IN THE COURT OF COMMON PLEAS
FOR FRANKLIN COUNTY, OHIO

MADELINE MOE, by and through her parents and next friends, Michael Moe and Michelle Moe; MICHAEL MOE; MICHELLE MOE,
c/o Freda Levenson
ACLU of Ohio
4506 Chester Avenue,
Cleveland, Ohio 44103

and

GRACE GOE, by and through her parents and next friends, Garrett Goe and Gina Goe; GARRETT GOE; GINA GOE,
c/o Freda Levenson
ACLU of Ohio
4506 Chester Avenue
Cleveland, Ohio 44103

Plaintiffs,

v.

DAVID YOST,
Attorney General of Ohio
30 E. Broad Street, 14th Fl.
Columbus, OH 43215,

STATE MEDICAL BOARD OF OHIO,
30 E. Broad Street, 3rd Fl.
Columbus, OH 43215,

and

THE STATE OF OHIO
c/o Attorney General Dave Yost
30 E. Broad Street, 14th Fl.
Columbus, OH 43215.

Defendants.

Case No. _____

Judge _____

EMERGENCY RELIEF REQUESTED

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs MADELINE, MICHAEL, and MICHELLE MOE, and GRACE, GARRETT, and GINA GOE,[1] bring this action for declaratory and injunctive relief.

INTRODUCTION AND NATURE OF THIS ACTION

1. On December 13, 2023, the Ohio General Assembly passed a bill composed of two separate acts, bearing separate titles: the "Saving Ohio Adolescents from Experimentation Act," and the "Save Women's Sports Act" (collectively, "H.B. 68"). The first Act bans physicians from providing medically necessary, widely accepted, and potentially lifesaving health care to transgender adolescents (the "Health Care Ban" or the "Ban"). The second Act prohibits Ohio schools from permitting trans girls and women to participate in girls' or women's athletic competitions (the "Sports Prohibition").[2]

2. The combination of these two unrelated acts is unconstitutional because it violates the single-subject rule. Worse, the General Assembly ignored the pleas of the families that the Health Care Ban targets, who seek nothing more than freedom from government interference in their health care decision-making. It also ignored the widespread opposition of medical professionals who informed the General Assembly that the Ban would prohibit a critically important treatment—in fact, the only evidence-based treatment—for gender dysphoria in adolescents.

[1] Plaintiffs have filed a separate motion to proceed using these pseudonyms, rather than their legal names, in order to protect their privacy regarding the minor plaintiffs' transgender status and their medical condition and treatment.

[2] This action challenges the enactment of H.B. 68 as a whole, and also specifically challenges the substance of the Health Care Ban.

3. Gender dysphoria is a serious medical condition, characterized by clinically significant distress resulting from incongruence between a person's gender identity and their sex assigned at birth. Left untreated, gender dysphoria is associated with severe anxiety, depression, suicidal ideation and suicide attempts, and decreased quality of life. The condition is recognized by all of the major medical associations in the United States and internationally, and the widely accepted standards of care include the use, where appropriate, of puberty-delaying medication and/or hormone therapy. This treatment regimen is referred to as gender-affirming health care, or simply gender-affirming care. The Health Care Ban prohibits this care for gender dysphoria in adolescents.

4. On December 29, Governor Mike DeWine vetoed H.B. 68, stating his justification in no uncertain terms:

> Ultimately, I believe this is about protecting human life. Many parents have told me that their child would be dead today if they had not received the treatment they received from an Ohio children's hospital. I have also been told, by those that are now grown adults, that but for this care, they would have taken their lives when they were teenagers. […] Parents are making decisions about the most precious thing in their life, their child, and none of us should underestimate the gravity and the difficulty of those decisions.

5. The Governor's message also acknowledged that the Health Care Ban stands contrary to both parental rights and the best judgment of physicians:

> While there are rare times in the law, in other circumstances, where the State overrules the medical decisions made by the parents, I can think of no example where this is done not only against the decision of the parents, but also against the

medical judgement of the treating physician and the treating team of medical experts.

6. Just as the General Assembly ignored families and physicians, it ignored Governor DeWine. On January 24, 2024, it overrode his veto.

7. By preventing Ohio physicians from prescribing medication to treat gender dysphoria in adolescents, the Health Care Ban poses an enormous threat to transgender adolescents and their families, now and in the future. It closes off access to critical medical care in Ohio, heedless of the consensus of the medical community, the best judgment of treating physicians, the needs of suffering patients, and the considered decisions of those patients' parents.

8. Some parents of transgender children are making plans to flee Ohio to protect their children's health and safety and to obtain the medical treatment their children need. Those with the resources to do so will have to leave their jobs, businesses, extended families, and communities. Other families will stay in Ohio but will have to shoulder the hardship of disruptive and expensive travel to secure medical care for their children out of state, often at the expense of the child's time in school and the parents' time at work. Families that do not have the resources or are otherwise unable to leave the state are terrified at the prospect of their children's suffering when they lose access to essential medical care.

9. Absent relief from this Court, H.B. 68 will go into effect on April 24, 2024.

PARTIES

A. The Minor Plaintiffs and Their Families

10. *The Moe Family.* Michael and Michelle Moe, along with their twelve-year-old daughter Madeline, live in Hamilton County, Ohio. Madeline is transgender, has a gender dysphoria diagnosis, and is currently receiving medically necessary care that would be prohibited

by the Health Care Ban. Madeline and her parents desperately want Madeline to continue to receive medically necessary care, but she will not be able to do so in Ohio if the Health Care Ban goes into effect.

11. *The Goe Family.* Gina and Garrett Goe, along with their twelve-year-old daughter Grace, live in Franklin County, Ohio. Grace is transgender, has a gender dysphoria diagnosis, and is being monitored for the onset of puberty, at which point she will be a candidate for medically necessary care that would be prohibited by the Health Care Ban. Grace and her parents want and have been planning for her to receive that medically necessary care, but she will not be able to do so in Ohio if the Health Care Ban goes into effect.

12. Plaintiffs Grace Goe and Madeline Moe are collectively referred to herein as "Minor Plaintiffs." Their parents, Gina and Garrett Goe and Michael and Michelle Moe, are collectively referred to herein as the "Parent Plaintiffs."

B. The Defendants

13. Defendant David Yost is the Attorney General of the State of Ohio. He is responsible for the enforcement of all laws, including H.B. 68. Under H.B. 68, he is also empowered to bring actions to enforce compliance with H.B. 68. He is sued in his official capacity.

14. Defendant State Medical Board of Ohio oversees the practice and licensure of physicians and other medical professionals in Ohio. Its authority includes taking disciplinary actions against medical professionals who violate public health and safety standards set by the Ohio General Assembly, such as those set forth in H.B. 68, and by the State Medical Board itself.

15. Defendant State of Ohio is the sovereign entity on whose behalf H.B. 68 was enacted.

JURISDICTION AND VENUE

16. This Court has jurisdiction over the subject matter of this action, including under R.C. 2721.02(A), 2727.02, and 2727.03.

17. Venue is proper in this Court pursuant to Ohio Rule of Civil Procedure 3(C)(4), because Defendants Yost and the State Medical Board of Ohio maintain their principal offices in Franklin County, and Rule 3(C)(6), because the passage of H.B. 68 occurred in Franklin County.

FACTUAL ALLEGATIONS

Standards of Care for Treating Transgender Adolescents with Gender Dysphoria

18. Gender dysphoria is the clinical diagnosis for the clinically significant distress that results from incongruence between a person's gender identity and their sex assigned at birth.

19. "Sex assigned at birth" or "sex designated at birth" are more precise than the term "biological sex," because all of the physiological aspects of a person's sex are not always aligned with each other. For these reasons, the Endocrine Society warns practitioners that the terms "biological sex" and "biological male or female" are imprecise and should be avoided.

20. Most boys are designated male at birth based on their external genital anatomy, and most girls are designated female at birth based on their external genital anatomy. But transgender people have a gender identity that differs from the sex they were assigned at birth.

21. "Gender identity" refers to a person's deeply felt, internal, intrinsic sense of their own gender. "Gender expression" refers to how a person enacts or expresses their gender in everyday life.

22. Everyone has a gender identity and one's understanding of it may develop over time.

23. A person's gender identity cannot be altered voluntarily or changed through

medical intervention.

24. Transgender people have existed throughout history.

25. Being transgender is not itself a medical condition to be treated. But gender dysphoria is a serious medical condition, recognized in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed., Text Revision. If left untreated, gender dysphoria can result in not just decreased quality of life, but also debilitating anxiety, severe depression, self-harm, suicidal ideation, and suicide attempts.

26. A person can experience gender dysphoria at any age, but among adolescents it is often associated with distress at physical changes associated with the development of secondary sexual characteristics during puberty—such as breast development, voice deepening, or growth and thickening of facial and body hair—that are inconsistent with the person's gender identity.

27. Gender-affirming medical care improves mental health for adolescents who require such care.

28. All of the major medical organizations in the United States have highlighted the importance of gender-affirming medical care for adolescents with gender dysphoria and have issued explicit statements opposing bans on this care. These organizations include the American Medical Association, the American Academy of Pediatrics, the American Psychiatric Association, the American College of Physicians, the American Academy of Family Physicians, the American Academy of Child & Adolescent Psychiatry, the Endocrine Society, the Pediatric Endocrine Society, the World Professional Association for Transgender Health, and the United States Professional Association for Transgender Health, among many others.

29. Gender dysphoria is a diagnosis in the American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders ("DSM V"). In order to be diagnosed with

gender dysphoria, the incongruence between a person's gender identity and designated sex must have persisted for at least six months and be accompanied by clinically significant distress or impairment in social, occupational, or other important areas of functioning. There are two separate diagnoses for gender dysphoria, one for gender dysphoria in childhood and the other for gender dysphoria in adolescence and adulthood.

30. The World Professional Association for Transgender Health (WPATH) has issued Standards of Care for the Health of Transgender and Gender Diverse People since 1979. The current version is Standards of Care Version 8 ("SOC-8"), published in 2022. SOC-8 provides guidelines for multidisciplinary care of transgender individuals, including youth and adolescents, and describes criteria for medical treatment of gender dysphoria in adolescents and adults. Such treatment may include puberty-delaying medication, hormone treatment, and surgery where medically indicated. Every major medical organization in the United States recognizes that these treatments can be medically necessary to treat gender dysphoria.

31. SOC-8 is based on a rigorous and methodological evidence-based approach. Its recommendations, which reflect an expert consensus, are informed by a systematic review of the evidence and an assessment of the benefits and harms of alternative care options.

32. These treatments for gender dysphoria are typically described in medical literature and clinical practice as "gender-affirming care." The text of the Health Care Ban instead uses the term "gender transition services" to describe similar treatments and concepts.

33. The guidelines for gender-affirming care outlined in SOC-8 are endorsed by numerous medical professional organizations, including the American Academy of Family Physicians, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the American Medical Association, the American Psychiatric Association, the

American Psychological Association, and the Pediatric Endocrine Society.

34. The Endocrine Society, an international medical organization of over 18,000 endocrinology researchers and clinicians, has also published a clinical practice guideline for the treatment of gender-dysphoric individuals, including pubertal suppression and sex hormone treatment. The Endocrine Society Guideline provides protocols for the medically necessary treatment of gender dysphoria similar to those outlined in the WPATH Standards of Care.

35. The quality of evidence supporting SOC-8 and the Endocrine Society Guideline are comparable to the support for guidelines that medical providers use to treat many other conditions, including in the field of pediatrics. The SOC-8 and the Endocrine Society Guideline are widely accepted. Clinicians throughout Ohio and the country follow the SOC-8 and the Endocrine Society Guideline to diagnose and treat people with gender dysphoria.

36. Gender-affirming care is not a novel or unproven treatment. The use of puberty-delaying medication for the treatment of gender dysphoria, for example, has been the subject of medical literature since 1998, and prospective observational trials began recruiting participants in 2000. The evidence for gender-affirming care is comparable to the evidence for many other widely accepted treatments in pediatrics.

37. Gender-affirming care also is not experimental. Experimental treatments are interventions that have shown some promise, administered to advance knowledge for the potential benefit of future patients. Conversely, gender-affirming care is provided to benefit individual patients and the treatment is modified based on their individual responses. There are decades of studies—going back over 25 years—supporting the benefits of gender affirming care where medically indicated, which is why it is the standard of care for gender dysphoria.

38. Medical guidance to clinicians differs depending on whether the treatment is

for a pre-pubertal child, an adolescent, or an adult. In all cases, the precise treatment recommended for gender dysphoria will depend upon each person's individualized needs.

39. Before puberty, gender-affirming care does not include any pharmaceutical or surgical intervention. Care for pre-pubertal children may include "social transition," which means supporting a child living consistently with the child's persistently expressed gender identity, along with supportive therapy.

40. Under SOC 8 and the Endocrine Society Guideline, medical interventions may become medically necessary and appropriate as transgender youth reach puberty.

41. Endocrinologists, including pediatric endocrinologists, have extensive experience in the types of hormone management that treatment of gender dysphoria entails. In providing medical treatments to adolescents, pediatric endocrinologists and other clinicians work with qualified mental health professionals experienced in diagnosing and treating gender dysphoria.

42. In accordance with SOC 8 and the Endocrine Society Guideline, and in the practice of clinicians in Ohio, there are generally two types of gender-affirming medical treatments to treat gender dysphoria in minors: puberty-delaying treatment, and gender-affirming hormone treatment.

Puberty-Delaying Treatment

43. There are no hormonal or medical interventions indicated for pre-prepubertal youth, i.e., those who have not started puberty.

44. For many transgender adolescents, going through puberty in accordance with their sex designated at birth can cause extreme distress. For these individuals, puberty-delaying medication—known as gonadotropin-releasing hormone agonists ("GnRH agonists") and

referred to in the Health Care Ban's text as "puberty-blocking drugs"—can minimize and potentially prevent the heightened gender dysphoria and permanent, unwanted physical changes that puberty would cause. For gender dysphoric adolescents who are experiencing severe distress upon the onset of puberty, this pause alleviates worsening distress that occurs as puberty progresses.

45. Treatment with puberty-delaying medication is part of the standard of care for treating gender dysphoria in adolescents.

46. Under the Endocrine Society Guideline,[3] adolescents may be eligible for puberty-delaying treatment if:

> "1. A qualified MHP [mental health professional] has confirmed that:
>
> - the adolescent has demonstrated a long-lasting and intense pattern of gender nonconformity or gender dysphoria (whether suppressed or expressed),
> - gender dysphoria worsened with the onset of puberty,
> - 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, and
> - the adolescent has sufficient mental capacity to give informed consent to this (reversible) treatment.
>
> 2. And the adolescent:
>
> - 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,
> - has given informed consent and (particularly when the adolescent has not reached the age of legal medical consent, depending on applicable

[3] *See* Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline, *The Journal of Clinical Endocrinology & Metabolism*, Vol. 102, Issue 11 (Nov. 1, 2017), available at https://academic.oup.com/jcem/article/102/11/3869/4157558.

legislation) the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process,

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

- agrees with the indication for GnRH agonist treatment,
- has confirmed that puberty has started in the adolescent (Tanner stage ≥G2/B2),[4]
- has confirmed that there are no medical contraindications to GnRH agonist treatment."

47. Puberty-delaying medication has been shown to be safe and effective at treating gender dysphoria in adolescents and is associated with improved mental health outcomes that include significantly lower levels of anxiety, depression, disruptive behaviors, and suicidality and suicidal ideation, as well as improved global functioning (i.e., how well a person functions in their daily life).

48. Puberty-delaying treatment pauses a person's endogenous puberty at the stage of pubertal development that the person is in at the time their treatment begins. For transgender girls, this treatment pauses the physiological changes typical of male puberty and prevents the development of associated secondary sex characteristics like facial hair, a pronounced "Adam's apple," and a deepening voice. For transgender boys, puberty-delaying treatment prevents the development of breasts and menstruation.

49. Pausing development in early puberty stops adolescents with gender dysphoria from developing secondary sex characteristics inconsistent with their gender identity, which can

[4] Tanner Staging is a measure of an individual's progression through puberty. *See generally* University of Cincinnati College of Medicine, *Tanner Stages*, available at https://med.uc.edu/landing-pages/reproductivephysiology/lecture-3/tanner-stages

be extremely distressing for them, and which may be difficult, if not impossible, to eliminate once the characteristics have fully developed.

50. The use of puberty-delaying treatment after the onset of puberty can eliminate or reduce the need for surgery later in life.

51. On its own, puberty-delaying treatment does not permanently affect fertility.

52. Because puberty-delaying treatment followed by gender-affirming hormone therapy can affect fertility, patients and their families are counseled about the risks and benefits of treatment and provided information about fertility preservation.

53. Puberty-delaying treatment is reversible. Once puberty-delaying treatment is stopped, there are no lasting effects of treatment. Endogenous puberty resumes and patients undergo puberty on a timeline typical of their peers.

Gender-Affirming Hormone Therapy

54. It may be medically necessary and appropriate for some adolescents later in puberty to treat their gender dysphoria with gender-affirming hormone therapy (testosterone for transgender boys, and testosterone suppression and estrogen for transgender girls). Gender-affirming hormone therapy results in the development of secondary sex characteristics consistent with an individual's gender identity. If gender-affirming hormone treatment is provided after puberty-delaying treatment, patients undergo puberty consistent with their gender identity on a timeline typical of their peers.

55. For adolescents and adults who do not begin medical treatment until after puberty has started or substantially progressed, gender affirming hormone therapy may be the first medical intervention.

56. The psychological benefits of gender-affirming hormone treatment for individuals

with gender dysphoria, including adolescents, include reduction of anxiety, depression, and suicidality, and improvements in life satisfaction.

57. Under the Endocrine Society Guideline,[5] transgender adolescents may be eligible for gender-affirming hormone therapy if:

> "1. A qualified MHP [Mental Health Professional] has confirmed:
>
> - the persistence of gender dysphoria,
> - 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,
> - the adolescent has sufficient mental capacity (which most adolescents have by age 16 years) to estimate the consequences of this (partly) irreversible treatment, weigh the benefits and risks, and give informed consent to this (partly) irreversible treatment,
>
> 2. And the adolescent:
>
> - has been informed of the (irreversible) effects and side effects of treatment (including potential loss of fertility and options to preserve fertility),
> - has given informed consent and (particularly when the adolescent has not reached the age of legal medical consent, depending on applicable legislation) the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process,
>
> 3. And a pediatric endocrinologist or other clinician experienced in pubertal induction:
>
> - agrees with the indication for sex hormone treatment,
> - has confirmed that there are no medical contraindications to sex hormone treatment."

[5] *See* Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline, *The Journal of Clinical Endocrinology & Metabolism*, Vol. 102, Issue 11 (Nov. 1, 2017), available at https://academic.oup.com/jcem/article/102/11/3869/4157558

58. Through decades of clinical experience and research, gender-affirming hormone therapy has been shown to be safe and effective at treating gender dysphoria in adolescents.

59. Treatment with gender affirming hormone therapy is demonstrated to result in improvement in symptoms of gender dysphoria, depression, and anxiety in transgender youth, as well as improved psychological functioning among transgender young adults who receive treatment for gender dysphoria.

60. Unwanted side effects from gender-affirming hormone therapy are rare when treatment is provided under clinical supervision.

61. Puberty-delaying medications and gender-affirming hormones are prescribed only after a comprehensive psychosocial assessment by a qualified health professional who: (i) assesses the diagnosis of gender dysphoria and any other co-occurring diagnoses, (ii) ensures the child can assent and the parents/guardians can consent to the relevant intervention after a thorough review of the risks, benefits, and alternatives of the intervention, and (iii) ensures that, if co-occurring mental health conditions are present, they do not interfere with the accuracy of the diagnosis of gender dysphoria or impair the ability of the adolescent to assent to care.

62. In the absence of intervention, distressing physical changes of puberty will progress. To not intervene, when gender-affirming medical care is indicated, thus causes significant harm to the patient in the form of increasing gender dysphoria associated with the development of secondary sex characteristics that do not match the person's gender identity.

63. There are no evidence-based interventions, other than gender-affirming medical care, that effectively treat adolescent gender dysphoria.

64. Psychotherapy alone does not effectively treat gender dysphoria.

65. If the Health Care Ban is not enjoined, medical and mental health providers will be

left with no evidence-based treatments to support their adolescent patients with gender dysphoria.

66. Given the well-documented benefits of gender-affirming medical care, and the known harms of untreated adolescent gender dysphoria, banning this care will lead to substantial deterioration of mental health for adolescents diagnosed with gender dysphoria. For many of these patients, this is likely to include worsening suicidality.

Text and Legislative History of H.B. 68

67. On February 27, 2023, Representative Gary Click introduced the Health Care Ban in the Ohio House of Representatives, dubbing it the "Saving Ohio Adolescents from Experimentation (SAFE) Act."

68. In language that persisted from its original incarnation through its enactment, the Ban prohibits physicians from providing certain medical care to aid adolescent patients in what the bill terms "gender transition," which it defines as "the process in which an individual goes from identifying with and living as a gender that corresponds to his or her biological sex to identifying with and living as a gender different from his or her biological sex, including social, legal, or physical changes." The purpose of the Health Care Ban is to obstruct or prevent physicians from providing gender-affirming care to patients under eighteen years of age.

69. In relevant part, the Health Care Ban states that a physician "shall not knowingly … [p]rescribe a cross-sex hormone or puberty-blocking drug for a minor individual for the purpose of assisting the minor individual with gender transition," nor "[e]ngage in conduct that aids or abets" in the same. 2024 Subs.H.B. No. 68 (enacting R.C. 3129.02(A)(2)-(3)). Defendant Yost "may bring an action to enforce compliance" with this restriction. *Id.* (enacting R.C. 3129.05(C)). Further, any violation "shall be considered unprofessional conduct and subject to discipline by" the Defendant State Medical Board. *Id.* (enacting R.C. 3129.05(A)).

70. Although the Health Care Ban restricts the use of puberty-delaying treatment and

hormone therapy, it does so only where those treatments are provided for the purposes of gender-affirming care. It expressly permits the use of these same treatments for other purposes, so long as it is not "gender transition."

71. For instance, puberty-delaying medication is commonly used to treat central precocious puberty, which is the premature initiation of puberty by the central nervous system. The Health Care Ban does not restrict the use of puberty-delaying medication for such treatment. The risks and side effects of puberty-delaying medication in this manner are comparable to the risks and side effects when used to treat gender dysphoria.

72. Separately, on February 15, 2023, Representative Jena Powell introduced a different bill, "the Sports Prohibition." That bill was introduced as House Bill 6 and dubbed the "Save Women's Sports Act." Its sponsors stated that it was intended to "preserve women's rights, and the integrity of women's and girls' sports." *See* H.B. No. 6, As Introduced version, 135th General Assembly (February 15, 2023).

73. The Sports Prohibition comprises a series of restrictions effectively prohibiting transgender girls from participating in any sports on gender-separated teams matching their gender identity. Specifically, the Sports Prohibition bars any school, interscholastic conference, or interscholastic athletic organization from knowingly permitting transgender girls from participating on girls' sports teams. Other provisions expand this prohibition to the vast majority of public and private colleges and universities in the state. The Sports Prohibition also creates private rights of action for, *inter alia*, "[a]ny participant who is deprived of an athletic opportunity or suffers a direct or indirect harm as a result of a violation of this section[.]" 2024 Subs.H.B. No. 68 (enacting R.C. 3345.562).

74. When introduced in the Ohio House of Representatives, H.B. 68 (the Health Care

Ban) and H.B. 6 (the Sports Prohibition) were two separate bills, introduced on different dates by different representatives, each with a distinct title. H.B. 68 contained no restrictions on participation in athletic competitions or events, but rather pertained only to restrictions on adolescent medical care. H.B. 6, meanwhile, contained no restrictions on medical care of any kind, but rather pertained only to restrictions on participation in girls' and women's sports.

75. Previous versions of both H.B. 68 and H.B. 6 had failed to pass the Ohio General Assembly in a prior legislative session. A similar bill to H.B. 6, which would have likewise prohibited transgender girls and women from participation on girls' and women's sports teams, had been introduced in the 2021-2022 session of the Ohio Senate, but failed to progress after being referred to committee—and, ultimately, failed to pass the Senate. *See* S.B. No. 132, As Introduced version, 134th General Assembly (March 16, 2021). Likewise, a similar bill to the original version of H.B. 68, which would have banned gender-affirming health care for adolescents, had previously been introduced in the 2021-2022 session of the General Assembly, but never made it out of the House Committee. *See* H.B. No. 454, As Introduced version, 134th General Assembly (October 19, 2021).

76. On June 14, 2023, H.B. 6 and H.B. 68 were lumped together into a single bill, which proceeded under the designation H.B. 68. This amended bill stated two express purposes, reflecting the amalgamation of two distinct laws: "to enact the Saving Ohio Adolescents from Experimentation (SAFE) Act regarding gender transition services for minors, and to enact the Save Women's Sports Act to require schools, state institutions of higher education, and private colleges to designate separate single-sex teams and sports for each sex."

77. As Senate Minority Leader Nickie J. Antonio would later remark: "It is two bills,

so much for single subject."[6]

78. H.B. 6 and H.B. 68 were under review by House committee for approximately four months, but the Ohio House passed the compound version of H.B. 68 just one week after they were merged, on June 21, 2023.

79. After the two bills were merged, there were no further opportunities in the Ohio House for public comment on the combined version.

80. On December 13, 2023, the Ohio Senate passed H.B. 68, with amendments. Most notably, the amended bill included a limited preexisting care exemption applicable to the Health Care Ban.

81. Under the exemption added in the Ohio Senate, a physician may "continue to prescribe cross-sex hormones or puberty-blocking drugs" to a minor patient if (a) the patient has been a continuous Ohio resident since the effective date of the law; and (b) the physician has both (1) "[i]nitiated a course of treatment for the minor individual prior to the effective date of this section that includes the prescription of a[n otherwise prohibited] cross-sex hormone or puberty-blocking drug[,]" and (2) "[d]etermined and documented in the minor individual's medical record that terminating the minor individual's prescription for the cross-sex hormone or puberty-blocking drug would cause harm to the minor individual." (§ 3129.02(B)).

82. On December 13, 2023, the Senate passed H.B. 68, as amended. That same day, the House concurred in the Senate amendments.

83. On December 29, 2023, Governor DeWine vetoed H.B. 68, citing his conversations

[6] Megan Henry, *Ohio law banning gender affirming care and trans athletes heads to Gov. Mike Dewine's desk*, Ohio Capital Journal (Dec. 14, 2023), *available at* https://ohiocapitaljournal.com/2023/12/14/ohio-law-banning-gender-affirming-care-and-trans-athletes-heads-to-gov-mike-dewines-desk/

with parents of transgender adolescents, and transgender adults, who told him that this care was lifesaving. The Governor also acknowledged that the Health Care Ban stands contrary to both parental autonomy and the best judgment of physicians: "While there are rare times in the law, in other circumstances, where the State overrules the medical decisions made by the parents, I can think of no example where this is done not only against the decision of the parents, but also against the medical judgement of the treating physician and the treating team of medical experts."

84. Notwithstanding Governor DeWine's statements, the General Assembly overrode his veto by a House vote on January 10, 2024, and a Senate vote on January 24, 2024.

85. H.B. 68 is scheduled to go into effect on April 24, 2024.

86. Transgender adolescents and their parents, including Plaintiffs, widely anticipate that they will be unable to access critically important medical care in Ohio once the Health Care Ban goes into effect.

87. Although the Health Care Ban provides an exemption, many physicians in Ohio—including the treating physician for Madeline Moe—have begun advising patients who are currently undergoing puberty-delaying treatment, and who anticipate wishing to progress to hormone therapy, that the Health Care Ban will prohibit them from doing so in Ohio after April 24, 2024.

88. Ohio physicians have also advised their younger patients with gender dysphoria who are being monitored for the first signs of puberty that, after April 24, 2024, those physicians will be unable to provide puberty-delaying medication when the appropriate time comes.

The Health Care Ban Prohibits Treatments for Gender Dysphoria that it Permits for Other Purposes

89. The Health Care Ban prohibits the use of well-established treatments for gender dysphoria in transgender adolescents—including puberty-delaying treatment and hormone therapy —because these treatments are provided "for the purpose of assisting the minor individual with gender transition." Ohio Revised Code § 3129.02(A)(2). The Health Care Ban does not prohibit the use of these same treatments for any other purpose. As one example, puberty-delaying medication is commonly used to treat conditions like precocious puberty. The Health Care Ban permits puberty-delaying treatment for precocious puberty because it is not "for the purpose of assisting the minor individual with gender transition[.]" Ohio Revised Code. § 3129.02(A)(2).

90. Likewise, the Health Care Ban prohibits hormone therapy when the treatment is "for the purpose of" treating transgender adolescents with gender dysphoria, but allows that same hormone therapy when prescribed to non-transgender patients. For example, non-transgender boys with delayed puberty or hypogonadism may be prescribed testosterone. Similarly, non-transgender boys who experience gynecomastia or overdevelopment of breast tissue may be treated to reduce breast tissue, and non-transgender girls with polycystic ovarian syndrome may be treated with hormone therapy to minimize undesired facial and body hair.

91. The side effects of puberty delaying treatment and hormone therapy are comparable when used to treat gender dysphoria and when used to treat other conditions. In each circumstance, doctors advise patients and their parents about the risks and benefits of treatment and tailor recommendations to the individual patient's needs. For adolescents, parents consent to treatment and the patient gives their assent.

The Health Care Ban Will Cause Severe Harm to Transgender Youth

92. Withholding gender-affirming medical treatment from adolescents with gender dysphoria when it is medically indicated puts them at risk of severe and irreversible harm to their health and well-being.

93. Without treatment, transgender adolescents and young adults report several-fold higher rates of depression, anxiety, suicidal ideation and suicide attempts, as compared to their cisgender counterparts. When transgender adolescents are able to access puberty-delaying medication and hormone therapy, 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 experiencing pain and suffering to thriving.

94. Medical treatment in adolescence can reduce life-long gender dysphoria, possibly eliminating the need for surgical intervention in adulthood, and can improve mental health outcomes significantly.

Plaintiffs

The Moe Family

95. Madeline Moe is a twelve-year-old girl who has lived in Cincinnati her entire life. She likes playing sports, including volleyball and basketball, running track, and playing Roblox. Madeline hopes to become a lawyer one day.

96. Madeline is transgender. She is a girl with a female gender identity, but when she was born, her sex was designated as male.

97. Growing up, Madeline felt uncomfortable in her body. She wore female clothes, painted her nails, and styled her hair to make it look as though it was longer. If she had to leave the house in male clothing, she would put on a dress as soon as she returned home.

98. Madeline experienced significant stress, anxiety, and self-harm. In first grade, she told her parents that she wanted to die and come back as a girl.

99. Michael and Michelle Moe were concerned about their child, and did everything they could to get her help. Eventually they met with a doctor at Cincinnati Children's Hospital, who diagnosed Madeline with gender dysphoria when she was six years old. She has continued to receive therapy since then.

100. Madeline has lived as a girl in every aspect of her life since she was seven years old. Once Michael and Michelle affirmed Madeline as their daughter, in Michael's words, they "got [their] child back." Michael and Michelle amended Madeline's birth certificate when she was eight to reflect her new name and gender marker.

101. Madeline started puberty approximately one year ago, at the age of 11. Her endocrinologist prescribed her with a pubertal suppressing implant to delay the changes of male puberty. Madeline's doctors explained the risks and benefits to Michael, Michelle, and Madeline. With her parents' consent and her own assent, Madeline received an implant in early 2023. She regularly gets blood tests to monitor her hormone levels and anticipates that the implant will need to be replaced every one to two years.

102. Pubertal suppression made a significant difference for Madeline. She no longer felt fear and anxiety about her body changing in ways inconsistent with her gender, which greatly improved her mental health and alleviated her gender dysphoria.

103. Madeline is now 12, and her doctors have said that she is a good candidate for hormone therapy in the form of estrogen, if that is what she wants and her parents agree. Madeline and her parents would like Madeline to be able to start hormones at the right time so that she can go through female puberty alongside her peers. Madeline's physicians are monitoring her physical

and mental health, and have told her that they will prescribe an appropriate hormone therapy if H.B. 68 does not go into effect.

104. Since beginning gender-affirming treatment, Madeline feels more confident and comfortable. Her parents have noticed a huge change in their daughter, who is now thriving. Madeline looks forward to a future where she continues receiving the treatment she needs and feels comfortable and at home in her body.

105. Madeline and her family are afraid of the impact the Health Care Ban will have on their family if it goes into effect. Madeline is scared that losing access to puberty blockers will mean that her body will undergo unwanted, permanent changes that are inconsistent with her gender identity, and that she will not be able to be prescribed estrogen when the time is right for her to start puberty. Her father worries that the debilitating stress and anxiety associated with Madeline's gender dysphoria will return if she loses access to gender-affirming care.

106. Madeline's school, friends, and family are in Ohio. Her parents have jobs that they love in Ohio. However, Madeline and her family are concerned about her health and well-being if she can no longer receive the medical care she needs in Ohio. They have discussed needing to leave Ohio so that she can get the medical care she needs.

The Goe Family

107. Grace Goe is twelve years old and in sixth grade, where her favorite activities are gym and art club. Outside school, she likes baking cakes, and collecting rocks, crystals, and fossils at the creek near her house.

108. Grace is a girl. She is also transgender. She has a female gender identity, but when she was born, her sex was designated as male.

109. Grace knew from a young age that she was a girl, and told her parents as much

when she was five. Grace's parents wanted to make sure Grace had appropriate mental health support, and she became a patient at Nationwide Children's Hospital in Columbus. Grace was diagnosed with gender dysphoria when she was six.

110. Grace is now 12, and her doctors are monitoring her for the first signs of puberty to identify the right time to begin medication that will temporarily pause puberty. She is being seen every six months; her next appointment is in July 2024.

111. Many people in Grace's life do not know that she is transgender. They only know her as a girl. If male puberty progresses and she does not have access to appropriate medications, Grace and her parents are afraid she will be outed as transgender against her will. Taking medication that would pause puberty would allow Grace to decide for herself who to tell that she is transgender. It would also be devastating for Grace to develop male physical characteristics and be forced to live in a body that does not match her true self as a girl.

112. It is not an option for Grace not to have access to the medical treatment that she needs to feel comfortable in her body. The prospect of losing access to gender-affirming medical care has caused Grace and her parents enormous stress. Grace and her parents fear that losing access to gender-affirming Health Care will have a serious negative effect on Grace's mental health.

113. It is critical for Grace to have access to appropriate medical care. If H.B. 68 goes into effect, Grace and her family will be forced to make the difficult choice between moving the entire family out of state, or separating the family to ensure that Grace has access to medically necessary care. Moving would uproot their entire family, be a financial hardship, and require the Goe family to leave behind the deep roots they have in a supporting and loving community. The only other option is to separate the family, with Gina Goe and Grace moving out of state to live

with relatives, while Garrett Goe and Grace's siblings remain behind in Ohio.

COUNT ONE: DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF FOR VIOLATION OF THE SINGLE-SUBJECT RULE CONTAINED IN ARTICLE II, SECTION 15(D) OF THE OHIO CONSTITUTION

114. Plaintiffs incorporate all foregoing paragraphs as if fully set forth herein.

115. The single-subject rule contained in Article II, Section 15(D) of the Ohio Constitution provides: "No bill shall contain more than one subject, which shall be clearly expressed in its title."

116. This language acts as a "constitutional limitation on the legislative power of the general assembly." *Rumpke Sanitary Landfill, Inc. v. State*, 128 Ohio St.3d 41, 2010-Ohio-6037, 941 N.E. 2d 1161, ¶ 20. In particular, this provision "attacks logrolling by disallowing unnatural combinations of provisions in acts, *i.e.*, those dealing with more than one subject, on the theory that the best explanation for the unnatural combination is a tactical one—logrolling." *In re Nowak*, 104 Ohio St.3d 466, 2004-Ohio-6777, 820 N.E.2d 335, ¶ 71 (quoting *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 143, 464 N.E.2d 153 (1984)).

117. "The resultant effect of the one-subject provision is a more orderly and fair legislative process. By limiting each bill to one subject, the issues presented can be better grasped and more intelligently discussed." *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 143, 464 N.E.2d 153 (1984). "The rule prevents extraneous matters from being introduced into consideration of the bill by disallowing amendments not germane to the subject under consideration." *Id.*

118. The Ohio legislature unnaturally combined restrictions on interscholastic sports participation, originally contained in H.B. 6, with a ban on gender-affirming care. By combining these two discrete subject matters into a single bill, H.B. 68 contains a disunity of subject matter.

119. Further, the "clearly expressed … title" of H.B. 68 confirms that it combines two distinct subject matters, by specifying its purpose "[t]o enact … the Saving Ohio Adolescents from

Experimentation (SAFE) Act regarding gender transition services for minors, and to enact the Save Women's Sports Act to require schools, state institutions of higher education, and private colleges to designate separate single-sex teams and sports for each sex."

120. In sum, the General Assembly passed a bill containing more than one subject, in violation of the Ohio Constitution, Article II, Section 15(D).

121. The General Assembly's passage of H.B. 68—in violation of the single-subject rule—has harmed Plaintiffs and will continue to harm them in the future.

122. There is a real and justiciable controversy regarding whether H.B. 68 complies with the single-subject rule of the Ohio Constitution.

123. The rights, status, and other legal obligations of Plaintiffs and Defendants are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy that has given rise to this proceeding.

124. Immediate relief, including injunctive relief, is necessary to preserve Plaintiffs' rights. Absent such relief, Plaintiffs will suffer irreparable injury and lack an adequate remedy at law.

125. Plaintiffs are entitled to a declaratory judgment that the enactment of H.B. 68 violates the Ohio Constitution, Article II, Section 15(D), and that it is void and without legal effect.

COUNT TWO: DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF FOR VIOLATION OF THE FREEDOM TO CHOOSE HEALTH CARE UNDER ARTICLE I, SECTION 21 OF THE OHIO CONSTITUTION

126. Plaintiffs incorporate all foregoing paragraphs as if fully set forth herein.

127. Article I, Section 21 of the Ohio Constitution, entitled "Preservation of the freedom to choose Health Care and Health Care coverage," provides in subsection (B) that "[n]o federal, state, or local law or rule shall prohibit the purchase or sale of Health Care or health insurance."

128. Further, Article I, Section 21(C) provides that "[n]o federal, state, or local law or

rule shall impose a penalty or fine for the sale or purchase of health care or health insurance."

129. Gender-affirming care, including the prescription of puberty-delaying medication and/or hormone therapy to minor patients where appropriate in the judgment of a physician, is "health care" within the meaning of Article I, Section 21.

130. By prohibiting physicians from prescribing puberty-delaying medication and/or hormone therapy to patients who need them, the Health Care Ban "prohibit[s] the purchase or sale of health care or health insurance" in violation of Article I, Section 21(B).

131. By providing that a violation of its terms is "unprofessional conduct and subject to discipline by the applicable licensing board," the Health Care Ban "impose[s] a penalty or fine for the sale or purchase of health care or health insurance" in violation of Article I, Section 21(C).

132. The Health Care Ban's prohibition on the prescription of puberty-delaying medication and/or hormone therapy is unconstitutional under Article I, Section 21 of the Ohio Constitution.

133. There is a real and justiciable controversy between Plaintiffs and Defendants concerning Plaintiffs' right to receive and/or purchase gender-affirming health care, including the prescription of puberty-delaying medication or hormone therapy.

134. The rights, status, and other legal obligations of Plaintiffs and Defendants are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy that has given rise to this proceeding.

135. Immediate relief, including declaratory relief pursuant to the Declaratory Judgment Act, R.C. 2721.03, and injunctive relief pursuant to R.C. 2721.09, is necessary to preserve Plaintiffs' rights.

136. Absent such relief, Plaintiffs will suffer irreparable injury.

COUNT THREE: DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF FOR VIOLATION OF THE EQUAL PROTECTION CLAUSE CONTAINED IN ARTICLE I, SECTION 2 OF THE OHIO CONSTITUTION

137. Plaintiffs incorporate all foregoing paragraphs as if fully set forth herein.

138. Article I, Section 2 of the Ohio Constitution provides: "All political power is inherent in the people. Government is instituted for their equal protection and benefit[.]"

139. The Health Care Ban bars the provision of certain medically necessary health care, including the prescription of puberty-delaying medication and hormone therapy, only when that health care is administered "for the purpose of assisting the minor individual with gender transition[.]" It does not prohibit the provision of that very same health care for any other purpose.

140. In doing so, the Health Care Ban expressly discriminates against transgender adolescents, including Minor Plaintiffs, based on their sex. Specifically, it discriminates against them based on their sex designated at birth, based on the incongruence between their sex and gender identity, based on their transgender status, and based on their failure to conform to stereotypes and expected behavior associated with their sex designated at birth.

141. The Health Care Ban also discriminates against the Parent Plaintiffs, by denying them the same ability to secure necessary medical care for their children that other parents can obtain, purely on the basis of their child's sex and/or transgender status.

142. In addition to facially discriminating based on sex and transgender status, the Health Care Ban was passed because of its effect on transgender people, not in spite of it.

143. Transgender people have obvious, immutable, and distinguishing characteristics that define that class as a discrete group. These characteristics bear no relation to transgender people's abilities to perform in, or contribute to, society.

144. Transgender people have historically been subject to discrimination in Ohio and across the country and remain a small minority of the American population that lacks political

power.

145. The Health Care Ban's discriminatory treatment of health care for transgender adolescents is not narrowly tailored to any compelling government interest, nor is it even rationally related to any legitimate government interest. The Health Care Ban is unconstitutional under the Equal Protection Clause of the Ohio Constitution.

146. There is a real and justiciable controversy between Plaintiffs and Defendants concerning whether the Health Care Ban violates Plaintiffs' rights to equal protection.

147. The rights, status, and other legal obligations of Plaintiffs and Defendants are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy which has given rise to this proceeding.

148. Immediate relief, including declaratory relief pursuant to the Declaratory Judgment Act, R.C. 2721.03, and injunctive relief pursuant to R.C. 2721.09, is necessary to preserve Plaintiffs' rights.

COUNT FOUR: DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF FOR VIOLATION OF THE DUE COURSE OF LAW PROVISION CONTAINED IN ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION

149. Plaintiffs incorporate all foregoing paragraphs as if fully set forth herein.

150. Article I, Section 16 of the Ohio Constitution provides: "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law[.]"

151. The Due Course of Law provision of Article I, Section 16 protects the fundamental rights of parents concerning the care, custody, and control of their children.

152. That fundamental right of parents includes the right to seek and to follow medical advice to protect the health and well-being of their minor children.

153. Parents' fundamental right to seek and follow medical advice is at its height when

parents, their minor child, and that child's doctor all agree on an appropriate course of medical evaluation and/or treatment.

154. The Health Care Ban's prohibition against well-accepted medical treatments for adolescents with gender dysphoria deprives parents, including Parent Plaintiffs, of their fundamental right to make decisions concerning the care of their children.

155. The Health Care Ban's prohibition against well-accepted medical treatments for adolescents with gender dysphoria is not narrowly tailored to serve a compelling government interest, nor is it even rationally related to any legitimate government interest.

156. The Health Care Ban is unconstitutional under the Due Course of Law provision of the Ohio Constitution.

157. There is a real and justiciable controversy between Plaintiffs and Defendants concerning whether the Health Care Ban violates Parent Plaintiffs' fundamental parenting rights.

158. The rights, status, and other legal obligations of Plaintiffs and Defendants are uncertain and insecure, and the entry of a declaratory judgment by this Court will terminate the uncertainty and controversy which has given rise to this proceeding.

159. Immediate relief, including declaratory relief pursuant to the Declaratory Judgment Act, R.C. 2721.03, and injunctive relief pursuant to R.C. 2721.09, is necessary to preserve Plaintiffs' rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs MADELINE, MICHAEL, and MICHELLE MOE, and GRACE, GARRETT, and GINA GOE demand judgment in their favor and against Defendants as follows:

1. A declaration by this Court that:

a. H.B. 68 violates the single-subject rule of Article II, Section 15(D) of the Ohio Constitution and is accordingly void and without legal effect;

b. The Health Care Ban violates Article I, Section 21(B) and (C) of the Ohio Constitution, insofar as it imposes any restriction or prohibition on the sale or purchase of gender-affirming care, including puberty-delaying medication and hormone therapy and is accordingly void and without legal effect;

c. The Health Care Ban violates the Equal Protection Clause of Article I, Section 2 of the Ohio Constitution and is accordingly void and without legal effect;

d. The Health Care Ban violates the Due Course of Law provision of Article I, Section 16 of the Ohio Constitution and is accordingly void and without legal effect;

e. Defendant Yost may not maintain any legal action to enforce compliance with those provisions of H.B. 68 that violate the Ohio Constitution;

f. Defendant State Medical Board may not subject medical professionals to professional discipline for providing gender-affirming care, including puberty-delaying medication and hormone therapy.

2. Entry of a temporary restraining order and/or a preliminary injunction, restraining and enjoining Defendant Yost from bringing any legal action to enforce compliance with H.B. 68, and restraining and enjoining Defendant State Medical Board from subjecting medical professionals to professional discipline for providing gender-affirming care, including puberty-delaying medication and hormone therapy.

3. Entry of a permanent injunction pursuant to R.C. 2721.03 and 2721.09, enjoining Defendant Yost from bringing any legal action to enforce compliance with those provisions of H.B. 68 that violate the Ohio Constitution, and enjoining Defendant State Medical Board

from subjecting medical professionals to professional discipline for providing gender-affirming care, including puberty-delaying medication and hormone therapy.

4. Award Plaintiffs their costs, expenses, and reasonable attorneys' fees under applicable law; and

5. Provide any further relief this Court deems just, necessary, or appropriate.

Dated: March 26, 2024

Respectfully submitted,

/s/ Freda J. Levenson

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