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 CLASS CERTIFICATION AND BRIEF IN SUPPORT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes, Rules and Regulations

Other Authorities

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs ask this Court to certify a sweeping "putative provisional class" of "all individuals incarcerated in the Georgia Department of Corrections who are seeking or receiving" cross-sex hormones on less than one month's notice. Cert.Mot.1; Dkt.4 (requesting that the State Defendants be forced to respond in ten days). The purpose of rushing, they say, is that the Court should enter an equally sweeping preliminary injunction that would halt the implementation of Georgia Senate Bill 185 across the State's prison system as to cross-sex hormones. Cert.Mot.1, 21; PI.Mot.25.

Plaintiffs' request should be denied because neither they nor the federal courts are entitled to set aside a state legislature's reasoned conclusion not to use taxpayer funds to provide cross-sex hormones solely for purposes of sex reassignment. *See* PI.Opp. But independent of the State Defendants' likelihood of success on the merits, Plaintiffs have also failed to demonstrate that litigating their preliminary injunction motion by means of a statewide "putative provisional class" is lawful or appropriate.

"The threshold question" when analyzing class certification is "whether the named plaintiffs have individual standing, in the constitutional sense," to obtain the requested relief. *Griffin v. Dugger*, 823 F.2d 1476, 1482 (11th Cir. 1987). Plaintiffs allege that the denial of cross-sex hormones is an ongoing Eighth Amendment

violation that can be redressed solely by enjoining enforcement of SB 185. PI.Mot.21; Cert.Mot.2; *see also* Compl. ¶177. But two named plaintiffs, Yohansan Jovan Stewart (GDC# 1002489911) and Terrell Montiel Madison (GDC# 1002532655),[1] were never approved for cross-sex hormones during their current term of imprisonment. Compl. ¶¶20, 22. Thus, neither has pleaded or proved that it is "'likely, as opposed to merely speculative,'" that an order enjoining enforcement of SB 185 would actually result in the provision of the hormonal interventions they seek. *Berrocal v. Att'y Gen. of United States*, 136 F.4th 1043, 1051-52 (11th Cir. 2025). Article III requires more than the conclusory assertion that a favorable ruling will "mak[e] it possible" that an alleged injury might eventually be redressed through "'a series of speculative events.'" *Id.* at 1053.

The "putative provisional class" has the same problem. A court's obligation to "assure itself of the Named Plaintiffs' standing to seek injunctive relief" "appl[ies] with no less force in the class-action context." *Williams v. Reckitt Benckiser*, 65 F.4th 1243, 1253-54 (11th Cir. 2023). "[W]hether absent class members can establish standing" is also "exceedingly relevant to the class certification analysis required by

[1] *See* Compl. ¶¶1 & n.1, 20, 22; Dkts.11-3, 11-5 (Stewart & Madison Decls.). Stewart and Madison filed their complaint under their self-declared names "Isis Benjamin" and "Naeomi Madison." *See* Compl. ¶1 & n.1. Throughout this filing, the State Defendants refer to Stewart and Madison as they are identified in GDC's official records.

[Rule 23]." *Cordoba v. DIRECTV*, 942 F.3d 1259, 1273 (11th Cir. 2019). Many members of the "putative provisional class," including nearly all future class members, will lack standing for the same reason as Stewart and Madison: GDC never authorized these inmates to receive cross-sex hormones during their current term of imprisonment under its pre-SB-185 policies, and enjoining enforcement of SB 185 would not change that fact. That the relief Plaintiffs request is unlikely to redress many class members' alleged injuries underscores that, even on Plaintiffs' erroneous view of the law, "the diverse medical needs of, and the different level of care owed to" different inmates means that the adjudication of such disputes is uniquely ill-suited resolution in a universal class action. *See Rouse v. Plantier*, 182 F.3d 192, 199 (3d Cir. 1999) (Alito, J.).

Plaintiffs also fail to show that certifying a "putative provisional class"—a phrase found nowhere in Rule 23—comports with the law.[2] Applying Rule 23's

[2] If Plaintiffs believe this odd phrasing allows them to avoid "affirmatively demonstrat[ing]" their compliance with Rule 23 to the ordinary standard of proof, they are mistaken. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Plaintiffs cannot circumvent the "rigorous analysis" that Rule 23 requires by stacking adjectives or declaring a proposed class to be "provisional" or for some special purpose. *See id.* at 350-51; Neibert, *The Rise of the All-Writs-Act-Putative-Class-Injunction?*, 77 Baylor L. Rev. __, at 11-12, 14 (forthcoming 2025), perma.cc/GKU9-ENMC. Rather, courts must "scrupulous[ly] adher[e] to the rigors of Rule 23." *Trump v. CASA*, 145 S. Ct. 2540, 2566 (2025) (Alito, J., concurring).

rigorous procedural protections and the required standard of proof, Plaintiffs have not established that class certification is appropriate.

Ascertainability: The proposed class's inclusion of all inmates "seeking … hormone therapy now proscribed by SB 185," Cert.Mot.1, is not "adequately defined such that [the class's] membership is capable of determination." *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1304 (11th Cir. 2021). Plaintiffs' reliance on vague and subjective class criteria is especially concerning given the Prison Litigation Reform Act's requirement that prospective relief in prison conditions suits "extend no further than necessary to correct the violation of the Federal right of *a particular plaintiff or plaintiffs*." 18 U.S.C. §3626(a)(1)(A) (emphasis added).

Commonality: Stewart, Madison, and similarly situated inmates lack standing to seek preliminary injunctive relief outside the context of an as-applied challenge because they allege a materially distinct Eighth Amendment injury stemming from the denial of cross-sex hormones but cannot show that enjoining enforcement of SB 185 would actually result in receiving those interventions. That the proposed class will include many such inmates means that Plaintiffs cannot establish commonality, which requires a showing "that the class members 'have suffered the same injury.'" *Dukes*, 564 U.S. at 349-50. As the Court's briefing order contemplates, Dkt.10 at 2, inmates like Stewart and Madison, even on Plaintiffs' erroneous view of the law, allege a materially different harm that would require a

materially different injunction to redress. A class-wide proceeding containing such individuals will not "'generate common answers apt to drive the resolution of the litigation,'" *Dukes*, 564 U.S. at 350, because "'[c]laims of inadequate medical care by their nature require individual determinations'" and correspondingly individualized relief, *Kress v. CCA of Tenn.*, 694 F.3d 890, 893 (7th Cir. 2012).

This is doubly true given that Plaintiffs' claims—and more specifically, Plaintiffs' pending motion seeking a class wide preliminary injunction—are governed by the PLRA, which requires that all prospective relief be narrowly drawn and extend no further than necessary to correct violations of the rights of "a particular plaintiff or plaintiffs." 18 U.S.C. §3626(a)(1)(A). Certifying a sweeping "putative provisional class" whose members do not allege a common (or commonly redressable) Eighth Amendment injury would turn an already-serious Article III and Rule 23 error into an egregious violation of the PLRA.

Typicality & Adequacy: The Supreme Court has explained that the "'commonality and typicality requirements of Rule 23(a)'" serve the same function. *Dukes*, 564 U.S. at 349 n.5. Both are "'guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.'" *Id.* Thus, typicality and commonality "'tend to merge,'" both with each other and with

Rule 23(a)(4)'s "'adequacy-of-representation requirement.'" *Id.*; *see also Cooper v. S. Co.*, 390 F.3d 695, 713 (11th Cir. 2004) (similar), *abrogated on other grounds by Ash v. Tyson Foods*, 546 U.S. 454, 457-58 (2006). Thus, for many of the same reasons Plaintiffs cannot show commonality, the inability to identify a class-wide and commonly redressable Eighth Amendment injury also prevents a showing of typicality and adequacy.

Rule 23(b)(2): Plaintiffs request that the Court certify their "putative provisional class" under Rule 23(b)(2), which applies only when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *See* Cert.Mot.19-21. The "key" to a Rule 23(b)(2) class is "'the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.'" *Dukes*, 564 U.S. at 360. Because many members of the proposed class lack standing to seek prospective relief enjoining the enforcement of SB 185 outside the context of an as-applied challenge, "final injunctive or corresponding declaratory relief" is not "appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). And because "each individual class member would be entitled to a different injunction or declaratory

judgment" tracking their individualized requests for cross-sex hormones, Rule 23(b)(2) "does not authorize class certification." *Dukes*, 564 U.S. at 360.

In sum, Plaintiffs' request that the Court certify a "putative provisional class" is deeply flawed. The Court should hold that Stewart, Madison, and all those similarly situated lack standing to seek prospective relief outside the context of an as-applied challenge, decline to certify any class, "putative," "provisional," or otherwise, and deny Plaintiffs' request for a preliminary injunction.

ARGUMENT

I. Stewart and Madison lack standing to seek prospective relief enjoining the enforcement of SB 185 outside the context of an as-applied challenge.

A class-certification analysis begins with the threshold determination that at least one named plaintiff has Article III standing to pursue the claims for relief he seeks to advance in a representative capacity. *See, e.g.*, *Green-Cooper v. Brinker Int'l*, 73 F.4th 883, 888 (11th Cir. 2023), *cert. denied sub nom.*, 144 S. Ct. 1457 (2024). Along the way the Court must analyze each named plaintiff's standing (or lack thereof), both because "'a plaintiff must demonstrate standing separately for each form of relief sought,'" *e.g.*, *Williams*, 65 F.4th at 1253, and because the named plaintiffs' qualities are relevant to whether a proposed class satisfies the "rigors of Rule 23," *CASA*, 145 S. Ct. at 2566 (Alito, J., concurring). This analysis occurs "'before undertaking any formal typicality or commonality review,'" *Williams*, 65

F.4th at 1253, and involves "both the allegations in the complaint and evidence in the record," *Green-Cooper*, 73 F.4th at 886 n.6 (collecting cases).

The "irreducible constitutional minimum of standing" consists of three elements: "(1) an injury in fact; (2) a causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision." *Williams*, 65 F.4th at 1251 (cleaned up). In a case seeking prospective relief, Article III demands that a plaintiff "separately establish a threat of 'real and immediate,' as opposed to 'conjectural or hypothetical,' future injury" that is both traceable to the conduct he seeks to challenge and redressable by an order enjoining that conduct. *Id.* "These principles apply with no less force in the class-action context." *Id.* at 1253.

Two named plaintiffs, Stewart and Madison, lack standing to seek prospective relief enjoining enforcement of SB 185 outside the context of an as-applied challenge. To explain why, it helps to lay out Plaintiffs' erroneous theory of Eighth Amendment liability.

The Eighth Amendment "forbids the 'inflict[ion]' of 'cruel and unusual punishments.'" *Wade v. McDade*, 106 F.4th 1251, 1255 (11th Cir. 2024) (en banc). And the Supreme Court has held that "exhibiting 'deliberate indifference to [the] serious medical needs of prisoners'" violates that prohibition. *Id.* To state a deliberate indifference claim Plaintiffs must allege, among other things, that

Defendants are providing treatment for "'an objectively serious medical need'" that is "'so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness.'" *Keohane v. Fla. Dep't of Corr. Sec'y*, 952 F.3d 1257, 1266 (11th Cir. 2020) (cleaned up). In other words, the Article III injury and risk of future injury in a deliberate indifference case stems from present and future medical treatment that allegedly violates the Eighth Amendment. *See, e.g.*, *id.* at 1272 (adjudicating claim that Florida was "continuing to violate the Eighth Amendment by denying [a biological male inmate] requested social-transitioning-related accommodations").

In this case, Plaintiffs' deliberate indifference claims are premised on the denial of cross-sex hormones. As Plaintiffs allege in their complaint:

> By denying Plaintiffs and Class Members medically necessary treatment for their gender dysphoria, Defendants have caused and will continue to cause them substantial and predictable physical and psychological harm by withholding effective treatment for an objectively serious medical condition.

Compl. ¶189; *see also id.* ¶14 (alleging that this denial violates the Eighth Amendment), ¶¶164-67 (alleging that denying Plaintiffs cross-sex hormones will harm them). Plaintiffs are wrong that the Eighth Amendment ever requires providing cross-sex hormones to satisfy a biological man's desire to live as a woman, or vice versa, in the face of a state legislature's reasoned judgment that taxpayer funds should not be used to provide these controversial interventions. *See* PI.Opp. But even

if they were not, to have standing to seek a preliminary injunction against the enforcement of SB 185, each named plaintiff "must prove that there is a substantial likelihood that their [alleged Eighth Amendment] injuries would be redressed by a favorable decision on the merits." *One Georgia, Inc. v. Carr*, 599 F. Supp. 3d 1320, 1329 (N.D. Ga. 2022); *cf. Berrocal*, 136 F.4th at 1051-52.

Stewart and Madison lack standing because neither has shown that enjoining enforcement of SB 185 would "significantly increase the likelihood" that GDC will ultimately provide them with the specific hormonal interventions they seek. *Lewis v. Governor of Al.*, 944 F.3d 1287, 1301 (11th Cir. 2019) (en banc). Both make the conclusory assertion that some undefined interventions are "medically necessary" to treat their gender dysphoria. Compl. ¶¶20, 22. But they never provide any of the individualized medical evidence that, on Plaintiffs' view of the law, should be necessary to support such a claim. Plaintiffs' experts, for example, never specifically discuss either inmate's medical condition. *See* Dkt.11-1 (Ettner Decl.); Dkt.11-2 (Haw Decl.). And although both mention receiving cross-sex hormones in the past, *see* Stewart Decl. ¶¶12-13 (recounting interventions authorized in 2020-2021); Madison Decl. ¶10 (similar in early 2024), those authorizations relied on contemporaneous medical evaluations that were long-stale when they began their most recent term of imprisonment. The Court cannot rely on vague accounts of

Plaintiffs' previous interventions as proof that GDC would likely provide the same interventions today absent enforcement of SB 185.

Nothing about this handful of conclusory allegations suggests that it is "'likely, as opposed to merely speculative,'" that enjoining the enforcement of SB 185 would cause Stewart or Madison to ultimately be approved for the interventions they seek under GDC's pre-SB-185 policies. *Berrocal*, 136 F.4th at 1051-52; *cf. Green-Cooper*, 73 F.4th at 888-89. At best, they suggest that an injunction will "mak[e] it possible" that their distinct Eighth Amendment allegations might eventually be redressed. *Berrocal*, 136 F.4th at 1053.

But the mere implication that redress is "possible, instead of significantly more likely," cannot support a grant of prospective relief. *Id.* Indeed, this theory of redressability is especially weak because it relies on both "'a series of speculative events'" involving Plaintiffs' individual doctors, who are not before the Court, *id.*, and speculation about GDC's discretionary application of its pre-SB-185 policies, which Plaintiffs have not challenged as applied to them, *cf. KH Outdoor v. Clay Cnty.*, 482 F.3d 1299, 1303 (11th Cir. 2007) (holding that an alleged First Amendment injury was not redressable because the defendant could have imposed the same injury under an unchallenged policy even if the plaintiff prevailed on the merits).

"At the preliminary injunction stage, [a] plaintiff must make a clear showing that [they are] likely to establish each element of standing." *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (cleaned up). As Stewart and Madison have elected to develop a factual record, they "cannot rest on 'mere allegations,' but must instead point to factual evidence." *Id.* Because neither has shown that their alleged Eighth Amendment injuries are "likely to be redressed by an injunction" prohibiting the enforcement of SB 185, they lack standing to seek prospective relief outside the context of an as-applied challenge that would permit them to adequately prove redressability. *Id.* at 69.

II. The proposed class includes many absent class members who similarly lack standing to seek prospective relief.

Stewart and Madison are not the only inmates in the proposed injunctive class who lack standing to seek prospective relief outside of an as-applied challenge. Plaintiffs' "putative provisional class" includes "all individuals incarcerated in the [GDC] who are *seeking* or receiving" cross-sex hormones now prohibited by SB 185. Cert.Mot.1 (emphasis added). But many (if not all) inmates "seeking" yet not "receiving" cross-sex hormones will not have been authorized to receive them during their current term of imprisonment, which means that their theory of redressability will be at least as speculative as Stewart's and Madison's.

Plaintiffs also contemplate that the class will include every new inmate who enters the GDC system over the course of this litigation. *See* Cert.Mot.11 (relying

on future class members as support for numerosity). But GDC cannot evaluate under its pre-SB-185 policies inmates it has yet to receive, much less authorize any interventions under those now-repudiated policies. Without a contemporaneous pre-existing authorization to bolster their claim to redressability, future inmates will need to litigate the validity of SB 185 as part of an as-applied challenge alleging that the failure to provide *them* with a specific desired intervention would violate the Eighth Amendment. *See, e.g.*, Compl. (Dkt.1), *Doe v. GDC*, No. 1:23-cv-5578-MLB (N.D. Ga. Dec. 6, 2023).

"[T]he fact that many, perhaps most, members of the [proposed] class may lack standing is extremely important to the class certification decision." *Cordoba*, 942 F.3d at 1264. As the Court's briefing order contemplated, 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 different Eighth Amendment injury than inmates without one. As discussed above, the latter group cannot show that it is "'likely, as opposed to merely speculative,'" that an order enjoining enforcement of SB 185 would result in the authorization of any specific hormonal intervention *for them*, and thus the remediation of a specific Eighth Amendment injury, outside the individualized context of an as-applied challenge. *Berrocal*, 136 F.4th at 1051-52.

Because at least one named plaintiff appears likely to have standing to pursue the requested relief, this case is justiciable. *See Cordoba*, 942 F.3d at 1264, 1273; *Green-Cooper*, 73 F.4th at 891. But the fact that a single injunction cannot redress many members of the proposed class's distinct alleged injuries has important implications for whether class certification is appropriate. *See, e.g.*, *Williams*, 65 F.4th at 1254, 1260-61 (remanding for a "meaningful analysis of whether a specifically defined class or subclass meets Rule 23(a)'s requirements" after a district court "did not assure itself of the Named Plaintiffs' standing to seek injunctive relief").

III. Plaintiffs have not shown that the proposed class satisfies Rule 23.

Rule 23's procedural requirements are designed to "ensure that the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented." *Id.* at 1260-61 (cleaned up). "[A]ffirmatively demonstrat[ing]" compliance with those requirements before granting class-wide relief is mandatory outside extraordinary circumstances not implicated here, where compliance will be fully briefed and there is no looming threat to the Court's jurisdiction. *Dukes*, 564 U.S. at 350-51; *see also* Neibert, *The Rise of the All-Writs-Act-Putative-Class-Injunction?*, at 13, perma.cc/GKU9-ENMC. But despite filing a motion for class certification moments

after the complaint, Plaintiffs have failed to satisfy almost any of Rule 23's requirements.

A. The proposed class definition's "seeking" category relies on vague and subjective criteria.

"Ascertainability is an "implied prerequisite of Rule 23." *Cherry*, 986 F.3d at 1302. "Class representatives bear the burden to establish that their proposed class is 'adequately defined and clearly ascertainable,' and they must satisfy this requirement before the district court can consider whether the class satisfies the enumerated prerequisites of Rule 23(a)." *Id.* This threshold analytical step weeds out classes that are "defined through vague or subjective criteria" and prevents a district court from certifying a class if it will later "be unable to ascertain who belongs in it." *Id.* "[A] proposed class is ascertainable if it is adequately defined such that its membership is capable of determination." *Id.* at 1304.

Plaintiffs proposed class definition includes "[a]ll individuals incarcerated in the [GDC] who are seeking or receiving hormone therapy now proscribed by SB185." Cert.Mot.1. Whether an inmate is included in that definition is readily ascertainable as to "receiving" members. But plaintiffs' inclusion of all inmates "seeking" cross-sex hormonal interventions introduces a second set of membership criteria based on the vague and subjective term "seeking." A few hypotheticals illustrate the point: Under Plaintiffs' definition, an inmate will almost certainly become a class member if he asks his doctor to prescribe cross-sex hormones for the

purpose of allowing him to live as the opposite sex. But what about a second inmate who mentions his desire to receive cross-sex hormones in casual conversation with a guard or other inmate but never formally asks his doctor? Or a third inmate who is diagnosed with gender dysphoria and has just arrived in GDC custody? Is he automatically included in the class as soon as he subjectively determines that he is "seeking" cross-sex hormones? Or must he act on that subjective determination, and if so, how?

That these questions lack obvious answers is especially concerning given that Plaintiffs ask the Court to certify a class without the notice and opt-out procedures of Rule 23(b)(3). If the Court certifies a Rule 23(b)(2) class, any inmate who satisfies Plaintiffs' vague and subjective criteria will be automatically joined, including for preclusive effect. *See* Fed. R. Civ. P. 23(c)(3)(A).

This also creates a serious problem under the PLRA, which mandates that prospective relief in prison conditions cases "extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs," 18 U.S.C. §3626(a)(1)(A), and further requires that preliminary injunctions be "narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm," *id.* §3626(a)(2). A class-wide injunction that turns on vague and subjective criteria like the "seeking" requirement will almost categorically be unable to justify

itself in terms of the PLRA's mandatory needs, narrowness, and intrusiveness inquiries.

Plaintiffs had plenty of time to craft a class definition that was "adequately defined and clearly ascertainable" before filing this case and moving for a sweeping preliminary injunction, since they waited three months after SB 185 was passed before initiating this "emergency" action. *Cherry*, 986 F.3d at 1302. The Court should not excuse their failure to satisfy even this modest preliminary requirement.

B. The proposed class does not allege a common Eighth Amendment injury redressable by a class-wide injunction, which forecloses certification under Rule 23(a).

As explained above in the State Defendants' discussion of standing, many members of Plaintiffs' proposed class do not share a common Eighth Amendment injury capable of being redressed by a single class-wide injunction, preliminary or otherwise. This discontinuity means that Plaintiffs cannot establish commonality, typicality, or adequacy under Rule 23(a).

Commonality: Rule 23(a)(2) "requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Dukes*, 564 U.S. at 349-50. Because the proposed class does not allege a common Eighth Amendment injury redressable by a single class-wide injunction, adjudicating the class's deliberate indifference claims will require many, if not all, class members to provide individualized proof to resolve threshold jurisdictional questions and determine the scope of any

individualized relief. Because Plaintiffs have not "established that [their] theory can be proved on a classwide basis," *id.* at 356; *cf. Cordoba*, 942 F.3d at 1273; *Williams*, 65 F.4th at 1254-57, 1260-61, they cannot show commonality under Rule 23(a)(2).

Setting the standing problem aside, Eighth Amendment deliberate indifference claims based on the allegedly unconstitutional denial of cross-sex hormones are uniquely poorly suited for resolution using the class-action device. "'Claims of inadequate medical care by their nature'" involve (on Plaintiffs' own legal theory) fine-grained inquiries that "'require individual determinations'" on the merits, and correspondingly individualized relief. *Kress*, 694 F.3d at 893; *cf. Rouse*, 182 F.3d at 199. Such claims are not amenable to the use of "'a class-wide proceeding to generate common answers apt to drive the resolution of the litigation.'" *Dukes*, 564 U.S. at 350.

Typicality: Because several named plaintiffs lack standing to pursue prospective relief outside of an as-applied challenge, "'the claims … of the [remaining] representative parties'" are not "'typical of the claims … of the class'" as a whole. *Williams v. Mohawk Indus.*, 568 F.3d 1350, 1356-57 (11th Cir. 2009). Current inmates who have never received cross-sex hormones from GDC during their current term of imprisonment do not "possess the same interest and suffer the same injury" as inmates who have. *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001). That divide will only sharpen as new inmates, who are categorically

differently situated, come to make up a greater fraction of the class over time. Even limiting the proposed class to those members who might have standing to pursue prospective relief outside an as-applied challenge, "the vast factual differences in each individual claim" mean that "the claim[s] of each proposed class member would differ from" those of the named plaintiffs. *Doe v. Unified Sch. Dist. 259*, 240 F.R.D. 673, 680 (D. Kan. 2007).

Adequacy: The named plaintiffs that have standing to seek prospective relief outside an as-applied challenge are unable to "adequately prosecute the action," especially the pending request for a preliminary injunction, because of the "substantial conflic[t]" between their litigating interests and those of many absent class members. *Valley Drug Co. v. Geneva Pharms.*, 350 F.3d 1181, 1189 (11th Cir. 2003). On Plaintiffs' own view of the law, inmates who were not receiving cross-sex hormones from GDC during their most recent term of imprisonment (or who will become imprisoned in the future and seek such interventions) allege a distinct Eighth Amendment injury that would require an individualized injunction to adequately redress. But including claims for that kind of individualized relief would only make clear that certifying a statewide class is inappropriate. Thus, Plaintiffs' proposal would leave many absent class members in the unenviable position of being forcibly joined to a provisional class that can adversely bind them but cannot provide meaningful relief.

C. Certification of an injunctive class under Rule 23(b)(2) is inappropriate.

A Rule 23(b)(2) injunctive class is appropriate "only when a single injunction or declaratory judgment would provide relief to each member of the class." *Dukes*, 564 U.S. at 360. On the other hand, if "each individual class member would be entitled to a different injunction or declaratory judgment," certification is improper. *Id.* Even if Plaintiffs were correct about what the Constitution requires (and they are not) a single injunction or declaratory judgment would be inadequate to provide each member of the proposed class the individualized cross-sex hormonal interventions that they claim are required by the Eighth Amendment.

Indeed, whether a given class member even has standing to seek prospective relief against the enforcement of SB 185 outside of an as-applied challenge (again, on Plaintiffs' own erroneous view of the law) would appear to be a fact-intensive question that would likely require individualized expert testimony. Thus, even if "a named plaintiff … proved [their] own claim" to the Court's satisfaction, they could not "prove anyone else's." *Elkins v. Am. Showa Inc.*, 219 F.R.D. 414, 425 (S.D. Ohio 2002). In short, Georgia's decision not to fund cross-sex hormonal interventions cannot "be enjoined or declared unlawful as to all of the class members or as to none of them." *Dukes*, 564 U.S. at 360.

CONCLUSION

The Eighth Amendment's Cruel and Unusual Punishment Clause does not permit Plaintiffs or the federal courts to second-guess the Georgia Legislature's reasoned judgment that taxpayer funds should not be used to provide controversial cross-sex hormonal interventions to inmates. *See* PI.Opp. Plaintiffs' request to certify a "putative provisional class" for the purpose of issuing a statewide injunction against the enforcement of SB 185 would compound that misapprehension of the Constitution and ignore Rule 23's procedural protections for absent class members. For these reasons, the Court should deny Plaintiffs' motion and decline to certify a provisional class.

Dated: August 18, 2025

Respectfully submitted,

/s/ Stephen J. Petrany
Christopher M. Carr
Attorney General
Georgia Bar No. 112505
Stephen J. Petrany
Solicitor General
Georgia Bar No. 718981
Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia, 30334
404-458-3408
spetrany@law.ga.gov

Attorneys for Defendants Tyrone Oliver, Randy Sauls, and Dr. Marlah Mardis

Jeffrey M. Harris*
Rachael C. T. Wyrick*
Julius Kairey*
Zachary P. Grouev*
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Suite 700
Arlington, VA 22209
(703) 243-9423
jeff@consovoymccarthy.com
rachael@consovoymccarthy.com
julius@consovoymccarthy.com
zach@consovoymccarthy.com

**pro hac vice pending*

Special Assistant Attorneys General and Attorneys for Defendants Tyrone Oliver, Randy Sauls, and Dr. Marlah Mardis

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*