

No. 24-1037

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In The  
**Supreme Court of the United States**

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**UNITED STATES OF AMERICA, ET AL.,**  
*Petitioners,*

**V.**

**MICHAEL THOMAS, ET. AL.**  
*Respondents.*

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**ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTEENTH  
CIRCUIT**

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**BRIEF FOR RESPONDENTS**

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*Attorneys for Respondents*

**QUESTIONS PRESENTED**

- I. Does a state law restricting certain experimental medical treatments for transgender minors infringe upon their parents' substantive due process rights under the Due Process Clause of the Fourteenth Amendment where the state purports to regulate medical care in order to protect minors from potentially harmful medical treatments.
- II. Does a state law restricting experimental medical treatments for transgender minors violate their constitutional rights under the Equal Protection Clause of the Fourteenth Amendment where the state' purported intent it to protect the safety, health, and wellbeing of vulnerable youth?

## TABLE OF CONTENTS

|                                                                                                                                                                                          |            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <b><u>QUESTIONS PRESENTED</u></b> .....                                                                                                                                                  | <b>i</b>   |
| <b><u>TABLE OF AUTHORITIES</u></b> .....                                                                                                                                                 | <b>iii</b> |
| <b><u>STATEMENT OF THE CASE</u></b> .....                                                                                                                                                | <b>1</b>   |
| <b>I. STATEMENT OF THE FACTS</b> .....                                                                                                                                                   | <b>1</b>   |
| <b>II. PROCEDURAL HISTORY</b> .....                                                                                                                                                      | <b>1</b>   |
| <b><u>ARGUMENT</u></b> .....                                                                                                                                                             | <b>4</b>   |
| <b>I. THE STATE’S INTEREST IN SAFEGUARDING THE MEDICAL WELL-BEING OF CHILDREN JUSTIFIES LIMITATIONS ON PARENTAL DECISION-MAKING</b> .....                                                | <b>5</b>   |
| A. Standard of Review .....                                                                                                                                                              | 6          |
| B. The Act is Subject to Inquiry Using Rational Basis Review Because the Act Does Not Implicate a Fundamental Right .....                                                                | 6          |
| 1. The state has a legitimate state interest in protecting the health and welfare of its minors .....                                                                                    | 8          |
| 2. There exists a rational connection between the Act and its goal of protecting its minors from mental and physical harm .....                                                          | 9          |
| C. Even If the Court Reviews the Act Under Strict Scrutiny, the Act Will Survive the Facial Challenge ...                                                                                | 10         |
| 1. Protecting minors from irreversible harm is a compelling government interest .....                                                                                                    | 10         |
| 2. The Act is narrowly tailored to further the government’s interest in protecting minors from mental and physical harm .....                                                            | 11         |
| <b>II. THE ACT, DRAFTED TO SAFEGUARD THE HEALTH AND SAEFTY OF AT-RISK TRANSGENDER YOUTH, IS A PROPER USE OF STATE AUTHTHORITY AND DOES NOT VIOLATE THE EQUAL PROTECITON CLAUSE</b> ..... | <b>11</b>  |
| A. Standard of review .....                                                                                                                                                              | 13         |
| C. Intermediate Scrutiny Should Not Be Applied Because Transgender Youth Are Not a Quasi-Suspect Class Under the Fourteenth Amendment .....                                              | 16         |
| 1. If the court were to determine that intermediate scrutiny applies in this case, the State will still prevail .....                                                                    | 18         |
| D. Strict Scrutiny Should Not Apply Because Transgender Children Are Not a Suspect Class .....                                                                                           | 19         |
| 1. Even if the court applies the rigorous standard of strict scrutiny, the State will prevail .....                                                                                      | 20         |
| a. New London has a compelling government interest .....                                                                                                                                 | 20         |
| b. The Act is narrowly tailored .....                                                                                                                                                    | 21         |
| <b><u>CONCLUSION</u></b> .....                                                                                                                                                           | <b>22</b>  |

**TABLE OF AUTHORITIES****United States Supreme Court Cases**

|                                                                                |  |
|--------------------------------------------------------------------------------|--|
| <i>Adarand Constructors, Inc. v. Pena</i> ,<br>515 U.S. 200 (1995) .....       |  |
| <i>Bostock v. Clayton Cnty.</i> ,<br>590 U.S. 644 (2020) .....                 |  |
| <i>Burson v. Freeman</i> ,<br>504 U.S. 191 (1992) .....                        |  |
| <i>City of Cleburne v. Cleburne Living Ctr.</i> ,<br>473 U.S. 432 (1995) ..... |  |
| <i>Collins v. City of Harker Heights</i> ,<br>503 U.S. 115 (1992) .....        |  |
| <i>Craig v. Boren</i> ,<br>429 U.S. 190 (1976) .....                           |  |
| <i>FCC v. Beach Commc'ns</i> ,<br>508 U.S. 307 (1993) .....                    |  |
| <i>Ginsberg v. N.Y.</i> , 3<br>90 U.S. 629 (1968) .....                        |  |
| <i>Gonzales v. Carhart</i> ,<br>550 U.S. 124 (2007) .....                      |  |
| <i>Heller v. Doe</i> ,<br>509 U.S. 312 (1993) .....                            |  |
| <i>Hurley v. Irish-Am. Gay</i> ,<br>515 U.S. 557 (1995) .....                  |  |
| <i>Jacobson v. Mass</i> ,<br>197 U.S. 11 (1905) .....                          |  |
| <i>Kadrmas v. Dickinson Pub. Sch.</i> ,<br>487 U.S. 450 (1988) .....           |  |
| <i>Korematsu v. U.S.</i> ,<br>323 U.S. 214 (1944) .....                        |  |
| <i>Lyng v. Castillo</i> ,<br>477 U.S. 635 (1986) .....                         |  |
| <i>Meyer v. Neb.</i> ,<br>262 U.S. 390 (1923) .....                            |  |
| <i>Mountain Timber Co. v. Washington</i> ,<br>243 U.S. 219 (1917) .....        |  |
| <i>Nken v. Holder</i> ,<br>556 U.S. 418 (2009) .....                           |  |
| <i>Pace v. Ala.</i> ,<br>106 U.S. 583 (1883) .....                             |  |
| <i>Plyler v. Doe</i> ,<br>457 U.S. 202 (1982) .....                            |  |
| <i>Prince v. Mass.</i> ,<br>321 U.S. 158 (1944) .....                          |  |
| <i>Reno v. Flores</i> ,                                                        |  |

|                                                    |  |
|----------------------------------------------------|--|
| 507 U.S. 292 (1993) .....                          |  |
| <i>San Antonio Indep. Sch. Dist. v. Rodriguez,</i> |  |
| 411 U.S. 1 (1973) .....                            |  |
| <i>Santosky v. Kramer,</i>                         |  |
| 455 U.S. 745 (1982) .....                          |  |
| <i>Tigner v. Texas,</i>                            |  |
| 310 U.S. 141(1940) .....                           |  |
| <i>United States v. Virginia,</i>                  |  |
| 518 U.S. 515 (1996) .....                          |  |
| <i>Village of Willowbrook v. Olech,</i>            |  |
| 528 U.S. 562 (2000) .....                          |  |
| <i>Ward v. Rock Against Racism,</i>                |  |
| 491 U.S. 781 (1989) .....                          |  |
| <i>Wash. v. Davis,</i>                             |  |
| 426 U.S. 229 (1976) .....                          |  |
| <i>Wash. v. Glucksberg,</i>                        |  |
| 521 U.S. 702 (1997) .....                          |  |
| <i>Winter v. NRDC, Inc.,</i>                       |  |
| 555 U.S. 7 (2008) .....                            |  |
| <i>Wis. v. Yoder, 4</i>                            |  |
| 06 U.S. 205 (1972) .....                           |  |

#### Circuit **Court** Cases

|                                                            |  |
|------------------------------------------------------------|--|
| <i>Am. Booksellers v. Webb,</i>                            |  |
| 919 F.2d 1493 (11th Cir. 1990) .....                       |  |
| <i>California Grocers Assn. v. City of Los Angeles,</i>    |  |
| 52 Cal. 4th 177 (2011) x .....                             |  |
| <i>Eknes-Tucker v. Governor, of the State of Alabama,</i>  |  |
| 80 F.4th 1205, 1210 (2023) .....                           |  |
| <i>In re McCauley,</i>                                     |  |
| 409 Mass. 134 (1991) .....                                 |  |
| <i>Inc. v. Ohio Dep't of Liquor Control,</i>               |  |
| 113 F.3d 614, 621 (6th Cir. 1997) .....                    |  |
| <i>Kanuszewski v. Mich. HHS,</i>                           |  |
| 927 F.3d 396 (6th Cir. 2019) .....                         |  |
| <i>L.W. v. Skrmetti,</i>                                   |  |
| 83 F.4th 460 (6th Cir. 2023) .....                         |  |
| <i>People v. Hardin,</i>                                   |  |
| 84 Cal. App. 5th 273, 285 (2022) .....                     |  |
| <i>Pickup v. Brown,</i>                                    |  |
| 740 F.3d 1208 (9th Cir. 2014) .....                        |  |
| <i>S. Or. Barter Fair v. Jackson Cnty.,</i>                |  |
| 372 F.3d 1128 (9th Cir. 2004) .....                        |  |
| <i>St. John's United Church of Christ v. City of Chi.,</i> |  |
| 502 F.3d 616, 637 (7th Cir. 2007) .....                    |  |

*State v. Wilson*,  
2021-NMSC-022 (2021) .....  
*Vitolo v. Guzman*,  
999 F.3d 353 (6th Cir. 2021) .....

**CONSTITUTIONAL AND STATUTORY PROVISIONS**

U.S. Const. amend. XIV

U.S. Const. amend. X

## **STATEMENT OF THE CASE**

### **I. STATEMENT OF THE FACTS**

The State of New London Enacted the Healthcare Protection Act (hereinafter “the Act”), codified as New London Code § 35-18-101 et seq. in 2023 to safeguard the physical and emotional well-being of minors. R. p. iv.. The Act goes into effect July 1, 2024. R. p. 6. The Act prohibits the use of puberty blockers and cross-sex hormone therapy when administered for the purpose of gender transition. R. p. viii. The Act does permit the use of these treatments for other medical conditions, such as precocious puberty and congenital anomalies. R. p. vii. The legislature based its decision on mounting evidence that gender-transition treatments are experimental, lack long-term safety data, and carry significant risks, including infertility, bone density loss, and psychological harm. R. p. 27. The Act seeks to protect minors from undergoing life-altering treatments they may later regret, particularly given the lack of conclusive scientific support for such procedures. R. p. 28. Petitioners are composed of the following: a group of parents of transgender minors, healthcare providers, and advocacy organizations. R. p. iii.

### **II. PROCEDURAL HISTORY**

On December 29, 2023, Ps lodged two counts against Ds- unconstitutional and preliminary + permanent injunctions in the United States District Court for the Southern District of New London. US Attorney General filed an unopposed motion to have U.S. join as an intervening plaintiff. Ds opposed motion. Ps filed reply brief in support of motion. No hearing was held on the Motion. Evidentiary support of the parties’ positions comes from the expert- and fact-witnesses’ declaration testimony that were attached to the briefs. On February 9, 2024, the court granted plaintiff’s motion for preliminary injunction.

On September 28, 2024, the United States Court of Appeals for the Fourteenth Circuit reversed the District Court's decision, vacated the injunction, and remanded the case to the lower court for further proceedings.

### **SUMMARY OF THE ARGUMENT**

First, Respondents argue that the lower court was correct in denying Petitioners' Request for a Preliminary Injunction and holding that the Act does not violate parental rights under the Due Process Clause of the Fourteenth Amendment. State laws are presumed valid unless they disturb a fundamental right protected by the Constitution. While parents have a fundamental right to control the upbringing of their children, this Court has recognized that a state's *parens patriae* authority may supersede parental wishes where the state has a legitimate reason for intervening. Here, Petitioner Parents assert a right to subject their children to medical treatments that New London has determined to be detrimental. New London has a legitimate interest in protecting minors from mentally and physically harmful medical treatments. Parents do not have a fundamental right to subject their children to experimental medical treatments or to access under-studied pharmaceuticals. Thus, the Due Process claim is subject to review under the rational basis standard, where it will succeed because the state has a legitimate interest in protecting minors from harmful medical treatment and employs plausible means to achieve that goal. Even if a fundamental right were at stake and the Court chose to analyze the claim under strict scrutiny, the claim would still fail. New London's interest is compelling, and the Act is narrowly tailored to achieve the state's objective.

The plaintiffs argue that the law violates: 1. The Due Process Clause, as it infringes on the parental rights of the plaintiffs to make healthcare decisions for their children; and 2. The

Equal Protection Clause of the U.S. Constitution, as it discriminates against transgender minors by denying them necessary medical care

The plaintiffs are seeking a preliminary injunction to stop the enforcement of the law, arguing that the Health Care Ban would cause irreparable harm to the minors and their families, as well as to medical providers like Dr. Nelson.

On the petitioner's Equal Protection argument, the act represents a proper use of state authority and does not violate the Equal Protection Clause. The regulation, which governs gender-affirming medical care for transgender minors, does not involve a suspect or quasi-suspect class, and therefore, it is subject to rational basis review. The regulation is rationally related to legitimate governmental interests in protecting the health and welfare of minors. Given that there is no classification based on a suspect or quasi-suspect class, no higher level of scrutiny is warranted. Intermediate scrutiny is also inappropriate, as transgender minors are not recognized as a quasi-suspect class under the Fourteenth Amendment. The Court has not extended heightened scrutiny to gender identity in this context, and thus, the classification does not trigger intermediate scrutiny. Even if intermediate scrutiny were applied, however, the State would still prevail. The regulation serves an important governmental interest—protecting the health and safety of minors—and the means employed are substantially related to achieving that goal, satisfying the standard for intermediate scrutiny. Strict scrutiny should not apply because transgender minors are not classified as a suspect class under the Equal Protection Clause. The Court has yet to extend suspect class status to gender identity in the context of state regulation. Nevertheless, if strict scrutiny is deemed applicable, the State will still prevail. The regulation serves a compelling governmental interest in safeguarding the health and welfare of transgender minors, and it is narrowly tailored to achieve that interest while minimizing any undue

infringement on the petitioners' constitutional rights. The statute targets only those minors at heightened risk for physical and mental health challenges due to gender-affirming treatments, addressing concerns over the long-term effects of such medical interventions. Moreover, the regulation is narrowly tailored to address the specific needs of transgender minors, ensuring that only those who meet particular criteria for care receive gender-affirming treatment. This targeted approach prevents potential harm to at-risk youth, without unnecessarily restricting access to medical care for other minors. The regulation is designed to protect the most vulnerable populations, thereby aligning with the State's compelling interest in safeguarding minors. For these reasons, the act is not unconstitutional under the Equal Protection Clause.

### **ARGUMENT**

This court should affirm the fourteenth circuit's decision and deny Petitioner's preliminary injunction, because New London's act neither impedes parental rights under the Due Process Clause nor violates transgender youths' rights under the Equal Protection Clause of the Fourteenth Amendment. Courts consider four factors in determining whether to issue a preliminary injunction: 1) whether the moving party has shown a likelihood of success on the merits; 2) whether the moving party will be irreparably injured absent an injunction; 3) whether issuing an injunction will harm other parties to the litigation; and 4) whether an injunction is in the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009). The factors of the balance of equities and public interest merge in the analysis when the government is the opposing party. *Id.* at 435. Where the petitioner is not likely to succeed on the merits, the courts should not grant the preliminary injunction because issuing a preliminary injunction is an "extraordinary remedy" that may only be awarded upon a clear showing that the plaintiff is entitled to such relief. *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008); *Vitolo v. Guzman*, 999 F.3d 353, 360 (6th Cir. 2021).

Thus, this case turns on whether Petitioners are likely to succeed on the merits. Because Petitioners are unlikely to succeed, this Court should affirm the decision of the Fourteenth Circuit and deny the preliminary injunction because the Act does not violate the Due Process Clause or Equal Protection Clause of the Fourteenth Amendment.

**I. THE STATE’S INTEREST IN SAFEGUARDING THE MEDICAL WELL-BEING OF CHILDREN JUSTIFIES LIMITATIONS ON PARENTAL DECISION-MAKING**

The Due Process Clause provides, “No state shall deprive any person of life, liberty, or property without due process of law.” U.S. Const. amend. XIV, § 1. The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. *Wash. v. Glucksberg*, 521 U.S. 702, 720 (1997). Before determining whether it is protected under the Due Process Clause, courts must begin with a careful description of the asserted fundamental liberty interest. *Reno v. Flores*, 507 U.S. 292, 302 (1993). Depending on the type of claim and class at stake, the claim may be subject to rational basis review, intermediate scrutiny, or strict scrutiny. *Id.*

State statutes are most often interpreted under a rational basis standard. *Heller v. Doe*, 509 U.S. 312, 319 (1993). Where a suspect class or foundational right is at stake, courts may apply a higher level of scrutiny. *Id.* Rational basis review requires only that a government’s interest be rationally related to a legitimate government interest when the court finds that an asserted right is not a fundamental liberty interest. *Glucksberg*, 521 U.S. at 728. A fundamental right is one that is deeply rooted in legal history and tradition. *Id.* at 721. Rational basis review is highly deferential. *FCC v. Beach Commc’ns*, 508 U.S. 307, 313 (1993). The court’s rational basis inquiry ends where there are “reasonably conceivable,” plausible justifications for a legislature’s action. *Id.* at 313-14.

Next, courts typically use intermediate scrutiny where legislation discriminates against a quasi-suspect class, such as gender or illegitimacy. *Craig v. Boren*, 429 U.S. 190, 197 (1976). To survive intermediate scrutiny, the legislation must serve an important governmental interest and must be substantially related to achieving that interest. *Id.* at 199.

Finally, certain government actions that infringe a fundamental right may be subject to strict scrutiny. *Ward v. Rock Against Racism*, 491 U.S. 781, 784 (1989). Under the strict scrutiny analysis, an infringement on a fundamental right will be upheld when the infringement is narrowly tailored to serve a compelling state interest. *Reno*, 507 U.S. at 302.

Petitioners bring their Due Process Clause claim based on parental rights; however, parents are not a recognized quasi-suspect class. Thus, intermediate scrutiny analysis does not apply to this claim. The merits of the claim depend on whether a parent's ability to make medical decisions for their minor child is a fundamental right. As such, the Court must determine whether to apply rational basis review or strict scrutiny analysis when deciding the viability of the Due Process claim.

#### **A. Standard of Review**

Whether a state law is subject to a facial constitutional challenge is an issue of law reviewed de novo. *Hurley v. Irish-Am. Gay*, 515 U.S. 557, 567 (1995); *S. Or. Barter Fair v. Jackson Cnty.*, 372 F.3d 1128, 1134 (9th Cir. 2004).

#### **B. The Act is Subject to Inquiry Using Rational Basis Review Because the Act Does Not Implicate a Fundamental Right**

The state has broad authority to act in the interest of public health and safety to regulate medical treatments for minors. *Jacobson v. Mass.*, 197 U.S. 11, 25 (1905). The legislature is at liberty to determine mode and manner in which those results are to be accomplished, and it may be restrained only when it finds that a statute clearly violates a fundamental right. *Id.* A law that

does not involve fundamental rights is accorded a strong presumption of validity. *Heller v. Doe*, 509 U.S. at 319.

While some parental rights may be fundamental, all parental rights are not absolute. *Wis. v. Yoder*, 406 U.S. 205, 233 (1972). The Court previously held, “The power of the parent . . . may be subject to limitation under *Prince* if it appears that parental decisions will jeopardize the health or safety of the child or have a potential for significant social burdens.” *Id.* Using its *parens patriae* authority, which is the state’s right to act on behalf of citizens who are unable to protect themselves, the state can restrict parental control to protect the wellbeing of its youth. *Prince v. Mass.*, 321 U.S. 158, 166 (1944) (holding that Massachusetts, as *parens patriae*, may enact statutes restrict the parent’s control by requiring school attendance and regulating or prohibiting the child’s labor); *see, e.g., Ginsberg v. N.Y.*, 390 U.S. 629, 639-40 (1968) (finding a New York statute prohibiting the sale of sexually explicit materials to children constitutional, while affirming that the state can enact laws to aid parents in taking care of their children); *see, e.g., Am. Booksellers v. Webb*, 919 F.2d 1493, 1506 (11th Cir. 1990) (finding a Georgia anti-obscenity statute constitutional where it regulated the display of sexually explicit materials deemed harmful to minors).

When acting to protect children’s welfare, the state may regulate medical care for minors. *Kanuszewski v. Mich. HHS*, 927 F.3d 396, 419 (6th Cir. 2019). Courts have even ordered medical care despite parental objections in cases where the child’s life was in danger. *See, e.g., In re McCauley*, 409 Mass. 134, 137 (1991). (finding the interest of the child and state outweigh any parental and religious rights if it appears that parental decisions will jeopardize the health or safety of the child or have a potential for significant social burdens when a judge ordered a blood transfusion over the parents’ protests). States may also regulate or ban medical technologies they

deem unsafe. *L.W. v. Skrmetti*, 83 F.4th 460, 474 (6th Cir. 2023). The Court has given state legislatures wide discretion to pass legislation even in areas where there is scientific uncertainty. *Gonzales v. Carhart*, 550 U.S. 124, 163 (2007) (finding that a documented medical disagreement about the health risks associated with a new law did not affect the law’s constitutionality). The fundamental rights of parents do not include the right to choose a . . . specific medical treatment that the state has reasonably deemed harmful. *Pickup v. Brown*, 740 F.3d 1208, 1236 (9th Cir. 2014) (finding a California state bill constitutional where it banned state-licensed mental health providers from engaging in “sexual orientation change efforts” with patients under the age of eighteen).

Parents do not have unbridled control over their children, and the Court has historically recognized that the state may regulate certain domains, including healthcare, despite objections from parents. *In Re McCauley* indicates that parental interests are less than the state’s when the child has potential for significant social burdens or has their health put in jeopardy. The Act seeks to protect children from social and physical harm associated with the unknown long-term effects of the medical treatments.

For the aforementioned reasons, parental right to make medical decisions for their child that a state deemed harmful is not a fundamental right. As such, the Act is subject to the highly deferential rational basis review. The Act will likely survive under rational basis review because the state’s interest in protecting the welfare of minors is legitimate, and creation of the Act is rationally related to the goal.

**1. The state has a legitimate state interest in protecting the health and welfare of its minors**

The state has an interest in protecting vulnerable groups. *Glucksberg*, 521 U.S. at 731. Any plausible reason for a legislature’s actions, even if unspoken, satisfies the rational basis

review, and those attacking its rationality have the burden to negate every conceivable basis that might support it. *FCC*, at 309-13. Courts review state laws with a strong presumption of validity unless the law conflicts with a fundamental right or quasi-suspect class. *Id.* at 313. States have a recognized interest in safeguarding minors from harm. *Ginsberg*, 390 U.S. at 638.

Here, New London created the Act to achieve its legitimate goals of protecting minors from physical and emotional harm, as well as medical procedures that are harmful or unsupported by high-quality or long-term studies. *R. p. v. In Glucksberg*, the lower court treated concerns of vulnerable persons being pressured into physician-assisted suicide as ludicrous; however, the Supreme Court recognized the risk of subtle coercion and undue influence in these types of life-altering medical cases. Similarly, New London legislatures found healthcare providers who performed surgeries on minors for financial incentives, rather for a minor's best interests. *R. p. v.* Because the asserted interest need only be plausible, the Act survives this prong of rational basis review for its interest in protecting minors from undue influence, as well as safeguarding the welfare of its youth.

## **2. There exists a rational connection between the Act and its goal of protecting its minors from mental and physical harm**

Under rational basis review, a law is presumed valid if it bears a rational connection to a legitimate state interest. *See Meyer v. Neb.*, 262 U.S. 390, 400 (1923). Laws are valid unless proven to be arbitrary and irrational. *Id.* (finding a disconnect with a law, whose goal was to promote American ideals and development, where the state aimed to achieve those goals by preventing students from learning another language before a certain age).

The Act clearly satisfies this prong of the rational basis review by directly addressing the state's legitimate interest in safeguarding minors' health and wellbeing. By prohibiting the procedures for minors, New London seeks to avoid the potential irreversible harms that come

with the lack of long-term safety data. The risks justify the state's intervention to protect minors from treatments that the legislature reasonably found to be experimental and potentially harmful. Constitutionally, parents are the primary caretaker of their children. The state is acting to aid the parents in preserving the welfare of their children. While Petitioners assert that parents and child are reasonably educated on the risks associated with the medical procedures, those parents cannot be aware of the full risks without enough long-term studies or some assurance that the medical provider performs the treatment for the child's sake and not financial gain. R. p. 3.

Because the Act is rationally related to New London's interest in protecting the welfare of its minors from harm at the hands of healthcare providers, the Act survives rational basis review.

### **C. Even If the Court Reviews the Act Under Strict Scrutiny, the Act Will Survive the Facial Challenge**

The Due Process Clause allows the government to infringe upon fundamental liberty interests when the infringement is narrowly tailored to serve a compelling state interest. *Burson v. Freeman*, 504 U.S. 191, 200 (1992). Courts must remain cautious when finding a new constitutional liberty, as courts are reluctant to expand the concept of due process using the strict scrutiny standard. *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992). Laws demonstrating necessity may survive the strict scrutiny standard. *Burson*, 504 U.S. at 200 (finding that an examination of the evolution of election reform demonstrates the necessity of restricted areas in or around polling places).

#### **1. Protecting minors from irreversible harm is a compelling government interest**

Here, New London created the Act to limit the consequences of understudied treatments, where the risks of mental and physical harm outweigh the potential benefits of those treatments.

R. p. iv. New London legislatures found healthcare providers who performed surgeries on minors for financial incentives, rather for a minor's best interests. R. p. v. The District Court found that Petitioner's legislative findings outweighed findings from Respondents, however, the legislature's authority allows it to use its discretion to regulate medical procedures in areas where there is uncertainty or active debate. R. p. 14. Gender-affirming care is a greatly debated topic in the medical field. As such, it is plausible that the state determined this to be its interest. Because the asserted interest need only be plausible, the Act survives this prong of rational basis review for its interest in protecting minors from undue influence, as well as safeguarding the welfare of its youth.

**2. The Act is narrowly tailored to further the government's interest in protecting minors from mental and physical harm**

**II. THE ACT, DRAFTED TO SAFEGUARD THE HEALTH AND SAEFTY OF AT-RISK TRANSGENDER YOUTH, IS A PROPER USE OF STATE AUTHROITY AND DOES NOT VIOLATE THE EQUAL PROTECITON CLAUSE**

The Equal Protection Clause of the Fourteenth Amendment, assert's "No State shall... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Among its many provisions, the constitution and the rights it guarantees to Americans remain pivotal in ensuring that citizens are protected from injustice and discrimination.

The Fourteenth Amendment does not call for absolute equality. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 24 (1973). Instead, the Equal Protection Clause was created to prevent hostile and discriminating state legislation against any person or class of persons. *Pace v. Ala.*, 106 U.S. 583, 584 (1883). The clause ensures states do not participate in unjust discrimination, thereby ensuring that no individual or group is arbitrarily subjected to unequal treatment by state governments. *Village of Willowbrook v. Olech*, 528 U.S. 562, 563 (2000).

To establish a claim under the Equal Protection Clause, a plaintiff must demonstrate that a state law or policy discriminated against them due to their membership in an identifiable class. *Village of Willowbrook*, 528 U.S. at 564. Identifiable classes can include suspect classes, such as race, religion, or national origin, which have historically faced discrimination and are thus afforded the highest level of judicial scrutiny. *Korematsu v. U.S.*, 323 U.S. 214, 216 (1944). A state law faces heightened scrutiny when it differentiates or targets such a class, requiring that the law be narrowly tailored to serve a compelling governmental interest. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995).

A suspect class is defined as a group that has been subjected to a history of intentional discrimination, exhibits a visible and immutable characteristic, and lacks political power to protect itself through the political process. *San Antonio Indep.*, 411 U.S. at 28. A quasi-suspect class, such as gender or illegitimacy, is afforded intermediate scrutiny, meaning laws affecting such groups must serve an important governmental objective and be substantially related to achieving that objective. *Craig v. Boren*, 429 U.S. 190, 197 (1976). To prevail in an equal protection claim, the discrimination must be demonstrably intentional rather than incidental or unintended. See *Wash. v. Davis*, 426 U.S. 229, 239 (1976).

The Equal Protection clause demands that states treat all similarly situated persons alike. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1995). This requirement protects members of certain groups from governments actions that arbitrarily discriminate against them. *Id.* At 446. If two groups are alike in all relevant respects and receive different treatment, the state must justify this differential treatment under the applicable level of scrutiny. *City of Cleburne*, 473 U.S. at 439–41 (holding that differential treatment of similarly situated groups must meet the applicable standard of review). However, if the groups are not similarly situated,

different treatment does not automatically constitute an Equal Protection violation. *Tigner v. Texas*, 310 U.S. 141, 147 (1940) (recognizing that equal protection does not require identical treatment for groups that are not similarly situated). Courts have established three levels of review for claims asserted under the Equal protection clause; 1. Rational Basis Review, 2. Intermediate Scrutiny, and 3. Strict Scrutiny. *Clark v. Jeter*, 486 U.S. 456, 461 (1988) (describing the three tiers of scrutiny applied under the Equal Protection Clause).

#### **A. Standard of review**

Whether a state statute violates the Equal Protection Clause is an issue of law reviewed de novo. *California Grocers Assn. v. City of Los Angeles*, 52 Cal. 4th 177, 208 (2011); *People v. Hardin*, 84 Cal. App. 5th 273, 285 (2022).

#### **B. The Act, Which Regulates Gender-Affirming Medical Care for Transgender Minors, Complies with the Equal Protection Clause of the Fourteenth Amendment and Should Be Upheld Under Rational Basis Review Because It Does Not Implicate A Suspect Or Quasi Suspect Class**

Rational basis review is the most deferential standard of judicial review. *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 459 (1988). This deference aligns with the Tenth Amendment to the United States Constitution, which states "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X. This framework grants states significant autonomy to regulate matters such as health, safety, education, and welfare, often referred to as their "police powers." *State v. Wilson*, 2021-NMSC-022, 21 (2021).

Given the inherent strength of these powers, judicial review under the rational basis standard ensures that state actions are presumed constitutional unless proven otherwise. This

presumption recognizes the legitimacy of state authority to enact laws tailored to local needs and circumstances without undue interference from the judiciary. This approach reflects a balance between respecting state sovereignty and preventing arbitrary or unreasonable state action. By deferring to the states in most cases, the rational basis standard preserves the foundational principle of federalism while still providing a mechanism for the judiciary to intervene when state laws clearly exceed constitutional limits.

Rational basis is applied to legislative acts that do not affect suspect or quasi-suspect classes. *New Orleans v. Dukes*, 427 U.S. 297, 303. Rational basis is most often applicable for state actions that regulate economic matters or social welfare policies. *U.S. v. Carolene Prods. Co.*, 304 U.S. 144, 152 (1938). In order to withstand rational basis review a statute that distinguishes between two classes must be rationally related to a legitimate governmental purpose. See *City of Cleburne* 473 U.S. at 435 (1985) (where the Court found that rational basis review was not appropriate because a law that made a distinction between the intellectually disabled and non-intellectually disabled people but had no rational purpose was invalid).

In *City of Cleburne*, the Court provides guidance on applying rational basis review, stating: "The term "rational," of course, includes a requirement that an impartial lawmaker could logically believe that the classification would serve a legitimate public purpose that transcends the harm to the members of the disadvantaged class. *City of Cleburne* 473 U.S. at 452 (Stevens, J., Concurring).

The act is grounded in legislative findings that justify its enactment. The stated purpose of this act is to “protect the health and welfare of minors” R. p. iv. At its core, this act aims to protect the health and welfare of minors, a legitimate governmental purpose. A legitimate state interest is one that encompasses any legitimate concern that falls within the scope of the state's

constitutional authority, particularly its "police powers" to promote the health, safety, welfare, and morals of its citizens. *Carey v. Population Servs. Int'l*, 431 U.S. 678, 686 (1977).

New London's legislature found "medical procedures that alter a minor's hormonal balance, remove a minor's sex organs, or otherwise change a minor's physical appearance are harmful to a minor... These procedures can lead to the minor becoming irreversibly sterile, having increased risk of disease and illness, or suffering from adverse and sometimes fatal psychological consequences... many of these procedures, when performed on a minor for such purposes, are experimental in nature and not supported by high-quality, long-term medical studies". R. p. iv. The provisions of the act are rationally related to this interest. The legislation seeks to address identified risks associated with gender-affirming medical procedures for minors and it establishes a means of redress for transgender children who may be harmed by gender-affirming care. Thus, the act is carefully designed to further the government's legitimate objective of safeguarding vulnerable populations.

The legislation found that harm could be caused to minors by use of these experimental treatments, preventing these experimental treatments are rationally related to the state safeguarding transgender minors. The Court asserted that it is within a state's power to enact legislation deemed necessary to promote the health, safety, and general welfare of its people. *Mountain Timber Co. v. Washington*, 243 U.S. 219, 243 (1917) (holding that the Washington Workmen's Compensation Act was constitutional, ruling that it was a fair and reasonable exertion of governmental power to promote health, safety, and general welfare, even though it required employers to make payments to a fund for employees' benefit). In accordance with that New London has acted within their authority to protect the health and safety of transgender youth. In *Eknes-Tucker v. Governor of Alabama* the court held that Alabama's Vulnerable Child

Compassion and Protection Act, which prohibits certain medical treatments for transgender minors, did not violate the Equal Protection Clause, where the court applied rational basis review, finding the law was rationally related to legitimate state interests in protecting children's welfare. Likewise, rational basis review should be applied in this case, as the legislation in question is similarly grounded in a legitimate state interest: safeguarding the health and well-being of transgender children. By prioritizing the protection of vulnerable minors, the legislation reflects the state's authority to regulate medical practices and ensure that treatments provided to children are safe, effective, and in their best interest.

The legislature has presented evidence that enacting this statute addresses a legitimate governmental interest. Protecting children is a legitimate state interest, because there is a rational relationship between the regulation and the state interest the act passes rational basis review. As guardians of the general health and safety of those within its borders, the State has acted within its authority to advance this legitimate purpose and responsibility.

**C. Intermediate Scrutiny Should Not Be Applied Because Transgender Youth Are Not a Quasi-Suspect Class Under the Fourteenth Amendment**

Intermediate scrutiny is used to evaluate equal protection claims for quasi-suspect classes. *Lyng v. Castillo*, 477 U.S. 635, 638 (1986). In order to withstand intermediate scrutiny: 1. the classification must serve important governmental objectives; and 2. the means employed must be substantially related to achieving those objectives. *Craig*, 429 U.S. at 191.

Classifications based on gender and questions of public education for children of undocumented aliens have all been reviewed under intermediate scrutiny. *Craig*, 429 U.S. at 197 (holding that a statute allowing women to purchase low-alcohol beer at age 18 while requiring men to wait until age 21 violated the Equal Protection Clause, where the Court applied intermediate scrutiny); *Plyler v. Doe*, 457 U.S. 202 (1982) (holding that a Texas statute denying

free public education to undocumented immigrant children violated the Equal Protection Clause, where the Court applied an intermediate level of scrutiny, reasoning that the law imposed a significant burden on a vulnerable group without advancing a substantial state interest).

However, courts have not been consistent in determining whether gender and sex are synonymous for the purposes of quasi-suspect classification. Some courts treat the terms as interchangeable, focusing on biological distinctions, while others consider the evolving understanding of gender as a social construct distinct from biological sex. This inconsistency has led to varied applications of intermediate scrutiny, particularly in cases involving transgender individuals or policies addressing gender identity. For example, while some courts have extended quasi-suspect classification protections to gender identity claims, others have declined to do so, instead applying rational basis review.

In *Bostock*, the Court held that an employer who fires an individual merely for being homosexual or transgender violates Title VII's prohibition against discrimination based on sex. The Court established for the purposes of Title VII gender was synonymous with sex for gender. However, it's important to note that the Supreme Court's interpretation in *Bostock* is limited to the statutory language and framework of Title VII, and it does not directly apply to other statutes or legal contexts outside of employment discrimination into other areas of law.

The *Bostock* decision, in its limited scope, avoided addressing the larger constitutional question, and as a result, whether transgender individuals should be afforded heightened scrutiny or considered a quasi-suspect class remains unresolved. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 681 (2020). However, the Court's clear decision to refrain from addressing this issue indicates that it did not intend for the decision to apply broadly. This suggests that transgender individuals

should not be treated as a quasi-suspect class, and therefore, our act should not be reviewed using a heightened scrutiny standard. The Court's omission implies that it did not see transgender status as warranting the same level of scrutiny typically applied to other protected classes, reinforcing that analyzing legislation impacting transgender rights under immediate scrutiny should not be expanded beyond the specific context of Bostock.

**1. If the court were to determine that intermediate scrutiny applies in this case, the State will still prevail**

In order to withstand intermediate scrutiny: 1. the classification must serve important governmental objectives; and 2. the means employed must be substantially related to achieving those objectives. *Craig*, 429 U.S. at 191; *United States v. Virginia*, 518 U.S. 515, 533.

The act in question serves an important governmental interest: protecting the mental and physical well-being of transgender minors. The State has a legitimate and compelling interest in promoting the health and safety of transgender youth. The regulation is carefully tailored to advance these objectives, ensuring that it is not overbroad or unnecessarily restrictive. *Inc. v. Ohio Dep't of Liquor Control*, 113 F.3d 614, 621 (6th Cir. 1997) (holding that the regulation prohibiting the sale of alcohol on Sundays by certain establishments served important governmental interests in promoting public health and safety, and that the regulation was substantially related to those interests).

The act underscores this interest by carefully delineating its legal scope and remedies to avoid broad sweeping legislation. The state seeks to protect children and their families through this act, which explicitly highlights that these remedies are available specifically for transgender minors who have been harmed. Drawing on evidence of risks associated with gender-affirming care for minors, the state has enacted this law as a necessary measure to safeguard transgender children's well-being.

Under intermediate scrutiny, states interest must be more than abstract and must be genuine and important. *U.S. v. Virginia*, 518 U.S. 515, 533 (1996) (holding that intermediate scrutiny requires the state to demonstrate that its classification serves "important governmental objectives" and that the discriminatory means employed are "substantially related to the achievement of those objectives"). New London's interest is clearly articulated throughout the act. The act outlines specific findings on the potential risks associated with gender-affirming treatments for minors, and the state, acting as guardians of public health and safety, has acted within its authority to uphold its compelling interest in protecting vulnerable children. By including enforceable penalties and consequences for violations, the legislature demonstrates that the statute is substantially related to achieving its important objective of safeguarding transgender children. Because the statute is substantially related, and the state objective is important it would survive intermediate scrutiny.

**D. Strict Scrutiny Should Not Apply Because Transgender Children Are Not a Suspect Class**

Strict scrutiny is the most rigorous form of judicial review. Government action is subject to strict scrutiny if it is directed at a suspect class or impedes a fundamental right. *St. John's United Church of Christ v. City of Chi.*, 502 F.3d 616, 637 (7th Cir. 2007) (holding that a city's zoning ordinance, which restricted the ability of churches to establish new places of worship in certain districts, served the important governmental interests of maintaining neighborhood character and that the ordinance was substantially related to those interests under intermediate scrutiny). The Court only considers classifications based on race, alienage, and national origin to be suspect. *City of Cleburne*, 473 U.S. at 440.

To survive strict scrutiny, the government must prove that the challenged action furthers a "compelling governmental interest" and is "narrowly tailored" to that interest." *Adarand*

*Constructors*, 515 U.S. at 215–17, 227 (holding that federal affirmative action programs that use race-based classifications must meet strict scrutiny by being narrowly tailored to serve a compelling governmental interest).

While the Court has not articulated a clear standard for determining whether a particular group or characteristic constitutes a suspect class, the court has steadfastly refused to expand suspect classes to beyond the historical groups of race, alienage, and national origin. The Court has considered a number of factors to establish groups suspect classification status, including but not limited to a class's historical subjection to discrimination, immutable characteristics, and minority to a political majority. *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984) (holding that race-based decisions did not meet the strict scrutiny standard, and the group in question—parents in a custody case—was not considered a suspect class); *Lyng v. Castillo*, 477 U.S. 635, 638 (1986) (holding that migrant farmworkers were not a suspect or quasi-suspect class and applied rational basis review to the policy, because the classification was rationally related to a legitimate government interest in controlling costs). Because gender is not a suspect class and historically has not been recognized as a suspect class, strict scrutiny does not apply.

**1. Even if the court applies the rigorous standard of strict scrutiny, the State will prevail**

**a. New London has a compelling government interest**

The State's interest in preserving the health and welfare of children is a paramount governmental interest. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (holding that the state has a compelling interest in protecting the health and welfare of children, particularly in regulating child labor, and that this interest is paramount in situations where the state seeks to impose restrictions for the well-being of minors, even when it might interfere with certain freedoms). This interest is particularly compelling when the life or safety of a child is at risk. As

enforced in *Santosky v. Kramer*, which emphasizes that “[i]f parental control falters, the State must play its part as *parens patriae* [and in such circumstances] the juvenile's liberty interest may . . . be subordinated to the State's '*parens patriae* interest in preserving and promoting the welfare of the child.” *Santosky v. Kramer*, 455 U.S. 745, 766 (1982). This principle is further supported by *Kanuszewski v. Mich.*, the State’s role as *parens patriae* allows it to subordinate parental authority when necessary to protect a child’s welfare, particularly in situations involving life-threatening or irreversible harm. *Kanuszewski v. Mich. HHS*, 927 F.3d 396, 403 (6th Cir. 2019). Together, these cases establish that the State’s compelling interest in safeguarding children’s welfare can justify interventions that temporarily limit parental authority to ensure the protection of vulnerable minors.

The act aligns with the principles established by the Court in both cases to build a unified argument for the State's paramount interest in protecting children under its *parens patriae* authority. The act highlights risk such as potential physical, mental, and emotional harm, this underscores the necessity of state intervention to safeguard vulnerable children. Protecting minors from such risks aligns with the State’s compelling interest in children's health and safety.

**b. The Act is narrowly tailored**

An act must be narrowly tailored to withstand strict scrutiny, meaning it must directly address a compelling governmental interest, utilize the least restrictive means to achieve its goal, and avoid being overinclusive or underinclusive, ensuring that no broader classifications are used than necessary to accomplish its purpose. *Adarand Constructors*, 515 U.S. at 215–17, 227.

The act is narrowly tailored to achieve this compelling interest without unnecessarily infringing on the constitutional rights of parents or transgender minors. It does not impose a

blanket prohibition on medical treatments but instead provides specific guidelines, remedies, and enforcement mechanisms. R. p. x. The legislation is grounded in legislative findings that emphasize the unknown risks of gender affirming medical treatments. R. p. iv. Through sections like the prohibitions (b)(1), the act ensures that the law directly addresses these concerns without overreach. This precise focus demonstrates that the statute is not an arbitrary or overly broad restriction, but a carefully crafted measure designed to protect children from harm.

The regulation advances a compelling governmental interest in protecting the health and safety of minors, and it is narrowly tailored to address specific risks without unnecessarily infringing on constitutional rights. The statute reflects a balanced approach that respects parental authority while fulfilling the State's critical duty to safeguard at risk children. Consequently, the statute would survive strict scrutiny review.

### **CONCLUSION**

For the aforesaid reasons, this Court should Deny Petitioner's Request for Preliminary Injunction affirm the Fourteenth Circuit's decision finding that 1) The act does not infringe on parental rights of Transgender children under the Due Process Clause and 2) The act does not violate transgender minors' rights under the Equal Protection Clause of the Fourteenth Amendment.

Respectfully Submitted,  
/s/ SABT  
Attorneys for Respondents, Michael Thomas, et al.