

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

BRIANNA BOE, individually and on behalf
of her minor son, MICHAEL BOE; MEGAN
POE, individually and on behalf of her minor
daughter, ALICE POE; son,
CHRISTOPHER NOE; REBECCA ROE,
individually and on behalf of her minor
daughter, MELISSA ROE; ROBERT MOE,
individually and on behalf of his minor
daughter, APRIL MOE; HEATHER
AUSTIN, Ph.D.; and RACHEL KOE, M.D.

,

v.

SECOND AMENDED COMPLAINT

Brianna Boe, individually and on behalf of her minor son, Michael Boe; Megan Poe, individually and on behalf of her minor daughter, Allison Poe; Kathy Noe, individually and on behalf of her minor son, Christopher Noe; Rebecca Roe, individually and on behalf of her minor daughter, Melissa Roe; Robert Moe, individually and on behalf of his minor daughter, April Moe; Heather Austin, Ph.D.; and Rachel Koe, M.D. (collectively, “Plaintiffs”), bring this Action for Declaratory and Injunctive Relief against Defendants Steve Marshall, in his official capacity as Attorney General of the State of Alabama; Daryl D. Bailey, in his official capacity as District Attorney for Montgomery County; C. Wilson Blaylock, in his official capacity as District Attorney for Cullman County; Jessica Ventiere, in her official capacity as District Attorney for Lee County; Tom Anderson, in his official capacity as District Attorney for the 12th Judicial Circuit; and Danny Carr, in his official capacity as District Attorney for Jefferson County (collectively, “Defendants”), respectfully stating as follows:

PRELIMINARY STATEMENT

1. This Action is a federal constitutional challenge to the State of Alabama’s Vulnerable Child Compassion and Protection Act (the “Act”), passed by

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until this Court granted Plaintiffs' Motion for Preliminary Injunction on May 13, 2022. Doc. 107.

2. The Act intrudes into the right of parents to make medical decisions to ensure the health and wellbeing of their children. It does so by prohibiting parents from seeking and obtaining appropriate medical care for their children and subjecting them to criminal prosecution if they do so.

3. The Act also targets transgender minors by imposing criminal penalties on any individuals, including parents and health care providers, who obtain or provide medical treatments essential to the minors' health care needs.

4. Plaintiffs seek declaratory and injunctive relief to enjoin the enforcement of the Act. Without the injunctive relief sought, Plaintiffs will experience irreparable injury.

PARTIES

I. Transgender Plaintiffs and Their Parents

5. Plaintiff Brianna Boe is and has at all relevant times been a resident of Montgomery County, Alabama. She is the mother of Plaintiff Michael Boe, a 12-year-old transgender boy for whom she also appears in this case as his next friend. Because of concerns about potential criminal liability, as well as her and her child's privacy and safety, Brianna Boe and Michael Boe are proceeding pseudonymously.

Doc. 83.

6. Plaintiff Megan Poe is and has at all relevant times been a resident of Cullman County, Alabama. She is the mother of Plaintiff Allison Poe, a 15-year-old transgender girl, for whom she also appears in this case as her next friend. Because of concerns about potential criminal liability, as well as her and her child's privacy and safety, Megan Poe and Allison Poe are proceeding pseudonymously. Doc. 83.

7. Plaintiff Kathy Noe is and has at all relevant times been a resident of

whom he also appears in this case as her next friend. Because of concerns about potential criminal liability, as well as his and his child's privacy and safety, Robert Moe and April Moe seek to proceed in this case under a pseudonym. Motion to Proceed Pseudonymously, filed concurrently herewith.

II. *Healthcare Provider Plaintiffs*

10. Plaintiff Heather Austin is a Ph.D. level, licensed clinical child psychologist with over 20 years of experience who maintains a practice in Jefferson County, Alabama.

III. *Defendants*

12. Defendant Steve Marshall is the Attorney General of the State of Alabama. He is the chief law enforcement officer of the State with the power to initiate criminal action to enforce the Act.

all felony and some misdemeanor criminal cases which occur within Lee County. In her capacity as District Attorney, Ms. Ventiere has the ability to enforce the Act. Ms. Ventiere is sued in her official capacity as District Attorney of Lee County, Alabama.

16. Defendant Tom Anderson is the District Attorney for the 12th Judicial Circuit overseeing Coffee County and Pike County, Alabama. He is the chief law enforcement officer of Coffee and Pike Counties, who prosecutes all felony and some misdemeanor criminal cases which occur within Coffee and Pike Counties. In his capacity of District Attorney, Mr. Anderson has the ability to enforce the Act. Mr. Anderson is sued in his official capacity as the District Attorney of the 12th Judicial Circuit.

17. Defendant Danny Carr is the District Attorney of Jefferson County, Alabama. He is the chief law enforcement officer of Jefferson County who prosecutes all felony criminal cases that occur within the Birmingham Division of Jefferson County, including the City of Birmingham. In his capacity as District Attorney, Mr. Carr has the ability to enforce the Act. Mr. Carr is sued in his official capacity as District Attorney of Jefferson County, Alabama.

18. Defendants each have separate and independent authority to enforce the Act within their respective jurisdictions.

JURISDICTION AND VENUE

19. Plaintiffs seek redress for the deprivation of their rights secured by the United States Constitution and the equitable powers of this Court to enjoin unlawful official conduct. This action is instituted pursuant to 42 U.S.C. § 1983 to enjoin Defendants from enforcing the Act and for a declaration that the Act violates federal law. Therefore, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

20. This Court has personal jurisdiction over Defendants because Defendants are domiciled in Alabama and the denial of Plaintiffs' rights guaranteed by federal law occurred within Alabama.

21. All Defendants reside in Alabama, and, upon information and belief, Defendants Marshall, Bailey, Ventiere, and Andersen

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transgender health, including the treatment of gender dysphoria. WPATH published the most recent edition of the Standards of Care for the treatment of gender dysphoria in minors and adults in 2011 and is in the process of finalizing a revised edition of the Standards of Care, which will likely be published later this year.

30. The Endocrine Society has also promulgated a standard of care for the provision of hormone therapy as a treatment for gender dysphoria in minors and adults. Wylie C. Hembree, et al.,

, 102 J. Clin. Endocrinol. Metab. 3869 (2017).

31. The American Medical Association, the American Academy of Pediatrics, the American Association of Child and Adolescent Psychiatrists, the Pediatric Endocrine Society, the American Psychiatric Association, the American Psychological Association, and other professional medical organizations also follow the WPATH and Endocrine Society standards of care.

32. The treatment of gender dysphoria is designed to reduce a transgender person's psychological distress by permitting them to live in alignment with their gender identity. Undergoing treatment for gender dysphoria is commonly referred to as transition. There are several components to the transition process: social, legal, medical, and surgical. Each of these components is part of the medically

need, and appropriateness of the procedure relative to the psychological development of the individual.

36. Longitudinal studies have shown that children with gender dysphoria who receive essential medical care show levels of mental health and stability consistent with those of non-transgender children. Lily Durwood, et al., *J. Am. Acad. Child & Adolescent Psychiatry* 116 (2017); Kristina Olson, et al., *Pediatrics* 137 (2016). In contrast, children with gender dysphoria who do not receive appropriate medical care are at risk of serious harm, including dramatically increased rates of suicidality and serious depression.

II. *The Alabama Vulnerable Child Compassion and Protection Act*

37. On April 8, 2022, Governor Kay Ivey signed the Act into law. The Act became effective on May 8, 2022, and remained in effect until this Court granted Plaintiffs' Motion for Preliminary Injunction on May 13, 2022. Doc. 107.

38. The Act prevents parents from consenting to, and healthcare professionals from providing, well-established medically necessary care. The Act also applies to any individual who "cause[s]" such care to be provided to a transgender minor.

39. Specifically, subsection 4(a) of the Act provides that:

Except as provided in subsection (b), no person shall engage in or cause any of the following practices to be performed upon a minor if the practice is performed for the purpose of attempting to alter the appearance of or affirm the minor's perception of his or her gender or sex, if that appearance or perception is inconsistent with the minor's sex as defined in this act:

- (1) Prescribing or administering puberty blocking medication to stop or delay normal puberty.
- (2) Prescribing or administering supraphysiologic doses of testosterone or other androgens to females.
- (3) Prescribing or administering supraphysiologic doses of estrogen to males.
- (4) Performing surgeries that sterilize, including castration, vasectomy, hysterectomy, oophorectomy, orchiectomy, and penectomy.
- (5) Performing surgeries that artificially construct tissue with the appearance of genitalia that differs from the individual's sex, including metoidioplasty, phalloplasty, and vaginoplasty.
- (6) Removing any healthy or non-diseased body part or tissue, except for a male circumcision.

40. A violation of subsection 4(a) of the Act is a Class C felony, punishable upon conviction by up to 10 years imprisonment or a fine of up to \$15,000.

41. As a result of subsection 4(a) of the Act, medical professionals, including the Healthcare Provider Plaintiffs, and parents of transgender minors, including the Parent Plaintiffs, are forced to choose between withholding medically necessary treatment from their minor transgender patients or children, on the one hand, or facing criminal prosecution, on the other.

III. *The Act Will Irreparably Harm the Plaintiffs*

Brianna Boe and Michael Boe

42.

47. Since Michael began to socially transition, his mood has improved greatly. His

52. When Allison was around nine years old, her personality began to change significantly. She became withdrawn, quiet, showed signs of depression, and regularly commented that she wanted to die. She also stopped eating regularly. Allison's actions became so worrisome to Megan that she consulted with a pediatrician.

physical traits that are inconsistent with her identity as a girl that will require her to undergo otherwise avoidable surgeries in the future as an adult.

Kathy Noe and Christopher Noe

57. Christopher Noe is a 17-year-old transgender boy who resides with his

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62. With his father's support, Kathy took Christopher to a physician to begin the evaluation for hormone-replacement therapy. Because Kathy and Christopher live close to the Alabama-Georgia state line, Christopher's doctors are in Columbus, Georgia. Christopher's prescriptions, however, are filled at a pharmacy in Alabama.

63. Christopher began hormone replacement therapy in March 2022. Christopher has been noticeably happier. He is bubbly and more outgoing and is confident at work and around other people.

64. If the Act is allowed to go into effect, Christopher's medical care will be disrupted, which will have devastating and irreversible physical and psychological consequences.

Rebecca Roe and Melissa Roe

65. Melissa is a nine-year-old transgender girl who lives with her mother, stepparent, and stepsibling in Jefferson County, Alabama.

66. When Melissa was about three, she began expressing a preference for wearing girls' clothing and having long hair.

67. Over time, Melissa continued to express a strong preference for girls'

68. In first grade, Rebecca learned from Melissa's teacher that Melissa asked to be referred to as a girl in school. Around the same time, Melissa also told her mother, "I am a girl."

69. Rebecca reached out to Melissa's pediatrician for support and Melissa also began seeing a new therapist.

70. Melissa's pediatrician referred Melissa to the clinic at UAB. Melissa had her first appointment in spring 2021. Her next appointment is in December 2022.

71. With puberty approaching, Melissa is starting to show signs of distress in anticipation of the physical changes that accompany puberty and is concerned that she will be perceived by others as a boy.

72. During their prior visits, Rebecca had extensive conversations with doctors at the clinic about the risks and benefits of puberty blockers and feels very well informed about treatment options for Melissa's gender dysphoria. If and when Melissa's doctors indicate that puberty blockers are medically necessary to treat Melissa's gender dysphoria, Rebecca plans to carefully review the consent forms and ensure she fully understands them before consenting to treatment. Given Melissa's prior difficulties with behavior, Rebecca is concerned that Melissa will attempt to hurt herself if Melissa does not obtain appropriate treatment for her gender dysphoria.

73. If

77. By age four, April became quite insistent that she is a girl. After taking a bath one night, April expressed intense distress to her mother about her penis. Unsurprisingly, that jarring comment caused April's parents to realize that this may not be a phase, and that April needed to see a mental health professional who could help April and her parents navigate this issue.

78. April's parents found a psychologist with experience working with children experiencing gender dysphoria. After evaluating April, the psychologist recommended using female pronouns when referring to April. Although a seemingly small change, April's parents saw a significant positive change in her attitude and behavior following her social transition.

79. Even though April's dysphoria had noticeably subsided since her social transition, April's parents wanted to get the advice of a medical doctor to ensure they were doing everything they could to keep April healthy. When they first started looking for a medical provider with experience working with transgender children, Robert's mother, a retired healthcare provider in Birmingham, suggested that they contact a doctor at the UAB clinic. Finding a doctor they could trust was of paramount importance to April's parents. Thus, they decided to make the approximately ten-hour drive for April to be seen at the UAB clinic.

80. April's first appointment with the UAB clinic occurred in September 2019. She had been going for annual visits at the clinic until recently when they

information she needs to determine whether the patient meets the diagnostic criteria

care. Practicing this way would require Dr. Austin to violate her professional and

49 (2000). That fundamental right includes the liberty to make medical decisions for their minor children, including the right to obtain medical treatments that are recognized to be safe, effective, and medically necessary to protect their children's health and well-being.

99. The Act violates this fundamental right by preventing the Parent Plaintiffs from obtaining medically necessary care for their minor children.

100. By intruding upon parents' fundamental right to direct the upbringing of their children, the Act is subject to strict scrutiny.

101. Defendants have no compelling justification for preventing parents from ensuring their children can receive essential medical care. The Act does not advance any legitimate interest, much less a compelling one.

COUNT II
Deprivation of Equal Protection
All Plaintiffs Against Defendants in Their Official Capacities
U.S. Const. Amend. XIV

102. Plaintiffs incorporate all preceding paragraphs of the Complaint as if set forth fully herein.

103. All Plaintiffs bring this Count against all Defendants.

104. The Equal Protection Clause of the Fourteenth Amendment, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1.

105.

112. The Act is not narrowly tailored to further a compelling government

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