APP NO. 23A-_____

In the Supreme Court of the United States

RAÚL R. LABRADOR, in his official capacity as Attorney General of the State of Idaho,

Applicant,

v.

PAM POE, by and through her parents and next friends Penny and Peter Poe, et al.,

Respondents.

To the Honorable Elena Kagan,
Associate Justice of the United States Supreme Court
and Circuit Justice for the Ninth Circuit

EMERGENCY APPLICATION FOR STAY PENDING APPEAL

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PARTIES TO THE PROCEEDING

The Applicant is Raúl R. Labrador, in his official capacity as Attorney General of the State of Idaho (Defendant-Appellant below).

The Respondents are Pam Poe, by and through her parents and next friends, Penny and Peter Poe; Penny Poe; Peter Poe; Jane Doe, by and through her parents and next friends, Joan and John Doe; Joan Doe and John Doe (Plaintiffs-Appellees below).

Jan M. Bennetts, in her official capacity as Ada County Prosecuting Attorney, and Individual Members of the Idaho Code Commission in their official capacities are defendants in the district court.

LIST OF ALL PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit, No. 24-142, *Poe* v. *Labrador et al.*, orders entered January 30, 2024 and February 9, 2024.

U.S. District Court for the District of Idaho, No. 1:23-cv-00269-BLW, *Poe* v. *Labrador et al.*, order entered December 26, 2023.

DECISIONS BELOW

The district court's decision granting a preliminary injunction will be published in the Federal Supplement and is available at 2023 WL 8935065 and reprinted at Appendix ("App.") A. The Ninth Circuit's unreported panel order denying the motion to stay pending appeal is reprinted at App.B. The Ninth Circuit's unreported panel order denying reconsideration en banc on behalf of the Court is reprinted at App.C.

JURISDICTION

Plaintiffs filed their Complaint in this matter on May 31, 2023, against the Attorney General (here, "Idaho") and other parties. *Poe* v. *Labrador*, No. 1:23-cv-00269-BLW, ECF 1. They moved for a preliminary injunction on July 21, 2023, *id.*, ECF 32, which the district court granted on December 26, 2023, *id.*, ECF 78 (App.A). Idaho filed a timely notice of appeal on January 3, 2024, *id.*, ECF 79, and moved the district court on an expedited basis for a stay pending appeal, *id.*, ECF 80 & 81. The district court denied that motion on January 16, 2024, *id.*, ECF 88, and Idaho moved for a stay in the Ninth Circuit on January 18, 2024. *Poe* v. *Labrador*, No. 24-142, ECF 14. A panel of the Ninth Circuit denied that motion in an unreasoned order on January 30, 2024, *id.*, ECF 24 (App.B), and Idaho moved for reconsideration en banc on February 7, 2024, *id.*, ECF 28. Citing local rules, the same Ninth Circuit panel denied that motion on behalf of the en banc court on February 9, 2024, without input from any other Ninth Circuit judges. *Id.*, ECF 31 (App.C).

This Court has jurisdiction under 28 U.S.C. §§ 1254(1) and 1651(a) and Supreme Court Rule 23. Per Supreme Court Rule 23.3, Idaho is a party to the judgment sought to be reviewed, and the relief now requested was first sought in the court below.

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To the Honorable Elena Kagan, as Circuit Justice for the Ninth Circuit:

This stay application presents a recurring question that five members of this Court have identified as warranting review: whether a district court may facially enjoin a state law and prohibit its enforcement against non-parties. See *Griffin* v. *HM Fla.-ORL, LLC*, 144 S. Ct. 1, 1–2 (2023).

The state-wide universal injunction here concerns Idaho's Vulnerable Child Protection Act (VCPA), a statute regulating a list of medical procedures used to treat gender dysphoria in minors, and it goes far beyond any relief the Plaintiffs needed or had standing to seek. The Plaintiffs both want access to a single procedure, but the injunction applies to all 20+ procedures that the VCPA regulates. The Plaintiffs are two minors and their parents, and the injunction covers 2 million.

Idaho sought an emergency stay pending appeal, but a Ninth Circuit motions panel denied it in a one-sentence unreasoned order. App.B (Wardlaw, Paez & Nguyen, J.J.). And when Idaho sought emergency en banc review, the same three judges denied it two days later "on behalf of" the en banc court—a local rule regarding unpublished motion orders permitted the original stay panel to decide the en banc petition without involving the other judges. App.C (Wardlaw, Paez & Nguyen, J.J.).

The district court's injunction and the Ninth Circuit's unreasoned orders violate controlling precedent on the limits of equitable remedies. That violation matters because it harms non-parties, leaving vulnerable children subject to procedures that even Plaintiffs' experts agree are inappropriate for some of them. This

Court should grant a stay of the injunction pending appeal to allow Idaho to enforce the VCPA except as to Plaintiffs. This is warranted for three reasons.

First, Idaho will likely succeed both as to the scope of the injunction and on the merits. Federal courts may only grant equitable relief available at common law. And as many members of this Court have written, that relief has always been party-specific. This Court has repeatedly vacated injunctions ordering defendants not to act against non-parties. Such broad relief is available only where plaintiffs meet Rule 23 class-action requirements, which Plaintiffs do not. Still, lower courts have increasingly issued universal injunctions, which stunt the development of the law, encourage forum-shopping, and can subject parties to conflicting universal orders.

Not stopping there, the district court's universal injunction also violated the well-settled requirements for facial injunctions. Plaintiffs could not and did not show the VCPA is unconstitutional in every application because even organizations that promote the regulated procedures—like the Endocrine Society—agree that some of them (like genital surgeries) are inappropriate for minors, and Plaintiffs' own experts conceded that the banned interventions should not be offered in some circumstances. Most egregiously, the district court exceeded its jurisdiction by invalidating *every* VCPA provision even though the Plaintiffs lack standing to challenge most of them. Idaho is likely to prevail in its appeal from these many legal errors.

Second, the equities decisively favor a stay pending appeal. Every day Idaho's law remains enjoined exposes vulnerable children to risky and dangerous medical procedures and infringes Idaho's sovereign power to enforce its democratically

enacted law. These procedures have lifelong, irreversible consequences, with more and more minors voicing their regret for taking this path. Pamela Paul, *As Kids, They Thought They Were Trans. They No Longer Do*, The New York Times (Feb. 2, 2024), nyti.ms/3ON6qSh. Meanwhile, Plaintiffs suffer no harm at all—let alone irreparable harm—if the injunction applies to them but not to others.

Third, this case presents a question as to which there is a "reasonable probability" this Court will grant review if the Ninth Circuit affirms. *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). As to the scope of the injunction, this Court has never authorized universal injunctions, and several circuits prohibit them, yet their use has grown increasingly common in high-stakes legal controversies. In *Griffin* v. *HM Fla.-ORL, LLC*, five members of this Court already identified this question as ripe for review, and this case raises none of the First Amendment issues that prevented the Court from addressing the question in *Griffin*.

And as to the merits, two circuits have already sided with Idaho on the questions in this case, one more is likely to follow en banc, and if the Ninth Circuit eventually upholds the injunction, it will probably create a circuit split demanding this Court's intervention. Br. in Opp. at 16–20, *L.W. ex rel. Williams* v. *Skrmetti*, No. 23-466 (Feb. 2, 2024). Because this case has a better-developed factual record, it would provide a superior vehicle for addressing the questions at issue compared to the ones presently before the Court.

The judicial excesses displayed in the injunction are a recurring problem in this district court and the Ninth Circuit. Last month, this Court granted a stay

pending appeal of an injunction issued by the same district court judge (Winmill, J.) that the en banc Ninth Circuit likewise left in place in an unreasoned order. *Idaho* v. *United States*, No. 23A470 (U.S. Jan. 5, 2024). See also *Hecox* v. *Little*, 9th Cir. Nos. 20-35813, 20-35815 (facial injunction first entered against Idaho law on questionable standing grounds in August *2020* remains in place); *Matsumoto v. Labrador*, No. 23-3787 (9th Cir. Jan. 30, 2024) (motion to stay facial injunction of Idaho law denied by same panel as this case on same day). Now, in this case, the district court and the Ninth Circuit continue to ignore this Court's precedents and disregard Idaho's sovereignty. This Court has previously granted requests to stay "so much of" the injunction "as grants relief to persons other than" plaintiff "pending disposition of the appeal." *U.S. Dep't of Def.* v. *Meinhold*, 510 U.S. 939, 939 (1993). It should do so again here.

STATEMENT OF THE CASE

A. Medical Transition Procedures Involve Many Different Risks.

There is a robust, worldwide "medical and policy debate" about how best to treat gender dysphoria in minors. *L.W. ex rel. Williams* v. *Skrmetti*, 73 F.4th 408, 419 (6th Cir. 2023). Some advocate procedures that block natural puberty, cause irreversible and often sterilizing physical changes, and surgically alter the body to look like the opposite sex. Others, including concerned parents, European health authorities, and systematic reviewers recognize these procedures as dangerous and unproven.

Gender dysphoria is a DSM-V mental health condition that arises when people experience "marked incongruence" between their biology and their felt gender lasting

at least six months and featuring "clinically significant distress." App.D.44–45, 97, 119–121. In children, feelings of gender incongruence typically resolve over the course of adolescence without medical intervention. App.D.47, 99. As the Endocrine Society puts it, a "large majority (about 85%) of prepubertal children with a childhood diagnosis" do not continue to experience dysphoria or incongruence through adolescence. App.D.99. And no one can predict beforehand which child's gender incongruence will naturally cease and which child's will not. App.D.101–02.

For reasons no one knows, gender dysphoria has grown exponentially among young people. App.D.74, 80–82, 84–85, 92, 104–05. Indeed, diagnoses increased ten-fold between 2009 and 2016. Dr. Hilary Cass, Independent Review of Gender Identity Services for Children and Young People: Interim Report 33 (Feb. 2022), https://bit.ly/4bzkiJI ("Cass Review"). And for equally unknown reasons, the dominant population has shifted from prepubertal boys to adolescent girls with no prior history of dysphoria issues. App. D.74, 80–82, 84–85, 92, 104–05.

With the increase in diagnoses has come the proliferation of three basic types of experimental interventions. *First*, puberty blockers, which stop children from experiencing natural puberty and developing the associated secondary sex characteristics—things like deeper voices and body hair for boys and breasts and wider hips for girls. App.D.45–52, 56, 114–15, 119. *Second*, cross-sex hormones (estrogen for boys, testosterone for girls), which make a child develop secondary sex characteristics that mimic those of the opposite sex—for example, testosterone permanently deepens the voices of girls who take it. App.D.53–60, 64, 123–24, 128.

Third, surgeries to remove or alter physical sex characteristics like breasts or genitals—for example, mastectomies to remove a girl's breasts and vaginoplasties to remove a boys' testicles, penis, and scrotum, then rearrange tissue to create a vagina-like structure. App.D.53–60, 64, 123–24; Johns Hopkins Medicine, Vaginoplasty for Gender Affirmation, https://bit.ly/48g0bNK (last visited Feb. 15, 2024).

Although all these interventions are experimental and dangerous, and none have proven benefits, each procedure has its own set of risks, side effects, and consequences. And although there is scientific debate about each of them, there is a nearly universal consensus that surgeries—especially genital surgeries—are inappropriate for minors. Tellingly, many of the countries that pioneered these interventions have now re-assessed and strictly limited their use.

Surgical Interventions. As the Endocrine Society notes, genital surgery is sterilizing and irreversible. W.C. Hembree, et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clin. Endocrinology & Metabolism 25 (2017) ("Endocrine Society Guidelines"). That's why the Society does not recommend offering it to minors. App.D.124, 128. That's also why genital surgeries are effectively unavailable to minors in many European countries, including Finland, the U.K., and Denmark. App.D.66–67; 77; Cass Review, *supra*, at 63.

Double mastectomies, too, have permanent effects and significant risks. Girls who undergo them will never breastfeed a child. App.D.109. And they often require multiple surgeries and involve complications like excessive scarring, pain and

swelling, and nipple necrosis. App.D.64–65. All that for surgeries that—according to a review team from Ontario's McMaster University—carry "great uncertainty" with evidence that is "not sufficient" to support their use. App.D.86–87. So as the Finnish health authority directs, "[s]urgical treatments are not part of the treatment methods for dysphoria caused by gender-related conflicts in minors." App.D.77.

Some American clinics do it anyway. Dr. Kara Connelly, an endocrinologist who practices in Oregon and serves as one of Plaintiffs' experts, testified that her clinic allows minors to obtain both vaginoplasty and mastectomy. App.D.27. And WPATH, an advocacy organization for medicalized transition, has defied a nearly universal consensus by promoting these surgeries and removing *all* age limits from their so-called standards of care. App.D.96.

Cross-Sex Hormones. "Infertility is frequent" in females who take testosterone. App.D.61. And testosterone more than triples women's risk of heart attacks, doubles the risk of strokes, lowers the average age of breast cancer onset by 20 years, and leads to pap smear abnormalities that make diagnosing cervical cancer harder. App.D.61–62. Administered to males, estrogen is likewise dangerous: it raises the risk of breast cancer, stroke, and potentially fatal thromboembolisms. App.D.63. And Plaintiffs' expert admits that we do not know the long-term fertility of adolescents who experienced puberty but then take cross-sex hormones. App.D.43, 61, 109. Plus, many physical effects of cross-sex hormones cannot be reversed (e.g., voice deepening with testosterone), App.D.133–34, so desistence and regret are substantial risks.

But there's no reliable evidence of benefits to offset these serious risks. The British government found that evidence on the efficacy of cross-sex hormones was "very low" quality. *Id*. The Cochrane Library, a renowned medical organization, published a systematic review on the efficacy of cross-sex hormones and could not find a single study reliable enough to include. App.D.87. Even WPATH's own systematic review on cross-sex hormones found "insufficient evidence to draw a conclusion about the effect of hormone therapy on death by suicide among transgender people." App.D.94.

Puberty Blockers. A child who begins puberty-blocking drugs at the onset of puberty and then progresses directly to cross-sex hormones—as nearly all of them do—will be infertile. App.D.56–57, 109. Respected scientists, including those cited by Plaintiffs' experts, note that puberty blockers "may prevent key aspects of [neurological] development during a sensitive period of brain organization." App.D.111. Plaintiffs' expert admitted there's not "enough data to draw conclusions about adverse effects on brain development" in children given puberty blockers. App.D.33.

Puberty blockers also prevent increases in bone mineral density that typically occur during puberty. App.D.56–58, 112–14. The long-term effects of these deficits are unknown, as bone-quality issues tend to emerge later in life. App.D.113–14. Per the New York Times, "[a] full accounting of blockers' risk to bones is not possible." *Id*.

Yet again, evidence about benefits is lacking. In its systematic review, the British government found "little change" in mental health outcomes for children

using puberty blockers. App.D.90–91. The Swedish government commissioned a systematic review that also found no "reliable scientific evidence" that hormonal interventions were effective. App.D.80.

International Turn Against Medicalized Transition. Over the past several years, many countries and clinics that pioneered medicalized transition procedures for minors have re-evaluated them and found the risks outweigh rewards. In Sweden, the leading gender clinic recently stopped providing hormonal interventions for children under the age of 16 and limited such interventions to formal research trials for children aged 16 to 18. App.D.79–80. The Swedish National Board of Health endorsed this limitation in 2022. App.D.66.

In Britain, the government commissioned an independent review of medicalized transition in minors. App.D.72. So far, the NHS has concluded that "there is not enough evidence to support" the "safety or clinical effectiveness" of puberty blockers or cross-sex hormones. App.D.76. And the NHS, like Sweden, limited their use to formal clinical trials. *Id.* The data from the NHS's own gender clinic—then the largest in the world—showed no improvement in mental health following the use of puberty blockers. App.D.50, 107. And Britain likely does not provide surgical interventions to minors. Cass Review, *supra*, at 63.

Finnish government health officials also recently restricted access to medicalized transition procedures for minors. They stopped allowing surgical transition procedures altogether. App.D.77–78. And they limited puberty blockers and cross-sex hormones to centralized research clinics. *Id.*

These developments continue apace. In the last few months, Danish and Finnish researchers published studies looking at 20+ years of data showing no difference in mental-health outcomes between dysphoric people who did and did not pursue medicalized transition.[1] As this evidence shows, medicalized transition does not improve mental health. The Swedish Board of Health summarizes: "At group level (i.e., the group of adolescents with gender dysphoria as a whole) … the risk of puberty blockers and gender-affirming treatment are likely to outweigh the expected benefits of these treatments." App.D.23–24. Plaintiffs' expert agrees with that assessment. *Id.*

B. Idaho Enacts the VCPA to Protect Vulnerable Children.

Faced with dramatic increases in gender-clinic referrals and prescriptions for dangerous procedures, Idaho passed the VCPA. The legislature found that medicalized transition procedures "can cause irreversible physical alterations," such as making "the patient sterile or with lifelong sexual dysfunction." App.D.152. Some of these procedures "mutilate healthy body organs." *Id.*

So the Act prohibits medical providers from performing 20+ specific procedures "for the purpose of attempting to alter the appearance of or affirm the child's perception of the child's sex if that perception is inconsistent with the child's biological sex." Idaho Code § 18-1506C(3). Those procedures include puberty blockers, cross-sex hormones, and various surgeries to treat gender dysphoria.

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[1] Glintborg, et al., *Gender-affirming treatment and mental health diagnoses in Danish transgender persons: a nationwide register-based cohort study*, 189 Eur. J. of Endocrinology 336–45 (2023); Kaltiala, et al., *Have the psychiatric needs of people seeking gender reassignment changed as their numbers increase? A register study in Finland*, 66 Eur. Psy. e93, 1–8 (2023).

The Act specifically allows medical providers to supply these interventions (1) where medically necessary for other purposes, (2) to deal with complications of medicalized transition procedures, or (3) to address genetic disorders of sexual development. Idaho Code § 18-1506C(4). A girl with polycystic ovarian syndrome may receive estrogen, and a child with early puberty may receive puberty blockers. The Act only regulates the experimental, dangerous, and ineffective use of these procedures to try to resolve gender dysphoria by making a child's body look more like the opposite sex.

C. The District Court Issues a Universal Injunction.

Suing through their parents, Plaintiffs are adolescent boys who have gender dysphoria and take estrogen for that condition. App.D.137, 139, 142, 144. Both Plaintiffs have attested that they once took puberty blockers. App.D.139, 144. It is not clear from the record whether either still does. *Id.* Neither plaintiff seeks surgical interventions. Neither Plaintiff is a gender dysphoric girl seeking testosterone. The only parts of the Act potentially relevant to them are its limits on prescribing estrogen to treat gender dysphoria. The limitations on surgical interventions and testosterone do not affect them at all.

Yet the district court enjoined the entire Act. Its injunction prohibits Idaho from "enforcing *any* provision" of the Act against *anyone*. App.A.54 (emphasis added). The court ruled that it would be "administratively burdensome" to fashion a narrower injunction App.A.53. And it wanted to avoid "follow-on lawsuits" by other potential

plaintiffs. *Id*. So it enjoined the Defendants "from enforcing any provision of House Bill 71 during the pendency of this litigation." App.A.54.

A Ninth Circuit motions panel denied Idaho's emergency application for a stay of this sweeping injunction in an unreasoned order. App.B. And the same three judges denied Idaho's en banc petition two days after it was filed, again without giving reasons and without review by other Ninth Circuit judges. App.C.

ARGUMENT

A stay pending appeal turns on four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken* v. *Holder*, 556 U.S. 418, 434 (2009) (citation omitted). Each of these favors a stay here.

I. Idaho Will Likely Prevail on Appeal.

Despite raising direct conflicts between the district court's order and this Court's precedents—as well as circuit conflicts on questions of first impression regarding States' ability to regulate medical procedures for gender dysphoria—Idaho's motion to stay received only a single-sentence rejection by the Ninth Circuit panel. App.B. And when Idaho sought reconsideration of that order en banc, two days later, the same panel invoked Ninth Circuit procedures to deny reconsideration of its summary order "on behalf of the court," without referring the matter to the full court. App.C (citing 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11).

Fully analyzing the questions that the Ninth Circuit left unaddressed demonstrates that Idaho is entitled to a stay pending appeal. One cannot square the exorbitant scope of the district court's injunction with this Court's precedents. It is flawed in three related and overlapping respects. *First*, the district court's unlawful universal injunction goes far beyond the relief necessary to protect the parties by enjoining enforcement of the VCPA in all circumstances against all parties. *Second*, the district court's order granted an unlawful facial injunction that voids the VCPA in all its applications, even though Plaintiffs' experts did not dispute that some applications were medically appropriate. And *third*, the district court's injunction is an unlawful exercise of jurisdiction over claims and injuries that Plaintiffs do not allege and lack standing to assert. Idaho is likely to prevail on its appeal.

A. The District Court's Universal Injunction Is Unlawful.

Where courts exercise their equitable powers, any relief "must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established." *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 353 (2006) (quoting *Lewis* v. *Casey*, 518 U.S. 343, 357 (1996)); *Madsen* v. *Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994). It is fundamental that the relief federal courts are empowered to grant is "party-specific." *United States* v. *Texas*, 599 U.S. 670, 693 (2023) (Gorsuch, J., concurring in judgment, joined by Thomas & Barrett, JJ.). "Party-specific relief" is easy to conceive here—an injunction prohibiting enforcement of the VCPA against anyone who provided these named Plaintiffs with the specific prohibited treatments they sought. Yet the district court enjoined the Defendants from enforcing the entire

law against the entire world. App.A.54 (Order.53). Its "universal injunction" is irreconcilable with this Court's precedents. *Texas*, 599 U.S. at 694 (Gorsuch, J., concurring in judgment, joined by Thomas & Barrett, JJ.).

1. Equitable Relief Is Party-Specific Relief.

The powers of the federal courts to issue injunctions are bounded by the relief that "was traditionally accorded by courts of equity." *Grupo Mexicano de Desarrollo, S.A.* v. *All. Bond Fund, Inc.*, 527 U.S. 308, 319 (1999). As Justice Story explained long ago, "remedies in equity are to be administered … according to the practice of courts of equity in the parent country." *Boyle* v. *Zacharie & Turner*, 31 U.S. 648, 658 (1832) (Story, J.). Thus, this Court has construed the extent of federal equity jurisdiction by looking to "the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act, 1789." *Grupo Mexicano*, 527 U.S. at 318.

That historic equity tradition "appear[s] to conflict" with universal injunctions, which in recent years have "exploded in popularity." *Trump* v. *Hawaii*, 585 U.S. 667, 716, 720 (2018) (Thomas, J., concurring). Fundamentally, equity dictates that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Madsen*, 512 U.S. at 765 (quoting *Califano* v. *Yamasaki*, 442 U.S. 682, 702 (1979)). And because "a court of equity . . . cannot lawfully enjoin the world at large," *Alemite Mfg. Corp.* v. *Staff*, 42 F.2d 832, 832 (2d Cir. 1930) (L. Hand, J.), courts must "take care to make no decree [that would] affect the rights of nonparties." Samuel L. Bray, *Multiple Chancellors: Reforming the*

National Injunction, 131 HARV. L. REV. 417, 427 (2017) (cleaned up). That is why Rule 65 limits an injunction's scope: it "binds only" the parties, their representatives, and those acting in concert with them. Fed. R. Civ. P. 65(d)(2). And it is why the traditional equitable remedy most analogous to what Plaintiffs seek here—the injunction to stay proceedings at law—was "directed only to the parties." 2 Joseph Story, Commentaries on Equity Jurisprudence as Administered in England and America § 875, at 166 (2d ed. 1839).

This Court has long policed these limits. More than a century ago, in *Scott* v. *Donald*, this Court agreed with the plaintiff that a challenged statute was unconstitutional, 165 U.S. 58, 99–101 (1897), yet in a separate opinion, it reversed an injunction that prohibited enforcement of the statute universally. See *Scott* v. *Donald*, 165 U.S. 107, 115–17 (1897). It did so even though "there may be others in like case with the plaintiff," and even though "such persons may be numerous," because that "state of facts" was "too conjectural to furnish a safe basis upon which a court of equity ought to grant an injunction." *Id.* at 115. That the Court's opinion of the law would apply to all the plaintiffs was of no moment to the injunction, for as this Court held last term, "[i]t is a federal court's judgment, not its opinion, that remedies an injury." *Haaland* v. *Brackeen*, 599 U.S. 255, 294 (2023) (Barrett, J.).

The Court has continued to uphold these equity boundaries. Thus, in *Lewis*, it considered a district court injunction that had "mandated sweeping changes designed to ensure" the defendant prison system "would 'provide meaningful access to the Courts for all present and future prisoners.'" 518 U.S. at 347 (citation omitted). But

since "only one named plaintiff" had an actual injury, the Court held that "the proper scope of th[e] injunction" could not reach other problems alleged to have injured "the inmate population at large." *Id.* at 358. And because those other problems "ha[d] not been found to have harmed any plaintiff," they "were not the proper object of th[e] District Court's remediation." *Id.*

Even in the First Amendment context, in *Doran* v. *Salem Inn, Inc.*, the Court upheld an injunction against enforcement of a local ordinance, explaining that it would not "directly interfere with enforcement of contested statutes or ordinances" for anyone other than "the particular federal plaintiffs." 422 U.S. 922, 931 (1975). And that injunction did little harm to the government, since officials remained "free to prosecute others who may violate the statute." *Id.*

Nor does the district court's conception of its order as upholding a facial challenge authorize it to enjoin the VCPA as to non-parties. "No federal statute expressly grants district courts the power to enter injunctions prohibiting government enforcement against non-parties" in cases like this one. *Griffin*, 144 S. Ct. at 2 (statement of Kavanaugh, J., joined by Barrett, J.). It does not make a difference that the district court's facial challenge opinion would logically extend to non-parties. While a decision of this Court affirming the injunction, as a matter of stare decisis, would preclude enforcement of the law "against anyone, party or not," district court injunctions, standing alone, "do not have that *stare decisis* effect." *Id.* at 1.

Universal injunctions disregard the limits of the equity tradition by exceeding what is necessary to redress the plaintiff's injury and impinging on the rights of unrepresented non-parties. As the district court did here, these injunctions depart from what equity understood about the judicial power as "fundamentally … to render judgments in individual cases," reconceiving it instead as judicial authority to "make federal policy" or to "'strik[e] down' laws or regulations." *Hawaii*, 585 U.S. at 718 (Thomas, J., concurring) (cleaned up). This Court should grant a stay as to nonparties to uphold these ancient limits on judicial power.

2. Injunctions for Non-parties Require a Class Action.

The Federal Rules provide only one exception to these limits on injunctions for non-parties: the injunctive class action, which Plaintiffs have not sought here. The modern class action "stems from equity practice," *Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591, 613 (1997), in the equity tradition of a "representative suit" or "bill of peace." See Joseph Story, Commentaries on Equity Pleadings §§ 77–135, at 101–78 (4th ed. 1848); accord *Scott*, 165 U.S. at 115. That device, which allowed "a portion of the parties in interest to represent the entire body," *Supreme Tribe of Ben Hur* v. *Cauble*, 255 U.S. 356, 363 (1921) (quotation omitted), has been superseded by Rule 23, which codifies the exclusive circumstances in which a representative suit is permitted in the federal courts. As the Rule's text states, "members of a class may sue … as representative parties on behalf of all members *only if*" they meet the Rule's conditions: numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a) (emphasis added). And because Rule 23 is both "more restrictive"

and "more clearly comprehensive" than its forbears, it "leaves plaintiffs with no room to argue that they can use some other procedure to seek relief on behalf of others." *Rodgers* v. *Bryant*, 942 F.3d 451, 464 (8th Cir. 2019) (Stras, J., concurring in part and dissenting in part).

If Plaintiffs wanted to enjoin VCPA's enforcement in all applications and against the whole world, Rule 23 was available. The modern Rule 23 treats "civil rights cases" as "prime examples" where class treatment was available to redress situations involving "class-based discrimination." *Amchem*, 521 U.S. at 614 (cleaned up). Yet Plaintiffs did not do so. For good reason. They cannot show that their individual claims, which seek access to estrogen treatment for gender dysphoria, make them adequate representatives of those who seek testosterone or surgery. See Fed. R. Civ. P. 23(a)(4); see also *supra* at 4–10. When "named parties with diverse medical conditions" seek to "act on behalf of a single giant class," there is "no structural assurance of fair and adequate representation for the diverse groups and individuals affected." *Amchem*, 521 U.S. at 626–27. A class so riven with conflicts could never be certified.

In addition, a court may certify an injunctive class action only if "a single injunction … would provide relief to each member of the class"—not if "each individual class member would be entitled to a *different* injunction." *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 360 (2011); Fed. R. Civ. P. 23(b)(2). The widely varied circumstances regulated by the VCPA precludes that "single injunction" treatment. And because Plaintiffs "do not represent a class"—and do not seek to—they cannot

obtain an injunction that purports to prevent alleged "harm to other parties." *Monsanto Co.* v. *Geertson Seed Farms*, 561 U.S. 139, 163 (2010).

3. Universal Injunctions Cause a Host of Harms.

Issuing universal injunctions leads to all manner of practical problems. By "making every case" an emergency, *Hawaii,* 585 U.S. at 713 (Thomas, J., concurring), universal injunctions "substantially thwart the development of important questions of law" and "freez[e] the first final decision rendered on a particular legal issue." *United States* v. *Mendoza*, 464 U.S. 154, 160 (1984). This case, where the district court enjoined the law in its entirety and in all applications on a limited record before it even took effect, is a perfect example. A single federal district-court judge, affirmed with no reasoning by an appeals panel, has prevented other courts in Idaho—both federal and state—from reaching different conclusions on a different factual record regarding different aspects of the law.

Plus, such injunctions "circumvent rules governing class-wide relief." *Texas*, 599 U.S. at 694 (Gorsuch, J., concurring in judgment, joined by Thomas and Barrett, JJ.). While a class action makes the court's judgment preclusive on both sides, win or lose, universal injunctions are a one-way preclusion ratchet against the defendant. If the district court *grants* the injunction, then non-parties get the benefit of the injunction, no matter how disparate their circumstances, and the defendant is forbidden from enforcing the law against them. But if the district court *denies* an injunction, the non-party is not bound by the judgment and is free to seek the same relief in its own proceeding raising different facts. Ironically, the district court

acknowledged the possibility of separate challenges by different plaintiffs, but cited it as a reason to grant a universal injunction—otherwise, it reasoned, there would be "follow-on lawsuits by similarly situated plaintiffs, which would create needless and repetitive litigation." App.A.53. Thus, under universal injunctions, Plaintiffs enjoy "a nearly boundless opportunity to shop for a friendly forum to secure a win" while defendants must remain undefeated to enforce their law. See *Dep't of Homeland Sec.* v. *New York*, 140 S. Ct. 599, 601 (2020) (Gorsuch, J., concurring in grant of stay, joined by Thomas, J.).

Universal injunctions also harm absent non-parties and other would-be plaintiffs. Courts issue universal injunctions without any finding that the interests of absent non-parties are adequately represented by the named plaintiffs, as Rule 23 and due process require. Fed. R. Civ. P. 23(a)(4); *Hansberry* v. *Lee*, 311 U.S. 32, 43 (1940). As a result, there is no assurance that an injunction against enforcement of a law actually protects them. Again, this case is a perfect example: Plaintiffs only seek estrogen hormone therapies, yet the district court issued a universal injunction against the law in its entirety, stopping enforcement even in situations where Plaintiffs' experts agree medical intervention is not appropriate. App.D.18, 128, 130. Those applications involve the most extreme surgical treatments and the most vulnerable minors, who will lose the protections of Idaho's law and will instead be governed by an injunction obtained by others who do not and cannot speak for them. Rule 23's due process guardrails are of no use against this lawless application of Rule

65. To protect those non-parties, this Court should stay the district court's injunction as to nonparties.

B. Plaintiffs Cannot Meet the Standard for a Facial Challenge.

The district court's injunction grants facial relief—enjoining *every* application of *every* provision of the Act to *every* person of *every* age, no matter the circumstances. But the district court did not conclude that "no set of circumstances exists under which the [challenged law] would be valid." *United States* v. *Salerno*, 481 U.S. 739, 745 (1987). Put another way, the district court did not find that "the law is unconstitutional in all of its applications." *Wash. State Grange* v. *Wash. State Republican Party*, 552 U.S. 442, 449 (2008).

Nor could it, for the Act has many constitutional applications. Start with surgical interventions. As noted above, the Endocrine Society and many international authorities agree that "genital surgery is not recommended to patients under age 18." App.D.130. Further, ample evidence shows that mastectomies on gender dysphoric patients often involve multiple surgeries and post-surgical complications. App.D.64. They're also irreversible and lack any proven benefits for gender dysphoric patients, so it makes sense that Idaho would prohibit them in minors. *Id.* Finland and Britain do not offer these interventions. App.D.77–78; Cass Review, *supra*, at 63. Neither does Idaho. Idaho Code § 18-1506C(3)(a), (b), (d).

The district court's overbroad injunction would allow doctors to experiment on kids with these dangerous surgeries. This is a serious risk because clinics across the country are already performing these surgeries on minors. *E.g.*, App.D.27 (Oregon

clinic performing vaginoplasties and mastectomies on minors). WPATH removed all age limits from its standards, so Idaho clinicians can (and will) perform surgeries on minors *of any age* and still follow those purported "standards of care." App.D.96. This is thus not a case in which *all* constitutional applications of the statute are "irrelevant" because the ban on surgical interventions "actually … prohibits conduct" that would otherwise occur. *City of L.A.* v. *Patel*, 576 U.S. 409, 418 (2015).

Applying the Act to keep a 13-year-old boy from permanently removing his healthy genitals or a 13-year-old girl from permanently removing her healthy breasts is plainly constitutional. It would be a strange rule indeed that allows states to prevent minors from getting tattoos, psychosurgery, or electroconvulsive therapy, see Idaho Code § 18-1523(2); Idaho Code § 16-2423(3), but precludes states from limiting experimental sterilizing surgeries on children. Given the broad consensus against these surgical interventions, Idaho is well justified in prohibiting them. Indeed, the law is an ordinary exercise of "the historic police powers of the States" to regulate medical practice. *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 485 (1996) (citation omitted).

The ban on surgical interventions would also pass intermediate scrutiny, which asks whether the law "serves important governmental objectives" through means that are "substantially related to the achievement of those objectives." *Miss. Univ. for Women* v. *Hogan*, 458 U.S. 718, 724 (1982) (cleaned up). "[S]afeguarding the physical and psychological well-being" of minors is an important objective. *New York* v. *Ferber*, 458 U.S. 747, 756–57 (1982). And banning surgeries that the Endocrine Society and many other authorities *agree* are inappropriate is "in substantial

furtherance" of that objective. *Tuan Anh Nguyen* v. *INS*, 533 U.S. 53, 70 (2001); accord *Califano* v. *Jobst*, 434 U.S. 47, 55 (1977) ("[B]road legislative classification must be judged by reference to characteristics typical of the affected classes rather than by focusing on selected, atypical examples.").

The same is true for puberty blockers and cross-sex hormones. Not even Plaintiffs' experts contend that these interventions are *always* appropriate; they concede that such interventions are "not indicated" for many individuals who receive treatment from them. App.D.130. Nor are any interventions appropriate for pre-pubertal children. App.D.128. And Plaintiffs' own expert agrees with the Swedish Board of Health's statement that "[a]t group level (i.e., for the group of adolescents with gender dysphoria as a whole) … the risk of puberty blockers and gender-affirming treatment are likely to outweigh the expected benefits of these treatments." App.D.23–24. So again, there are countless scenarios in which Idaho's law applies constitutionally—by regulating procedures that many experts agree are inappropriate. Yet Idaho's protection for minors is now a nullity as to every doctor, child, and factual scenario presented in the State. Because Idaho's law has patently constitutional applications, the district court's grant of facial relief was inappropriate.

Nor does this case raise First Amendment issues that would change that. The district court cited *John Doe No. 1* v. *Reed*, 561 U.S. 186 (2010), a First Amendment challenge to a disclosure law for those who signed electoral petitions. 561 U.S. at 192. Although the Court there allowed plaintiffs to "reach beyond" their specific circumstances and challenge the public disclosure of all referendum petitions, the

Court still required the plaintiffs to "satisfy our standards for a facial challenge to the extent of that reach." *Reed*, 561 U.S. at 194. That's not possible here. Plaintiffs cannot show that all applications of, for example, the ban on genital surgeries, are unconstitutional. Further, First Amendment cases present "doctrinal complexities about the scope of relief" that do not apply to a case like this. *Griffin*, 144 S. Ct. at 2 (statement of Kavanaugh, J., joined by Barrett, J.). This case concerns conduct only, not speech, and nothing allowed the district court to enjoin plainly constitutional applications of the VCPA. *Ams. for Prosperity Found.* v. *Bonta*, 141 S. Ct. 2373, 2390 (Thomas, J., concurring) ("[T]he principle that application of a law is always unlawful if a substantial number of its applications are unconstitutional lacks any basis in the Constitution's text and contravenes traditional standing principles.") (cleaned up).

C. Plaintiffs Lack Standing to Challenge Most of the VCPA.

The district court injunction is also flawed because it enjoins VCPA provisions that Plaintiffs have no standing to challenge concerning treatments they do not or cannot seek. Standing is the "irreducible constitutional minimum" for seeking relief in federal court. *Lujan* v. *Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Its elements are well-known: an injury-in-fact that is traceable to the defendant's actions and redressable by the court. *DaimlerChrylser*, 547 U.S. at 342. "And standing is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 431 (2021).

That means that any remedy a court issues must arise from the plaintiff's actual injury. *Lewis*, 518 U.S. at 357. After all, the injury-in-fact requirement would mean nothing "if once a plaintiff demonstrated harm from one particular inadequacy in government administration, the court were authorized to remedy *all* inadequacies in that administration." *Id.* Courts must limit their remedies to the actions "that produced the injury in fact that the plaintiff has established." *Id.*

This Court vacated remedies that violated this principle in both *Lewis* and *DaimlerChrysler*. In *Lewis*, the prisoner plaintiff only established the inability to present grievances to the court because the prison lacked any accommodation for his illiteracy. 518 U.S. at 359. But the district court's sweeping injunction addressed other perceived inadequacies at the prison, such as special accommodations for non-English speakers, prisoners in lockdown, and the general prison population. *Id.* at 347–48 (describing district court's broad injunction). Because these provisions addressed issues that "have not been found to have harmed any plaintiff in this lawsuit," they "were not the proper object" of the district court's injunction. *Id.* at 358. And this Court "eliminate[d]" them from the injunction's scope. *Id.*

So too with *DaimlerChrysler*. There, municipal taxpayers tried to leverage their standing to challenge a city's tax-break agreement with DaimlerChrysler to also challenge a state-law tax break from which they had no cognizable injury-in-fact. 547 U.S. at 351. They argued that the state tax-break challenge was "sufficiently related" to the municipal tax agreement that the federal courts had "supplemental jurisdiction" over it. *Id.* This Court said no and vacated the Sixth Circuit's injunction

of the state tax-break law. *Id.* at 353. The plaintiffs "failed to establish Article III injury with respect to their *state* taxes," and the injury from their *municipal* taxes did "not entitle them to seek a remedy as to the *state* taxes." *Id.* (emphasis added).

The same is true here. Plaintiffs cannot challenge the Act's regulation on testosterone prescribed to females, Idaho Code § 18-1506C(3)(c)(ii), or its bar on surgeries, Idaho Code §§ 18-1506C (3)(a), (b), (d), because they seek neither. Plaintiffs seek only to access estrogen. App.D.139, 144. The bans on those other procedures simply "were not the proper object" of the district court's injunction. *Lewis*, 518 U.S. at 358.

It is no answer to say, as Plaintiffs have, that it would be too burdensome to wait until someone seeks and sues over a particular intervention. Article III limits are a feature of our constitutional system, not a bug. "If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler*, 547 U.S. at 341. And "[t]he fact that [the plaintiff] has standing to challenge" one provision of a statute "does not necessarily mean that he also has standing to challenge" any others. *Davis* v. *FEC*, 554 U.S. 724, 733–34 (2008).

The wisdom of that rule is apparent here because every regulated procedure is not the same. While they all are experimental and dangerous, they each have their own sets of risks, side effects, and consequences. Surgical interventions, for example, permanently remove or disform healthy body parts. App.D.109; Endocrine Society Guiedlines, *supra*, at 25. Cross-sex hormones carry specific long-term risks like heart

attacks and strokes. App.D.115. And puberty blockers involve neurological and bone-related risks specific to interrupting natural puberty. App.D.110–14. A court should not adjudicate—much less enjoin—Idaho's prohibition on a particular intervention without a real case involving a real plaintiff who seeks that intervention and develops a record. The Constitution demands it.

II. The Equities Warrant a Stay.

A. Idaho and Third Parties Are Suffering Irreparable Harm.

This Court has repeatedly recognized that a State's "inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State." *Abbott* v. *Perez*, 585 U.S. 579, 602–03 n.17 (2018) (citing *Maryland* v. *King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers)); accord *New Motor Vehicle Bd.* v. *Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers). That's particularly true here because the injunction prevents Idaho from protecting children from permanent, sterilizing surgeries that the Endocrine Society and many others recommend against. App.D.30, 67, 77; Cass Review, *supra*, at 63. Yet clinicians are doing these surgeries anyway. App.D.27. Without Idaho's law, nothing is stopping them. The injunction also prevents Idaho from banning hormonal interventions for which the risks, according to international authorities, "currently outweigh the benefits." App.D.80. So the district court's sweeping injunction hamstrings Idaho's ability to protect its citizens from well-recognized harms.

The district court's overbroad injunction also harms kids who are subjected to experimental and dangerous treatments and later desist from their dysphoria and

regret that their bodies will never be the same. See Paul, *supra.* A recent New York Times article based on interviews with youth who have received medical transitions and come to regret the decision shows a small sampling of those long-term and irreversible harms. See Paul, *supra.* One young girl received testosterone and then a double mastectomy at 17, only to find that, after five years living as a man, "her mental health symptoms were only getting worse," and her voice, "permanently altered by testosterone, is that of a man." *Id.* Another young man transitioned in college and had surgery on his genitals, which led to "[s]evere medical complications from both the surgery and hormone medication," leading him to de-transition. *Id.* Yet despite the many records of similar experiences, one psychologist who favors medical transitions has explained with apprehension that, "[a]s far as I can tell, there are no professional organizations who are stepping in to regulate what's going on." *Id.* Idaho should not be prevented from stepping in to stop it.

B. Limiting the Injunction to Plaintiffs Does Not Harm Them.

Conversely, Plaintiffs will not be harmed by a more limited injunction. They don't need to enjoin every application of every provision in Idaho's law to obtain complete relief. As Idaho noted below, all they need is a sealed order they can present to their doctors and pharmacists giving them access to the drugs they seek. App.D.149.

The district court's contrary conclusion is wrong. The court said it would be "administratively burdensome" to fashion an injunction preserving Plaintiffs' anonymity. App.A.53. But why? Doctors, pharmacists, and other medical

professionals often keep patient information secure and confidential; indeed, federal law requires it. See 45 C.F.R. §§ 164.102–534 (HIPAA Privacy and Security Rules). So there's no "burden" associated with giving Plaintiffs a sealed order to be kept in their doctors' confidential records, and the balance of equities tips heavily against the district court's broad injunction. Any modest administrative burden, especially in service of a courtesy grant of litigation anonymity, cannot justify an injunction vastly in excess of the federal courts' equitable powers.

III. This Court Is Likely to Grant Review.

A. The Court Is Likely to Review the Question Presented.

A stay is also warranted to the extent the Court considers whether there is "a reasonable probability" that it would grant certiorari if the district court's judgment were affirmed by the Ninth Circuit. *Merrill* v. *Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring, joined by Alito, J.). This case presents a question that a majority of this Court has recognized as worthy of review. Justices Thomas, Alito, and Gorsuch would have granted a stay in *Griffin* in anticipation that this Court would review this question. 144 S. Ct. at 1. And Justices Kavanaugh and Barrett acknowledged that "whether a district court, after holding that a law violates the Constitution, may nonetheless enjoin the government from enforcing that law against non-parties to the litigation is an important question that could warrant our review in the future." *Id.* at 2 (statement of Kavanaugh, J., joined by Barrett, J.). The only factor that led to the stay denial in *Griffin* was unique First Amendment issues there. *Id.*; see also *Madsen*, 512 U.S. at 765. But unlike *Griffin*, this case does not implicate

the First Amendment and thus presents a straightforward vehicle to address this question. Nor does this case raise the unique remedy questions that arise in the Administrative Procedures Act context. See *Griffin*, 144 S. Ct. at 2 n.1 (statement of Kavanaugh, J.) (recognizing that these issues are "distinct"). The Court is likely to grant review here.

The propriety of universal injunctions has divided the lower courts. Several circuits—the First, Fifth, Sixth, Ninth, and Eleventh Circuits—have refused to issue these injunctions when requested to *protect* nonparties. The First Circuit vacated a universal injunction because "such breadth [was] [un]necessary to give [plaintiff] relief." *Brown* v. *Trs. of Bos. Univ.*, 891 F.2d 337, 361 (1st Cir. 1989) (citation omitted). The Fifth Circuit has likewise rejected the notion of nonparties "also need[ing] protection" as a valid basis for universal injunction. *Louisiana* v. *Becerra*, 20 F.4th 260, 263–64 (5th Cir. 2021). Last summer, the Sixth Circuit addressed a law like Idaho's and held that "[a] court order that goes beyond the injuries of a particular plaintiff to enjoin government action against nonparties exceeds the norms of judicial power." *L.W.* 73 F.4th at 415. The Ninth Circuit—despite its unreasoned order in this case—has held that universal injunctions are appropriate only if "necessary to redress the [plaintiff's] injury." *California* v. *Azar*, 911 F.3d 558, 584 (9th Cir. 2018). And the Eleventh Circuit has refused to protect nonparties as a valid basis for a universal injunction. *Georgia* v. *President of the U.S.*, 46 F.4th 1283, 1306–07 (11th Cir. 2022).

Still, "in recent years a number of lower courts have asserted the authority to issue decrees that purport to define the rights and duties of sometimes millions of people who are not parties before them." *Texas*, 599 U.S. at 694 (Gorsuch, J., concurring in judgment, joined by Thomas & Barrett, JJ.). The Fourth Circuit, misapplying this Court's stay decision in *Trump* v. *Int'l Refugee Assistance Project*, 582 U.S. 571, 580 (2017), held that this Court has "affirmed the equitable power of district courts" to grant "injunctions extending relief to those who are similarly situated to the litigants." *Roe* v. *Dep't of Def.*, 947 F.3d 207, 232 (4th Cir. 2020), *as amended* (Jan. 14, 2020). The Seventh Circuit reached the same decision in *City of Chicago* v. *Barr*, 961 F.3d 882, 916 (7th Cir. 2020). And so has the Eighth Circuit. *Rodgers*, 942 F.3d at 458; but see *id.* at 464 (Stras, J., concurring in part and dissenting in part). As *Griffin* reflects, this Court is likely to grant review to clarify that its decision on interim relief in *Trump* to leave in place an injunction in favor of similarly situated parties did not overrule *sub silentio* its longstanding jurisprudence on the limits of equity as to nonparties.

The need for and likelihood of this Court's review is even more clear given the various circuits' confusion about the equitable limits on injunctions. For example, the Third Circuit, despite having held that injunctive relief should generally be limited to preventing harm to plaintiffs, has left open the possibility for an exception that would allow universal injunctions when a statute is held facially unconstitutional. *Free Speech Coal., Inc.* v. *Att'y Gen.*, 974 F.3d 408, 430–31 (3d Cir. 2020). Likewise, the Eleventh Circuit has acknowledged that its decisions in *Georgia* and other cases

"provide some support" for limiting an injunction only to the parties, but concluded in *Griffin* that a "division of authority in both the Supreme Court and in this circuit" warranted denial of a request to so limit an injunction. *HM Fla.-Orl, LLC* v. *Governor of Fla.*, No. 23-12160, 2023 WL 6785071, at *4 (11th Cir. Oct. 11, 2023); but see *id.* at *5 (Brasher, J., dissenting). And while the Ninth Circuit has recognized that "[t]he scope of the remedy must be no broader and no narrower than necessary to redress the injury shown by the plaintiff," *Azar*, 911 F.3d at 584 , it refused to apply that rule in this case (without any reason) and has affirmed universal injunctions in other cases filed by just two plaintiffs. *Hecox* v. *Little*, 79 F.4th 1009, 1037 (9th Cir. 2023); but see *id.* at 1050 (Christen, J., concurring in part) (raising concerns with scope of injunction). These many conflicts present an acute need for this Court's guidance.

This continued "chaos for litigants, the government, [and] courts" is "patently unworkable." *New York*, 140 S. Ct. at 600 (Gorsuch, J., concurring in grant of stay, joined by Thomas, J.). The Court is likely to intervene to do something about it, and this case offers an optimal vehicle to do so. This case has none of the First Amendment issues that led to a denial of review in *Griffin*. And the district court's order evinces all of the worst traits that have characterized universal injunctions—an emergency ruling before the law takes effect that shuts off further litigation, a gross breach of the limits of Article III standing and the standards for facial challenges, and an important law that is now unable to protect *anyone* in Idaho because of judicial overreach. If the Ninth Circuit were to affirm, this Court would be likely to grant review, and so it should stay the injunction now as to nonparties.

B. The Merits of Plaintiffs' Claims May Warrant Review.

Finally, while Idaho currently seeks a stay based on the scope of the district court's injunction, the legal issues raised by the merits of Plaintiffs' claims present equally important questions. As of this date, the courts of appeals are split 2-1 as to whether laws like VCPA violate the Fourteenth Amendment's Equal Protection and Due Process Clauses. The most recent decisions, from the Sixth and Eleventh Circuits, have held that they do not. *L.W.*, 83 F.4th at 473; *Eknes-Tucker* v. *Governor of Ala.*, 80 F.4th 1205, 1227 (11th Cir. 2023). An earlier Eighth Circuit decision—based on a limited, preliminary record—held that they do. *Brandt* v. *Rutledge*, 47 F.4th 661, 669 (8th Cir. 2022). Two pending petitions for certiorari cite the Eighth Circuit decision in *Brandt* as evidence of a split that they say warrants review of the Sixth Circuit's decision. See *United States* v. *Skrmetti*, 23-477; *L.W.* v. *Skrmetti*, 23-466.

But signs point to that split resolving now that the Eighth Circuit has granted initial hearing en banc from final judgment in the same case. Order, *Brandt* v. *Griffin*, No. 23-2681 (8th Cir. Oct. 6, 2023). If the en banc Eighth Circuit reverses, there will be no split among the courts of appeals, and no need for this Court to intervene unless the Ninth Circuit, in this matter, ultimately breaks with the other circuits' growing consensus.

This Court may therefore restrain the district court to the lawful exercise of its equitable power by granting a stay pending appeal that limits the injunction to the parties only. Doing so would protect Idaho's sovereignty and the safety of Idaho

children by letting Idaho enforce the VCPA in its many unchallenged and undoubtedly constitutional applications. If the Ninth Circuit later rules for Plaintiffs on the merits of their claims, then this case—on a developed testimonial record that includes expert testimony—would present an optimal vehicle for the Court to resolve the important constitutional questions at issue. And if the Court determines that review of those constitutional questions is warranted now, it should treat this application as a petition for certiorari before judgment, grant it, and reverse.

CONCLUSION

The Court should issue a stay of the district court's injunction pending appeal insofar as it grants relief to non-parties.

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Respectfully submitted,

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