

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

SOUTHAMPTON COMMUNITY
HEALTHCARE, formerly known as
SOUTHAMPTON HEALTHCARE, INC.;
KELLY STORCK; A.S., as next friend and on
behalf of her minor child R.S.; N.F., as next
friend and on behalf of his minor child A.F.;
and LOGAN CASEY;

Plaintiffs,

v.

ANDREW BAILEY, in his official capacity as
Attorney General for the State of Missouri,

207 West High Street,
Jefferson City, MO 65102,
Defendant.

Case No. _____

Division: _____

**PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER**

Plaintiffs, through counsel, move this Court, pursuant to Rule 92.02 of the Missouri Supreme Court Rules, to enter a temporary restraining order (“TRO”) to enjoin Defendant from implementing, enforcing, or applying any provision of the Emergency Rule codified at 15 CSR 60-17.010 and titled “Experimental Interventions to Treat Gender Dysphoria” (the “Emergency Rule” or “Rule”). In support of their Motion, Plaintiffs rely on and incorporate by reference the allegations of the Petition for a Temporary Restraining Order, Injunctive Relief, and Declaratory Relief (“Petition”) and the arguments made in the Memorandum in Support of this Motion, filed herewith, and further state as follows:

1. The content of the Emergency Rule and the process through which it was developed, adopted, and promulgated do not comply with Revised Statutes of Missouri Sections 536.014, 536.021, and 536.025, which provide important limitations on the ability of state agencies to issue

agency rules. As a result, the Emergency Rule is invalid. The instant requested relief is tailored to maintaining the *status quo* until these important issues can be heard and the upcoming request for injunctive relief merits addressed.

2. Provision of gender-affirming care is not a new issue; rather, it is well-established, widely-accepted, safe, and effective medical care that is supported by decades of scientific study and clinical experience, including in Missouri. Even while it has been a focus of hundreds of politically-motivated legislative attacks in the last two years, it has never been considered an “emergency.” That is until now, when Defendant Bailey arbitrarily and capriciously decided it was.

3. On April 13, 2023, without engaging in the typical agency rule-making process of RSMo Section 536.021, which provides for public notice and comment, Defendant Bailey adopted an emergency rule, codified at 15 CSR 60-17.010 (the “Emergency Rule”), purportedly pursuant to the procedures set out in RSMo Section 536.025.

4. The Emergency Rule conflicts not only with the medical and scientific consensus surrounding gender-affirming care and the voluminous scientific literature and decades of clinical experience supporting it, but also with the medical, ethical, and legal duties that providers owe to their patients. The Emergency Rule effectively precludes many, if not most, transgender Missourians, not just adolescents, from receiving medically indicated, safe, and effective evidence-based gender-affirming medical care from Missouri health care providers. The Rule makes it a class E felony, punishable by up to four years in prison and fines of \$10,000, for any person to provide transgender individuals with or refer them to gender-affirming healthcare, including puberty-blockers, hormone therapy, and surgical interventions, if the vague and arbitrary provisions of the Emergency Rule are not met.

5. Defendant Bailey did not have authority to adopt the Emergency Rule via the emergency rule-making provisions. Additionally, and in the alternative, the Emergency Rule is invalid, pursuant to RSMo Section 536.014.

6. As demonstrated in Plaintiffs' memorandum in support of this motion, Plaintiffs are likely to prevail on the merits of their claims; a temporary restraining order is necessary to prevent irreparable harm to Plaintiffs; and such injunctive relief is in the public interest.

7. Section RSMo 536.025 requires that the state agency, in order to be authorized to adopt an emergency rule:

- (1) Finds that an immediate danger to the public health, safety or welfare requires emergency action or the rule is necessary to preserve a compelling governmental interest that requires an early effective date as permitted pursuant to this section;
- (2) Follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances;
- (3) Follows procedures which comply with the protections extended by the Missouri and United States Constitutions; and
- (4) Limits the scope of such rule to the circumstances creating an emergency and requiring emergency action.

8. Defendant Bailey did not comply with any of these requirements.

9. There are no emergent conditions either constituting an immediate danger to public health, safety or welfare or requiring an early effective date to preserve any governmental interest, let alone a compelling interest. Provision of gender-affirming care is not a new phenomenon demanding emergency action.

10. The procedures employed by Defendant Bailey were not calculated to assure fairness to all interested persons and parties. Instead, he ignored and/or misconstrued the overwhelming evidence in support of gender-affirming healthcare, including reports from prominent medical associations, research papers from leading medical institutes, and the will of

Missourians; refused to permit public notice or comment on the Rule; and even refused to stay enforcement of the Rule pending the Court’s consideration of this Motion. At every step, Defendant Bailey has sought to exclude the public’s voice in order to unilaterally and unlawfully legislate a new restriction to access to essential medical care.

11. Beyond the definitions of “Covered Gender Transition Intervention” and “Intervention,” the Emergency Rule does not define a single term. However, even the definition of “Intervention” is vague. For instance, carved out from the definition of “Intervention” is “continuing prescription or provision of a specific intervention that has already begun, so long as the person or health organization promptly seeks to initiate the treatments and assessments called for by these subparagraphs.” The Rule does not clarify how prompt the medical providers must be in implementing the remaining requirements of the Rule, or whether they can continue provision under the carve-out to those that do not comply with the requirements of the Rule after its implementation. This leaves both medical providers and transgender patients currently receiving care without a clear understanding of whether continued care is permitted or prohibited.

12. Defendant Bailey openly admits that the Emergency Rule regulates transgender adults as well as minors. And yet Defendant Bailey’s purported justification for the Emergency Rule focuses almost exclusively on the perceived dangers related to provision of gender-affirming care to transgender minors. The Emergency Rule is accordingly not limited to the stated circumstances allegedly requiring emergency action.

13. Defendant Bailey lacked any authority to adopt the Emergency Rule pursuant to his emergency rule-making power, violating both RSMo Sections 536.025 and 536.021, which provide the process for traditional agency rulemaking.

14. Further, and in the alternative, the Emergency rule is also invalid under RSMo Section 536.014, which provides that no agency rule is valid where:

- (1) There is an absence of statutory authority for the rule or any portion thereof; or
- (2) The rule is in conflict with state law; or
- (3) The rule is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected.

15. As described above and in the accompanying Memorandum, Defendant Bailey acted in the absence of statutory authority under Sections 536.021 and 536.025 to adopt the Emergency Rule. Further the Rule is in conflict with state law, including these sections, as well as Sections 407.020, 407.025, and 538.210, among others. Finally, the Emergency Rule is arbitrary and capricious and results in substantial inequity and unreasonable burdens on transgender adolescents and adults who are now largely prohibited from receiving medically necessary, safe, effective, and often lifesaving gender-affirming care.

16. Plaintiffs will be subjected to irreparable harm if the injunction is not granted. For instance, the loss of access to gender-affirming care will result in transgender individuals experiencing heightened levels of gender dysphoria as treatment of this serious medical condition becomes unobtainable. This will result in significant emotional distress, anxiety, depression, and, in many cases, suicidal ideation or completion.

17. Denial of medically necessary health care is sufficient to show immediate and irreparable harm. *See, e.g., Bowen v. City of New York*, [476 U.S. 467, 483-84](#) (1986) (finding denial of benefits caused irreparable injury by exposing plaintiffs to “severe medical setback[s]” or hospitalization); *Smith v. W. Elec. Co.*, [643 S.W.2d 10, 13](#) (Mo. App. 1982) (finding exposure to conditions deleterious to one’s health is an irreparable harm “particularly . . . where the harm has not yet resulted in full-blown disease or injury”); *Brandt v. Rutledge*, [551 F. Supp. 3d 882](#) (E.D.

Ark. 2021) (finding irreparable harm where plaintiffs “would be denied access to hormone treatment (including needing to stop treatment already underway), undergo endogenous puberty—a process that cannot be reversed—and suffer heightened gender dysphoria”), *aff’d*, [47 F.4th 661](#) (8th Cir. 2022).

18. This is especially so where, in the case of transgender adolescence, loss of gender-affirming care will cause the minor to experience endogenous puberty, which results in irreversible physical and physiological changes. “[D]eprivations of temporally isolated opportunities, are exactly what [injunctive relief is] intended to relieve.” *D.M. by Bao Xiong v. Minnesota State High School League*, [917 F.3d 994, 1003](#) (8th Cir. 2019).

19. The public interest also supports issuance of a temporary restraining order prohibiting enforcement of the Emergency Rule. This requested restraint seeks only to compel Defendant to comply with the laws of Missouri and the United States, including those set out at RSMo Sections 536.014; 536.021; 536.025, 407.020, 407.025, and 538.210. “Compliance with the law does not pose a burden on a defendant.” *Lankford v. Sherman*, [2007 WL 689749](#), at *3 (“The comparative harm to the Defendant, however, is small. Plaintiffs’ injunction seeks only that Defendant comply with federal law. Compliance with the law does not pose a burden on a defendant.” (internal citations omitted)); *White v. Martin*, [2002 WL 32596017](#), *9 (W.D. Mo. 2002) (“[E]nforcement of laws passed by Congress is in the public interest, even when that means enjoining allegedly illegal actions by another government body.”); *Glenwood Bridge, Inc. v. City of Minneapolis*, [940 F.2d 367, 372](#) (8th Cir. 1991).

20. A proposed Temporary Restraining Order accompanies this motion as Exhibit 1.

WHEREFORE, for the foregoing reasons, and those set forth in the Petition and in the Memorandum in Support of this Motion, Plaintiffs request this Court to:

1. Enter a temporary restraining order implementing, enjoining, restraining and prohibiting Defendant, and all of their agents, servants, representatives, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly enforcing any provision of the Emergency Rule; and
2. Grant Plaintiffs such other and further relief as the Court deems just and proper.

Dated: April 24, 2023

Respectfully submitted,

By: /s/ J. Bennett Clark

GILLIAN R. WILCOX, #61278
JASON ORR, #56607
ACLU of Missouri Foundation
406 West 34th Street, Ste. 420
Kansas City, MO 64111
gwilcox@aclu-mo.org
jorr@aclu-mo.org

ANTHONY E. ROTHERT, #44827
JONATHAN SCHMID, #74360
ACLU of Missouri Foundation
906 Olive Street, Suite 1130
St. Louis, Missouri 63101
Phone: (314) 652-3114
arothert@aclu-mo.org
jschmid@aclu-mo.org

NORA HUPPERT*
KARA INGELHART*
**Lambda Legal Defense
and Education Fund, Inc.**
65 E. Wacker Pl., Suite 2000
Chicago, IL 60601
(312) 663-4413
nhuppert@lambdalegal.org
kingelhart@lambdalegal.org

OMAR GONZALEZ-PAGAN*
**Lambda Legal Defense
and Education Fund, Inc.**
120 Wall Street, 19th Floor
New York, NY 10005
(212) 809-8585
ogonzalez-pagan@lambdalegal.org

J. BENNETT CLARK, #30907
MICHAEL E. ROWAN, #72992
MARY GRACE E. WARREN, #73147
Bryan Cave Leighton Paisner LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102
(314) 259-2000
ben.clark@bclplaw.com
michael.rowan@bclplaw.com
marygrace.warren@bclplaw.com

JAMES D. LAWRENCE, #53411
TYLER JERRAD BLAKE BRIGGS, #73151
Bryan Cave Leighton Paisner LLP
One Kansas City Place
1200 Main Street, Suite 3800
Kansas City, Missouri 64105
(816) 374-3200
jdlawrence@bclplaw.com
tj.briggs@bclplaw.com

* Application for admission *pro hac vice*
forthcoming.

Attorneys for Plaintiffs