphoria from accessing necessary gender-affirming care. R. at 3. Specifically, healthcare providers are prohibited from engaging in or causing any procedure, practice, or service to be performed upon a minor for the purpose of instilling or creating physiological or anatomical characteristics different

from the minor's biological gender. R. at 3. Puberty blockers, gender-affirming hormonal medication, and gender-affirming surgeries are types of treatment specifically made illegal, but only when administered to a minor with gender dysphoria. R. at 4.

The Attorney General of the State of Lincoln is tasked with enforcing the SAME Act. R. at 4. Any healthcare provider found to have violated the SAME Act will be guilty of a class 2 felony punishable by civil fines up to $100,000 or imprisonment ranging from two to ten years. R. at 4. Such providers will also be subject to discipline by their respective licensing entity. R. at 4. The SAME Act was scheduled to take effect on January 01, 2022. R. at 4. Attorney General April Nardini has indicated she intends to enforce the SAME Act. R. at 1.

PROCEDURAL HISTORY

The Marianos filed suit in the United States District Court for the District of Lincoln on November 04, 2021. R. at 1. The Marianos sought to enjoin Lincoln's newly enacted SAME Act from going into effect on January 01, 2022. Specifically, the Marianos allege that the SAME Act would violate their rights to Due Process and Equal Protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution. R. at 1.

The Marianos filed a Motion for Preliminary Injunction on November 11, 2021. R. at 1. On November 18, 2021, Lincoln filed a motion to dismiss along with its response asking the District Court to deny the request for preliminary injunction. R. at 1. A hearing on both motions was held on December 01, 2021. R. at

1. The District Court granted the Mariano's request for a preliminary injunction and denied Lincoln's motion to dismiss. R. at 2.

Lincoln appealed the action to the United States Circuit Court of Appeals for the Fifteenth Circuit. R. at 23. The Fifteenth Circuit affirmed the grant of preliminary injunction with Judge Gilmore in dissent. R. at 27.

Lincoln filed a writ of certiorari, which was granted by the Court and limited to the following issue: (1) whether the "serious questions" standard for preliminary injunctions remains viable following *Winter v. Natural Resources Defense Council, Inc.*; and (2) whether the preliminary injunction against the SAME Act was properly granted in regard to the Marianos' Substantive Due Process and Equal Protection claims. R. at 35.

SUMMARY OF THE ARGUMENT

The Court should affirm the District Court's order enjoining the SAME Act because the "serious questions" standard remains viable after *Winter v. Natural Resources Defense Council* and because the preliminary injunction was properly granted in regard to the Respondents' due process and equal protection claims.

The District Court's use of the "serious questions" standard in deciding whether to grant the Mariano's request for a preliminary injunction was proper because the Court's opinion in *Winter* did not discard a sliding-scale approach when dealing with the four factors governing preliminary injunction. Justice Ginsburg's dissent in *Winter* explicitly clarified this point. Consequently, lower courts and legal scholars do not read *Winter* as stripping lower courts of their discretion in deciding which approach to employ.

The Court should also find the "serious questions" standard viable after *Winter* because such an approach is consistent with the origins and history of the preliminary injunction. Such an approach empowers courts with the flexibility needed to meet the complex and varied factual issues presented early in the litigation. The "serious questions" standard also prevents courts from having to adjudicate cases at the preliminary injunction stage.

The Court should find that the preliminary injunction was properly granted with regard to the Respondent's Substantive Due Process claim because the SAME Act wrongfully prohibits parents from making necessary medical decisions on behalf of their children. The SAME Act is founded upon an illegitimate State interest and

therefore cannot supersede the constitutional right of the parents. Therefore, the SAME Act violates the parents Substantive Due Process rights by prohibiting parents from making proper medical decisions without providing a legitimate State interest.

The Court should find that the preliminary injunction was properly granted with regard to the Respondents' equal protection claim because the SAME Act is subject to, and fails, heightened scrutiny. The SAME Act is subject to heightened scrutiny because it discriminates on the basis of both sex and transgender status. Additionally, the Act cannot survive heightened scrutiny because it is not substantially related to either of the alleged government interests.

ARGUMENT

I. THE DISTRICT COURT'S INJUNCTION WAS PROPER BECAUSE THE "SERIOUS QUESTIONS" STANDARD FOR PRELIMINARY INJUNCTIONS REMAINS VIABLE AFTER *WINTER*.

The Court should affirm the Fifteenth Circuit's judgment because the "serious questions" standard remains a viable approach to preliminary injunctions after *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008). The purpose of a preliminary injunction is to preserve the positions of the parties as best as a court can until a trial on the merits may be held. *Bloedorn v. Grube*, 631 F.3d 1218, 1229 (11th Cir. 2011). Within the federal court system, all circuits employ the four factors listed in *Winter*. A plaintiff seeking a preliminary injunction must establish that he is (1) likely to succeed on the merits, (2) likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Winter*, 555 U.S. at 20. When the opposing party is the government, the third and fourth elements merge into one inquiry. *Nken v. Holder*, 556 U.S. 418, 435 (2009). For all requirements, the burden of persuasion rests upon the plaintiff. *Ne. Fla. Chapter of Ass'n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990) (internal quotations omitted). Because the "serious questions" standard employs all four *Winter* elements, its use by lower courts is still a permissible approach.

The District Court here correctly balanced all four elements to conclude that the Marianos were entitled to preliminary relief from the SAME Act's violence against Jess Mariano. Neither the Supreme Court's opinion or dissent in *Winter* strip lower

courts of their discretion in how to apply the four factors governing preliminary injunctions. To that end, the "serious questions" standard allows courts the flexibility required to meet the complex and varied factual issues presented early in the litigation without having to adjudicate cases at the preliminary injunction stage. Therefore, the District Court's order preliminarily enjoining the SAME Act should be affirmed.

A. In *Winter*, the Supreme Court Did Not Discard the "Serious Questions" Standard as Evidenced by the Court's Opinion and Dissent and Their Interpretation by Lower Courts and Legal Scholars.

The District of Lincoln and Fifteenth Circuit correctly interpreted *Winter* as not discarding the circuit's long-standing sliding-scale approach to preliminary injunctions. R. at 9, 24. In determining whether the "serious questions" standard survives *Winter*, the Court need only look to the text of its opinion, as well as the accompanying dissent. The Court's majority opinion in *Winter* left the application of its four-part test to the discretion of lower courts. In dissent, Justice Ginsburg interpreted the Court's opinion as not eliminating a sliding-scale approach, an interpretation that the Court has yet to reject. *Winter*, 555 U.S. at 392 (Ginsburg, J., dissenting). Consequently, lower courts and legal scholars correctly understand *Winter* as allowing such an approach.

1. The Supreme Court's opinion in *Winter* left the application of its four-part test to the discretion of lower courts, and point clarified in Justice Ginsburg's dissent.

Under *Winter*, lower courts were left with discretion on how to apply the four-factor test for preliminary injunctions and the "serious questions" approach is a

permissible exercise of that discretion. Since its inception in *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738 (1953), the "serious questions" standard has survived several instances in which the Court has described the factors relevant to a preliminary injunction without specifically addressing how those factors are to be weighed. *Citigroup Glob. Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010). *Winter* represents the latest such instance. *See id.* ("The flexible standard for granting preliminary injunction has a 'considerable history' that *Winter* does not alter."). What *Winter* does not represent, is a repudiation of this approach in assessing its four factors.

Under the "serious questions" approach, a plaintiff is entitled to a preliminary injunction if he can show (1) irreparable harm and (2) either (a) likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and (3) a balance of hardships tipping decidedly toward the party requesting preliminary relief. *Id.* Such an approach allows district courts to grant a preliminary injunction in situations where it cannot determine with certainty that the movant is more likely than not to prevail on the merits of the underlying claims, but where the costs outweigh the benefits of not granting the injunction. *Id.* This approach has courts considering the same factors articulated in *Winter* since a district court must balance the strengths of the movant's arguments in each of the four required areas. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). Only after these elements are met does the sliding scale analysis kick in. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1085

(9th Cir. 2013) ("'[S]erious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met.").

Although a sliding-scale approach may appear to be in tension with the text of *Winter*, Justice Ginsburg's dissent made clear that the Court did not discard this approach. Rather, Justice Ginsburg wrote: "[C]ourts have evaluated claims for equitable relief on a 'sliding scale,' sometimes awarding relief based on a lower likelihood of harm when the likelihood of success is very high. This Court has never *rejected* that formulation, and I do not believe it does so *today*."). *Winter*, 555 U.S. at 392 (Ginsburg, J., dissenting) (emphasis added).

In the years since *Winter* was decided in 2008, the Supreme Court has not provided any further guidance on how to apply the four-factor test. M. Devon Moore, Note, *The Preliminary Injunction Standard: Understanding the Public Interest Factor*, 117 MICH. L. REV. 939, 944 (2019). And in none of the cases involving preliminary injunctions has the Court rejected Justice Ginsburg's clarification. *Id.*

In reviewing the District Court's application of the "serious questions" standard, the Fifteenth Circuit held that "nothing in the Supreme Court's decision in *Winter v. National Resources Defense Council* requires us to abandon our long-standing sliding-scale approach to determine the propriety of a preliminary injunction." R. at 24. Thus, the Fifteenth Circuit correctly understood the Court's opinion in *Winter* and Justice Ginsburg's accompanying clarification as not discarding the "serious questions" standard.

2. Lower courts understand *Winter* as allowing them discretion in their approach, a view also supported by legal scholars.

Among the circuits themselves, there exists strong doubt that *Winter* has stripped them of their flexibility. The Second Circuit has "found no command from the Supreme Court that would foreclose the application of its established 'serious questions' standard as a means of assessing a movant's likelihood of success on the merits." *Citigroup*, 598 F.3d at 38. Likewise, in *Davis v. Pension Benefit Guaranty Corporation,* the D.C. Circuit saw no need to decide whether a stricter standard was warranted following *Winter*. 571 F.3d 1288, 1292 (D.C. Cir. 2009). Of the seven circuits that applied a flexible preliminary injunction standard prior to *Winter*, only the Fourth and Ninth Circuits have retreated from such an approach, with an intra-circuit dispute ongoing in the Ninth. *Id.* at 38 f.9. The First Circuit has also previously recognized a potentially more flexible approach. *Tuxworth v. Foehlke*, 449 F.2d 763, 764 (1st Cir. 1971) ("No preliminary injunction should be granted in any case unless there appears to be a reasonable possibility of success on the merits. Granted that the necessary degree of likelihood of success depends upon various considerations, we must perceive at least some substantial possibility").

The scholarship in this area of law also provides insight. Nowhere in the academic literature surrounding the standard for preliminary injunctions exists a consensus that *Winter* eliminated a sliding-scale approach. *Id.* at 948. Instead, the collective thinking is that a circuit split has developed since *Winter* that the Supreme Court should resolve by specifically endorsing one approach over the

other. *Id.* But until that day comes, lower courts are free to employ a sliding-scale approach.

The District Court here properly exercised the discretion afforded to it under *Winter* when it applied the "serious questions" standard. R. at 2. Under that approach, the District Court found that the Marianos had met all four factors in *Winter*. R. at 2. Specifically, the Marianos can show a likelihood of success on the merits of their claims that the SAME Act violates both the Due Process and Equal Protection Clauses of the Fourteenth Amendment. R. at 2. That the Marianos will suffer immediate and irreparable harm is the SAME Act is not enjoined. R. at 2. That the harm to the Marianos greatly outweighs any damage the SAME Act seeks to prevent. R. at 2. And that there is no overriding public interest that requires the denial of injunctive relief at this stage of the litigation. R. at 2. On appeal, the Fifteenth Circuit found no abuse of discretion in the District Court's use of the "serious questions" approach. R. at 24.

B. The "Serious Questions" Standard Allows Courts the Flexibility Required to Meet the Complex and Varied Factual Issues Presented Early in the Litigation Without Having to Adjudicate Cases at the Preliminary Injunction Stage.

The standard for granting a preliminary injunction should remain flexible in order to meet the complex and varied factual issues presented early in the litigation. The "serious questions" standard allows the four requirements articulated in *Winter* to be conditionally redefined as other requirements are more fully satisfied. *The Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d 342, 347 (4th Cir. 2009), *cert. granted, judgment vacated*, 559 U.S. 1089 (2010), *and*

adhered to in part sub. Nom. The Real Truth About Obama, Inc. v. F.E.C., 607 F.3d 355 (4th Cir. 2010). Under that approach, the granting or denying of a preliminary injunction depends upon a flexible interplay among all the factor considered. *Id.* Such is the case because all "four factors are intertwined and each affects, in degree, all the others." *Id.*

The origins and history of the preliminary injunction caution against removing such flexibility and interplay among the four factors. Doing so would make this form of preliminary relief unavailable in most complex cases. It will also have courts deciding cases at the preliminary injunction stage, when factual disputes predominate.

1. The origins and history of the preliminary injunction emphasize its flexibility.

The equitable origins and history of the preliminary injunction heed against stripping courts of their flexibility in granting such relief. Since their inception, preliminary injunctions have always been an equitable remedy. M. Devon Moore, Note, *The Preliminary Injunction Standard: Understanding the Public Interest Factor*, 117 MICH. L. REV. 939, 941 (2019). Courts of equity, not law, had jurisdiction to grant preliminary injunctions prior to trial, meaning that such decisions were purely equitable in nature. *Id.* To that end, early courts often noted that a careful consideration of facts was required with an aversion to mechanical and deterministic applications of rules. *Id.* at 942. Courts of equity were thus reluctant to pass judgment on the underlying merits of a claim regarding a legal right for fear of expressing an opinion on the proceedings of a court of law.

The very nature of the preliminary injunction cuts against a mechanical application of its factors. The purpose of such relief is to give temporary relief based on a preliminary estimate of the strength of the plaintiff's suit, prior to the resolution at trial of the factual disputes and difficulties presented by the case. *Citigroup*, 598 F.3d at 35. To this end, the equitable nature of the proceeding mandates that the court's approach be flexible enough to encompass the particular circumstances of each case. *Id.* at 36. Because each case is unique, an effort to apply the probability language to all cases with mathematical precision is misplaced. *Washington Metro. Area Transit Cmm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977).

While courts of equity and law are now merged, the equitable nature of preliminary injunctions should still govern a court's approach. Allowing courts to employ a flexible approach, such as the "serious questions" standard, honors the intent behind such form of preliminary relief. To read *Winter* as eliminating a sliding-scale approach would run counter to the origins, history, and very nature of preliminary injunctions.

2. Rejecting a flexible approach confines the availability of preliminary injunctions to only easy cases.

A harsh reading of *Winter* threatens to make preliminary injunctions unavailable in complex cases. Preliminary relief would instead only be available in cases which are simple and straightforward. *Citigroup*, 598 F.3d at 35 ("Preliminary injunctions should not be mechanically confined to cases that are simple and easy."); *Reilly v. City of Harrisburg*, 858 F.3d 173, 177-79 (3d Cir. 2017) ("[N]o test

for considering preliminary equitable relief should be so rigid as to dimmish, let alone disbar, discretion."). As a result of limiting the availability of preliminary injunctions to cases that do not present significant difficulties, the remedy would be stripped of much of its use. *Id.*

By remaining flexible and nimble, the "serious questions" standard permits a district court to grant preliminary relief in situations where it cannot determine with certainty that the movant is more likely than not to prevail on the merits of the underlying claims, but where the costs outweigh the benefits of not granting such relief. *Id.*

Here, the District Court employed such flexibility when dealing with a particularly complex case. This case involves several parties and a myriad of constitutional questions regarding an issue at the frontiers of science. R. at 1. Furthermore, the Marianos' constitutional rights are threatened or in fact being impaired. R. at 10. On the other end, the State of Lincoln alleges that its law-making ability is at risk. R. at 13. The stakes could not be higher. In balancing the competing allegations of irreparable harm, the District Court sided with the Marianos. R. at 10. The District Court also found that the balance of equities and the public interest tipped in the Mariano's favor. R. at 12. Finally, the District Court further held that the Marianos had raised sufficiently serious questions going to the merits of their claims. R. at 13. On all four factors, the District Court's findings were upheld by the Fifteenth Circuit. R. at 24-26. Thus, the District Court

artfully balanced the four factors to determine that the Marianos were entitled to a preliminary injunction of the SAME Act pending a trial on the merits.

3. The "serious questions" approach avoids courts having to adjudicate cases at the preliminary injunction stage.

Courts are rarely able to fully assess the likelihood of success based on the slim record available at the preliminary injunction juncture. In complex cases, the difficulty of this task is amplified. The chief function of a preliminary injunction is to preserve the status quo prior to the resolution at trial of the factual disputes and difficulties presented by each case. *Ne. Fla. Chapter of Ass'n of Gen. Contractors*, 896 F.2d at 1284; *Citigroup*, 598 F.3d at 35. Such final determination of factual disputes is reserved for ta court working with a more ample record. *See Hennessy-Waller v. Snyder*, 529 F.Supp.3d 1031, 1046 (D. Ariz. 2021) (finding it "premature to grant such relief prior to discovery and summary judgment briefing. . . "). A strict reading of *Winter* forces judges to make such determinations at the preliminary injunction stage. Yet a trial on the merits may cast the facts on which the grant or denial of a preliminary injunction is based in a different light. *Planned Parenthood of Wisconsin, Inc. v. Van Hollen*, 738 F.3d 786, 799 (7th Cir. 2013). About all that is feasible at the preliminary injunction stage is for the judge to estimate the likelihood that the plaintiff will prevail in a full trial and which of the parties is likely to be harmed more by a ruling granting or denying a preliminary injunction. *Kraft Foods Grp. Brands LLC v. Cracker Barrel Old Country Store, Inc.*, 735 F.3d 735, 740 (7th Cir. 2013).

To that end, the "value of the serious questions standard approach to assessing the merits of a claim at the preliminary injunction stage lies in its flexibility in the fact of varying factual scenarios and the greater uncertainties inherent at the outset of particularly complex litigation." *Citigroup*, 598 F.3d at 35. Appellate courts recognize the uncertainty involved in balancing the considerations that weigh on a decision whether to grant a preliminary injunction by reviewing such decisions deferentially. *Van Hollen*, 738 F.3d at 795. Such uncertainty is further "amplified by the unavoidable haste with which the district judge must strike the balance." *Id.* The "serious questions" standard permits a district court to grant preliminary relief in situations where it cannot determine with certainty that the movant is more likely than not to prevail on the merits, but where the costs outweigh the benefits of not granting an injunction. *Id.*

As noted earlier, this case involves "particularly complex litigation." And factual disputes permeate it at the preliminary injunction stage. What is clear, however, is that the Marianos risk violent and immediate harm to their constitutional rights. R. at 12. If the SAME Act is allowed to take effect, Jess Mariano will no longer be able to continue to receive his physician's recommended gender-affirming care. R. at 8. Given Jess Mariano's history of gender dysphoria, and prior attempts to end his life, he will also suffer a heightened risk of suicide. R. at 11. All these harms cannot be undone through money damages. R. at 10.

The Marianos' request for, and the District Court's grant of, the preliminary injunction does not strike down the SAME Act. Rather, it merely preserves the

status quo until a trial on the merits takes place. Allowing the SAME Act to take effect now would obliterate the status quo. Thus, the District Court correctly found that the Marianos met all four factors under *Winter*. And while factual disputes predominate this case at the preliminary injunction stage so as to prevent an exact estimate of which side will ultimately prevail, the irreparable harm the Marianos face swamps the speculative harm claimed by Lincoln. Denying the District Court's flexibility in this case would lead to a perverse outcome: when the Marianos succeed on their claims, the very relief owed, protection from the SAME Act's effects on Jess' health, will no longer be available.

The Court should therefore uphold the District Court's use of the "serious questions" standard, an approach still allowed under *Winter*.

II. THE PRELIMINARY INJUNCTION WAS PROPERLY GRANTED IN REGARD TO THE RESPONDENTS' DUE PROCESS AND EQUAL PROTECTION CLAIMS.

The Due Process Clause of the Fourteenth Amendment provides that no State shall deprive any person of life, liberty, or property without Due Process. U.S. Const. amend. XIV, § 1. This Court has recognized that the Due Process Clause includes parents' ability to render decisions concerning their child's medical treatment. *Troxel v. Granville,* 530 U.S. 57, 65-66 (2000). The SAME Act violates the Substantive Due Process rights of parents because the Act entirely prohibits gender-affirming medical care for transgender minors. 20 LINC. STAT. §1203. The Act strips parents of their constitutional right, without bolstering a legitimate State

interest. Therefore, the SAME Act must be prohibited because the Act violates parents' constitutional rights due to an illegitimate State interest.

The Equal Protection Clause of the Fourteenth Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV §1. The SAME Act violates the Equal Protection Clause by specifically prohibiting gender-affirming medical care for transgender minors. 20 LINC. STAT. §1203. While the Act does not explicitly use the term "transgender" when referring to minors that are barred from seeking the specified care, the same treatments in question are permitted when provided to non-transgender minors when used to help them align with their biological sex. Thus, only transgender minors are prohibited from seeking gender-affirming care under the SAME Act.

A. The Preliminary Injunction Was Properly Granted in Regard to the Respondents' Due Process Clause Because the SAME Act Prohibits Parents From Making Necessary Medical Decisions for Their Children.

The Fourteenth Amendment provides that no State shall deprive any person of life, liberty, or property without Due Process of law. U.S. Const. amend. XIV, § 1. The Supreme Court in *Washington* recognized the Court's substantive due-process tradition of interpreting the Due Process clause to protect certain fundamental rights and personal decisions relating to family relationships and child-rearing. *Washington v. Glucksberg*, 521 U.S. 702, 725 (1997). Thus, the parental right to make decisions that affect their family is a fundamental right protected by the Due

Process Clause of the Constitution. Therefore, The SAME Act wrongfully violates the Marianos Substantive Due Process rights granted by the Constitution because the Act prohibits the Marianos from making a medical decision that affects their family relationship and child-rearing.

1. The Marianos have an enforceable constitutional right as parents to seek proper medical treatment to care for their child who is struggling with gender dysphoria.

It has long been established that parents have the liberty to direct the upbringing of their children. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). This liberty rests on the notion that the child is not a mere creature of the state and that those who nurture and direct the child have the right, coupled with the high duty, to recognize and prepare them for additional obligations. *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 535 (1925). This Court has recognized that the additional obligations granted to parents under the Constitution surely includes seeking and following medical advice. *Parham v. J.R.*, 442 U.S. 584, 603 (1979). A parent's right to make decisions concerning the care, custody, and control of their children is one of the oldest fundamental liberty interests that have been recognized by the Supreme Court. *Troxel,* 530 U.S. 57 at 66. This Court has recognized throughout history that the Constitution protects parents' rights to make decisions that affect their children. Therefore, parents have a constitutional right, protected by Due Process, to care for their children.

Elizabeth and Thomas Mariano are the parents of Jess, a child struggling with gender dysphoria. This battle with gender dysphoria has caused Jess to suffer from

severe anxiety and depression. R. at 4. As a family, along with the advice from medical professionals, the Marianos made the tough, but necessary decision to seek gender-affirming care for Jess to cure gender dysphoria. R. at 5. Elizabeth and Thomas decided gender-affirming surgery was in the best interest of their child after witnessing Jess struggle with depression, anxiety, and even attempted suicide due to Jess's battle with gender dysphoria. R. at 5. However, the family decision made by the Marianos was not permitted due to an unjust act by the State of Lincoln that denies such treatment, even to those in desperate need. R. at 2-3. The SAME Act created by the State of Lincoln violates the Marianos' fundamental right as parents to make decisions that affect their family relationship and child-rearing by prohibiting gender affirming treatment for minors. *Id.* Thus, The SAME Act is in direct violation of the Marianos' Substantive Due Process rights granted to them under the Constitution to properly render judgment as parents concerning family relationships and the upbringing of their child, Jess.

2. The Marianos have a Substantive Due Process Right to seek proper medical care for their child and the State of Lincoln is prohibited from encroaching on this right due to a lack of legitimate State interest.

When a State alleges interest in violating an individual's constitutional right, the State must show a legitimate interest that outweighs the violation of the constitutional right. The Marianos have a fundamental right, under the Due Process Clause, to seek proper medical treatment for their child. However, The State of Lincoln alleges a state interest in protecting children from experimental medical procedures, but this alleged interest is illegitimate. R. at 3. Whenever the

constitutional right of a parent is in direct conflict with a proposed State interest, there must been an inquiry into the balancing of interests. *Youngberg v. Romeo*, 457 U.S. 307, 321 (1982). Thus, the constitutional right of the Marianos as parents cannot be violated unless the State of Lincoln can establish a legitimate state interest.

States nor private actors, concerned about the medical needs of a child, can willfully disregard the right of the parents to make decisions concerning the treatment to be given to their children. *Bendiburg v. Dempsey*, 909 F.2d 463, 470 (11th Cir. 1990). The right to family association includes the right of parents to make important medical decisions for their children, and the right of children to have those decisions made by their parents rather than the state. *Mann v. Cnty. of San Diego*, 907 F.3d 1154, 1161 (9th Cir. 2018) (citing *Parham,* 442 U.S. at 602). Families hold the responsibility and right to render decisions concerning a child's medical care due to the authority granted by the Constitution. This concept rests on the notion that parents possess the maturity, experience, and capacity for judgment that a child lacks when making complex decisions. *Parham,* 442 U.S at 603. The Court in *Parham* came to this conclusion based on the historically recognized concept that the formation of natural bonds of affection leads parents to make decisions that are in the best interests of their child making them best suited to render a decision that will affect their child. *Id.* Therefore, the Marianos have a constitutional right under the Due Process Clause to decide proper medical

treatment for their child because the parents possess the necessary requirements to decide in the best interest of the child.

When determining whether the constitutional right of a parent has been violated there must be a balancing analysis between the parent's constitutional right and a legitimate State interest. *Cruzan by Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 2851-52 (1990). The State of Lincoln alleges an interest in protecting children from experimental medical procedures. R. at 3. However, this interest is illegitimate and does not outweigh the Marianos' Due Process Right to render proper medical treatment for their child. The fact that a pediatric treatment involves risks does not automatically transfer the power to choose that treatment from the parents to some agency or officer of the state. *Parham*, 442 U.S. at 603. Additionally, numerous medical organizations have recognized gender-affirming care as an evidence-based cure for gender dysphoria. *Brandt v. Rutledge*, 551 F.Supp.3d 882, 890 (E.D. Ark. 2021). Parents, pediatricians, and psychologists – not the State – are best qualified to determine whether transitioning medications are in the child's best interest on a case-by-case basis. *Eknes-Tucker v. Marshall,* No. 2:22-CV-184-LCB, 2022 WL 1521889 (M.D. Ala. May 13, 2022). Gender-affirming care and transitioning medications are recognized by the medical community as evidence-based cures to gender dysphoria and are often necessary to cure such diagnoses. A decision to pursue such treatment constitutionally rests with the parents of the child because parents will act in the best interest of their child due to the affectionate bonds that are only created amongst a family. Thus, a State

alleging an interest in the protection of children from medical experimentation is not legitimate with regards to gender affirmation treatment because gender-affirming surgery is widely recognized by the medical field. The State of Lincoln's alleged interest does not defeat a parent's constitutional right provided by the Due Process Clause to make proper medical decisions for their child due to this lack of a legitimate interest. Therefore, the SAME Act violates the constitutional rights guaranteed to the Marianos by the Due Process Clause because the Act forbids the Marianos to act upon their constitutional right without propelling a legitimate state interest.

Here, the State of Lincoln fails to provide a legitimate government interest when enacting the SAME Act. The State contends the interest is prohibiting children from experimental medical procedures, but this alleged interest cannot be recognized as a legitimate state interest. The decision to seek gender affirming treatment is one that was reached by Jess, the Marianos, a pediatrician, and a psychologist. R. at 5. After careful consideration, the Marianos developed a treatment plan that they believed, along with medical advice, was in the best interest of their child, Jess. Allowing the State of Lincoln to prohibit this necessary treatment for Jess would be detrimental and unconstitutional. The SAME Act is unjust and burdensome due to the lack of a legitimate state interest and therefore, it cannot outweigh the constitutional right of the Marianos who are seeking to properly exercise their fundamental rights granted by the Due Process Clause. Therefore, the SAME Act is a direct violation of the Marianos' Substantive Due

Process Rights because it attempts to deny the Marianos from exercising constitutional rights without providing a legitimate state interest.

Therefore, the Marianos have a fundamental, constitutional right to seek proper medical treatment for their child, Jess, and the SAME Act violates this constitutional right by prohibiting access to such treatment without providing a legitimate state interest for such denial.

B. The Preliminary Injunction Was Properly Granted in Regard to the Respondents' Equal Protection Claim Because the SAME Act is Subject To and Fails Heightened Scrutiny.

When courts review an equal protection claim, the first step is to determine the appropriate level of review. *Att'y Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 906 (1986). The SAME Act should be reviewed using heightened scrutiny because it discriminates based on transgender status and sex. The SAME Act is subject to heightened scrutiny because it prohibits access to medical care based on the minor's transgender status and sex. 20 LINC. STAT. §1203. The State's alleged government interests do not justify solely prohibiting gender-affirming care for transgender minors. If the State had a legitimate concern for protecting minors from alleged "experimental" and life-changing medical treatment, it would ban the treatments for all minors, not just those who are seeking care for a gender other than their biological sex. The SAME Act fails both heightened scrutiny and rational basis review because its purpose and practical effect is to discriminate against transgender individuals.

1. The SAME Act is subject to heightened scrutiny because it discriminates on the basis of sex.

The SAME Act warrants heightened scrutiny because it treats individuals differently based on their sex assigned at birth. "It is impossible to discriminate against a person for being…transgender without discriminating against that individual based on sex." *Bostock v. Clayton Cnty*., 140 S. Ct. 1731, 1741 (2020). Under the SAME Act, a girl could receive testosterone suppressants to better align her physical characteristics with her gender identity if her assigned sex at birth was female, but not if her assigned sex at birth was male. This is because that type of treatment would be considered "gender transition" treatment, inconsistent with her male sex. Although both girls in this case would be seeking gender-affirming treatment, the SAME Act would treat them differently based on their assigned sex at birth, which is clear sex discrimination. *See Bostock*, 140 S. Ct. at 1741-42 (when an "employer intentional penalizes a person identified as male at birth for traits or actions that it tolerates in an employee identified as female at birth…sex plays an unmistakable and impermissible role in the [employer's] decision").

The SAME Act further discriminates based on sex by condemning transgender minors for simply not conforming to social norms that "presume that men and women's appearance and behavior will be determined by their sex" assigned at birth. *See Grimm v. Gloucester Cty. Sch. Bd*., 972 F.3d 586, 608 (8th Cir. 2020). The only minors that are seeking the certain types of gender-affirming care deemed unlawful by the SAME Act are inherently transgender minors. Treating an individual less favorably because they do not conform to gender expectations is

evidence of sex discrimination. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 236 (1989).

2. The SAME Act is subject to heightened scrutiny because it discriminates against transgender youth on the basis of their transgender status.

Gender-based classifications warrant heightened scrutiny. *United States v. Virginia*, 518 U.S. 515, 555 (1996). If transgender status equates to a sex-based classification for the purposes of the Equal Protection Clause, then the SAME Act would be subject to intermediate scrutiny. *Id*. at 516. By definition, a transgender person is someone whose gender identity is different from their sex assigned at birth. Merriam-Webster Unabr. Dictionary (3rd ed. 2002) ("Transgender: A transgender person is one whose gender identity is different from the sex the person had or was identified as having at birth.") When a transgender individual experiences distress due to the conflict between their gender identity and their sex assigned at birth, the accepted medical protocols are to treat the patient to help them live in accordance with their gender identity. Under the SAME Act, any medical care related to gender transition is prohibited for patients under eighteen years old. By facially targeting gender transition—a process and set of medical treatments that only transgender people undergo—the statute discriminates on the basis of transgender status.

The Fourth and Ninth Circuits have recognized that transgender people are a quasi-suspect class under the Equal Protection Clause and that discrimination based on transgender status is subject to heightened scrutiny. *Grimm*, 972 F.3d at

611-13; *Karnoski v. Trump*, 929 F.3d 1180, 1200 (9th Cir. 2019). Those courts reasoned that transgender people meet all the considerations triggering heightened scrutiny under Supreme Court precedent: (1) they have historically been subject to discrimination; (2) they have a defining characteristic that bears no relation to a person's ability to contribute to society; (3) they may be defined as a discrete group by obvious, immutable, or distinguishing characteristics; and (4) they are a minority group lacking political power. *See Grimm*, 972 F.3d at 611-13; *Karnoski*, 926 F.3d at 1200-01.

First, as quoted in *Grimm*, "[t]here is no doubt that transgender individuals historically have been subjected to discrimination on the basis of their gender identity, including high rates of violence and discrimination in education, employment, housing, and healthcare access." *Grimm*, 972 F.3d at 611. Second, transgender individuals also have a defining characteristic with no relation to their ability to contribute to society. Medical, mental health, and public health organizations all agree that being transgender has no negative effect on an individual's abilities or rational judgment. *Id.* at 612. Third, transgender people make up their own discrete group with immutable characteristics. *Id.* at 612-13 (explaining "that gender identity is formulated for most people at a very early age," and that "being transgender is not a choice," but "is as natural and immutable as being cisgender"). Finally, transgender people make up less than 1% of adults in the United States and are underrepresented politically. *Id.* at 613. Because transgender

people satisfy all of the requirements to be considered a quasi-suspect class, heightened scrutiny applies.

The Supreme Court has previously applied heightened scrutiny even in cases where it refuses to find a quasi-suspect class. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 441 (1985). The Supreme Court has also imposed a more exacting scrutiny on state laws that impose a special disability on children for something that is beyond their control. *Plyer v. Doe*, 457 U.S. 202, 210 (1982). Under the SAME Act, children with gender dysphoria are denied access to medical and surgical treatments that are not denied to children who do not seek treatment for gender dysphoria. 20 LINC. STAT. §1203.

Because only transgender people are affected by the Act, an intent to target transgender people as a class can be presumed. See *Bray v. Alexandria Women's Health Clinic,* 506 U.S. 263, 270 (1993) ("Some activities may be such an irrational object of disfavor that, if they are targeted, and if they also happen to be engaged in exclusively or predominantly by a particular class of people, an intent to disfavor that class can readily be presumed"). Although the Act does not specifically refer to transgender individuals, it does refer to gender-transition treatment, which is only sought by transgender people. Thus, because the SAME Act discriminates against transgender people, the statute triggers heightened scrutiny.

3. The SAME Act cannot survive heightened scrutiny because it is not substantially related to a government interest.

In order to satisfy heightened scrutiny, the State has the burden of proving that its classification serves important governmental objectives and that the

discriminatory means employed are substantially related to the achievement of those objectives. *Miss Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982). The State is alleging that the government's interest is in protecting children from experimental medical treatments and protecting children from making life-changing decisions based on peer pressure. 20 LINC. STAT. § 1201(b)(1-3). In evaluating whether the SAME Act is substantially related to the State's goals, the Court "retains an independent constitutional duty to review [legislative] factual findings where constitutional rights are at stake." *Gonzales v. Carhart*, 550 U.S. 124, 165 (2007). Because the SAME Act is not substantially related to the government's alleged interest, the Act fails to survive the heightened scrutiny test.

i. The SAME Act is not substantially related to a government interest in protecting children from experimental medical treatments.

Because the treatments prohibited for transgender minors are permitted to treat non-transgender minors yet carry the same potential risks, the alleged interest in protecting minors does not satisfy heightened scrutiny. *See Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (striking down a contraception ban for single individuals where stated health-related risks applied equally to married people). While the SAME Act has "superficial earmarks as a health measure," protecting the health of children cannot "reasonably be regarded as its purpose." *Id.* at 452.

The gender-affirming treatments that are prohibited by the SAME Act have been deemed to be medically necessary by the World Professional Associations for Transgender Health ("WPATH"). *Position Statement on Medical Necessity of*

Treatment, Sex Reassignment, and Insurance Coverage in the U.S.A., WORLD PROFESSIONAL ASS'N FOR TRANSGENDER HEALTH (2016) https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH-Position-on-Medical-Necessity-12-21-2016.pdf. Additionally, the American Medical Association, American Psychiatric Association, and the American College of Obstetricians and Gynecologists have publicly called for medically necessary gender-affirming care to be covered by insurance. *Health Insurance Coverage for Gender-Affirming Care of Transgender Patients*, AM. MED. ASS'N (2019) https://www.ama-assn.org/system/files/2019-03/transgender-coverage-issue-brief.pdf.

Additionally, the same treatments that are prohibited when provided to transgender minors for gender-transition purposes are permitted when provided to cisgender minors for affirming their gender, despite having the same potential risks. For example, the puberty-delaying drugs that would be prohibited for use by transgender minors with gender dysphoria to assist with gender transitioning would be allowed to delay puberty for minors with central precocious puberty (puberty starting prior to age 8 in children assigned female at birth and prior to age 9 in children assigned male at birth). The SAME Act similarly prohibits hormone therapy for transgender minors because the treatment is used to assist with gender transition, but the same hormone therapy treatment is allowed for cisgender patients. 20 LINC. STAT. §1203. The same treatments that are permitted for

cisgender minors—often to affirm their gender—are banned if provided to transgender minors for the exact same reason.

Multiple studies have shown that gender-affirming treatment drastically helps the mental health and well-being of those with gender dysphoria. *Health Insurance Coverage for Gender-Affirming Care of Transgender Patients*, AM. MED. ASS'N (2019). The California Department of Insurance determined in a study that providing trans-inclusive care reduced suicide attempts and improved the mental health of affected communities. *Id.* The psychological benefits of gender-affirming care also include lower rates of substance abuse. *Id*. Rather than protecting the health and well-being of minors, the SAME Act threatens the health and safety of transgender minors by denying them access to medically necessary care and treatment. At a bare minimum, heightened scrutiny requires that a law advance an important governmental interest, not impede it. *Virginia*, 518 U.S. at 523. The SAME Act fails this test.

ii. The Same Act is not substantially related to a government interest in protecting children from making life-changing decisions based on peer pressure.

The SAME Act targets minors who have had a medical diagnosis of gender dysphoria and met rigorous criteria for treatment under the guidelines. The medical care banned by the SAME Act is part of well-established medical protocols for the treatment of minors with gender dysphoria, and is recognized as safe and effective by the medical community. *Health Insurance Coverage for Gender-Affirming Care of Transgender Patients*, Am. Med. Ass'n (2019). These accepted medical protocols are

recognized by major medical professional groups in the United States, including the American Medical Association, The American Academy of Pediatrics, the Endocrine Society, and the American Academy of Child and Adolescent Psychiatry. *Id*. These groups have all asserted that gender-affirming treatments such as those prohibited by the SAME Act are safe, effective, and medically necessary for minors with gender dysphoria.

Puberty blockers, which are prohibited by the act for gender-transition purposes, specifically are only effective when prescribed to pubescent and pre-pubescent youth. *Most Gender Dysphoria Established by Age 7*, CEDARS SINAI (2020) https://www.cedars-sinai.org/newsroom/most-gender-dysphoria-established-by-age-7-study-finds. Additionally, puberty blockers can be stopped at any time and the treatment's effects will be reversed and are thus not a "life-changing" decision. *Id*. The SAME Act would completely close the window in which puberty blocker treatment is effective.

4. The SAME Act cannot survive even rational basis review.

The SAME Act fails under any level of equal protection scrutiny. As addressed above, the alleged governmental justifications for banning gender-affirming medical care for transgender minors fail to make sense in light of how the State treats cisgender minors in need of the same treatments. There is no rational basis to conclude that permitting transgender minors to receive gender-affirming care would "threaten legitimate interests of [the State] in a way that," allowing the same treatments for cisgender youth, "would not." See *City of Cleburne*, 473 U.S. at 448

(invalidating a zoning law barring homes for disabled adults, because of all the asserted rationales—such as concerns about traffic—applies to other types of multiple-resident dwellings that were not prohibited); *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 533 (1973) (irrationally excluding one type of household from access to food stamps violated the Equal Protection Clause); *Lindsey v. Normet*, 405 U.S. 56, 77 (1972) (when a right is granted "it cannot be granted to some and capriciously or arbitrarily denied to others without violating the Equal Protection Clause").

For the above reasons, Respondents are likely to succeed on their Equal Protection claim and the preliminary injunction was properly granted.

CONCLUSION

For the aforementioned reasons, Respondents Jess, Elizabeth and Thomas Mariano, respectfully request that the Court affirm the decision of the United States Court of Appeals for the Fifteenth Circuit.

Respectfully Submitted,

/s/_____
Team 3109
Counsel for the Respondents
Jess, Elizabeth and Thomas Mariano

APPENDIX A

Stop Adolescent Medical Experimentations ("SAME") Act, 20 LINC. STAT. §§ 1201-06

20-1201 Findings and Purposes

(a) Findings:
The State Legislature finds -

(1) Lincoln has a compelling interest to ensure the health and safety of its citizens, in particular that of vulnerable children.

(2) Gender dysphoria is a serious mental health diagnosis experienced by a very small number of children.

(3) Many cases of gender dysphoria in adolescents resolve naturally by the time the adolescent reaches adulthood.

(4) There is as of yet no established causal link between use of medical treatments for so- called "gender affirming care," such as puberty blockers, sex hormones and reassignment surgery, and decreased suicidality. Studies demonstrating health benefits of these treatments have not been sufficiently longitudinal or randomized.

(5) Emerging scientific evidence shows potential harms to children from gender transition drugs and surgeries, including but not limited to risks related to irreversible infertility, cancer, liver disfunction, coronary artery disease, and bone density.

(6) Parents and adolescents often do not fully comprehend and appreciate the risks and life complications that accompany these surgeries, such as the loss of fertility and sexual function, and may not be able to give informed consent to the treatments.

(7) Individuals who have detransitioned (decided to stop identifying as transgender) have expressed regret for taking puberty-suppressing medications and cross-sex hormones and identified "social influence" as playing a significant role in their decision to identify as a different sex.

(8) There are conventional and widely-accepted methods to treat gender dysphoria that do not raise informed consent and experimentation concerns. Conventional psychology may safely and effectively guide a dysphoric youth to stability while deferring decisions on often irreversible medical gender affirming treatments until adulthood.

(b) Purposes:
It is the purpose of this chapter –

(1) To protect children from risking their own mental and physical health and lifelong negative medical consequences that could be prevented by receiving a more conventional treatment of their gender dysphoria.

(2) To encourage treatments supported by medical evidence and discourage harmful, irreversible medical interventions.

(3) To protect against social influence surrounding gender affirmation treatments, which is especially concerning given the potential life-altering effects of gender transition drugs and surgeries.

20-1202 Definitions

The Act defines –

(1) "Adolescent" as the phase of life between childhood and adulthood, from ages 9 to 18.

(2) "Healthcare provider" as a person or organization licensed under Chapters 15 and 16 of the Lincoln Code to provide healthcare services.

(3) "Puberty" as the time of life when a child experiences physical and hormonal changes that mark a transition into adulthood. The child develops secondary sexual characteristics and becomes able to have children.

(4) "Puberty blocking medication" as medications that prevent the body from producing the hormones that cause the physical changes of puberty.

(5) "Sex" as the biological state of being male or female, based on the individual's sex organs, chromosomes, and endogenous hormone profiles.

20-1203 Prohibition on Certain Gender Transition Treatments

No healthcare provider shall engage in or cause any procedure, practice or service to be performed upon any individual under the age of eighteen if the procedure, practice or service is performed for the purpose of instilling or creating physiological or anatomical characteristics that resemble a sex different from the individual's biological sex, including without limitation to:

(a) Prescribing or administering puberty blocking medication to stop or delay normal puberty.

(b) Prescribing or administering supraphysiologic doses of testosterone or other androgens to females or prescribing or administering supraphysiologic doses of estrogen to males.

(c) Performing surgeries that artificially construct genitalia tissue or remove any healthy or non-diseased body part or tissue, except for a male circumcision.

20-1204 Enforcement

(A) The attorney general may bring an action to enforce compliance with this chapter. Nothing in this chapter shall be construed to deny, impair, or otherwise affect any right or authority of the attorney general, the state, or any agency, officer, or employee of the state, acting under any provision of the Lincoln Code, to institute or intervene in any proceeding.

(B) Any healthcare provider found to have knowingly and willingly violated the provisions of the chapter shall have committed a class 2 felony punishable by civil fines up to and including $100,000 or imprisonment of not less than two years and not more than ten years.

20-1205 Unprofessional conduct of healthcare providers

Any provision of gender transition procedures prohibited by 20-1203 to a person under eighteen years of age shall be considered unprofessional conduct and shall be subject to discipline by the licensing entity with jurisdiction over the healthcare provider.

20-1206 Effective Date

The provisions of this chapter shall take effect on January 1, 2022.