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NORTH DAKOTA SUPREME COURT

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

T.D., by and through his parents, DEVON DONLEY and ROBERT DONLEY, DEVON DONLEY, an individual, ROBERT DONLEY, an individual, PAMELA ROE, by and through her parents PETER ROR and PAULA ROE, PETER ROE, an individual, PAULA ROE, an individual, JAMES DOE, by and through his parents, JOHN DOE and JANE DOE, JOHN DOE, an individual, JANE DOE, an individual,

Plaintiffs/Appellees,

and

DR. LUIS CASAS, an individual, on behalf of himself and his patients,

Plaintiff/Appellant,

-vs-

DREW H. WRIGLEY, in his official capacity as Attorney General for the State of North Dakota; KIMBERLEE JO HEGVIK, in her official capacity as the State's Attorney for Cass County; JULIE LAWYER, in her official capacity as the State's Attorney for Burleigh County: AMANDA ENGELSTAD, in her official capacity as the State's Attorney for Stark County.

Defendants/Appellees.

Supreme Ct. 20260075

District Ct. 08-2023-CV-02189
South Central Judicial District

On Appeal from Amended Judgment dated December 19, 2025
The Honorable Jackson J. Lofgren, District Court Judge
Burleigh County District Court, South Central Judicial District

APPELLEE BRIEF OF DREW H. WRIGLEY

(Oral Argument Requested)

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

[¶1] Whether the District Court was correct that N.D.C.C. ch. 12.1-36.1 is not subject to strict scrutiny under the Equal Protection principles of N.D. Const. art. I, §§ 21 and 22.

[¶2] Whether the District Court was correct that N.D.C.C. ch. 12.1-36.1 is not subject to strict scrutiny under the fundamental rights principles of N.D. Const. art. I, § 1.

[¶3] Whether the District Court was correct that N.D.C.C. ch. 12.1-36.1 is rationally related to legitimate government interests.

INTRODUCTION

[¶4] Through this lawsuit, Plaintiff seeks a declaration that the Legislative Assembly lacks authority to protect minors from life-altering procedures of disputed efficacy for which they are unlikely to understand the long-term risks and implications.

[¶5] Indeed, recognizing minors' inability to fully appreciate how these procedures may impact the rest of their lives, Plaintiff himself acknowledged he doesn't require a child's informed consent before subjecting them to these procedures; he requires only their "assent" (R767:138:14-25)—reflecting the indisputable fact that "the status of minors under the law is unique in many respects." *Bellotti v. Baird*, 443 U.S. 622, 633 (1979).

[¶6] After holding a bench trial on Plaintiff's claims, the District Court found that "[t]he evidence presented in this case establishes there are recognized concerns regarding the medical risks associated with providing hormone blockers and cross-sex hormones to minors to treat gender dysphoria." (R785:70:¶148). "There are legitimate concerns about the ability of these minors to understand the long-term effects of these interventions fully," "[t]he evidence establishes … an ongoing international debate regarding the safety and effectiveness of th[ese] medical procedures," and "[w]here there is uncertainty, deference is given to the Legislature to decide where the line should be drawn." *Id*.

[¶7] Nonetheless, underpinning Plaintiff's entire argument for this case is the idea that State authority to regulate the practice of medicine and protect the well-being of minors in this context is subordinate to "medical guidelines supported by every major medical association." Appellant Br. ¶109. But "the [] people [of North Dakota] and their representatives are entitled to disagree with those who hold themselves out as experts." *United States v. Skrmetti*, 605 U.S. 495, 530 (2025) (Thomas, J., concurring).

[¶8] And nationally, the legal landscape for Plaintiff's theory has changed significantly since the underlying complaint was filed in 2023. Most notably, the U.S. Supreme Court held last year that Tennessee's analogous law does not violate the Equal Protection Clause of the U.S. Constitution. As that court explained at the end of its decision:

> This case carries with it the weight of fierce scientific and policy debates about the safety, efficacy, and propriety of medical treatments in an evolving field. The voices in these debates raise sincere concerns; the implications for all are profound. The Equal Protection Clause does not resolve these disagreements. Nor does it afford [the courts] license to decide them as we see best. Our role is not 'to judge the wisdom, fairness, or logic' of the law before us, … but only to ensure that it does not violate the equal protection guarantee of the [U.S. Constitution]. Having concluded it does not, we leave questions regarding its policy to the people, their elected representatives, and the democratic process.

Skrmetti, 605 U.S. at 525 (citation omitted).

[¶9] Plaintiff contends "*Skrmetti* is neither controlling nor persuasive here." Appellant Br. ¶96. To be sure, interpretations of the federal Equal Protection Clause are not "controlling" for analyzing Sections 21 and 22 of the North Dakota Constitution. But to suggest the *Skrmetti* decision lacks any persuasive value strains credulity. That decision thoroughly addressed why laws like North Dakota's classify based on age and medical use, not on sex or transgender status. *See Skrmetti*, 605 U.S. at 511. And concurrences to that decision thoroughly explained why, even assuming such laws classified based on

transgender status, that wouldn't be a constitutionally suspect class. *See id.* at 547-57 (Barrett, J., concurring); *id.* at 564-78 (Alito, J., concurring in the judgment).

[¶10] Courts should "be wary of plaintiffs who seek to transform … courts into 'weapons of political warfare' that will deliver victories that eluded them 'in the political arena.'" *Alexander v. S.C. Conf. of the NAACP*, 602 U.S. 1, 11 (2024) (citation omitted). This is one such case. Across the country, there is a fierce debate "over the efficacy and ethics of pediatric sex-transition treatments." *Skrmetti*, 605 U.S. at 543 (Thomas, J., concurring). More than half the States in the nation have concluded, like North Dakota, that minors lack the "capacity to fully understand the irreversible treatments they may undergo" when subjected to these procedures. *Id*. And despite Plaintiff's claims to the contrary, nothing in the history or traditions of our State demonstrates any clear intent by the people of North Dakota to place such determinations outside the democratic process.

STATEMENT OF THE CASE

[¶11] H.B. 1254 (codified at N.D.C.C. ch. 12.1-36.1) was enacted and became effective on April 21, 2023. *See* (R785:4:¶6). Plaintiff (originally joined by several minors and their parents) filed the original complaint in this action in September 2023, asserting a variety of claims. (R1). An amended complaint was filed in February 2024. (R273).

[¶12] After holding a hearing on Plaintiffs' motion for a temporary restraining order, the District Court denied the motion. (R104). And after holding a hearing on Plaintiffs' motion for a preliminary injunction, it denied that motion as well. (R365).

[¶13] In January 2025, the District Court entered a summary judgment order, granting in part and denying in part the State's motions for summary judgment. (R537).

[¶14] The summary judgment order narrowed this dispute in several respects by: (1) holding that no Plaintiff had standing to challenge N.D.C.C. § 12.l-36.l-02(1)(a)—relating

to genital surgeries—as there was no allegation that such procedures were occurring in North Dakota (R537:15:¶35);[1] (2) holding the minor plaintiffs, and by extension their parents, lack standing because they fall under the legacy clause in N.D.C.C. § 12.1-36.1-03 (R537:23-24:¶52); (3) holding the remaining Plaintiff (Dr. Casas) lacks standing to allege a violation of parental rights for his patients' parents (R537:32:¶71); (4) holding that Plaintiff's procedural due process claim fails as a matter of law (R537:50:¶113); and (5) holding that Plaintiff's vagueness claims fail as a matter of law (R537:50:¶114).

[¶15] What remained after summary judgment was a case wherein Dr. Casas (the sole remaining Plaintiff) was determined to have third party standing to assert that the provisions of N.D.C.C. § 12.1-36.1-02 restricting the use of puberty blockers and hormones on minors for the purpose of gender transition violate his patients' rights to equal protection under N.D. Const. art. I, § 21, and their right to personal autonomy under N.D. Const. art. I, § 1 (R537:52:¶¶128-29). The District Court held a seven-day bench trial on those claims starting in January 2025. *See generally* (R764-70) (trial transcripts).

[¶16] In October 2025, the District Court issued an extensively researched 85-page order that thoroughly addressed the evolution of this Court's jurisprudence regarding the Equal

[1] While the summary judgment order didn't expressly dismiss claims pertaining to the surgery restrictions in Section (1)(b) (mastectomies) and Section (1)(d) (removing otherwise healthy body parts), both the parties and the District Court understood that only the non-surgical restrictions of the law in Section (1)(c) remained at issue. *See, e.g.*, Appellant Br. ¶5 ("The provisions of the [Law] regarding surgical procedures, which Dr. Casas does not provide, were not at issue at trial.").

Protection provisions of N.D. Const. art. I, §§ 21 and 22 and the right to personal autonomy under N.D. Const. art. I, § 1, as well as the extensive record and testimonial evidence that was submitted for this case. *See generally* (R785).

[¶17] For the Equal Protection claim under Article I, Sections 21 and 22, the District Court held that, "[b]y its expressed terms," the statute only "discriminates based upon age" and "upon medical purpose." (R785:50:¶¶101-102). It rejected the claim that the law either "covertly or overtly classif[ies] based on sex." (R785:53:¶109). And it held that "[t]he legislative record does not support [the claim] … that the Legislature passed the Health Care Law for an invidious discriminatory purpose." (R785:54-55:¶111). The District Court further rejected the argument that transgender status should be declared a constitutionally suspect class, noting "[g]ender dysphoria is [] not an immutable characteristic like race," as it "may go into remission or desist," (R785:57:¶119), and that "[t]ransgender individuals do not occupy 'a position of political powerlessness' that requires 'extraordinary protection from the majoritarian political process.'" (R785:58:¶120) (quoting *Gore v. Lee*, 107 F.4th 548, 559 (6th Cir. 2024)).

[¶18] For the personal autonomy argument under Article I, Section 1, the District Court found that claim failed twice over. For one, a "review of the common law doctrine evidences the right was recognized as belonging to a person of adult years with the capacity to reason and have a clear understanding of the risks and benefits of the medical treatment. Here, the Health Care Law only limits medical procedures performed on minors." (R785:82:¶182). And second, "the right to personal autonomy under the common law was recognized as the right to refuse medical treatment. [Here,] [t]he Plaintiffs are asking that the reverse be recognized—the right to obtain a medical treatment that has been statutorily

prohibited. … [But] [a]t the time of statehood, it would have been understood the State had the authority to regulate medical practices as evidenced by the criminalization of abortion." (R785:82-83:¶¶183-184). Thus, to the extent Article I, Section 1 constitutionalized a limit on State authority to regulate medical practices in 1889, the traditional understanding was that "the State may prohibit certain medical practices but may not force unwanted medical procedures upon an adult with the capacity to refuse." (R785:83:¶184).

[¶19] Because N.D.C.C. ch. 12.1-36.1 is not subject to strict scrutiny under either Article I, Sections 21 and 22 or Article I, Section 1, the District Court subjected it to rational basis review, which it concluded was easily satisfied. As the District Court summarized it, "[t]he evidence presented in this case establishes there are recognized concerns regarding the medical risks associated with providing hormone blockers and cross-sex hormones to minors to treat gender dysphoria. There are legitimate concerns about the ability of these minors to understand the long-term effects of these interventions fully." (R785:70:¶148). The evidence also established that "there is an ongoing international debate regarding the safety and effectiveness of the medical procedures prohibited by the Health Care Law." *Id.* Consequently, "the Health Care Law bears a rational relationship to … North Dakota's legitimate interest in regulating the medical profession." *Id.*

[¶20] The District Court accordingly entered an amended final judgment on December 19, 2025, (R812), for which the notice of entry was submitted December 29, 2025, (R813). Plaintiff noticed the instant appeal on February 25, 2026.

STATEMENT OF FACTS

I. North Dakota's Health Care Law.

[¶21] N.D.C.C. ch. 12.1-36.1 became effective on April 21, 2023. As relevant for this appeal, the operative text that Plaintiff challenges is contained in Sections 12.1-36.1-02(1)

and (1)(c), which provide:

> 1. Except as provided under section 12.1-36.1-03, if a minor's perception of the minor's sex is inconsistent with the minor's sex, a health care provider may not engage in any of the following practices for the purpose of changing or affirming the minor's perception of the minor's sex:
>
> ….
>
> c. Prescribe, dispense, administer, or otherwise supply any drug that has the purpose of aligning the minor's sex with the minor's perception of the minor's sex when the perception is inconsistent with the minor's sex, including:
>
> (1) Puberty-blocking medication to stop normal puberty;
> (2) Supraphysiologic doses of testosterone to females; or
> (3) Supraphysiologic doses of estrogen to males; …

N.D.C.C. § 12.1-36.1-02(1).

[¶22] "Sex" is defined as "the biological state of being female or male, based on the individual's nonambiguous sex organs, chromosomes, or endogenous hormone profiles at birth." N.D.C.C. § 12.1-36.1-01(3). "Minor" is defined as "an individual under the age of eighteen." N.D.C.C. § 12.1-36.1-01(2).

[¶23] Before the District Court, Plaintiff asserted various vagueness and interpretive arguments, generally premised on "Dr. Casas' alleged inability to interpret the law." *See* (R537:17,19:¶¶38,41). The District Court dismissed those arguments, concluding "the Health Care Law defines the conduct it criminalizes with sufficient definiteness that ordinary people can understand what is prohibited." (R537:21:¶45).

[¶24] Plaintiff has not raised any statutory vagueness arguments in this appeal.

II. Similar Health Care Laws Around the Nation.

[¶25] The North Dakota Legislative Assembly is far from alone in restricting the use of chemical and hormonal gender transition procedures on minors.

[¶26] As of April 2026, at least 27 States have adopted similar laws. *See* Ala. Code § 26-26-1; Ariz. Rev. Stat. Ann. § 32-3230; Ark. Code. Ann. § 20-9-1502; Fla. Stat. Ann.

§ 456.52; Ga. Code Ann. § 31-7-3.5; Idaho Code § 18-1506C; Ind. Code §§ 25-1-1; Iowa Code § 147.164; Kan. Stat. Ann. §§ 65-28.137-42; Ky. Rev. Stat. Ann. § 311.372; La. Stat. Ann. § 40:1098.1-1099.1; Miss. Code Ann. § 41-141-1; Mo. Rev. Stat. Ann. § 191.1720; Mont. Code Ann. § 50-4-1001; Neb. Rev. Stat. § 71-7301; N.H. Rev. Stat. §332-N; N.C. Gen. Stat. § 90-21.150-154; N.D.C.C. § 12.1-36.1; Ohio Rev. Code Ann. § 3129.02; Okla. Stat. Ann. tit. 63 § 2607.1; S.D. Codified Laws § 32-24-33; Tenn. Code Ann. § 68-33-101; Tex. Health and Safety Code Ann. §§ 161.701-706; Utah Code Ann. §§ 58-1-603; W. Va. Code § 30-14-17; Wyo. Stat. Ann. § 35-4-1001. Puerto Rico can also be added to that list. *See* Puerto Rico Act No. 63 of July 16, 2025 (S.B. 350).

[¶27] And around the nation, these laws have generally been upheld against constitutional challenges once they have reached state supreme courts or federal appellate courts.

[¶28] Most recently, the Supreme Court of Missouri rejected challenges under its state constitution's Equal Protection and fundamental right provisions earlier this year. *E.N. v. Kehoe*, 726 S.W.3d 679 (Mo. 2026) (en banc). For the Equal Protection claim, the court held that Missouri's analogous law "classifies only on age and medical use," and therefore is not subject to heightened scrutiny. *Id.* at 687-88. And on the fundamental rights claim, the court noted that despite the existence of a general "right of individual autonomy over decisions relating to one's health and welfare," "there is no fundamental right to seek care the legislature has prohibited." *Id.* at 689 (citation omitted).

[¶29] Likewise, the Supreme Court of Texas issued a reasoned decision reversing the grant of a temporary injunction for its analogous law, rejecting Equal Protection and fundamental right-to-parent challenges under its constitution. *State v. Loe*, 692 S.W.3d 215 (Tex. 2024). For the Equal Protection claim, the court held that the "statute treats both

males and females receiving treatment for gender dysphoria the same." *Id*. at 237. And on the fundamental right-to-parent claim, the court explained that "to the extent parents possess a fundamental interest in obtaining medical care for their children, it [] extend[s] only to those medical treatments that are legally available." *Id.* at 229.

[¶30] Federal appellate courts are also in accord. Most prominently, there is the U.S. Supreme Court's decision rejecting an Equal Protection challenge to Tennessee's law. That Court held that Tennessee's law is not subject to heightened scrutiny because it "does not prohibit conduct for one sex that it permits for the other … *no* minor may be administered puberty blockers or hormones to treat gender dysphoria, gender identity disorder, or gender incongruence; minors of *any* sex may be administered puberty blockers or hormones for other purposes." *Skrmetti*, 605 U.S. at 515. Several concurring Justices also thoroughly addressed why arguments to strike down such laws based on the claim that transgender status is a suspect class should likewise be rejected, noting that status "is not … 'definitively ascertainable at the moment of birth,'" nor is it a "'discrete group'" that could be "defined by an easily ascertainable characteristic that is fixed and consistent across the group." *Id.* at 550-51 (Barrett, J., concurring, joined by Thomas, J.) (citations omitted); *see also id.* at 564-78 (Alito, J., concurring in the judgment).

[¶31] The Eighth Circuit, sitting en banc, similarly rejected arguments that Arkansas's analogous law violated principles of Equal Protection or fundamental rights. *Brandt by & through Brandt v. Griffin*, 147 F.4th 867 (8th Cir. 2025) (en banc). As to Equal Protection, that court held "[t]he Act classifies based on age and medical procedure, not sex," *id.* at 879, and that it also "does not classify based on transgender status," *id*. at 881. And on the fundamental right claims, the court held that "this Nation's history and tradition[s]" do not

"support the right of a parent to obtain for his or her child a medical treatment that, although the child desires it and a doctor approves, the state legislature deems inappropriate for minors." *Id.* at 887; *see also id.* at 888 ("It does not violate this Nation's historical concept of ordered liberty for the people …, through their legislature, to prohibit physicians from providing gender transition procedures for minors.").

[¶32] The Seventh Circuit similarly rejected Equal Protection and fundamental right challenges to Indiana's law. *K.C. v. Indiv. Members of Med. Licensing Bd.*, 121 F.4th 604 (7th Cir. 2024). As to Equal Protection, the court held that the law's "classifications based on age and medical diagnosis do not merit [heightened] scrutiny," rejecting the claim of sex discrimination given that "[n]obody may receive the treatment the state has chosen to regulate[,] [so] sex does not indicate on what basis treatment is prohibited." *Id*. at 616-17. And on the fundamental rights challenge, the court rejected claims that "the gender transition procedures at the heart of appellees' claimed right" are deeply rooted in our nation's history and traditions. *Id.* at 625.

[¶33] The Tenth Circuit also rejected Equal Protection and fundamental right challenges to Oklahoma's law. *Poe by & through Poe v. Drummond*, 149 F.4th 1107 (10th Cir. 2025). For Equal Protection, that court held the "classifications are [] based on age and medical use which requires us to employ a rational basis inquiry," and that the law "rationally relates to Oklahoma's interest in safeguarding the physical and psychological well-being of minors in light of the debate … about the risks and benefits associated with treating a minor's gender dysphoria with gender transitioning procedures." *Id.* at 1123. And for fundamental rights, the Court held that "our Nation does not have a deeply rooted tradition in providing gender transition procedures to minors." *Id.* at 1131.

[¶34] The Eleventh Circuit likewise rejected Equal Protection and fundamental right challenges to analogous laws from Alabama and Florida. *Eknes-Tucker v. Governor of Ala.*, 80 F.4th 1205 (11th Cir. 2023). On Equal Protection, that court found that Alabama's law is one that "targets specific medical interventions for minors, not one that classifies on the basis of any suspect characteristic under the Equal Protection Clause." *Id.* at 1227. And on fundamental rights, it held "the fundamental parental right in the context of medical decision-making do[es] not establish that parents have a [] fundamental right to obtain a particular medical treatment for their children as long as a critical mass of medical professionals approve." *Id.* at 1224; *accord Doe v. Surgeon Gen.*, 2024 WL 4132455 (11th Cir. Aug. 26, 2024) (per curiam) (reversing injunction against analogous Florida law that was based on a purported finding of "invidious discriminatory purpose").

[¶35] To the State's knowledge, the only exception to state supreme court and federal appellate courts upholding analogous laws is an outlier decision from the Supreme Court of Montana—which affirmed the grant of a preliminary injunction based solely on "Montana's expansive right to privacy," which has no equivalent in our State Constitution. *See Cross ex rel. Cross v. State*, 560 P.3d 637, 648-49 (Mont. 2024).

[¶36] Decisions from other courts are of course not binding on this Court's analysis of the North Dakota Constitution. But they're highly relevant because they demonstrate that time and again, around the county, appellate courts have rejected the exact premises that underly Plaintiff's arguments in this case, concluding that: (1) similar laws discriminate based on age and medical procedure, not on sex or some other suspect classification; (2) there is no historical support for the idea that minors (or their parents) have a fundamental right to receive disputed medical procedures the State has deemed unsafe or untested; and

(3) there is a valid debate over the efficacy and ethics of performing these kinds of procedures on minors for treating a diagnosis of gender dysphoria.

III. The Disputed Efficacy and Ethics of Performing these Procedures on Minors.

[¶37] Plaintiff would have the Court believe there's an unquestionable "medical consensus" around the efficacy and ethics of performing these procedures on minors, and that anyone who disagrees with subjecting children to these potentially life-altering procedures is an "outlier" to be disparaged. *See* Appellant Br. ¶40. The Court should reject that notion on its face given the authorities above, as well as common sense.

[¶38] The Court should also reject that notion based on the record developed in this case, which was discussed and summarized in extensive detail by the District Court.

[¶39] As an initial matter, there are glaring questions about whether minors who haven't even gone through puberty have the capacity to understand the long-term effects that undergoing these procedures may have on them, as well as with the ethics of performing them on a child unlikely to fully understand the long-term implications. For instance, there are serious concerns as to whether "a 12- or 13-year-old [can truly] appreciate that taking cross-sex hormones may mean sterility later in life." (R785:64:¶136). And "[t]he evidence presented at trial establishes [that] this is a valid concern." (R785:64:¶137).

[¶40] As an endocrinologist who testified on behalf of the State explained, gender dysphoria is a psychological condition, not an endocrine disorder. (R768:22:8-14). And as a psychiatrist who testified on behalf of the State explained, providing gender transition procedures to minors diagnosed with gender dysphoria requires presuming "a child is able to know what is best for them when they're 11 years old," and that they have the ability to understand these procedures may result in "sexual dysfunction and sterility," before they

are likely to even understand what those concepts are. (R770:14:19-25).

[¶41] Indeed, one of Plaintiff's own experts—who supports performing these procedures on minors—coauthored an article that said clinicians "must [] be prepared to prescribe these interventions in situations where patients are not able to demonstrate clear 'knowledge and understanding' of the interventions." (R785:64:¶137) (quoting (R761:5); (R764:203:8-11)). And Plaintiff himself testified he believes most of his minor patients "know exactly what they want" because "[t]hey have watched YouTube, they have watched TikTok." (R785:65:¶137) (quoting (R:767:139:4-5)). The reasons why a child cannot be presumed to understand the potentially life-altering effects of procedures they might see on TikTok seem so obvious as to not require exposition.

[¶42] Furthermore, given the high rate of children diagnosed with gender dysphoria who will desist from identifying with the other gender as they continue to mature—*see* (R769:74:1-4) (referencing studies that found upwards of 80% of children who reported feeling gender dysphoric ceased to do so as they went through puberty); (R770:92:1-5) (similar)—there are serious ethical problems when a clinician deliberately alters the physiological development of a child's secondary sex characteristics without any way of knowing the child will continue to identify with that gender in five years' time. *See* (R770:20:2-10).

[¶43] It would thus seem indisputable that "[t]he evidence presented at trial establishes there is a legitimate concern regarding the capacity of minors to understand and appreciate the long-term consequences of the practices prohibited by the Health Care Law." (R785:65:¶138); *accord Skrmetti*, 605 U.S. at 541, 543 (Thomas, J., concurring) ("it is unsurprising that '[t]he risks associated with puberty blockers and cross-sex hormones are difficult for adolescents to comprehend and appreciate,' … [and] despite the supposed

expert consensus that young children can consent to irreversible sex-transition treatments, States have good reasons to disagree…") (citation omitted).

[¶44] Moreover, even setting aside a child's likely inability to fully appreciate the life-altering effects of being subjected to these procedures, there are serious questions about the efficacy and effects of using these procedures to treat gender dysphoria in minors.

[¶45] As the District Court noted, there "are acknowledged health risks when prescribing puberty-blocking medications and cross sex hormones to minors." (R785:62-63:¶133). "The use of puberty blocking medications can impact bone density and cause intracranial pressure." *Id.* (citing (R764:115:1-25)). "Estrogen can cause blood clots." *Id.* (citing (R764:123:12-15); (R:767:147:6-13)). "Testosterone can increase blood pressure and the risk of heart disease. *Id.* (citing (R:767:125:1-3)). And "[p]erhaps most significant are the risks these medications might have on fertility." *Id.* (citing (R:767:140:22-25)).

[¶46] As an endocrinologist who testified on behalf of the State explained (in testimony credited by the District Court), "it is not the same to prescribe estrogen to biological males and biological females, and conversely, it is not the same to prescribe testosterone to biological females and biological males." (R785:63:¶134) (citing (R768:18:20-25); (R768:19:1-12)). Clinicians that subject a child to gender transition procedures "induc[e] a state of iatrogenic disease suppressing the normal function of the testes" and ovaries, (R768:39:14-42:3), and they do so to intentionally create "a medical condition called hypogonadotropic hypogonadism … [that] stop[s] normal pubertal development," (R768:95:10-13, 103:15-18), which is typically a condition that an endocrinologist would diagnose and treat for a developing adolescent. (R768:95:13-15).

[¶47] There are also fundamental differences between an adolescent prescribed puberty

blockers as a treatment for precocious puberty and an adolescent prescribed puberty blockers due to a diagnosis of gender dysphoria. (R768:33:4-13). Because whereas the treatment of precocious puberty attempts to restore an adolescent to a normal timeline for pubertal development, gender transition procedures seek to interrupt a child's normal pubertal development. *Id.* And interrupting a child's normal pubertal development with puberty blockers, even if the child never proceeds to cross-hormone infusions, can influence the child's growth and have negative effects on his or her bone mineral density, which cannot be regained after it is lost. (R768:33:25-34:7).

[¶48] Yet in exchange for the many known physiological harms that are associated with chemically interrupting a child's normal pubertal development, the evidence that such procedures are even beneficial for treating a child's mental health diagnosis of gender dysphoria is dubious and debated, to say the least. As the District Court remarked, "[i]n this area, the parties' witnesses could not be more opposite." (R785:65:¶139).

[¶49] Notwithstanding Plaintiff's self-serving insistence that chemically interrupting a child's normal pubertal development is "a safe and effective medical treatment to alleviate th[e] distress" of gender dysphoria that the supposed experts agree on, Appellant Br. ¶59, the District Court recognized that the evidence does not support such a claim.

[¶50] As the District Court explained, these kinds of procedures were not performed on minors at all until the late 1990s, and for years were only done as small studies with extremely limited follow-up to assess whether there was long-term improvement in mental health. (R785:60:¶¶125-126). A relatively early study in the United Kingdom, from 2011, found that among a cohort of 12–15-year-olds who were prescribed puberty blockers for gender dysphoria, only 9-29% reported an improvement in psychological well-being,

whereas 15-34% reported a *deterioration*. (R785:61:¶128) (citing (R594:70)).

[¶51] Since that time, there has been an explosion in the number of minors who have been diagnosed with gender dysphoria, and a dramatic increase in the number of children being prescribed puberty blockers and cross-sex hormones for the purpose of chemically inducing a gender transition. *See* (R770:8:7-14) (testimony that "in the United States, there was a rapid escalation beginning with about 2010").

[¶52] However, as a psychologist who specializes in research methodology testified on behalf of the State (in testimony that was credited by the District Court), the research generally cited to justify subjecting minors to these kinds of procedures is "of very low quality and not reliable." (R785:66-67:¶142) (citing (R769:51:24-25)); *see also, e.g.*, (R785:67:¶143) (District Court compiling the "limitations" of "numerous exhibits regarding the research" submitted by Plaintiff in this very case); (R769:63:17-65:11) (testimony that the guidance used to justify these procedures largely "cit[es] to each other" and "reiterat[es] what the other said" to create an illusion of consensus).

[¶53] Even worse, there is evidence that studies that didn't get behind the purported "consensus" were systematically suppressed. *See, e.g.*, (R770:42:8-12) (testimony noting a review performed by Johns Hopkins was suppressed when its findings did not support using cross-sex hormones to treat minors diagnosed with gender dysphoria). And discovery ordered by a federal court in Alabama revealed that some of the primary guidelines on which Plaintiff and others rely to justify performing these procedures on children without any age limits—the Standards of Care 8 (or SOC 8) issued by the World Professional Association for Transgender Health (or WPATH) in 2022—were not driven by the goal of achieving the best patient outcomes, but were instead crafted to support

political and legal goals under pressure by a former Assistant Secretary for Health of the prior Administration. *See* (R768:114:14-115:10); (R770:43:8-10); *see also Skrmetti*, 605 U.S. at 545-46 (Thomas, J., concurring) ("recent reporting has exposed that WPATH changed its medical guidance to accommodate external political pressure").[2]

[¶54] In comparison with the low quality and biased research cited to support subjecting children to these procedures, the United Kingdom's National Health Service conducted a four-year, comprehensive examination of the research in this field and commissioned eight systematic reviews of its own. (R785:67-68:¶144) (citing (R594) (Cass Review)).

[¶55] The findings of the Cass Review are devastating for Plaintiff's insistence that all the "experts" agree subjecting children to these procedures will improve their mental well-being. *Cf.* Appellant Br. ¶40. Because after conducting an exhaustive examination of the available research in this field, the Cass Review concluded "[t]his is an area of remarkably weak evidence, and … [t]he reality is that we have no good evidence on the long-term outcomes of interventions to manage gender related distress." (R:594:13).

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[2] Notably, Plaintiff's brief to this Court does not mention WPATH or SOC 8 even once, despite his Amended Complaint having been full of references to both. *Cf.*, *e.g.*, (R273:8:¶30) (claiming "SOC 8 is based upon a rigorous and methodological evidence-based approach"). One might surmise Plaintiff's curious silence on them has something to do with SOC 8 becoming a national scandal. *See*, *e.g.*, Azeen Ghorayshi, *Biden Officials Pushed to Remove Age Limits for Trans Surgery, Documents Show*, N.Y. Times (June 25, 2024), https://perma.cc/RP5L-QFD9; *Research into Trans Medicine Has Been Manipulated*, The Economist (June 27, 2024), https://perma.cc/A942-J2DY.

[¶56] On subjecting minors to puberty blockers, the Cass Review said: "[the] systematic review found no evidence that puberty blockers improve body image or dysphoria, and very limited evidence for positive mental health outcomes, which without a control group, could be due to placebo effect or concomitant psychological support." (R594:179). And on subjecting minors to cross-sex hormones, the Cass Review said that based on a lack of high-quality evidence, "[n]o conclusions can be drawn about the effect on gender dysphoria, body satisfaction, [or] psychosocial health." (R594:184).

[¶57] In short, the Cass Review torpedoes any suggestion that the efficacy of using these procedures to improve the mental well-being of minors diagnosed with gender dysphoria has been established beyond question, let alone that the known physiological risks outweigh the purported mental health benefits. *See also Skrmetti*, 605 U.S. at 525 (findings of the Cass Review are relevant not because they answer any questions of U.S. law, but because they "demonstrate the open questions regarding basic factual issues").

[¶58] To resolve this case, the Court need not answer the question of whether chemically altering a child's hormones is an effective or ethical way to treat minors experiencing gender dysphoria. Indeed, answering such a question is likely outside the judicial competence. But for Plaintiff to claim that such questions do not or cannot legitimately exist, and that any disagreements could only be explained by discriminatory "animus," *see* Appellant Br. ¶¶115-20, is both disingenuous and wrong.

LAW AND ARGUMENT

I. STANDARD OF REVIEW.

[¶59] This Court "review[s] de novo a claimed violation of a constitutional right." *Liquid Hosp., LLC v. Bd. of City Comm'rs*, 2025 ND 136, ¶10, 24 N.W.3d 376.

[¶60] "Whether a statute is unconstitutional is a question of law, which is fully reviewable

on appeal. … The justice, wisdom, necessity, utility and expediency of legislation are questions for legislative, and not for judicial[,] determination. This Court exercises the power to declare legislation unconstitutional with great restraint." *Condon v. St. Alexius Med. Ctr*., 2019 ND 113, ¶7, 926 N.W.2d 136 (citation omitted).

[¶61] "When attacking the constitutionality of a statute, the scales are weighed in favor of the statute. The challenger must overcome a strong presumption of constitutionality." *State v. Tweed*, 491 N.W.2d 412, 418 (N.D. 1992). "Any doubt must be resolved in favor of [] constitutionality," *id.,* and "[t]he presumption … is so strong that a statute will not be declared unconstitutional unless its invalidity is … beyond a reasonable doubt," *Capps v. Weflen*, 2014 ND 201, ¶15, 855 N.W.2d 637 (citation omitted).

[¶62] The presumption of constitutionality is especially strong in North Dakota, as we are one of only two States (the other being Nebraska) that require a supermajority of the Supreme Court to declare a statute unconstitutional. N.D. Const. art. VI, § 4.

II. N.D.C.C. ch. 12.1-36.1 Is Not Subject to Strict Scrutiny Under the Equal Protection Principles Embodied in N.D. Const. art. I, §§ 21 and 22.

[¶63] Plaintiff contends N.D.C.C. ch. 12.1-36.1 is subject to strict scrutiny under the Equal Protection provisions of N.D. Const., art. I, §§ 21 and 22. *See* Appellant Br. ¶¶47-48, 76-98. The District Court thoroughly examined and rejected this argument. *See* (R785:16-36:¶¶32-68) (discussing evolution of this Court's Equal Protection jurisprudence in relation to federal Equal Protection jurisprudence); (R785:36-49:¶¶69-99) (analyzing decisions from other jurisdictions that involved "arguments … nearly identical to the arguments being made here"); (R785:50-58:¶¶100-121) (analyzing and rejecting Plaintiff's argument for heightened scrutiny under Article I, Sections 21 and 22).

[¶64] The Court should affirm the District Court's determination that N.D.C.C. ch. 12.1-

36.1 is not subject to heightened scrutiny under the Equal Protection provisions.

A. The District Court Did Not Fail to Conduct an Independent Analysis.

[¶65] Before addressing the merits of Plaintiff's Equal Protection argument, a short response to Plaintiff's criticism of the District Court's analysis is required.

[¶66] Plaintiff and some amici criticize the District Court for "deferring to federal Equal Protection caselaw" and "failing to conduct an independent analysis under the North Dakota Constitution." *E.g.*, Appellant Br. ¶92. Nonsense. While Plaintiff may disagree with the District Court's decision, it is not lacking for independent analysis.

[¶67] The District Court determined N.D.C.C. ch. 12.1-36.1 classifies based on age and medical purpose, and that "[t]he North Dakota Supreme Court has never recognized [] age-based classifications [as] subject to heightened scrutiny," nor has it ever "given heightened equal protection scrutiny to laws that classify based on medical purpose." (R785:50:¶¶101-102). And to the extent the District Court opined this Court's Equal Protection standards would parallel federal standards, it was to indicate this Court would employ something akin to intermediate scrutiny for sex-based classifications—a conclusion that ultimately ends up being irrelevant to the District Court's analysis, because it found that the statute does not classify based on sex in the first place. *See* (R785:35-36:¶¶67-68).

[¶68] Other than engaging in some grandstanding about the fact that the State Constitution and Federal Constitution are different (which no one disputes) and that rights may be guaranteed under one even when not guaranteed under the other (which no one disputes), Appellant Br. ¶¶92-95, Plaintiff doesn't actually propose a different analytic framework that should be adopted for Equal Protection claims arising under the North Dakota Constitution. He simply seems to contend that different conclusions should be reached with respect to the same underlying predicate determinations—*i.e.*, he seems to

contend that whether or not a law classifies based on sex, or upon something else, changes based on whether the challenge is brought under the State or Federal Constitution. But as far as the State can tell, there's no basis in law or reason for such a proposition.

[¶69] Moreover, in exhorting this Court to jettison federal caselaw and blaze its own Equal Protection path, Plaintiff entirely fails to mention this Court's decision in *Snyder's Drug Stores*, where this Court said, for purposes of that case, "we consider the objectives of Section[s] [21] and [22] of the [State] Constitution and the Equal Protection Clause of the Fourteenth Amendment … to be similar," and, even though North Dakota's Equal Protection provisions can sometimes be given a different meaning than the federal provision, "there [was] no compelling reason to do so" in that case. *Snyder's Drug Stores, Inc. v. State Bd. of Pharm.*, 219 N.W.2d 140, 146, 150 (N.D. 1974).

[¶70] Undoubtedly, Plaintiff does not like federal Equal Protection caselaw in this field. After all, it's "easy to see the similarities between this case and *Skrmetti.*" (R785:37:¶74). But he has offered no "compelling reason" for the Court to adopt some sort of different analytical framework for the particular circumstances of this case.[3]

[¶71] In short, the District Court did not "fail[] to conduct an independent analysis under the North Dakota Constitution." *Cf.* Appellant Br. ¶92. The District Court applied this

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[3] *See also Kehoe*, 726 S.W. at 685 & n.4 (Supreme Court of Missouri noting the *Skrmetti* decision is "persuasive and aid[s] this Court's analysis," and observing that while the "[p]rovisions of our state constitution *may be* construed to provide more expansive protections than comparable federal … provisions," plaintiffs had not offered any persuasive arguments for why they'd be different in this context) (citation omitted).

Court's analytical framework for allegations under Article I, Sections 21 and 22. (R785:50:¶¶101-02). And when it came to making the underlying predicate determinations—such as what the law classifies based upon—the District Court did what courts routinely do: examine decisions from jurisdictions that have confronted similar challenges for their persuasive authority. There's nothing improper about that, and this Court itself has done so repeatedly, including in the Equal Protection context. *See Snyder's Drug Stores*, 219 N.W.2d at 150 (commenting on fact that California's Equal Protection provisions are similar to North Dakota's, and that California understands its provisions to be "substantially the equivalent" of the federal Equal Protection Clause); *see also, e.g.*, *State v. Leppert*, 2003 ND 15, ¶¶10-13, 656 N.W.2d 718 (reviewing decisions from other jurisdictions before "agree[ing] with the majority of courts that … the rational basis test applies to equal protection challenges to statutes authorizing DNA testing").

B. N.D.C.C. ch. 12.1-36.1 Classifies Based on Age and Medical Purpose.

[¶72] Our State Constitution's Equal Protection provisions are contained in Article I, Sections 21 and 22, and provide as follows:

> Section 21. No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.
>
> Section 22. All laws of a general nature shall have a uniform operation.

In re P.F., 2008 ND 37, ¶15, 744 N.W.2d 724.

[¶73] "The equal protection clauses of the state and federal constitutions do not prohibit legislative classifications or require identical treatment of different groups of people." *Leppert*, 2003 ND 15 at ¶7. "Rather, the equal protection clause prohibits the government from treating individuals differently who are alike in all relevant aspects." *Hector v. City*

of Fargo, 2014 ND 538, ¶34, 44 N.W.2d 542. This Court applies three potential levels of judicial scrutiny to Equal Protection claims:

> [1] We apply strict scrutiny to an inherently suspect classification or infringement of a fundamental right … [2] When an "important substantive right" is involved, we apply an intermediate standard of review …[and] [3] When no suspect class, fundamental right, or important substantive right is involved, we apply a rational basis standard.

Id. (quoting *Gange v. Clerk of Burleigh Cnty. Dist. Ct.*, 429 N.W.2d 429, 433 (N.D. 1988)); *accord Skrmetti*, 605 U.S. at 509-10.

[¶74] Plaintiff claims that N.D.C.C. ch. 12.1-36.1 is subject to strict scrutiny because it "classifies based on sex and on a minor's immutable transgender identity." Appellant Br. ¶78. But those aren't the lines drawn by the statute.

[¶75] First, it is indisputable that the statute draws a line based on age. By its plain text, the restrictions of N.D.C.C. § 12.1-36.1-02 apply only to procedures performed on minors under the age of 18. People over the age of 18 are not subject to the restrictions. Yet there's nothing "inherently suspect" about conduct that's legal for an adult being illegal for a minor. Indeed, our Constitution prohibits those who have not "attained the age of eighteen years" from having the right to vote. N.D. Const. art. II, § 1. And minors are routinely treated differently under the law in a whole host of ways. *See*, *e.g.*, N.D.C.C. § 5-01-08 (consumption of alcohol); N.D.C.C. § 12.1-31-03 (use of tobacco); N.D.C.C. § 14-03-02 (ability to marry); N.D.C.C. § 34-07-01 (restrictions on employment). So the fact that the law applies differently to minors than it does to adults does not subject it to strict scrutiny. *See*, *e.g.*, *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 83 (2000) ("age is not a suspect classification under the Equal Protection Clause").

[¶76] Second, by its plain text, the law only applies to certain procedures that are done "for the purpose" of facilitating a gender transition. N.D.C.C. § 12.1-36.1-02(1). As the

District Court observed, any minor can be given puberty blockers for the purpose of treating conditions like precocious puberty, and the law restricts their use only "for the purpose" of facilitating a gender transition. *See* (R785:50:¶102). Likewise, any minor can be given estrogen or testosterone for otherwise lawful reasons, as long as the reason is not "for the purpose" of facilitating a gender transition. *Id*. There is nothing "inherently suspect" about a law that draws a line based on the *purpose* of a medical procedure. For example, States can permit the use of barbiturates for the treatment of seizures while at the same time prohibiting their use "for the purpose" of assisting a suicide. *See* N.D.C.C. § 12.1-16-04; *accord Vacco v. Quill*, 521 U.S. 793, 799 (1997) (laws prohibiting assisted suicide do not "involve suspect classifications"). And they can prohibit surgeries on the genitals of young girls when done for reasons of custom or ritual, while still permitting such surgeries when done "for the purpose" of correcting an anatomical abnormality. *See* N.D.C.C. § 12.1-36-01; *accord* 18 U.S.C. § 116.

[¶77] Because neither minority status nor medical purpose constitutes an "inherently suspect" classification, Plaintiff's Equal Protection challenge must be rejected if the law has any "rational relationship to a legitimate governmental purpose." *Leppert*, 2003 ND 15 at ¶7; *accord*, *e.g.*, *Skrmetti*, 605 U.S. at 511 ("SB1 incorporates two classifications. First, SB1 classifies on the basis of age. … Second, SB1 classifies on the basis of medical use. … Classifications that turn on age or medical use are subject to only rational basis review."); *Brandt*, 147 F.4th at 879 ("The Act classifies based on age and medical procedure."); *Poe*, 149 F.4th at 1123 ("The statute's classifications are [] based on age and medical use which requires us to employ a rational basis inquiry."); *Kehoe*, 726 S.W.3d at 687 ("The [] Act … classifies only on age and medical use.").

C. N.D.C.C. ch. 12.1-36.1 Does Not Classify Based on Sex.

[¶78] Plaintiff contends "[t]he plain language of the Health Care Ban explicitly classifies based on sex." Appellant Br. ¶79. According to Plaintiff, "'sex' is the operating mechanism" of the statute because a girl can receive estrogen for the purpose of treating developmental or endocrine disorders, but a boy cannot receive the same dose of estrogen for the purpose of transitioning his gender identity. Appellant Br. ¶80. According to Plaintiff, "[s]imilarly situated minor patients" are therefore "treated differently based on their sex." Appellant Br. ¶81. But that argument is wrong all the way down.

[¶79] As the District Court noted, "it is not the same to prescribe estrogen to biological males and biological females, and conversely, it is not the same to prescribe testosterone to biological females and biological males." (R785:63:¶134) (citing (R768:18:20-25, 19:1-12)). They are different procedures, with different purposes, different effects, and different physiological risks. Giving an adolescent boy testosterone to correct an endocrine disorder may *alleviate* future fertility issues, whereas giving an adolescent girl the same testosterone for the purpose of transitioning her gender may *cause* future fertility issues. Young boys and girls are not "similarly situated" in this respect, and pretending as if they are would be "especially inappropriate." *Skrmetti*, 605 U.S. at 512. "Some medical treatments and procedures are uniquely bound up in sex," *id.*, but that does not change the fact that N.D.C.C. ch. 12.1-36.1 classifies based on medical procedure, not sex.

[¶80] Plaintiff also briefly contends that N.D.C.C. ch. 12.1-36.1 classifies based on sex because it "mandates gender conformity and adherence to sex-stereotypes." Appellant Br. ¶82. But N.D.C.C. ch. 12.1-36.1 is not about mandating gender conformity, it is about protecting children from the long-term effects of relatively novel procedures for which the effects, efficacy, and ethics are vigorously disputed. *Accord Skrmetti*, 605 U.S. at 516-17

(“plaintiffs’ allegations of sex stereotyping are misplaced” and “fail to acknowledge [the State] found that the prohibited medical treatments are experimental, can lead to later regret, and are associated with harmful—and sometimes irreversible—risks”).

[¶81] In short, N.D.C.C. ch. 12.1-36.1 does not classify based on sex because it does not prohibit conduct for one sex that it permits for the other. Under N.D.C.C. ch. 12.1-36.1, “*no* minor may be administered puberty blockers or hormones” for the purpose of facilitating a gender transition and “minors of *any* sex may be administered puberty blockers or hormones for other purposes.” *Skrmetti*, 605 U.S. at 515; *accord, e.g.*, *Brandt*, 147 F.4th at 879. The analysis need not be any more complicated than that.

D. N.D.C.C. ch. 12.1-36.1 Does Not Classify Based on Transgender Status, and That Is Not a Constitutionally Suspect Category Regardless.

[¶82] Plaintiff next contends that N.D.C.C. ch. 12.1-36.1 should be subjected to strict scrutiny because it “targets a class of people” based on the “immutable characteristic” of their “transgender status.” Appellant Br. ¶¶86-88. This argument is also mistaken.

[¶83] For one, because the law only classifies based on age and medical purpose, the Court need not address whether “transgender status” should be newly recognized as a constitutionally “suspect class.” *See Espeland v. Police Magistrate’s Ct.*, 78 N.D. 349, 49 N.W.2d 394, 399 (1951) (Court does not address constitutional questions “unless such determination is absolutely necessary”); *accord*, *e.g.*, *Skrmetti*, 605 U.S. at 517 (question did not arise “because SB1 does not classify on the basis of transgender status”); *Kehoe*, 726 S.W.3d at 688 n.7 (“The Court need not determine whether transgender status is a quasi-suspect class because the [] Act classifies only based on age and medical use.”).

[¶84] But if the Court nonetheless addresses whether “transgender status” should be newly recognized as a constitutionally suspect class, it should follow the reasoning of the

District Court and conclude the answer is no. (R785:55-58:¶¶112-20).

[¶85] While neither this Court nor the U.S. Supreme Court has articulated a clear test for an inherently "suspect class," both have "cited factors which include immutable and highly visible characteristics, historical disadvantage, and relative lack of political representation." *State v. Carpenter*, 301 N.W.2d 106, 109 (N.D. 1980); *see also In re G.H*, 218 N.W.2d 441, 447 (N.D. 1974) (opining U.S. Supreme Court would hold handicapped children share an "'immutable characteristic determined solely by the accident of birth' to which the 'inherently suspect' classification would be applied").

[¶86] But "transgender status" is not an "immutable" characteristic. "Something is 'immutable' if it is 'not capable of or susceptible to change.'" (R785:56:¶115) (quoting Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/immutable). And because it is indisputable that at least "some transgender individuals 'detransition' later in life … transgender status does not turn on an 'immutable ... characteristi[c].'" *Skrmetti*, 605 U.S. at 551 (Barrett, J., concurring) (citation omitted); *see also* (R785:57:¶¶117-19) (discussing record testimony on the point).

[¶87] On appeal to this Court, Plaintiff claims that "[a] person's transgender status is a fixed identity; it does not go into 'remission' or 'desist' any more than a person's race goes into remission." Appellant Br. ¶88. But that argument is belied by Plaintiff's own Amended Complaint, which alleges that "[a] transgender person is a person whose gender identity does not align with the sex they were assigned at birth." (R273:6:¶24).

[¶88] So by Plaintiff's own pleaded understanding of the term, if a person's gender identity reverts to aligning with the sex they were "assigned at birth," then they are no longer a "transgender person." Surely, Plaintiff is not claiming any person who identifies

as being transgender thereafter lacks the personal autonomy to ever identify as someone whose gender identity aligns with their biological sex—and thus change from identifying as someone who is transgender to identifying as someone who is not transgender. *Cf.* (R767:173:11-16) (testimony from Plaintiff acknowledging that "some children diagnosed with gender dysphoria identify with their biological sex later in life").

[¶89] Plaintiff's attempt to equate gender identity to race is even more specious. Plaintiff claims that a person who changes their understanding of their gender identity is the same as a person who takes a DNA test and "learn[s] something new about their race." Appellant Br. ¶89. But that argument fundamentally "misunderstands what it means for a trait to be immutable." *K.C.,* 121 F.4th at 620 n.3. If race is informed by DNA, as Plaintiff contends, then it's an aspect of one's identity fixed at the moment of conception. "Gender identity," on the other hand, is an internal sense of one's identity that is not fixed at conception, nor any other time, but which remains capable of change throughout one's life. *See* (R764:73:16-17) (expert for Plaintiff testifying "gender identity [is] a deeply felt internal sense of oneself"); *see also* (R676:82) (WPATH's SOC 8 guidelines stating transgender-identifying individuals can have "more than one gender identity simultaneously or at different times (e.g., bigender), … and/or [] have a gender that changes over time (e.g., genderfluid)"). Indeed, Plaintiff himself acknowledged some people who identify with the opposite sex will identify with their biological sex later in life. (R767:173:11-16). So when it comes to being "immutable," race and gender identity are not remotely close.

[¶90] "The conclusion that transgender individuals do not share the 'obvious, immutable, … characteristics' of 'a discrete group' is enough to demonstrate that transgender status does not define a suspect class." *Skrmetti*, 605 U.S. at 553 (Barrett, J., concurring).

[¶91] But as an additional strike, Plaintiff's invitation to recognize transgender status as a new constitutionally suspect class should also be rejected because Plaintiff has not established that group has been "subject to a longstanding pattern … of *de jure* discrimination," as is generally the case for other inherently suspect classes. *Id.* at 554; *see also id*. at 555 (*de jure* state action is the proper focus for inquiring whether a group suffers from the kind of historical "political powerlessness" that underlies other suspect classes); (R785:58:¶120) (finding transgender persons do not have the same kind of "political powerlessness" that supported the recognition of existing suspect classes).

[¶92] In short, N.D.C.C. ch. 12.1-36.1 does not classify based on transgender status, so the Court need not determine whether that constitutes an inherently "suspect class" under the North Dakota Constitution. But if the question is reached, the Court should decline Plaintiff's invitation to create a new constitutionally suspect class. As the Supreme Court of Texas has noted, "[r]espect for the separation of powers should make courts reluctant to establish new suspect classes." *Loe*, 692 S.W.2d at 238 (citation omitted).

* * * *

[¶93] To summarize, the Court should reject Plaintiff's claim that N.D.C.C. ch. 12.1-36.1 is subject to heightened scrutiny under the Equal Protection provisions of Article I, Sections 21 and 22. As appellate courts all around the country have concluded, such laws classify based on age and medical purpose, neither of which is a suspect class. And Plaintiff has not articulated any coherent or persuasive reason for why the North Dakota Constitution would somehow require arriving at a different conclusion.

III. N.D.C.C. ch. 12.1-36.1 Is Not Subject to Strict Scrutiny Under the Personal Autonomy Rights Embodied in N.D. Const. art. I, § 1.

[¶94] "North Dakota Constitution article I, section I was enacted in 1889 when North

Dakota was admitted as a state to the Union." *Wrigley v. Romanick*, 2023 ND 50, ¶22, 988 N.W.2d 231. As stylistically amended in 1984, it provides that:

> All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for … other lawful purposes, which shall not be infringed.

N.D. Const., art. I, § 1.

[¶95] "The rights guaranteed by Article I, Section 1, are those natural rights as they were known to the people of North Dakota at the time the constitution was adopted. These natural rights were fixed at that time…" *Access Indep. Health Servs., Inc. v. Wrigley*, 2025 ND 199, ¶120, 28 N.W.3d 850 (op. of Tufte, J.); *see also Wrigley*, 2023 ND 50 at ¶27 ("Fundamental rights are those which are deeply rooted in history and tradition and are implicit in the concept of ordered liberty.").

[¶96] In the analogous context of substantive due process claims, this Court has noted that the analysis "has two primary features: First, … the Due Process Clause [] protects those fundamental rights and liberties which are … 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' … [and] [S]econd, we have required in substantive-due-process cases a 'careful description' of the asserted fundamental liberty interest." *Abdullah v. State*, 2009 ND 148, ¶27, 771 N.W.2d 246 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 719-21 (1997)).

[¶97] Plaintiff claims that the restrictions against providing chemical gender transition procedures to minors codified in N.D.C.C. ch. 12.1-36.1 implicate the fundamental rights "to personal autonomy and self-determination under Article I, § 1 of the North Dakota Constitution." Appellant Br. ¶49. The District Court readily rejected such an argument,

(R785:70-84:¶¶149-185), and this Court should as well.

A. Article I, Section 1 Did Not Create a Constitutional Right for Minors to Receive Chemical Gender Transitioning Procedures.

[¶98] Addressing whether Article I, Section 1 would have been understood in 1889 as guaranteeing a fundamental right for minors diagnosed with gender dysphoria to undergo chemical gender transitioning procedures first requires defining what the alleged fundamental right is. *Access Indep. Health*, 2025 ND 199 at ¶73 (op. of Tufte, J.) (The "framing of the right affects how we approach the evidence of meaning … as we interpret both the constitution and the challenged statute. … [T]he answer to the framing question must also be … rooted in evidence of what was the understanding of the enacting public."); *see also Abdullah*, 2009 ND 148 at ¶27 (the alleged "fundamental liberty interest" requires a "careful description") (quoting *Glucksberg*, 521 U.S. at 719-21).

[¶99] Here, Plaintiff's alleged fundamental right can be framed in one of two ways: one specific, and one more general. Under either framing, the claim necessarily fails.

[¶100] First, there is the specific framing: Would the people who ratified North Dakota's Constitution in 1889 have understood Article I, Section 1 to guarantee a right to give puberty blockers and hormones to a child for the purpose of transitioning their gender? A narrower framing is more consistent with how the U.S. Supreme Court analyzes alleged fundamental rights. *See K.C.*, 121 F.4th at 624-25 (noting that in the abortion context, the U.S. Supreme Court has not examined generally whether there's "a right of every individual to the possession and control of his own person," but instead examined whether there's a fundamental right in "access to a specific medical procedure") (citation omitted). And when framed in that way, the answer to the question is obviously no.

[¶101] There is nothing in the record to suggest that chemical gender transition procedures

were even performed on minors prior to the late 1990s. *See* (R785:60:¶125). And because "[t]here is nothing in the record that suggests medical technology permitted doctors to [conduct such procedures] in 1889, [] there is no reason to think the enacting public had any basis to understand natural rights to be implicated in such situations." *Access Indep. Health*, 2025 ND 199 at ¶125 (op. of Tufte, J.); *accord*, *e.g.*, *Poe*, 149 F.4th at 1130-31 ("This recent development in the medical field regarding gender transition procedures for minors shows that our Nation does not have a deeply rooted tradition in providing gender transition procedures to minors."). So if the alleged fundamental right that Plaintiff claims is framed narrowly, it necessarily fails.

[¶102] That leaves the second, more general framing: Would the people who ratified North Dakota's Constitution in 1889 have understood Article I, Section 1 to guarantee a right for minors to receive medical procedures which the State has deemed unsafe or untested? At various points in his brief, Plaintiff gestures towards this level of framing. *E.g.*, Appellant Br. ¶63 (asserting "adolescents diagnosed with gender dysphoria … have a fundamental right to access best-practice medical care, as determined by their licensed medical providers."). But an alleged fundamental right under this framing fails as well.

[¶103] Nothing in our State's (or our Nation's) history and traditions supports the idea that there is a constitutional right to perform any procedures a patient may want and that a doctor may deem "best practice." To the contrary, it's long been established that "the State may use its regulatory power to bar certain procedures … in the furtherance of its legitimate interests in regulating the medical profession." *MKB Mgmt. Corp v. Burdick*, 2014 ND 197, ¶20, 855 N.W.2d 31 (op. of VandeWalle, C.J.) (quoting *Gonzales v. Carhart*, 550 U.S. 124, 158 (2007)). Indeed, North Dakota's history of regulating abortion belies any

notion the founders of our State had a different understanding in 1889.

[¶104] As the District Court aptly observed, "at the time of statehood, it was recognized that the State had the authority to prohibit certain medical practices as evidenced by the criminalization of abortions." (R785:82:¶180); *see also MKB Mgmt.*, 2014 ND 197 at ¶¶36-37 (op. of VandeWalle, C.J.) ("North Dakota [has] had a long history of prohibiting abortions except to preserve a woman's life … [they were prohibited] before statehood, at statehood, and after statehood."); *see also* Compiled Laws of the Territory of Dakota §§ 6538-39 (1887); N.D.R.C. §§ 7177-78 (1895).

[¶105] The fact that non-life-saving abortions were illegal at North Dakota's founding in 1889—even when a patient wanted the procedure and a doctor was willing to perform it—destroys any contention that Article I, Section 1 would have been understood at that time to create a fundamental right to receive any medical procedure that a doctor might deem advisable or "best practice." *Accord*, *e.g.*, *Lambert v. Yellowley*, 272 U.S. 581, 596 (1926) (Congress could prohibit the prescription of alcohol for medicinal purposes, despite a doctor deeming it "both advisable and necessary"); *Gonzales*, 550 U.S. at 161 (Congress could prohibit certain abortion procedures, even during the *Roe* era, despite some doctors being "disinclined to follow the proscription" because they considered the prohibited procedures to be "safer for women with certain medical conditions").

[¶106] And that is especially true when it comes to minors. To be sure, "[m]inors, as well as adults, are protected by the Constitution and possess constitutional rights." Appellant Br. ¶70 (quoting *Bergstrom v. Bergstrom*, 296 N.W.2d 490, 495 (N.D. 1980) (quoting in turn *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976)). But it is also more than well-established that the "state's authority over children's activities is broader

than over like actions of adults." *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944); *id.* at 169 ("What may be wholly permissible for adults [] may not be so for children.").

[¶107] It has long been settled in our legal tradition that States "may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences," because "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize … choices that could be detrimental to them." *Bellotti*, 443 U.S. at 635. That includes protecting children from "restraints and dangers" to which competent adults might lawfully consent, even when doing so is "against the parents claim to control of the child." *Prince*, 321 U.S. at 169. Such authority was recognized at North Dakota's founding. *See*, *e.g.*, N.D.R.C. § 7213 (1895) (prohibition against showing obscene literature to minors); N.D.R.C. § 7337 (1895) (prohibition against giving tobacco to minors).

[¶108] Given minors' lack of maturity and the age-specific risks and harms that come from subjecting a child to these procedures before their body has gone through normal pubertal development, there is absolutely nothing in our State's history and traditions to suggest that the people of North Dakota, in 1889, would have understood Article I, Section 1 to strip the State of all authority to protect children from those risks and harms.

[¶109] Consequently, even assuming the founders of our State would have understood Article I, Section 1 to constitutionally guarantee a right for consenting adults to accept the risks of chemically adjusting their hormones for the purpose of undergoing a gender transition, there is nothing in our history that suggests the State would have been understood as powerless to protect children from those risks. *See* (R785:82:¶182) (finding that to the extent Article I, Section 1 codified a common law right to personal autonomy in

this context, it would have been a right "belonging to a person of adult years with the capacity to reason and have a clear understanding of the risks and benefits of the medical treatment"); *accord Kehoe*, 726 S.W.2d at 689 (to the extent that there is a "fundamental right to autonomy in healthcare decisions," such a right "has not been applied to minors seeking treatments prohibited by the legislature").

[¶110] One final note with respect to fundamental rights held by children and parents. The District Court dismissed on summary judgment the claim that N.D.C.C. ch. 12.1-36.1 violates the fundamental right of parents to make medical decisions for their children, concluding Plaintiff lacks third-party standing to assert claims on behalf of his patients' parents. (R537:32:¶71). Plaintiff has not appealed that holding. Nonetheless, his brief on appeal is littered with claims that N.D.C.C. ch. 12.1-36.1 violates the personal autonomy rights of adolescents "and their families." *E.g.*, Appellant Br. ¶¶63, 70, 75. To the extent the Court is inclined to address this surreptitiously asserted theory, it lacks independent weight for the simple reason that "[a] parent's right to demand care for his child could not be stronger than the child's right to access it." *K.C.*, 121 F.4th at 627.[4]

[¶111] In summary, Plaintiff is asking this Court to declare a fundamental right for minors to undergo life-altering chemical treatments for the purpose of transitioning their gender,

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[4] *Accord*, *e.g.*, *Loe*, 692 S.W.3d at 234 (Blacklock, J., concurring) (notwithstanding the traditional right of parents to direct the care and upbringing of their children, "plaintiffs point to no time in [State] history—and to no aspect of [the State's] legal traditions—in which the Legislature was thought to be powerless to outlaw a practice it considers to be severe child endangerment masquerading as medical care").

before they have reached physiological and emotional maturity, and before they are likely to fully appreciate the long-term risks and effects. Nothing in the history and traditions of our State supports the notion that such a right was understood to be constitutionally guaranteed by Article I, Section 1 in 1889. *Accord*, *e.g*., *Brandt*, 147 F.4th at 887 (our nation's history and traditions do not support the claim that there is a fundamental right for a child to receive "a medical treatment that, although the child desires it and a doctor approves, the state legislature deems inappropriate for minors").

B. Plaintiff's Attempt to Equate These Procedures with the Right to Receive Life-Preserving Abortions Is Specious.

[¶112] Because there is nothing in our State's history and traditions that supports recognizing a general right to chemically transition a child's gender, Plaintiff tries to put this case into the category of a "life-preserving" procedure. *See, e.g*., Appellant Br. ¶58 (claiming N.D.C.C. ch. 12.1-36.1 "infringes on the rights of [] adolescents to life- and health-preserving care"); Appellant Br. ¶49 (referring to a "right to access life- and health-preserving healthcare with the aid of a licensed physician").

[¶113] In the abortion context, this Court has held that Article I, Section 1 protects a fundamental right to receive an abortion when "necessary to prevent severe, life altering damage." *Wrigley*, 2023 ND 50 at ¶31. But that constitutional right "need not be understood more broadly than its application to the right of self-defense." *Id.* at ¶42 (Tufte, J., concurring); *see also Access Indep. Health*, 2025 ND 199 at ¶99 (op. of Tufte, J.) ("statutes in force after the constitution was adopted are consistent with a narrower self-defense framing of Section 1 as applied to abortion restrictions").

[¶114] Plaintiff's attempt to equate the performance of these procedures on minors to a right that derives from principles of self-defense fails for numerous reasons.

[¶115] For one, the comparison to a self-defense right falls apart outside of the abortion context. In this context, the State is acting to protect the children themselves from relatively novel procedures that the State has determined to be unsafe and untested, and for which it has determined children are unlikely to understand the long-term risks and implications. So the much better comparator is experimental medicine.

[¶116] And in the experimental medicine context, courts have repeatedly rejected the idea that principles of self-defense create a constitutional right to undergo medical procedures the State has deemed unsafe or untested. As one court explained: "Because [] patients cannot fairly be characterized as using reasonable force to defend themselves when they take unproven and possibly unsafe drugs, the … desire that [patients] be free to assume the risk of experimental drugs cannot draw support from the doctrine of self-defense." *Abigail All. for Better Access to Dev'l Drugs v. Eschenbach*, 495 F.3d 695, 710 (D.C. Cir. 2007) (en banc) (rejecting claim that "the doctrine of self-defense justifies access to [experimental] treatment[s]," even for patients "in immediate danger of harm"); *see also id.* at 710 n.18 (compiling cases to reject the idea of a fundamental right to undergo medical procedures the state has rationally deemed unsafe or experimental).

[¶117] Moreover, even setting aside the basic inapplicability of self-defense principles in this context, Plaintiff does not allege the kind of imminent and direct physical threat that might implicate a constitutional right to "life-preserving" procedures in other contexts.

[¶118] Instead, Plaintiff claims a fundamental right to engage in prohibited conduct because he alleges being denied the ability to engage in that conduct may impact others' mental health or cause them to engage in self-harm. *See* Appellant Br. ¶59 (asserting North Dakota's law might "cause serious and life-threatening mental health crises, including

suicide, self-harm, depression, and anxiety"). The Court should refuse to recognize new fundamental rights on that novel and sweeping basis.

[¶119] As an initial matter, there is fierce disagreement with the very premise that subjecting children to the procedures that are at issue decreases rates of suicide. Plaintiff does not point to any indisputable data in the record to establish that subjecting children to these kinds of procedures will actually lead to decreased rates of suicide. *Cf.* Appellant Br. ¶61 (citing only a study that purported to find a change in rates of suicidal *ideation*). To the contrary, despite Plaintiff and others continuing to recklessly repeat a mantra that subjecting children to these kinds of procedures is necessary to reduce their likelihood of suicide, the Cass Review determined "the evidence … does not support this conclusion." (R594:33); *see also United States v. Skrmetti*, No. 23-477 (U.S.), Oral Argument Transcript at 89:3-17 (Dec. 4, 2024) (counsel for ACLU conceding "there is no evidence in some -- in the studies that this treatment reduces completed suicide …").[5]

[¶120] As a professor of psychiatry testified for the State, the claim that children who've been diagnosed with gender dysphoria will suffer a deterioration in mental health or increased likelihood of suicide if not given puberty blockers or cross-sex hormones is a "rhetorical device" being "used to justify care that has not been scientifically verified." (R770:33:11-34:6). And as a clinical psychologist testified, if Plaintiff and others are suggesting to vulnerable children they need chemical gender transition procedures for their mental well-being, that itself can "cause psychologically vulnerable youth to start

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[5] Available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2024/23-477_hgdj.pdf

beginning to experience suicidality." (R769:86:11-15); *see also* (R769:87:8-21) (testimony that there's "no reasonable evidence" of a "causal association" between using chemical gender transition procedures on minors and mental health improvement).

[¶121] So as an initial matter, there is a fierce dispute—a factual dispute—over the efficacy of using puberty blockers and cross-sex hormones to improve the mental health of minors diagnosed with gender dysphoria. That dispute exists before one even reaches the entirely separate question of whether any purported mental health benefits could justify the known physiological risks of subjecting children to such procedures, as well as the significant ethical problems of subjecting children to life-altering procedures for which they are unlikely to understand the long-term risks and implications. These are profound disputes. And it is well established that States have "wide discretion to pass legislation in areas where there is medical and scientific uncertainty." *Gonzales*, 550 U.S. at 163.

[¶122] Moreover, even setting aside the fierce factual dispute over the claim that subjecting children to these procedures will result in improved mental health, this Court has never recognized a constitutional right to take "life-preserving" actions when claimed to be necessary solely for one's mental health, and for good reason.

[¶123] To reiterate, this Court's recognition of a constitutional right to "life-preserving abortions," *Wrigley*, 2023 ND 50 at ¶32, is doctrinally grounded in the constitutional right of self-defense. *Id*. at ¶42 (Tufte, J., concurring); *see also Access Indep. Health*, 2025 ND 199 at ¶99 (op. of Tufte, J.). But since the time of our State's founding, the fundamental right to self-defense has been recognized as applicable only where there is a direct and imminent threat of "bodily injury." *United States v. Leighton*, 13 N.W. 347, 348-49 (Dakota Terr. 1882) (citation omitted). This Court has never recognized a constitutional

right to override the democratic process based solely on a contention that being required to comply with State laws may result in "mental health crises, … suicide, self-harm, depression, [or] anxiety." *Cf.* Appellant Br. ¶59. And that distinction makes sense.

[¶124] There is a difference in kind between the threat of direct and imminent bodily harm against which individuals have had a long-recognized and fundamental right to protect themselves, and the possibility that someone may react to a situation by having anxiety or hurting themselves. Plaintiff has pointed to nothing in our history that suggests a State law would have *ever* been understood to implicate Article I, Section 1 because it resulted in someone having a mental health crisis or engaging in self-harm.

[¶125] And at a basic level, the Court should reject the idea that fundamental rights can be created by someone claiming they may harm themselves unless they get to engage in conduct the State has prohibited. *Cf. Hatchard v. State*, 48 N.W. 380, 382 (Wis. 1891) (rejecting idea that a "threat[] to commit suicide" could establish medical necessity for an abortion); *Ziemba v. Rell*, 409 F.3d 553, 554 (2d Cir. 2005) (rejecting idea that plaintiffs could create standing to assert constitutional claims by alleging "suicide-prone class members will attempt to harm themselves"). Constitutionalizing a fundamental right to engage in unlawful conduct whenever a doctor claims it's necessary for protecting a patient's "mental health" would in short order swallow up the State's long-held authority to regulate the medical profession (and just about anything else). *Contra, e.g.*, *Watson v. Maryland*, 218 U.S. 173, 176 (1910) ("There is perhaps no profession more properly open to [State] regulation than that which embraces the practitioners of medicine.").

[¶126] Consequently, just as Article I, Section 1 did not constitutionalize a right to receive abortions whenever doing so is deemed necessary for reasons of mental health, it also did

not constitutionalize a right for minors to undergo chemical gender transition procedures whenever doing so might be deemed necessary for reasons of mental health. *See Access Indep. Health*, 2025 ND 199 at ¶124 (op. of Tufte, J.) ("Neither the statute's omission of mental health conditions nor the omission of self-harm implicates Section 1 rights.").

* * * *

[¶127] To summarize, the Court should reject Plaintiff's claim that N.D.C.C. ch. 12.1-36.1 is subject to heightened scrutiny under the fundamental rights provision of Article I, Section 1. Nothing in the history and traditions of our State supports the notion that the people of North Dakota, in 1889, understood Section 1 to constitutionalize a right for minors to undergo chemical gender transition procedures that the State has deemed unsafe or unlawful. Plaintiff's attempt to conflate these procedures with the right to receive an abortion that is necessary to protect a mother's life or physical health is meritless.

IV. N.D.C.C. ch. 12.1-36.1 Satisfies Rational Basis Review.

[¶128] Because N.D.C.C. ch. 12.1-36.1 does not classify based on an inherently suspect class or implicate a fundamental right deeply rooted in the history and traditions of our State, the Court should "apply a rational basis standard and sustain the [law] unless it is patently arbitrary and bears no rational relationship to a legitimate governmental purpose." *Leppert,* 2003 ND 15 at ¶7 (quoting *Gange*, 429 N.W.2d at 433).

[¶129] This Court has described the rational basis test "as 'a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary classifications is neither possible nor necessary.'" *Hamich, Inc. v. State*, 1997 ND 110, ¶31, 564 N.W.2d 640 (quoting *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 314 (1976)).

[¶130] For purposes of rational basis review, the legislature need not "actually articulate

at any time the purpose or rationale supporting its classification," and the law will be upheld so long as "a reviewing court can conceive of a reason justifying the choice made by the legislature … in service of a legitimate end." *Id.* at ¶32.

[¶131] Plaintiff claims that N.D.C.C. ch. 12.1-36.1 cannot survive rational basis review because "[e]vidence at trial demonstrated that the [law] is patently arbitrary and not rationally related to the State's asserted interest in protecting children," and also because the law is purportedly "motivated by animus." Appellant Br. ¶¶103-104. The Court should affirm the District Court's rejection of both claims. *See* (R785:58-70:¶¶122-148).

A. The State Has a Legitimate Interest in Protecting Children through Regulation of the Medical Profession.

[¶132] "States clearly have a legitimate interest in 'safeguarding the physical and psychological well-being of a minor.'" *Kehoe*, 726 S.W.3d at 688 (quoting *Brandt*, 147 F.4th at 882 (quoting in turn *New York v. Ferber*, 458 U.S. 747, 756-57 (1982))).

[¶133] Consequently, "[p]rotecting minor children from being subjected to a new and heavily challenged medical treatment is a legitimate end. … And because the state believes puberty blockers are dangerous when prescribed to stop puberty's natural course and hormone therapy is dangerous when prescribed cross-sex, limiting access for those purposes is reasonable." *K.C.*, 121 F.4th at 621; *accord, e.g.*, *Eknes-Tucker*, 80 F.4th at 1225 ("states have a compelling interest in protecting children from drugs, particularly those for which there is uncertainty regarding benefits, recent surges in use, and irreversible effects"); *Loe*, 692 S.W.3d at 234 ("the Legislature had a rational basis for concluding that the risk of providing these treatments to children solely for the purpose of physically transitioning from their sex at birth was not outweighed by the benefits").

[¶134] Plaintiff's primary argument on rational basis is to pretend there isn't an ongoing

national debate about the effects, efficacy, and ethics of performing these kinds of procedures on minors who have been diagnosed with gender dysphoria. *See* Appellant Br. ¶107 (claiming it is not "reasonable for the State to ban the *only* medical care available and effective for the treatment of gender dysphoria in adolescents"); *see also* Appellant Br. ¶¶108-111 (asserting variations of the same idea).

[¶135] But pretending a dispute doesn't exist does not make the dispute cease to exist. As discussed at considerable length *supra*, and "contrary to the representations of [Plaintiff], there is no medical consensus on how best to treat gender dysphoria in children." *Skrmetti*, 605 U.S. at 530 (Thomas, J., concurring); *see also* (R785:70:¶148) ("The evidence establishes there is an ongoing international debate regarding the safety and effectiveness of the medical procedures prohibited by the Health Care Law.").

[¶136] Like Tennessee (and over half the States in the nation), North Dakota has "concluded that there is an ongoing debate among medical experts regarding the risks and benefits associated with administering puberty blockers and hormones to treat gender dysphoria." *Skrmetti*, 605 U.S. at 523. N.D.C.C. ch. 12.1-36.1's restriction on subjecting minors to those procedures "responds directly to that uncertainty." *Id*.

[¶137] A variation of Plaintiff's argument is that "all medications carry side effects" and it's irrational for the State to allow puberty blockers and hormones to be used by adolescents for other treatments but not to facilitate a gender transition. Appellant Br. ¶113. But that argument is wrong on its premise. As discussed *supra*, using puberty blockers and hormones to stunt or alter a child's normal pubertal development is not the same thing as using them to facilitate a child's normal pubertal development; they are different procedures, with different effects and different physiological risks. *See*

(R785:63:¶134) (citing (R768:18:20-25, 19:1-12)); *see also* (R768:33:25-34:7).

[¶138] And in any event, the fact that Plaintiff disagrees with North Dakota's legislators about the relative risks and benefits of subjecting minors to these procedures for gender transition purposes, as opposed to other purposes, does not make the law irrational. "It may be true, as the plaintiffs contend, that puberty blockers and hormones carry comparable risks for minors no matter the purposes for which they are administered." *Skrmetti*, 605 U.S. at 524. "But it may also be true, as [North Dakota] determined, that those drugs carry greater risks when administered to treat gender dysphoria." *Id.* Rational basis review ensures that states retain "wide discretion to pass legislation in areas where there is medical and scientific uncertainty." *Gonzales*, 550 U.S. at 163.

[¶139] In short: "The evidence presented in this case establishes there are recognized concerns regarding the medical risks associated with providing hormone blockers and cross-sex hormones to minors to treat gender dysphoria[,] … [and] about the ability of these minors to understand the long-term effects … fully." (R785:70:¶148). This case does not present a close call under the rational basis standard of review.

B. The State's Interest in Protecting Children Is Not Pretextual.

[¶140] Finally, Plaintiff claims that N.D.C.C. ch. 12.1-36.1 cannot survive rational basis review because the North Dakota Legislative Assembly was not motivated by a concern to protect children from novel and debated medical procedures. Instead, Plaintiff alleges that "the legislative record is rife with anti-transgender animus" and "lawmakers who supported the Ban acted with animus … and with [] invidious discriminatory purpose." Appellant Br. ¶¶117-118. This argument can be easily rejected.

[¶141] Plaintiff's primary basis for criticizing the motives of North Dakota's legislative

branch is a cherry-picking of potentially controversial statements from a handful of legislators, Appellant Br. ¶117 (citing Appellant Br. ¶¶31-34), coupled with the claim that legislators "ignored" "medical evidence that the [law] would be harmful," Appellant Br. ¶117. Neither rationale supports maligning the entire Legislative Assembly.

[¶142] For one, disagreeing with the opinion of Plaintiff, or with any other self-styled expert, on the net risks and benefits of performing these procedures on minors does not evidence animus—the Legislative Assembly can exercise its authorities regardless of "whether experts disagree." *Skrmetti*, 605 U.S. at 531 (Thomas, J., concurring).

[¶143] And for the cherry-picking of a few potentially controversial statements, Plaintiff's "argument ignores the voluminous legislative record." (R785:54-55:¶111). As the District Court observed, "[m]ultiple hearings were held and testimony was received from many individuals. There was significant debate amongst members of the House and Senate regarding H.B. 1254." *Id*. "Plaintiffs have cited to the most inflammatory statements made by a small group of legislators," but "[e]ven without the votes of these legislators, the Health Care Law would have still overwhelmingly passed." *Id.*; *see also id.* at ¶6 (noting that the bill passed the House 66-25 and passed the Senate 37-10).

[¶144] As the District Court concluded: "The legislative record does not support, and the Plaintiffs have not established, that the Legislature passed the Health Care Law for an invidious discriminatory purpose." (R785:54-55:¶111).

[¶145] Moreover, comments by individual legislators, "while possibly useful if they are consistent with the statutory language …, are of little value in fixing legislative intent." *Little v. Tracy*, 497 N.W.2d 700, 705 (N.D. 1993). And when reviewing the constitutionality of a statute, this Court has said "improper motives in its enactment are

never imputed to the Legislature." *State ex rel. Peterson v. Olson*, 307 N.W.2d 528, 535 (N.D. 1981) (citation omitted); *accord Alexander*, 602 U.S. at 6 ("in assessing a legislature's work, we start with a presumption that the legislature acted in good faith").

[¶146] Consequently, the handful of controversial statements that Plaintiff points to from a few legislators does not come anywhere close to establishing that every lawmaker who supported the bill (or even a majority thereof) "acted with animus … and with [] invidious discriminatory purpose." *Cf.* Appellant Br. ¶¶117-118; *accord, e.g.*, *Loe*, 692 S.W.3d at 234-35 ("Even if we assume … someone voting for this bill may have been improperly motivated, that constitutes no evidence that all, most, or even a significant percentage of the over 100 legislators who voted for the statute were similarly motivated.").

[¶147] Plaintiff also alleges the law is motivated by animus because it is "inexplicable by anything but animus toward the class it affects." Appellant Br. ¶119 (quoting *Romer v. Evans*, 517 U.S. 620, 632 (1996)). But that contention simply lacks any merit.

[¶148] As the Supreme Court of Missouri has noted, "a *Romer*-type analysis only applies where there is no other legitimate state interest for the legislation that survives scrutiny." *Kehoe*, 726 S.W.3d at 688 n.8 (quoting *Gallagher v. City of Clayton*, 699 F.3d 1013, 1021 (8th Cir. 2012)). And that's plainly not the case here. As discussed *supra*, the law can be explained by the State's legitimate interest in protecting children from being subjected to medical procedures of debated effects and efficacy, for which children are not likely to fully understand and appreciate the potential long-term risks and implications.

* * * *

[¶149] Because N.D.C.C. ch. 12.1-36.1 does not classify based on an inherently suspect class or implicate a fundamental right, it must be upheld unless it bears no rational

relationship to a legitimate governmental purpose. And here, the law plainly has a rational relationship with the State's legitimate interest in protecting the health and welfare of children. Plaintiff's arguments to the contrary should be rejected.

CONCLUSION

[¶150] The State respectfully asks the Court to affirm the District Court's judgment.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

T.D., by and through his parents, DEVON DONLEY and ROBERT DONLEY, DEVON DONLEY, an individual, ROBERT DONLEY, an individual, PAMELA ROE, by and through her parents PETER ROR and PAULA ROE, PETER ROE, an individual, PAULA ROE, an individual, JAMES DOE, by and through his parents, JOHN DOE and JANE DOE, JOHN DOE, an individual, JANE DOE, an individual,

Plaintiffs/Appellees,

and

DR. LUIS CASAS, an individual, on behalf of himself and his patients,

Plaintiff/Appellant,

-vs-

DREW H. WRIGLEY, in his official capacity as Attorney General for the State of North Dakota; KIMBERLEE JO HEGVIK, in her official capacity as the State's Attorney for Cass County; JULIE LAWYER, in her official capacity as the State's Attorney for Burleigh County: AMANDA ENGELSTAD, in her official capacity as the State's Attorney for Stark County.

Defendants/Appellees.

Supreme Ct. 20260075

District Ct. 08-2023-CV-02189
South Central Judicial District

CERTIFICATE OF COMPLIANCE

[¶1] In compliance with Rule 32(d) of the North Dakota Rules of Appellate Procedure and the Order granting Appellee's Motion for Increased Page Limitations, the undersigned certifies that the **APPELLEE BRIEF OF DREW H. WRIGLEY** contains 55 pages and was prepared with a plain, roman style typeface in a 12-point font.

Dated: May 06, 2026.

/s/ *Philip Axt*
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