IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ISIS BENJAMIN, *et al.*,

Plaintiffs,

v.

COMMISSIONER TYRONE OLIVER, *et al.*,

Defendants.

Case No. 1:25-cv-04470-VMC

STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND BRIEF IN SUPPORT

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INTRODUCTION & SUMMARY OF ARGUMENT

This case is an attempt to compel the State of Georgia to use taxpayer money to fund controversial sex-change interventions for inmates. Plaintiffs—four named and one anonymous inmate—seek to enjoin the State from enforcing Senate Bill 185 not just as to themselves, but as to a putative class of inmates who seek such interventions. They argue that declining to fund cross-sex hormonal interventions violates the Eighth Amendment's prohibition on cruel and unusual punishments. While Plaintiffs present this as a medical question, it is ultimately a legal one: does the Constitution require a State to recognize, facilitate, and pay for cosmetic interventions that allow a person to present and live as the opposite sex?

The answer is no. The Legislature acted in response to developing evidence questioning the benefits of these interventions, as well as repeated litigation against the State demanding these interventions. Plaintiffs make much of the fact that the Georgia Department of Corrections previously authorized hormonal interventions in certain circumstances. But those policies were never enacted or approved by the Legislature. There is nothing inherently suspect about the Legislature making a different policy choice than a state agency; this happens all the time.

The Legislature reasonably chose to adopt a clear, uniform rule on a hotly contested question of public policy. Senate Bill 185 was passed by the Georgia Legislature and signed by Governor Kemp on May 8, 2025. It amended Ga. Code

Ann. § 42-5-2 to prohibit the use of state funds or resources "for the following treatments for state inmates: (A) Sex reassignment surgeries or any other surgical procedures that are performed for the purpose of altering primary or secondary sexual characteristics; (B) Hormone replacement therapies; and (C) Cosmetic procedures or prosthetics intended to alter the appearance of primary or secondary sexual characteristics." Ga. Code Ann. § 42-5-2(e)(1). It includes among the exemptions: "Treatments for medical conditions where such treatments are considered medically necessary, provided that such condition is not gender dysphoria or the purpose of such treatment is not for sex reassignment," and "[h]ormone replacement therapy treatment for state inmates who were being treated with such therapy prior to the effective date of this Act, provided that the provision of such therapy is solely for the purpose of transitioning off such therapy." Ga. Code Ann. § 42-5-2(e)(2)(A), (D).

It was perfectly rational and appropriate for the Legislature to prohibit the use of public funds for controversial and unproven sex-change interventions. Plaintiffs rely heavily on World Professional Association for Transgender Health guidelines, but courts have repeatedly recognized that WPATH—a self-interested private advocacy organization—cannot dictate constitutional standards.

Because Plaintiffs assert a facial challenge, they face the additional hurdle of showing that there is no set of circumstances under which SB 185 is constitutional.

They have not done so. And given both the individualized nature of the Eighth Amendment inquiry and the need-narrowness-intrusiveness requirements of the Prison Litigation Reform Act, any relief granted should be limited only to the named Plaintiffs. *See* Cert.Opp.16-20.

The democratic decision of Georgia's elected representatives to decline to pay for controversial sex-change interventions for inmates should be respected. Plaintiffs' preliminary-injunction motion should be denied.

BACKGROUND

I. Plaintiffs' Medical History

Isis Benjamin (Yohansan Jovan Stewart):[1] Plaintiff Benjamin (Stewart) first entered GDC custody in 2020, and has been most recently in GDC custody since March 2025. Compl. ¶20. Plaintiff Stewart had been receiving cross-sex hormones before Stewart entered GDC custody in 2024. Stewart Decl. ¶9. Stewart has not been receiving cross-sex hormones while in GDC custody. Compl. ¶20. The complaint alleges that Stewart "is currently seeking an evaluation" for hormones. *Id; see* Wynne Decl. ¶8.

Fantasia Horton (Sylvester Horton): Plaintiff Horton "was diagnosed with gender dysphoria in 2019 and since then, has been prescribed hormone therapy by

[1] Plaintiffs' complaint uses self-declared names that differ from the names in their official GDC records. GDC will refer to them by their names in official records.

GDC as treatment." Compl. ¶21. GDC is currently in the process of tapering Horton off cross-sex hormones, in accordance with SB 185. *See id.*; Wynne Decl. ¶9.

Naeomi Madison (Terrell Montiel Madison): Plaintiff Madison has been in GDC custody multiple times, and has most recently been incarcerated since November 2024. Compl. ¶22; *see* Madison Decl. ¶12. Madison has never received cross-sex hormones while in GDC custody, but the complaint alleges that Madison is "seeking an evaluation for hormone therapy." Compl. ¶22; *see* Madison Decl. ¶10. Madison's request for hormones was not made until June 2025. *See* Compl. ¶22; Wynn Decl. ¶10.

Brynn Wilson (Brynn Wilson): Plaintiff Wilson "has been in GDC custody since 2012 and is currently incarcerated at Pulaski State Prison." Compl. ¶23. Plaintiff Wilson has been "continuously receiving" cross-sex hormones "for approximately seven years." Wilson Decl. ¶10. GDC is currently in the process of tapering Wilson off hormones. *Id*. ¶13; *see* Wynne Decl. ¶11.

John Doe: According to the complaint, Plaintiff Doe "has been in GDC custody since 2010 and is currently incarcerated at Lee Arrendale State Prison." Compl. ¶24. Plaintiff "was diagnosed with gender dysphoria in 2019 and has been receiving hormone therapy since June 2020." *Id.* Plaintiffs provided Doe's true identity to Defendants at 3:56pm on the date of this filing. Defendants will provide supplemental information about Doe as appropriate.

II. This Action

SB 185 passed both Houses of the Georgia General Assembly and was signed into law by the Governor on May 8, 2025. It took effect immediately. SB 185 prohibits the use of state funds or resources for sex reassignment surgeries, cross-sex hormones, or other cosmetic procedures intended to alter the appearance of primary or secondary sexual characteristics. Ga. Code Ann. § 42-5-2(e)(1). The law does not prohibit any medical treatments for purposes other than sex reassignment.

SB 185 represents the State's view that certain controversial sex-change interventions should not be facilitated and funded at taxpayer expense. In accordance with SB 185, GDC has ceased providing cross-sex hormones as treatment for gender dysphoria, except that those inmates who were receiving such interventions may continue to receive them "solely for the purpose of transitioning off such therapy." Ga. Code Ann. § 42-5-2(e)(2)(D).

Plaintiffs brought this action on August 8, 2025, and simultaneously moved for class certification. Dkts.1-2. Despite waiting three months after the law was enacted to file this suit, Plaintiffs also moved for an "emergency" preliminary injunction for the entire putative class. Dkt.3.

ARGUMENT

To obtain a preliminary injunction, Plaintiffs must show: (1) a substantial likelihood of success on the merits, (2) imminent or ongoing irreparable harm,

(3) the harm to Plaintiffs outweighs any harm to Defendants, and (4) the public interest favors relief. *Swain v. Junior*, 961 F.3d 1276, 1284 (11th Cir. 2020). A "preliminary injunction is an extraordinary and drastic remedy which should not be granted unless the movant clearly carries the burden of persuasion as to these four prerequisites." *Eknes-Tucker v. Gov't of Ala.*, 80 F.4th 1205, 1219 (11th Cir. 2023) (cleaned up). It is "never awarded as of right." *Swain*, 961 F.3d at 1284.

Plaintiffs' burden is at its apex here because Plaintiffs' claim is subject to the PLRA. *See Keohane v. Fla. Dep't of Corr. Sec'y*, 952 F.3d 1257, 1265 n.3 (11th Cir. 2020). As a result, Plaintiffs cannot get any relief without showing a federal constitutional or statutory violation and overcoming the PLRA's other significant limitations on prospective relief. *See* 18 U.S.C. §3626(a)(1)-(2).

I. Plaintiffs Cannot Establish a Likely Violation of the Eighth Amendment.

A. SB 185 reflects a reasonable legislative choice on a hotly contested question of public policy.

Plaintiffs accuse the State of violating the Eighth Amendment for failure to provide allegedly essential medical care. "A prisoner bringing a deliberate-indifference claim has a steep hill to climb." *Keohane*, 952 F.3d at 1266. Plaintiffs have not established a likelihood of success.

To show deliberate indifference, "the plaintiff must demonstrate, as a threshold matter, that he suffered a depravation that was, objectively, sufficiently serious." *Wade v. McDade*, 106 F.4th 1251, 1262 (11th Cir. 2024) (en banc) (cleaned

up). "Second, the plaintiff must demonstrate that the defendant acted with subjective recklessness as used in the criminal law, and to do so he must show that the defendant was actually, subjectively aware that his own conduct caused a substantial risk of serious harm to the plaintiff." *Id.* (cleaned up). That is, a plaintiff must demonstrate "an objectively serious need, an objectively insufficient response to that need, subjective awareness of facts signaling the need, and an actual inference of required action from those facts." *Taylor v. Adams*, 221 F.3d 1254, 1258 (11th Cir. 2000).

A plaintiff cannot show an Eighth Amendment violation if the defendant provided "minimally adequate care." *Hoffer v. Sec'y, Fla. Dep't of Corr.*, 973 F.3d 1263, 1277 (11th Cir. 2020). Minimally adequate care need not "be perfect, the best obtainable, or even very good." *Id*. (cleaned up). The legal test is not "negligence" but "the stringen[t] … deliberate-indifference standard." *Id.* at 1271. Officials violate the Eighth Amendment only when the care "'is so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.'" *Id*. "[A] simple difference in medical opinion … fails to support a claim of cruel and unusual punishment." *Keohane*, 952 F.3d at 1266.

Plaintiffs have not shown that Defendants' care "is so grossly incompetent, inadequate, or excessive as to shock the conscience." *Hoffer*, 973 F.3d at 1271. Plaintiffs do not dispute that each of them has ongoing access to mental-health counseling and psychotherapy, including specific counseling related to gender

dysphoria. Owen Decl. ¶¶7-10. In other words, they do not—and cannot—deny that Plaintiffs' clinicians are "assessing [Plaintiffs'] risk of future harm" and "regularly monitoring and managing" Plaintiffs' conditions. *Hoffer*, 973 F.3d at 1272.

Instead, Plaintiffs argue that Defendants' care violates the Eighth Amendment because they are now ineligible for one specific *type* of intervention for gender dysphoria: cross-sex hormones. In other words, Plaintiffs' "complaint isn't that [Defendants are] providing no care," just that Defendants are not providing "the more aggressive … care that [Plaintiffs] desire[s]." *Id.*

At bottom, Plaintiffs ask this Court to disregard and override the Legislature's decision not to fund cross-sex hormonal interventions for inmates. But the Constitution entrusts the State, not Plaintiffs, with the decisions of what treatments to fund, so long as the minimal constitutional standard is met. Indeed, on questions of how a State should handle policy issues involving gender identity, "[t]he heart of the dispute is moral and political, not scientific and medical." *State of Tex. v. Loe*, No. 23-0697, slip op. at 3 (Tex. June 28, 2024) (Blacklock, J., concurring). Because there is no constitutional right to controversial cross-sex hormonal interventions, Plaintiffs have no likelihood of success on the merits of this claim.

The Supreme Court's recent decision in *United States v. Skrmetti*, 145 S. Ct. 1816 (2025) is the clearest expression of the wide latitude States are accorded in this area. The law at issue in *Skrmetti* was far broader than this one. It was not limited to

state funding of sex-change interventions but instead *prohibited outright* the use of surgeries, puberty blockers, and hormones designed to enable minors to identify in a manner inconsistent with their biological sex. *Id.* at 1826. In support of its law, Tennessee's legislature noted that the "full range of harmful effects" of such interventions were likely not known, and that the claimed benefits were unproven and based on low-quality evidence. *Id.* "Tennessee concluded that there is an ongoing debate among medical experts regarding the risks and benefits associated with administering puberty blockers and hormones to treat gender dysphoria, gender identity disorder, and gender incongruence." *Id.* at 1836. The legislature also "determined that there is evidence that gender dysphoria 'can be resolved by less invasive approaches that are likely to result in better outcomes.'" *Id.* at 1826.

The Court rejected constitutional challenges to Tennessee's law and affirmed the vacatur of a preliminary injunction against the law. *Id.* at 1837. As the Court explained, "[t]his case carries with it the weight of fierce scientific and policy debates about the safety, efficacy, and propriety of medical treatments in an evolving field." *Id.* But States are to be afforded "wide discretion to pass legislation in areas where there is medical and scientific uncertainty." *Id.* at 1836.

Lower courts have already applied *Skrmetti* to other laws addressing sex-change interventions. In upholding an Arkansas law that prohibited the use of hormones for changing a minor's gender presentation, the Eighth Circuit recently

emphasized that "the Supreme Court leaves wide discretion for medical legislation to the more politically accountable bodies, especially in areas of medical uncertainty." *Brandt by & through Brandt v. Griffin*, 2025 WL 2317546, at *7 (8th Cir. Aug. 12, 2025) (en banc). The court upheld the Arkansas law even though "many medical associations in Arkansas and the United States support gender transition procedures for minors under certain conditions." *Id.* at *6. And the Eighth Circuit further emphasized the broad authority of both Congress and the States to prohibit or regulate medical treatments, even where medical associations claim such interventions are "both advisable and necessary." *Id.* at *9.

That broad authority applies with full force in the context of prisons. The Eleventh Circuit recently addressed a suit by an inmate alleging that Georgia was providing inadequate gender-transition accommodations by refusing to allow a biological male inmate to follow female grooming standards and use certain cosmetic products (such as makeup and nail polish). *See Bayse v. Ward*, 2025 WL 2178446 (11th Cir. Aug. 1, 2025). In *Bayse*, the Court emphasized that it is the prisoner's—not the State's—burden to establish that so-called "social transitioning" accommodations are medically necessary. *Id.* at *6.

The inmate argued that "two ancillary pieces of evidence" showed that these interventions were required by the Eighth Amendment: the prisoner's "previous treatment plan from Georgia State Prison and the standards of care promulgated by

the World Professional Association for Transgender Health." *Id.* But the Eleventh Circuit concluded that "this evidence is insufficient to satisfy Bayse's burden—even as the nonmovant on summary judgment." *Id.*

The Eleventh Circuit agreed with the district court "that these sources do not constitute evidence of medical necessity." *Id.* (cleaned up). "The social transitioning accommodations can be psychologically pleasing without being strictly medically necessary." *Id.* (cleaned up). The Eleventh Circuit also made quick work of the inmate's argument that WPATH "standards of care" can be used to dictate constitutional standards or establish an Eighth Amendment violation. *Id.* "[B]y their own terms," the Court explained, "WPATH offers flexible clinical guidelines that list changes in gender expression as a mere option for treatment." *Id.* (cleaned up).

These cases stand for the proposition that States have wide latitude to regulate medical procedures, and that an inmate's demand for a certain intervention does not mean that it is medically necessary or that a state's decision not to provide it violates the Eighth Amendment. *See id.* at *5. At bottom, "[p]risoners aren't constitutionally entitled to their preferred treatment plan." *Id.* (cleaned up). Many other courts have denied deliberate-indifference claims based on the argument that the plaintiff's hormonal treatment deviates from WPATH's Standards of Care. *See, e.g., Lamb v. Norwood*, 899 F.3d 1159, 1163 (10th Cir. 2018); *Druley v. Patton*, 601 F. App'x 632, 634-36 (10th Cir. 2015). This Court should do the same.

B. WPATH guidance does not dictate constitutional standards.

Plaintiffs rely heavily on WPATH standards in support of their argument that cross-sex hormones are medically necessary. *See, e.g.*, Ettner Decl., ¶¶51, 55, 66, 77-79, 82, 86, 98, 101-04, 109, 130, 152, 155, 161, 165. But WPATH's "Standards of Care" are particularly unreliable because they are not "politically neutral." *Gibson v. Collier*, 920 F.3d 212, 222 (5th Cir. 2019) (cleaned up). "WPATH aspires to be both a scientific organization and an advocacy group for the transgendered," and "[t]hese aspirations sometimes conflict." *Id.* (cleaned up); *see, e.g.*, *Edmo v. Corizon, Inc.*, 949 F.3d 489, 495 (9th Cir. 2020) (O'Scannlain, J., dissental).

Recent authority confirms the unreliability of WPATH's guidance. Concurring in the denial of rehearing en banc, Judge Lagoa discussed a whistleblower leak of "documents and recordings impugning the credibility of the World Professional Association for Transgender Health." *Eknes-Tucker v. Governor of Alabama*, 114 F.4th 1241, 1249 (11th Cir. 2024) (Lagoa, J., concurring). "The leaked documents suggest that WPATH officials are aware of the risks of cross-sex hormones and other procedures yet are mischaracterizing and ignoring information about those risks." *Id.* Judge Lagoa explained that "notwithstanding assurances from organizations like WPATH, there are significant unknowns about these treatments." *Id.* at 1268. She concluded that "[t]he propriety of the medications at issue is a quintessential legislative question, not a constitutional one." *Id.* at 1249.

Justice Thomas has likewise explained that WPATH rests many of its recommendations "on self-referencing consensus rather than evidence-based research, which may help explain the group's confidence in the face of concededly inadequate evidence." *Skrmetti*, 145 S. Ct. at 1848 (Thomas, J., concurring). Moreover, "newly released documents" suggest that "WPATH tailored its Standards of Care in part to achieve legal and political objectives," and recent reporting showed "that WPATH changed its medical guidance to accommodate external political pressure." *Id.* Justice Thomas also discussed the Cass Review, published in April 2024, which concluded, "'we have no good evidence on the long-term outcomes of interventions to manage gender-related distress.'" *Id.* at 1845.

Indeed, "emerging gender dysphoria treatments"—such as "cross-sex hormones, and gender reassignment surgery—are matters of significant scientific debate and uncertainty." *Kadel v. Folwell*, 100 F.4th 122, 193 (4th Cir. 2024) (Wilkinson, J., dissenting), *cert. granted, judgment vacated, Crouch v. Anderson*, 2025 WL 1787678 and 2025 WL 1787687 (U.S. June 30, 2025). It is precisely because of that debate and uncertainty that the arguments Plaintiffs make here "are advanced in the wrong forum. The right forum is a legislative hearing." *Id.* at 193.

The deep and profound disagreements within the medical community about the utility of cross-sex hormones to treat gender dysphoria confirm that Plaintiffs' deliberate indifference claims are foreclosed. At bottom, "[p]rudent medical

professionals … do reasonably differ in their opinions regarding [WPATH's] requirements." *Kosilek v. Spencer*, 774 F.3d 63, 88 (1st Cir. 2014). WPATH's standards "reflect not consensus, but merely one side in a sharply contested medical debate." *Gibson*, 920 F.3d at 221. And "various circuits . . . have rejected Eighth Amendment claims for hormone therapy … to treat gender dysphoria, at least in individual cases." *Id.* at 223 n.8 (collecting cases).

A systematic review of the evidence in the Journal of the Endocrine Society confirms that the medical debate is unsettled. *See* Kellan E. Baker, *et al*., *Hormone Therapy, Mental Health, and Quality of Life Among Transgender People: A Systematic Review, Journal of the Endocrine Society*, 5(4), *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC7894249/pdf/bvab011.pdf. While this review "conclude[d] that hormone therapy may improve [quality of life] among transgender people," it also stated that the "***strength of evidence for this conclusion is low due to concerns about bias in study designs, imprecision in measurement because of small sample sizes, and confounding by factors such as gender-affirming surgery status***." *Id.* at 8 (emphasis added). The review also stated that "[i]t was impossible to draw conclusions about the effects of hormone therapy on death by suicide." *Id.* at 12. Nothing in the Constitution compels Georgia to facilitate and fund interventions that even supporters concede are based on "low"-quality evidence that is biased, imprecise, and confounded by other factors.

Plaintiffs rely heavily on *Keohane* but that case does not forbid bans of unproven procedures. *See* Mot.15-16. Rather, the Court stated: "It seems to us that responding to an inmate's acknowledged medical need with what amounts to a shoulder-shrugging refusal even to consider whether a particular course of treatment is appropriate is the very definition of 'deliberate indifference'—anti-medicine, if you will." *Keohane*, 952 F.3d at 1266-67. Here, there was nothing "shoulder-shrugging" about the Legislature's reasoned decisions on a hotly contested question of public policy. In all events, the panel made clear that its statement was dicta: "We conclude, though, that we are *not* free to reach the merits." *Keohane*, 952 F.3d at 1267. "[D]icta is not binding on anyone for any purpose." *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1298 (11th Cir. 2010).

C. Defendants' provision of cross-sex hormones in the past does not support Plaintiffs' Eighth Amendment claim.

That GDC may have provided certain hormonal interventions previously does not show that they are forever mandated by the Eighth Amendment. Plaintiffs argue that Defendants' past policies establish "that hormone therapy is an integral part of gender dysphoria treatment and that psychotropic drugs and counseling are not a substitute." Mot.13 (emphasis removed). But those policies were adopted by GDC as a matter of discretion and were *overruled* by the Legislature in SB 185. It would be a radical conception of the Eighth Amendment to suggest that once a state agency

provides a certain intervention, the Legislature is permanently disabled from reconsidering or revising the policy.

For the same reason, it is irrelevant that GDC acknowledged in prior litigation that the then-existing regulations authorized "medically necessary" cross-sex hormones in certain circumstances. *See id.* (citing *Doe v. Georgia Dep't of Corr.*, 730 F. Supp. 3d 1327, 1342 (N.D. Ga. 2024), *appeal dismissed as moot*, 2025 WL 1206229 (11th Cir. Mar. 6)). In fact, GDC argued in that case that "Plaintiff's preferred dosage of cross-sex hormones," among other interventions, is *not* "medically necessary." Opp. to Prelim. Inj., *Doe v. GDC*, No. 23-cv-5578-MLB, Dkt.86 (Jan. 31, 2024), at 3. In the same brief, GDC stated (just as it argues here): "The efficacy and proper dosage of cross-sex hormonal medication is also susceptible to reasonable medical disagreement." *Id.* And, regardless of what was contained in any prior GDC policies—which were abrogated by SB 185—Georgia surely did not concede that it would *violate the Eighth Amendment* if it did not provide cross-sex hormones as demanded by an inmate.

Plaintiffs also cite "recurrent litigation against GDC" over its policies to try to establish that applying SB 185 constitutes deliberate indifference. Mot.15. But the Georgia Legislature had not previously addressed the issue of cross-sex hormonal interventions for inmates, and it is for the Legislature alone to exercise the State's legislative power. *See* Ga. Const. art. III, § I. The Legislature's adoption of a uniform

rule in light of repeated litigation against the State is not problematic merely because it has the effect of superseding GDC policy. And courts are generally "not empowered to second-guess the wisdom of state policies." *W. & S. Life Ins. Co. v. State Bd. of Equalization of California*, 451 U.S. 648, 670 (1981).

D. Plaintiffs are not entitled to class-wide relief.

Plaintiffs' motion suffers from another serious flaw: it is a facial challenge on behalf of a class of individuals "seeking or receiving gender dysphoria treatment now proscribed by" SB185. Compl.¶25. "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). Given the individualized nature of the Eighth Amendment inquiry, Plaintiffs cannot establish that *every* individual unable to access a desired sex-change intervention would necessarily experience a level of care below the minimum required by the Constitution. That dooms their request for class-wide relief against the application of SB 185.

And as this is a preliminary-injunction motion, the only question before the Court is whether there is an *ongoing* or *imminent* constitutional violation. *See Wilson v. Sec'y, Dep't of Corr.*, 54 F.4th 652, 668 (11th Cir. 2022) ("In cases where a plaintiff seeks injunctive relief, pointing only to past injuries and speculating that such harm will inevitably occur again is insufficient to establish standing." (cleaned

up)); *Keohane*, 952 F.3d at 1275 n.10 (pre-filing "'attitudes and conduct'" are "irrelevant" for "prospective injunctive relief"). Prospective relief must thus be limited only to those individuals who can show an ongoing or imminent injury, not every individual who seeks cross-sex hormones now or may seek them in the future.

II. Plaintiffs Cannot Establish Irreparable Injury or That the Equities Favor Issuing a Preliminary Injunction.

Irreparable Harm. Citing Ninth Circuit precedent, Plaintiffs argue (at 22) that "deprivation of one's 'constitutional right to adequate medical care is sufficient to establish irreparable harm,'" but the Eleventh Circuit has not endorsed that rule. *See Siegel v. LePore*, 234 F.3d 1163, 1177 (11th Cir. 2000) (en banc). "'The only areas of constitutional jurisprudence where [the Eleventh Circuit has] said that an on-going violation may be presumed to cause irreparable injury involve the right of privacy and certain First Amendment claims.'" *Barrett v. Walker Cnty. Sch. Dist.*, 872 F.3d 1209, 1229 (11th Cir. 2017). Plaintiffs cite *Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010), Mot.22, but that was a First Amendment case. And Plaintiffs ask this Court to facially enjoin a state law, which is a form of irreparable injury *to Georgia*. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) ("Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.").

Balance of the Equities and Public Interest. Where, as here, "the government is the party opposing the preliminary injunction, its interest and harm merge with the

public interest." *Swain v. Junior*, 958 F.3d 1081, 1091 (11th Cir. 2020). Here, the harm to Defendants and the public far outweighs the speculative harm to Plaintiff. *See* 18 U.S.C. §3626(a)(2) ("The court shall give substantial weight to any adverse impact on … the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity…."). Moreover, "it is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Swain*, 958 F.3d at 1090 (cleaned up); *see Valentine v. Collier*, 956 F.3d 797, 803 (5th Cir. 2020).

Plaintiffs claim irreparable harm based on "suicide risks," Mot.22-23, which Defendants take extremely seriously. Numerous procedures are in place to monitor such risks and prevent self-harm. *See* Owen Decl. ¶¶8, 12-16.

Regardless, the Supreme Court and Eleventh Circuit have denied preliminary injunctions in constitutional challenges to restrictions on sex-change interventions, even where the plaintiffs claimed that the laws would increase the risk of suicide or mental distress. *See* Lacy Decl., Dkt. 28, *L.W., et al., v. Skrmetti*, No. 3:23-cv-00376 (M.D. Tenn. Apr. 21, 2023) ("I am deeply concerned for my young transgender patients because my experience leads me to believe that denying my patients access to gender-affirming hormone therapy can lead to depression, increase anxiety, and possibly lead to suicidal ideation."). Notwithstanding those representations, the

Sixth Circuit vacated the preliminary injunction against the law and the Supreme Court affirmed. *See Skrmetti*, 145 S. Ct. 1816.

Indeed, in granting a stay of the preliminary injunction in *Skrmetti*, the Sixth Circuit noted that "the [Tennessee law's] continuing care exception permits the challengers to continue their existing treatments until March 31, 2024," which lessened the challengers' harm. *L. W. by & through Williams v. Skrmetti*, 73 F.4th 408, 421 (6th Cir. 2023). Georgia's SB 185 contains a similar provision, allowing hormonal interventions to be continued while a tapering-off plan is developed.

In *Eknes-Tucker*, the Eleventh Circuit similarly vacated a preliminary injunction against restrictions on sex-change interventions for minors notwithstanding nearly identical claims of irreparable harm. *See Eknes-Tucker*, 80 F.4th 1205. The plaintiffs' expert argued that "[t]he denial of medically indicated care to transgender people not only results in the prolonging of their gender dysphoria, but causes additional distress and poses other health risks, such as depression, posttraumatic stress disorder, and suicidality." Rebuttal Expert Report of Dan H. Karasik, Dkt.592-11, *Boe, et al., v. Marshall, et al.*, No. 22-cv-00184 (M.D. Ala. June 24, 2024). That is almost verbatim what Plaintiffs' expert argues here. *See* Ettner Decl., ¶117 ("For GDC patients with gender dysphoria, even a gradual taper will risk a resurgence of dysphoria, depression, or suicidality.").

Finally, as a matter of law, courts are justifiably hesitant to accede to an inmate's demands based on threats of suicide or self-harm. Doing so would "incentivize the use of suicide threats by prisoners as a means of receiving desired benefits." *Kosilek*, 774 F.3d at 94. This "concern—regarding the unacceptable precedent that would be established in dealing with future threats of suicide by inmates to force the prison authorities to comply with the prisoners' particular demands—cannot be discounted as a minor or invalid claim." *Id.* "Such threats are not uncommon in prison settings and require firm rejection by the authorities, who must be given ample discretion in dealing with such situations." *Id.*

III. The PLRA Prohibits Plaintiffs' Requested Interventions.

Remarkably, Plaintiffs do not mention the PLRA even though it applies directly to this case. Under the PLRA, Plaintiffs cannot obtain any relief without at least showing a federal constitutional or statutory violation. *See* 18 U.S.C. §3626(a)(1)-(2). As explained, Plaintiffs have not done so. Plaintiffs also must show that any preliminary-injunctive relief meets the PLRA's need-narrowness-intrusiveness requirement: *i.e.*, the relief is "narrowly drawn," "extend[s] no further than necessary to correct the harm," and is "the least intrusive means necessary to correct that harm." 18 U.S.C. §3626(a)(2). The PLRA further requires the Court to give "substantial weight to any adverse impact on … the operation of the criminal justice system," and to respect principles of comity. 18 U.S.C. §3626(a)(2).

Plaintiffs never explain how enjoining SB 185 as to an entire class could meet the need-narrowness-intrusiveness requirement or why this Court can intrude on Defendants' "substantial discretion over the institutions they manage" by ordering access to (or evaluation for) specific interventions. *Rasho v. Jeffreys*, 22 F.4th 703, 711 (7th Cir. 2022) (collecting cases). Defendants are not categorically preventing all treatment for gender dysphoria; they are only enforcing a law that prohibits certain types of hormonal or surgical interventions. Any injunctive relief would thus need to be narrowly tailored to (1) a specific plaintiff who is receiving medical care below what the Constitution demands, (2) only reach as far as is strictly necessary to ensure that the minimal standard required by the Eighth Amendment is met, and (3) intrude as little as possible in Defendants' operation of State prisons.

Plaintiffs seek an injunction of startling breadth, in direct contravention of the PLRA. Their motion asks for an order "(1) enjoining Defendants from enforcing SB185 against Plaintiffs and Class Members seeking or receiving hormone therapy; (2) directing Defendants to resume providing hormone therapy to Plaintiffs and Class Members in the dosages and amounts approved by GDC pursuant to its pre-SB185 policies related to gender dysphoria; and (3) directing Defendants to continue providing Plaintiffs and Class Members evaluations for hormone therapy in accordance with GDC's pre-SB185 policies related to gender dysphoria." Mot.25.

Paragraph (1) could be read to prevent the enforcement of *all aspects* of SB 185 (including, *e.g.*, its ban on sex-reassignment surgeries) with respect to those seeking or receiving hormones. Paragraph (2) would prevent GDC from varying the dosages of hormone therapy given to inmates, even if changes or stoppages were warranted due to other health concerns. Paragraph (2) also would require GDC to "resume providing hormone therapy" to Plaintiffs, even though two named Plaintiffs were not receiving cross-sex hormones at the time of SB 185's enactment. And Paragraph (3) attempts to freeze GDC's policies regarding evaluations for hormone therapy, again without a showing that those policies are constitutionally required.

Rather than being narrow as required by the PLRA, Plaintiffs' proposed injunction comes close to being an unenforceable "obey the law" injunction that does not specify "what conduct the court has prohibited and what steps they must take to conform their conduct to the law." *Fla. Ass'n of Rehab. Facilities, Inc. v. State of Fla. Dep't of Health & Rehab. Servs.*, 225 F.3d 1208, 1222-23 (11th Cir. 2000). Since even Plaintiffs do not contend that every inmate seeking hormones is constitutionally entitled to them, Defendants would have to make every decision about whether to provide these interventions to an inmate on peril of contempt, with little way to anticipate whether any particular decision would transgress the Eighth Amendment. Plaintiffs' proposed injunction "fails to identify with adequate detail and precision how Defendants are to perform such critical obligations." *Id.* at 1223.

Moreover, the PLRA imposes a time limit on preliminary injunctive relief: any relief the Court enters must be limited to ninety days. The PLRA states that "[p]reliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief" (which is the need-narrowness-intrusiveness findings), and "makes the order final before the expiration of the 90-day period." 18 U.S.C. § 3626(a)(2); *see United States v. Sec'y, Fla. Dep't of Corr.*, 778 F.3d 1223, 1227 (11th Cir. 2015); *Melendez v. Sec'y, Fla. Dep't of Corr.*, 2022 WL 1124753, at *8 (11th Cir. Apr. 15, 2022). Thus, any interim relief given on the limited record now before the Court must be strictly temporary to comply with the PLRA.[2]

IV. Response to the Court's Questions.

The Court asked the parties to address two questions in its order of August 8, 2025. *See* Dkt.10.

The State Defendants contend that SB 185 is constitutional in all its applications because the Eighth Amendment's Cruel and Unusual Punishment Clause does not allow Plaintiffs to second-guess a state legislature's reasoned conclusion not to use taxpayer funds to provide cross-sex hormones for purposes of sex reassignment. Plaintiffs disagree, arguing that deliberate indifference claims and

[2] For the reasons given in Defendants' Brief in Opposition to Class Certification, Defendants do not believe that two of the named Plaintiffs have standing to seek prospective injunctive relief at all. *See* Cert.Opp.6-11.

WPATH's discredited "standards of care" permit them to do exactly that by alleging a distinct Eighth Amendment injury each time an inmate is denied a hormonal intervention WPATH thinks he or she should receive. *See* Mot.4,13.

As the State Defendants explain in their opposition to Plaintiffs' motion to certify a "putative provisional class," on Plaintiffs' view of the law—which, to be clear, the State Defendants strongly reject on the merits—inmates with contemporaneous authorization from GDC to receive cross-sex hormones before SB 185's effective date allege a materially different Eighth Amendment injury, requiring a materially different injunction to redress, than inmates without one. This distinction is critical because it means several named plaintiffs (Stewart and Madison) and many members of Plaintiffs' proposed class lack standing to seek prospective relief enjoining the enforcement of SB 185 outside an as-applied challenge where they can show the necessary evidence to plead and prove individualized redressability. *See* Cert.Opp.11-13.

In response to the second question, GDC could not allow an outside provider to come into a state-run facility under SB 185, given that it would involve the use of state money or resources. Nor could GDC take an offender to a private physician using state resources.

CONCLUSION

For these reasons, the Court should deny Plaintiffs' motion.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief conforms to the requirements of L.R. 5.1C and this Court's subsequent orders. The brief is prepared in 14-point Times New Roman font.

/s/ Stephen J. Petrany

CERTIFICATE OF SERVICE

I certify that on August 18, 2025, I electronically filed the foregoing with the Clerk of the Court using the Court's ECF system, which will automatically send email notification to all counsel of record.

/s/ Stephen J. Petrany