

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

REV. PAUL A. EKNES-TUCKER;
BRIANNA BOE, individually and on
behalf of her minor son, MICHAEL BOE;
JAMES ZOE, individually and on behalf
of his minor son, ZACHARY ZOE;
MEGAN POE, individually and on behalf
of her minor daughter, ALLISON POE;
KATHY NOE, individually and on behalf
of her minor son, CHRISTOPHER NOE;
JANE MOE, Ph.D.; and RACHEL KOE,
M.D.

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STATE OF ALABAMA; KAY IVEY, in
her official capacity as Governor of the
State of Alabama; STEVE MARSHALL,
in his official capacity as Attorney
General of the State of Alabama; DARYL
D. BAILEY, in his official capacity as
District Attorney for Montgomery
County; C. WILSON BLAYLOCK, in his
official capacity as District Attorney for
Cullman County; JESSICA VENTIERE,
in her official capacity as District
Attorney for Lee County; TOM
ANDERSON, in his official capacity as

Case No.

2:22-cv-184-LCB-SRW

Honorable Liles C. Burke

District Attorney for the 12th Judicial Circuit; and DANNY CARR, in his official capacity as District Attorney for Jefferson County.

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF UNITED STATES' MOTION
TO INTERVENE**

Under Federal Rule of Civil Procedure (“Rule”) 24, the United States respectfully submits this brief in support of its motion to intervene in this lawsuit as Plaintiff-Intervenor. This lawsuit challenges the felony ban on certain types of gender-affirming medical care for transgender youth contained in Section 4 of Act No. 2022-289, Senate Bill (“S.B.”) 184 (2022), the “Alabama Vulnerable Child Compassion and Protection Act.”

Two purposes of Rule 24 are “to foster economy of judicial administration and to protect non-parties from having their interests adversely affected by litigation conducted without their participation.” *Stallworth v. Monsanto Co.*, 558 F.2d 257, 265 (5th Cir. 1977).¹ The United States has a statutory right to intervene in this litigation under Rule 24(a). *See* Fed. R. Civ. P. 24(a)(1). Section 902 of the Civil Rights Act of 1964, as amended, grants the United States an unconditional

¹ Decisions by the former Fifth Circuit issued before October 1, 1981 are binding as precedent in the Eleventh Circuit. *See Bonner v. City of Prichard, Ala.*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

right to intervene in certain cases seeking relief from the alleged denial of equal protection of the laws under the Fourteenth Amendment if the Attorney General certifies that the case is one of general public importance. 42 U.S.C. § 2000h-2. Here, the United States alleges that S.B. 184’s felony ban on certain types of gender-affirming medical care for transgender youth violates the Equal Protection Clause of the Fourteenth Amendment. Further, the Attorney General has certified that this case is one of general public importance and the United States’ motion to intervene is timely.

For these reasons, the Court should grant the United States’ motion to intervene.

BACKGROUND

S.B. 184 was signed into law by Governor Kay Ivey on April 8, 2022. The law will become effective on May 8, 2022. Section 4 of S.B. 184 states that “no person shall engage in or cause any of” specified types of medical care to be performed on a minor if “the purpose of attempting to alter the appearance of or affirm the minor’s perception of his or her gender or sex, if that appearance or perception is inconsistent” with sex assigned at birth. Alabama S.B. 184, § 4(a). The prohibited practices include administering puberty blockers, administering hormone therapy, and surgical interventions (including the removal of “any healthy or non-diseased body part or tissue, except for a male circumcision”). *Id.* § 4(a)(1)-

(6). There is an exception for procedures “undertaken to treat a minor born with a medically verifiable disorder of sex development.” *Id.* § 4(b). Violation of Section 4 of S.B. 184 is a Class C felony, *id.* § 4(c), which is punishable by up to 10 years of imprisonment and a fine of up to \$15,000. *See* Ala. Crim. Code §§ 13-A-5-6(a)(3), 13A-5-11(a)(3).

The *Eknes-Tucker* Plaintiffs, who include four Alabama transgender minors and their parents, a pediatrician, child psychologist, and a pastor, initiated this lawsuit on April 19, 2022 against Alabama Governor Kay Ivey, Attorney General Steve Marshall, and five district attorneys. In their lawsuit, the *Eknes-Tucker* Plaintiffs allege, *inter alia*, that S.B. 184 discriminates on the basis of sex and transgender status in violation of the Equal Protection Clause of the Fourteenth Amendment. Defendants answered the Complaint on April 21, 2022.

On April 21, 2022, the *Eknes-Tucker* Plaintiffs filed a motion for a temporary restraining order and preliminary injunction. Defendants’ response is due on May 2, 2022, and the motion will be heard on May 5 and 6, 2022.

The United States’ complaint in intervention, which adds the State of Alabama as a Defendant, challenges Section 4 of S.B. 184. The United States alleges that S.B. 184’s felony ban on certain forms of medically necessary gender-affirming care for transgender minors discriminates on the basis of sex and

transgender status in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

**THE UNITED STATES HAS A RIGHT TO INTERVENE
UNDER RULE 24(a)(1)**

The United States’ motion to intervene should be granted under Rule 24(a)(1) because the United States satisfies the requirements for intervention as of right. Under that rule on timely motion, a court must permit anyone to intervene who “is given an unconditional right to intervene by a federal statute.” Fed. R. Civ. P. 24(a)(1). Where an intervenor timely files a motion to intervene and has an unconditional statutory right to intervene in the lawsuit, a court has no discretion to deny the intervention. *Equal Emp. Opportunity Comm’n v. STME, LLC*, 938 F.3d 1305, 1322 (11th Cir. 2019).

The United States is given an unconditional right to intervene in this lawsuit by a federal statute. Section 902 of the Civil Rights Act of 1964 (“Section 902”), as amended, explicitly states that:

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

42 U.S.C. § 2000h-2. Numerous courts, including the Supreme Court, have recognized that this statute entitles the United States to intervene in equal protection cases. *See, e.g., Fitzgerald v. Barnstable School Comm.*, 555 U.S. 246, 247-48 (2009) (acknowledging that Section 902 allows the Attorney General to intervene in private equal protection suits alleging sex discrimination); *Pasadena City Bd. of Ed. v. Spangler*, 427 U.S. 424, 430 (1976) (Section 902 authorizes the United States to continue as a party plaintiff despite the disappearance of the original plaintiffs); *Fuel Oil Supply & Terminaling v. Gulf Oil Corp.*, 762 F.2d 1283, 1286 n.5 (5th Cir. 1985); *Strain v. Philpott*, 331 F. Supp. 836, 837 (M.D. Ala. 1971).

Section 902 applies here. The United States alleges that S.B. 184 discriminates on the basis of sex and transgender status in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution—one of the claims brought in this matter by the *Eknes-Tucker* Plaintiffs. As required by Section 902, the Attorney General has certified that this is a case of public importance. U.S. Mot. to Intervene, Ex. 1.

The United States' motion is timely. In *United States v. Jefferson County*, 720 F.2d 1511 (11th Cir. 1983), the Eleventh Circuit established four factors to consider when evaluating the timeliness of a motion to intervene: (1) the length of time during which the movant actually knew or reasonably should have known of

its interest in the case before petitioning for leave to intervene; (2) the extent of the prejudice that the existing parties to the litigation may suffer as a result of the movant's failure to apply for intervention as soon as it actually knew or reasonably should have known of its interest in the case; (3) the extent of the prejudice that the movant may suffer if its petition for leave to intervene is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the application is timely. *Jefferson Cnty.*, 720 F.2d at 1516; *see also Comm'r, Ala. Dep't of Corrs. v. Advance Local Media, LLC*, 918 F.3d 1161, 1171 (11th Cir. 2019); *Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d 1242, 1259 (11th Cir. 2002) (holding that delay of six months does not in itself constitute untimeliness) (citing *Chiles v. Thornburgh*, 865 F.2d 1197, 1215 (11th Cir. 1989)).

The United States has met those requirements. The United States is petitioning the Court for leave to intervene as quickly as possible after learning of its interest. The United States is moving to intervene only 11 days after Plaintiffs' initiation of their lawsuit and only three weeks after S.B. 184 was signed into law. S.B. 184 has not yet gone into effect. Second, the existing parties to the litigation will not suffer any prejudice if the United States' motion is granted. The case is in a preliminary phase and discovery has not yet commenced.

Moreover, granting intervention will not have any negative effect on the pending preliminary injunction proceedings. The *Eknes-Tucker* Plaintiffs filed their

motion for a temporary restraining order and preliminary injunction on April 21, 2022. Granting intervention to the United States here will not prejudice any party with respect to the resolution of the pending motion. The United States will imminently file its own motion for a preliminary injunction, which does not raise new claims or arguments. The government is prepared to argue this motion on May 5 and 6, 2022.

Conversely, the United States will suffer prejudice if its motion to intervene is denied. This case implicates the United States' ability to protect its sovereign interest in ensuring that all persons, including transgender youth, are afforded equal protection of the laws in accordance with the Fourteenth Amendment to the U.S. Constitution. Granting intervention here will conserve resources and best serve judicial economy. It will ensure that the United States' interests are protected without requiring the filing of a separate lawsuit that would delay the adjudication of this matter and, ultimately, the constitutionality of S.B. 184. Such efficiency is particularly critical here given that S.B. 184 goes into effect on May 8.

Thus, the United States has met the requirements for intervention as of right under Rule 24(a)(1).²

² In the alternative, the Court should permit the United States to intervene in this litigation because the requirements for permissive intervention under Rule 24(b)(1)(B) are met here. First, the United States' putative claims share common questions of law and fact with the *Eknes-Tucker* Plaintiffs' claims. *See* Fed. R. Civ. P. 24(b)(1)(B). Both Plaintiffs and the United States claim violations of the Equal Protection Clause of the Fourteenth Amendment and these claims

CONCLUSION

For the foregoing reasons, the Court should grant the United States' motion to intervene and order its intervention in this action.

Dated: April 29, 2022

Respectfully submitted,

SANDRA J. STEWART
United States Attorney
Middle District of Alabama

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

PRIM F. ESCALONA
United States Attorney
Northern District of Alabama

JOHN POWERS (DC Bar No. 1024831)
Counsel to the Assistant Attorney General
Civil Rights Division

LANE H. WOODKE
Chief, Civil Division
Northern District of Alabama

CHRISTINE STONEMAN
Chief, Federal Coordination and
Compliance Section

s/Jason R. Cheek
JASON R. CHEEK
Deputy Chief, Civil Division
U.S. Attorney's Office
Northern District of Alabama
1801 Fourth Avenue North
Birmingham, Alabama 35203
Tel.: (205) 244-2104
Jason.Cheek@usdoj.gov

COTY MONTAG (DC Bar No. 498357)
Deputy Chief, Federal Coordination and
Compliance Section

STEPHEN D. WADSWORTH
Assistant United States Attorney
U.S. Attorney's Office
Middle District of Alabama

s/Alyssa C. Lareau
ALYSSA C. LAREAU (DC Bar No. 494881)
RENEE WILLIAMS (CA Bar No. 284855)
KAITLIN TOYAMA (CA Bar No. 318993)
Trial Attorneys
United States Department of Justice
Civil Rights Division
Federal Coordination and Compliance
Section
950 Pennsylvania Avenue NW – 4CON

are based on the same facts. Both lawsuits challenge Section 4 of S.B. 184's ban on certain types of gender-affirming care for transgender youth. Second, because the United States' motion is timely, intervention will not unduly delay or prejudice the adjudication of the original parties' rights. *Id.* at (b)(3). Given that the United States has promptly moved to intervene, intervention will not unduly delay or prejudice the original parties' rights.

Post Office Box 197
Montgomery, Alabama 36101-0197
Tel.: (334) 223-7280
Stephen.Wadsworth@usdoj.gov

Washington, DC 20530
Tel.: (202) 305-2994
Alyssa.Lareau@usdoj.gov
Renee.Williams3@usdoj.gov
Kaitlin.Toyama@usdoj.gov

*Attorneys for Plaintiff-Intervenor United
States of America*

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record, in accordance with Rules 24(c) and 5(b)(2)(E).

Respectfully submitted,

s/ Jason R. Cheek

Jason R. Cheek

Assistant U.S. Attorney