Team #3120

No. 22-8976

IN THE

Supreme Court of the United States

APRIL NARDINI, in her official capacity as Attorney General of the **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 RESPONDENTS

QUESTIONS PRESENTED FOR REVIEW

I. Whether the highly favored "serious questions" standard for preliminary injunctions survived this Court's refusal to establish a specific standard in *Winter*.

II. Whether a state act banning all gender-affirming treatments for transgender minors is unconstitutional under the Due Process and Equal Protection Clauses of the Fourteenth Amendment when a state provides unsubstantiated justifications based on inaccurate gender stereotypes.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Constitutional Provisions

Statutes

United States Supreme Court Cases

Federal Court of Appeals Cases

Federal District Court Cases

Other Authorities

CITATIONS OF THE OPINIONS AND JUDGMENTS IN COURTS BELOW

The Fifteenth Circuit's opinion, affirming the district court, has not yet been published in the Federal Reporter, but can be found as the Record on Appeal on Pages 23 through 34. Similarly, the district court's opinion, Case No. 21-cv-12120, has not yet been published but can also be found as the Record on Appeal on Pages 1 through 22.

CONSTITUTIONAL PROVISIONS AND POLICIES INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

The Stop Adolescent Medical Experimentation ("SAME") Act, 20. Linc. Stat. §§ 1201-06, is reproduced in pertinent part in **Appendix A**.

STATEMENT OF THE CASE

Jess Mariano, a fourteen-year-old, has battled suicidal ideations throughout his childhood because of his gender dysphoria. Record on Appeal (hereafter "R.") at 2. Gender dysphoria is a traumatizing mental health diagnosis causing affected individuals to feel unsafe in their own body because they strongly identify as the opposite sex. R. at 4. Often children diagnosed with gender dysphoria persistently suffer from depression, eating disorders, substance abuse, self-harm, and suicide. R. at 7. Jess, born biologically female, felt disconnected from his biological gender from a young age, causing him to identify as a male. R. at 4. For years, Jess endured severe anxiety and depressive episodes because of his gender disconnect, and even claimed that he did not "want to grow up if I have to be a girl." R. at 4-5. At merely eight years old, Jess' ongoing fight culminated when he attempted suicide by taking a handful of painkillers, saying he hoped to "never wake up." R. at 4. Following Jess' suicide attempt, he began regularly attending therapy, which he attends to this day. R. at 4.

In accordance with well-accepted medical guidelines, Jess' psychiatrist quickly diagnosed him with gender dysphoria and, along with his pediatrician, prescribed puberty blockers once Jess turned ten and began to show signs of puberty. R. at 4-5. As of today, Jess still relies on monthly puberty blocking medication. R. at 5. Jess' psychiatrist testified that since Jess began receiving treatment, his symptoms have been manageable, resulting in fewer episodes of depression from feelings of gender incongruence. R. at 5. Without access to puberty blockers for even a month, Jess' psychiatrist warned that his progress combatting depression and dysphoria will be detrimentally impacted because of the advancement of puberty. R. at 5. Looking forward, Jess' psychiatrist believes that hormone therapy and chest surgery will be necessary as Jess gets older. R. at 5. Now, the State of Lincoln threatens to destroy the hard-

fought progress Jess and other children have battled for by needlessly outlawing the life-saving medical treatments which Jess needs. R. at 5.

The Stop Adolescent Medical Experimentations Act

The State of Lincoln recently enacted the Stop Adolescent Medical Experimentations ("SAME") Act, 20 Linc. Stat. §§ 1201-06, in an effort by the legislature to ban necessary, and potentially lifesaving, healthcare treatments from patients fighting gender dysphoria. R. at 1. The Act explicitly prohibits healthcare providers from performing widely accepted gender dysphoria treatments for at-risk, minor children, including puberty blockers, hormone therapies, and surgeries "performed for the purpose of instilling or creating anatomical or physiological characteristics that resemble a sex different from the individual's biological sex." R. at 3-4. The overly broad and blatantly unconstitutional SAME Act punishes any healthcare provider who performs these crucial treatments with up to ten years in prison or a fine of up to $100,000. R. at 4.

Procedural History

Jess Mariano and his parents challenged the SAME Act in the United States District Court for the District of Lincoln, arguing enforcement violates their Due Process and Equal Protection rights as guaranteed by the Fourteenth Amendment to the United States Constitution. R. at 1. When the Marianos sought to enjoin the Act from going into effect, the District Court correctly issued an injunction because the balance of hardships strongly favored the Marianos, and they raised serious questions going to the merits of their claims. R. at 1, 22. The Fifteenth Circuit Court of Appeals affirmed the lower court's ruling, holding that the district court acted in its discretion by granting the Marianos' motion for a preliminary injunction. R. at 27. In a last-

ditch effort to enforce a damaging and unconstitutional statute, the State has now appealed to this Court to advance unsubstantiated and frivolous arguments. R. at 35.

SUMMARY OF THE ARGUMENT

The district court and the Fifteenth Circuit below correctly determined that this Court's holding in *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008) did not reject the "serious questions" standard for whether to grant a preliminary injunction. The lower courts properly applied the serious questions standard and determined that an injunction was necessary to protect the Marianos, who raised serious questions going to the merits of both their Due Process and Equal Protection Clause claims.

First, the lower courts correctly applied the serious questions approach for a preliminary injunction. This Court's decision in *Winter* did not invalidate the flexible approaches used by a majority of circuits. The *Winter* Court merely struck down the Ninth Circuit's "possibility of irreparable harm" standard, which is conceptually separate from the serious questions standard. This Court consistently refuses to mandate one preliminary injunction standard and should not upheave precedent by doing so now.

Second, the lower courts properly applied elements of the serious questions test and found that public policy, in conjunction with the balance of hardships, tipped in favor of the Marianos, and risked great irreparable harm to Jess. Restricting treatment to Jess will undoubtedly cause regression in his gender dysphoria, anxiety, and depression. The risk of irreparable harm is tremendous in this case for similar reasons; if Jess is denied treatment, he will quickly develop female sex characteristics during puberty, which will destroy the hard-fought progress he has already made and set his treatment back years.

Third, the Marianos have raised sufficiently serious questions going to the merits of their due process claim. Constitutional due process protects fundamental liberty interests such as the right of a parent to decide their own child's care and medical treatment. The SAME Act violates the Marianos' fundamental right to make healthcare decisions for Jess because the State denies the Marianos access to data-proven and medically accepted treatments for Jess' condition. Therefore, the SAME Act is subject to strict scrutiny and must be narrowly tailored to serve a compelling government interest. The State of Lincoln cannot meet this burden because the Act is overly broad, and the State's interest is tenuous at best.

Fourth, even if this Court puts aside the Marianos' due process argument, they have still raised sufficiently serious questions going to the merits of their equal protection claim. The SAME Act triggers the Equal Protection Clause by classifying based on transgender status, which equates to sex discrimination. Legislation that discriminates based on sex is inherently suspect, and subject to intermediate scrutiny. The SAME Act fails intermediate scrutiny because the State does not have an exceedingly persuasive interest to advance that is substantially related to its arbitrary objectives.

Therefore, this Court should affirm the Fifteenth Circuit Court of Appeals.

ARGUMENT

Preliminary injunctions are one of the most critical tools offered by the court system and serve the essential purpose of "preserv[ing] the status quo until the merits of the controversy can be fully and fairly adjudicated." *Ne. Fla. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1284 (1990). Executed at a court's discretion, a preliminary injunction is an order to perform or refrain from performing an adverse act before a court decides the merits. *Injunction, Black's Law Dictionary* (11th ed. 2019).

Although all courts agree that a preliminary injunction is an important tool in their arsenal of equitable remedies, different circuits apply different tests. In *Winter*, this Court ruled against the Ninth Circuit's preliminary injunction test. 555 U.S. at 22 (2008) (holding "the Ninth Circuit's 'possibility' standard is too lenient"). Since this Court's holding in *Winter*, a circuit split has developed on how the case should be read. *See Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30 (2d Cir. 2010); *Real Truth About Obama, Inc. v. Fed. Election Com'n.*, 575 F.3d 342 (4th Cir. 2009). The lower courts below correctly construed *Winter* and determined that the serious questions standard for preliminary injunctions is still viable in the post-*Winter* world. Applying the serious questions standard, the district court ruled for the Marianos on both their equal protection and due process claims, granting the requested preliminary relief. This Court should affirm both the district court and the Fifteenth Circuit Court of Appeals' holding because (1) the serious questions standard is still viable after *Winter* and (2) under both the Equal Protection and Due Process Clauses of the United States Constitution, the SAME Act fails constitutional muster.

I. Because *Winter* did not overrule the "serious questions" standard, the district court properly exercised its discretion and correctly applied a flexible approach when granting the Marianos' preliminary injunction.

Neither this Court nor the Federal Rules of Civil Procedure have established a specific standard for granting a preliminary injunction, however, the following factors are relevant to the analysis: (1) the moving party's likelihood of success on the merits; (2) the likelihood that the moving party will suffer irreparable harm absent preliminary injunctive relief; (3) the balance of harms between the moving party and the non-moving party; and (4) the effect of the injunction on the public interest. *Winter*, 555 U.S. at 20. In applying these factors, circuit courts

implement varying tests. Fed. R. Civ. P. 65. Few circuits still adhere to the "traditional test," under which a movant must establish all four elements independently to obtain a preliminary injunction. *See Snook v. Trust Co. of Georgia Bank of Savannah, N.A.*, 909 F.2d 480, 483 (11th Cir. 1990); *Concerned Women for Am. Inc. v. Lafayette Cnty.*, 883 F.2d 32, 34 (5th Cir. 1989). Alternatively, most courts apply a more flexible "Balancing Test," under which the decision to grant a preliminary injunction depends on a "flexible interplay" among all of the four factors. *Blackwelder Furniture Co. of Statesville, Inc. v. Seilig Mfg. Co., Inc.*, 550 F.2d 189, 196 (4th Cir. 1977); s*ee D.T. v. Sumner Cnty. Sch.*, 942 F.3d 324, 326 (6th Cir. 2019); *Christian Louboutin S.A. v. Yves Saint Laurent Am. Holdings, Inc.*, 696 F.3d 206, 215 (2d Cir. 2012); *Hoosier Energy Rural Elec. Co-op., Inc. v. John Hancock Life Ins. Co.*, 582 F.3d 721, 725 (7th Cir. 2009). Some courts apply the "Balancing Test" by utilizing the serious questions approach, which grants a preliminary injunction when "it cannot [be] determine[d] with certainty that the moving party 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." *Citigroup*, 598 F.3d at 35. The moving party must show serious questions going to the merits, as well as a balance of hardships tipping in its favor. *Id.*

A. The "serious questions" standard, which thrives in a multitude of circuits, survived Winter because this Court had every opportunity to reject it yet refused to mandate a test by focusing almost exclusively on the Ninth Circuits "irreparable harm" standard.

Over the course of several decisions, this Court deliberately refused to mandate one specific approach to apply when deciding preliminary injunction matters. *Nken v. Holder*, 556 U.S. 418 (2009); *Munaf v. Geren*, 553 U.S. 674 (2008). Courts require the use of varying

approaches, including the serious questions approach, because early litigation is inherently difficult and complex. *Citigroup*, 598 F.3d at 34-35, 37-38 (holding a broker's request for a preliminary injunction, where hedge fund threatened to initiate arbitration, warranted the application of the serious questions approach, given that this Court has never foreclosed such approach).

In *Winter*, this Court did not reject the serious questions approach in. *Winter*, 555 U.S. at 22. Rather, it exclusively focused on the Ninth Circuit's "conceptually separate 'possibility of irreparable harm' standard." *Citigroup*, 598 F.3d at 37. The Ninth Circuit incorrectly found that because the environmental agencies showed a strong likelihood of success on the merits, they must only show a possibility of irreparable injury if denied a preliminary injunction. This Court reversed such finding, holding that the environmental agencies were not entitled to a preliminary injunction when seeking to enjoin the U.S. Navy from using mid-frequency sonar to prevent potential harm to marine mammals; rather, a movant must show a likelihood, instead of a possibility, of irreparable harm. *Winter*, 555 U.S. at 22. Justice Ginsburg's dissent reaffirms that the court has never rejected the sliding scale approach and "did not do so" in *Winter*. *Id.* at 51 (Ginsburg, J., dissenting).

After *Winter*, numerous circuits persist in using variations of the balancing test, including the serious questions approach in determining whether to grant a preliminary injunction. *See D.T.*, 942 F.3d at 327; *A.C.L.U. v. Clapper*, 785 F.3d 787, 825 (2d Cir. 2015) (finding courts may apply either the traditional four-part approach or the serious questions approach, but ultimately choosing to apply the serious questions approach); *All. For The Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32, 1139 (9th Cir. 2011) (granting a preliminary injunction); *Greater Yellowstone Coal. v. Timchak*, No. 08-36018, 2009 WL 971474 (9th Cir. 2009) (granting a

preliminary injunction); *Hoosier*, 582 F.3d at 725 (choosing to apply a balancing test, reasoning "the more net harm an injunction can prevent, the weaker the claim on the merits can be while still supporting some preliminary relief").

This Court does not require the district court to apply one specific standard for granting the Marianos' preliminary injunction. In *Nken* and *Munaf*¸ this Court encountered a preliminary injunction issue yet declined to issue a mandatory test and allowed the lower courts discretion in choosing which standard to apply. Here, the district court used such given discretion by choosing to follow the serious questions approach. R. at 9. Had this Court wanted to restrict the circuits' discretion, it would have taken the opportunities presented before it in both *Munaf* and *Nken* to overrule the serious questions approach. Akin to the complex factual background presented in *Citigroup*, where complex litigation arose to halt a hedge fund's threatened arbitration against a broker, the Marianos dispute a statute heavily restricting access to gender-affirming care from trained healthcare providers throughout the state. R. at 8. Both this Court and the district court correctly identified the need for flexible approaches, like the serious questions approach, when evaluating preliminary injunctions in order to address the wide variety of circumstances posed by diverse litigants.

As this Court did not overrule the serious questions approach in *Winter*, the district court had the right to choose the serious questions standard. Like the environmental agencies who needed to show a likelihood of irreparable harm, rather than a mere possibility of harm, when seeking to enjoin the Navy, the Marianos demonstrated a likelihood of immediate and irreparable harm because the discontinuation of Jess' medical treatment would cause serious mental distress and a setback in his gender transitioning progress. R. at 24. The district court correctly followed *Winter*'s only applicable precedent, the possibility of irreparable harm standard. Left with full

discretion to proceed with the analysis of its choice, the district court applied a flexible approach when weighing equities, public interest, and whether the likelihood of immediate harm to Jess—by discontinuing his treatment—outweighed the alleged harm Lincoln would suffer from an injunction. Even more, Justice Ginsburg's dissent in *Winter*, confirming that this Court never rejected the balancing approach, clarifies that the district court had full discretion in choosing an approach.

After *Winter,* the serious questions approach remains valid and actively used by a multitude of circuits, including the Fifteenth Circuit. The widespread adoption of the approach, as evidenced by the Second Circuit in *A.C.L.U.*, the Ninth Circuit in *Wild Rockies*, the Sixth Circuit in *D.T.*, and the Seventh Circuit in *Hoosier*, demonstrates its continuing validity; the Fifteenth Circuit paralleled this overwhelming majority's position that the standard remained flexible post *Winter*. Even with the choice between the traditional four-part approach or the serious questions approach, the court in *A.C.L.U.* opted to implement the serious questions approach, further indicating the preference for the serious questions approach among circuits. Accordingly, the district court did not abuse its discretion by electing to apply the serious questions approach.

Thus, the lower court correctly found that the serious questions standard survived *Winter*.

B. This Court must affirm the district court's application of the serious questions approach because the Marianos demonstrated an irreparable harm to Jess' gender transition, in conjunction with a balance of hardships tipping decidedly in their favor, and a significant public policy interest that affects transgender children across the country.

Under the serious questions test, a movant must show a balance of hardships tipping decidedly in their favor, irreparable harm, and that the injunction would be in the public interest, along with the serious questions as to the merits. *Sperry Intern Trade, Inc. v. Gov't. of Israel*, 670 F.2d 8, 11 (2d Cir. 1982); *Caribbean Marine Serv. Co. Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (finding the public interest factor pertinent across all preliminary injunction tests); *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc*., 596 F.2d 70, 72 (2d Cir. 1979). When the government is a party to the case, the balance of hardships factor merges with the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014); *see Padilla v. Immigr. and Customs Enf't*, 953 F.3d 1134, 1141, 1148 (9th Cir. 2020) (merging the balance of hardships and public interest factors to find a partial preliminary injunction against United States Immigration and Customs Enforcement).

A claim satisfies the public interest factor if there are no means by which both interests can be reasonably accommodated. *Porretti v. Dzurenda*, 11 F.4th 1037, 1042-43, 1052 (9th Cir. 2021) (granting a preliminary injunction where the government's financial burden of providing psychological medication to a prisoner could not be accommodated without negative impact to the prisoner's psychotic symptoms or the dignity of incarcerated individuals); *see also Indigo Room, Inc. v. City of Fort Myers*, 710 F.3d 1294, 1298-99 (11th Cir. 2013); *Caribbean*, 844 F.2d at 677. The public interest analysis focuses on the impact on non-parties. *League of Wilderness*

Defenders/Blue Mountains Biodiversity Project v. Connaughton, 752 F.3d 755, 766 (9th Cir. 1994); *see Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (denying a preliminary injunction where a political party had other means available for registering veterans to vote, reasoning society was not adversely affected by a geographic limitation on voter registration).

To satisfy the irreparable harm standard, the movant must show an injury "both certain and immediate," not "speculative or theoretical." *D.T.*, 942 F.3d at 326-27 (finding no certain injury where parents sought an injunction against the state wanting the ability to freely remove their autistic son from school, because their claims were based on a hypothetical fear of future prosecution). An injury is irreparable when monetary awards cannot be adequate compensation. *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338-39 (5th Cir. 1981) (granting a preliminary injunction where no monetary award can replace the loss of first amendment freedoms of female patients denied access an abortion facility by the city commission).

Here, the Marianos surpassed their burden under the serious questions approach by definitively proving the public interest necessitates the injunction and that they would suffer irreparable harm in its absence. Undeniably, the State of Lincoln is an essential party to the case and the embodiment of a government entity. As merged by the court in *Padilla*, where a preliminary injunction was awarded against the United States Immigration and Customs Enforcement, the balance of hardship factor blends into the public interest factor in this Court's analysis.

The public interest demands a preliminary injunction restricting the SAME Act. Lincoln and the Marianos' interests stand in direct conflict with one another and cannot both be reasonably accommodated. As in *Poretti*, where the government's financial burden of providing psychological medication directly harms prisoners' mental states and dignity, the State's

purported interest in limiting access to gender-affirming treatments directly and immediately harms Jess and others like him. R. at 3. As cited by his pediatrician and psychiatrist, Jess has no alternative treatment options for puberty blockers and future chest surgery because of his overwhelming identification as a boy, and his desperate cries to "not want to grow up" as a girl. R. at 4-5.

The State defends the SAME Act on the grounds of protecting children, when, in actuality, it imposes severe mental and physical challenges upon children facing gender dysphoria. R. at 3. Leaving our country's youth plagued by gender dysphoria amplifies the anxiety, depression, eating disorders, substance abuse, self-harm, and potential for suicide among this vulnerable group. R. at 7.

This Court's decision impacts not only Jess, but all children seeking gender reassignment procedures throughout the country. This case distinguishes from *Preminger*, where a political party was denied an injunction because other means existed for registering veterans to vote; society was not adversely affected by the geographic limitation on voter registration, whereas here, countless children will be deprived of much-needed gender dysphoria treatment if the SAME Act is implemented. R. at 7. Once a transgender child begins puberty, hormone suppressants become necessary to reach favorable mental health outcomes. R. at 6. Stripping transgender children of this vital treatment has an impact that will be felt much further than the parties before this Court today.

Additionally, the Marianos proved that the balance of irreparable harm falls in their favor because Jess will suffer a certain and immediate injury that cannot be compensated monetarily. The medical community has found care such as gender-affirming hormones and genital surgery among the best practices for treating gender dysphoria. R. at 6. According to his psychiatrist,

the effects of discontinuing Jess' treatment would be grave because even a month of interruption of his treatment could allow puberty to advance and substantially undermine his treatment progress. R. at 5. Jess' injury would be both certain and immediate, not speculative or theoretical, unlike the injury alleged in *D.T.*, by parents who wanted the ability to freely remove their autistic son from school without threat of hypothetical prosecution. Such unfounded fears do not create the certainty needed to demonstrate irreparable injury.

No monetary award will undo the negative effects of interrupting Jess' gender affirming therapy. Similar to *Deerfield*, where the loss of first amendment freedoms of female patients could not be replaced by mere dollars and cents, no amount of money can treat Jess' severe gender dysphoria. Enjoining the SAME Act will remedy the inevitable damage done to Jess by the State of Lincoln.

Thus, the lower courts correctly determined that the Marianos satisfied the public interest, balance of hardships, and irreparable harm factors.

II. The SAME Act violates the Marianos' due process and equal protection rights, therefore necessitating a preliminary injunction to stop irreversible harm to Jess' wellbeing.

With all other preliminary injunction factors heavily favoring the Marianos, the only remaining question is whether they have raised sufficiently serious questions going to the merits of their constitutional claims.

The Due Process Clause and Equal Protection Clause of the Fourteenth Amendment have always protected fundamental American liberties. *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). Within the family unit, the role of parents in raising their children is "established beyond debate as an enduring American tradition."

Wisconsin v. Yoder, 406 U.S. 205, 232-33 (1972). Moreover, discrimination against a transgender individual classifies as sex discrimination because being transgender contravenes gender stereotypes. *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011).

The SAME Act violates the Fourteenth Amendment's Due Process Clause because it prevents the Marianos from accessing well-established, data-proven treatment, which Jess needs as he struggles to cope with his gender dysphoria. Additionally, the Act violates the Fourteenth Amendment's Equal Protection Clause because it makes a sex-based classification by blocking Jess from accessing gender-affirming treatment based on his transgender status.

A. The SAME Act is subject to strict scrutiny because it violates the Marianos' fundamental due process right as parents to choose Jess' gender affirming treatment, and the State fails to meet this extremely high burden.

The Due Process Clause necessitates that no state "shall deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Due process protects against government violations of fundamental rights and liberty interests, encompassing "the personal intimacies of the home, the family, marriage, motherhood, procreation, and child rearing." *Washington v. Glucksberg*, 521 U.S. 702, 719-20 (1997); *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 65 (1973) *citing Abigail All. for Better Access to Developmental Drugs v. von Eschenbach*, 495 F.3d 695, 710-11 (D.C. Cir. 2007). The right of a parent to decide their child's medical treatment based on physicians' medical advice is one of the oldest fundamental liberty interests recognized by this Court. *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000); *Parham v. J.R.*, 442 U.S. 584, 604 (1979). Legislation that lacks a "reasonable relation to some

purpose" within the state's control may not infringe on this constitutional right. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925).

The SAME Act violates the Marianos' constitutional rights under the Due Process Clause to obtain medical treatment for their child and is therefore subject to strict scrutiny. The State has no legitimate interest in preventing children with gender dysphoria from accessing data-proven and widely accepted treatments. The mere existence of concerns surrounding gender-affirming care does not remove the Marianos' power to choose whether Jess has access to the treatment. The SAME Act is not sufficiently tailored to serve a compelling interest, rather the State's purported interests are based on traditional assumptions and mischaracterizations of transgender individuals. The Act fails to use the least restrictive means necessary to achieve its stated purposes, employing broad and clunky strokes based on little scientific or medical evidence. Therefore, the SAME Act cannot hurdle the extremely high bar of strict scrutiny.

1. The SAME Act must be subject to strict scrutiny because parents have a fundamental right to obtain data-proven and widely accepted medical treatments for their child.

The medical field's widely accepted standards of care recommend that clinicians treat children suffering from gender dysphoria with pubertal hormonal suppression once they reach puberty. World Pro. Ass'n for Transgender Health ("WPATH"), *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*, 10-21 (7th ed. 2012); *see De'lonta v. Johnson*, 708 F.3d 520, 522-23 (4th Cir. 2013) (using the *Standards of Care* to find inmate's sex reassignment surgery nonexperimental and "an accepted, effective, and medically indicated treatment" when gender dysphoria persisted after over a year of "hormone therapy and living in [her] identified gender role"); *see also Edmo v. Corizono, Inc.*, 935 F.3d

757, 770-71 (9th Cir. 2019) (finding that a state correctional facility and medical staff violated transgender prisoner's constitutional rights by failing to provide her with gender confirmation surgery). However, individuals do not have a constitutional right to procure ineffective and unproven experimental drugs. *Abigail*, 495 F.3d at 710-11 (finding the right to self-defense does not create a right to "assume any level of risk without regard to scientific and medical-judgment" for terminally ill patients accessing new and insufficiently tested drugs).

This Court warns against constitutional constructions forming medical frameworks "unsound in principle and unworkable in practice." *Webster v. Reprod. Health Servs.*, 492 U.S. 490, 518-19 (cautioning against serving "as the country's ex officio medical board" when evaluating a statute regulating abortion). In areas of medical and scientific uncertainties, "legislative options must be especially broad." *Marshall v. United States*, 414 U.S. 417, 427 (1974) (holding that addicts with felony convictions are not denied due process by a federal act excluding them from consideration for rehabilitative commitment because the medical community lacks a consensus as to the methods' efficacy); s*ee also Gonzales v. Carhart*, 550 U.S. 124, 163 (2007) (upholding a partial-birth abortion ban act when deferring to the state's interest in promoting respect for human life throughout pregnancy).

Parents have an essential and basic civil right to raise their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (holding that a father had the right to a parental fitness hearing before having his children removed from his custody); *see also Wisconsin*, 405 U.S. at 232-33. While states have limited discretion to regulate health professions, the "custody, care and nurture" of a child should primarily reside with the parents, as their central "function and freedom include preparation for obligations [that] the state can neither supply nor hinder." *Barsky v. Bd. of Regents of Univ.*, 347 U.S. 442, 449 (1954); *see Pierce*, 268 U.S. at 535 (rejecting an act

mandating children of a certain age attend public school, reasoning that "the child is not the mere creature of the state," but rather parents have the right and duty to "direct his destiny").

Parents' fundamental right to obtain medical treatment for their child is not transferred to the state just because the treatment involves risks. *Parham*, 442 U.S. at 604 (state act permitted parents to voluntarily admit their minor children to mental hospitals with guidance from a physician because of the high risk of error in institutionalizing a child). When parents adequately care for their children, the state must refrain from "inject[ing] itself into the private realm of the family" and presume that parents act in their children's best interest. *Troxel*, 530 U.S. at 68-69; *Parham*, 442 U.S. at 602; *see Brandt v. Rutledge*, 551 F. Supp. 3d 882, 892 (E.D. Ark. 2021) (finding parents have a fundamental right to obtain gender dysphoria treatment for their transgender children based on a doctor's recommendation and with their child's consent).

The SAME Act erroneously targets data-proven and widely accepted gender-affirming treatments. These treatments are hardly comparable to the drugs in *Abigail*, when the court found that new, insufficiently tested drugs requested by terminally ill patients did not have an established tradition of access or proven safety; instead, the puberty blockers that Jess needs are commonly prescribed by physicians and have been in use since the 1980s. R. at 15. Despite this Court in *Gonzales* deferring to the state's decision in a case of medical uncertainty, this decision upholding an abortion ban act was only made in consideration of the respect for human life throughout a pregnancy, which is incomparable to an act preventing sentient transgender minors and their parents from accessing established medical treatment. Rather, the gender-affirming treatment sought by Jess resembles the care sought in *De'lonta* and *Edmo*, where courts found state prison policies unconstitutional when they declined to provide transgender prisoners with gender confirmation surgery because the policies blatantly contradicted WPATH Standards of

Care. These Standards, which contain widely accepted, evidence-based guidelines for the treatment of gender dysphoria, recommend that physicians treat children suffering from gender dysphoria with puberty blockers, which the Same Act recklessly restricts. R. at 4, 6. The wide acceptance of gender-affirming treatment differs from the lack of consensus in *Marshall*, where this Court found that addicts were not denied due process because of the contention within the medical community as to the efficacy of the methods denied to them. The SAME Act's ban of proven and effective treatments for gender dysphoria, based on the State's medical misconceptions and inaccurate characterizations, targets the health and wellbeing of transgender minors.

The Marianos' fundamental right as parents to choose medical care for their children is not eradicated by the State's inadequate concerns. The Marianos' desire to maintain access to the treatment for their child aligns with the decision in *Parham*, where this Court found that parents could voluntarily admit their children to a mental hospital, because the Marianos merely wish to obtain a widely accepted treatment for their child that has been approved by both his pediatrician and his psychiatrist. R. at 5. The Marianos' decision resembles the parents' decision in *Brandt* to obtain gender dysphoria treatment for their transgender child. Echoing the court's holding in *Brandt*, the Marianos have the fundamental right to make decisions on Jess' medical care in partnership with doctor recommendations and Jess' consent without state interference. In fact, this Court has repeatedly held that the primary care of children should reside with parents in many additional areas, including: their child's education, as seen in *Pierce* and *Wisconsin*; the raising of their child, as seen in *Stanley*; and admitting their child to a mental institution, as seen in *Parham*. The parents in each of these cases parallels the Marianos, as they

are all pursuing what they think is in the best interest of their children, which, as this Court has stated, should be presumed.

Thus, the SAME Act is subject to strict scrutiny.

2. The SAME Act fails to meet the high burden of strict scrutiny because it is not narrowly tailored to achieve any compelling state interest.

A state's interest in preserving the "historical and traditional status quo" fails to justify a restrictive statute. *Bostic v. Schaefer*, 760 F.3d 352, 380 (4th Cir. 2014). A statute must be narrowly tailored to achieve a compelling state interest in order to satisfy the extremely high bar of strict scrutiny. *Reno v. Flores*, 507 U.S. 292, 302-05 (1993) (holding that a federal act regulating the release of juvenile immigrants did not violate substantive due process on its face because narrow tailoring is required when a fundamental right is involved). "[S]trict scrutiny requires congruity between a law's means and its end." *Bostic*, 760 F.3d at 384 (finding state statute violated the Due Process Clause where it lacked congruity between its means of prohibiting same-sex marriage and its stated end of minimizing the number of same-sex couples raising children).

A statute must employ the "least restrictive means" necessary to achieve its purpose to satisfy strict scrutiny. *Holt v. Hobbs*, 574 U.S. 352, 364 (2015) (policy restricting prisoners' grooming was not the least restrictive means of achieving the officials' interest in preventing hidden contraband). If a less restrictive means is available, the state must use it. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 815 (2000) (holding government failed to show that requiring cable providers to ban certain channels during specific time periods was not the least restrictive means of protecting children from "signal bleed" when targeted blocking was also effective at achieving the government's purpose); s*ee also Stenberg v. Carhart*, 530 U.S. 914,

930 (2000) (holding restrictive abortion statutes unconstitutional because they failed to provide exceptions for the health of the mother).

While the State may claim a compelling interest in regulating the medical profession in this area, its interest is based on inaccurate assumptions about gender dysphoria and its associated treatments. Although transgender care is certainly a newer area of the medical field, it has been thoroughly researched and studied. R. at 5-7. As the court noted in *Bostic* when rejecting the state's cited interest of limiting the number of children raised by same-sex couples, the preservation of a traditional status quo without adequate supporting evidence is uncompelling. Like the court's finding in *Bostic*, the State's interest lacks factually supported interests to justify the SAME Act. The medical community widely accepts the treatments banned by the SAME Act because of their proven results and basis in research. R. at 5-7. In stark contrast, the State recklessly targets these treatments based on a minority viewpoint most prominently held in other countries. R. at 7-8.

Even still, the SAME Act is not narrowly tailored to achieve the State's interests. In *Bostic*, the court held that the state statute prohibiting same-sex marriage misaligned from the state's claimed purpose of limiting same-sex couples raising children because the ban would not rationally prevent same-sex couples from raising children. Similarly, the SAME Act's overly broad ban on gender-affirming treatments is not narrowly tailored to the State's cited purpose of protecting children from experimental treatment and regulating the medical profession, because it bans accepted, data-proven treatments that greatly help children. R. at 3. Because of the blanket ban in the Act, children like Jess no longer have access to medically recommended treatment that greatly benefits their mental health and well-being. Disrupting Jess' medical treatments for his gender dysphoria for even one month could undermine Jess' entire progress in

coping with his depression and gender dysphoria, an alarming consequence of the Act that can hardly be considered to achieve the state's purpose of protecting children. R. at 5. Moreover, if the State truly had such grave concerns about the safety and legitimacy of these treatments for children, then it would ban the treatment for all children, not just transgender children.

Further, the SAME Act does not use the least restrictive means available to achieve these interests. In *Stenberg*, this Court held an abortion statute unconstitutional because it failed to provide exceptions for the health of the mother. As shown in the study *Psychiatric Comorbidity in Gender Dysphoric Adolescents, Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, gender dysphoria can endanger adolescents' well-being if not treated. R. at 7. Like the direct and obvious consequences of failing to allow abortions in cases when the mother's health is at risk, preventing minors from accessing certain gender dysphoria treatments has proven to seriously threaten the lives of teenagers. *Id.* Mimicking this Court's reasoning in *Playboy*, where a broad channel ban was unnecessarily restrictive because targeted blocking was also effective, the State could have utilized less restrictive means to achieve its purpose by substituting its broad ban for more selective, case-specific restrictions. Similarly, in *Holt* this Court found that a strict policy restricting prisoners' grooming was unnecessarily restrictive to achieve prison officials' interest in preventing hidden contraband. Like the channel bans in *Playboy* and the excessively restrictive grooming policy in *Holt*, the SAME Act employs an overly broad ban of gender-affirming treatment for adolescents, which is unjustifiable in light of the shaky interests cited by the State.

Thus, the SAME Act fails strict scrutiny.

B. The SAME Act is subject to intermediate scrutiny because it violates Jess' right to equal protection by classifying him on the basis of sex, and the State fails to meet this burden.

The Equal Protection Clause 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 Equal Protection Clause prevents "arbitrary discrimination," whether by a statute's "express terms" or its "improper execution." *Sunday Lake Iron Co. v. Wakefield Twp.*, 247 U.S. 350, 352 (1918). The appropriate standard of review for governmental gender-based classifications is intermediate scrutiny. *See Craig v. Boren*, 429 U.S. 190 (1976). The Act's classification of Jess based on her transgender status equates to a sex-based classification because the state cannot discriminate against Jess based on his transgender status without discriminating against him based on sex. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1741 (2020). Even if this Court puts aside their Due Process argument, the SAME Act still violates Jess' equal protection rights and fails intermediate scrutiny because its sex-based classification unjustifiably discriminates against transgender individuals, which unsubstantially relates to the achievement of its cited objectives.

1. The SAME Act's classification based on a minor's transgender status equates to a sex-based classification under the Equal Protection Clause, therefore, it is subject to intermediate scrutiny.

A policy relying on sex-based stereotypes equates to a sex-based classification. *Frontiero v. Richardson*, 411 U.S. 677, 682-86 (1973) (finding federal statute's sex-based preference unconstitutional in part because it ignored the applicants' individual qualifications and instead classified them based on "immutable characteristics determined solely by the accident of birth"); *M.A.B.*, 286 F. Supp. 3d at 718 (D. Md. 2018) (policy prohibiting transgender

students from using boys' locker rooms was a sex-based classification). Regardless of whether a sex-based policy treats both genders the same way, it can violate the Equal Protection Clause. *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051-52 (7th Cir. 2017) (found school's policy barring transgender student from using the boys' bathroom unconstitutional, despite policy applying to both genders); *see also Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 609 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied*, 141 S. Ct. 2878 (2021) (requirement that all students use bathrooms based on their biological sex was a sex-based classification). A state cannot "discriminate against a person for being . . . transgender without discriminating against that individual based on sex." *Bostock*, 140 S. Ct. at 1741 (finding employer violated Civil Rights Act prohibiting discrimination based on sex by firing employees for identifying as homosexual or transgender).

The Equal Protection Clause prohibits states from regulating treatments among protected classes based on criteria "wholly unrelated to the object of that statute." *Reed v. Reed*, 404 U.S. 71, 75-76 (1971) (finding state statute giving preference to males when equally qualified persons filed competing petitions to administer estates depended solely on discrimination). Distinguishing between treatment purposes to determine permissibility is impossible to do without classifications based on sex and transgender status. *Brandt*, 551 F. Supp. 3d at 893 (holding state act which prohibited healthcare professionals from providing minors with gender transition procedures unconstitutional because it restricted referrals solely for such purposes) *applying Bostock*, 140 S. Ct. at 1741; *but see Hennessy-Walker v. Snyder*, 529 F. Supp. 3d 1031, 1039 (D. Ariz. 2021) (finding state health care was not obliged to cover mastectomies for gender transitions, despite covering the same procedure for other purposes, because a state is not obligated to pay for experimental medical procedures). Treatment differing between "similarly

situated people" in distinct classes establishes an equal protection claim if based on criteria unrelated to the statute's objective. *F.V. v. Barron*, 286 F. Supp. 3d 1131, 1140-41 (D. Idaho 2018) (state policy of categorically denying transgender individuals' applications for se changes on their birth certificates violated Equal Protection Clause because no such policy existed for non-transgender applicants).

The SAME Act's transgender-based classification equates to sex-based discrimination under the Equal Protection Clause. In *M.A.B.*, *Whitaker*, and *Grimm*, the court found that policies prohibiting transgender students from using the locker room of their respective gender identities were sex-based classifications because they relied on sex-based stereotypes. Similarly, the policies within the SAME Act are based on inaccurate sex-based stereotypes and severe misconceptions regarding the effects of gender-affirming treatments, rather than the consensus within scientific and medical communities on the issue of gender dysphoria and its appropriate treatments. R. at 6-7. By categorically denying transgender minors access to medically recommended treatment for their gender dysphoria, the Act punishes them for failing to conform to sex-based stereotypes. Furthermore, the Act ignores the individual circumstances of these children who are prevented access to treatments, which this Court in *Frontiero* found unconstitutional when analyzing a federal statute's sex-based preference, as it unjustly classifies individuals based on immutable characteristics determined by birth. Just like the firing in *Bostock*, targeting employees for identifying as homosexual or transgender, the SAME Act's targeting of transgender minors constitutes sex discrimination.

The SAME Act places a heavy burden on transgender minors by punishing them for seeking the same care afforded to other minors, thus violating the Equal Protection Clause. Like the statute in *Reed* that unconstitutionally preferred males over equally qualified persons, the

SAME Act unconstitutionally favors non-transgender individuals based on criteria completely unrelated to the statute's claimed purpose. The Act's unqualified denial of transgender minors from receiving gender affirming treatment is like the policy in *F.V.*, when the court found the categorical denial of transgender individuals' applications for sex changes on their birth certificate violated the Equal Protection Clause. The SAME Act's arbitrary restriction on treatment for transgender individuals likens to the state act in *Brandt*, when the court found that a state act which prohibited healthcare providers from providing minors with gender transition procedures was unconstitutional because it restricted referrals solely for a discriminatory purpose. Notably, the party's claim in *Hennessy*, when the court found state health care was not obliged to cover gender-transitioning mastectomies, differs greatly from the Marianos' claim because the Marianos simply wanted access to the treatments, rather than state coverage for them.

Thus, the SAME Act is subject to intermediate scrutiny.

2. The SAME Act fails intermediate scrutiny because it serves no important government objective and unjustifiably discriminates against transgender minors.

Intermediate scrutiny requires that, for a court to uphold an action based on sex, the state must establish an "exceedingly persuasive justification" for the classification and demonstrate "that the discriminatory means employed are substantially related to the achievement of this objective." *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982) (finding university's policy of limiting its enrollment to women violated the Equal Protection Clause because it was unsubstantially related to its objective of compensating for discrimination faced by women)

quoting Wengler v. Druggists Mut. Ins. Co., 446 U.S. 142, 150 (1980); *Whitaker*, 858 F.3d at 1051-52.

Moreover, an exceedingly persuasive justification must be "genuine, not hypothesized, or invented post hoc in response to litigation." *United States v. Virginia*, 518 U.S. 515, 533 (1996) (finding university's unsubstantiated justifications of promoting educational benefits and unique training methods unpersuasive in defense of their exclusion of women from citizen-solider program). Further, the classification must be "reasonable, not arbitrary," and treat all persons similarly circumstanced alike. *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920); *Glenn*, 663 F.3d at 1316-17 (government agent's firing of transgender employees because he found their gender non-conformity during their transitioning unnatural violated the Equal Protection Clause protection against sex-based discrimination); *M.A.B.*, 286 F. Supp. 3d at 718 (holding school board's policy barring a biological female student with male gender identity from boys' locker rooms failed intermediate scrutiny because it was not substantially related to privacy rights cited by the state).

The State fails to provide an exceedingly persuasive justification for its sex-based classification, which is related to the achievement of their objectives. Much like the university's policy in *Miss. Univ.* to limit enrollment to women in order to compensate for gender discrimination, the Act's supposed justification of preventing minors with gender dysphoria from being influenced by peer pressure is not substantially related to the unnecessarily restrictive means employed. Ultimately, despite inconclusive findings suggesting some role of social pressure in adolescents self-identifying as transgender, the SAME Act prevents treatment for many transgender minors who meet the rigorous medical criteria and face substantial daily hardships due to their gender mischaracterization. R. at 20-21.

The State's arbitrary justification equates to a mere hypothesis with no basis in fact. The State's cited interest of protecting children from making life-altering decisions based on peer pressure is not dissimilar to the interest proffered by the university in *Virginia*, when this Court found that the interest in promoting educational benefits and unique training methods was an unsubstantiated justification for the exclusion of women from their citizen-soldier program. R. at 3. Like this Court held in *Virginia* when dismissing the state's unsupported concerns, the alarming discriminatory means used by the Act are not justified by hypothetical concerns for the damaging effects of peer pressure. R. at 20-21. The State carelessly targets transgender adolescents who greatly benefit from gender-affirming treatments based on mere suggestions that social pressure may play a role in their self-identification as transgender. R. at 20.

Akin to *M.A.B.*, where the school board claimed their discriminatory bathroom policies targeting transgender students were justified by privacy rights interests, the State's justification of the SAME Act by claiming to protect children from experimental treatments is also based on misconceptions. If anything, the interests identified by the Act indicate a fundamental ignorance on the topic of gender dysphoria, much like in *Glenn*, where a government agent fired transgender employees because he found their appearance during their transitioning to be unnatural. Like *Glenn*, the SAME Act treats transgender minors differently than other minors because of the State's unacceptance of their gender non-conformity.

Thus, the SAME Act fails intermediate scrutiny.

CONCLUSION

As demonstrated by the foregoing reasons, the SAME Act substantially violates the Marianos' constitutional rights protected under the Fourteenth Amendment. Thus, the

Respondent respectfully requests that this Court affirm the district court and the Fifteenth Circuit's decision to grant a preliminary injunction.

APPENDIX A: THE STOP ADOLESCENT MEDICAL EXPERIMENTATION ACT

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.