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March 13, 2025

Speaker Jon Burns
Georgia House of Representatives
332 State Capitol
Atlanta, GA 30334
jon.burns@house.ga.gov

Re: Letter from the Center for Constitutional Rights Regarding the Unconstitutionality of Senate Bill 185 & House Bill 660

Dear Speaker Burns,

The Center for Constitutional Rights is a national, not-for-profit legal, educational, and advocacy organization dedicated to protecting and advancing rights guaranteed by the United States Constitution, federal statutes, and local and international law. Since our founding in 1966, we have litigated landmark civil rights and human rights cases before the U.S. Supreme Court and other tribunals concerning government overreach and discriminatory state policies, including policies that disproportionately impact LGBTQIA+ communities.

As legal experts who advocate for the rights of transgender, gender nonconforming, intersex, and nonbinary individuals, we write to express our strong opposition to Senate Bill 185 (SB 185) and House Bill 660 (HB 660), which seek to deny essential, evidence-based medical care to transgender individuals with gender dysphoria in the custody of the Georgia Department of Corrections (GDC). In doing so, these bills directly contravene the Eighth Amendment to the U.S. Constitution, which prohibits cruel and unusual punishment and mandates that corrections officials provide adequate medical care to incarcerated people with serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 103–06 (1976).

Blanket Treatment Bans on Gender Dysphoria Treatment Violate the U.S. Constitution and Federal Law

Gender dysphoria is a recognized medical condition that many transgender people experience.[1] Federal courts, including the Eleventh Circuit, have consistently recognized that gender dysphoria is a serious medical condition requiring individualized, evidence-based medical care under the Eighth Amendment. *See, e.g., Keohane v. Fla. Dep't of Corr. Sec*., 952 F.3d 1257, 1266 (11th Cir. 2020); *Kothmann v. Rosario*, 558 F. App'x 907, 910 n.4 (11th Cir. 2014); *Edmo v. Corizon, Inc.*, 935 F.3d 757, 785 (9th Cir. 2019), *cert. denied sub nom*. *Idaho Dep't of Corr. v.*

[1] Gender dysphoria is the psychological distress that results from an incongruence between an individual's gender identity and their assigned sex at birth, and it can lead to significant anxiety, depression, suicide ideation and other disabling conditions when left untreated. *See* AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) (DSM-5); E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 INT'L J. OF TRANSGENDER HEALTH S252 (Sept. 15, 2022), https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644 (hereinafter WPATH Standards).

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Edmo, 141 S. Ct. 610 (Mem.) (2020); *De'lonta v. Angelone*, 330 F.3d 630, 635 (4th Cir. 2003); *White v. Farrier*, 849 F.2d 322, 325 (8th Cir. 1988); *Meriwether v. Faulkner*, 821 F.2d 408, 413 (7th Cir. 1987). In the context of gender dysphoria, such individualized, evidence-based care can include hormone therapy, gender-affirming surgery, and other procedures (hereinafter "gender-affirming care").[2]

If adopted, SB 185 and HB 600 would impose blanket bans on the provision of gender-affirming care to incarcerated people with gender dysphoria, regardless of need.[3] Blanket bans such as these have repeatedly been found unconstitutional because they show deliberate indifference to incarcerated people's serious medical needs. *See Kosilek v. Spencer,* 774 F.3d 63, 91 (1st Cir. 2014); *Fields v. Smith*, 653 F.3d 550, 559 (7th Cir. 2011); *Hicklin v. Precynthe*, No. 4:16-cv-01357-NCC, 2018 WL 806764, at *11 (E.D. Mo. Feb. 9, 2018); *Diamond v. Owens*, 131 F. Supp. 3d 1346, 1376 (M.D. Ga. 2015); *Soneeya v. Spencer*, 851 F. Supp. 2d 228, 246–47 (D. Mass. 2012). Indeed, as the Eleventh Circuit recognized in *Keohane,* "responding to an inmate's acknowledged medical need with what amounts to a shoulder-shrugging refusal ***to even consider*** whether a particular course of treatment is appropriate is the very definition of 'deliberate indifference.'" *Keohane*, 952 F.3d at 1266–67 (emphasis added).

Beyond the Eighth Amendment, SB 185 and HB 660 violate the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 et *seq.*, and Section 1557 of the Affordable Care Act (ACA), 42 U.S.C. § 18116, because they purposefully deny healthcare based on sex and disability.[4] *See, e.g.*, *Williams v. Kincaid*, 45 F.4th 759, 766–74 (4th Cir. 2022) (affirming that gender dysphoria is a covered disability for purposes of the ADA), *cert. denied*, 143 S. Ct. 2414 (2023); DOJ Statement of Interest at 7–14, *Doe v. Ga. Dep't of Corr.*, No. 1:23-cv-5578-MLB (N.D. Ga. Jan. 8, 2024) (explaining that Gender Dysphoria is covered by the ADA).

The Consequences of Passing SB 185 and HB 660 Will be Dangerous and Costly

Adopting legislation like SB 185 and HB 660 that prohibit gender-affirming care regardless of medical necessity not only violates the Constitution and federal statutory protections, but it puts lives at risk. Studies have shown that transgender individuals who are denied appropriate medical treatment in custody, including treatment for gender dysphoria, face an increased risk of severe

[2] WPATH Standards, *supra* note 1 (outlining the treatments that can constitute medically necessary gender dysphoria care depending on the individuals). The WPATH Standards are the accepted standards of care for treating patients with gender dysphoria, as recognized by the American Psychiatric Association and the American Medical Association, as well as the Fourth and Ninth Circuits. *See Edmo v. Corizon, Inc.*, 935 F.3d 757, 788 n.16 (9th Cir. 2019) (calling WPATH guidelines "the gold standard on this issue"); *accord De'Lonta v. Johnson*, 708 F.3d 520, 522–23 (4th Cir. 2013).

[3] H.B. 660, 2025 Gen. Assemb., Reg. Sess. (Ga. 2025), *available at* https://legiscan.com/GA/text/HB660/2025 (last visited March 10, 2025); S.B. 185, 2025 Gen. Assemb., Reg. Sess. (Ga. 2025), *available at* https://www.legis.ga.gov/api/legislation/document/20252026/232616 (last video March 10, 2025).

[4] *See* HB 660 § 2(a)(2) (defining the prohibited care as "any medical procedure performed for the purpose of: (A) Enabling an individual to identify with or live as a purported identity inconsistent with such individual's sex; or (B) Treating an individual's purported discomfort or distress from a discordance between such individual's sex and asserted identity."); SB 185 § 1(e)(2) (authorizing gender-affirming care *except* for people with gender dysphoria or those seeking "sex reassignment").

psychological distress and suicide.[5] Tragically, at least one transgender person with gender dysphoria has already died by suicide in GDC custody.[6]

History has shown the severe financial and legal consequences of such unconstitutional actions for corrections officials: indeed, Georgia has already paid millions of dollars in damages and settlements to people who were denied necessary medical treatment while incarcerated, including treatment for gender dysphoria.[7] Furthermore, recent legal challenges underscore the risks of adopting policies like those proposed in SB 185 and HB 660. Just last week in *Jones v. Bondi*, Case No. 1:25-cv-401-RCL (D.D.C. Mar. 3, 2025), a federal court enjoined the Federal Bureau of Prisons from denying gender dysphoria healthcare to transgender inmates under a Trump Executive Order, finding such actions unconstitutional under the Eighth Amendment.

Passing SB 185 or HB 660 will all but guarantee that Georgia finds itself embroiled in similar legal challenges and costly and protracted litigation. The state's resources would be far better spent providing constitutionally adequate medical care than defending an indefensible and discriminatory policy in court.

Therefore, we urge you to reject SB 185 and HB 660 and stand against any legislation that endangers lives, violates constitutional and federal law, and exposes Georgia and its taxpayers to unnecessary financial liability.

Sincerely,

The Center for Constitutional Rights

cc.

Chief of Staff, Chris Riley

Executive Assistant, Sheena Wright

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[5] Mattia Marchi, *et al., Mental health of transgender people in prison: a systematic review and meta-analysis*, 36.7 INT'L REV. OF PSYCHIATRY 714–728 (2024); https://doi.org/10.1080/09540261.2023.2287680; Marie Claire Van Hout et al., *Contemporary transgender health experience and health situation in prisons: A scoping review of extant published literature (2000–2019)*, 21.3 INT'L J. OF TRANSGENDER HEALTH 258 (2020), https://doi.org/10.1080/26895269.2020.1772937; Leah Drakeford, *Correctional Policy and Attempted Suicide Among Transgender Individuals,* 24.2 J. OF CORR. HEALTH CARE 171 (2018), https://doi.org/10.1177/1078345818764110.

[6] U.S. Dep't of Justice, Civil Rights Div., Investigation of Georgia Prisons 22 (2024), https://www.justice.gov/crt/media/1371406/dl.

[7] *See, e.g.,* Carrie Teegardin, Danny Robbins, & Jennifer Peebles, *Prison System Failures Cost Georgia Taxpayers Millions*, ATLANTA JOURNAL-CONSTITUTION (Feb. 1, 2024), https://perma.cc/8LXH-5DPG (noting that GDC spent almost $20 million since 2018 settling claims involving death or injury to people incarcerated in its custody, including a 2021 settlement regarding the suicide of an incarcerated transgender person); Deborah Sontag, *Georgia: State to Pay Transgender Inmate*, N.Y. TIMES, Feb. 16, 2016, https://www.nytimes.com/2016/02/13/us/georgia-state-to-pay-transgender-inmate.html.