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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

EMILIE JACKSON-EDNEY, *et al.*,

Plaintiffs,

v.

RAÚL LABRADOR, in his official capacity
as Attorney General of the State of Idaho, *et*
al.,

Defendants.

Case No. 1:26-cv-00261-AKB

**REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION [DKT. 4]**

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Defendants’ Opposition to Class Certification essentially asserts that the proposed class is a monolith, and therefore it cannot be certified. That is not the test. Because Plaintiffs have established that they meet the requirements of Rule 23, and Defendants present no meaningful evidence or argument to the contrary,¹ this Court should provisionally certify the class and issue classwide relief.²

ARGUMENT

I. The Class Satisfies Commonality.

Rule 23(a)’s requirement of commonality requires that proceeding as a class has the capacity “to generate common *answers* apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (*quoting* Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. REV. 97, 132 (2009)). Plaintiffs need not show that “every question in the case, or even a preponderance of questions, is capable of class wide resolution. So long as there is ‘even a single common question’ a would-be class can satisfy the commonality requirement of Rule 23(a)(2).” *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) (*quoting* *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 544 (9th Cir. 2013)) (cleaned up).

Plaintiffs raise simple common legal questions here capable of classwide resolution: That H.B. 752 is unconstitutionally vague and violates the class’s right to equal protection and informational privacy. Common facts also support classwide resolution. Plaintiffs are all

¹ Defendants do not contest Plaintiffs’ allegations of numerosity, adequacy of counsel, or fulfillment of Rule 23(b)(2). *See* Dkt. 41 (“Class Cert. Opp.”), *passim*.

² If this Court would prefer additional time to consider the class certification issues, it may provisionally certify the class for purposes of a preliminary injunction and reserve its final ruling on class certification for a later date. *See, e.g., Kaiser v. County of Sacramento*, 780 F. Supp. 1309, 1312, 1312 n.5 (E.D. Cal. 1991).

transgender individuals who will be barred from using restrooms that align with their gender identity by operation of this law. Likewise, the putative class is defined according to members' gender identity and use of restrooms. The factual commonalities between the Plaintiffs and the putative class advance resolution of the common legal contentions. That satisfies commonality.

In response, Defendants dwell on the differences among transgender persons based on age or their process of transitioning and the diversity of terms used to describe gender identity outside the courtroom. But they have not explained in any way how this affects the analysis of the legal claims at issue. See Class Cert. Opp. at 3-5; *cf. Stockwell v. City & Cnty. of San Francisco*, 749 F.3d 1107, 1114 (9th Cir. 2014) (“To assess whether the putative class members share a common question, the answer to which ‘will resolve an issue that is central to the validity of each one of the [class members’s] claims,’ we must identify the elements of the class members’s [sic] case-in-chief.” (*quoting Wal-Mart*, 564 U.S. at 350)). Neither age³ nor medical transition affect the questions of whether this law provides ordinary people notice of what it proscribes, whether this law classifies based on a protected characteristic, or whether it meets the level of justification and tailoring required therein. Further, it is inherent in the right to informational privacy that individuals be allowed to choose when and to whom they disclose information. See Dkt. 3-1 (“PI Mot.”) at 21. Differences in individuals’ gender presentations do not vitiate this right. Defendants’ arguments are a red herring that fail to address whether the class shares common contentions which will drive resolution of the litigation.

³ Defendants focus on diversity in age in the class, arguing that use of one’s chosen restroom is harmful to minors. Class Cert. Opp. at 6, 9. That proposition is unsupported by evidence. See Dkt. 46-1 (“Ettner Rebuttal Decl.”) ¶¶ 21-23. More to the point, it is wholly irrelevant to commonality and adequacy. Defendants cannot import their own judgment of what minor class members *should want* to try to defeat certification.

Prior to H.B. 752, individuals sorted themselves into restrooms aligned with their gender identities without issue. After July 1, for members of the class, this action is criminalized. Each member of the proposed class thus faces the same risk of arrest and punishment under this unlawful state statute. As such, commonality is satisfied.

II. The Class Representatives' Claims Are Typical.

Again, Defendants point to differences among class members without any explanation of how those differences affect the legal claims and interests at issue. Typicality requires only that the representative claims “are reasonably co-extensive with those of absent class members; they need not be substantially identical.” *DZ Rsrv. v. Meta Platforms, Inc.*, 96 F.4th 1223, 1238 (9th Cir. 2024) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998), *overruled on other grounds by Wal-Mart*, 564 U.S. at 338). Defendants assert that the named Plaintiffs may have “unique defenses or eligibility under H.B. 752[.]” Class Cert. Opp. at 7. But it is unclear to Plaintiffs what those defenses or “eligibility” may be. What is clear is that the named Plaintiffs and all class members, *by definition*, will be denied access to their chosen restroom by operation of H.B. 752. *See* Dkt. 4-1 (“Mem. ISO Mot. Class Cert.”) at 1 (“The class would include all transgender people who seek to use a restroom in a government-owned building or place of public accommodation in Idaho consistent with their gender identity.”).

III. The Class Representatives Are Adequate.

The class, despite variations in gender identity and presentation, does not have “conflicts of interest,” and the named Plaintiffs will “prosecute the action vigorously on behalf of the class.” *See Idaho Org. of Res. Councils v. Labrador*, 780 F. Supp. 3d 1013, 1050 (D. Idaho 2025) (quoting *Kim v. Allison*, 87 F.4th 994, 1000 (9th Cir. 2023)).

Defendants’ arguments against adequacy are illogical. They argue that Plaintiffs “assume[] that every transgender person (however defined) will want to use multi-occupancy

restrooms designated for members of the opposite sex and that every transgender person wants members of the opposite sex to be able to access the restroom that they use.” Class Cert. Opp. at 8 (emphasis added). But this first point is not an assumption, it is a feature of the class definition. *See* Mem. ISO Mot. Class Cert. at 1 (defining the class as “all transgender people *who seek to use* a [covered restroom] consistent with their gender identity”).

This leaves only Defendants’ second contention: that if a class member did not want other transgender people to be able to use the restroom that aligns with their gender identity, the class representatives who are fighting for that right would be inadequate representatives. Essentially, if an individual member of the class wanted their own rights protected, but not those of a different member of the class, certification must be denied. Ignoring the test for adequacy, which focuses merely on uncovering conflicts of interest, Defendants argue that every member of the class must “want[] exactly what the six named Plaintiffs want[.]” Class Cert. Opp. at 8-9. Courts have never been required to probe the exact wishes of every class member. Imposing that requirement here would vitiate class certification in any circumstance. The interest in protecting one’s access to their chosen restroom is shared by the class members. As such, the named Plaintiffs are adequate representatives.

Defendants’ response ignores the relevant standards while fixating on immaterial diversity in the class. Plaintiffs have demonstrated that they have met the requirements of Rule 23 to proceed as a class and request that any relief be issued classwide.

CONCLUSION

For the foregoing reasons, this Court should grant provisional class certification and classwide relief.

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Respectfully Submitted

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