

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL COURT DEPARTMENT**

LILY LOE, by and through her parent and next friend Lisa Loe; LISA LOE; RYAN ROE, by and through his parent and next friend Rebecca Roe; REBECCA ROE,

Plaintiffs,

v.

STATE OF KANSAS, *ex rel* KRIS KOBACH,
Attorney General of the State of Kansas,

Defendant.

Case No. DG-2025-CV-000241

Division No. 7

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO
DISMISS**

Dated: August 21, 2025

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I. INTRODUCTION

Section 1 of the Kansas Constitution Bill of Rights (“Section 1”) protects the fundamental right of parents to make decisions about parenting and affords equal protection from unjustified discrimination on the basis of protected traits. The newly-enacted Senate Bill 63 (“SB 63”) conflicts with Section 1 by preventing parents from making important medical decisions with and for their adolescent children and medical providers, and targeting transgender people by both prohibiting state support for social transition and barring transgender youth from receiving the only evidence-based medical treatment for gender dysphoria. SB 63 deprives Lily Loe and Ryan Roe (“Minor Plaintiffs”) of medical interventions that are currently working to treat their gender dysphoria, violating equal protection, and forcing Lisa Loe and Rebecca Roe (“Parent Plaintiffs”) to leave Kansas to support their adolescent children and exercise their natural rights.

Defendant asks this court to ignore the Kansas Constitution and instead follow recent federal case law that is both inapplicable to and distinguishable from the circumstances set forth in Plaintiffs’ Petition (the “Petition”). Defendant’s Motion to Dismiss (“Motion”) is also rife with factual allegations that appear nowhere in the Petition and therefore must be disregarded at this stage of the case. Plaintiffs have sufficiently alleged that SB 63 violates Section 1; thus, Defendant’s Motion must be denied.

II. BACKGROUND

On February 18, 2025, the Kansas legislature enacted—over the governor’s veto—SB 63. The law bans puberty blockers, hormone therapy, and surgery as treatments for minors “whose perceived gender or perceived sex is inconsistent with such child’s sex.” SB 63 § 2(f). SB 63 exempts from its ban the use of these medications for any other purpose. SB 63 § 3(c) (“The treatments prohibited by subsections (a) and (b) shall not apply to treatment provided for other

purposes, including: Treatment for individuals born with a medically verifiable disorder of sex development...”).

SB 63 also prohibits certain kinds of state support for social transition for transgender youth. SB 63 § 2(d) (“[A] state property, facility or building shall not be used to promote or advocate the use of social transitioning, medication or surgery . . . as a treatment for a child whose perceived gender or perceived sex is inconsistent with such child’s sex.”), *id.* at § 2(f) (“A state employee whose official duties include the care of children shall not, while engaged in those official duties, promote the use of social transitioning or provide or promote medication or surgery . . . as a treatment for a child whose perceived gender or perceived sex is inconsistent with such child’s sex.”). As defined by SB 63, “social transitioning” means “acts other than medical or surgical interventions that are undertaken for the purpose of presenting as a member of the opposite sex, including the changing of an individual’s preferred pronouns or manner of dress.” SB 63 § 1(b)(10). This prohibition operates outside of the medical context to prevent state support for non-medical decisions that transgender youth may make to express their gender identity, including how they refer to themselves or dress.

All major U.S. medical organizations support the provision of gender-affirming medical care, including puberty blockers and hormone therapy, where clinically indicated for adolescents experiencing gender dysphoria. *See* Pet. ¶¶ 22, 37-41, 48-51. Gender-affirming medical care is the only evidence-based treatment for gender dysphoria, and Plaintiffs independently decided, after careful consideration and reflection, that such treatments were appropriate and necessary. For example, Lily Loe, a transgender girl, experienced enormous distress about the prospect of going through male puberty. *Id.* ¶ 93. After weighing the risks, benefits, and alternatives, Lily’s mother, Lisa, in consultation with Lily and her doctors, chose to begin puberty blocker treatments for Lily.

Id. ¶¶ 93-94. Since being affirmed in her gender identity, Lily has thrived. *Id.* ¶ 92. However, SB 63’s passage has already threatened her medical treatment, with her Kansas medical provider refusing to continue her puberty blocker treatments because of the law. *Id.* ¶¶ 95-96.

Ryan Roe, a transgender boy, was diagnosed with gender dysphoria at age 14, after female puberty had already begun. *Id.* ¶ 103. Ryan’s doctors discussed the risks, benefits, and alternatives of beginning hormone therapy with Ryan’s parents (including his mother, Rebecca), after which Rebecca, in consultation with Ryan and his doctors, elected to begin hormone therapy. *Id.* Ryan has been happier and healthier on hormone therapy, and able to participate fully in his own life. *Id.* ¶ 105. The Roe family is concerned that SB 63 will essentially force them to move out of state, as “[n]ot maintaining Ryan’s care is not an option” given the benefits of hormone therapy. *Id.*

On May 28, Plaintiffs filed a Petition and contemporaneously filed a Motion for Temporary Injunction, seeking to enjoin the enforcement of SB 63 given the devastating impacts that it has on the Minor Plaintiffs and transgender youth like them—particularly those who, like the Minor Plaintiffs, have already started treatment. On July 10, pursuant to an extension agreed to by the parties and allowed by the Court, Defendant (the State of Kansas, *ex rel.* Kris Kobach) filed his opposition to Plaintiff’s Motion for Temporary Injunction and contemporaneously filed a Motion to Dismiss. Plaintiffs now oppose Defendant’s Motion to Dismiss and, contemporaneously, file their Reply in further support of their Motion for Temporary Injunction.

III. STANDARD

A motion to dismiss for failure to state a claim upon which relief can be granted under K.S.A. 60-212(b)(6) challenges the legal sufficiency of the petition, not the merits of the case. *Minjarez-Almeida v. Kansas Bd. of Regents*, 63 Kan. App. 2d 225, 232 (2023). “[R]elief under this section is the exception, not the rule.” *Id.* at 232. Kansas follows a liberal notice pleading standard, and a petition need only provide fair notice of the nature of the claim and the grounds on which it

rests. *Id.* at 233. A plaintiff is not required to set forth every element of a cause of action or plead detailed facts or legal theories; general allegations are sufficient to survive dismissal so long as the claim is facially plausible. *See id.*

In reviewing such a motion, Kansas courts must accept all well-pleaded factual allegations as true, draw all reasonable inferences in favor of the plaintiff, and view the allegations in the light most favorable to the non-moving party. *Cohen v. Battaglia*, 296 Kan. 542, 546 (2013) (finding that dismissal is appropriate only when it appears the plaintiff can prove no set of facts that would entitle him to relief). The court's role at this stage is not to weigh evidence or assess the likelihood of success on the merits, but only to determine whether the petition alleges a legally cognizable claim. *Minjarez-Almeida*, 63 Kan. App. 2d at 232. "Factual disputes cannot be resolved or decided on a motion to dismiss for failure to state a claim." *Rector v. Tatham*, 287 Kan. 230, 232-33 (2008).

At the motion to dismiss stage, the court's duty is to "determine whether those pleaded facts and inferences state a claim, not only on the theory which may be espoused by the plaintiffs, but on *any possible theory* we can divine." *Noel v. Pizza Hut, Inc.*, 15 Kan. App. 2d 225, 231, *rev denied*, 248 Kan. 996 (1991) (emphasis included). Furthermore, "[j]udicial skepticism must be exercised when the motion is made before the completion of discovery" because "the petition is not intended to govern the entire course of the case," and a "motion to dismiss typically is filed early in a case, when many of the facts have not yet been discovered and legal theories may be in flux." *Rector*, 287 Kan. at 232-33.

IV. **ARGUMENT**

Plaintiffs have adequately alleged their state constitutional claims under Kansas' liberal notice pleading standard. First, SB 63 violates Section 1's constitutional guarantee of parents' natural rights, including the right to consent to medical treatment that a minor adolescent desires and a medical professional recommends. Second, SB 63 violates Section 1's guarantee of equal

protection by unjustifiably discriminating on the basis of sex and transgender status under any level of scrutiny. Finally, Plaintiffs’ claims under the Kansas Constitution are not limited by the federal constitution, and the Court must follow controlling Kansas Supreme Court precedent in finding that Plaintiffs have stated a claim on which relief can be granted.

A. Parent Plaintiffs State a Claim That SB 63 Violates Their Parental Rights Under Section 1.

SB 63 conflicts with Section 1, which protects parents’ rights to consent to the clinically recommended medical care that their children need and assent to. Defendant even admits that “[t]he Constitution of Kansas protects the fundamental right of parents to direct the care and upbringing of their children.” MTD at 16 (citing *In re Adoption of Baby Girl P.*, 291 Kan. 424, 430, 242 P.3d 1168, 1173 (2010) (“Natural parents who have assumed their parental responsibilities have a fundamental right, protected by the United States Constitution and the Kansas Constitution, to raise their children.”)). SB 63, by banning critical gender-affirming medical care for minors, impermissibly deprives parents and their children of a natural right under the Kansas Constitution. *See* Kan. Const. Bill of Rights § 1 (“All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.”).

1. Parent Plaintiffs Adequately Pled the Existence of a Natural Right.

It is well-settled under controlling Kansas Supreme Court precedent that Section 1 goes beyond the federal constitution to protect “natural rights”—words that do not appear in the federal Constitution. *See Hodes & Nauser, MDS, P.A. v. Schmidt*, 309 Kan. 610, 624 (2019) (“*Hodes I*”) (“Section 1 of the Kansas Constitution Bill of Rights acknowledges rights that are distinct from and broader than the United States Constitution Among the rights is the right of personal autonomy. This right allows a woman to make her own decisions regarding her body, health, family formation, and family life...”).

This natural right includes the care and upbringing of children, as well as the right to consent to medical care for a minor child. Other state courts have interpreted language similar to that found in Section 1 to include parents’ rights to direct their children’s medical care. *See Huffman v. State*, 204 P.3d 339, 346 (Alaska 2009) (finding the guarantee that “all persons have a natural right to life, liberty, the pursuit of happiness” found in Art. I, § 1 of the Alaska Constitution to include “the right to make decisions about medical treatments for oneself or one’s children”); *Happel v. Guilford Cnty. Bd. of Educ.*, 387 N.C. 186, 200 (2025) (state constitution protects parent’s fundamental right to control her child’s upbringing and remanding to district court to determine whether right was violated by the administration of COVID-19 vaccine without parental consent).

Notably, *Huffman* considered parents’ challenge to a law requiring that public schools test for tuberculosis using a purified protein derivative (PPD) test.¹ *Huffman*, 204 P.3d at 346. *Huffman* is instructive because, there, the Alaska Supreme Court found that parents had a fundamental right to direct their children’s medical care, even where the parent plaintiffs did not allege any constitutionally-protected religious beliefs that led them to be wary of the PPD test, nor did they submit a waiver from a physician indicating that the PPD test would be detrimental to their children’s health. *Id.* *Huffman* reasoned that the right to make medical decisions on behalf of minor children is a logical continuation of other liberty and privacy interests the Alaska Constitution protects, including the right to control one’s hairstyle and “reproductive choices.” *Id.* Thus, *Huffman* applied strict scrutiny to the law the plaintiff parents challenged. *Id.*

¹ *Huffman* involves parents’ natural right to *refuse* medical treatment for their children. *Hodes* goes a step further—illustrating that the natural right to one’s “body, health, family formation, and family life” does not end at the ability to *refuse* treatment, but includes affirmative rights to *access* medical care. *Hodes I*, 309 Kan. at 624 (upholding the right to obtain abortion under the Kansas Constitution).

The cases on which Defendant relies to argue there is no such right are inapposite. MTD at 16. None of the cases cited by Defendant concern Section 1 or any analogous constitutional provision protecting natural rights. Indeed, nearly all Defendant’s cases concern the *federal* due process clause, which is not the basis of Plaintiffs’ Petition.² Moreover, Defendant’s cases are factually distinguishable. *See, e.g., State v. Ross*, 568 P.3d 877 (Kan. Ct. App. May 9, 2025) (concerning a parent charged with battery of their child—not a parent seeking doctor-recommended medical care for the *benefit* of their child); *Sammon v. N.J. Bd. of Med. Exam’rs*, 66 F.3d 639, 640 (3d Cir. 1995) (involving practitioners’ challenge of licensing standards—not patients or their guardians seeking medical care).

Defendant argues that “federal courts have repeatedly rejected a fundamental right to obtain specific medical treatment for oneself,” and that this prevents parents from obtaining specific treatment for their children. MTD at 17. But Parent Plaintiffs bring a state constitutional claim, and so even if that derivative rights theory applied, which it does not, Kansas courts *have* found a fundamental right to seek specific medical treatment for oneself. *See Hodes I*, 309 Kan. at 624 (finding Section 1 guarantees right to abortion care).

² Federal due process protections are more limited than the Lockean natural rights protected by Section 1. Even so, it is not the case that “[n]o Kansas or federal court holding recognizes a fundamental right of a parent to choose a child’s medication, let alone the right to subject a child to puberty blockers, cross-sex hormones, or sex change procedure.” MTD, p. 16. *See, e.g., Poe by & through Poe v. Labrador*, 709 F. Supp. 3d 1169, 1195 (D. Idaho 2023) (“parents’ fundamental right to care for their children includes the right to choose a particular medical treatment, in consultation with their healthcare provider, that is generally available and accepted in the medical community”—here, gender-affirming medical care—and “such a right is deeply rooted in our nation’s history and traditions and implicit in our concept of ordered liberty” where right at issue is), *appeal dismissed*, No. 24-142, 2025 WL 1872749 (9th Cir. June 18, 2025); *cf. Moe v. Yost*, 2025-Ohio-914, ¶ 121, *appeal allowed*, 2025-Ohio-2537 (statute banning gender-affirming medical care for minors violated parents’ substantive due process rights under Ohio Constitution).

2. **Infringements of Natural Rights Trigger Strict Scrutiny, with the Government Bearing the Burden.**

Courts apply a strict scrutiny standard where the natural right to make decisions about one’s “body, health, family formation, and family life” is implicated, requiring “the [legislative] enactment serve some compelling state interest and be narrowly tailored to further that interest.”³ *Hodes I*, 309 Kan. at 663. Once the plaintiff has shown that a law infringes on a natural right “regardless of [the] degree” to which the natural right is infringed, “the burden shifts to the government to establish the requisite compelling interest and narrow tailoring of the law to serve it.” *Id.* at 669. To survive strict scrutiny, a defendant must state a precisely defined compelling interest, as it would be “difficult, if not impossible, to effectively regulate in the interest of something that is amorphous or capable of encompassing countless sub-interests.” *Hodes & Nauser, MDs, P.A. v. Kobach*, 318 Kan. 940, 953 (2024) (“*Hodes II*”); *id.* at 956-57 (holding proffered interest of “promoting the value and dignity of human life, born and unborn” insufficient to overcome strict scrutiny). SB 63 denies parents the ability to decide, in consultation with their adolescent child and medical providers, whether their child will receive puberty blockers or hormone therapy. SB 63 displaces parental decision-making and replaces it with a state mandate prohibiting treatment, regardless of individual medical need. Thus, not only does the Kansas Constitution protect parents’ rights, but also it demands strict scrutiny review for any abridgement of those rights, with the burden falling on the state to prove that a compelling interest exists and that SB 63 is narrowly tailored to further it.

³ Case law is clear that where natural rights are infringed, strict scrutiny applies, but as set forth *infra* in Sections IV(B)(3) and IV(B)(4), SB 63 fails even lower levels of scrutiny.

3. Parent Plaintiffs Adequately Pled an Infringement on Their Natural Rights, and that the Infringement Fails Strict Scrutiny.

At the pleadings stage, it is enough that Parent Plaintiffs adequately plead the infringement of a natural right and a failure to survive strict scrutiny. The only facts for the Court to consider are those alleged in the Petition, and Defendant bears the burden to demonstrate how the law survives strict scrutiny. *See Farley v. Engelken*, 241 Kan. 663, 667 (1987) (under strict scrutiny, “the presumption of constitutionality [is] displaced and the burden [is] placed on the party asserting constitutionality to . . . justif[y] the classification”). Because Plaintiffs have plausibly alleged the existence of a natural right regarding medical decision-making, *see supra* Section IV(A)(1), and that the state infringes that right by displacing their decision-making authority, dismissal here is unwarranted. *See Cohen v. Battaglia*, 296 Kan. 542, 546 (2013) (finding that dismissal is appropriate only when it appears the plaintiff can prove no set of facts that would entitle him to relief).

Defendant does not even attempt to argue that SB 63 can survive strict scrutiny. *See* MTD at 14 (arguing for rational basis review on equal protection claim); *id.* at 16-19 (making no arguments about tailoring on Parent Plaintiffs’ claims). And Defendant’s purported interest “in protecting children” and “protecting the integrity and ethics of the medical profession,” MTD at 15, is a “broadly stated aspirational interest” which falls woefully short of the “compelling interest” required to overcome strict scrutiny under controlling Kansas Supreme Court precedent. *See Hodes II*, 318 Kan. at 958.

Looking only at the Petition, as this Court must on a motion to dismiss, Plaintiffs adequately plead that the law fails strict scrutiny for lack of tailoring. SB 63 also bans *all* gender-affirming medical care for minors experiencing gender dysphoria, regardless of medical need, the minor’s ability to assent, or the particular benefits and risks of any given intervention. Pet. ¶ 70-

71. Meanwhile, SB 63 expressly *allows* interventions on intersex youth, including sterilizing surgeries. Pet. ¶ 13, 72. There are other less restrictive means of addressing Defendant’s alleged interests in “protecting children” and “protecting the integrity and ethics of the medical profession,” including specific informed consent procedures. SB 63 is so over-inclusive that it even bans social transition, defined as “acts *other than* medical or surgical interventions.” Pet. ¶ 79-81. Restricting state employees from fully recognizing transgender youth or requiring them to misgender young people has nothing to do with protecting children or the medical profession.

4. **Rebecca Roe Has Standing for Her State Constitutional Claim.**

Defendant argues that Rebecca Roe, Ryan’s mother, cannot bring a Section 1 claim on her own behalf because Kansas law allows Ryan (who is 16 years old) to direct his own healthcare. This is a deliberate misreading of K.S.A. § 38-123(b), which sets forth that “any minor sixteen (16) years of age or over, **where no parent or guardian is immediately available**, may give consent to the performance and furnishing of hospital, medical or surgical treatment or procedures and such consent shall not be subject to disaffirmance because of minority. The consent of a parent or guardian of such a minor shall not be necessary in order to authorize the proposed hospital, medical or surgical treatment or procedures.” (emphasis added). As indicated by Rebecca Roe’s participation in this litigation, as well as the Petition’s allegations setting forth her involvement in Ryan’s healthcare and Ryan’s assent to this healthcare, she is “immediately available,” and so the statute does not apply, nor does it strip her of standing.

Parent Plaintiffs state a claim under Section 1, and the claim must proceed to discovery.

B. **Minor Plaintiffs State a Claim for Violation of Section 1’s Guarantee of Equal Protection on The Basis of Sex and Transgender Status.**

Minor Plaintiffs adequately allege that SB 63 violates the Kansas Constitution’s equal protection guarantee set forth in Section 1 by impermissibly and unjustifiably discriminating

against them on the bases of sex and transgender status. *See* Pet. ¶¶ 2, 106-12, 113-21. Because this is a Motion to Dismiss, the Court must accept as true Plaintiffs’ averments regarding the provision of gender-affirming medical care, not Defendant’s account, to guide its equal protection analysis.⁴ Plaintiffs have met their pleading burden with respect to their equal protection claims because they (1) adequately allege that SB 63 prohibits medical interventions based on sex and transgender status, Pet. ¶¶ 110, 117; and (2) sufficiently plead that these prohibitions are not substantially related to achieving an important governmental objective or even rationally related to an independent and legitimate legislative end, *id.* ¶¶ 112, 120-21.

Kansas courts employ a three-step analysis to evaluate an equal protection claim. “[W]hen an equal protection claim is made, the first step of the analysis is to determine the nature of the legislative classification and the rights which are affected by the classification. That determination will dictate the level of scrutiny which applies. The final step of the analysis requires determining whether the classification withstands the scrutiny.” *State v. Limon*, 280 Kan. 275, 284 (2005).

Here, Plaintiffs allege that SB 63 violates the equal protection guarantees of Section 1 by discriminating on the bases of sex and transgender status, triggering heightened scrutiny. Because, as alleged, SB 63 fails to satisfy heightened scrutiny or even the rational basis standard, Ryan and Lily have sufficiently stated claims for violation of Section 1’s equal protection guarantee, and Defendant’s Motion must be denied.

⁴ In the Motion, Defendant attempts to backdoor in facts not alleged in the Petition by quoting mostly concurrences from *Skrmetti*, which did not concern an appeal from a motion to dismiss, and otherwise concerned a different law in a different state with different plaintiffs. *See* MTD at 2-6. This Court must ignore those impermissibly alleged facts in favor of the facts as alleged in the Petition. *See Cohen*, 296 Kan. at 546 (Kansas courts must accept all well-pleaded factual allegations as true, draw all reasonable inferences in favor of the plaintiff, and view the allegations in the light most favorable to the non-moving party).

1. SB 63 Facially Discriminates Based on Sex and Transgender Status.

SB 63 contains a facial sex classification. SB 63 treats minors differently based on their sex assigned at birth. Those assigned male at birth can be treated as males by state employees, but those assigned female cannot; the reverse is true for those assigned female at birth. Similarly, SB 63 does not prohibit puberty-blocking medication or hormone therapy for all minors, or even for the purposes of affirming a child's gender identity, but rather only prohibits those treatments "to a female child for the purpose of treatment for distress arising from such female child's perception that such child's gender or sex is not female," SB 63 § 3(a), or "to a male child for the purpose of treatment for distress arising from such male child's perception that such child's gender or sex is not male." SB 63 § 3(b). A person whose sex is assigned as female at birth can receive estrogen to affirm her gender, but a person assigned male cannot. *See* SB 63 § 3(a). Similarly, a person whose sex is assigned as male at birth can receive testosterone as a treatment to affirm his male gender identity, but a person whose sex is female cannot. *See id.* at § 3(b).⁵

SB 63 also contains a transgender status classification, which is necessarily a sex classification. SB 63's prohibitions depend on whether a minor's gender identity is different from their sex assigned at birth, which is the definition of being transgender. *Compare* Pet. ¶ 14 *with* Pet. ¶¶ 70-71, 79-81. It is logically impossible to classify based on transgender status without necessarily classifying based on sex. *See, e.g., Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 660 (2020); *see also Griffith v. El Paso Cnty., Colo.*, 129 F.4th 790, 806-07 (10th Cir. 2025) (jail

⁵ As set forth more fully in Section IV.B.3, SB 63 is still a sex-based classification post-*Skrametti*. The social transition restriction and medical care prohibition do not merely regulate a medical procedure; they operate in tandem to "regulate[] a class of persons identified on the basis of a specific characteristic," *Skrametti*, 145 S. Ct. at 1834 n.3, i.e. transgender people, who have a gender identity that differs from their sex at birth.

housing and commissary policies for transgender inmates based on “biological sex” were sex classifications triggering heightened scrutiny).

2. SB 63’s Sex Classifications Trigger Heightened Scrutiny.

Classifications based on sex require heightened scrutiny.⁶ See *In re K.M.H.*, 285 Kan. 53, 73 (2007) (“In Kansas, as before the United States Supreme Court, statutory gender classifications . . . are subject to intermediate, or heightened, scrutiny.”) (citing *Reed v. Reed*, 404 U.S. 71, 76-77 (1971)); *United States v. Virginia*, 518 U.S. 515, 533 (1996)).

In addition to triggering heightened scrutiny based on facial sex classifications and transgender status classifications (which are inherently based on sex), SB 63 also triggers heightened scrutiny on two other independent grounds. First, transgender status classifications trigger heightened scrutiny because transgender people are a group historically subject to discrimination, whose transgender status bears no relation to their ability to contribute to society, are a discrete group with immutable characteristics, and constitute a minority group without political power.⁷ Second, as set forth in Section III(B)(ii)(a) of Plaintiffs’ contemporaneously filed

⁶ See also *Stephenson v. Sugar Creek Packing*, 250 Kan. 768, 775-77 (1992) (explaining that gender-based classifications “must serve important governmental objectives and must be substantially related to achievement of those objectives”) (quoting *Craig v. Boren*, 429 U.S. 190, 197 (1976)); *Farley*, 241 Kan. at 669 (“This intermediate level of review is termed ‘heightened scrutiny’ and is applicable to ‘quasi-suspect’ classifications.”); cf. *Wentling v. Med. Anesthesia Servs., P.A.*, 237 Kan. 503, 518 (1985) (determining the court “must apply a scrutiny which . . . is not a toothless one” when a statute affects important rights and “embodies elements of putativeness and discrimination”); *In re K.M.H.*, 285 Kan. 53, 75 (2007) (applying heightened scrutiny to statute that treated sperm donors and sperm recipients differently, even though there are biological differences between people assigned female and male that render them differently situated with respect to conception).

⁷ See *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 609-11 (4th Cir. 2020) (reasoning that transgender people are a quasi-suspect class); see also *Doe v. State of S. Carolina*, No. 25-1787, 2025 WL 2375386, at *8 (4th Cir. Aug. 15, 2025) (“*Grimm* remains the law of this Circuit and is thus binding on all the district courts within it.”). In addition to the Fourth Circuit in *Grimm*, many other state and federal courts have also recognized transgender status classifications as triggering heightened scrutiny. See, e.g., *N.H. v. Anoka-Hennepin Sch. Dist. No. 11*, 950 N.W.2d

Response in Further Support of Motion for Temporary Injunction, SB 63 was passed to achieve an invidious discriminatory purpose, as is evident from the larger context in which it was passed. Heightened scrutiny thus applies to SB 63 through three separate paths—a suspect classification based on sex, a suspect classification based on transgender status, and invidious discriminatory purpose.

3. SB 63 Fails Heightened Scrutiny.

Again, it is Defendant’s burden to demonstrate that SB 63 survives heightened scrutiny, and Defendant is confined to the Petition. But Defendant makes no such attempt in his Motion, instead arguing exclusively under rational basis review. *See* MTD at 14-15. That alone requires denying Defendant’s Motion.

In any event, Plaintiffs have adequately pled that SB 63 fails heightened scrutiny, which requires a given “statutory classification to substantially further a legitimate legislative purpose.” *Farley*, 241 Kan. at 669. When applying this standard, Kansas courts look for a “greater justification for the statutory classification than is required under the rational basis analysis . . . including a direct relationship between the classification and the state’s goal.” *Id.* Kansas courts have also recognized another “perhaps stronger, statement of the heightened scrutiny test,” that is, “the classification ‘must serve the important governmental objectives and must be substantially related to achievement of those objectives.’” *Stephenson*, 250 Kan. at 775-77 (quoting *Craig*, 429 U.S. at 197). When heightened scrutiny applies, laws like SB 63 do not

553, 569 (Minn. Ct. App. 2020) (applying intermediate scrutiny to transgender student’s equal protection claim under Minnesota Constitution); *Hundley v. Aranas*, No. 21-15757, 2023 WL 166421, at *1 (9th Cir. Jan. 12, 2023) (“Discrimination against an individual based on a person’s gender identity demands heightened scrutiny.”) (citing *Karnoski v. Trump*, 926 F.3d 1180, 1200-01 (9th Cir. 2019)); *Doe v. Horne*, 115 F.4th 1083, 1102 (9th Cir. 2024) (stating “heightened scrutiny applies to laws that discriminate based on transgender status” and striking down law prohibiting transgender girls from playing on girls’ sports teams).

pass muster. No court applying heightened scrutiny has upheld a law like SB 63.⁸ SB 63 similarly fails heightened scrutiny here.

Here, SB 63 fails heightened scrutiny because its classifications are not substantially related to achieving an important government interest and the law is over- and underinclusive. As a preliminary matter, the provisions of SB 63 that restrict social transition cannot be tethered to Defendant’s proffered interests. Defendant cites the state’s “interests in protecting children” and “protecting the integrity and ethics of the medical profession,” but offers no argument about how SB 63’s restrictions on social transition relate to these interests. MTD at 15. Indeed, Defendant only cites these interests in relation to SB 63’s prohibition of medical transition. *Id.* (arguing the

⁸ See *Cross by & through Cross v. State*, 419 Mont. 290, 303-04 (2024) (affirming grant of preliminary injunction by district court which found “Plaintiffs had demonstrated a likelihood of success on the merits of both their Montana constitutional equal protection” and other claims); see also *PFLAG, Inc. v. Trump*, 769 F. Supp. 3d 405, 447 (D. Md. 2025); *Washington v. Trump*, 768 F. Supp. 3d 1239, 1277 (W.D. Wash. 2025); *Doe v. Ladapo*, 737 F. Supp. 3d 1240, 1284 (N.D. Fla. 2024); *Koe v. Noggle*, 688 F. Supp. 3d 1321, 1348 (N.D. Ga. 2023); *Eknes-Tucker v. Marshall*, 603 F. Supp. 3d 1131, 1147 (M.D. Ala. 2022), *rev’d on other grounds*, 80 F.4th 1205 (11th Cir. 2023) (applying rational basis); *Poe ex rel. Poe v. Labrador*, 709 F. Supp. 3d 1169, 1193 (D. Idaho 2023), *appeal dismissed*, No. 24-142, 2025 WL 1872749 (9th Cir. June 18, 2025); *K.C. v. Individual Members of Med. Licensing Bd. of Indiana*, 677 F. Supp. 3d 802, 818 (S.D. Ind. 2023), *rev’d and remanded on other grounds*, 121 F.4th 604 (7th Cir. 2024) (applying rational basis); *Doe I v. Thornbury*, 679 F. Supp. 3d 576, 584 (W.D. Ky.), *rev’d and remanded sub nom. L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460 (6th Cir. 2023) (applying rational basis), *and aff’d sub nom. Skrmetti*, 145 S. Ct. at 1816; *L.W. ex rel. Williams v. Skrmetti*, 679 F. Supp. 3d 668, 712 (M.D. Tenn.), *rev’d and remanded on other grounds*, 83 F.4th 460 (6th Cir. 2023) (applying rational basis), *and aff’d sub nom. United States v. Skrmetti*, 145 S. Ct. at 1816; *Loe v. State*, No. D-1-GN-23-003616, 2023 WL 5519799, at *2 (Tex. Dist. Aug. 25, 2023) (finding ban did not survive scrutiny applied under Texas Constitution’s equal protection and “equality under the law” clauses), *rev’d on other grounds*, 692 S.W.3d 215, 237 (Tex. 2024) (applying rational basis); Order Re: Cross-Mots. Summ. J., *Cross v. Montana*, No. DV-23-541 (Missoula Cnty. Dist. Ct., Mont. May 13, 2025), at 44 (finding Montana’s ban did not survive equal protection scrutiny applied under the Montana Constitution), <https://www.aclu.org/cases/cross-v-state-of-montana?document=Order-Regarding-Cross-Motions-for-Summary-Judgment#legal-documents>; cf. *Dekker v. Weida*, 679 F. Supp. 3d 1271, 1293 (N.D. Fla. 2023) (finding ban on Medicaid coverage failed heightened scrutiny as applied to both minors and adults), *appeal docketed*, No. 23-12155 (11th Cir. June 27, 2023); *Kadel*, 100 F.4th at 156, *vac’d and remanded on other grounds*, 2025 WL 1787687 (June 30, 2025).

Act’s “restrictions rationally advance these goals by shielding children from unproven *treatments* with severe, lifelong consequences.”) (emphasis added).

SB 63’s prohibitions on social transition constitute evidence of sex-based stereotyping that further emphasize its failure to survive heightened scrutiny. *See, e.g., Skrametti*, 145 S. Ct. at 1832 (“[A] law that classifies on the basis of sex may fail heightened scrutiny if the classifications rest on impermissible stereotypes.”) (citing *J. E. B. v. Alabama ex rel. T. B.*, 511 U.S. 127, 139 n.11 (1994)). Since transgender people have gender identities that do not align with their sexes assigned at birth, Pet. ¶ 14, they therefore express gender identities inconsistent with sex stereotypes. *See, e.g., Price Waterhouse v. Hopkins*, 490 U.S. 228, 235 (1989) (finding employer’s advice that female employee “dress more femininely” and “talk more femininely” to violate Title VII’s prohibition of sex discrimination as impermissible sex-stereotyping). In prohibiting and restricting this expression, SB 63 seeks to force Kansan youth to conform to expectations associated with their sex assigned at birth. *See* Pet. ¶¶ 79-81 (outlining the ways in which SB 63 prohibits social transitioning, defined as “acts *other than medical or surgical interventions* that are undertaken for the purpose of presenting as a member of the opposite sex, including the changing of an individual’s *preferred pronouns or manner of dress*” (citing SB 63 § 1(b)(10) (emphases added)). SB 63’s enforcement of sex stereotypes is underscored by the fact that it expressly exempts from its prohibitions intersex youth (who may receive treatment—even without their consent—to conform their bodies *with* traditional expectations of male or female), while at the same time prohibiting transgender youth from receiving treatments that would result in traits *contrary* to traditional expectations. Seeking to enforce such gender-based stereotypes is not a valid government action. *See Limon*, 280 Kan. at 302 (acknowledging Justice Scalia’s dissent in *Lawrence v. Texas*, 539 U.S. 558, 599 (2003), in which he summarizes the majority’s conclusion

that “the promotion of majoritarian sexual morality is not even a *legitimate* state interest” (emphasis in original)).

Defendant’s argument that SB 63’s prohibition of gender-affirming medical care substantially relates to the state’s interest in “[p]rotecting children from these experimental procedures,” MTD at 11, similarly fails to pass muster because Plaintiffs specifically alleged facts demonstrating that gender-affirming medical care for transgender youth is not “experimental.” Pet. ¶¶ 12, 19, 22-31; *id.* at ¶ 22 (“There are decades of studies—going back over 25 years—supporting the benefits of gender affirming medical care where medically indicated.” For that reason, “[a]ll of the major medical organizations in the United States have highlighted the importance of gender affirming medical care for adolescents with gender dysphoria and have issued explicit statements opposing bans on this care.”). Plaintiffs adequately allege that Minor Plaintiffs are harmed, not protected, by being deprived of this medical care that has already effectively treated their gender dysphoria and improved their health and well-being. Pet. ¶¶ 86-105.

Plaintiffs adequately allege that none of the government’s proffered justifications for the sweeping prohibitions contained in SB 63 constitute important governmental objectives, and that the prohibitions of SB 63 are not substantially related to achievement of those objectives. Thus, Plaintiffs have plausibly alleged that SB 63 triggers and fails heightened scrutiny. Defendant’s arguments to the contrary are based on allegations outside of the pleadings, and therefore cannot be considered by the Court on a motion to dismiss.

4. Minor Plaintiffs State a Claim That SB 63’s Classification Based on Transgender Status Fails Even Rational Basis Review.

Even if this Court applied rational basis review, Minor Plaintiffs state a claim that SB 63’s targeting of transgender youth would fail that lower standard. For a statute to pass constitutional muster under the rational basis standard, it “must meet a two-part test: (1) it must implicate

legitimate goals, and (2) the means chosen by the legislature must bear a rational relationship to those goals.” *Limon*, 280 Kan. at 288 (citing *Mudd v. Neosho Memorial Regional Med. Ctr.*, 275 Kan. 187, 198 (2003)). This ensures that “classifications are not drawn for the purpose of disadvantaging the group burdened by the law.” *Id.* at 288 (quoting *Romer v. Evans*, 517 U.S. 620, 632-33 (1996)). Although the rational basis test is the “most deferential of standards[,]” the Kansas Supreme Court still “insist[s] on knowing the relation between the classification adopted and the object obtained.” *Limon*, 280 Kan. at 288 (quoting *Romer*, 517 U.S. at 632). Courts examine the “scope of the classification” because “[o]ver-inclusiveness, where the legislation burdens a wider range of individuals than necessary given the State’s interest, may be particularly invidious and unconstitutional.” *Id.* By the same token, “a failure to create a classification which is sufficiently broad to effectively accommodate the State’s interest, *i.e.*, the creation of an under-inclusive class, may evidence an animus toward those burdened.” *Id.* (internal citations omitted). And “when the articulated interest is the protection of minors, there still must be a connection between the State’s interest and the classification and, if the burden would not be allowed if placed upon an adult, the State’s interest must be unique to children.” *Id.* at 296.

As a threshold matter, SB 63 contains a discriminatory classification based on transgender status. The protections of Section 1 thus apply. “[W]hen an equal protection claim is made, the first step of the analysis is to determine the nature of the legislative classification and the rights which are affected by the classification.” *Id.* at 284. SB 63’s prohibitions apply based on whether an individual seeks to present socially as a gender that does not correspond to their sex assigned at birth and whether they seek medical treatment that will align their bodies with a gender identity that does not correspond to their sex assigned at birth. SB 63 § 1(b)(10), 2(d), 2(f), 3(a),

3(b). That is definitionally what it means to be transgender: to have a gender identity different from assigned sex. Pet. ¶ 14.

It does not matter that SB 63 does not use the word “transgender” because, when a law imposes a greater burden on the conduct that defines that class of people, it nonetheless constitutes “a discriminatory classification.” *Limon*, 280 Kan. at 284-86. For example, in *Limon*, the court reasoned that regardless of whether the challenged law was understood as discriminating based on “orientation, conduct, practices, or relationships,” it was nonetheless discriminating against non-heterosexual people and thus had to survive scrutiny under Section 1. *Id.* at 285; *see also Christian Legal Soc’y v. Martinez*, 561 U.S. 661, 689 (2010) (“Our decisions have declined to distinguish between status and conduct in this context.”) (citing *Lawrence*, 539 U.S. at 583-84 (O’Connor, J., concurring) (“While it is true that the law applies only to conduct, the conduct targeted by this law is conduct that is closely correlated with being homosexual. Under such circumstances, [the] law is targeted at more than conduct. It is instead directed toward gay persons as a class.”)). Here, SB 63 imposes a greater burden on conduct that defines transgender people as a class—living as a gender different from one’s sex assigned at birth, *i.e.*, social and medical transition.

But even if only the more permissive rational basis test applies,⁹ Minor Plaintiffs nonetheless state a claim under Section 1 because of SB 63’s overbreadth, under-inclusiveness,

⁹ As set forth *supra* and in Plaintiffs’ Response in Further support of Motion for Temporary Injunction, this classification triggers heightened scrutiny. The *Limon* Court in 2005 applied rational basis, not heightened scrutiny, to a law that classified based on sexual orientation or same-sex sexual conduct. Because a law that classifies based on sexual orientation necessarily classifies based on sex, heightened scrutiny should apply. *Limon* is most instructive not because of the level of scrutiny applied, but because of its analysis of how to determine whether a law contains a discriminatory classification. Using *Limon*, this Court can readily find a transgender status classification, which triggers heightened scrutiny. But even if this Court interpreted *Limon* to require rational basis review, SB 63 would fail.

and animus, all of which demonstrate that the law fails to implicate legitimate goals and that the means chosen fail to rationally further those goals.

First, the law fails to implicate legitimate goals. Although protecting children and the medical profession would be legitimate goals, Minor Plaintiffs adequately plead that SB 63 harms them and transgender minors with gender dysphoria who are eligible for gender-affirming medical care. Pet. ¶¶ 56-60, 93-97, 103-105. Minor Plaintiffs also adequately plead that the medical profession is not protected by SB 63, but rather the law deprives clinicians of the only evidence-based treatments for gender dysphoria. Pet. ¶ 57-60. Requiring clinicians to abandon their patients by stopping effective medical care no later than the end of this year harms both patients and their providers. Pet. ¶ 73. Moreover, SB 63's inclusion of a social transition restriction, defined specifically in terms of its non-medical basis, demonstrates that SB 63's purpose is to restrict transgender people based on their transgender status, and "moral disapproval of a group cannot be a legitimate government interest." *Limon* at 295. There is no legitimate basis for applying this moral disapproval to adults or minors. *Id.* at 296.

Second, the means chosen fail to rationally further Defendant's purported goals. Minor Plaintiffs adequately plead that SB 63 is over-inclusive and under-inclusive in ways that are irrational and demonstrate animus. *See Limon*, 280 Kan. at 288. SB 63 is over-inclusive because it prohibits state support for social transition, even though that is defined as "acts other than medical or surgical interventions" Pet. ¶ 79. It is also over-inclusive because it bans all forms of gender-affirming medical care, regardless of whether those interventions are reversible (like puberty blockers, Pet. ¶ 47) or the nature of the side effects (which for hormone therapy are rare, Pet. ¶ 54). SB 63 also continues to allow the use of puberty blockers and hormone therapy by non-transgender adolescents (Pet. ¶¶38, 48) including to affirm a gender identity that corresponds with

sex assigned at birth. Pet. ¶¶ 70, 110, 117. SB 63 also excludes from its prohibition intersex conditions such that minors are explicitly permitted to undergo any medical interventions, including sterilizing surgeries, if the goal is conformity to sex assigned at birth. Pet. ¶¶ 13, 72.

Minor Plaintiffs adequately plead that SB 63 systematically targets transgender youth for differential treatment across multiple domains. The “sheer breadth” of the law to prevent transgender people from living or being treated as their gender, both in terms of social and medical transition, “seems inexplicable by anything but animus toward the class it affects.” *Limon*, 280 Kan. at 290 (quoting *Romer*, 517 U.S. at 632); *see also id.* at 288 (rational basis assesses whether classification is “drawn for the purpose of disadvantaging the group burdened by the law”).

Minor Plaintiffs state a claim for discrimination based on transgender status under Section 1, even under rational basis. *See, e.g., Merryfield v. State*, 44 Kan. App. 2d 817, 827 (2010) (reversing dismissal of equal protection claim after applying rational basis review).

C. Skrmetti is Neither Controlling nor Persuasive.

As set forth above, Plaintiffs adequately allege their claims under Section 1 for violations of both natural rights and equal protection guarantees under Kansas notice pleading standards. Defendant’s extensive reliance on the recent U.S. Supreme Court decision in *United States v. Skrmetti*, 145 S. Ct. 1816 (2025), does not defeat Plaintiffs’ claims at this procedural juncture. Not only is SB 63 substantively different from Tennessee’s law analyzed in *Skrmetti*, but also, it is the Kansas Constitution Bill of Rights—not the federal constitution—that controls here.

1. Plaintiffs’ Claims Are Brought Under the Kansas Constitution Only.

It is well-settled that Kansas has the authority to independently interpret its own constitution. *See Hodes I*, 309 Kan. at 624 (2019); *Farley*, 241 Kan. at 674 (“While we are aware the United States Supreme Court has applied heightened scrutiny to very limited classifications, we are interpreting the Kansas constitution and thus are not bound by the supremacy clause of the

federal Constitution.”). Indeed, Kansas courts have warned that “lockstep interpretation” of the U.S. Constitution with the Kansas Constitution does not always serve Kansans’ best interests. *See State v. Lawson*, 296 Kan. 1084, 1090-91 (2013) (finding that “wholesale, automatic adoption of federal constitutional jurisprudence does not produce such desired stability in the law for Kansans”). This warning is consistent with long-standing principles of federalism that are consistently respected not just in Kansas, but by the U.S. Supreme Court and other state high courts.¹⁰

The Kansas judiciary can, and does, deviate from the federal courts’ equal protection analysis because Section 1 “has no textual counterpart in the U.S. Constitution and therefore has its own independent meaning and effect.” *Rivera v. Schwab*, 315 Kan. 877, 893 (2022) (citing *Hodes I*, 309 Kan. at 624). Here, Plaintiffs anchored their equal protection claims in Section 1, not in the Fourteenth Amendment. Pet. ¶¶ 107, 114.

For example, the Kansas Supreme Court in *Farley* applied heightened scrutiny to a distinction that would not trigger heightened scrutiny under the federal constitution. *See Farley*,

¹⁰ *See, e.g., Prune Yard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980) (holding that each state has the “sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution.”) (citing *Cooper v. California*, 386 U.S. 58, 62 (1967)); *State v. Wilson*, 154 Haw. 8, 14 (2024) (“State constitutions have a distinct role under our nation’s system of federalism. Deciding a case first on state constitutional grounds respects state sovereignty and aligns with a key constitutional design feature—subnational governance[.]”); *State v. Ball*, 124 N.H. 226, 231-32 (1983) (“This court has historically viewed the rights of people in light of both the United States Constitution and the Constitution of the State of New Hampshire. While the role of the Federal Constitution is to provide the minimum level of national protection of fundamental rights, our court has stated that it has the power to interpret the New Hampshire Constitution as more protective of individual rights than the parallel provisions of the United States Constitution.”) (internal citations omitted); *State v. Hunt*, 91 N.J. 338, 353 (N.J. 1982) (“That this Court has the power to construe the New Jersey Constitution to reach results contrary to the United States Supreme Court decisions construing the federal constitution is not controverted In deciding the appropriate extent of this protection, this Court is the final arbiter of the meaning of the New Jersey Constitution.”).

241 Kan. at 670-71 (in holding that the abrogation of the collateral-source rule in medical malpractice actions violated Section 1, concluding “a heightened scrutiny analysis is appropriate in this case” and “clearly and expressly decid[ing] this case upon Section[] 1 . . . of the Kansas Bill of Rights” rather than the federal constitution).

More recently, in *Hodes I*, the Kansas Supreme Court concluded that Section 1 acknowledges rights that are “distinct from and broader than the United States Constitution and that [the Kansas] framers intended these rights to be judicially protected against governmental action that does not meet constitutional standards.” 309 Kan. at 624; *see also Farley*, 241 Kan. at 671 (“[T]he Kansas Constitution affords separate, adequate, and greater rights than the federal Constitution.”). The *Hodes I* Court thoroughly analyzed the scope and applicability of Section 1 and, following extensive analysis into the plain language and legislative history of both Section 1 and the Fourteenth Amendment, determined that “Kansans chose to protect their ‘inalienable natural rights,’ including their liberty.” *Hodes I*, 309 Kan. at 622-23 (“Accordingly, the parties’ arguments and [plaintiffs’] exclusive reliance on the Kansas Constitution Bill of Rights require us to now delve deeper into the differences between it and the Fourteenth Amendment.”).

The affirmation of the holding in *Hodes I* just five years later in *Hodes II* also demonstrates that intervening Supreme Court decisions on a provision in the federal constitution that parallels or is otherwise similar to a provision in the Kansas Constitution are not controlling. In 2024, after the district court in *Hodes I* applied strict scrutiny on remand as instructed (and found the law at issue limiting abortion access unconstitutional), the Supreme Court of Kansas affirmed the district court’s opinion and clarified that the U.S. Supreme Court’s intervening decision in *Dobbs v. Jackson Whole Women’s Health Org.*, 597 U.S. 215 (2022), “d[id] not control *or even bring into question* [its] interpretation of the Kansas Constitution Bill of Rights.” *Hodes II*, 318 Kan. at 949

(emphasis added). Just as the U.S. Supreme Court’s intervening on-point decision in *Dobbs* did not control the Kansas court’s analysis of the issues on remand in *Hodes II*, *Skrmetti* does not affect the equal protection analysis here.

Defendant misleads the court by suggesting that “the equal protection guarantees of the Kansas Constitution are coextensive with the equal protection guarantees afforded under the Fourteenth Amendment.” MTD at 9-10 (citing *Rivera*, 315 Kan. at 894). First, *Rivera* dealt solely with Section 2 of the Kansas Constitution Bill of Rights—not claims grounded in Section 1, as is the case here. Second, as noted above, Section 1 is expressly broader than the Equal Protection Clause of the federal constitution. Moreover, Kansas courts otherwise do not shy away from interpreting the Kansas Constitution more expansively than the federal constitution.¹¹

In sum, Kansas courts often interpret the Kansas Constitution more broadly than the federal constitution, with the Supreme Court of Kansas—not the United States Supreme Court—as the ultimate arbiter of its meaning. Thus, Plaintiffs’ claims should be examined separate and apart from *Skrmetti*’s holding. Under Kansas precedent, and analogous authority from other states (*see infra* Section IV(B)(2)), Plaintiffs have sufficiently stated two claims for violations of Section 1.

¹¹ *See, e.g., State v. McDaniel & Owens*, 228 Kan. 172, 184-85 (1980) (interpreting section 9 of the Kansas Constitution Bill of Rights more broadly than the Eighth Amendment despite a recent United States Supreme Court decision analyzing a similar issue); *State v. Albano*, 313 Kan. 638, 644-46 (2021) (interpreting section 5 more broadly than the Sixth Amendment and emphasizing that “established precedent foreclosing [defendant’s] challenge under the Sixth Amendment does not categorically dispose of her challenge under Section 5 [of the Kansas Constitution]”); *see also State v. Hall*, 65 Kan. App. 2d 369, 373 (2025) (interpreting section 4 of the Kansas Constitution more broadly than the Second Amendment); *Lawson*, 296 Kan. at 1091-92 (reaffirming the Supreme Court of Kansas’s “right to independently construe our own constitution” because “wholesale, automatic adoption of federal constitutional jurisprudence does not produce such desired stability in the law for Kansans”).

2. The Law in *Skrmetti* Is Different From Kansas' SB 63.

Even if this Court considers *Skrmetti*, it is factually distinguishable. SB 63 contains a prohibition on the “promotion of social transition,” *see* Pet. ¶¶ 79-81; SB 63 §§ (b)(10), (d), (f)—a non-medical, non-surgical intervention that does not serve any of the State’s stated purposes for enshrining SB 63—not present anywhere in Tennessee’s law. Defendant’s attempted comparison of SB 63 and Tennessee’s law, *see* MTD at 10, left out these crucial provisions.

The *Skrmetti* Court found that Tennessee’s law did not classify on the basis of sex, but merely on the basis of medical use and age. *See Skrmetti*, 145 S. Ct. at 1829 (Tennessee’s law “prohibits healthcare providers from administering puberty blockers and hormones to minors for certain *medical uses*, regardless of a minor’s sex.” (emphasis in original)). But SB 63 sweeps further than Tennessee’s law by prohibiting the promotion of “acts *other than* medical or surgical interventions” that relate to transgender youth’s ability to express their identity and be themselves. SB 63 § (b)(10) (emphasis added). SB 63 is thus much more than “simply a prohibition on the prescription of puberty blockers and hormones to treat gender dysphoria, gender identity disorder, or gender incongruence.” *Skrmetti*, 145 S. Ct. at 1831; *compare id.* at 1859 (Alito, J., concurring) (Tennessee’s law “targets only the *experimental medical procedures* that the legislature found to be unsupported and dangerous. It does not regulate any other behavior in which minors might engage for the purpose of *expressing their gender identity*. It says nothing at all about names, *pronouns*, hair styles, *attire*, recreational activities or hobbies, or career interests.” (emphases added)) *with* SB 63 (providing examples of prohibited types of social transitioning including “changing of an individual’s preferred pronouns or manners of dress”). In short, the *Skrmetti* Court grounded its dismissal of plaintiffs’ equal protection claims in “the State’s concerns regarding the use of puberty blockers and hormones to treat gender dysphoria, gender identity disorder, and

gender incongruence[.]” 145 S. Ct. at 1832. This justification is insufficient to support the law at issue here given SB 63’s more expansive restrictions on social transition.

3. SB 63’s Restrictions on Social Transition Are Sex Classifications Under *Skrmetti*.

Not only is SB 63 distinguishable from the law analyzed in *Skrmetti*, but also SB 63 contains specific provisions that *Skrmetti* framed as paradigmatic sex classifications. The *Skrmetti* court specifically called out a “requirement that all children wear ‘sex-consistent clothing’” as an example of a classification that would be “covertly []or overtly based on sex.” *Id.* at 1832 (citing *id.* at 1874 (Sotomayor, J., dissenting)). And in his concurrence, Justice Alito specifically emphasized the absence of such policies from Tennessee’s law to further clarify that under the federal constitution Tennessee’s law was merely an age and medical use classification. *Id.* at 1859 (Alito, J., concurring) (Tennessee’s law “*does not regulate any other behavior* in which minors might engage for the purpose of expressing their gender identity. It says nothing at all about names, *pronouns*, hair styles, *attire*, recreational activities or hobbies, or career interests.”) (emphasis added). Moreover, *Skrmetti* distinguished “a hypothetical law that prohibits minors from attending any services, rituals, or assemblies if done for the purpose of allowing the minor to identify with a purported identity *inconsistent with the minor’s religion*” from Tennessee’s law because “prohibiting attendance at a religious service ‘inconsistent with’ the attendee’s religion may trigger heightened scrutiny,” while “[a] law prohibiting the administration of *specific drugs for particular medical uses* does not.” *Id.* at 1831 (cleaned up) (emphasis added). In other words, if a law seeks to categorically regulate a minor’s attempts to “identify with a purported identity inconsistent” with a protected status, *Skrmetti* indicated that heightened scrutiny applies. *Id.* SB 63 does just that.

4. *Skrmetti* Did Not Foreclose Heightened Scrutiny for Transgender Status Classifications.

Even if this Court were to find *Skrmetti*'s reasoning persuasive, *Skrmetti* did not “decline[] to recognize transgender status as a suspect class”; to argue or at least imply otherwise, Defendant misleadingly cites to Justice Barrett’s concurrence without identifying it as such. MTD at 13. That concurrence itself explains that *Skrmetti* “does not resolve whether transgender status constitutes a suspect class.” *Skrmetti*, 145 S. Ct. at 1849 (Barrett, J., concurring). The *Skrmetti* majority did not reach the question of what level of scrutiny applies to a transgender status classification because it determined that there was none. *Id.* at 1832-33 (“this case, in any event, does not raise that question” of whether “transgender individuals are a suspect or quasi-suspect class” “because SB1 does not classify on the basis of transgender status”).

In sum, *Skrmetti* does not apply to Plaintiff’s claims under the Kansas Constitution. Even if it did, SB 63’s prohibitions are distinguishable from those in Tennessee’s law, and its social transition prohibitions trigger heightened scrutiny. SB 63 also triggers heightened scrutiny independently because of its transgender status classifications and animus. Defendant makes no effort in his Motion to Dismiss to defend SB 63 under heightened or strict scrutiny, and so Plaintiffs are entitled to discovery on their Section 1 claims.

V. CONCLUSION

Plaintiffs respectfully request that this Court deny Defendant’s Motion to Dismiss and allow this case to proceed to discovery. In the alternative, Plaintiffs request leave to amend their Petition and re-plead in lieu of dismissal with prejudice (as requested by Defendant).¹²

¹² Kansas courts favor allowing plaintiffs to file amended pleadings over dismissals with prejudice. *Brull v. Secretary of Kansas Department for Aging and Disability Services*, 557 P.3d 1237 (2024).

Respectfully submitted, this 21st day of August, 2025.

By: 

Monica Bennett, KS Bar 30497
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF KANSAS
10561 Barkley St., Suite 500
Overland Park, KS 66212
Tel: (913) 303-3641
Fax: (913) 490-4119
mbennett@aclukansas.org

Harper Seldin (pro hac vice pending)
Shana Knizhnik (pro hac vice pending)
Alexandra R. Johnson (pro hac vice pending)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad St.
New York, NY 10004
hseldin@aclu.org
sknizhnik@aclu.org
a.johnson@aclu.org

Kristen Broz (pro hac vice pending)
Elizabeth V. Wingfield (pro hac vice pending)
Alexia Chapman (pro hac vice pending)
Helen Hitz (pro hac vice pending)
Ryan Sullivan (pro hac vice pending)
BALLARD SPAHR LLP
1909 K Street, NW
12th Floor
Washington, DC 20006
brozk@ballardspahr.com
wingfelde@ballardspahr.com
chapmana@ballardspahr.com
hitzh@ballardspahr.com
sullivanr@ballardspahr.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2025, the above Plaintiffs' Response in Opposition to Defendant's Motion to Dismiss was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to registered participants.

/s/ Alexia C. Chapman

Alexia C. Chapman