STATE OF NORTH DAKOTA | DISTRICT COURT

COUNTY OF BURLEIGH | SOUTH CENTRAL JUDICIAL DISTRICT

T.D., by and through his parents, Devon Dolney and Robert Dolney, DEVON DOLNEY, an individual, ROBERT DOLNEY, an individual, PAMELA ROE, by and through her parents, Peter Roe and Paula Roe, PETER ROE, an individual, PAULA ROE, an individual, JAMES DOE, by and through his parents, John Doe and Jane Doe, JOHN DOE, an individual, JANE DOE, an individual, and DR. LUIS CASAS, an individual,

Plaintiffs,

vs.

DREW H. WRIGLEY, in his official capacity as Attorney General for the State of North Dakota, KIMBERLEE JO HEGVIK, in her official capacity as the State Attorney for Cass County, and JULIE LAWYER, in her official capacity as the State's Attorney for Burleigh County, AMANDA ENGELSTAD, in her official capacity as the State's Attorney for Stark County,

Defendants.

Case No.: _____

COMPLAINT

Plaintiffs T.D., by and through his parents, Devon Dolney and Robert Dolney, DEVON DOLNEY, an individual, ROBERT DOLNEY, an individual, PAMELA ROE, by and through her parents, Peter Roe and Paula Roe, PETER ROE, an individual, PAULA ROE, an individual, JAMES DOE, by and through his parents, John Doe and Jane Doe, JOHN DOE, an individual, JANE DOE, an individual, and DR. LUIS CASAS, an individual, through their attorneys, bring this complaint

against the above-named defendants, their employees, agents, and successors in office, and in support state and allege as follows:

COMPLAINT

PRELIMINARY STATEMENT

[1] This is a civil rights action challenging North Dakota Century Code Chapter 12.1-36.1 (the "Health Care Ban" or the "Statute") under the Constitution and laws of the State of North Dakota. A copy of the Statute is attached as Exhibit A.

[2] On April 19, 2023, North Dakota Governor Doug Burgum signed the Health Care Ban into law. The Health Care Ban was filed with the secretary of state on April 21, 2023. The law was passed as an "emergency measure" by more than two-thirds of both houses, so the law went into effect immediately on April 21, 2023. See North Dakota Constitution, Art. 4, § 13.

[3] Gender dysphoria is a serious medical condition characterized by clinically significant distress caused by an incongruence between a person's gender identity and the sex they were assigned at birth. All major medical associations in the United States recognize that adolescents with gender dysphoria may require medical interventions to treat severe distress. This care may include puberty-delaying treatment and hormone therapy. For some older adolescents, this care may also include chest surgery. This care is often referred to as "gender-affirming care."

[4] The Health Care Ban makes it a crime to provide any medications and certain enumerated surgeries if, and only if, such medical care is provided "for the purposes of changing or affirming the minor's perception of the minor's sex" where "a minor's perception of the minor's sex is inconsistent with the minor's sex." The enumerated forms of medical care can still be provided to minors of any age for any other medically indicated purpose. In other words, the government is denying certain

forms of care to transgender youth experiencing gender dysphoria, while permitting the exact same medical care to be provided to patients of any age who are not transgender.

[5] Until the passage of the Health Care Ban, medical providers in North Dakota followed their medical judgment, informed by training, education, experience, and evidence-based standards of care, for assessing and treating youth experiencing gender dysphoria. Parents were involved in any decision making regarding medical intervention, as required by the relevant standards of care. Families were able to make informed decisions, in consultation with trusted medical professionals, about the care that best suited the needs of transgender youth. The government has taken away the right of parents and children to make these deeply personal decisions for themselves, in consultation with medical professionals.

[6] This law prevents families from making their own informed decisions, in consultation with trusted medical providers, about health care for transgender adolescents. The Health Care Ban was passed over the objection of North Dakota families and local medical experts. In addition to the legislative testimony of numerous local medical experts, over 200 North Dakota healthcare providers signed an open letter in opposition to the Health Care Ban that was published in InForum on March 6, 2023.[1]

[7] The medical care criminalized by the government of North Dakota has been recognized as safe, effective, and the primary means for the treatment of gender dysphoria by the American Medical Association, the American Academy of Pediatrics, the Endocrine Society, the American Psychological Association, and every other leading relevant professional medical association.

[1] Available at https://www.inforum.com/opinion/letters/over-200-health-care-providers-and-organizations-sign-letter-against-north-dakota-bill-targeting-trans-youth (last viewed May 9, 2023).

[8] The Health Care Ban not only harms the well-being of transgender youth in North Dakota by denying them safe and effective medical care, but it is an unconstitutional infringement on the rights of transgender youth and their families. The Health Care Ban violates the fundamental right of North Dakota parents to parent their children. It deprives the parents and their adolescent children (in consultation with experienced and trusted medical providers) of the ability to make a personal medical decision. It directly substitutes the decision of the government, banning the care with no exceptions and no considerations for individual circumstances. The Health Care Ban violates the equal protection clause of the North Dakota Constitution by targeting only transgender youth for the denial of health care while allowing that same health care to be provided to anyone else of any age for any other purpose. The Health Care Ban also violates North Dakotans' fundamental rights of liberty, safety, happiness, reputation, and their right to Due Process. Finally, the Health Care Ban is unconstitutionally vague.

[9] Plaintiffs therefore seek immediate declaratory and injunctive relief barring Defendants and their agents from enforcing the Health Care Ban, allowing Plaintiff Dr. Casas to continue to care for his patients, and allowing the patient Plaintiffs to continue to receive gender-affirming care.

JURISDICTION & VENUE

[10] This Court has jurisdiction pursuant to N.D. Const. Art. VI, § 8 and N.D.C.C. § 27-05-06.

[11] Plaintiffs' claims for declaratory and injunctive relief are authorized by N.D.C.C. §§ 32-06-02, 32-23-01, and by the general equitable powers of this Court.

[12] Venue is appropriate under N.D.C.C. § 28-04-05 because at least one of the Defendants, Drew H. Wrigley, in his official capacity as Attorney General for the State of North Dakota, is located in Burleigh County.

PLAINTIFFS

[13] Plaintiffs T.D., Devon Dolney, and Robert Dolney live in Cass County, North Dakota. Devon Dolney and Robert Dolney are the parents of T.D., their 12-year-old son. T.D. is transgender and receiving necessary care that the Health Care Ban prohibits.

[14] Plaintiffs Pamela Roe, Peter Roe, and Paula Roe live in Burleigh County, North Dakota. Peter Roe and Paula Roe are the parents of Pamela Roe, their 15-year-old daughter. Pamela Roe is transgender and receiving necessary care that the Health Care Ban prohibits.

[15] Plaintiffs James Doe, John Doe, and Jane Doe, live in Stark County, North Dakota. John Doe and Jane Doe are the parents of James Doe, their 12-year-old son. James Doe is transgender and receiving necessary care that the Health Care Ban prohibits.

[16] Plaintiff Dr. Luis Casas is a pediatric and adult endocrinology specialist that is licensed to practice medicine in North Dakota. He practices medicine in Fargo, Bismarck, and Minot in North Dakota. As an endocrinologist, he treats medical conditions related to hormones and commonly prescribes appropriate medications to treat such conditions. These conditions include diabetes, growth issues, concerns regarding puberty, thyroid and adrenal gland issues, and gender-affirming care. As a result of the Health Care Ban, he is now prohibited from providing gender-affirming care to minors in North Dakota.

DEFENDANTS

[17] Defendant Drew H. Wrigley is the State's Attorney General. The Attorney General is "authorized to institute and prosecute all cases in which the state is a party, whenever in their judgment it would be for the best interests of the state to do so." N.D.C.C. § 54-12-02. He also must "advise the several state's attorneys in matters relating to the duties of their office." N.D.C.C. § 54-12-01(6). He is sued in his official capacity.

[18] Defendant Kim Hegvik is the State's Attorney for Cass County, where Plaintiffs T.D., Devon Dolney, and Robert Dolney are located, and where Plaintiff Dr. Luis Casas has a clinic. The State's Attorney's office is charged with prosecuting all public offenses on behalf of the State of North Dakota. N.D.C.C. § 11-16-01(1). She is sued in her official capacity.

[19] Defendant Julie Lawyer is the State's Attorney for Burleigh County, where Plaintiffs Pamela Roe, Peter Roe, and Paula Roe are located, and where Plaintiff Dr. Luis Casas has a clinic. The State's Attorney's office is charged with prosecuting all public offenses on behalf of the State of North Dakota. N.D.C.C. § 11-16-01(1). She is sued in her official capacity.

[20] Defendant Amanda Engelstad is the State's Attorney for Stark County, where Plaintiffs James Doe, John Doe, and Jane Doe are located. The State's Attorney's office is charged with prosecuting all public offenses on behalf of the State of North Dakota. N.D.C.C. § 11-16-01(1). She is sued in her official capacity.

FACTUAL ALLEGATIONS

STANDARD OF CARE FOR TREATING TRANSGENDER ADOLESCENTS DIAGNOSED WITH GENDER DYSPHORIA

[21] Gender identity refers to a person's innate sense and deeply held understanding of their own gender. Everyone has a gender identity.

[22] A person is typically assigned "Male" or "Female" at birth, and this designation is typically based solely on external genitalia.

[23] Designations based on external genitalia alone do not account for the multitude of other factors that bear on one's sex. These other factors include hormones, internal reproductive organs, chromosomes, secondary sexual characteristics that develop during puberty, brain anatomy, and gender identity. There are many biological sex characteristics that may not be aligned in any given

person who is assigned "male" or "female" at birth. A person's sex designation on their birth certificate typically, and with limited exception, accounts only for their genitalia. Because of this, the phrase sex assigned at birth is more accurate than other terms such as "biological sex."

[24] Typically, individuals born with the external physical characteristics commonly associated with males identify and experience themselves as men and individuals born with the external physical characteristics commonly associated with females identify and experience themselves as women. However, for transgender individuals, this is not the case. A transgender person is a person whose gender identity does not align with the sex they were assigned at birth.

[25] According to the American Psychiatric Association, being transgender, in and of itself, "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Being transgender is not a "condition" or "diagnosis" to be cured. However, for many people who experience incongruence between their gender identity and their sex assigned at birth, the incongruence can cause serious and even life-threatening emotional distress.

[26] When a person experiences clinically significant distress caused by the incongruence between their gender identity and their sex assigned at birth, that person may be diagnosed with gender dysphoria. Gender dysphoria is a serious medical condition recognized by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR 2022). Gender dysphoria is a condition that can be diagnosed and treated.

[27] The DSM-5-TR has specific diagnostic criteria for gender dysphoria for pre-pubescent children and for adolescents through adults. For all patients, regardless of age, a diagnosis always requires a persistent incongruence of at least six months along with clinically significant distress or impairment in social, occupational, or other important areas of functioning. Suicidality is higher among transgender Americans than non-transgender Americans. Gender-affirming medical care is known to

mitigate psychological distress and reduce suicide risk by aligning a patient's physical characteristics with their gender identity when there is marked, persistent incongruence with the sex assigned at birth.[2]

[28] Every major U.S. medical and mental health organization, including the American Medical Association, the American Academy of Pediatrics, and the American Psychological Association support access to gender-affirming care for youth. This is also true for major international health organizations including the Endocrine Society, the Pediatric Endocrine Society, the Society for Adolescent Health and Medicine, and the World Health Organization.

[29] The World Professional Association for Transgender Health ("WPATH") is a 501(c)(3) nonprofit, interdisciplinary professional and educational organization devoted to transgender health. They were founded over 40 years ago, in 1979. They publish widely accepted standards of care for treating gender dysphoria. The current version is Standards of Care 8, published in 2022, ("WPATH Standards of Care" or "SOC 8").

[30] The WPATH Standards of Care provide guidelines for multidisciplinary care of transgender individuals, including children and adolescents, and describe criteria for medical interventions to treat gender dysphoria for adolescents and adults. The SOC 8 is based upon a rigorous and methodological evidence-based approach. Its recommendations are informed by a systematic review of evidence and an assessment of the benefits and harms of alternative care options, as well as expert consensus.

[31] The Endocrine Society, founded over 100 years ago in 1916, is an organization comprised of over 18,000 medical care providers and scientists who focus on the field of endocrinology. They publish an evidence-based clinical practice guideline for the treatment of transgender patients

[2] Poteat, et al, Standards of Care for Transgender and Gender Diverse People, JAMA, Vol. 329, No. 21, https://jamanetwork.com/journals/jama/fullarticle/2805345 (June 6, 2023)

experiencing gender dysphoria. The Endocrine Society's guidelines are similar to those published by WPATH.

[32] Prior to the Health Care Ban, doctors in North Dakota used these well-established guidelines and standards of care to diagnose and treat youth with gender dysphoria, and consistently found the treatments to be safe and effective. Patients and their families have found those treatments to be, quite literally, lifesaving. The specific treatment for gender dysphoria depends on the individualized needs of the person being treated. The medical standards of care differ depending on whether the treatment is for a pre-pubescent child, or an adolescent or adult.

[33] Even prior to the Health Care Ban, medical interventions were not used for pre-pubescent children diagnosed with gender dysphoria. Pre-pubescent children may "socially transition" which involves allowing a child to live and be socially recognized in accordance with their gender identity. For example, a child may style their hair, wear clothing, and use a name typically associated with their gender identity.

[34] As transgender youth reach puberty, medical options become available to treat the distress associated with gender dysphoria.

A. Puberty-Delaying Treatment

[35] Puberty-delaying therapy may become medically necessary to address extreme distress associated with going through puberty in accordance with an adolescent's sex assigned at birth rather than that of the adolescent's gender identity.

[36] Until April 21, 2023, the North Dakota government has never forced adolescents experiencing gender dysphoria to undergo male or female puberty against their will. Instead, adolescents and their parents, in consultation with trusted medical professionals acting in accordance with the prevailing standards of care and evidence-based practices, could make these deeply personal decisions for

themselves. Now, the government makes this deeply personal medical decision for each and every transgender adolescent in the state of North Dakota.

[37] Puberty-delaying medication continues to be permitted, without any state government interference, for youth of any age, to treat medical conditions other than gender dysphoria. For example, puberty-delaying medication is the standard of care for the treatment of central precocious puberty, which is the premature initiation of puberty. This care is provided to minors younger than 8. The Health Care Ban prohibits puberty-delaying care only for transgender youth experiencing gender dysphoria, and not for any other medical indication regardless of a patient's age.

[38] In denying every youth with gender dysphoria access to puberty-delaying medication and forcing them to undergo puberty against the recommendations of health care professionals, the government is not only practicing medicine but is doing so in a manner that is contrary to ethical requirements for medical care providers, and contrary to evidence-based protocols for care.

[39] Under the Endocrine Society Clinical Guidelines, transgender adolescents experiencing gender dysphoria may be eligible for puberty-delaying treatment if:

a. A qualified mental health professional has confirmed that:

   i. the adolescent has demonstrated a long-lasting and intense pattern of gender nonconformity or gender dysphoria (whether suppressed or expressed);

   ii. gender dysphoria worsened with the onset of puberty;

   iii. any coexisting psychological, medical, or social problems that could interfere with treatment (e.g., that may compromise treatment adherence) have been addressed, such that the adolescent's situation and functioning are stable enough to start treatment;

iv. has sufficient mental capacity to give informed consent to this reversible treatment.

b. And the adolescent:

i. has been informed of the effects and side effects of treatment (including potential loss of fertility if the individual subsequently continues with sex hormone treatment) and options to preserve fertility;

ii. has given informed consent and, particularly when the adolescent has not reached the age of legal medical consent, the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process.

c. And a pediatric endocrinologist or other clinician experienced in pubertal assessment:

i. agrees with the indication for gonadotropin-releasing hormone ("GnRH") agonist treatment;

ii. has confirmed that puberty has started in the adolescent;

iii. has confirmed that there are no medical contraindications to GnRH agonist treatment.

[40] In sum, in order to provide an adolescent with puberty-delaying treatment, the Endocrine Society Guidelines call for a diagnosis of gender dysphoria, a prolonged period of distress that has worsened at the onset of puberty, the ability of the adolescent to make an informed medical decision, the involvement, consent, and support of a parent or guardian, the provision of informed consent to both the adolescent and parent, and the absence of any medical contraindications. Providers in North Dakota followed these guidelines before the Health Care Ban went into effect.

[41] In North Dakota, providers understand that the decision to begin puberty-delaying treatment is a personal decision for adolescents to make alongside their parents or guardians. Providers give families the information they need to make the best decision for themselves and continue to meet with families throughout the course of care. Providers only provide medical care after the adolescent and their parent have both provided informed consent.

[42] The Health Care Ban prohibits the provision of puberty-delaying treatment, even when a family, in consultation with a trusted medical provider, following evidence-based guidelines and standards of care, makes the informed decision that such treatment is necessary and appropriate.

[43] Puberty-delaying treatment is reversible. If an adolescent discontinues the medication, puberty consistent with their assigned sex will resume.

[44] Puberty itself is irreversible. Once an adolescent experiences puberty, those changes cannot be reversed. As the WPATH SOC 8 recognizes, "allowing irreversible puberty to progress in adolescents who experience gender incongruence is not a neutral act given that it may have immediate and lifelong harmful effects for the transgender young person."

[45] In other words, the harm caused to transgender youth by the Health Care Ban's prohibition on puberty-delaying treatment is irreversible.

B. Hormone Therapy

[46] For some adolescents, it may be medically necessary and appropriate to initiate puberty consistent with the young person's gender identity. This is often referred to as hormone therapy (testosterone for transgender boys, and estrogen and testosterone suppression for transgender girls).

[47] In denying every youth with gender dysphoria access to hormone therapy, the government is not only practicing medicine but doing so in a manner that is contrary to ethical requirements for medical care providers, and contrary to evidence-based protocols for care.

[48] Under Endocrine Society Clinical Guidelines, transgender adolescents may be eligible for gender-affirming hormone therapy if:

a. A qualified mental health professional has confirmed:
    i. the persistence of gender dysphoria;
    ii. any coexisting psychological, medical, or social problems that could interfere with treatment (e.g., that may compromise treatment adherence) have been addressed, such that the adolescent's situation and functioning are stable enough to start sex hormone treatment;
    iii. the adolescent has sufficient mental capacity to estimate the consequences of this partly irreversible treatment, weigh the benefits and risks, and give informed consent.
b. And the adolescent:
    i. has been informed of the partly irreversible effects and side effects of treatment (including potential loss of fertility and options to preserve fertility);
    ii. has given informed consent and, particularly when the adolescent has not reached the age of legal medical consent, the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process.
c. And a pediatric endocrinologist or other clinician experienced in pubertal induction:
    i. agrees with the indication for sex hormone treatment;
    ii. has confirmed that puberty has started in the adolescent;

iii. has confirmed that there are no medical contraindications to sex hormone treatment.

[49] Adolescents who receive gender-affirming hormones after having timely received puberty-delaying treatment never go through puberty in accordance with the sex assigned to them at birth. Rather, they go through puberty that matches their gender.

[50] Before April 21, 2023, the North Dakota government had never prohibited hormone therapy to treat gender dysphoria, or any other diagnosable medical condition.

[51] The Health Care Ban only prohibits hormone therapy when it is used to treat transgender adolescents with gender dysphoria. The same forms of hormone treatment are still permitted, without state government interference, for use in minors of any age for any other medically indicated purpose such as delayed puberty, Turner's Syndrome, and polycystic ovarian syndrome.

C. Surgery

[52] Under the WPATH standards of care, transgender young people may also receive medically necessary chest reconstructive surgeries before the age of majority, provided the young person has lived in their affirmed gender for a significant period of time. Genital surgery is not recommended until patients reach the age of majority, and providers in North Dakota do not provide minors with genital surgery to treat gender dysphoria.

[53] Every major medical organization in the United States recognizes that medical treatments, including puberty-delaying medication, hormone treatment, and surgery when medically indicated, can be medically necessary to treat gender dysphoria. For example, these standards of care are recognized by the American Academy of Pediatrics, which agrees that this care is safe, effective, and medically necessary treatment for the health and well-being of youth suffering from gender dysphoria.

[54] Gender-affirming medical care can be lifesaving treatment and can improve the short- and long-term health outcomes for transgender youth. Denying this care for adolescents causes irreversible harm.

[55] Every surgery listed in the Health Care Ban can continue to be provided to any minor of any age for any reason unless that minor is a transgender youth experiencing gender dysphoria.

THE HEALTH CARE BAN

[56] The Health Care Ban was passed as H.B. 1254 and codified as Chapter 12.1-36.1 of the North Dakota Century Code. It was signed by the governor on April 19, 2023.

[57] The law was passed as an emergency measure pursuant to North Dakota Constitution, Art. 4, § 13. This means that it went into effect immediately on April 21, 2023, upon filing with the secretary of state.

A. The Law Bans All Gender-Affirming Medical Care to Treat Gender Dysphoria

[58] The Health Care Ban categorically bars all gender-affirming medical care for transgender minors with gender dysphoria in the state of North Dakota regardless of the prevailing medical opinion that such care is necessary and life-saving. In other words, the Health Care Ban is a backdoor attempt to criminalize transgender youth by banning the care necessary for transgender youth in North Dakota to live free, healthy, happy lives.

[59] The Health Care Ban targets any "licensed physician, physician assistant, nurse, or certified medical assistant" ("Health Care Providers") with criminal penalties. N.D.C.C. §§ 12.1-36.1-01(1); 12.1-36.1-02.

[60] The bill targets health care providers treating minors whose "perception of the minor's sex is inconsistent with the minor's sex." N.D.C.C. § 12.1-36.1-02(1). The bill bans health care provided "for

the purpose of changing or affirming the minor's perception of the minor's sex." N.D.C.C. § 12.1-36.1-02(1).

[61] The Health Care Ban defines "sex" as the "biological state of being female or male based on the individuals' nonambiguous sex organs, chromosomes, and endogenous hormone profiles at birth." N.D.C.C. § 12.1-36.1-01(3).

[62] In light of the Health Care Ban, a Health Care Provider cannot prescribe, dispense, administer, or otherwise supply any medication whatsoever to treat youth experiencing gender dysphoria with the purpose of affirming the minor's gender, including but not limited to puberty-delaying treatment or hormone treatment. N.D.C.C. § 12.1-36.1-02(1)(c). A provider who does so is guilty of a class A misdemeanor. N.D.C.C. § 12.1-36.1-02(2)(b).

[63] A Health Care Provider also may not perform certain enumerated surgeries on any minors with gender dysphoria for the purpose of affirming a minor's gender. N.D.C.C. § 12.1-36.1-02(1). A provider who does so is guilty of a class B felony. N.D.C.C. § 12.1-36.1-02(2)(a).

B. The Exact Same Medical Care Is Permitted For Minors For Any Purpose Other Than Treating Gender Dysphoria

[64] The bill only targets medical treatment when it is provided "for the purpose of changing or affirming the minor's perception of the minor's sex" where "a minor's perception of the minor's sex is inconsistent with the minor's sex." N.D.C.C. § 12.1-36.1-02(1). Therefore, the same exact treatments, surgeries, and medications are permitted for minors without any government interference for any and every other medically indicated purpose other than gender-affirming care to treat gender dysphoria.

[65] Additionally, the law expressly permits the same exact surgeries or medications for a minor, regardless of age, experiencing "a medically verifiable genetic disorder of sex development." N.D.C.C. § 12.1-36.1-03(1).

[66] The Health Care Ban prohibits chest surgery on transgender young men to treat the psychological distress associated with gender dysphoria but permits chest surgery in non-transgender young men to treat the psychological distress associated with gynecomastia (overdevelopment of breast tissue), and for non-transgender girls to address the psychological distress associated with conditions such as breast hypoplasia (a lack of breast development).

[67] During legislative debate on the bill, Representative Weisz and Representative Prichard discussed the question of whether surgery would be permitted to treat Klinefelter's syndrome in minors. Klinefelter's syndrome occurs where a male is born with an extra X chromosome. Treatment for Klinefelter's syndrome may include the removal of healthy breast tissue for boys that develop excess breast growth so they can look more typically male and less typically female. Both legislators agreed they wanted providers to be able to continue to provide the banned medications and surgeries to treat conditions other than gender dysphoria, such as Klinefelter's syndrome. In other words, legislators expressly want non-transgender boys to be permitted to remove healthy breast tissue to alleviate distress associated with non-conformance to their gender identity, but do not want transgender boys to be permitted to remove breast tissue for the same purpose.

[68] The Health Care Ban prohibits genital surgery to treat gender dysphoria on minors even though the standards of care do not call for such treatment on minors and there have been no reports of such surgeries taking place in North Dakota for the purpose of treating gender dysphoria in minors. Genital surgery on minors does take place in North Dakota for reasons unrelated to gender dysphoria,

and the Health Care Ban permits every type of genital surgery on any minor regardless of age for any other reason.

[69] The same puberty-delaying medications and hormone therapy that are banned for transgender youth are permitted when prescribed to non-transgender patients of any age to help bring their bodies into alignment with their gender. This includes permitting testosterone for delayed puberty, estrogen for primary ovarian insufficiency, hypogonadotropic hypogonadism (delayed puberty due to lack of estrogen caused by a problem with the pituitary gland or hypothalamus), and Turner's Syndrome (a chromosomal condition that can cause a failure of ovaries to develop), and testosterone blockers for polycystic ovarian syndrome (a condition that can cause increased testosterone, and, as a result, symptoms including facial hair).

[70] The government of the state of North Dakota has never before categorically barred specific medical care, if and only if that medical care is provided to a specific population of people, in this case transgender people, while permitting such medical care for anyone else of any age.

C. The Legacy Clause Is Unconstitutionally Vague

[71] The exception to the Health Care Ban does not put health care providers on notice of what care is permitted and what care is prohibited for patients who had received some form of gender-affirming care prior to April 21, 2023.

[72] The Health Care Ban permits an exception "[i]f the performance or administration of the medical procedure on the minor began before the effective date of this Act." N.D.C.C. § 12.1-36.1-03(2).

[73] The Legislative History indicates that this exemption was put in place "for youth that are currently undergoing treatment so that they don't have to abruptly stop, causing problems including increased risk of suicidality."

[74] The law does not define "medical procedure" and does not, on its face, indicate whether providers can write new prescriptions for patients who have already been receiving medication and have run out of refills, or whether they can dispense medication refills.

[75] The law carries severe penalties including criminal conviction and all of its collateral consequences including but not limited to incarceration and loss of medical license. N.D.C.C. § 43-17-31(c).

[76] In light of the severe consequences for violating the Health Care Ban, and the language that does not provide clear direction on what they may or may not do, providers have been forced, against their own best medical judgment, to abruptly discontinue treatment for their transgender patients. Abruptly discontinuing treatment causes extreme distress and negative mental and physical consequences for patients.

[77] Patients forced to abruptly stop taking puberty delaying medications will experience endogenous puberty which may not be reversible even with subsequent hormone therapy and surgery in adulthood. In other words, the consequences of abruptly pulling a patient off puberty blockers are irreversible and can include long-term medical and mental health consequences including, but not limited to, the need for surgeries that would have otherwise not been needed.

[78] For patients who are currently undergoing treatment with gender-affirming hormones like estrogen or testosterone, or a testosterone suppressant like spironolactone, abruptly withdrawing care can result in depressed mood, hot flashes, headaches, or a spike in blood pressure increasing a risk of heart attack or stroke. The abrupt withdrawal of these treatments also results in predictable and negative mental health consequences including heightened anxiety and depression and risk of suicidality.

D. Legislative History

[79] During the 2023 legislative session, North Dakotan lawmakers devoted substantial time and taxpayer resources to bills restricting the rights of transgender people, a small minority of North Dakotans. For example, legislators introduced and debated bills barring transgender North Dakotans from changing the sex designation on their birth certificate, barring transgender people from using bathrooms that align with their gender identity, barring transgender girls from playing sports at school with their peers, prohibiting schools from using a transgender youth's pronoun, prohibiting government agencies from requiring employees to use their colleague's proper pronoun, and prohibiting the government from including transgender North Dakotans in data collection.

[80] The Health Care Ban was among the many bills targeting transgender North Dakotans that passed this session.

[81] The legislative history of the Health Care Ban demonstrates that the intent was to bar medical care if and only if that care is provided to transgender adolescents for gender-affirming medical care. When discussing the bill legislators referred to the banned care as "gender-affirming surgeries" and "pediatric transgender medicalization."

[82] The Health Care Ban went into effect immediately, as an emergency measure on April 21, 2023.

[83] Legislators did not meet with any transgender people or their families in drafting the Health Care Ban or in determining whether there was a need for such a bill. On February 17, 2023, Representative Boschee asked bill author Representative Tveit whether he had "visit[ed] with any transgender North Dakotans about the need for this [bill]" and whether he had "talked with transgender youth" in the process. Representative Tveit first claimed to have been in contact with a person named "Chloe" who regretted her gender-affirming care. He later testified that Chloe does not reside in North Dakota, nor has she ever received care in North Dakota. Finally, he admitted that he

does not know Chloe, had never spoken to Chloe, and had simply seen some videos on the internet about her. He did not meet with any transgender North Dakotans or the parents of any transgender youth in determining whether there was a need for this bill.

[84] Testifiers in opposition to the bill included people who benefitted from gender-affirming medical care, including one adolescent who described to legislators how this care, quite literally, saved his life, and one transgender adult who said the same. There was also testimony from the adolescent's mother. She had learned that the government was banning her child's medical care when she picked up a newspaper in the grocery store that happened to have an article describing H.B. 1254. She was horrified upon learning this and did not understand why the government was interfering in her family's medical care. This was the first time her family had ever come to the capitol in order to testify about a bill.

[85] Representative Tveit was categorically dismissive of claims that barring this care for each and every minor experiencing gender dysphoria in the state may lead to increased risk of suicidality. He did not refute these claims. Rather, he did not want to discuss the issue regardless of whether this bill would have such a dire impact on transgender youth in North Dakota. He stated that he found it "appalling" that anyone would even bring up the word "suicide" and that he has no interest in "measur[ing] which side is gonna encourage the most suicides."

[86] Legislators disregarded the expertise of gender-affirming care providers in this state who testified in opposition to the bill. This included two pediatric endocrinologists, a physician, a clinical psychologist, a board-certified OB/GYN, and a psychiatrist, all with first-hand experience treating

youth with gender dysphoria. In addition to that testimony, over 200 North Dakota healthcare providers signed an open letter opposing the Health Care Ban that was published on March 6, 2023.[3]

[87] Representative Prichard claimed that trusting a medical provider who provides gender-affirming care is like trusting a tobacco company about the safety of tobacco. However, as noted in the open letter, the healthcare professionals who provide gender-affirming care are also "diabetes providers, mental health providers, pediatricians, and more." Representative Prichard did not specify what was unique about medical providers who, among many other types of care, also provide gender-affirming care that warranted distrust and disregard.

[88] Rather than crediting medical professionals, legislators instead credited the testimony of political lobbyists who had no medical training or expertise. For example, legislators credited testimony from the North Dakota Family Alliance, a lobbying group with no medical training or expertise. Two lobbyists from that organization claimed that 80%-90% of children will "grow out of" their gender dysphoria. Representative Keifer cited this statistic that he said came from "two different testifiers," without noting that they were both lobbyists from the same organization with no expertise in gender-affirming care. Legislators did not explain why they believed that knowledgeable, experienced, and licensed medical providers cannot be trusted while lobbyists with no subject-matter experience can be trusted unquestioningly.

[89] Legislators expressed offensive views about transgender North Dakotans and dismissed the notion that gender dysphoria is a diagnosable condition involving significant mental and emotional distress with evidence-based treatment protocols. Representative Holle claimed that transgender youth experiencing gender dysphoria were akin to 14-year-olds who fantastically believed themselves

[3] Available at https://www.inforum.com/opinion/letters/over-200-health-care-providers-and-organizations-sign-letter-against-north-dakota-bill-targeting-trans-youth (last viewed May 9, 2023).

to be cats or dogs. Representative Tveit dismissively compared an adolescent receiving gender-affirming medical care to a child thinking they are a pirate and having an "eye removal" or a "peg leg surgery."

[90] Representative Tveit also referred to transgender minors as manipulative kids who may have "coerced" their parents into allowing them to receive care.

[91] Representative Boehm claimed that it is inappropriate to allow adolescents to receive gender-affirming medical care because minors "cannot mentally handle such adult things" arguing that we wouldn't give minors access to guns because they wanted to be policemen or axes because they wanted to be firemen. In the state of North Dakota minors can and do lawfully possess axes and guns. Adolescents in North Dakota do not, however, provide themselves with gender-affirming medical care. They go to medical professionals and make decisions in consultation with their parents and knowledgeable doctors. Medical professionals then provide care to the adolescent consistent with evidence-based practices.

[92] Representative Tveit expressed offensive views about the parents of transgender youth in North Dakota, suggesting that they were capable of being "coerced" by their children, and that parents are just blindly going along with what their children want once they lobby their parents for care. Senator Boehm claimed that prohibiting parents from providing informed consent to medical care for their own children is not a parents' rights issue because allowing adolescents to have gender-affirming care is akin to cutting off a child's leg if that child says they "want to be a disabled person, really bad."

[93] Senator Boehm also expressed that he did not want youth to grow up to be transgender adults, dismissively describing people who receive gender-affirming medical care as "lifelong medical patients who will suffer from chronic pain, sex dysfunction, infertility, and will not enjoy life fully."

[94] Legislators made numerous harmful and defamatory claims about gender-affirming care providers that, if true, would already be grounds for a medical malpractice claim or loss of licensure. Representative Tveit accused providers of guiding children behind their parents' backs. He baselessly accused physicians providing gender-affirming care of wanting to take advantage of, and cash in on, vulnerable victims. Senator Boehm claimed that "doctors ushered immature, distressed teenagers into taking poisons and having surgeries." He also claimed, without support, that WPATH is "led by ideologically and financially motivated activists preying on our youth to seek to circumvent parental authority, if needed, and to medically transition as many children as possible."

[95] Legislators expressed unsupported views about the provision of gender-affirming care in North Dakota. Representative Weisz suggested a minor could say "hey, I think I'm a boy today" and gain immediate access to puberty blockers. This is contrary to the relevant standards of care and the way such care is provided in North Dakota. There is no evidence of this ever happening in North Dakota. Legislators disregarded the testimony of numerous experts who told them that this is not how such care is provided in this state. There was no direct testimony presented to the contrary.

[96] Legislators never adequately addressed concerns that, in introducing and debating this bill, politicians were attempting to practice medicine. Senator Roers stated, "[t]he nurse in me hates that the government is trying to practice medicine…" Senator Lee expressed that "it is extraordinarily important for the 47 people who are here who don't have medical degrees to not be intruding into extraordinarily private medical decisions that providers and families, that means parents, are making with their children."

[97] The legislators discussed what one described as "dueling data" on gender-affirming care out of various European countries. None of the countries discussed categorically bar all gender-affirming medical care for all adolescents as the Health Care Ban does. Senator Boehm claimed that "progressive

European countries" are "backpedaling" on gender-affirming care. Senator Lee, after hearing her colleagues discuss claims about what was being done in various European countries, reached out to the head of "Norway's health division." Norway's "health administrator" informed Senator Lee in writing that the North Dakota legislature was mistaken and that European countries are not banning or turning their backs on gender-affirming care for minors.

[98] Similarly, in a recent ruling by the Eighth Circuit upholding a preliminary injunction on Arkansas' ban on gender-affirming care for minors, the court noted that European countries who have examined this issue are not banning this care. *Brandt by and through Brandt v. Rutledge*, 47 F.4th 661, 671 (8th Cir. 2022). The Eighth Circuit further noted that the Finnish council, for example, "still recommends that gender-affirming care be available to minors" and their "recommendations for treatment closely mirror the standard of care laid out by [WPATH] and the Endocrine Society." *Id.* These recommended standards of care are the same standards used by North Dakota providers.

[99] Representative Prichard discussed potential side effects of specific medications and surgeries that he believed to be "brutal" and "life-altering." The medications described in the debate and in the bill are provided to patients of all ages for a variety of conditions. Yet there was never any discussion about banning these medications for anything other than gender-affirming care. In fact, no form of genital surgery is provided to minors to treat gender dysphoria, and mastectomies among transgender minors are rare. Nevertheless, there was never any discussion about banning any of these surgeries for minors of any age for anything other than for gender-affirming care.

THE IMPACT OF THE BILL

[100] Gender-affirming medical care can be lifesaving treatment for minors experiencing gender dysphoria. The major medical and mental health associations support the provision of such care and recognize that the mental and physical health benefits to receiving this care outweigh the risks. These

groups include the American Academy of Pediatrics, the American Medical Association, the Endocrine Society, the Pediatric Endocrine Society, the American Psychological Association, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, the National Association of Social Workers, USPATH, and WPATH.

[101] Adolescents with untreated gender dysphoria suffer significant distress. Many are on medication for depression and anxiety. Self-harm and suicidal ideation are common. Suicidality among transgender young people is a crisis. In one survey, more than half of transgender youths had seriously contemplated suicide, and nearly a third had made at least one suicide attempt.[4] Studies have found that as many as 40% of transgender people have attempted suicide at some point in their lives (over nine times the attempted suicide rate in the U.S. population as a whole – 4.6%).[5] In a 2021 survey of LGBTQ+ students in North Dakota, 61.6% said they had seriously considered attempting suicide, 48.5% made a plan to attempt suicide, and 33.3% attempted suicide.[6]

[102] When adolescents have access to puberty-delaying drugs and hormone therapy, which prevents them from going through endogenous puberty and allows them to go through puberty

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[4] *See* Johanna Olson et al., Baseline Physiologic and Psychosocial Characteristics of Transgender Youth Seeking Care for Gender Dysphoria, 57 J. ADOLESCENT HEALTH 274 (2015).

[5] *See, e.g.*, SANDY E. JAMES ET AL., NAT'L CTR. FOR TRANSGENDER EQUAL., THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY (2016), *available at:* https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf; *see also* Elliot A. Tebbe & Bonnie Moradi, Suicide Risk in Trans Populations: An Application of Minority Stress Theory, 63 J. Counseling Psych. 520 (2016); Arnold H. Grossman et al., Transgender Youth and Suicidal Behaviors: Applying Interpersonal Pscyhological Theory of Suicide, 20 J. Gay & Lesbian Mental Health 329 (2016); Greta R. Bauer et al., Intervenable Factors Associated with Suicide Risk in Transgender Persons: A Respondent Driven Sampling Study in Ontario, Canada, 15 BMC Pub. Health 525 (2015).

[6] *See* FAYE SEIDLER, NORTH DAKOTA LGBTQ+ SCHOOL CLIMATE REPORT: A STEP TOWARDS ENDING QUEER YOUTH SUICIDE (2021), *available at:* https://static1.squarespace.com/static/5e2b24b3cb83aa14f197e1aa/t/6155f491fd81454d77e6b92a/1633023122685/North+Dakota+LGBTQ%2B+School+Climate+Report%5B6541%5D.pdf.

consistent with their gender identity, their distress recedes, and their mental health improves. Both clinical experience and medical studies confirm that for many young people, this treatment is transformative, and they go from painful suffering to thriving.[7]

A. THE IMPACT ON PLAINTIFF FAMILIES

i. The Dolney Family

[103] Plaintiff T.D. is a 12-year-old transgender boy living in North Dakota with his family, including his parents Devon Dolney and Robert Dolney.

[104] T.D. enjoys his hobbies, such as playing double bass in orchestra, bass in a rock band. He is a black belt in youth Tae Kwon Do.

[105] T.D. started puberty earlier than usual and began menstruation at the age of 9. He was diagnosed with precocious puberty and went on puberty-delaying medication.

[106] Around this time T.D. was subsequently diagnosed with gender dysphoria. If not for that diagnosis, he would have stopped taking the puberty-delaying medication in 2022. In light of the diagnosis, he continued to take the same medication prescribed by the same provider to treat gender dysphoria rather than precocious puberty.

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[7] *See, e.g.*, Jack L. Turban et al., *Access to Gender-Affirming Hormones During Adolescence and Mental Health Outcomes Among Transgender Adults*, 17 PLOS ONE e0261029 (2022), https://doi.org/10.1371/journal.pone.0261039 (finding that if gender-affirming hormone therapy is accessed by age 14–15, past year suicidal ideation decreases by 40%; if accessed by 1–17, past year suicidal ideation decreases by 50%. Past year suicide attempt decreases by 220% if accessed between 16–17); Amy E. Green et al., *Association of Gender-Affirming Hormone Therapy with Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth*, J. ADOLESCENT HEALTH 643 (2022), https://doi.org/10.1016/j.jadohealth.2021.10.036 (2020 survey of 11,914 transgender or nonbinary youth; use of gender affirminggender-affirming decreases odds of recent depression by 73% and seriously considering suicide by 74% compared to those who wanted this therapy and did not receive it. For youth under age 18, gender affirming hormone therapygender-affirmingwith decrease in the odds of recent depression by 61% and of past-year suicide attempt by 62%).

[107] T.D. and his parents were well informed of the possible side effects of puberty-delaying medication, and T.D. and his parents agreed together that this was the best decision for T.D.

[108] Devon and Robert Dolney found that the gender-affirming care, which included puberty-delaying medication, alleviated T.D.'s distress, which included severe depression, self-harm, and self-isolation.

[109] Devon and Robert are very worried about T.D.'s mental well-being in light of the Health Care Ban. They are concerned that if T.D. is no longer able to access this health care that has been vital to their child's well-being, that he will fall back into depression and self-harming behavior.

[110] T.D. would be devastated if he is unable to eventually start hormone replacement therapy and start going through a male puberty that matches his identity. He would feel depressed and uncomfortable in his body.

[111] The Dolneys have reluctantly considered moving out of North Dakota because of the obstacles the Health Care Ban has put in the way of T.D.'s well-being.

ii. The Roe Family

[112] Plaintiff Pamela Roe is a 15-year-old transgender girl living in North Dakota with her parents Peter Roe and Paula Roe.

[113] Pamela enjoys chatting with her friends on social media and is an avid reader.

[114] Pamela was about 4 years old when she realized that she felt more like a girl than a boy. Her parents noticed that even though Pamela did not talk to them about her gender identity until the age of 12, she always had very feminine habits, interests, and ways of presenting herself to the world.

[115] After Pamela told her parents that she identified as a girl, Peter and Paula had to figure out the best way to support the health and well-being of their child. It was not an easy time for them as a family. Pamela even spent a few months living with her grandmother, Peter's mother, who was her

trusted adult. Peter and Paula were committed to helping their child be happy and healthy, so they did a lot of research about gender dysphoria.

[116] When Pamela came back home in the summer of 2021, Peter and Paula found that Pamela's mood and general mental health were greatly improved after she began socially transitioning to living as a girl.

[117] Before hormone replacement therapy, Pamela was so anxious about being misgendered that she was often afraid to leave the house. She would have full-blown panic attacks at the thought of going through puberty as a boy and would go from being hysterical to deeply depressed. She was filled with anger and resentment, and she often talked about suicide. After she started hormone replacement therapy, Pamela blossomed socially.

[118] If Pamela is not able to continue accessing gender-affirming healthcare, she is worried that she will become anxious and depressed to the point of being suicidal. Her parents are also worried about this. Pamela and her parents just want to be able to have access to health care that has greatly improved their lives.

[119] The Health Care Ban has already had negative impacts on Pamela and her parents, as she and her mother are now forced to travel to Moorhead, Minnesota, to see an endocrinologist. Paula has to take time off work to make this 6 to 7-hour drive. Once school starts, Pamela will have to miss a whole day of school to obtain the care she needs.

iii. The Doe Family

[120] Plaintiff James Doe is a 12-year-old transgender boy living in North Dakota with his parents Plaintiffs John and Jane Doe.

[121] James enjoys playing video games and sports, especially baseball.

[122] James realized he was a boy when he was 6 or 7 years old. He did not want to wear girls' clothing to school and did not like when people asked if he was a girl.

[123] John and Jane Doe began noticing that their child had a different gender identity than female when he was about 4 years old. They noticed that when they would ask him to name all the boys in their home, he would include himself. His choices of toys were always centered around "boy" toys (cars, trucks etc.) and when he would play with other kids, he was always choosing a boy role like daddy or grandpa.

[124] Toward the end of his kindergarten year, James wanted his hair cut super short (like daddy) and his choice of clothes changed—absolutely no dresses and no pink or purple.

[125] Things changed a lot during James's second-grade year. The bathroom became a big issue. He refused to use the girls' bathroom and as a result he had accidents and/or had to hold it in all day. John took James to a "Daddy/Daughter" dance and James would only go if he could wear a suit and tie.

[126] James had already begun the process of socially transitioning to male before he began seeing a counselor. However, counseling has really helped him, especially around bathroom issues and how to deal with people who ask questions that he is not comfortable with, especially relating to him being transgender.

[127] James socially transitioning to male was a huge turning point. He would light up when he heard his name. He was slowly becoming more confident about using the boys' bathroom in public and would no longer hold it in or have accidents.

[128] James has now been on puberty blockers for about a year, and they have helped him physically and mentally. James's parents agree that access to gender-affirming care has greatly improved his mental health and well-being.

[129] If James is not able to continue puberty blockers, and eventually start hormone therapy, it would make him very sad, because he would start developing a body that doesn't match who he knows he is.

[130] James and his parents are already suffering harm due to the Health Care Ban. They now have to travel to Moorhead, Minnesota, a 4-hour drive from home, to keep seeing Dr. Casas, when they used to be able to get appointments closer to home in North Dakota. Dr. Casas is only in Moorhead two times a month which makes discussing any concerns with him much harder. The choice of appointment times and days is very limited. To make it to the appointments in Minnesota, they now have to take a day off work and school, plus cover the cost of a hotel room and gas.

[131] James's family is reluctantly considering moving out of the state of North Dakota, which would be a financial struggle for them and would also upend the lives of James and his siblings who have lived their whole lives in North Dakota.

B. THE IMPACT ON MEDICAL PROVIDER PLAINTIFF

[132] Plaintiff Dr. Luis Casas is licensed to practice as a physician in the states of North Dakota and Minnesota, and actively practices in both states. He primarily works in pediatrics. He works at Sanford Health in Fargo, Bismarck, and Minot in North Dakota and in Moorhead, East Grand Forks, and Bemidji in Minnesota.

[133] Dr. Casas is an endocrinologist, which means he primarily treats medical conditions related to hormones. This includes diabetes, growth issues, concerns regarding puberty, thyroid and adrenal gland issues, endocrine tumors, and transgender health care. He is one of only two pediatric endocrinologists in the state of North Dakota.

[134] Dr. Casas' practice includes providing gender-affirming care, including prescribing puberty blockers and hormone replacement therapy. This care is now prohibited by the Health Care Ban for minor transgender patients in North Dakota.

[135] Gender-affirming care is considered best practice medical care, and it is supported by every major U.S. medical and mental health organization, including the American Medical Association, the American Academy of Pediatrics, and the American Psychological Association. This is also true for major international health organizations including the Endocrine Society, the Pediatric Endocrine Society, the Society for Adolescent Health and Medicine, and the World Health Organization.

[136] The Health Care Ban forces Dr. Casas to harm his patients by denying them essential health care, putting them at risk for self-harm and suicide. Dr. Casas must either provide best practice care and risk criminal prosecution, or he must be complicit in denying his patients best practice medical care.

[137] The Health Care Ban forces Dr. Casas to refuse to treat transgender adolescents experiencing gender dysphoria, while allowing him to provide the exact same medications and treatments to youth of any age for any other condition.

COUNT I

North Dakota Constitution Article I, § 21 (Equal Protection)

[138] Plaintiffs reallege the above allegations, paragraphs 1 through 137 of this Complaint.

[139] Under the North Dakota Constitution's equal protection clause, "[n]o special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens." N.D. Const. Article I, § 21.

[140] The Health Care Ban uniquely burdens transgender adolescents experiencing gender dysphoria for a denial of medically necessary care consistent with the prevailing standards of care, while allowing this exact same care to be provided to non-transgender patients for any reason whatsoever.

[141] The question of whether certain medical procedures are prohibited turns not on the specifics of the medical care being provided, but rather on the sex assigned at birth and transgender status of the minor patient. Thus, the Health Care Ban makes an inherently suspect sex-based classification in violation of the equal protection clause.

COUNT II

North Dakota Constitution Article I, § 1 (Fundamental Right to Parent)

[142] Plaintiffs reallege the above allegations, paragraphs 1 through 141 of this Complaint.

[143] "The pursuit of happiness guaranteed by N.D. Const. art. I, § 1, includes 'the right to enjoy the domestic relations and the privileges of the family and the home ... without restriction or obstruction ... except in so far as may be necessary to secure the equal rights of others,' which is protected and insured by the due process clause of N.D. Const. art. I, § 12." *Hoff v. Berg*, 595 N.W.2d 285, 291 (ND 1999) (citing *State v. Cromwell,* 72 N.D. 565, 9 N.W.2d 914, 919 (1943)).

[144] Parents in North Dakota have a fundamental right to make decisions regarding the raising of their children. "Keeping State intervention in the matter of child rearing to a minimum, consistent with necessity, is essential to the American ideal." *In re R.D.S.,* 259 N.W.2d 636, 639 (N.D.1977).

[145] The Health Care Ban infringes the fundamental right to parent by substituting the government in place of the parent in a minor's medical decision making. Under the prevailing standards of care for the treatment of adolescents experiencing gender dysphoria, a parent or guardian provides informed consent and is involved in supporting the adolescent throughout the treatment process.

[146] Under the Health Care Ban, parents are no longer allowed, in consultation with minors and knowledgeable health care providers, to provide informed consent to treatment for their children. The Health Care Ban replaces the informed decision-making of parents of a minor experiencing gender dysphoria with the opinion of the government.

COUNT III

North Dakota Constitution Article I, § 1 (Personal Autonomy and Self Determination)

[147] Plaintiffs reallege the above allegations, paragraphs 1 through 146 of this Complaint.

[148] Article I, Section 1 of the North Dakota Constitution guarantees the inalienable rights of North Dakotans, including "enjoying and defending life and liberty" "acquiring, possessing and protecting…reputation" and "pursuing and obtaining safety and happiness."

[149] The "constitutional right to pursue happiness is one of a general nature" and "is not capable of specific definition or limitation." *State v. Cromwell*, 72 N565, 574-75 (N.D. 1943). The North Dakota Constitution thus protects both rights enumerated in the text and those encompassed in a broader liberty guaranty, and "is a living, breathing, vital instrument, adaptable to the needs of the day, and was so intended by the people when adopted." *State v. Norton*, 64 N.D. 675, 686 (N.D. 1934); *see also Ferch v. Hous. Auth. of Cass Cty.*, 79 N.D. 772, 772 (N.D. 1953) ("The changes in North Dakota since the constitution was enacted must be taken into consideration. The constitution is unchanged but the needs over which it may control have changed."); *Hassett*, 217 N.W.2d at 779 ("In constitutional law, as in other matters, times change and doctrines change with the times.").

[150] The North Dakota Supreme Court has long recognized that "[a] person's interest in personal autonomy and self-determination is a fundamentally commanding one with well-established legal and philosophical underpinnings." *State ex. Rel. Schuetzle v. Vogel*, 537 N.W.2d 358, 360 (N.D. 1995).

[151] State interests related to a patient's fundamental right to bodily autonomy include "preserving life, preventing suicide, maintaining the integrity of the medical profession, and protecting innocent third-persons" though even these interests are typically subordinate to the fundamental rights to bodily autonomy and self-determination. *Id.* These rights include the right to both refuse unwanted medical

treatments and to receive medical interventions without governmental prohibitions. *Id.* at 360; *Wrigley v. Romanick*, 2023 N.D. 50, ¶17 (N.D. 2023).

[152] The Health Care Ban infringes the right to bodily autonomy and self-determination by dictating how transgender minors must experience puberty, even when they have a medical diagnosis, the full support of knowledgeable medical providers abiding by guidelines supported by all major medical associations, and the support of caring parents.

COUNT IV

North Dakota Constitution Article I, § 9 (Due Process - Procedural)

[153] Plaintiffs reallege the above allegations, paragraphs 1 through 152 of this Complaint.

[154] Plaintiff Dr. Casas has a protected liberty interest in pursuing his profession and maintaining his license to practice medicine. *See Bland v. Comm'n on Med. Competency*, 557 N.W.2d 379, 381 (N.D.1996) (a license to practice medicine is a constitutionally protected property right).

[155] The Health Care Ban infringes on Plaintiff Dr. Casas' protected interests because it prohibits him from providing gender-affirming care to his adolescent patients in North Dakota.

[156] Procedural due process requires "a sufficient 'grace period' to provide the persons affected by a change in the law with an adequate opportunity to become familiar with their obligations under it." *Atkins v. Parker*, 472 U.S. 115, 130 (1985). Because the Health Care Ban was passed as an "emergency measure," the legislature never intended for a provider to be allowed a reasonable time to comply with the law. *See, e.g.*, *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994) ("Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct; accordingly, settled expectations should not be lightly disrupted."); *Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 748 F.3d 583, 600 (5th Cir. 2014) (finding that admitting-

privileges requirement may not be enforced against providers that apply for admitting privileges within grace period but did not receive a response within the 100-day grace period).

[157] The Health Care Ban puts Plaintiff Dr. Casas in an impossible position: Comply with the Health Care Ban by immediately ceasing provision of all gender-affirming care to minors but violate the standard of care for treating minors with gender dysphoria; or follow the evidence-based standard of care for treating gender dysphoria and potentially violate the Health Care Ban.

COUNT IV

North Dakota Constitution Article I, § 9 (Due Process - Vagueness)

[158] Plaintiffs reallege the above allegations, paragraphs 1 through 157 of this Complaint.

[159] The North Dakota Constitution requires "definiteness of criminal statutes so that the language, when measured by common understanding and practice, gives adequate warning of the conduct proscribed and marks boundaries sufficiently distinct for judges and juries to fairly administer the law." *City of Fargo v. Roehrich*, 2021 ND 145, ¶ 6 (citation omitted). A vaguely worded law "may trap the innocent by not providing fair warning" and "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis…" *Id.* (citation omitted).

[160] The Health Care Ban contains a legacy clause exception "[i]f the performance or administration of the medical procedure on the minor began before the effective date of this Act." N.D.C.C. § 12.1-36.1-03(2).

[161] The law does not define "medical procedure" and does not, on its face, indicate whether providers can write new prescriptions for patients who have already been receiving medication and have run out of refills, or whether they can dispense any medication refills.

[162] Because of this lack of clarity, a health care provider may be trapped for innocently authorizing new refills of previously prescribed medications. Some providers may choose not to continue care for

fear that they will be trapped by this vague language, and thus find it more prudent to refuse new refills than to risk criminal prosecution.

[163] This vaguely worded law impermissibly delegates basic policy matters to law enforcement officers, judges, and juries for resolution on an ad hoc and subjective basis.

COUNT V

Declaratory Judgment

[164] Plaintiffs reallege the above allegations, paragraphs 1 through 163 of this Complaint.

[165] The North Dakota Declaratory Judgment Act, N.D.C.C. § 32-23-01 *et seq.*, allows "[a]ny person" who is "affected by a statute, municipal ordinance, contract, or franchise, [to] have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and may obtain a declaration of rights, status, or other legal relations thereunder." N.D.C.C. § 32-23-02. "The provisions authorizing declaratory relief are remedial and are to be construed and administered liberally to afford relief from uncertainty about rights, status, and other legal relations." *City of Harwood v. City of Reiles Acres*, 2015 ND 33, ¶ 11, 859 N.W.2d 13 (citing N.D.C.C. § 32-23-12).

[166] Plaintiffs seek a declaratory judgment that the Health Care Ban is without legal force or effect because the law violates Plaintiffs' fundamental rights under the North Dakota Constitution as discussed above.

[167] In the alternative, Plaintiffs seek a declaratory judgment that the Health Care Ban permits providers to prescribe and dispense medication, to change medication dosages, and to provide puberty

blockers and hormone therapy to transgender patients who had been receiving any form of gender-affirming care prior to the Health Care Ban going into effect.

[168] Plaintiffs further affirmatively plead and allege that they have sued Defendants in their official capacities, that state officials are necessary parties to this case, and governmental immunity does not apply.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request the following relief:

1. Issue a declaratory judgment that the Health Care Ban violates the Constitution of the State of North Dakota and is void and of no effect;

2. Issue a temporary restraining order and preliminary injunction, later to be made permanent, restraining Defendants, their employees, agents, successors, and anyone acting in concert with them from enforcing the Health Care Ban; and

3. Grant such other and further relief as the Court may deem just and proper.

Dated: September 14, 2023

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