UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

AJ KWIATKOWSKI, et al., *Plaintiffs,* v. LESLIE COOLEY DISMUKES, et al., *Defendants.*	Case No. 3:26-cv-00098-SCR-WCM

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs are people in the custody of the North Carolina Department of Adult Correction (DAC) who have been diagnosed with gender dysphoria, a serious medical condition. DAC's longstanding policy authorized treatment for gender dysphoria based on patients' individual mental and physical health needs. Possible treatment included cross-sex hormone therapy and gender-affirming surgery.

But a recently enacted state law, known as HB805, forbids paying for those treatments with state funds unless a patient will experience "imminent physical harm." Mental health considerations are irrelevant. In this case, Plaintiffs challenge that provision under the Eighth Amendment. They allege that HB805 imposes a medically unjustified requirement — a gross deviation from the widely accepted standard of care and DAC's own policy — that forces patients to suffer "until [their] condition significantly deteriorates," *Gordon v. Schilling*, 937 F.3d 348, 359 (4th Cir. 2019), and even then may not allow adequate treatment.

Pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2), the named Plaintiffs respectfully ask the Court to certify a class consisting of all current and future people in DAC custody who have or will have gender dysphoria, and have been prescribed or may require cross-sex hormone therapy or gender-affirming surgery to treat gender dysphoria. Plaintiffs satisfy all of Rule 23's requirements.[1] Joinder of all individual class members is impracticable because there are likely dozens of putative class members in state custody, the class's fluid composition will fluctuate day to day, and the class contains future members who cannot be identified now. The commonality and typicality requirements are satisfied because all class members are subject to HB805's "imminent physical harm" requirement and all bring identical claims for relief. And the named Plaintiffs and their attorneys would adequately represent the class.

For these reasons and as discussed below, the Court should certify the proposed class. In the alternative, Plaintiffs ask the Court to certify the class on a provisional basis for the purpose of entering preliminary injunctive relief.[2]

[1] In the alternative, Plaintiffs propose two classes: (1) All current and future people in DAC custody who have or will have gender dysphoria and have been prescribed or may require cross-sex hormone therapy to treat gender dysphoria (the Hormone Class); and (2) All current and future people in DAC custody who have or will have gender dysphoria and have been prescribed or may require gender-affirming surgery to treat gender dysphoria (the Surgery Class). Certification of these classes is appropriate for the same reasons discussed below.

[2] A motion for a classwide preliminary injunction will be filed in tandem with the motion for class certification.

FACTS

I. DAC has long acknowledged that gender dysphoria is a serious medical condition that requires treatment based on a patient's individual needs, including their mental health.

The term "gender identity" is a well-established concept in psychology and medicine, referring to a person's internal sense of belonging to a particular gender. Every person has a gender identity. All human beings develop this elemental internal conviction of belonging to a particular gender, such as male or female. For transgender and gender non-conforming individuals, this deeply felt sense of gender does not align with the sex that they were assigned at birth. (Ex. 1, Declaration of Dr. Randi Ettner ¶¶ 20–22).[3]

Gender dysphoria is a serious medical condition that some, but not all, transgender and gender non-conforming people experience because of this disparity. (*Id.* ¶¶ 23, 30-31). It involves (1) a marked incongruence between an individual's sex assigned at birth and gender identity, (2) strong cross-gender identification, and (3) clinically significant distress or impairment of functioning. (*Id.* ¶ 32). Without adequate treatment, gender dysphoria can lead to debilitating psychological distress, self-mutilation, and suicide. (*Id.* ¶ 59).

Gender dysphoria is a medical condition recognized by the American Psychiatric Association and listed in the DSM-V and the World Health Organization's International Classification of Diseases-10. (*Id.* ¶¶ 24–29). The World Professional Association for

[3] Dr. Ettner is a clinical and forensic psychologist with expertise concerning the diagnosis and treatment of gender dysphoria. She has extensive experience treating transgender individuals with gender dysphoria in her clinical practice and has published numerous books and articles on the topic. She has also frequently served as an expert witness in federal court in cases concerning health care for incarcerated transgender persons. (Ettner Decl. ¶¶ 1–15 & App. A).

Transgender Health ("WPATH") publishes internationally accepted Standards of Care ("WPATH Standards") for treating gender dysphoria. *(Id.* ¶¶ 6, 47–48). They set forth "clinical guidelines" for gender-affirming medical interventions. The current WPATH Standards, published in 2022 as version 8, are the prevailing guidelines for medical professionals treating gender dysphoria. (*See id.* ¶ 7, 47).

The Fourth Circuit has observed that the WPATH Standards "represent the consensus approach of the medical and mental health community. . . and have been recognized by various courts, including this one, as the authoritative standards of care" in both carceral and non-carceral settings. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 595 (4th Cir. 2020) (citing *De'lonta v. Johnson*, 708 F.3d 520, 522–23 (4th Cir. 2013)). "There are no other competing, evidence-based standards that are accepted by any nationally or internationally recognized medical professional groups." *Id.* at 595–96 (quoting *Edmo v. Corizon, Inc.*, 935 F.3d 757, 769 (9th Cir. 2019)); *see also Zayre-Brown v. NCDPS*, No. 3:22-CV-191-MOC-DCK, 2024 WL 410243, at *5 (W.D.N.C. Feb. 2, 2024) (hereinafter "*Zayre-Brown I*") ("In the Fourth Circuit, requests for gender-affirming care are analyzed according to the WPATH standards.").

The WPATH Standards have been endorsed by the American Medical Association, the Endocrine Society, the American Psychological Association, the American Psychiatric Association, the World Health Organization, the American Academy of Family Physicians, the American Public Health Association, the National Association of Social Workers, the American College of Obstetrics and Gynecology, and theNational Commission on Correctional Healthcare. (Ettner Decl. ¶ 49).

The WPATH Standards establish treatment guidelines tailored to the needs of the individual patient. (Ettner Decl.¶¶ 50, 53). Treatments for gender dysphoria include

social transition, psychotherapy, gender-affirming hormone therapy, and gender-affirming medical procedures and surgeries to align an individual's primary sex characteristics (genitals) and/or secondary sex characteristics (e.g., breasts, facial hair) with their gender identity. (*Id.* ¶¶ 52, 66–89).

The Endocrine Society also has published guidelines concerning use of hormone therapy to treat gender dysphoria. Like the WPATH Standards, the Endocrine Society Guidelines are broadly recognized as providing authoritative clinical guidance. (*Id.* ¶ 49).

According to WPATH and the Endocrine Society, hormone therapy becomes necessary when social transitioning and psychotherapy prove ineffective in resolving a patient's dysphoria. For some patients, gender-affirming surgery becomes necessary if hormone therapy is not effective. (*Id.* ¶ 75). Without adequate treatment, patients face the risk of debilitating psychological distress that can lead to self-mutilation and suicide. (*Id.* ¶ 59). WPATH and the Endocrine Society do not require that a patient reach that stage of imminent physical harm before qualifying for any treatment. Rather, a key goal in treating any patient is *avoiding* such risks. (*Id.* ¶¶ 106–113).

For patients who have begun hormone therapy, ending it can have serious short- and long-term effects. Short-term effects typically include painful withdrawal symptoms such as chills, diarrhea, vomiting, cramps, and exacerbation of mental health symptoms. Long-term, patients face risks of bone-density loss and cardiac complications. (*Id.* ¶ 108).

For years, DAC (formerly "DPS") has recognized that gender dysphoria is a real medical condition that requires individualized treatment. DAC policy has also long recognized that, based on a patient's individual needs, including mental health needs, such

treatment may include hormone therapy and gender-affirming surgery.[4] (Ex. 7, Declaration of Tremayne Izzard ¶ 7; Ex. 6, Declaration of Lulubell Frazier ¶ 10; Ex. 5, Declaration of Pumpkin Snuggs ¶ 7).

This Court recently addressed DAC's process for evaluating and treating patients for gender dysphoria. *Zayre-Brown I*, 2024 WL 410243, at *1–2. In short, DAC had a multidisciplinary team of healthcare providers and prison administrators evaluate the healthcare needs of prisoners diagnosed with gender dysphoria. *Id.* at *1. DAC policy authorized accommodations and medical treatment, including hormone therapy and gender-affirming surgery, based on a patient's individual needs. *See id.* at *2. According to official DAC policy, imminent physical harm was not a requirement for any treatment.

In this case, all named Plaintiffs have been diagnosed with gender dysphoria, and all have been undergoing hormone therapy in DAC custody for years. This treatment has been critical to their mental health. (Ex. 4, Declaration of AJ Kwiatkowski Decl. ¶¶ 8–10; Inscoe Decl. ¶¶ 6–7; Snuggs Decl. ¶¶ 4–7; Frazier Decl. ¶¶ 10, 17; Izzard Decl. ¶¶ 6–7). Plaintiffs Frazier and Inscoe have also submitted requests for gender-affirming surgery to treat their gender dysphoria, which had long been pending with DAC and were denied after implementation of HB805. (Frazier Decl. ¶¶ 9, 14–15; Inscoe ¶¶ 13–14).

In June 2025, DAC reported that 42 out of 381 transgender prisoners had received hormone therapy in the past year, and 28 were receiving hormone therapy.[5] Plaintiffs are

[4] *See* DAC Division of Institutions Policy and Procedure Manual, Evaluation and Management of Transgender Offenders, Chapter F, §.4300 (2023), https://public.powerdms.com/NCDAC/tree/documents/2050350.

[5] Grace Vitaglione and Rachel Crumpler, *NC Senate Republicans seek to define biological sex, dismiss gender identity*, NC Health News (June 17, 2025), https://www.northcarolinahealthnews.org/2025/06/17/nc-senate-republicans-seek-to-define-biological-sex-dismiss-gender-identity/.

not aware of DAC ever having provided surgery for the purpose of treating gender dysphoria. *See Zayre-Brown I*, 2024 WL 410243, at *2 (DAC "has never recommended approval of gender-affirming surgery for an inmate's [gender dysphoria]").

II. HB805 imposes medically unsound obstacles to treatment for gender dysphoria.

On July 29, 2025, the North Carolina General Assembly overrode Governor Stein's veto to enact HB805. As relevant here, Section 3.(a)(b1) of the Act states:

> No State funds may be used, directly or indirectly, for the performance of or in furtherance of surgical gender transition procedures, or to provide puberty-blocking drugs or cross-sex hormones to any prisoner incarcerated in the State prison system . . . . Nothing in this subsection shall be construed to prevent State funds from being used, directly or indirectly, to address medical complications resulting in imminent physical harm, including the treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by a previously performed or privately funded gender transition procedure.

(Ex. 2, 2025 N.C. Sess. Laws 84).

Plaintiffs' attorneys sent DAC a public records request seeking information on how DAC would implement HB805. (Ex. 3, Declaration of Daniel K. Siegel ¶ 7). Based on the response, it appears that Defendant Arthur Campbell, DAC's chief medical officer, has been directing implementation of the new law. (*Id.*, Attach. A at 5–6).

Dr. Campbell is a defendant in the *Zayre-Brown* litigation. In that case, this Court found that Dr. Campbell had implemented a *de facto* ban on gender-affirming surgery based on his belief that the procedure was never medically necessary for anyone. *Zayre-Brown I*, 2024 WL 410243, at *2; *Zayre-Brown v. NCDPS,* No. 3:22-CV-191-MOC-DCK,

2024 WL 1641795, at *3 (W.D.N.C. Apr. 16, 2024) (hereinafter ("*Zayre-Brown II*"), *opinion vacated, appeal dismissed sub nom. Zayre-Brown v. NCDAC*, No. 24-6477, 2024 WL 4925046 (4th Cir. Nov. 25, 2024) (vacating injunction as moot following plaintiff's release from prison).

On September 22, 2025, Dr. Campbell wrote the following to other DAC officials concerning how current and new patients would be evaluated under the new law:

> For transgender offenders currently prescribed HRT [hormone replacement therapy], the individualized review will be completed by DAC's endocrinologist at the next evaluation for renewal of their current prescription. If the endocrinologist determines that "medical complications resulting in imminent physical harm" are likely to result from discontinuation of the therapy, then the medication can be continued accordingly. If those medical complications do not exist for that particular offender, then the medication can be discontinued.
>
> For new requests for initiation of HRT, the process will mirror that utilized for all other specialty treatment referrals, namely submission of request by the primary care practitioner (PCP), with routing through the existing Utilization Management (UM) system. These cases can be referred to the PCP through several mechanisms: (1) Offender self referral, (2) Referral from mental health staff, or (3) Referral from Facility staff. The PCP will evaluate the offender, complete an abbreviated/focused history and physical examination, and as appropriate, route request through the UM process for final determination. The UM review authority will base their determination solely on the risk of "medical complications resulting in imminent physical harm".

(Siegel Decl., Attach. A at 5–6 (italics and underlining omitted)).

This directive does not allow DAC healthcare providers to account for a patient's mental health or long-term physical health when considering treatment. And, in the entirety of DAC's response to Plaintiffs' inquiry, no DAC official acknowledges even the possibility that a patient could ever qualify for gender-affirming surgery under HB805.

Pursuant to this directive. Plaintiffs Kwiatkowski, Snuggs, Izzard, and Frazier had their gender-affirming hormone therapy reduced or cut off completely. All experienced painful withdrawal symptoms including vomiting, diarrhea, cold sweats, and worsened effects of gender dysphoria. (Kwiatkowski Decl. ¶¶ 18–19; Snuggs Decl. ¶¶ 8–10; Frazier Decl. ¶¶ 12–13; Izzard Decl. ¶ 10). Being cut off from their medication creates longer term health risks including cardiac complications and loss of bone density. (Etter Decl. ¶ 108).

Plaintiffs' clinical visits confirm that DAC did this solely because of HB805's new requirements — not because anyone's treating physician thought it medically prudent. (Kwiatkowski Decl. ¶ 14; Snuggs Decl. ¶ 9; Frazier Decl. ¶¶ 12–13; Izzard Decl. ¶ 9). Plaintiffs' medical records bear this out as well. For example, Plaintiffs Snuggs' records state that her hormones were "on hold pending endocrinology review due to HB805" and "had to be stopped because of NC HB 805." (Ettner Decl., App. D at 21, 11). Plaintiff Kwiatkowski's medical records state he was informed by Dr. Wani that DAC would "have to stop his HRT" due to "the recent North Carolina State law HB 805" before his hormones were tapered and discontinued. (*Id*. at 5).

DAC resumed Plaintiffs' hormone therapy but only after they experienced serious mental and physical pain. However, as with other prescription drugs, Plaintiffs must have their medications periodically renewed. Plaintiffs are terrified that they will have to endure this medically unnecessary "evaluation" again and again to prove that they will experience physical harm without their medication. (Kwiatkowski Decl. ¶ 26; Snuggs Decl. ¶¶ 12–15; Frazier Decl. ¶ 18; Izzard Decl. ¶ 15; Inscoe Decl. ¶ 15).

As for surgery, Plaintiff Inscoe filed an administrative grievance in September 2025 to check on her longstanding request for a vulvoplasty. In its response, DAC denied the surgery request citing HB805's prohibition on the use of state funds for such

procedures. (Inscoe Decl. ¶¶ 13–14, Attach. A). Plaintiff Frazier also filed a grievance concerning surgery around this time; DAC responded that the surgery had been denied as it was "[b]eyond control of agency" and that any grievance "shall be rejected at any level if it . . . [c]hallenges matters beyond the control of the Department." (Frazier Decl. ¶¶ 14-15).

CLASS CERTIFICATION STANDARD

To obtain class certification, Plaintiffs must satisfy all of Rule 23(a)'s requirements and one prong of Rule 23(b). Certification is appropriate under Rule 23(a) if: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(1)-(4).

Rule 23(b)(2) requires that Defendants "ha[ve] acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."

Courts may provisionally certify a class in tandem with entering preliminary injunctive relief. *E.g.*, *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036, 1041 (9th Cir. 2012); *Benjamin v. Oliver*, 800 F. Supp. 3d 1314, 1341 (N.D. Ga. 2025); *Padres Unidos de Tulsa v. Drummond*, No. CIV-24-511-J, 2025 WL 1444433, at *12 (W.D. Okla. May 20, 2025) (collecting cases). For provisional certification, plaintiffs must still satisfy Rule 23, but the "analysis is tempered . . . by the understanding that such certifications may be altered or amended before the decision on the merits." *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 180 (D.D.C. 2015) (quotation marks omitted).

ARGUMENT

Plaintiffs satisfy all of Rule 23's requirements. There are likely dozens of state prisoners who currently require or will require medical care now jeopardized by HB805, and the fluid nature of a prison population makes joinder of individual suits especially impracticable. All class members seek identical relief from the same statute. The named Plaintiffs will adequately represent the class, and undersigned counsel have significant experience with prison litigation, LGBTQ+ rights, class actions, and civil rights litigation generally.

I. The proposed class is so numerous that joinder of all members is impracticable.

Rule 23 requires that a proposed class be "so numerous that joinder of all members is impracticable[.]" Fed. R. Civ. Pro. 23(a)(1).

"Though no specified number is needed to maintain a class action, as a general guideline, a class that encompasses fewer than 20 members will likely not be certified while a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone[.]" *In re Zetia (Ezetimibe) Antitrust Litig.*, 7 F.4th 227, 234 (4th Cir. 2021) (cleaned up). The Fourth Circuit has affirmed certification of a class with as few as eighteen members. *Cypress v. Newport News Gen. and Nonsectarian Hospital Ass'n*, 375 F.2d 648 (4th Cir. 1967).

Moreover, "classes including future claimants generally meet the numerosity requirement due to the 'impracticality of counting such class members, much less joining them.'" *J.D. v. Azar*, 925 F.3d 1291, 1322 (D.C. Cir. 2019) (quoting 1 William B. Rubenstein, Newberg on Class Actions § 3:15 (5th Ed. 2018)). And when "a class's membership changes continually over time, that factor weighs in favor of concluding that joinder of all members is impracticable." *A. B. v. Hawaii State Dep't of Educ.,* 30 F.4th 828, 838

(9th Cir. 2022). "The fluid composition of a prison population is particularly well-suited for class status, because, although the identity of the individuals involved may change, the nature of the wrong and the basic parameters of the group affected remain constant." *Dean v. Coughlin*, 107 F.R.D. 331, 332–33 (S.D.N.Y. 1985).

Here, Plaintiffs propose a class consisting of all current and future people in DAC custody who have or will have gender dysphoria, and have been prescribed or will require hormone therapy or gender-affirming surgery to treat their gender dysphoria. In June 2025, DAC reported that 42 out of 381 transgender prisoners had received hormone therapy in the past year, and 28 were currently receiving hormone therapy.[6] These figures raise the presumption of impracticality. Moreover, because the proposed class is fluid (the prison population changes every day) and includes future members, it would be impracticable for all class members to file suit individually and have their claims joined before a single court.

Class members' limited resources also support certification. *See J.D.*, 925 F.3d at 1323. North Carolina prisoners have high rights of indigency, making it less likely that everyone affected by HB805 could effectively litigate an important constitutional issue on their own.[7]

Accordingly, Plaintiffs satisfy Rule 23(a)(1).

II. Class members share common questions because all suffer the same alleged harm and seek the same relief.

[6] *NC Senate Republicans seek to define biological sex, dismiss gender identity*, Grace Vitaglione and Rachel Crumpler, NC Health News (June 17, 2025), https://www.northcarolinahealthnews.org/2025/06/17/nc-senate-republicans-seek-to-define-biological-sex-dismiss-gender-identity/.

[7] *See* Gene Nichol, *Forcing Judges to Criminalize Poverty in North Carolina*, 4 UCLA Crim. Just. L. Rev. 227, 228–29 (2020).

Plaintiffs must show that "there are questions of law or fact common to the class[.]" Fed. R. Civ. P. 23(a)(2). This means that classwide "claims must depend upon a common contention" that is "capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "[E]ven a single common question will do." *Id*. at 359.

Courts routinely find commonality when plaintiffs in state custody seek declaratory and injunctive relief from a generally applicable policy. *See, e.g.*, *Scott v. Clarke*, 61 F. Supp. 3d 569, 587 (W.D. Va. 2014) (surveying cases and certifying class of all prisoners subject to "policies and practices" that "reflect substandard medical care"); *Buffkin v. Hooks*, No. 1:18CV502, 2019 WL 1282785, at *12 (M.D.N.C. Mar. 20, 2019) (certifying statewide class challenging prison policy on hepatitis C treatment); *Bumgarner v. NCDOC*, 276 F.R.D. 452, 454 (E.D.N.C. 2011) (certifying statewide class of all prisoners "denied the benefits of the DOC's sentence reduction credit programs by reason of their disabilities"); *Parsons v. Ryan*, 754 F.3d 657, 678 (9th Cir. 2014) (affirming statewide class certification and explaining that "every inmate suffers exactly the same constitutional injury when he is exposed to a single statewide . . . policy or practice that creates a substantial risk of serious harm"). These policies provide the "glue" holding class members' claims together. *See Wal-Mart*, 564 U.S. at 352.

Importantly, "the commonality requirement does not require that all class members share identical factual histories." *Scott*, 61 F. Supp. 3d at 586. Nor does it matter that "a presently existing risk may ultimately result in different future harm for different inmates—ranging from no harm at all to death." *Id.* (quoting *Parsons,* 754 F.3d at 678–79).

What matters is that all class members are subject to the same policy that creates risks of harm. *See, e.g.*, *Buffkin*, 2019 WL 1282785, at *11 (certifying class and enjoining hepatitis C policy in part because it was "not justified by any medical reason").

Here, Plaintiffs challenge Section 3.(a)(b1) of HB805 under the Eighth Amendment. Plaintiffs must first prove that gender dysphoria is an objectively serious medical condition: one that has "been diagnosed by a physician as mandating treatment or is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Gordon v. Schilling*, 937 F.3d 348, 356 (4th Cir. 2019) (quoting *Scinto v. Stansberry*, 841 F.3d 219, 225 (4th Cir. 2016)). The answer to this question will be the same for all class members.

Plaintiffs will also have to prove deliberate indifference to their serious medical conditions. *Id.* at 357. "Deliberate indifference may occur where a prison official, having knowledge of a significant risk to inmate health or safety, administers blatantly inappropriate medical treatment, acts in a manner contrary to the recommendation of specialists, or delays a prisoner's treatment for non-medical reasons, thereby exacerbating his pain and suffering." *Perez v. Fenoglio*, 792 F.3d 768, 777 (7th Cir. 2015) (cleaned up). Prison officials may not "withhold treatment from an inmate who suffers from a serious, chronic disease until the inmate's condition significantly deteriorates." *Gordon,* 937 F.3d at 359. This includes treatment for gender dysphoria. *De'lonta v. Johnson,* 708 F.3d 520, 526 (4th Cir. 2013).

Courts have found commonality where prisoners alleged that policies prohibiting gender-affirming care demonstrated deliberate indifference. *E.g.*, *Kingdom v. Trump*, No. 1:25-CV-691-RCL, 2025 WL 1568238, at*14 (D.D.C. June 3, 2025) ("plaintiffs do not claim that all class members are actually injured by the denial of gender-affirming care,

but rather by a blanket policy that may prevent them from accessing such care, should they be deemed to need it due to their shared medical condition"); *Benjamin*, 800 F. Supp. 3d at 1344–45 (plaintiffs did "not seek a one-size-fits-all treatment regimen, [but] only to receive hormone therapy as medically necessary without regard to [statutory] restrictions"); *Robinson v. Labrador*, 747 F. Supp. 3d 1331, 1345 (D. Idaho 2024) (whether a "blanket prohibition on hormone therapy . . . is medically unacceptable as to those who would otherwise be eligible and whether it requires prison medical personnel to consciously disregard excessive risks to the health of the proposed class members are questions common to the proposed class").

Here, Plaintiffs allege that HB805 imposes deliberate indifference by creating a medically unsound barrier to gender-affirming care: patients only qualify if they will suffer "imminent physical harm" without it. This creates a serious risk that patients who have a real medical need for this care will go without it.

For hormone therapy, patients can only continue treatment by undergoing a dangerous and painful "evaluation" in which their prescribed medication is reduced or cut off — not because any doctor thinks it prudent, but because the statute requires it. (Ettner Decl. ¶ 143; Kwiatkowski Decl. ¶ 14; Snuggs Decl. ¶¶ 8–10; Frazier Decl. ¶¶ 11–16; Izzard Decl. ¶ 9). As another court recently put it, taking prisoners off hormones pursuant to a statute is "not a medical judgment" but "a policy judgment." *Benjamin*, 800 F. Supp. 3d at 1336. Then, if a patient does not display sufficient physical pain, they must continue suffering the unchecked symptoms of their gender dysphoria. *See id.*

So too for prisoners who need to initiate hormone therapy. Whether they receive treatment depends "solely on the risk of 'medical complications resulting in imminent physical harm.'" (Siegel Decl., Attach. A at 6). It is unclear how a patient could clear this

hurdle if they are not being forced to experience withdrawal symptoms. Perhaps a patient could qualify if their condition deteriorates and they wind up on the verge of self-mutilation or suicide. (Ettner Decl. ¶ 112). That, however, would be entirely inconsistent with sound medical practice (*id.* ¶¶ 106–113), and the Eighth Amendment does not permit such treatment of people in the state's care. *See Gordon,* 937 F.3d at 359; *Helling v. McKinney,* 509 U.S. 25, 33 (1993) (explaining that "the Eighth Amendment protects against future harm" and "a remedy for unsafe conditions need not await a tragic event").

Moreover, Defendants appear to believe HB805 will *never* permit gender-affirming surgery. Plaintiffs Frazier and Inscoe have been told that under the new law, surgery will not be considered at all. (Frazier Decl. ¶ 15; Inscoe Decl. ¶¶ 13–14). And, as noted above, Defendant Campbell – whose directive on implementing HB805 doesn't even mention surgery — believes that gender-affirming surgery is never medically necessary for anyone. *Zayre-Brown II*, 2024 WL 1641795, at *1, *3. This Court has already held such a blanket ban unconstitutional, *id.* at *3, and multiple courts have found such claims amenable to classwide resolution. *See Kingdom*, 2025 WL 1568238, at *13–14; *Robinson*, 747 F. Supp. 3d at 1345–46.

In sum, all class members' claims involve proving that Section 3.(a)(b1) of HB805 imposes a medically inappropriate barrier to adequate treatment for gender dysphoria, thereby creating unconstitutional risks of harm. Plaintiffs will show that determining who gets treatment based entirely on the imminent-physical-harm standard is never appropriate for anyone. Plaintiffs therefore satisfy Rule 23(a)(2).

III. The named Plaintiffs' claims are typical of the class claims because they are identical.

Rule 23's typicality requirement "tends to merge with the commonality and adequacy-of-representation requirements. The representative party's interest in prosecuting his own case must simultaneously tend to advance the interests of the absent class members." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006) (citation omitted).

Here, as discussed above, the named Plaintiffs' claims and the relief sought are identical to those of unnamed class members. Plaintiffs therefore satisfy Rule 23(a)(3). *See Kingdom*, 2025 WL 1568238, at *14.

IV. Plaintiffs and their counsel will adequately represent the class.

"The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent. A class representative must be part of the class and possess the same interest and suffer the same injury' as the class members." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625–26 (1997) (cleaned up).

Here, the named Plaintiffs are part of the proposed class — all have confirmed diagnoses of gender dysphoria, all are currently prescribed hormone therapy, and two are candidates for gender-affirming surgery. They have no conflicts of interest with other class members, understand their responsibility to act in the best interests of the class and, as discussed above, they have identical interest and alleged injury. (Kwiatkowski Decl. ¶ 28; Frazier Decl. ¶ 20; Snuggs Decl. ¶ 16; Inscoe Decl. ¶ 16; Izzard Decl. ¶ 16). The Court should appoint them as class representatives.

Plaintiffs' attorneys are also qualified to represent the proposed class. Under Rule 23(g)(1), relevant considerations include "the work counsel has done in identifying or investigating potential claims in the action," "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action," "counsel's

knowledge of the applicable law," and "the resources that counsel will commit to representing the class[.]"

Plaintiffs' attorneys with the ACLU of North Carolina and Emancipate NC have extensive experience with prison litigation, the rights of LGBTQ+ people, class actions, and civil rights litigation generally. They have already devoted significant resources to investigating and litigating this case and are prepared to continue doing so for its duration. (Siegel Decl. ¶¶ 4–7; Ex. 9, Declaration of Elizabeth G. Simpson ¶¶ 3–5).

V. Defendants are acting on grounds generally applicable to the class.

Rule 23(b)(2) requires that a defendant "has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." The relief sought must be "indivisible," meaning that the relief for any individual class member can only be obtained if the court enjoins the actions of the opposing party "as to all of the class members." *Wal-Mart*, 564 U.S. at 360.

Congress created this rule "to facilitate civil rights class actions." *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 330 n.24 (4th Cir. 2006). Rule 23(b)(2) "is almost automatically satisfied in actions primarily seeking injunctive relief." *CASA, Inc. v. Trump*, 793 F. Supp. 3d 703, 717 (D. Md. 2025) (quoting *Baby Neal v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994)). And the Supreme Court recently noted the importance of class actions in providing universal relief against broadly applicable statutes and policies. *See Trump v. CASA, Inc.*, 606 U.S. 831, 849 (2025); *id.* at 869 (Kavanaugh, J., concurring) (specifically noting importance of Rule 23(b)(2)).

Courts regularly certify (b)(2) classes of plaintiffs in state custody seeking to enjoin a generally applicable law or policy. As discussed above, certification is appropriate in these cases even when individual class members have varying factual circumstances and may ultimately suffer different degrees of injury. *See Jonathan R. v. Justice*, 344 F.R.D. 294, 304 (S.D.W. Va. 2023) (certifying class and discussing cases)*; Scott*, 61 F. Supp. 3d at 591; *Buffkin*, 2019 WL 1282785, at *12. Courts addressing recent challenges to prohibitions on gender-affirming care in prisons have also found the rule satisfied. *Kingdom*, 2025 WL 1568238, at *16 ("Enjoining the BOP [policy] will provide swift, indivisible relief to all plaintiffs during the pendency of this litigation."); *Robinson*, 747 F. Supp. 3d at 1349 ("An injunction on the Act would provide relief to each class member, and in no way differentiates between class members."); *Benjamin*, 800 F.Supp.3d at 1345 (similar).

Here, as discussed above, all class members would be subject to HB805's provisions concerning gender-affirming medical care in prison. All class members would have identical Eighth Amendment claims seeking identical relief: a declaration that Section 3.(a)(b1) violates the Eighth Amendment and an injunction prohibiting its enforcement. With that relief, all class members would be eligible to begin or resume gender-affirming care under DAC's previous policy, which accounted for patients' mental health needs and did not require that a patient face imminent physical harm. No class member would be entitled to a different ruling from the Court. Therefore, Rule 23(b)(2) is satisfied.

CONCLUSION

The Court should certify the proposed class on either a regular or provisional basis, appoint the named Plaintiffs as class representatives, and appoint Plaintiffs' counsel as class counsel.

Respectfully submitted this 18th day of March, 2026.

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CERTIFICATE OF SERVICE

I certify that on March 18, 2026, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will effect service on all counsel of record.

Respectfully submitted this the 18th day of March, 2026.

/s/ Jaclyn A. Maffetore
Jaclyn A. Maffetore

Counsel for Plaintiff

CERTIFICATE OF AI COMPLIANCE

Pursuant to the Court's standing order on the use of artificial intelligence, Docket No. 3:24-mc-104, I hereby certify that no artificial intelligence was employed in the research for the preparation of the foregoing document except for such artificial intelligence embedded in Westlaw. I further certify that every statement and citation to authority in the foregoing document has been checked by an attorney in this case or a paralegal working at their direction as to the accuracy of the proposition for which it is offered and the citation to authority provided.

Respectfully submitted this the 18th day of March, 2026.

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