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SUPREME COURT OF TEXAS
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Nos. 24-0384 (*consolidated with* No. 24-0387), 24-0385

IN THE SUPREME COURT OF TEXAS

STEPHANIE MUTH, in her official capacity as Commissioner of the Texas Department of Family and Protective Services; and TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,

Petitioners,

vs.

Mirabel Voe, individually and as parent and next friend of Antonio Voe, a minor; Wanda Roe, individually and as parent and next friend of Tommy Roe, a minor; PFLAG, Inc.; and Adam Briggle and Amber Briggle, individually and as parents and next friends of M.B., a minor,

Respondents.

_____

GREG ABBOTT, in his official capacity as Governor of the State of Texas; STEPHANIE MUTH, in her official capacity as Commissioner of the Texas Department of Family and Protective Services; and TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,

Petitioners,

vs.

Jane Doe, individually and as parent and next friend of Mary Doe, a minor; John Doe, individually and as parent and next friend of Mary Doe, a minor; and Dr. Megan Mooney

Respondents.

On Petition for Review from the
Third Court of Appeals at Austin, Texas
Case Nos. 03-22-00126-CV, 03-22-00587-CV & 03-22-00420-CV

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[1] Effective January 2, 2023, Stephanie Muth assumed the role of DFPS Commissioner and, pursuant to Texas Rule of Appellate Procedure 7.2, was automatically substituted as a party for defendant Jaime Masters whose tenure as DFPS Commissioner ended on November 28, 2022.

Respondents:

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John Doe, individually and as parent and next friend of Mary Doe, a minor
Dr. Megan Mooney
Mirabel Voe, individually and as parent and next friend of Antonio Voe, a minor
Wanda Roe, individually and as parent and next friend of Tommy Roe, a minor
Adam Briggle, individually and as parent and next friend of M.B., a minor
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V3SCR	*Voe v. Muth* Supplemental Clerk's Record filed November 8, 2022 (Nos. 24-0384 and 24-0387)
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VSRR	*Voe v. Muth* Supplemental Reporter's Record (Nos. 24-0384 and 24-0387)

[2] Citations to exhibits appear in the form [Volume] RR [PX-#].

[3] Citations to the Clerk's Records herein appear in the form [Volume] CR [Page(s)] and reflect the pagination that appears in the footer of the Clerk's Records. Beginning with page 493, the pagination in the *Voe* Clerk's Record is not consecutive and does not match the pagination identified in the index thereto.

[4] Citations to the Supplemental Clerk's Records herein appear in the form [Volume] SCR [Page(s)] and reflect the pagination that appears in the footer of the Supplemental Clerk's Records. Each of the three Supplemental Clerk's Records in *Voe* is labeled as Volume 1 on its cover page. For citation purposes, Respondents have assigned volume numbers, as indicated here. Additionally, the pagination in Volume 1 of the Supplemental Clerk's Record is not consecutive and does not match the pagination identified in the index thereto.

[5] Volume 2 of the Supplemental Clerk's record has no pagination in the footer. Therefore, citations to 2SCR herein refer to the pdf page numbers.

STATEMENT OF THE CASE

Nature of the Case:	Actions by Respondents seeking declaratory and injunctive relief against Petitioners for violations of the APA and Texas Constitution, including *ultra vires* actions.
Trial Court:	201st and 459th Judicial District Court of Travis County, Judge Amy Clark Meachum presiding.
Trial Court Disposition:	The District Court issued three temporary injunctions prohibiting Petitioners from investigating Respondents, including PFLAG member families, *solely* based on an alleged provision of gender-affirming medical care.
Court of Appeals:	Third Court of Appeals at Austin.
Court of Appeals Disposition:	In an opinion written by Justice Smith and joined by Chief Justice Byrne and Justice Triana, the Court of Appeals affirmed the District Court's injunction as to DFPS and its Commissioner but reversed and rendered as to the Governor. *Abbott v. Doe*, 691 S.W.3d 55, 63 (Tex. App.—Austin 2024, pet. pending). In an opinion written by Justice Triana and joined by Chief Justice Byrne and Justice Theofanis, the Court of Appeals affirmed the District Court's injunction as to DFPS and its Commissioner. *Muth v. Voe*, 691 S.W.3d 93 (Tex. App.—Austin 2024, pet. pending).

ISSUES PRESENTED

1. Whether the District Court properly exercised its discretion in temporarily enjoining DFPS and its Commissioner from implementing an unlawful Rule to presumptively treat gender-affirming medical care as child abuse in order to maintain the status quo during the pendency of litigation and protect Respondents from imminent and irreparable harm.
2. Whether the District Court properly exercised jurisdiction over Respondents' claims against Petitioners' adoption and implementation of an unlawful Rule that has caused and threatens to cause ongoing significant and irreparable harm.
3. Whether Petitioners waived their sovereign immunity by adopting and implementing an unlawful Rule in violation of both the substantive and procedural requirements of the APA, by acting *ultra vires*, and by infringing constitutional rights.

INTRODUCTION

Without any statutory basis or authority, the Department of Family and Protective Services (DFPS) and its Commissioner effectively rewrote the definition of child abuse under Texas law, adopting a rule deeming the provision of gender-affirming medical care to minors, even when legal and available, to be *per se* child abuse. No Texas statute has ever supported this definition of child abuse, either before or after Petitioners' adoption of this rule. Regardless, DFPS immediately operationalized the rule, launching unlawful and invasive investigations that defied the agency's typical procedures to target families with transgender adolescents whose physicians recommended gender-affirming medical care. In temporarily enjoining this rule, the District Court did not abuse its discretion but instead maintained the status quo and prevented imminent and irreparable harm to Respondents from Petitioners' violations of the APA and Texas Constitution. The District Court found multiple concrete and tangible harms that Respondents suffered due to the new DFPS Rule and its implementation, including being subjected to unlawful investigations, interference with familial autonomy and parental decision-making, invasions of privacy, trauma and mental health impacts for every member of the household, and disruption of medically necessary care.

Because Respondents are concretely injured by this Rule, they have standing to challenge it under the APA, as *ultra vires*, and under the Texas Constitution, and Petitioners' sovereign immunity is waived. No intervening event has mooted Respondents' claims, and the Texas Legislature has pointedly refused to adopt the unfounded and unlawful definition of abuse invented by Petitioners, even when it acted to regulate doctors' ability to provide gender-affirming medical care. The temporary injunctions should be affirmed to preserve the status quo while Petitioners may raise any outstanding arguments before the trial court.

STATEMENT OF FACTS

These cases arise from Petitioners' promulgation and implementation of a new agency rule requiring DFPS to investigate parents for child abuse based solely on allegations that they accessed gender-affirming medical care for their transgender adolescent children (the "DFPS Rule").

I. The DFPS Rule

In 2021, the Legislature considered and rejected legislation that would have categorized the provision of gender-affirming medical treatment to minors as "child abuse." 1VCR11; 1DCR9. After the bill failed, Governor Abbott explained that he had a "solution" to what he called the "problem" of medical treatment for minors with gender dysphoria. 1VCR11; 1DCR10.

On February 21, 2022, Attorney General Ken Paxton released an opinion that medical treatment for a minor with gender dysphoria, including pubertal suppression and hormone therapy, could constitute child abuse ("Paxton's Opinion"). 1VCR9-10; 1DCR7-8. The next day, the Governor directed DFPS and its Commissioner, in contravention of their legislatively prescribed authority, to investigate all reports of parents securing medical treatment for their adolescents' gender dysphoria as "child abuse," and ordering, under threat of criminal prosecution, "all licensed professionals who have direct contact with children," and "members of the general public"

to report instances of minors receiving such treatment ("Abbott's Directive"). *See* 3VRR PX-02, at 1; 4DRR PX-02, at 1.

DFPS immediately operationalized Abbott's Directive, triggering abrupt changes in DFPS's policies and practices. 2VRR135:18-138:8; 2DRR32-33, 51-53. Before February 22, 2022, DFPS had "no pending investigations of child abuse involving the procedures described" in Paxton's Opinion. 3VRR PX-03; 1VCR12; 4DRR PX-03; 1DCR8; *see* 2VRR228:13-17, 266:4-8; 2DRR44-46, 49, 88-89. After the Directive, DFPS announced it would investigate all reports of such care ("DFPS Statement"). 3VRR PX-03; 1VCR11; 4DRR PX-03; 1DCR8. DFPS then instructed investigators that they could not document anything about these "specific cases" in writing; could not designate them "priority none" or send them to "alternative response"; and were required to "staff up" the cases with "upper leadership." 2VRR136:2-16, 137:21-138:2; 4DRR PX-17; 1VCR12-13; *see* 3VRR PX-15, ¶ 2(B); 2DRR36:24-39:5, 48:16-24. In so doing, DFPS departed dramatically from established rules and statutes and created a mandate that these cases *will* be investigated and cannot be deprioritized or screened out.

II. *Doe v. Abbott*

After February 22, 2022, DFPS launched investigations into families throughout Texas, including the Doe family. 1DCR9; 2DRR33:12-17;

2VRR40:16-22, 147:15-148:5, 148:24-149:19; 1VCR13, 187-88. Respondents Jane Doe and John Doe are the loving parents of Respondent Mary Doe, who is transgender. 1DCR22-24. The Doe family was immediately investigated under the DFPS Rule, and Jane was placed on administrative leave from her job at DFPS. 1DCR24-25, 57; 2DRR87:4-90:21. Mary was terrified during the investigator's interview at their home, blaming herself for the investigation, and in its aftermath, she dreaded going to school, her anxiety spiked, and she required counseling. 1DCR25-26.

Respondent Dr. Megan Mooney is a clinical psychologist and mandatory reporter under Texas law who treats adolescents diagnosed with gender dysphoria. 1DCR26-28; 3DRR17:24-25, 22:14-16. The DFPS Rule requires her to either report her clients who receive gender-affirming medical care, thereby violating her code of ethics and damaging her professional reputation, or face the prospect of civil and criminal penalties for failing to report what Petitioners newly decreed to be child abuse. 1DCR26-28; 3DRR19:8-22, 21:9-12, 23:6-18, 27:5-24.

The Does and Dr. Mooney brought suit on March 1, 2022, against Governor Abbott, Commissioner Masters, and DFPS. After an evidentiary hearing, the District Court issued the Temporary Injunction (TI) and denied Petitioners' jurisdictional plea. 1DCR232-37. The court found Respondents

likely to prevail on the merits and held that absent injunctive relief, the Doe Family faces the "ongoing deprivation of their constitutional rights and the stigma attached to being the subject of a child abuse investigation" and "Mary faces the potential loss of medically necessary care, which if abruptly discontinued can cause severe and irreparable physical and emotional harms, including anxiety, depression, and suicidality." 1DCR235. The court further ruled that "[i]f defendants' directives remain in effect, Dr. Mooney will be required to report her patients who are receiving medically necessary gender-affirming care, in contravention of the code of ethics governing her profession and the medical needs of her patients. If Dr. Mooney does not report her patients, she could face immediate criminal prosecution as set forth in the Governor's letter." 3DRR146.

Petitioners appealed to the Third Court of Appeals ("3COA"), which reinstated the TI during the pendency of the appeal pursuant to Texas Rule of Appellate Procedure 29.3. *Abbott v. Doe*, No.03-22-00126-CV, 2022 WL 837956 (Tex. App.—Austin Mar. 21, 2022, order) (per curiam). Petitioners then sought mandamus relief from this Court. While permitting the TI to remain in place for the Doe Family and Dr. Mooney, this Court conditionally granted mandamus "as to the portions of the court of appeals' order that purport to have statewide application," finding that Rule 29.3 relief is only

warranted "to preserve the parties' rights until disposition of the appeal." *In re Abbott*, 645 S.W.3d 276, 280-82 (Tex. 2022) (orig. proceeding).

III. *Voe v. Muth*

Shortly after this Court's ruling leaving the 3COA's TI intact only as to the Doe Respondents and Dr. Mooney, DFPS resumed its implementation of the DFPS Rule, investigating families of transgender youth across the state. 2VRR52:17-25, 149:20-150:5.

Respondent Mirabel Voe is the loving parent of Respondent Antonio Voe, who is transgender. DFPS opened an unlawful investigation into the Voe family based solely on allegations that Antonio had been prescribed medical care for his diagnosed gender dysphoria. 2VRR32:18-22, 33:6-10, 33:14-17, 36:15-18. Petitioners' actions have affected the Voes "in every aspect that [they] can[:] medically, physically, emotionally, and . . . to a certain extent financially." 2VRR53:1-54:2; *see also* 2VRR38:19-40:10, 48:19-49:1.

Respondent Wanda Roe is the loving parent of Respondent Tommy Roe, who is transgender. DFPS opened an unlawful investigation into the Roe family based solely on allegations that Tommy had been prescribed medical care for his diagnosed gender dysphoria. 2VRR145:5-9, 146:17-20. The investigation and the threat of future investigations have had an "awful"

impact on the Roe family. 2VRR150:18-20; *see also* 2VRR150:6-17.

Respondents Adam and Amber Briggle are the loving parents of Respondent M.B., a transgender adolescent. DFPS opened an unlawful investigation into the Briggle family based solely on allegations that M.B. had been prescribed medical care for his diagnosed gender dysphoria. 1VCR185-86. Petitioners' actions have caused the Briggle family "overwhelming fear, stress and anxiety." 1VCR190.

Respondent PFLAG is the "largest and first organization for LGBTQ+ [lesbian, gay, bisexual, transgender, and queer] individuals and their families." 2VRR60:24-61:4. A 501(c)(3) non-profit organization, PFLAG has approximately 250,000 members, including approximately 700 members (including Respondent Families) in Texas. *Id.*; 2VRR62:1-6, 68:1-5. PFLAG focuses on support, education, and advocacy in line with its mission to help create "an equitable world where LGBTQ+ plus individuals are safe, celebrated, empowered, and loved." 2VRR60:24-61:4, 68:14-69:6, 72:23-73:5. Petitioners' actions have resulted in or threatened to result in unlawful child abuse investigations of many PFLAG members who have transgender children, including the Voe, Roe, and Briggle families, causing those families to become "extremely terrified," not only about the potential of having their child removed from their care or potential disruption to their child's

medically necessary care, but about the trauma, stigma, invasion of privacy, and threat to their parental rights inherent in being investigated for child abuse. *See* 2VRR68:6-13, 69:2-6, 69:17-19, 70:13-20, 71:22-72:22.

The Voe, Roe, Briggle, and PFLAG Respondents sued Petitioners, along with the Governor, on June 8, 2022. They challenged Abbott's Directive and the DFPS Rule and asserted six causes of action, 1VCR4-192, but they sought temporary injunctive relief against Commissioner Masters and DFPS *only* on the grounds that the DFPS Rule violates the APA, both procedurally and substantively. 1VCR74-78.

After a full evidentiary hearing that included testimony from the parties' fact witnesses and experts, the District Court granted temporary injunctions. 1VCR546-50 (granting relief to Voes and Roes; the "Voe Injunction"); V2SCR3-8 (granting relief to PFLAG and Briggles; the "PFLAG Injunction"). The District Court determined that "there is a substantial likelihood that [Respondents] will prevail after a trial on the merits" because the "DFPS Rule was adopted without following the necessary procedures under the APA, is contrary to DFPS's enabling statute, is beyond the authority provided to the Commissioner and DFPS, and is otherwise contrary to law." 1VCR547-48; V2SCR4-5. The District Court concluded "[t]he DFPS Rule was given the effect of a new law or new agency rule,

despite no new legislation, regulation or even valid agency policy." 1VCR548; V2SCR5. The District Court also held that, absent injunctive relief, Appellees would "suffer probable, imminent, and irreparable injury." 1VCR548; V2SCR5. Such harms include, among others,

> being subject to an unlawful and unwarranted child abuse investigation; intrusion and interference with parental decision-making; the deprivation or disruption of medically necessary care for the parents' adolescent children . . . gross invasions of privacy in the home and school, and the resulting trauma felt by parents, siblings, and other household members; . . . adverse effects on grades and participation in school activities; . . . [and] increased incidence of depression and risk of self-harm.

1VCR548-49; V2SCR5-6.

The TIs enjoined Petitioners from "implementing or enforcing" the DFPS Rule against the Doe, Roe, Voe, Briggle, and PFLAG member families with transgender children (together, "Respondent Families"). 1VCR549; V2SCR6. Petitioners are specifically restrained from (1) investigating Respondents "for possible child abuse or neglect <u>*solely*</u> based on allegations that they have a minor child or are a minor child who is gender transitioning or alleged to be receiving or being prescribed medical treatment for gender dysphoria;" and (2) from taking any investigatory or adverse actions against Respondents with investigations that have already been opened on this basis other than to administratively close them. 1VCR549; *see* V2SCR6-7.

Petitioners separately appealed the Voe Injunction and the PFLAG Injunction. 1VCR535-37; V2SCR9-11. The 3COA granted Respondents' requests for Rule 29.3 relief to maintain the status quo and protect the parties' rights during the pendency of the appeals. *Masters v. Voe*, No. 03-22-00420-CV, 2022 WL 4359561, at *3 (Tex. App.—Austin, Sept. 20, 2022, order) (per curiam); *Masters v. PFLAG, Inc.*, No. 03-22-00587-CV, 2022 WL 4473903, at *1 (Tex. App.—Austin Sept. 26, 2022, order) (per curiam).

On March 29, 2024, the 3COA affirmed the District Court's TI in *Doe* as to DFPS and its Commissioner but reversed and dismissed all claims against the Governor. *Abbott v. Doe*, 691 S.W.3d 55 (Tex. App.—Austin 2024, pet. pending). The 3COA affirmed the District Court's TIs in *Voe* in their entirety. *Muth v. Voe*, 691 S.W.3d 93 (Tex. App.—Austin 2024, pet. pending).

IV. Legislative Action on Gender-Affirming Medical Care for Minors

In 2023, the Texas Legislature again considered and rejected proposed legislation that would have defined child abuse under Texas law to include the provision of gender-affirming medical care. *See* Tex. H.B. 42, 436, and 672, 88th Leg., R.S. (2023). Instead, the Legislature enacted S.B.14, which regulates medical professionals in Texas, barring them from providing this

care to minors.[6] *See* Act of May 17, 2023, 88th Leg., R.S., ch. 335, 2023 Tex. Gen. Laws 732. Notably, S.B.14 did not address the conduct of parents regarding gender-affirming medical care for their adolescent children in any way, whether within Texas or in states where this medical care remains lawfully provided. It did not amend the Family Code or otherwise authorize Petitioners to investigate the mere provision of gender-affirming medical care as abuse.

In 2025, subsequent to the passage of S.B.14 and to this Court's decision in *State v. Loe*, the Texas Legislature yet again considered and rejected proposed legislation that would have defined child abuse under Texas law to include the provision of gender-affirming medical care. *See* Tex. H.B. 3478, 89th Leg., R.S. (2025).

[6] In *State v. Loe*, 692 S.W.3d 215 (Tex. 2024), this Court upheld the constitutionality of S.B.14 as an exercise of the Legislature's authority to regulate the practice of medicine.

SUMMARY OF ARGUMENT

The Court should affirm the District Court's temporary injunctions to preserve the status quo and affirm its jurisdiction over Respondents' claims.

First, the District Court did not abuse its discretion in issuing the TIs. The lower courts properly concluded that the DFPS Rule is a rule within the meaning of the APA, and Petitioners do not contest that the Rule was adopted in violation of both the procedural and substantive requirements of the APA. The uncontroverted record supports the District Court's findings of imminent and irreparable harm to Respondents as a result of the DFPS Rule warranting injunctive relief. And the scope of relief in the TIs is appropriate: they are targeted solely at the DFPS Rule itself, simply returning the Department to the status quo before its application of the Rule. Statewide relief against agency action is regularly granted in APA or *ultra vires* actions, as is injunctive relief to the impacted members of membership organizations such as PFLAG.

Second, the passage of S.B.14 and the Court's decision in *State v. Loe* do not change the propriety of the TIs or the courts' jurisdiction over Respondents' claims. Neither S.B.14 nor *Loe* changed the statutory definition of child abuse, and indeed, the Legislature has rejected multiple bills seeking to expand the statutory definition of child abuse to include gender-affirming

medical care—even after the passage of S.B.14. And the passage of S.B.14 does not end the threat of concrete harms imposed by the DFPS Rule because this care remains lawful in half the country.

Third, Respondents' claims are justiciable. In granting and affirming the TIs, the courts below properly exercised jurisdiction over Respondents' claims. The Doe, Roe, Voe, and Briggle families, Dr. Mooney, and PFLAG all have standing because they and their members face actual and imminent injuries from the DFPS Rule. These claims were ripe when these cases were filed and have not been rendered moot by any subsequent event. Absent injunctive relief, Respondents will be subject to an unlawful Rule that impairs and threatens to impair their rights. Respondents' injuries are directly traceable to Petitioners, who promulgated the DFPS Rule and operationalized it in ways that exceeded their statutory authority, violated longstanding protocols for DFPS investigations, and invaded Respondents' rights. Sovereign immunity poses no bar to Respondents' APA, *ultra vires*, and constitutional claims, all of which are plainly justiciable.

ARGUMENT

In 2022, Petitioners circumvented the Legislature's refusal to deem the provision of gender-affirming medical care to be child abuse, flouting both statutory and constitutional limits on the authority of both DFPS and its Commissioner. The implementation of this expanded definition of child abuse included a dramatic shift in DFPS policy and practice, resulting in unlawful investigations of parents for alleged conduct that no statute deems to be child abuse to this day, including S.B.14. The DFPS Rule and the unauthorized investigations it mandates caused and continue to cause immediate and irreparable harm for the Respondent Families and for Dr. Mooney, both tangible and constitutional. As the 3COA affirmed, the District Court properly exercised both its jurisdiction over Respondents' claims and its discretion to protect Respondents from the harm caused by the DFPS Rule, restoring the status quo regarding the definition of child abuse and blocking the Rule's implementation.

Petitioners' challenge to the District Court's TIs boils down to three things: (1) their argument that the DFPS Rule is not a rule within the meaning of the APA; (2) their assertion that the passage of S.B.14 and this Court's decision in *State v. Loe* somehow ratified the Rule; and (3) their

claim that Respondents lack standing and their claims are not justiciable. None of these arguments disturbs the propriety or necessity of the TIs below.

I. The District Court did not abuse its discretion in issuing the temporary injunctions.

This Court reviews a District Court's TI under an abuse of discretion standard, limiting its review to the order itself rather than the underlying merits, and "will not disturb the order unless it is 'so arbitrary that it exceed[s] the bounds of reasonable discretion.'" *Henry v. Cox*, 520 S.W.3d 28, 33-34 (Tex. 2017) (quoting *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002)). Viewing the evidence in the light most favorable to the trial court's order and indulging every reasonable inference in its favor, if some evidence reasonably supports the trial court's decision—even if the evidence is conflicting—the trial court did not abuse its discretion. *Id.* at 34; *Davis v. Huey*, 571 S.W.2d 859, 862 (Tex. 1978).

Here, the District Court in no way abused its discretion by granting the TIs. Respondents established: (1) a cause of action against Petitioners; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *See Butnaru*, 84 S.W.3d at 204. Temporary relief was (and remains) necessary to shield Respondents from harm and maintain the status quo during the litigation. *Id.*; *Walling v. Metcalfe*, 863 S.W.2d 56, 58 (Tex. 1993). The District Court correctly concluded based on

the evidence before it that Respondent Families and Dr. Mooney were likely to succeed on their APA, *ultra vires*, and separation of powers claims challenging the DFPS Rule's unauthorized expansion of the definition of child abuse to mandate investigations into all allegations that a minor is receiving gender-affirming medical care. Temporary injunctive relief was necessary both to shield Respondents from the imminent and irreparable harms of the DFPS Rule and to maintain the status quo ante before the Rule's adoption and operationalization.

A. Respondents have a probable right to relief.

Petitioners do not contest in any way the District Court's determinations, affirmed by the 3CoA, that the DFPS Rule was adopted in violation of both the procedural and substantive requirements of the APA. They simply insist that it is not a rule and that Petitioners were following their normal policies and procedures. But the evidence before the District Court more than amply supports that court's contrary conclusions, underscoring Respondents' probable right to the relief sought in their APA, *ultra vires*, and separation of powers claims. *Butnaru*, 84 S.W.3d at 211 ("The trial court does not abuse its discretion if some evidence reasonably supports the trial court's decision.").

1. The District Court properly concluded that Respondents have a probable right to declaratory and injunctive relief on their APA Claims.

The District Court properly held, and the 3COA affirmed, that the DFPS Rule is a rule within the meaning of the APA. A rule "means a state agency statement of general applicability that: (i) implements, interprets, or prescribes law or policy; or (ii) describes the procedure or practice requirements of a state agency." Tex. Gov't Code § 2001.003(6)(A). The policy announced in the DFPS Statement and its subsequent implementation plainly qualify.

DFPS fully operationalized Abbott's Directive, altering both the policy and procedure of the agency. As this Court noted, DFPS may have considered itself bound to do so by Abbott's Directive and Paxton's Opinion. *See In re Abbott*, 645 S.W.3d 276, 281 (Tex. 2022) (the language of the statement "suggests that DFPS may have considered itself bound by either the Governor's letter, the Attorney General's Opinion, or both."); *see also id*. at 287 (Lehrmann, J., concurring) (noting "DFPS's summary change in policy pursuant to the Governor's directive—whether or not based on an erroneous view of the Governor's authority to issue it"). But "nothing before this Court supports the notion that DFPS is so bound," and it is only "the Legislature, by statute" that has the authority to alter DFPS's ability to investigate

conduct as child abuse. *Id*. at 281; *see also Holmes v. Morales*, 924 S.W.2d 920, 924 (Tex. 1996) (Attorney General opinions are "not controlling").

The Legislature has repeatedly refused to amend the Texas Family Code to grant DFPS the authority it invented through this Rule. *See In re Abbott*, 645 S.W.3d at 281 n.4 (noting Legislature's consideration and rejection of "proposed legislation that would have amended the Family Code to add certain treatments for gender dysphoria to the definition of 'child abuse'" and citing Tex. S.B. 1646, 87th Leg., R.S. (2021)). Thus, in operationalizing Abbott's Directive, DFPS unilaterally adopted an unsanctioned definition of child abuse. As the District Court found, "[t]he Governor's directive was given the effect of a new law or new agency rule, despite no new legislation, regulation or even stated agency policy." *Doe*, 691 S.W.3d at 70. DFPS and the Commissioner were not merely following the law but altering it.

They launched a sea change in DFPS policy and process, dramatically altering the status quo for transgender adolescents and their families, as well as professionals who support them, throughout the State of Texas. 1DCR234; 2VRR135:18-138:8. Before operationalizing Abbott's Directive, DFPS had no pending investigations of gender-affirming care as child abuse. 1DCR8; 4DRR PX-03; 3VRR PX-03; 1VCR12; *see* 2DRR44-46, 49, 88-89;

2VRR33:13-17, 86:7-12. Following Abbott's Directive, DFPS started to treat gender-affirming care as presumptively abusive and, alone, as grounds for investigations. *See* 1DCR8-9; 4DRR PX-03; 1VCR11, 187-88; 3VRR PX-03; 2VRR40:16-22, 147:15-148:5, 148:24-149:19. Petitioners mandated investigation into gender-affirming medical care, without exception. *See* 2DRR137:21-138:2. This was a departure from, rather than an exercise of, DFPS's ordinary authority to investigate child abuse.

Petitioners also upended the agency's usual practices for these particular investigations by limiting which personnel could oversee them to those at higher levels within the agency, instructing investigators not to document anything about these cases in writing but to confer with senior leadership for the "dispositioning" of these cases, and barring them from designating them as "priority none" or qualified for an "alternative response." 2VRR136:2-16, 137:21-138:2; 1VCR12-13; 4DRR PX-17; *see* 3VRR PX-15, ¶ 2(B); 2DRR36:24-39:5, 44:17-25, 51:2-19, 53:2-8.

The February 22, 2022, the DFPS Statement publicly announced this dramatic shift in order to "advise third parties regarding applicable legal requirements," which further makes it a rule under the APA. *Tex. Dep't of Transp. v. Sunset Transp., Inc.*, 357 S.W.3d 691, 703 (Tex. App.—Austin 2011, no pet.); *see also Tex. Alcoholic Beverage Comm'n v. Amusement &*

Music Operators of Tex., Inc., 997 S.W.2d 651, 657-58 (Tex. App.—Austin 1999, writ dism'd w.o.j.) (holding that memoranda constituted "rule" because they "set out binding practice requirements" that "substantially changed previous enforcement policy"). While Petitioners try to reduce the DFPS Statement to a mere "press statement confirming that [the] agency will 'follow the law,'" Pets' Br. 9, that contention is undermined by the Statement itself, which proclaimed that reports of minors receiving gender-affirming care "will be investigated" by the agency as abuse for the very first time. 3VRR PX-03; 1VCR11; 4DRR PX-03; 1DCR8. Far from concerning only the agency's "internal management or organization," Pets' Br. 15, 29 (quoting Tex. Gov't Code § 2001.003(6)(C)), the DFPS Statement unilaterally altered the definition of abuse across the board, mandating a brand-new category of investigations that is generally applicable, interfered with private rights, and is binding, making it unquestionably a rule within the meaning of the APA. *See El Paso Hosp. Dist. v. Tex. Health & Hum. Servs. Comm'n*, 247 S.W. 3d 709, 714 (Tex. 2008) (holding statement of Health and Human Services Commission had "general applicability" because it applied to "all hospitals"); *Combs v. Entm't Publ'ns, Inc.*, 292 S.W.3d 712, 721-22 (Tex. App.—Austin 2009, no pet.) (holding Comptroller's statements constituted a "rule" under APA because it applied to all persons and entities "similarly situated"); *see*

also Teladoc, Inc. v. Tex. Med. Bd., 453 S.W.3d 606, 615 (Tex. App.—Austin 2014, pet. denied) ("Agency statements of 'general applicability' refer to those 'that affect the interest of the public at large such that they cannot be given the effect of law without public comment,' as contrasted with statements 'made in determining individual rights.'" (citation omitted)).

This Court has never held to the contrary. Petitioners dramatically mischaracterize this Court's language in *In re Abbott*, 645 S.W.3d at 281 (Pets' Br. 29, 32), which did not draw any conclusions about whether the Statement announced a rule within the meaning of the APA. In fact, the majority opinion did not once mention the APA. The phrase Petitioners quoted—that "nothing before this Court supports the notion that DFPS is so bound"—refers to Abbott's Directive and Paxton's Opinion, and not to the DFPS Statement as Petitioners' brief suggests. Rather than undermining the existence of a rule, this language bolsters it, making clear that the Statement announced Petitioners' substantial change in policy and practice, an action Petitioners took of their own accord.

Because the DFPS Rule is a rule, the District Court properly found that it violates the APA because it was adopted without following the necessary notice and comment procedures, is contrary to DFPS's enabling statute, is beyond the authority provided to the Commissioner and DFPS, and is

otherwise contrary to law and the Texas Constitution. 1DCR232-37; 1VCR546-50; V2SCR3-8; *Doe*, 691 S.W.3d 55; *Voe*, 691 S.W.3d 93. Petitioners do not challenge any of these conclusions.

As set forth more fully in Part II, *infra*, there has been no "ratification" of the DFPS Rule by the Legislature. Pets' Br. 32. The definition of child abuse in the Family Code is the same today as it was three years ago. Tex. Fam. Code § 261.001(1). S.B.14 did not change that definition, and this Court's opinion in *Loe* in no way affirmed any such change. If S.B.14 had done so, then the Legislature would not have needed to introduce House Bill 3478 this session, which, notably, the Legislature again declined to pass. Tex. H.B. 3478.

Nor could any subsequent change to the definition of child abuse alter the unlawfulness of Petitioners' adoption and implementation of the DFPS Rule or render the issuance of the TIs an abuse of discretion. Petitioners offer no authority to support the notion that the Legislature could retroactively render Petitioners' failure to follow notice and comment procedures, violation of the agency's enabling statute, exceeding of the authority provided to the Commissioner and DFPS, and violation of constitutional rights lawful. To the extent the impact of any subsequent development is

relevant to the DFPS Rule, the District Court is free to consider them in its assessment of these cases on the merits.

2. The District Court properly concluded that the *Doe* Respondents have a probable right to declaratory and injunctive relief on their *ultra vires* and separation of powers claims.

Petitioners provide only a cursory response to the *Doe* Respondents' *ultra vires* and separation of powers claims[7] by trying to minimize Petitioners' adoption and enforcement of "an enlarged definition of 'child abuse' without delegation from the state legislature," *Doe*, 691 S.W.3d at 75, as a "legal mistake," Pets' Br. 31. But the District Court's determination that Petitioners' adoption and implementation of the DFPS Rule went well beyond a simple mistake and exceeded their own authority and encroached upon that of the Legislature was well supported by the record. 1VCR547-48; V2SCR2-3; 1DCR234. Whether or not Petitioners "purport[ed]" to exceed their constitutional and statutory authority, Pets' Br. 31, the District Court found that they did so, and the Court of Appeals agreed, 1DCR232-37; 1VCR546-50; V2SCR3-8; *Doe*, 691 S.W.3d 55; *Voe*, 691 S.W.3d 93. Petitioners do not challenge these conclusions.

[7] While all Respondents brought *ultra vires* and separation of powers claims, the *Voe* Respondents sought temporary relief on their APA claims only. 1VCR53-61.

B. Respondents have shown probable, imminent, and irreparable harm.

The uncontroverted record supported the District Court's findings of imminent and irreparable harm to Respondents as a result of the DFPS Rule, which warrants injunctive relief.

Petitioners try to reduce Respondents' injuries to "[m]ere investigations" that DFPS was already authorized to conduct before the Rule went into effect. Pets' Br. 15. But that ignores the undisputed fact that DFPS never considered a report of accessing medical care for the treatment of gender dysphoria to be grounds to open a child abuse investigation before February 22, 2022. 4DRR PX-03; 1DCR8; 3VRR PX-03; 1VCR12 *see* 2DRR44-46, 49, 88-89; 2VRR228:13-17, 266:4-8.

It also ignores that the unlawfulness of an investigation itself imposes harm. While as a general matter, the "disruption or disintegration of family life . . . suffered as a result of [a] child abuse investigation does not, in and of itself, constitute a constitutional deprivation," when such investigation lacks "reasonable grounds, governmental intrusions of this type are arbitrary abuses of power." *Croft v. Westmoreland Cnty. Child. & Youth Servs.*, 103 F.3d 1123, 1125-26 (3d Cir. 1997); *see also Doe v. Heck*, 327 F.3d 492, 520, 526 (7th Cir. 2003) ("although child welfare caseworkers may investigate allegations of child abuse without violating parents' constitutional right to

familial relations, they may not do so arbitrarily"; holding that investigations pursuant to child welfare agency's policy of treating "corporal punishment as *per se* child abuse" violated parents' rights); *accord In re A.M.*, 630 S.W.3d 25, 27 (Tex. 2019) (Blacklock, J., concurring in denial of petition) (opining that "Texas parents still have the liberty to employ [traditional disciplinary measures] as they see fit without fearing a knock on the door from child protective services," and noting it is up to the Legislature to alter or maintain that status quo). Unjustified child abuse investigations interfere with familial integrity, causing harm of a constitutional dimension, as "investigations do not escape constitutional scrutiny when initiated, expanded, or continued in the absence of reasonable grounds." *Harrington v. UPMC*, No. CV 20-497, 2022 WL 1606422, at *12 (W.D. Pa. May 20, 2022).[8]

The District Court found that the DFPS Rule and its unlawful investigations harmed Respondent Families in the intrusion and interference with parental decision-making, including regarding medical

[8] Petitioners' citation to *Gates v. Tex. Tex. Dep't of Fam. & Prot. Servs.*, No. 03-11-00363-CV, 2013 WL 4487534 (Tex. App.—Austin Aug. 15, 2013, pet. denied) (mem. op.), Pets' Br. 15-16, does not contradict this general principle. In *Gates*, the court concluded that the plaintiff did not identify an "agency statement of general applicability" and thus the APA claims were not adequately pled. Moreover, the plaintiff in *Gates* was not challenging the application of an improperly promulgated agency rule but the result of an authorized investigation. Here, Respondents have identified and are challenging the DFPS Rule itself—unquestionably an "agency statement of general applicability"—and the unlawfulness of any investigation undertaken pursuant thereto, not the ultimate outcome of any legally authorized investigation.

decisions and following medical providers' determinations of medically necessary treatments; the deprivation or disruption of medically necessary care for the adolescents; intrusion into the relationship between patients and their health care providers; invasions of privacy in the home and school, and the resulting trauma felt by parents, siblings, and other household members; outing an adolescent as transgender; adverse effects on grades and participation in school activities; fear and anxiety associated with the threat of having a child removed from the home; increased incidence of depression and risk of self-harm or suicide; the stigma of being subject to a child abuse investigation; being placed on the child abuse registry and the consequences that result therefrom; and the threat of criminal prosecution. 1VCR548-49; 1DCR234-35. Jane Doe also faces the harm of administrative leave and the risk of losing her job because of the DFPS Rule, and Dr. Mooney faces harms to her ability to fulfill her professional and ethical obligations to her clients and the risk of civil and criminal sanctions for not reporting clients in accordance with the DFPS Rule's definition of child abuse. 1DCR25-28, 57; 2DRR87:4-90:21; 3DRR19:8-22, 21:9-12, 23:6-18, 27:5-24.

The District Court did not abuse its discretion in any way in making these well supported findings of harm, and Petitioners do not rebut them or undermine Respondents' need for continued injunctive relief.

C. The scope of ordered relief was appropriate.

The TIs are properly targeted at the DFPS Rule itself, protecting Respondents from the harms of Petitioners acting in accordance therewith. The TIs do not stop DFPS from exercising its ordinary authority to investigate child abuse. They simply "prohibit[] DFPS from investigating reports 'based *solely* on ... facilitating or providing gender-affirming care ... where the *only grounds* for the purported abuse' are 'facilitation or provision of gender-affirming medical treatment.'"[9] *In re Abbott*, 645 S.W.3d at 286 (Lehrmann, J., concurring) (ellipses in original). "In other words, the order temporarily reinstates DFPS's policies as they were prior to the February 22 directive," restoring not only the previous understanding of what constitutes child abuse, but also the full scope of discretion that DFPS retains in conducting investigations. *Id*. at 286-87 (describing discretion to set priority levels, administratively close cases, pursue alternate responses); *see also Doe*, 691 S.W.3d at 89 (TI "does not create new restrictions on the Department's statutory authority to investigate child abuse or neglect as that

[9] Justice Lehrmann's concurrence makes precisely the opposite point than that for which Petitioners cite it. Pets' Br. 34. The opinion bolsters that the TI is specifically tailored to address the *per se* deeming of gender-affirming medical care to be abuse, leaving the agency free to investigate the provision of these treatments to a specific child for whom it is alleged that such care is *inappropriate* or *medically unnecessary*—such as for a child who does not suffer from gender dysphoria—under DFPS's "preexisting policies regarding medical abuse and neglect." *In re Abbott*, 645 S.W.3d at 286.

authority was understood before February 22, 2022. It returned the Department to the status quo before the application of the Department Statement." (internal citation omitted)); *Voe*, 691 S.W.3d at 135 n.28 (evidence supported District Court's holding "that the status quo is preserved by its narrowly tailored injunction" barring investigations "solely based on allegations" of accessing gender-affirming medical care; noting "the orders do not change the status quo with regard to the Department's preexisting statutory authority").

Further, the TIs properly enjoined DFPS's application of the Rule in every aspect of the child abuse investigation process, including with regard to making referrals for prosecution and child abuse reporting requirements. Tex. Fam. Code § 261.105(b) (DFPS "shall immediately notify the appropriate state or local law enforcement agency of any report it receives . . . that concerns the suspected abuse or neglect of a child"); *id.* § 261.1055(b) (DFPS "shall, on receipt of a report of suspected abuse or neglect, immediately notify the district attorney . . . and . . . forward a copy of the reports to the district attorney on request"); *id.* § 261.103(c) (report must be made to DFPS "if the alleged or suspected abuse or neglect involves a person responsible for the care, custody, or welfare of the child"); *see also* 40 Tex. Admin. Code § 707.487 (requiring written notification of all reports of child

abuse by DFPS to law enforcement within three days of receipt). As the 3COA noted, the District Court made findings about DFPS's role in receiving reports from mandated reporters like Dr. Mooney and in referring cases like the Does' for prosecution. *Doe*, 691 S.W.3d at 88-92. Restraining DFPS in those roles is necessary to fully protect Respondents from harm.

1. Statewide relief is appropriate.

The District Court did not abuse its discretion in extending relief statewide in *Doe*. Petitioners rely heavily on *In re Abbott* to challenge this, Pets' Br. 34-35, ignoring this Court's explicit note that its ruling was limited to an appellate court's authority under Rule 29.3 and said nothing about the District Court's authority to issue statewide injunctive relief. *In re Abbott*, 645 S.W.3d at 283.

Courts routinely issue statewide injunctive relief against agency action challenged under the APA or as *ultra vires*. *See, e.g.*, *Tex. Health & Hum. Servs. Comm'n v. Advocates for Patient Access, Inc.*, 399 S.W.3d 615, 620 (Tex. App.—Austin 2013, no pet.) (affirming statewide injunction of regulation challenged as *ultra vires*); *Combs*, 292 S.W.3d at 724 (affirming statewide TI of rule challenged under APA). A court's ability to enjoin an agency's unlawful rule statewide is critical to ensuring uniformity and preserving judicial economy, just as it is to providing relief to the parties

before it. Enjoining Petitioners from enforcing the DPFS Rule is necessary to provide relief to Respondents whose injuries stem from the Rule's unauthorized adoption itself and not merely from Petitioners' implementation against them specifically in the form of unlawful and invasive investigations or threatened penalties related to the statewide reporting requirements that changing the definition of "child abuse" triggers. Thus, the TI in *Doe* was narrowly crafted to address Petitioners' illegal conduct and Respondents' resulting injuries.

The cases Petitioners cite to argue that statewide relief is improper are inapposite. *See* Pets' Br. 35 (citing *Lewis v. Casey*, 518 U.S. 343, 360 (1996); *Operation Rescue-Nat'l v. Planned Parenthood of Hous. & Se. Tex., Inc.*, 975 S.W.2d 546, 568 (Tex. 1998); *In re Abbott*, 954 F.3d 772, 786 n.19 (5th Cir. 2020), *vacated sub nom. by Planned Parenthood v. Abbott*, 141 S. Ct. 1261 (2021) (mem.)). First, Petitioners' cases neither arise under the same provisions of Texas law nor address challenges to an agency's rulemaking authority or *ultra vires* actions. Second, dicta in a footnote related to the limitations of federal jurisdiction does not apply to Texas's unitary court system. In Texas, challenges to agency rulemaking authority have only one path in the courts—a Travis County District Court. *See* Tex. Gov't Code § 2001.038. It is entirely appropriate (and indeed, necessary) for the only

District Court with jurisdiction over Respondents' claims to temporarily enjoin the DFPS Rule while Respondents challenge its validity.

As the 3COA found, because of the impossibility of crafting a plaintiff-only injunction without compromising the Doe family's anonymity and the goal of avoiding "needless and repetitive litigation,"[10] the TI's statewide scope was not "so arbitrary as to exceed the reasonable bounds of discretion." *Doe*, 691 S.W.3d at 90 (quoting *Universal Health Servs., Inc. v. Thompson*, 24 S.W.3d 570, 576 (Tex. App.—Austin 2000, no pet.)).

2. Relief for PFLAG members is appropriate.

The District Court properly issued injunctive relief protecting PFLAG members from investigations or adverse actions "solely based on allegations that they have a minor child who is gender transitioning or alleged to be receiving or being prescribed medical treatment for gender dysphoria." 1DCR236; 1VCR549; V2SCR4-5. So defined, the TI does not apply to every member of PFLAG writ large, but to "those members of the association actually injured"—namely, those who face child abuse investigations only because of the DFPS Rule. *Texas Ass'n of Bus. v. Tex. Air Control Bd.*, 852

[10] As noted *infra*, Part II, S.B.14's prohibition on the provision of gender-affirming medical care does not neutralize the threat posed by the DFPS Rule given that this care remains lawful in many other states. Thus, contrary to Petitioners' assertion, Pets' Br. 35, it also does not erase the potential for duplicative litigation challenging the unlawfulness of the DFPS Rule.

S.W.2d 440, 448 (Tex. 1993) (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)). Nor does the TI bar Petitioners from investigating PFLAG members when independent reasons exist beyond the DFPS Rule. On its face, the TI is limited to barring investigations rooted exclusively in the Rule. Granting injunctive relief to members of PFLAG who are harmed by the DFPS Rule lies at the core of associational standing. *See Warth v. Seldin*, 422 U.S. 490, 515 (1975) (injunctive relief that "will inure to the benefit of those members of the association actually injured" is the typical remedy in cases in which associational standing has been recognized).

II. Nothing about S.B.14 or *State v. Loe* changes the propriety of the temporary injunctions or their continued necessity.

As the 3COA properly concluded, the passage of S.B.14 has no bearing on the propriety of the TIs or the courts' jurisdiction over Respondents' claims. *Doe*, 691 S.W.3d at 77 n.16; *Voe*, 691 S.W.3d at 129. S.B.14 did not change the definition of child abuse. It amended the Texas Health and Safety Code, not the Texas Family Code; S.B.14 regulates doctors, not parents. As this Court noted in *Loe*, S.B.14 "does not sever parents' control or autonomy to make medical decisions for their children, nor does it displace a child's parent as the ultimate decision maker. The law merely restricts the availability of new treatments with which medical providers may treat children diagnosed with . . . gender dysphoria." *State v. Loe*, 692 S.W.3d 215,

233 (Tex. 2024).[11] The same cannot be said of the DFPS Rule, which directly targets parents and subjects them to child abuse investigations for decisions to seek medical care for their children that was available and legal when accessed.

The sweep of the DFPS Rule is thus much broader than S.B.14's. The Rule, which predates S.B.14, echoes Paxton's Opinion deeming gender-affirming medical treatment to be entirely elective and presumptively harmful in every situation. *See* 1VCR238-39. As such, the Rule's scope goes beyond the balance adopted by the Legislature in S.B.14 and this Court's decision in *Loe*. S.B.14 explicitly permitted a "continuing course of treatment . . . in a manner that is safe and medically appropriate" to "wean" patients off of medication, Tex. Health & Safety Code § 161.703(b)-(c). Thus, while the Legislature recognized the need to provide continued medical treatment for gender dysphoria in certain circumstances, the DFPS Rule categorically mandates child abuse investigations of any parent alleged to have secured medical treatments for their adolescents' gender dysphoria, regardless of the

[11] The U.S. Supreme Court's decision in *United States v. Skrmetti*, 145 S. Ct. 1816 (2025), is inapposite for the same reasons. Like this Court's decision in *Loe*, the *Skrmetti* Court confirmed that a state's regulation of medical treatments is discrete and does not implicate other constitutional concerns. *Id*. at 1830-34.

recommendations and medical necessity determinations of doctors or the lawfulness of the care when and where it was obtained.

Neither S.B.14 nor this Court in *Loe* ever disregarded the reality of gender dysphoria, deemed these treatments "elective," or extended the Legislature's regulation of the medical profession to the Texas Family Code. *See Loe*, 692 S.W.3d at 222-23 (recognizing that "children suffering from gender dysphoria" deserve "the most appropriate treatment together with support, love, and empathy"; that what that treatment is for any given child is "a complicated question"; and that the question before the Court turned on "the Legislature's authority to regulate the practice of medicine"). Moreover, this Court in *Loe* emphasized that it "need not and d[id] not hold that the Legislature could withdraw from parents the authority to choose any *legal, available medical treatment*," 692 S.W.3d at 232 (emphasis added), something the DFPS Rule completely ignores in deeming the care to be abuse even when or where it is legal and available. Petitioners' arguments that S.B.14 ratified the DFPS Rule ignore these critical differences.

Having left the statutory definition of child abuse the same as it was when Petitioners attempted to alter it without authorization, S.B.14 did not and could not change the unlawfulness of the Commissioner and DFPS's actions at the time of the Rule's adoption and implementation. Nor does

S.B.14 alter that DFPS and the Commissioner are the source of Respondents' injuries. The DFPS Rule alone creates the threat of unlawful child abuse investigations based solely on a parent's accessing of gender-affirming medical care for their adolescent child, and those injuries are traceable only to Petitioners.

Further, this Court's conclusion in *Loe* that S.B.14's ban on doctors' provision of gender-affirming medical care did not violate fundamental parental rights does not mean that subjecting parents to unlawful child abuse investigations related to the same care is constitutionally permissible. The type and level of infringement are different: S.B.14 merely restricts the availability of certain medical treatments, while the DFPS Rule directly targets parental rights to care for and make decisions for their children based on an illegitimate definition of what constitutes child abuse. The Rule's mandate to investigate the fitness of a parent based solely on their having sought and accessed prescribed medical care for their children is an intrusion into parental rights of a constitutional dimension to which *Loe*'s constitutional analysis of S.B.14 does not speak. "[T]he State may legitimately interfere with family autonomy" in only limited circumstances, such as "to protect children from *genuine* abuse and neglect by parents who are unfit to discharge the 'high duty' of 'broad parental authority over minor

children.'" *A.M.*, 630 S.W.3d at 26 (emphasis added) (quoting *Parham v. J.R.*, 442 U.S. 584, 602 (1979)). The DFPS Rule's unauthorized deeming of all gender-affirming medical care to categorically be child abuse does not authorize this level of intrusion into Respondents' family autonomy. Neither S.B.14 nor *Loe* undermines the District Court's determinations regarding the DFPS Rule's constitutional implications.

As the 3COA found, the DFPS Rule continues to pose imminent and irreparable harm to the parents of transgender minors, who may still face child abuse investigations based solely on allegations that they are securing gender-affirming medical care for their adolescents. *Doe*, 691 S.W.3d at 77 n.16; *Voe*, 691 S.W.3d at 129. That the care is no longer provided in Texas because of S.B.14 does not end the threat, because this care remains lawful in half the country. *Id*. S.B.14 does not and could not bar Texas residents from traveling to seek medical care for their adolescents in those states, but the DFPS Rule still mandates child abuse investigations based on their having done so. The harms found by the District Court remain, as does the need for the protection of the TIs.

III. Respondents' claims are justiciable.

In granting and affirming the TIs, the lower courts properly rejected Petitioners' challenges to Respondents' standing, to the traceability of their

harms to Petitioners, to the ripeness of their claims, and to the continued viability of these claims. Jurisdiction over Respondents' claims was proper at the outset of these cases and remains so, and there is simply no basis for Petitioners' assertions of sovereign immunity against Respondents' APA, *ultra vires*, and constitutional claims, all of which are justiciable.

A. Respondents have standing to challenge the DFPS Rule.

Respondents alleged redressable injuries-in-fact that meet and exceed the "constitutional minimum" for standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). In mischaracterizing Respondents' injuries as "generalized" and complaining of "[m]ere investigations," Pets' Br. 9, 13, 15, Petitioners ignore the specific, actual harm directly caused by Petitioners' unlawful Rule and the resulting illegal, unprecedented, and invasive agency actions. Petitioners disregard the "myriad of serious injuries from the [DFPS Rule] and the resulting investigations, such as . . . an invasion of their legally protected interests to direct their children's medical care, as well as an invasion of the Minors' right to seek such care, sufficient to establish their standing to challenge the allegedly invalid rule." *Voe*, 691 S.W.3d at 116. Respondents' injuries are "traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 485 (Tex. 2018) (citation omitted).

First, Respondent Families have standing because *unlawful* investigations constitute legally cognizable harm—regardless of the outcome of such investigations. *See supra,* Part I.B. As the 3COA properly found, Respondent Families "are presently and prospectively subject to the regulation that they are challenging. They are or have been the subject of invasive investigations by the Department based on the Department's enforcement of the allegedly invalid new rule," which itself establishes standing. *Voe*, 691 S.W.3d at 117.

Respondent Families also suffered and, absent injunctive relief, will continue to suffer significant and irreparable harm beyond mere "investigations" as a direct result of Petitioners' unlawful promulgation and implementation of the DFPS Rule. Among other injuries, the District Court held that Respondents suffered "gross invasions of privacy in the home and school, and the resulting trauma felt by parents, siblings, and other household members; outing an adolescent as transgender; adverse effects on grades and participation in school activities; fear and anxiety associated with the threat of having a child removed from the home; increased incidence of depression and risk of self-harm or suicide;" and "the deprivation or disruption of medically necessary care for the parents' adolescent[s]" 1VCR548-49; V2SCR5-6. Petitioners do not contest these injuries, nor do

they dispute that state interference with parental rights or the provision of medical care can alone trigger standing. *See* Pets' Br. 17; *see also Loe*, 692 S.W.3d at 226 (finding standing based on harms of alleged infringement of constitutional rights and loss of medical care). Respondents therefore not only alleged, but presented "evidence of a concrete and particularized injury that is traceable to the Department's alleged rulemaking." *Doe*, 691 S.W.3d at 79 (citing *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)). Such harm "separate and apart from the Department's actual investigations of the Individual Appellees" is "more than a threatened and 'certainly impending' injury—this is injury that has already occurred." *Voe*, 691 S.W.3d at 116–17.

Second, PFLAG has associational standing because: (1) PFLAG's members, including the Respondent Families, have standing to sue in their own right; (2) the interests PFLAG seeks to protect are germane to its organizational purpose; and (3) neither the claims PFLAG asserts nor the relief it seeks requires the participation of individual members in the lawsuit.

Third, Dr. Mooney also has standing because she suffered interference with her professional and ethical obligations, harm to her professional practice, and threatened sanctions due to the DFPS Rule.

1. The Respondent Families established injury-in-fact.

The Respondent Families have challenged the DFPS Rule under Section 2001.038(a) of the APA, which states "[t]he validity or applicability of a rule . . . may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff." Tex. Gov't Code § 2001.038(a). To show standing, Respondents' pleadings must allege "how a particular rule has already interfered with the plaintiffs' rights or how that rule in reasonable probability will interfere with the plaintiffs' rights in the future." *Fin. Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 592 (Tex. 2013) (Johnson, J. concurring and dissenting in part). Here, Respondents suffered injury-in-fact because the DFPS Rule interferes with Respondents' legally protected interests, caused collateral harms triggered by unlawful DFPS investigations, and threatened the provision of medically necessary healthcare—none of which are mere "labels" Respondents have placed on these harms, but actual injuries which they have faced. *Cf.* Pets' Br. 12 (quoting *E.T. v. Paxton*, 41 F.4th 709, 717 (5th Cir. 2022)).

As set forth in Part I.B., *supra*, and as the District Court found, the DFPS Rule caused and threatens to continue to cause irreparable harm—

both tangible and constitutional—to the legally protected interests of the Respondent Families, including and beyond the unlawfulness of the investigations themselves. *See supra* Part I.B. (addressing full scope of harms to Respondent parents and children caused by the DFPS Rule)*; see also, e.g.*, *Clark v. Libr. of Cong.*, 750 F.2d 89, 93 (D.C. Cir. 1984) (unlawfulness of investigation central to finding of legal harm); *All. to End Repression v. City of Chicago,* 742 F.2d 1007, 1009-10 (7th Cir. 1984) (allegations that unlawful investigations harassed and intimidated targets sufficiently stated cognizable harm).

Such injuries are more than the potential "subjective chill" that the Supreme Court in *Laird v. Tatum*, 408 U.S. 1, 10, 13-14 (1972), found insufficient to provide standing and are not merely the "legal, moral, ideological, and policy objections" that the Supreme Court cautioned against in *Food & Drug Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 381 (2024). Respondents are not average members of the public generally complaining that Petitioners merely "abused [their] discretion." *Bland Indep. Sch. Dist. v. Blue,* 34 S.W.3d 547, 555 (Tex. 2000) (citation omitted). Rather, the alleged harms are more akin to those recognized by the Supreme Court in *TransUnion*, which Petitioners also cite, "includ[ing], for example, reputational harms, disclosure of private information, and

intrusion upon seclusion . . . And those traditional harms may also include harms specified by the Constitution itself." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021).

Among the particularized injuries Respondents have suffered and will continue to suffer are interference "with [Respondents'] fundamental parental rights and other equality and due process guarantees of the Texas Constitution," 1VCR60, which this Court has previously found sufficient to establish standing. *See Loe*, 692 S.W.3d at 226 ("Whatever their claims' ultimate merits, the parents have concretely alleged that S.B.14 prevents them and their children from engaging in constitutionally protected conduct they would continue to engage in but for the statute."). In *Loe*, this Court reaffirmed that "parents have a fundamental interest in directing the care, custody, and control of their children free from government interference." 692 S.W.3d at 223. While the Court held that S.B.14 ultimately survived constitutional scrutiny, it was undisputed that the plaintiffs' claims that the law interfered with parental decision-making were sufficient to trigger judicial review. *Id.* at 226. The same is true here. Respondents have established that the DFPS Rule "has already interfered with [Respondent]s' rights or . . . in reasonable probability will interfere with [Respondent]s' rights in the future." *Fin. Comm'n of Tex.*, 418 S.W.3d at 592.

Similarly, Petitioners do not rebut the existence of standing for Respondents' claims that the DFPS Rule interferes with Respondent Families' medical decision-making. Instead, they falsely attribute the injury and relief Respondents are seeking solely to S.B.14. Pets' Br. 14. But all of Respondents' injuries are readily traceable to Petitioners and redressable by the TIs that have blocked implementation of the DFPS Rule. Respondents' claims are aimed at stopping the DFPS Rule itself, which was promulgated by the Commissioner and DFPS. Petitioners' attempt to shift the blame for Respondents' injuries to S.B.14 as a basis for undermining Respondents' standing fails, as it is undisputed that S.B.14 did not exist at the time these lawsuits were filed. *Texas Ass'n of Bus.*, 852 S.W.2d at 446 n.9 ("Standing is determined at the time suit is filed in the trial court, and subsequent events do not deprive the court of subject matter jurisdiction."). Moreover, as discussed *supra*, Part II, S.B.14 is distinct from the DFPS Rule; the Rule's interference with Respondents' right to make decisions about what medical care to access for their children is wholly separate from whether and when doctors may lawfully provide that care in Texas. Enjoining Petitioners from implementing the DFPS Rule is the only way to remedy Respondents' harms. Respondents have therefore alleged "personal injur[ies] fairly traceable to

the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Meyers*, 548 S.W.3d at 485.

2. PFLAG has associational standing.

PFLAG has associational standing for the same reasons set forth above for the other Respondent Families. PFLAG meets the test for associational standing because (1) PFLAG's members, including Respondent Families, have standing to sue in their own right; (2) the interests PFLAG seeks to protect are germane to its organizational purpose; and (3) neither the claims PFLAG asserts nor the relief it seeks requires the participation of its individual members in the lawsuit. *See Tex. Ass'n of Bus.*, 852 S.W.2d at 447; *Hunt*, 432 U.S. at 343. Petitioners do not challenge the germaneness of PFLAG's representation of its members' interests to its mission, and their arguments regarding the harms to PFLAG members that establish PFLAG's standing to sue on their behalf and the ability to remedy those harms without individual member participation, Pets' Br. 19-23, are without merit.

PFLAG members have standing to sue in their own right because they face imminent and irreparable harm or threat of harm due to the DFPS Rule's redefinition of child abuse and mandatory investigations of parents alleged to have facilitated gender-affirming medical care for their adolescents. The DFPS Rule subjects Texas PFLAG members, including but

not limited to the other Respondent Families, to legally cognizable harm. *See supra*, Part III.A.1. Because the Rule constitutes "unlawful government action" that results in "actual present or immediately threatened injury," *Laird*, 408 U.S. at 15, PFLAG members with transgender children have standing to challenge Petitioners' actions.

Petitioners' claim that PFLAG has failed to "identify any member" who has been "labeled a 'child abuser' or ha[s] had children removed" fails for similar reasons. Pets' Br. 20. PFLAG does not need to identify members who have had children removed to have standing. Respondents have identified at least five PFLAG member families who have suffered, and are at risk to further suffer, the harms flowing from the DFPS Rule itself, including being subject to unlawful child abuse investigations based solely on allegations that they have accessed gender-affirming medical care for their children. *See Voe*, 691 S.W.3d at 120-21; 1VCR85-91, 93-103; V3SCR30-34, 36-40. For the same reasons the Roe, Voe, and Briggle families' harms established their own standing, those same harms suffered by them and by the additional identified members are sufficient to confer standing on PFLAG to represent their interests.

Further, neither the claims asserted nor the relief sought by PFLAG requires the participation of its individual members to vindicate their rights.

See Tex. Ass'n of Bus., 852 S.W.2d at 448. The specifics of each investigation, though plainly traumatic for each family and emblematic of the harms experienced by other members, are collateral to the general harm posed by Petitioners' unlawful promulgation and implementation of the DFPS Rule that is shared by all PFLAG members with transgender adolescents. As the 3COA concluded, "[e]ven if the PFLAG members' individual experiences of the harm differ, they have identical legal claims concerning the invalidity of the rule that will be resolved by the declaratory and injunctive relief sought by PFLAG." *Id*. The TI blocking the DFPS Rule for PFLAG members with transgender adolescent children has borne this out already, providing relief to all PFLAG members harmed by the Rule to stop their collective injury without the need for any "inquiry tailored to each" member. *Contra* Pets' Br. 21.[12] As the 3COA correctly concluded, there is no reason to require the separate participation of every PFLAG member impacted by the Rule when this litigation will efficiently and adequately address common legal questions and answers based on the participation of the other Respondents who are

[12] Petitioners' argument regarding remedial injunctive relief depriving Petitioners of their statutory discretion, Pets' Br. 22-23, goes to the scope of the TI, rather than to PFLAG's standing. As discussed *supra*, Part I.C.2, the TI is narrow, blocking only the DFPS Rule and permitting child abuse investigations against PFLAG members for any other reason within DFPS's pre-existing authority. The remedy sought by PFLAG does not have to apply to every member of the organization. They merely need to have some members needing the relief sought—the same members who would have standing to sue in their own right.

also PFLAG members. *See Voe,* 691 S.W.3d at 122-23; *Big Rock Invs. Ass'n v. Big Rock Petroleum, Inc.,* 409 S.W.3d 845, 851 (Tex. App.—Fort Worth 2013, pet. denied) ("when resolution of the claims can be proven by evidence from representative injured members without a fact-intensive-individual inquiry, the need for participation of those individual members will not defeat associational standing"); *Ass'n of Am. Physicians & Surgeons, Inc.*, 627 F.3d 547, 552 (5th Cir. 2010) (associational standing was appropriate where "[p]roving the illegality of the [challenged action] required some evidence from members, but once proved as to some, the violations would be proved as to all").

3. Dr. Mooney has standing.

The DFPS Rule also harms Dr. Mooney because it infringes on her legal rights, threatens her business, and harms her relationships with her patients, while also subjecting her to civil and criminal penalties for her noncompliance. 3DRR27; 1CR63. "[A] business can have standing to challenge the legality of governmental actions [that] ... damage or destroy markets for its services." *Tex. Dep't of State Health Servs. v. Balquinta*, 429 S.W.3d 726, 741 (Tex. App.—Austin 2014, pet. dism'd). As a mandatory reporter under Texas law and a clinical psychologist who provides mental health care for youth with gender dysphoria, Dr. Mooney suffers an actual

and imminent injury from the DFPS Rule that unlawfully redefines child abuse because she is legally required to report suspected abuse and neglect. 1DCR27, 63, 66. Reporting her own clients for seeking medically necessary care—whether in Texas or out-of-state—would violate Dr. Mooney's professional code of ethics, which mandates that she do her clients no harm. 1DCR26, 64. Petitioners' unlawful Rule conflicts with this code, leaving Dr. Mooney without sufficient clarity about how to meet her obligations both to her clients and as a mandated reporter. Because of the DFPS Rule, Dr. Mooney's bond with her clients would be fractured absent injunctive relief, and she faces the actual and imminent threat of collateral consequences, including loss of her license and civil and criminal penalties. 1DCR69; 3DRR24-25, 26:2-16, 29:7-10. *See In re* Abbott, 645 S.W.3d at 285 (Lehrmann, J., concurring) (explaining that DFPS Rule causes dilemma of choosing between possibility of referral for prosecution for failing to report conduct newly deemed abusive and violating professional and ethical obligations).

Petitioners attempt to dismiss Dr. Mooney's injuries as "involv[ing] a series of contingencies," seeking to dismiss these concrete harms as a "theoretical possibilit[y]." Pets' Br. 18 (alteration in original) (quoting *In re Gee*, 941 F.3d 153, 164 (5th Cir. 2019) (per curiam) (orig. proceeding)).

However, unlike the purported harms in *Gee* where the plaintiff challenged legal provisions that "theoretically *could* apply to them—but without any allegation that they *would*," 941 F.3d at 164, Dr. Mooney has alleged *actual* harm in connection with a legal provision that *would* apply.

Consistent with her ethical obligations, Dr. Mooney said publicly before filing suit that she did not intend to follow Abbott's Directive and the DFPS Rule to report gender-affirming medical care as child abuse. 3DRR 24:19-24. Since then, she has been called a "child abuser," and had her license threatened. 3DRR 26:17-20. If the DFPS Rule is permitted to go into effect, Dr. Mooney will face increased threats to her business and professional reputation, plus the possible loss of her license or criminal prosecution. 1DCR69; 3DRR24-25, 26:2-16, 29:7-10. It is well established that when a plaintiff has alleged an intent to continue the regulated conduct, she need not be arrested or prosecuted before filing suit. *See Babbitt*, 442 U.S. at 298 ("intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute," is sufficient to confer standing); *Lake Medina Conservation Soc., Inc./Bexar-Medina Atascosa Cntys. WCID No.1 v. Tex. Nat. Res. Conservation Comm'n*, 980 S.W.2d 511, 516 (Tex. App.—Austin 1998, pet. denied) (finding that property owners had standing to challenge government regulations that could harm

their property in the future). Dr. Mooney's business, reputation, and bonds with her clients are directly impacted by the creation and implementation of the DFPS Rule, which immediately altered her reporting requirements and threatened to destroy the bonds of trust Dr. Mooney has built with her clients if the Rule is not enjoined.

Dr. Mooney's injuries are also traceable to DFPS and its Commissioner, who promulgated the Rule that threatens Dr. Mooney's business, license, and reputation. Even if DFPS is not the entity that would ultimately strip away her license or prosecute her for failing to report her clients, Pets' Br. 19, Petitioners are solely responsible for the Rule that changed Dr. Mooney's reporting requirements, threatens her relationships with her clients, and exposes her to sanctions. She does not challenge the reporting requirements in general, but only the altered definition of child abuse for which Petitioners are solely responsible. Her injuries are attributable to Petitioners alone, and injunctive relief blocking the Rule fully redresses her injuries.

B. Respondents' claims are ripe.

For the same reason that Respondents had standing at the outset of this case, their claims are ripe because Petitioners promulgated and implemented the DFPS Rule that impaired and threatens to impair Respondents' rights. The APA explicitly permits parties to challenge "[t]he

validity or applicability of a rule" by alleging "that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff." *See* Tex. Gov't Code § 2001.038(a). Here, Respondents challenge the DFPS Rule that has already caused them harm and threatens imminent harm. Thus, their claims are ripe for review.

Respondents' claims are not contingent on the outcome of any particular DFPS investigation. Instead, Respondents challenge the validity of the DFPS Rule itself and the unlawful actions of Petitioners in implementing it. While Petitioners correctly note that this Court's decision in *In re Abbott* distinguished between the role of DFPS and the courts in the child abuse context, Pets' Br. 16, that distinction applies to the individualized assessment of whether a particular child has been abused. What Respondents challenge here is Petitioners' wholesale mandate that every parent who has accessed gender-affirming medical care for their adolescent is *per se* engaging in child abuse. This unlawful determination is what is harming parents and their adolescents and renders the investigations themselves illicit and harmful. Respondents need not wait for DFPS to inflict the ultimate punishment of seizing custody of Respondents' children to challenge the validity of the DFPS Rule that itself contravenes Texas law. *See*

People United for Child., Inc. v. City of New York, 108 F. Supp. 2d 275, 285 (S.D.N.Y. 2000) (distinguishing between plaintiffs' individual child welfare cases and their challenge to "the constitutionality of [agency]'s system-wide policy of resolving any ambiguity in an abuse investigation in favor of finding that abuse has occurred"; allowing plaintiffs to proceed with claims that their parental rights were infringed by the policy itself).

Petitioners' only legal support for the contention that Dr. Mooney's and PFLAG's claims are unripe is based on a strained reading of *Waco Independent School District v. Gibson*, 22 S.W.3d 849 (Tex. 2000). *See* Pets' Br. 26-27. In *Gibson*, the court held a challenge to a new but unimplemented standardized-testing policy was unripe because no students had been tested under the policy and the record did not support the existence of an injury that was "*likely to occur*." 22 S.W.3d at 852 (emphasis in original). On a "sparse record," the Court held the claims were unripe based on the "uncertainty of the policy's impact." *Id.* at 852-53. But unlike in *Gibson*, the DFPS Rule's "impact" here is far from "uncertain." As this Court has held, even where plaintiffs "have not yet faced administrative enforcement," a lawsuit challenging an administrative rule or policy is ripe where "the threat of harm is more than conjectural, hypothetical or remote" because the record establishes that plaintiffs are "subject to a real threat of likely civil and

criminal proceedings." *Patel v. Tex. Dep't of Licensing & Regul.*, 469 S.W.3d 69, 78 (Tex. 2015).

The harms facing Respondents here are analogous to those in *Patel* because DFPS reached a definitive position by promulgating a Rule that has already had a tangible impact on Respondents' rights. As discussed *supra*, Part III.A, Respondent Families, including PFLAG members, faced concrete and tangible injuries extending beyond mere investigations themselves, to include gross invasions of privacy, trauma, stigma, and disruption to medically necessary care. Likewise, Dr. Mooney faced an immediate and concrete ethical conflict due to the DFPS Rule, injuries to her business, reputation, and client relationships, and the threat of civil and criminal consequences. *See supra* Part III.A.3. Dr. Mooney need not suffer the loss of her license before challenging an unlawful agency rule under the APA, just as parents do not have to suffer the loss of custody of their children. *See Patel*, 469 S.W.3d at 78 (finding claims ripe where "individuals were subject to a real threat of likely civil and criminal proceedings, as well as administrative proceedings that could result in penalties and sanctions"); *Mitz v. Tex. State Bd. of Veterinary Med. Exam'rs*, 278 S.W.3d 17, 26 (Tex. App.—Austin 2008, pet. dism'd by agr.) (a constitutional challenge to a state-

licensing law is ripe when enforcement of the law is "sufficiently likely" to occur).

C. Respondents' claims are not moot.

Respondents' claims are not moot because they are still subject to concrete and constitutional harms if the TIs are lifted and the DFPS Rule is permitted to take effect. Nothing that has occurred since the filing of this case has "ma[d]e it impossible for the court to grant the relief requested or otherwise 'affect the parties' rights or interests.'" Pets' Br. 23 (quoting *State ex rel. Best v. Harper*, 562 S.W.3d 1, 6 (Tex. 2018)). Petitioners offer three arguments for why they believe Respondents' claims to be moot. First, Petitioners contend that the passage of S.B.14 renders it impossible for Respondents' injuries to be redressed. Pets' Br. 24. Second, Petitioners assert that, because the Voe, Roe, and Briggle investigations were administratively closed (and, but for the applicable injunction, the Doe investigation would "all but certain[ly]" be closed), an order enjoining investigations under the DFPS Rule cannot "affect Respondents' interest in [not] 'being subjected to an unlawful and unwarranted child abuse investigation.'" *Id.* at 23-24 (quoting *Voe*, 691 S.W.3d at 138). Third, Petitioners claim that "the sole remaining minor in the case grew up, and legally is now an adult." *Id.* at 1. While Petitioners' first argument is legally erroneous, *see supra* Part II, their

last two contentions are contrary to the TI records below and do not undermine the need for continuing injunctive relief.

First, neither S.B.14 nor this Court's decision in *Loe* negates the harms to Respondents flowing from the DFPS Rule. *Supra* Part II.

Second, DFPS's decision to "administratively close" certain investigations, Pets' Br. 24, does not fully redress Respondents' injuries or obviate the need for TIs against the DFPS Rule itself. It is well established that a "defendant's cessation of challenged conduct does not, in itself, deprive a court of the power to hear or determine claims for prospective relief." *Matthews ex rel. M.M. v. Kountze Indep. Sch. Dist.*, 484 S.W.3d 416, 418 (Tex. 2016). Instead, Petitioners bear a "heavy burden" of making it "absolutely clear that the [challenged conduct] could not reasonably be expected to recur." *Id.* (alteration in original) (internal quotation marks and citation omitted).

Here, DFPS remains free under its policies to investigate "the same incidents and the same allegations in a previous case that was closed" when there are "new incidents or new allegations in the current case." *See* 2VRR PX-20, § 2314.[13] Though Petitioners attempted to argue before the District

[13] *Child Protective Services Handbook*, Section 2300 – Special Circumstances for Investigations, § 2314, DFPS (Mar. 2023), https://www.dfps.texas.gov/handbooks/CPS/Files/CPS_pg_2200.asp.

Court that DFPS could possibly *choose* not to open a new, subsequent investigation based on an allegation of the provision of gender-affirming care, the factual record established that DFPS *could* do so and nothing prevents DFPS from again investigating Respondent Families. *See* V3SCR3-6; 2VRR PX-20, § 2314.

Indeed, the "Ruled Out" notice that DFPS provided to some Respondent Families explicitly contradicts Petitioners' mootness argument here. VSR10-11. The notice specifies that "[t]his investigation is now closed and there will be no further agency involvement with your family *unless* we receive another report of abuse or neglect, which, *by law, we would need to investigate*." VSR14 (emphasis added). DFPS witness testimony before the trial court confirmed that DFPS would only decline to investigate subsequent allegations if they involved "the exact same complaint" as the prior allegations. 2VRR221:8-15. But if there is a separate complaint involving subsequent or continuing medical care, DFPS remains free to initiate a new investigation and enforce the DFPS Rule against Respondent Families.

Beyond the continuing threat of a subsequent investigation, there are also collateral consequences from a "Ruled Out" disposition that continue to harm Respondent Families. A "Ruled Out" disposition *disqualifies* families from receiving an "Abbreviated Rule Out" disposition for any subsequent

allegations. This means that Respondent Families would face a more extended and intrusive investigation in the future if any person were to accuse the families of providing gender-affirming medical care, regardless of how specious or superficial the allegation.[14]

Unable to rely on the TI record that firmly supports the continuing need for injunctive relief, Petitioners attach to their brief a new declaration from the Associate Director of Child Protective Investigations. Pets' Br., Ex. A, Declaration of Marta Talbert. Setting aside the question of whether the Court should consider new evidence for the first time on appeal,[15] this declaration conspicuously does not disavow future investigations against Respondent Families. Instead, it merely states that the investigations against the Voe, Roe, and Koe families have been closed. *Id.* ¶ 6.[16] This falls short of

[14] *See Child Protective Services Handbook*, Section 2291.1 - Abbreviated Ruled Out, DFPS (Oct. 2020), https://web.archive.org/web/20201019043239/https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_2200.asp#CPS_2291_1 (stating that cases are only eligible for an abbreviated rule out if "No previous investigations or alternative response cases involve any principal in the investigation.").

[15] While this Court may *sua sponte* consider evidence of matters occurring after the lower courts' orders for purposes of assessing mootness, *Sabine Offshore Serv., Inc. v. City of Port Arthur*, 595 S.W.2d 840, 841 (Tex. 1979) ("Affidavits outside the record cannot be considered by [an appellate court] for any purpose other than determining its own jurisdiction."), Ms. Talbert's declaration offers nothing new relating to Petitioners' mootness argument regarding investigations that have been "ruled out," which was considered and rejected by both the District Court and the 3COA. *See* V2SCR3-8; *Voe*, 691 S.W.3d at 127-28.

[16] Ms. Talbert's declaration makes no mention of the Poe family, who are members of PFLAG. *See Voe*, 691 S.W.3d at 106 n.8, 119.

Petitioners meeting their "heavy burden" of making it "absolutely clear that the [challenged conduct] could not reasonably be expected to recur," *Matthews*, 484 S.W.3d at 418, and the trial court may consider Petitioners' newly submitted evidence about the possibility of continuing DFPS investigations and the collateral consequences thereof once this case is fully litigated on the merits.

Lastly, these cases are not moot just because Mary Doe has reached the age of majority. Petitioners do not contend that the *Voe* Respondents and PFLAG members are no longer subject to potential investigations because of the DFPS Rule—nor could they, because at least one Respondent and many PFLAG members are indisputably still minors. Instead, Petitioners only focus on Mary Doe by asserting that "there is nothing left for DFPS to investigate" because she has reached the age of majority. Pets' Br. 13. Yet nothing in the relevant statutes, regulations, or DFPS policy expressly states that an investigation terminates as a matter of law upon a child's eighteenth birthday, and there is no evidence in the TI record supporting Petitioners' position. Seemingly acknowledging this fact, Petitioners rely solely on the newly submitted Talbert declaration, which asserts without citation that "[i]f a child underlying an investigation is no longer a minor, and the subject parent(s) do not have another child, DFPS no longer has authority to

investigate." Pets' Br., Ex. A, ¶ 8. Once again, it is telling what this declaration omits. It *does not* say that DFPS will not take any adverse actions against the Doe Family, such as referring them for prosecution, or that the agency will not enforce collateral consequences against Jane Doe as a DFPS employee.[17] Instead, the declaration only suggests that the agency will stop its investigation. But, as discussed above, the Doe Family's injuries cannot be reduced to a "[m]ere investigation," and promising to stop the investigation alone does not redress the full extent of their injuries.

Further, the very nature of the Respondent Families' challenges to the DFPS Rule underscores that a live legal controversy remains. Because these challenges concern the creation and enforcement of the DFPS Rule—and the corresponding harms beyond specific investigations—Respondents' claims may still proceed to challenge the lawfulness of the Rule, even if the specific investigations against them no longer remain ongoing. *See, e.g., Tex. Mut. Ins. Co. v. Tex. Dep't of Ins., Div. of Workers' Comp.*, 214 S.W.3d 613, 622

[17] Petitioners baldly misstate the record in claiming that Jane Doe "was placed on paid administrative leave because she sued her employer on a matter directly related to her role as an intake specialist." Pets' Br. 15 n.3. Petitioners placed Jane Doe on leave on February 23, 2022, within hours of her inquiring about the implications of the DFPS Rule with her supervisor, who knew Mary Doe is transgender. Jane Doe was told she would have to be investigated and would be placed on leave during the investigation. 2DRR86:2-90:21; *see also Doe*, 691 S.W.3d at 65 n.6 (petitioners represented "that the Department placed Jane on administrative leave for the duration of its child abuse investigation"). Jane's job status is thus inherently intertwined with the DPFS Rule.

(Tex. App.—Austin 2006, no pet.) (APA allows claimant "to obtain a final declaration of a rule's validity before the rule is applied"); *State Bd. of Ins. v. Deffebach*, 631 S.W.2d 794, 797 (Tex. App—Austin 1982, writ ref'd n.r.e.) ("[O]ne is not required to wait until [a challenged] rule is attempted to be enforced against him" before challenging it.). Ultimately, Petitioners fail to meet their "heavy burden" of showing that Respondents' claims are moot and thus injunctive relief is still warranted to shield Respondents from both concrete and constitutional harms.

D. Sovereign immunity does not bar these suits.

Petitioners are not entitled to sovereign immunity for any of Respondents' claims. The APA expressly waives sovereign immunity for suits alleging that a "rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff," Tex. Gov't Code § 2001.038(a); *see also Tex. Dep't of Ins. v. Tex. Ass'n of Health Plans*, 598 S.W.3d 417, 421 (Tex. App.—Austin 2020, no pet.). And both *ultra vires* and constitutional claims are well-established exceptions to the doctrine of sovereign immunity. *See City of El Paso v. Heinrich*, 284 S.W.3d 366, 370-72 (Tex. 2009); *Klumb v. Hous. Mun. Emps. Pension Sys.*, 458 S.W.3d 1, 13 (Tex. 2015). Further, Respondents do not rely on the UDJA's limited immunity waiver for any of their claims.

1. The APA expressly waives sovereign immunity.

Petitioners' only rebuttal to the explicit waiver of sovereign immunity provided by the APA is their contention that the DFPS Rule is not a "rule" under the APA. Pets' Br. 29. But as discussed above, the District Court and 3COA both properly concluded that the DFPS Statement constitutes a rule under the APA, thereby waiving DFPS's sovereign immunity. *See supra* Part I.A.1. Far from a mere "statement to a reporter," Pets' Br. 29, as the TI records below illustrated, DFPS announced a dramatic departure from pre-existing policies and procedures, fully operationalizing the Abbott Directive, *see supra* Part I.A.1. DFPS cannot hide its official policy change behind its spokesperson or its decision to not reduce this rulemaking into writing. *See Combs*, 292 S.W.3d at 721-22 (holding that letter conveying Comptroller's construction of tax laws was a "rule" under APA and noting that "Comptroller does not contend that the signer of the letter was acting with anything less than her full authority").

Because the DPFS Rule and implementation thereof satisfy all elements of a "rule" under the APA, sovereign immunity is waived as to Respondents' APA claims against DFPS.

2. Sovereign immunity does not shield the Commissioner's *ultra vires* and unconstitutional actions from judicial review.

Respondents' challenges to the Commissioner's *ultra vires* and unconstitutional actions are not barred by sovereign immunity. "[A]n action to determine or protect a private party's rights against a state official who has acted without legal or statutory authority is not a suit against the State that sovereign immunity bars." *Heinrich*, 284 S.W.3d at 370 (quoting *Fed. Sign v. Tex. S. Univ.*, 951 S.W.2d 401, 404 (Tex. 1997)). State action is without legal authority if it exceeds the bounds of authority granted to the actor or conflicts with the law itself. *Matzen v. McLane*, 659 S.W.3d 381, 388 (Tex. 2021). Further, "suits to require state officials to comply with constitutional provisions are not prohibited by sovereign immunity." *Klumb*, 458 S.W.3d at 13 (citing *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 621 (Tex. 2011)).

The Commissioner exceeded her authority in promulgating and operationalizing the DFPS Rule in violation of both procedural and substantive APA requirements. Though the Commissioner's statutory powers include the ability to "adopt rules and policies for the operation of and the provision of services by the department," Tex. Hum. Res. Code § 40.027(e), this power is limited as DFPS is still required to abide by the APA, *see id.* § 40.006(a). No other enumerated power exempts the

Commissioner from following APA notice and comment procedures, permits her to create new agency rules by fiat, or enables her to unilaterally expand statutory definitions in ways that conflict with either the Family Code or the language or objectives of the agency's enabling statute. *See id.* § 40.027(a)-(d); *City of El Paso v. Public Util. Comm'n*, 839 S.W.2d 895, 910 (Tex. App.—Austin 1992) ("[I]f there is no specific express authority for a challenged [agency] action, and if the action is inconsistent with a statutory provision or ascertainable legislative intent, we must conclude that, by performing the act, the agency has exceeded its grant of statutory authority."), *aff'd in part & rev'd in part*, 883 S.W.2d 179 (Tex. 1994). Further, the Commissioner acted *ultra vires* by usurping the Legislature's authority to alter the statutory definition of child abuse, violating the separation of powers established by Article II of the Texas Constitution.

While Petitioners classify the Commissioner's actions as a "legal mistake," Pets' Br. 31 (citation omitted), this does not change the fact that the Commissioner exceeded her authority and acted *ultra vires* when she adopted and implemented the DFPS Rule. Because the Commissioner acted without legal authority and in conflict with the law, Respondents' suits are not barred by sovereign immunity. *Heinrich*, 284 S.W.3d at 370.

Finally, Respondents' remaining claims against the Commissioner are

facially valid constitutional claims and thus not barred by sovereign immunity. *See Klumb*, 458 S.W.3d at 13 ("sovereign immunity does not bar a suit to vindicate constitutional rights"). In addition to their separation of powers claims, 1DCR40-44; 1VCR67-70, Respondents state claims that the DFPS Rule violates Due Course of Law protections against vagueness and infringement of parental rights, 1DCR44-45; 1VCR70-72, and Equal Protection guarantees, 1DCR45-46; 1VCR72-74. For the same reasons the lower courts found that Petitioners established irreparable harms from and standing based on the infringement of these constitutional protections, *see supra* Parts I.B., III.A.; *Voe*, 691 S.W.3d at 112-13, these claims are viable and sovereign immunity does not apply, *see Perez v. Turner*, 653 S.W.3d 191, 202 (Tex. 2022).

3. Petitioners' UDJA argument is futile.

Contrary to Petitioners' assertions, Pets' Br. 30, Respondents do not rely on the UDJA's limited immunity waiver to establish jurisdiction for any of their claims. The UDJA is "merely a procedural device for deciding cases already within a court's jurisdiction." *Tex. Parks & Wildlife Dep't v. Sawyer Tr.*, 354 S.W.3d 384, 388 (2011) (citation omitted). Here, the APA itself expressly waives immunity for Respondents' APA claims—the only claims against DFPS itself, *see supra* Part III.D.1, and Respondents' *ultra vires* and

constitutional claims against the Commissioner fall within well-established exceptions to sovereign immunity, *see supra* Part III.D.2. Therefore, the fact that Respondents do not—and need not—also invoke the UDJA's limited immunity waiver does not deprive courts of subject matter jurisdiction over Respondents' claims.

PRAYER

The Court should affirm the District Court's temporary injunctions to preserve the status quo and affirm its jurisdiction over Respondents' claims.

Dated: July 7, 2025

Respectfully submitted,

By: /s/ Maddy R. Dwertman

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I certify that this brief contains 14,146 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/ Maddy R. Dwertman
Maddy R. Dwertman

CERTIFICATE OF SERVICE

I certify that on July 7, 2025, a true and correct copy of the foregoing motion was served electronically on all counsel of record by the Court's electronic filing system

/s/ Maddy R. Dwertman
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V. FACTUAL BACKGROUND

A. Governor Abbott, Attorney General Paxton, and Commissioner Masters Create New Definitions of "Child Abuse" Under State Law.

15. On February 21, 2022, Attorney General Paxton released Opinion No. KP-0401 ("Paxton Opinion") dated February 18, 2022, which addressed "Whether certain medical procedures performed on children constitute child abuse."[2] The Paxton Opinion was issued in response to Representative Matt Krause's request dated August 23, 2021 about whether certain enumerated "sex-change procedures" when used to treat a minor with gender dysphoria constitute child abuse under state law. Specifically, Representative Krause inquired about and Attorney General Paxton purportedly addressed the following procedures: "sterilization through castration, vasectomy, hysterectomy, oophorectomy, metoidioplasty, orchiectomy, penectomy, phalloplasty, and vaginoplasty; …mastectomies; and … removing from children otherwise healthy or non-diseased body part or tissue."[3] The Paxton Opinion also responded to Representative Krause's additional inquiries about: whether "the following categories of drugs: (1) puberty-suppression or puberty-blocking drugs; (2) supraphysiologic doses of testosterone to females; and (3) supraphysiologic doses of estrogen to males" when used to treat minors with gender dysphoria could constitute child abuse.[4]

16. In summary, Attorney General Paxton's Opinion concluded that the enumerated procedures *could* constitute child abuse. The Opinion was based on the premise that "elective sex

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[2] Ken Paxton, et al., Re: Whether Certain Medical Procedures Performed on Children Constitute Child Abuse (RQ-0426-KP), Opinion No. KP-0401, at 1 (Feb. 18, 2022), https://texasattorneygeneral.gov/sites/default/files/global/KP-0401.pdf.

[3] *Id.*

[4] *Id.*

changes to minors often has [sic] the effect of permanently sterilizing those minor children."[5] The Paxton Opinion specifies that it "does not address or apply to *medically necessary* procedures."[6]

17. In response to the Paxton Opinion, Governor Abbott sent a letter to DFPS Commissioner Jaime Masters dated February 22, 2022 ("Abbott Letter" of "Abbott's Letter") directing the agency "to conduct a prompt and thorough investigation of any reported instances" of "sex-change procedures," without any regard to medical necessity.[7] The Abbott Letter claimed that "a number of so-called 'sex change' procedures constitute child abuse under existing Texas law."[8] In addition to directing DFPS to investigate reports of procedures referenced in the Paxton Opinion, under threat of criminal prosecution, the Abbott Letter directs "all licensed professionals who have direct contact with children" and "members of the general public" to report instances of minors who have undergone the medical procedures outlined in his Letter and the Paxton Opinion.[9]

18. On February 22, 2022, DFPS announced that it would "follow Texas law as explained in (the) Attorney General opinion" and comply with the Paxton Opinion and Abbott letter and "investigate[]" any reports of the procedures outlined in the new directives ("DFPS Statement"), again, without any regard to medical necessity.[10]

19. Commissioner Masters claimed that prior to the issuance of the Paxton Opinion and Abbott letter, the agency had "no pending investigations of child abuse involving the procedures described in that opinion."[11]

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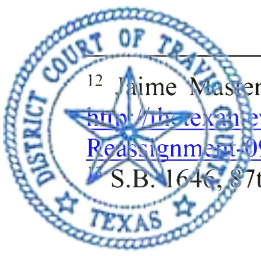
[5] *Id.* at 2.
[6] *Id.* at 2 (emphasis added).
[7] Greg Abbott, Letter to Hon. Jaime Masters, Commissioner, Tex. Dep't of Fam. & Protective Servs. (Feb. 22, 2022), https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf.
[8] *Id.*
[9] *Id.*
[10] Isaac Windes, *Texas AG says trans healthcare is child abuse. Will Fort Worth schools have to report*?, Fort Worth Star-Telegram (Feb. 23, 2022), https://www.star-telegram.com/news/local/crossroads-lab/article258692193.html.
[11] *Id.*

20. Previously, on September 3, 2021, Commissioner Masters responded to an inquiry from Representative Bryan Slaton about the same underlying medical treatment and explained, "I will await the opinion issued by the Attorney General's office before I reach any final decisions on the matters you raise."[12]

21. In the hours and days following the February 2022 actions of Attorney General Paxton, Governor Abbott, and Commissioner Masters, DFPS initiated investigations into families with transgender children, which continue.

22. During the 87th Regular session, the Texas legislature considered, but did not pass, proposed legislation that would have changed Texas law to include treatment for gender dysphoria under the definition of child abuse. Specifically, Senate Bill 1646 ("SB 1646") would have amended Section 261.001 of the Family Code to add certain treatments to the definition of "child abuse." The bill would have amended this provision of the law to include within the definition of "child abuse": "administering or supplying, or consenting to or assisting in the administration or supply of, a puberty suppression prescription drug or cross-sex hormone to a child, other than an intersex child, for the purpose of gender transitioning or gender reassignment; or performing or consenting to the performance of surgery or another medical procedure on a child other than an intersex child, for the purpose of gender transitioning or gender reassignment."[13] SB 1646 did not pass. The legislature considered additional bills that would have prohibited medical treatment for gender dysphoria in minors, including House Bill 68 and House Bill 1339. None of these bills were passed by the duly elected members of the legislature.



[12] Jaime Masters, Letter to Hon. Bryan Slaton, Representative, District 2, Re: Correspondence (Sept. 3, 2021), http://thetexaznews/wp-content/uploads/2021/09/Response-Letter_Representative-Slaton_Addressing-Gender-Reassignment-090321.pdf.

[13] S.B. 1646, 87th Leg. (Tex. 2021), https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB01646E.pdf.

23. On July 19, 2021, after the above-referenced legislation failed to pass, Governor Abbott explained on a public radio show that he had a "solution" to what he called the "problem" of medical treatment for minors with gender dysphoria.[14]

B. Responses to New Child Abuse Directives

24. Following the recent attempts by Defendants to change the definition of "child abuse" under Texas law, experts in pediatric medicine, endocrinology, mental health care, and social work issued statements condemning the action and warning that it was counter to established protocols for treating gender dysphoria, could force providers to violate their professional ethics, and would cause substantial harm to minors and their families in Texas.

25. In response to the actions taken by Defendants, the National Association of Social Workers issued the following statement: "The continued attempts in Texas to change the definition of child abuse are in direct opposition to social work values, principles, and Code of Ethics and pose an imminent danger to transgender youth and their families. Furthermore, these shameful actions undermine the established truth supported by every credible medical and mental health organization in the country that the concepts of sexual orientation and gender identity are real and irrefutable components of one's individual identity."[15]

26. The American Academy of Pediatrics and the Texas Pediatric Society condemned the actions of Texas executive officials explaining that "[t]he AAP has long supported gender-affirming care for transgender youth, which includes the use of puberty-suppressing treatments when appropriate, as outlined in its own policy statement, urging that youth who identify as

[14] The Mark Davis Show, *July 19, 2021 8am Hour*, at 11:04 (July 19, 2021), https://omny.fm/shows/the-mark-davis-show/july-19-2021-8am-hour.

[15] *NASW Condemns Efforts to Redefine Child Abuse to Include Gender-Affirming Care*, Nat'l Ass'n Soc. Workers (Feb. 25, 2022), https://www.socialworkers.org/News/News-Releases/ID/2406/NASW-Condemns-Efforts-to-Redefine-Child-Abuse-to-Include-Gender-Affirming-Care.

65. In Arkansas, a simple majority of the General Assembly overrode Governor Hutchinson's veto and nonetheless enacted a ban on health care treatments for minors with gender dysphoria. In July 2021, that law was enjoined in federal court. Based on an extensive preliminary injunction record, the court found: "If the Act is not enjoined, healthcare providers in this State will not be able to consider the recognized standard of care for adolescent gender dysphoria. Instead of ensuring that healthcare providers in the State of Arkansas abide by ethical standards, the State has ensured that its healthcare providers do not have the ability to abide by their ethical standards which may include medically necessary transition-related care for improving the physical and mental health of their transgender patients."[28] The court further held that the law "cannot withstand heightened scrutiny and based on the record would not even withstand rational basis scrutiny if it were the appropriate standard of review."[29]

VI. PLAINTIFFS

The Doe Family

66. Plaintiff Jane Doe is married to Plaintiff John Doe and together they are the proud parents of Plaintiff Mary Doe, a 16-year-adolescent. Ex. 1, Decl. of Jane Doe.

67. Plaintiffs Jane and John have called Texas their home for nearly 20 years and Texas is the only home Mary has ever known.

68. Mary Doe is transgender. When she was born, she was designated as "male" on her birth certificate, but she is a girl.

69. From a very young age, Mary has expressed herself and behaved in manner that does not conform with the stereotypes associated with the sex she was designated at birth.

[28] *Brandt v. Rutledge*, Case No.: 4:21-cv-00450-JM, 2021 WL 3292057, at *4 (E.D. Ark. Aug. 2, 2021).
[29] *Id.*

70. Mary's parents have been supportive and accepting of her, giving her the space to express herself and explore who she is.

71. Mary has been under the care of the same pediatrician most of her life. Her pediatrician diagnosed her with gender dysphoria and referred the family to other medical professionals who likewise confirmed that Mary suffers from gender dysphoria.

72. The family has also done research to educate themselves about gender dysphoria and its treatment, and connected Mary with youth support groups that would permit them to have discussions as a family.

73. Following Mary's diagnosis of gender dysphoria, Mary's doctors recommended that Mary be provided with medical care to treat and alleviate her gender dysphoria. This care has included the prescription of puberty-delaying medication and hormone therapy to initiate puberty consistent with her female gender.

74. In consultation with these doctors and after extensive discussions about the benefits and potential side effects of this treatment, Jane Doe, John Doe, and Mary Doe jointly decided to initiate treatment for Mary's gender dysphoria. This treatment has been prescribed by Mary's doctors in accordance with what they believe are best medical practices and what the Doe family understands will be the best course of action to protect Mary's physical and mental health.

75. Mary was worried about having to undergo a puberty that would result in permanent physical characteristics not in alignment with her female gender. Jane and John observed how the prospect of beginning this puberty caused Mary significant distress and exacerbated her dysphoria.

76. Being able to be affirmed as who she is, including through the course of treatment prescribed by her doctors, has brought Mary significant relief and allowed her to thrive.

77. Plaintiff Jane Doe has worked in the field of child protective services at various times throughout her career. At present, Plaintiff Jane Doe is an employee of DFPS, where she works on the review of reports of abuse and neglect. Her track record as a DFPS employee has been exemplary and commended by her supervisors.

78. The issuance of the Paxton Opinion and the Abbott Letter, followed by DFPS's implementation of these to investigate the provision of medically necessary gender-affirming health care as abuse, has wreaked havoc on the Doe family.

79. Plaintiffs Jane Doe, John Doe, and Mary Doe are terrified for Mary's health and wellbeing, and for their family.

80. On February 23, 2022, following the issuance of the Paxton Opinion and the Abbott Letter, Jane communicated with her supervisor at DFPS to seek clarification of how the Abbott Letter would affect DFPS policy. Such clarification was important for her family as well as to her ability to perform her job at DFPS.

81. That same day, and just mere hours later, Jane Doe was placed on leave from her employment because she has a transgender daughter with a medical need for treatment of gender dysphoria.

82. The next day, on the afternoon of February 24, 2022, Plaintiff Jane Doe was informed that her family would be investigated in accordance with Governor Abbott's letter to determine if Jane Doe and John Doe had committed abuse by affirming their transgender daughter's identity and obtaining the medically necessary health care that she needs.

83. On February 25, 2022, a DFPS Child Protective Services (CPS) investigator visited the Doe family's home to interview Jane Doe, John Doe, and Mary Doe. The CPS investigator interviewed Jane Doe and John Doe, who were accompanied by counsel, together, while he

interviewed Mary Doe, who was accompanied by different counsel, apart from her parents. Aside from interviewing the Doe family, the CPS investigator sought access through releases to Mary Doe's medical records, which the Doe Plaintiffs refused to sign.

84. The CPS investigator disclosed that the sole allegation against Jane Doe and John Doe is that they have a transgender daughter and that their daughter may have been provided with medically necessary gender-affirming health care and is "currently transitioning from male to female."

85. The issuance of the Paxton Opinion and the Abbott Letter, along with DFPS's implementation of these, has terrorized the Doe family and inflicted ongoing and irreparable harm.

86. As a result of DFPS's implementation and the subsequent investigation of the Doe family, Jane Doe has been placed on leave from her employment. Should DFPS incorrectly find that Jane Doe and John Doe have committed "abuse" based on Governor Abbott's and Attorney General Paxton's erroneous and misguided missives and understanding of medical treatment for gender dysphoria, Jane Doe could face termination, which would result not only in the loss of income for the family but also their health care coverage.

87. Should DFPS incorrectly issue a finding that there is reason to believe that Jane Doe and John Doe have committed "abuse" based on Governor Abbott's and Attorney General Paxton's erroneous and misguided missives and understanding of medical treatment for gender dysphoria, they would automatically be placed on a child abuse registry and be improperly subject to all of the effects that flow from such placement.

88. The issuance of the Attorney General's opinion and Governor's letter, along with DFPS's implementation of these, has caused a significant amount of stress, anxiety, and fear for the Doe family. For example, Mary has been traumatized by the prospect that she could be

separated from her parents and could lose access to the medical treatment that has enabled her to thrive. The stress has taken a noticeable toll on her, and her parents have observed how their daughter who is typically joyful and happy, is now moodier, stressed, and overwhelmed. Similarly, Jane and John are now filled anxiety and worry. Jane has been unable to sleep, worrying about what they can do and how they can keep their family intact and their daughter safe and healthy. The Doe family is living in constant fear about what will happen to them due to the actions by DFPS, the Governor, and the Attorney General.

89. Plaintiffs Jane and John also worry about the potential physical and mental health consequences of depriving Mary of the medical treatment her doctors have prescribed and that she needs. Not providing Mary with the medically necessary health care that she needs is not an option for them, as their topmost goal and duty are to ensure Mary's health and wellbeing.

Dr. Megan A. Mooney

90. Plaintiff Dr. Megan A. Mooney is a licensed psychologist in Texas. For almost two decades now, she has worked with children and families to respond to and mitigate trauma and harm. Ex. 2, Decl. of Dr. Mooney.

91. Dr. Mooney is also a mandatory reporter obligated to report child abuse and neglect to DFPS. She has received and conducted trainings on mandatory reporting requirements and is familiar with Texas law on child abuse and neglect.

92. She runs a private psychology practice based in Houston that serves children, adolescents, and families. However, she also sees clients elsewhere in the state, including outside of the major metropolitan areas, by video conference.

93. She is bound by professional codes of ethics from the American Psychological Association to do no harm to her patients.

94. Many of her patients are transgender or non-binary young people under the age of 18, including youth with gender dysphoria.

95. Part of Dr. Mooney's job includes providing mental health evaluations for youth with gender dysphoria, referring youth with gender dysphoria for medical treatment, and continuing to treat young people who receive medical treatment for gender dysphoria.

96. She provides this care only after careful mental health evaluations of her clients and with the informed consent of parents and the assent of minor patients.

97. As someone who works closely with LGBTQ+ young people, she has seen first-hand the trauma and harm they face and the bullying and harassment they experience, especially in schools.

98. From a clinical perspective, Dr. Mooney has also observed the tremendous health benefits that her patients experience as a result of medical treatment for gender dysphoria. These clinical observations have been supported by the most up-to-date data and scientific studies she reviews as part of her ongoing professional obligations.

99. Dr. Mooney has seen young people who were depressed and feeling hopeless and scared for their future begin to feel happy and optimistic just by starting medications to suppress puberty or to develop the secondary sex characteristics that align with their gender identity.

100. The Governor's directive and DFPS implementation have placed Dr. Mooney in an untenable situation.

101. If Dr. Mooney fails to report her clients who receive gender-affirming care, she faces the prospect of civil and criminal penalties, the loss of her license, and other severe consequences.

102. However, if she does follow the Governor's letter and DFPS' erroneous reliance on it, she faces even more damaging personal and professional consequences.

103. Dr. Mooney would be violating her professional standards of ethics and inflict serious harm and trauma on her clients.

104. Many clients that she works with have already experienced trauma, and reporting them to DFPS simply for receiving gender-affirming care from a licensed medical provider would cause immense and irreversible harm by subjecting them to an investigation and possible family separation.

105. Being subject to an investigation would dramatically worsen the mental health outcomes of her clients, and could worsen the already tragic rate of suicide among transgender youth.

106. In addition, she would irreparably damage the bonds of trust that she has built with her clients and, as a consequence, could face the possible closure of her practice if clients know that she cannot maintain their trust. She could also be subject to malpractice lawsuits from her clients for failing to adhere to ethical guidelines and for harming her clients.

107. Dr. Mooney could also confront harsh penalties, including prison time, for the false reporting of child abuse, as she would be making a report to DFPS when she knows child abuse is not happening.

108. Thus, the issuance of the Governor's letter and DFPS' implementation has threatened and continues to threaten Dr. Mooney's morality, liberty, and livelihood.

and upbringing of their children." Tex. Hum. Res. Code § 40.002(b). Rather than support children and respect the right of parents to raise their children and the rights of transgender minors to receive medically necessary treatment available to similarly situated non-transgender minors, Commissioner Masters' action has already directly caused harm to loving families across Texas. This harm will become even more irreparable as investigations turn into family separations and medically necessary treatments are terminated.

147. Finally, this sequence of events, in which a Commissioner agrees to follow a Governor's unlawful directive—issued not as an executive order but as a letter—has never before been recognized by a court as a proper execution of government authority, further supporting the *ultra vires* nature of both officials' actions here.

C. Separation of Powers Claims – By All Plaintiffs Against Defendants Governor Abbott and Commissioner Masters

148. Plaintiffs incorporate the foregoing paragraphs in support of the following causes of action.

149. Defendants' actions violate the separation of powers established by Article II of the Texas Constitution. Defendants' actions run afoul of Article II in two ways:

a. *First*, the Governor's directive, which criminalizes conduct by adding a new definition of "child abuse" under Section 261.001 of the Texas Family Code, unduly interferes with the functions of the state legislature, which possesses *sole* authority to establish criminal offenses and designate applicable penalties. *See Martinez v. State*, 323 S.W.3d 493, 501 (Tex. Crim. App. 2010).

b. *Second*, all Defendants seek to adopt and enforce an overbroad interpretation of "child abuse." They do this in contravention of the plain

meaning of the statute, and despite the state legislature's recent decision not to adopt such a definition. This too represents an overreach by the executive branch into the legislative function.

150. The Texas Constitution prohibits one branch of state government from exercising power inherently belonging to another branch. Tex. Const. art. 11, § 1; *see also Gen Servs. Comm'n v. Little-Tex. Insulation Co.*, 39 S.W.3d 591, 600 (Tex. 2001) (superseded by statute on other grounds).

151. A separation of powers constitutional violation occurs when: (1) one branch of government has assumed or has been delegated a power more "properly attached" to another branch, or (2) one branch has unduly interfered with another branch so that the other branch cannot effectively exercise its constitutionally assigned powers. *Jones v. State*, 803 S.W.2d 712, 715 (Tex. Crim. App. 1991) (citing *Rose v. State*, 752 S.W.2d 529, 535 (Tex. Crim. App. 1987)).

152. The "power to make, alter, and repeal laws" lies with the state legislature, and such power is plenary, "limited only by the express or clearly implied restrictions thereon contained in or necessarily arising from the Constitution." *Diaz v. State*, 68 S.W.3d 680, 685 (Tex. App.—El Paso 2000, pet. denied).

153. In particular, the legislature possesses the *sole* authority to establish criminal offenses and designate applicable penalties. *See Martinez,* 323 S.W.3d at 501; *see also Matchett v. State*, 941 S.W.2d 922, 932 (Tex. Crim. App. 1996) (the authority to define crimes and prescribe penalties for those crimes is vested exclusively with the legislature).

154. Governor Abbott's directive unduly interferes with the state legislature's sole authority to establish criminal offenses and penalties. First, the Abbott Letter outright claims that

"a number of so-called 'sex change' procedures constitute child abuse under existing Texas law," despite the fact that the legislature has failed to pass nearly identical legislation.

155. The Abbott Letter also violates separation of powers by inventing a separate crime when it directs, under the threat of *criminal prosecution*, "all licensed professionals who have direct contact with children" as well as "members of the general public" to report instances of minors who have undergone the medical procedures outlined in the Letter and the Paxton Opinion. This, too, is without legislative approval and represents an overreach by the executive into the core legislative function of establishing crimes and criminal penalties.

156. Second, separate and apart from the criminalization of conduct that has heretofore been legal, all Defendants violate separation of powers by seeking to adopt and enforce an overbroad interpretation of "child abuse" under the Family Code.

157. Courts have repeatedly held that the executive branch and the courts must, in construing statutes, take them as they find them. *See Tex. Highway Comm'n v. El Paso Bldg. & Const. Trades Council*, 234 S.W.2d 857, 863 (Tex. 1950); *Simmons v. Arnim*, 220 S.W. 66, 70 (Tex. 1920); *City of Port Arthur v. Tillman*, 398 S.W.2d 750, 752(Tex. 1965). In particular, the other branches are not empowered to "substitute what [they] believe is right or fair for what the legislature has written," *Vandyke v. State*, 538 S.W.3d 561, 569 (Tex. Crim. App. 2017) (citations omitted), or to give meanings to statutory language that contravene their plain meaning or clear legislative intent. *See Burton v. Rogers,* 492 S.W.2d 695 (Tex. Civ. App.—Beaumont 1973), writ granted, (July 11, 1973) and *judgment rev'd on other grounds*, 504 S.W.2d 404 (Tex. 1973) (finding that words employed by the legislature must be taken in their ordinary and popular acceptation). To do otherwise would once again violate the core legislative power to make, alter, and repeal laws.

158. Defendants violate separation of powers when they attempt to create new and novel definitions for "child abuse" under the Family Code. Defendants endeavored to redefine "child abuse" in spite of the state legislature's recent refusal to adopt Senate Bill 1646, which would have included certain treatments for gender dysphoria in adolescents under the definition of child abuse, and bills like it, such as House Bills 68 and 1339. In expanding the definition of child abuse beyond the limits permitted by the plain meaning of the Family Code, and in clear defiance of legislative intent, the Defendants impermissibly invade the legislative field. *See Brazos River Auth. v. City of Graham*, 354 S.W.2d 99, 109 (Tex. 1961).

159. Finally, there has been no delegation of powers from the state legislature to the executive that would in any way cure the separation of powers violation. While the legislature may not generally delegate its law-making power to another branch, it may designate some agency to carry out legislation for the purposes of practicality or efficiency. *See Tex Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 466 (Tex. 1997). Separation of powers requires that in statutes delegating such power, the legislature provide definite guidelines and prescribe sufficient standards to guide the discretion conferred. *See State v. Rhine*, 255 S.W.3d 745, 749 (Tex. App.—Fort Worth 2008, pet. granted). Such standards must be reasonably clear and acceptable as standards of measurement. Tex. Const. art. 11 § 1.

160. In the instant case, the Texas Family Code provides no such delegation in any way from the state legislature to the executive of the power to expand—unilaterally and without legislative approval—the definition of "child abuse." Recent decisions by the state legislature in fact signal that the legislature does not intend and has explicitly declined to expand the definition of child abuse at this time to include certain gender-affirming care for minors.

161. For the foregoing reasons, Defendants' actions violate state constitutional separation of powers.

D. Due Process Vagueness Claims – By All Plaintiffs Against Defendants Governor Abbott and Commissioner Masters

162. Article 1, Section 19 of the Texas Constitution states: "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." Under this guarantee, a governmental enactment is unconstitutionally vague if it fails to provide a person of ordinary intelligence fair notice of what is prohibited or is so standardless that it authorizes or encourages seriously discriminatory enforcement. *See Ex parte Jarreau*, 623 S.W.3d 468, 472 (Tex. App.--San Antonio 2020) (quoting *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018)). Differently stated, governmental enactments are unconstitutionally void for vagueness when their prohibitions are not clearly defined.

163. Criminal enactments are subject to an even stricter vagueness standard because "the consequences of imprecision are... severe." *Hoffman Estates v. Flipside, Hoffman Estates, Ic.*, 455 U. S. 489, 498–499 (1982). Each ground—a lack of fair notice and a lack of standards for enforcement—provides an independent basis for a facial vagueness challenge. *Ex parte Jarreau*, 623 S.W.3d at 472.

164. The Abbott letter and DFPS's attempt to adopt and enforce an overbroad interpretation of "child abuse" under the Family Code create precisely this type of unconstitutional vagueness. These vague prohibitions leave parents like Plaintiffs Jane and John Doe uncertain how to act in order to avoid criminal penalty in their efforts to provide for the medical needs of the children they love. Under the text of the Family Code itself, a parent is liable for neglect for "failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting an immediate danger of death, disfigurement, or bodily injury or with the failure

resulting in an observable and material impairment to the growth, development, or functioning of the child." Tex. Fam. Code § 261.001(4)(A)(ii)(b). Failing to seek medically necessary treatment for an adolescent's gender dysphoria could fall within this statutory definition. But if parents pursue the medical care necessary to their transgender minor adolescent's growth, development, or functioning, Defendants' recent actions make them liable for abuse. These parents are left without fair notice of how their actions will be assessed and what standard DFPS will employ.

165. The same is true for mandatory reporters like Plaintiff Dr. Mooney, who are left in a similarly untenable position. Under Defendants' actions, failing to report her clients who receive gender-affirming care will subject her to civil and criminal penalties, the loss of her license, and other severe consequences. If she does report her clients solely because they have sought essential and necessary medical care, however, she will be subject to penalty for violating professional standards of ethics and false reporting of child abuse under the plain terms of the statute, let alone having inflicted serious harm and trauma on her clients. Mandated reporters are left without fair notice of how their actions will be assessed and what standards will apply to them.

E. Deprivation of Parental Rights Due Process Claims – By Plaintiffs Jane and John Doe Against Defendants Governor Abbott and Commissioner Masters

166. Plaintiffs incorporate the foregoing paragraphs in support of the following causes of action.

167. Plaintiffs' right to care for their children is a fundamental liberty interest protected by the Texas Constitution and acknowledged by the legislature. *See Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976); *see also* Tex. Fam. Code § 151.001(a)(11).

168. Under substantive due process, the government may not infringe parental rights unless there exist exceptional circumstances capable of withstanding strict scrutiny. *See Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976). The state must have a compelling state interest, and

the state action in question "*must* be narrowly drawn to express *only* the legitimate state interests at stake." *Gibson v. J.W.T.*, 815 S.W.2d 863, 868 (Tex. App. – Beaumont 1991, writ granted), *aff'd and remanded In re J.W.T.*, 872 S.W.2d 189 (Tex. 1994) (citations omitted).

169. In the present case, there are no exceptional circumstances that would justify Defendants' complete negation of Plaintiffs' fundamental liberty interests in parental autonomy. There is perhaps no right more fundamental than the right of parents to care for their children. *See Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). Defendants have trampled Plaintiffs' right to care for their children by effectively criminalizing the act of providing medically necessary care to their children in consultation with medical professionals in accordance with applicable standards of care. Defendants' actions cause immeasurable harm to both parents and young people, threaten family separation, and lack any legitimate justification at all, let alone a constitutionally adequate one. This is not a "narrowly drawn" policy that respects Plaintiffs' fundamental due process rights to parent their children.

F. Violation of the Guarantee of Equal Rights and Equality Under the Law – By Plaintiff Mary Doe Against Defendants Governor Abbott and Commissioner Masters

170. The Abbott Letter, DFPS's statement, and DFPS's implementation of these violates the Texas Constitution by denying transgender youth equal protection under law. Under the Texas Constitution, all persons "have equal rights," Tex. Const. art. 1, § 3, and "[e]quality under the law shall not be denied or abridged because of sex." Tex. Const. art. 1, § 3a.

171. The Abbott letter, incorporated into DFPS's statement, specifically designates "*gender*-transitioning procedures" to be abusive and refers to the Paxton Opinion by noting that it deems "'*sex* change' procedures [to] constitute child abuse." The Abbott letter, incorporated into DFPS's statement, explicitly uses sex-based terms, making plain that the discrimination at issue here is based on sex. Moreover, it discriminates against transgender youth, like Mary, because

they are transgender and they fail to conform to the stereotypes associated with the sex they were designated at birth.

172. As the United States Supreme Court has explained, however, "discrimination based on … transgender status necessarily entails discrimination based on sex." *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1747 (2020); *cf. Tarrant Cty. Coll. Dist. v. Sims*, 621 S.W.3d 323, 329 (Tex. App. 2021) ("[W]e conclude we must follow Bostock and read the TCHRA's prohibition on discrimination 'because of ... sex' as prohibiting discrimination based on an individual's status as a … transgender person."). Likewise, discrimination based on transgender status is independently unconstitutional. *See Brandt v. Rutledge*, No. 4:21CV00450 JM, 2021 WL 3292057, at *2 (E.D. Ark. Aug. 2, 2021) ("The Court concludes that heightened scrutiny applies to Plaintiffs' Equal Protection claims because Act 626 rests on sex-based classifications and because 'transgender people constitute at least a quasi-suspect class.'" (quoting *Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 607 (4th Cir. 2020)).

173. The Abbott letter, DFPS's statement, and DFPS's implementation of these directives therefore unlawfully discriminate against transgender youth by deeming the medically necessary care for the treatment of their gender dysphoria as presumptively abuse because they are transgender when the same treatment is permitted for non-transgender youth. By doing so, the Abbott letter, DFPS's statement, and DFPS's implementation of these directives place a stigma and scarlet letter upon transgender youth and subject them to additional harms. For example, the Abbott letter, DFPS's statement, and DFPS's implementation of these directives do nothing to protect transgender youth, yet subject them to abuse investigations simply because of who they are and force the denial of their medically necessary care unless they are separated from their families or their parents are penalized.

15. My topmost commitment as a parent is to ensure to the health, safety, and wellbeing of my daughter, whom John and I love and support.

16. I have worked in the field of child protective services at various times throughout my career. At present, I am an employee for the Texas Department of Family and Protective Services (DFPS), where I work on the review of reports of abuse and neglect. My supervisors have recognized and commended my performance, which has been recognized through career advancement and merit compensation.

17. The issuance of Attorney General Paxton's opinion dated February 18, 2022 and Governor Abbott's letter on February 22, 2022, followed by DFPS's implementation of these to investigate the provision of medically necessary gender-affirming health care as abuse, has wreaked havoc on our lives.

18. We are terrified for Mary's health and wellbeing, and for our family. I feel betrayed by my state and the agency for whom I work.

19. On February 23, 2022, following the issuance of Attorney General Paxton's opinion and Governor Abbott's letter, I contacted my direct supervisor at DFPS to inquire how these would affect DFPS policy. The answer to my inquiry was important for my family as well as to my ability to perform my job at DFPS.

20. That same day, just mere hours later, I was placed on paid leave from my employment because I was the parent of a transgender adolescent who requires necessary medical care for the treatment of gender dysphoria.

21. On February 24, 2022, I was contacted by a DFPS Child Protective Services (CPS) investigator, who was unknown to me, and informed that my family would be investigated in accordance with Governor Abbott's letter to determine if John and I had committed abuse by

to them at birth. In order to be diagnosed with gender dysphoria, the incongruence must have persisted for at least six months and be accompanied by clinically significant distress or impairment in social, occupational, or other important areas of functioning.

4. Part of my job includes providing mental health evaluations for youth with gender dysphoria, referring youth with gender dysphoria for medical treatment, and continuing to treat young people who receive medical treatment for gender dysphoria.

5. I am a mandatory reporter obligated to report child abuse and neglect to the Texas Department of Family Protective Services (DFPS). I have received and conducted trainings on mandatory reporting requirements and am familiar with Texas law on child abuse and neglect. I have reported cases of child abuse to DFPS where appropriate and have testified in court cases involving child abuse and neglect.

6. From a clinical perspective, I have observed the tremendous health benefits that my patients experience as a result of medical treatment for gender dysphoria. My clinical observations are also supported by data and scientific studies. Gender-affirming medical treatment does not harm minors but rather greatly improves their health, wellbeing, and quality of life.

7. The latest actions purporting to require me to report gender-affirming care as child abuse put me in an untenable situation. If I fail to report my clients who receive this medical treatment, I face the prospect of civil and criminal penalties, the loss of my license, and other severe consequences. But if I report any of my clients for receiving critical and medically necessary care, I would be violating professional standards of ethics, inflict serious harm and trauma on my clients, irreparably damage the bonds of trust that I have built with my clients, face the possible closure of my practice if clients know that I cannot maintain their trust, and confront harsh penalties for false reporting of child abuse.

Background

8. I have a bachelor's degree in psychology from Vanderbilt University and completed both a master's degree and doctorate in clinical psychology at the University of Arkansas. During my doctoral program, which I completed in 2005, I was a child and family specialist and a clinical psychology intern at Baylor College of Medicine.

9. Since 2008, I have been a licensed psychologist with the Texas State Board of Examiners of Psychologists (TX License #33819, expires July 31, 2023). I have met all of the requirements for licensing and renewal for psychologists established under Texas Occupations Code, Section 501.2525.

10. As a licensed psychologist, I am required to follow the ethical principles of psychologists and code of conduct from the American Psychological Association ("APA"). The code of conduct requires me to strive to benefit my patients and do no harm, and I must respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination.[1]

11. I have spent nearly two decades working as a psychologist in Texas with children, adolescents, adults, and families. My focus is on helping young people and families respond to trauma. For over twelve years, I worked at DePelchin Children's Center in Houston, where I supervised a trauma program and provided therapy to children, adolescents, adults, and families. Because DePelchin is a licensed foster care agency, I became intimately familiar with DFPS and cases of abuse and neglect, received training regarding child welfare and mandatory reporting requirements, and I advised other mental health professionals, psychology trainees, and other

[1] Ethical Principles of Psychologists and Code of Conduct (Am. Psych. Ass'n 2017), https://www.apa.org/ethics/code.

Society, and the Texas Academy of Family Physicians, among other professional associations. This bill did not become law.

Current Practice and Professional Responsibilities

17. I founded a private psychological practice in 2018 to serve young people and families in Houston and its surrounding areas. Most of my clients live in Houston, but I also see clients who live outside of Houston and Harris County, including by video conference. My practice focuses on providing therapeutic services to children and adolescents and I specialize in assisting clients with trauma and grief. Many of my clients identify as LGBTQ+ and the majority are transgender or non-binary.

18. As a psychologist, I often evaluate and diagnose gender dysphoria in my patients. I sometimes refer patients for medical treatment for gender dysphoria and oversee their ongoing mental health care during the course of such treatment. This care is only provided after careful mental health evaluation and with the informed consent of parents and the assent of minor patients.

19. Medical interventions to treat gender dysphoria in adolescence are effective, safe, and often lifesaving. I have personally witnessed time and time again, young people who were depressed and feeling hopeless and scared for their future begin to feel happy and optimistic just by starting medications to suppress puberty or to develop the secondary sex characteristics that align with their gender identity. Given the exceptionally high rates of suicidality in this population, medical interventions are a critical part of treatment and often save lives. At least 44% of transgender youth attempt suicide during their lifetime as compared to the national average of about 4% for teens.[3] This treatment does not harm patients but helps them; it is not abuse.

[3] *See* Brian S. Mustanski et al., *Mental Health Disorders, Psychological Distress, and Suicidality in a Diverse Sample of Lesbian, Gay, Bisexual, and Transgender Youths*, 100 Am. J. Pub. Health 2426 (2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2978194/; Matthew K. Nock et al., *Prevalence, correlates, and treatment of lifetime suicidal behavior among adolescents: results from the National Comorbidity Survey Replication*

26. Under the Governor's directive and DFPS's implementation of its redefinition of gender-affirming health care as child abuse, my clients could be separated from their parents and guardians and removed for their homes. My clients' parents could also face catastrophic consequences. And having their families be subject to an investigation will dramatically worsen the mental health outcomes of my clients, and could worsen the already tragic rate of suicide among transgender youth.

27. The recent actions taken by Governor Abbott threaten me with criminal sanctions and put me in an impossible position. If I follow my ethical duties and Texas law by not reporting any of my clients for the health care described in the Governor's letter, I could be subject to prosecution for failure to report child abuse or neglect, which is a Class A misdemeanor and punishable by up to a year in prison and/or a fine of up to $4,000. I could also be subject to an investigation by the Texas Board of Examiners of Psychologists and lose my license, which would end my livelihood and private practice.

28. If I am compelled to follow the Governor's letter and DFPS's erroneous reliance on it, the personal and professional consequences that I face are even more devastating. Under Section 261.107 of the Texas Family Code, I could be charged with false reporting of child abuse if I make a report to DFPS when I know that child abuse is not happening. It is a state jail felony punishable by up to two years in prison and/or a $10,000 fine to falsely report child abuse. I also could be subject to an investigation by the Texas Board of Examiners of Psychologists and lose my license for failing to follow the ethical code of conduct promulgated by the APA. And I could be subject to malpractice lawsuits from my clients for failing to adhere to ethical guidelines and harming my clients. Even worse, it would be a betrayal of the bonds of trust between me and my clients and the oath that I swore as a psychologist to do no harm to my patients.

Filed in The District Court
of Travis County, Texas
MAR 11 2022
At 5:24 P.M.
Velva L. Price, District Clerk

NO. D-1-GN-22-000977

JANE DOE, ET AL.,
Plaintiff,

v.

GOVERNOR ABBOTT, ET AL.,
Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

DENYING
ORDER ~~GRANTING~~ PLEA TO THE JURISDICTION

On this day, the Court considered Defendants' Plea to the Jurisdiction. After due consideration, the Court finds said plea ~~meritorious.~~ NOT FOUNDED AND without merit. DENIED.

IT IS THEREFORE ORDERED that Defendants' Plea to the Jurisdiction is ~~GRANTED~~.

~~IT IS FURTHER ORDERED that all of Plaintiffs' claims against Defendants are hereby~~ AM

DISMISSED WITHOUT PREJUDICE in their entirety.

~~This is a FINAL JUDGMENT, and all relief not specifically granted is denied.~~ AM

SIGNED this 11th day of MARCH, 2022.

HON. AMY CLARK MEACHUM
201st DISTRICT COURT JUDGE

I, VELVA L. PRICE, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office
On 04/15/2022 10:09:26

VELVA L. PRICE
DISTRICT CLERK
By Deputy: SH

CAUSE NO. D-1-GN-22-000977

JANE DOE, individually and as parent and next friend of MARY DOE, a minor; JOHN DOE, individually and as parent and next friend of MARY DOE, a minor; and DR. MEGAN MOONEY	§	
Plaintiffs	§	
	§	IN THE DISTRICT COURT OF
	§	TRAVIS COUNTY, TEXAS
v.	§	353RD JUDICIAL DISTRICT
GREG ABBOTT, sued in his official capacity as Governor of the State of Texas; JAIME MASTERS, sued in her official capacity as Commissioner of the Texas Department of Family and Protective Services; and the TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,	§	
Defendants.	§	

ORDER GRANTING PLAINTIFFS' APPLICATION FOR TEMPORARY INJUNCTION

On this day the Court considered the application by Plaintiffs John and Jane Doe, individually and as parents and next friends of Plaintiff Mary Doe, a minor, and Dr. Megan Mooney (collectively, "Plaintiffs") for a Temporary Injunction (the "Application"), as found in Plaintiffs' Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, and Request for Declaratory Relief ("Petition") filed against Defendants Greg Abbott, in his official capacity as Governor of the State of Texas, Jaime Masters, in her official capacity as Commissioner of the Texas Department of Family and Protective Services, and the Texas Department of Family and Protective Services ("DFPS") (collectively, "Defendants").

Based on the facts set forth in Plaintiffs' Application, the supporting declarations, the testimony, the evidence, and the arguments of counsel presented during the March 11, 2022, hearing on Plaintiffs' Application, this Court finds sufficient cause to enter a Temporary Injunction. Plaintiffs state a valid cause of action against each Defendant and have a probable right to the declaratory and permanent injunctive relief they seek. For the reasons detailed in Plaintiffs' Application and accompanying evidence, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits because the Governor's directive is *ultra vires*, beyond the scope of his authority, and unconstitutional. The improper rulemaking and implementation by Commissioner Masters and DFPS are similarly void.

The Court further finds that gender-affirming care was not investigated as child abuse by DFPS until after February 22, 2022. The series of directives and decisions by the Governor, the Executive Director, and other decision-makers at DFPS, changed the *status quo* for transgender children and their families, as well as professionals who offer treatment, throughout the State of Texas. The Governor's Directive was given the effect of a new law or new agency rule, despite no new legislation, regulation or even stated agency policy. Governor Abbott and Commissioner Masters' actions violate separation of powers by impermissibly encroaching into the legislative domain.

It clearly appears to the Court that unless Defendants are immediately enjoined from enforcing the Governor's directive and the DFPS rule enforcing that directive, both issued February 22, 2022, and which make reference to and incorporate Attorney General Paxton's Opinion No. KP-0401, Plaintiffs will suffer imminent and irreparable injury. For example, Jane Doe has already been placed on administrative leave at work and is at risk of losing her job, her livelihood, and the means of caring for her family. Jane, John and Mary Doe face the imminent

and ongoing deprivation of their constitutional rights and the stigma attached to being the subject of a child abuse investigation. Mary faces the potential loss of medically necessary care, which if abruptly discontinued can cause severe and irreparable physical and emotional harms, including anxiety, depression, and suicidality. If placed on the Child Abuse Registry, Jane Doe would lose the ability to practice her profession, and both Jane and John Doe would lose their ability to work with minors and volunteer in their community. Absent intervention by this court, Dr. Mooney could face civil suit by patients for failing to treat them in accordance with professional standards and loss of licensure for failing to follow her professional ethics if Defendants' directives are enforced. If Defendants' directives remain in effect, Dr. Mooney will be required to report her patients who are receiving medically necessary gender-affirming care, in contravention of the code of ethics governing her profession and the medical needs of her patients. If Dr. Mooney does not report her patients, she could face immediate criminal prosecution, as set forth in the Governor's letter. Defendants' wrongful actions cannot be remedied by any award of damages or other adequate remedy at law.

The Temporary Injunction being entered by the Court today maintains the status quo prior to February 22, 2022, and should remain in effect while this Court, and potentially the Court of Appeals, and the Supreme Court of Texas, examine the parties' merits and jurisdictional arguments.

IT IS THEREFORE ORDERED that, until all issues in this lawsuit are finally and fully determined, Defendants are immediately enjoined and restrained from enforcing the Governor's directive and DFPS rule, both issued February 22, 2022, as well as Attorney General Paxton's Opinion No. KP-0401 which they reference and incorporate. This Temporary Injunction restrains the following actions by the Defendants: (1) taking any actions against Plaintiffs based on

DISTRICT COURT OF TRAVIS COUNTY TEXAS

the Governor's directive and DFPS rule, both issued February 22, 2022, as well as Attorney General Paxton's Opinion No. KP-0401 which they reference and incorporate; (2) investigating reports in the State of Texas against any and all persons based solely on alleged child abuse by persons, providers or organizations in facilitating or providing gender-affirming care to transgender minors where the only grounds for the purported abuse or neglect are either the facilitation or provision of gender-affirming medical treatment or the fact that the minors are transgender, gender transitioning, or receiving or being prescribed gender-affirming medical treatment; (3) prosecuting or referring for prosecution such reports; and (4) imposing reporting requirements on persons in the State of Texas who are aware of others who facilitate or provide gender-affirming care to transgender minors solely based on the fact that the minors are transgender, gender transitioning, or receiving or being prescribed gender-affirming medical treatment.

IT IS FURTHER ORDERED that a trial on the merits of this case is July 11, 2022. The Clerk of the Court is hereby directed to issue a show cause notice to Defendants to appear at the trial.

The Clerk of the Court shall forthwith, ~~on filing by Plaintiffs of the Bond hereinafter required, and on proving of the same according to law,~~ issue a temporary injunction in conformity with the laws and terms of this Order.

Plaintiffs have previously executed ~~and filed~~ with the Clerk a bond in conformity with the law in the amount of $100 dollars, and that bond amount will remain adequate and effective for this Temporary Injunction.

It is further ORDERED that this Order shall not expire until judgment in this case is entered or this case is otherwise dismissed by the Court.

DISTRICT COURT OF TRAVIS COUNTY TEXAS

Signed this 11th day of March 2022, at 5:22 P.M o'clock in Travis County, Texas.

JUDGE AMY CLARK MEACHUM

I, VELVA L. PRICE, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office

On 04/15/2022 10:09:28

VELVA L. PRICE
DISTRICT CLERK
By Deputy: SH

impairs, or threatens to interfere with or impair, a legal right or privilege of the Plaintiffs. Tex. Gov't Code § 2001.038(a), (b). Additionally, venue is proper because Defendants have their principal office in Travis County. Tex. Civ. Prac. & Rem. Code § 15.002(a)(3).

IV. DISCOVERY CONTROL PLAN

14. Plaintiffs intend for discovery to be conducted under Level 3 of Texas Rule of Civil Procedure 190.

V. FACTUAL BACKGROUND

A. Governor Abbott, Attorney General Paxton, and Commissioner Masters Create New Definitions of "Child Abuse" Under State Law.

15. On February 21, 2022, Attorney General Paxton released Opinion No. KP-0401 ("Paxton Opinion") dated February 18, 2022, which addressed "Whether certain medical procedures performed on children constitute child abuse."[4] The Paxton Opinion was issued in response to Representative Matt Krause's request dated August 23, 2021, about whether certain enumerated "sex-change procedures" when used to treat a minor with gender dysphoria constitute child abuse under state law. Specifically, Representative Krause inquired about and Attorney General Paxton purportedly addressed the following procedures: "sterilization through castration, vasectomy, hysterectomy, oophorectomy, metoidioplasty, orchiectomy, penectomy, phalloplasty, and vaginoplasty; . . . mastectomies; and . . . removing from children otherwise healthy or non-diseased body part or tissue."[5] The Paxton Opinion also responded to Representative Krause's additional inquiries about: whether "the following categories of drugs: (1) puberty-suppression or puberty-blocking drugs; (2) supraphysiologic doses of testosterone to females; and

[4] Ken Paxton et al., Re: Whether Certain Medical Procedures Performed on Children Constitute Child Abuse (RQ-0426-KP), Opinion No. KP-0401, at 1 (Feb. 18, 2022), https://texasattorneygeneral.gov/sites/default/files/global/KP-0401.pdf.

[5] *Id.*

(3) supraphysiologic doses of estrogen to males" when used to treat minors with gender dysphoria could constitute child abuse.[6]

16. In summary, Attorney General Paxton's Opinion concluded that the enumerated procedures *could* constitute child abuse. The Paxton Opinion was based on the premise that "elective sex changes to minors often has [sic] the effect of permanently sterilizing those minor children."[7] The Paxton Opinion specifies that it "does not address or apply to *medically necessary* procedures,"[8] though it did not take into account the medical consensus that certain procedures described in the Paxton Opinion—including puberty blockers and hormone therapy—*are* medically necessary when prescribed to treat gender dysphoria.

17. In response to the Paxton Opinion, Governor Abbott sent a letter to DFPS Commissioner Jaime Masters dated February 22, 2022 (the "Abbott Letter" or "Abbott's Letter") directing the agency "to conduct a prompt and thorough investigation of any reported instances" of "sex-change procedures," without any regard to medical necessity.[9] The Abbott Letter claimed that "a number of so-called 'sex change' procedures constitute child abuse under existing Texas law."[10] In addition to directing DFPS to investigate reports of procedures referenced in the Paxton Opinion, under threat of criminal prosecution, the Abbott Letter directs "all licensed professionals who have direct contact with children" and "members of the general public" to report instances of minors who have undergone the medical procedures outlined in his Letter and the Paxton Opinion.[11]

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[6] *Id.*
[7] *Id.* at 2.
[8] *Id.* at 2 (emphasis added).
[9] Greg Abbott, Letter to Hon. Jaime Masters, Commissioner, Tex. Dep't of Fam. & Protective Servs. (Feb. 22, 2022), https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf.
[10] *Id.*
[11] *Id.*

18. During the 87th Regular session, the Texas Legislature considered, but did not pass, proposed legislation that would have changed Texas law to include treatment for gender dysphoria under the definition of child abuse. Specifically, Senate Bill 1646 ("SB 1646") would have amended Section 261.001 of the Family Code to add certain treatments to the definition of "child abuse." The bill would have amended this provision of the law to include within the definition of "child abuse": "administering or supplying, or consenting to or assisting in the administration or supply of, a puberty suppression prescription drug or cross-sex hormone to a child, other than an intersex child, for the purpose of gender transitioning or gender reassignment; or performing or consenting to the performance of surgery or another medical procedure on a child other than an intersex child, for the purpose of gender transitioning or gender reassignment."[12] SB 1646 did not pass. The Legislature considered additional bills that would have prohibited medical treatment for gender dysphoria in minors, including House Bill 68 and House Bill 1339. None of these bills was passed by the duly elected members of the Legislature.

19. On July 19, 2021, after the above-referenced legislation failed to pass, Governor Abbott explained on a public radio show that he had a "solution" to what he called the "problem" of medical treatment for minors with gender dysphoria.[14]

20. Following the issuance of the Paxton Opinion and the Abbott Letter, on February 22, 2022, DFPS announced that it would "follow Texas law as explained in (the) Attorney General opinion" and comply with the Governor's directive to "investigate[]" any reports of the procedures outlined in the new directives ("DFPS Statement"), again, without any regard to medical necessity.[13]

[12] S.B. 1646, 87th Leg. (Tex. 2021), https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB01646E.pdf.
[13] Isaac Windes, *Texas AG says trans healthcare is child abuse. Will Fort Worth schools have to report*?, Fort Worth Star-Telegram (Feb. 23, 2022), https://www.star-telegram.com/news/local/crossroads-lab/article258692193.html.

21. Commissioner Masters claimed that, prior to the issuance of the Paxton Opinion and Abbott Letter, the agency had "no pending investigations of child abuse involving the procedures described in that opinion."[14]

22. Previously, on September 3, 2021, Commissioner Masters responded to an inquiry from Representative Bryan Slaton about the same underlying medical treatment and explained, "I will await the opinion issued by the Attorney General's office before I reach any final decisions on the matters you raise."[15]

23. On February 24, 2022, DFPS convened a meeting where investigators and supervisors with Child Protective Services (CPS) were told that, for the first time, they would be required to investigate cases involving medical care for transgender youth as "child abuse" in accordance with Paxton's Opinion and Abbott's Letter.

24. Before February 22, CPS investigations teams had discretion to screen out or de-prioritize reports that did not meet the statutory definition of abuse and neglect, nor pose any harm to a child. According to long-established DFPS policy, CPS only "accepts reports for investigation" where "DFPS appears to be the responsible department under the law" and "the child's apparent need for protection warrants an investigation."[16]

25. During the meeting on February 24, CPS investigators were told that they would be required to investigate *all* reports of minors receiving the prescribed treatments of gender dysphoria mentioned in Paxton's Opinion and Abbott's Letter. Investigators were told that they had to treat these "specific cases" differently from all other reports of abuse or neglect and would

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[14] *Id.*

[15] Jaime Masters, Letter to Hon. Bryan Slaton, Representative, District 2, Re: Correspondence (Sept. 3, 2021), http://thetexanews/wp-content/uploads/2021/09/Response-Letter_Representative-Slaton_Addressing-Gender-Reassignment-090321.pdf.

[16] DFPS Child Protective Services Handbook, Section 2141, available at https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_2140.asp (last visited June 6, 2022).

not be able to "priority none" these investigations or send them to "alternative response"—both of which are available for other reports that DFPS receives. But following Abbott's Letter and DFPS's Statement, DFPS told investigators to speak directly with their supervisors and the agency's general counsel to discuss "dispositioning these specific cases." Unlike all other reports of alleged abuse or neglect, CPS investigators were told that they no longer had discretion to close out investigations of medically necessary care for gender dysphoria.

26. On and after February 24, CPS investigators and supervisors were also instructed in writing not to discuss anything about these "specific cases" in writing, but instead that "[a]ny communication you have regarding these cases needs to be done in a Teams meeting, telephone call, or face to face. Do not send text messages or emails in regards to these specific cases." This instruction was highly irregular and antithetical to DFPS's longstanding policies and practices, since investigators and supervisors are tasked with documenting every aspect of each investigation to safeguard the interests of Texas children.

27. On or around February 24, DFPS opened investigations into families across Texas for allegedly providing their children with the medically necessary treatments referred to in Paxton's Opinion and Abbott's Letter. A DFPS spokesperson told the media that nine investigations were opened statewide.

28. These sudden and substantive changes reflected in DFPS's new rule, and the sudden shift in longstanding agency policies, along with Abbott's Letter, had immediate and harmful effects across the state. Faced with the purported changed definition of "child abuse" under Texas law, some medical providers temporarily discontinued medically necessary care for transgender adolescents with gender dysphoria. Teachers, social workers, and other mandatory reporters were confused about whether they needed to report their students and clients to CPS. Phone calls and

210. Should DFPS incorrectly issue a finding that the Briggle parents committed "abuse" due to the new rule announced in the DFPS Statement based on Governor Abbott's and Attorney General Paxton's erroneous and misguided missives and understanding of medical treatment for gender dysphoria, they would automatically be placed on a child abuse registry and be improperly subject to all of the effects that flow from such placement.

211. Not providing M.B. with the medically necessary health care that he needs is not an option for the Briggle parents, as their utmost desire is to ensure the health, safety, and wellbeing of M.B., whom they love and support.

VIII. CAUSES OF ACTION

A. Request for Declaratory Relief Under the Texas Administrative Procedure Act – By All Plaintiffs Against Defendants Commissioner Masters and DFPS

212. Plaintiffs incorporate the foregoing paragraphs in support of the following causes of action.

213. Plaintiffs request declaratory relief under the Texas Administrative Procedure Act ("APA"). *See* Tex. Gov't Code § 2001.038(a) ("The validity or applicability of a rule, including an emergency rule adopted under Section 2001.034, may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or *threatens to interfere with or impair, a legal right or privilege of the plaintiff*.") (emphasis added).

214. The APA contains a waiver of sovereign immunity to the extent of creating a cause of action for declaratory relief regarding the validity or applicability of a "rule." *Id.*

The DFPS Statement Constitutes a Rule, and Commissioner Masters Bypassed Mandatory APA Procedures for Rule Promulgation.

215. Under the APA, a rule

> (A) means a state agency statement of general applicability that: (i) implements, interprets, or prescribes law or policy; or (ii) describes the procedure or practice requirements of a state agency; (B) includes the amendment or repeal of a prior rule; and (C) does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures.

Id. § 2001.003(6) (line breaks omitted).

216. As DFPS Commissioner, Commissioner Masters is statutorily authorized to "provide protective services for children" and "develop and adopt standards for persons who investigate suspected child abuse or neglect at the state or local level" via rulemaking. Tex. Hum. Res. Code § 40.002(b); Tex. Fam. Code § 261.310(a).

217. As a state agency, DFPS is required to follow APA rulemaking procedures when adopting or changing rules. The APA's procedural requirements for promulgating agency rules, including public notice, comment, and a reasoned justification for the rule, are mandatory. *See* Tex. Gov't Code §§ 2001.023, .029, .033. To be valid, a rule must be adopted in substantial compliance with these procedures. *See id.* § 2001.035. The February 22, 2022, DFPS Statement conveys the Department's official position with respect to the investigation of gender-affirming care as child abuse. The DFPS Statement, issued in accordance with Abbott's Letter, is a statement of general applicability that is (1) directed at a class of all persons similarly situated and (2) affects the interests of the public at large. The statement sets forth a new rule and provides that DFPS *will* implement Abbott's "directive" and *will* investigate allegations relating to gender-affirming medical care as "child abuse" according to the new definition formulated by the Paxton Opinion. The DFPS Statement thus applies to and affects the private rights of a class of persons—all parents

of transgender children—as well as members of the general public. *El Paso Hosp. Dist. v. Tex. Health & Human Servs. Comm'n*, 247 S.W. 3d 709, 714 (Tex. 2008) (holding that statement of Health and Human Services Commission had "general applicability" because it applied to "all hospitals"); *Combs v. Entm't Publ'ns, Inc.*, 292 S.W.3d 712, 721-22 (Tex. App.—Austin 2009, no pet.) (holding that Comptroller's statements constituted "rule" under the APA because it applied to all persons and entities similarly situated"); *see also Teladoc, Inc. v. Tex. Med. Bd.*, 453 S.W.3d 606, 615 (Tex. App.—Austin 2014, pet. denied) ("Agency statements of 'general applicability' refer to those 'that affect the interest of the public at large such that they cannot be given the effect of law without public comment,' as contrasted with statements 'made in determining individual rights.'" (citation omitted)).

218. The DFPS Statement prescribes a new DFPS rule and enforcement policy with respect to the investigation of gender-affirming care to minors as child abuse, which changes DFPS policy and constitutes a rule for purposes of the APA. *See Texas Alcoholic Beverage Comm'n v. Amusement & Music Operators of Texas, Inc.*, 997 S.W.2d 651, 657-58 (Tex. App.—Austin 1999, writ dism'd w.o.j.) (holding that memoranda constituted a "rule" because they "set out binding practice requirements" that "substantially changed previous enforcement policy" with respect to eight-liner machines).

219. Prior to the DFPS Statement, DFPS had not promulgated any rule pertaining to the investigation of gender-affirming care as child abuse.[40] The DFPS Commissioner explicitly disavowed pursuing these investigations last September, stating "I will await the opinion issued by the Attorney General's office before I reach any final decisions" relating to investigations of gender-affirming care as child abuse. The agency has now adopted a new rule that it *will* conduct

[40] Even if DFPS had previously promulgated a rule providing for the investigation of gender-affirming medical care as "child abuse," such a rule would have exceeded the bounds of DFPS's authority. *See infra* ¶¶ 223-229.

investigations in accordance with the Paxton Opinion, while stating that there were "no pending investigations of child abuse involving the procedures described in [the Paxton Opinion]" when DFPS announced this policy change on February 22. Before the Commissioner's announcement, there were *no* pending investigations being pursued by DFPS. But now there are investigations targeting Plaintiffs and the Commissioner's statement prescribed a new rule and policy that greatly expands DFPS's scope of enforcement. *See John Gannon, Inc. v. Tex. Dep't of Transp.*, No. 03-18-00696-CV, 2020 WL 6018646, at *5 (Tex. App.—Austin Oct. 9, 2020, pet. denied) (mem. op.) (agency statements that "advise third parties regarding applicable legal requirements" may "constitute 'rules' under the APA" (quoting *LMV-AL Ventures, LLC v. Texas Dep't of Aging & Disability Servs.*, 520 S.W.3d 113, 121 (Tex. App.—Austin 2017, pet. denied))).

220. In addition, DFPS's actions since the Statement evidence a new rule and substantive change in policy. Prior to DFPS's Statement, DFPS had refused to investigate reports regarding the provision of gender-affirming medical treatment as child abuse. *See Doe v. Abbott*, 2022 WL 831383, at *1; *see also* Ex. 2, Aff. of Lisa Stanton. In fact, such reports were treated as "priority none" and closed without further investigation. Now, however, following DFPS's Statement, DFPS has opened investigations into the Voe, Roe, and Briggle families in this suit, the Doe family in the *Doe v. Abbott* Litigation, and at least five other families based on allegations that just a few months before would have been treated as "priority none" and not investigated. Moreover, CPS investigators and supervisors have been told to pursue these cases in a manner that departs from longstanding agency procedures and lacks transparency. For example, upon information and belief, DFPS has instructed CPS investigators and supervisors to not put anything about these specific cases in writing. And despite the *Doe v. Abbott* court's finding that these actions are likely unlawful, DFPS has now resumed investigations into Plaintiffs in this case.

221. In declaring that investigations would be initiated based on a non-binding opinion from the Attorney General and an unauthorized directive from the Governor, and now having resumed them, the Commissioner has entirely bypassed the APA's mandatory procedural requirements for promulgating agency rules. The Commissioner did not provide public notice or an opportunity for and full consideration of comments from the public. Additionally, the Commissioner provided no reasoned justification for the new rule announced in the DFPS Statement, nor for the implementation of the Abbott Letter, which goes even further than Paxton's Opinion by making no mention of medical necessity. Neither the non-binding Paxton Opinion nor the Abbott Letter—both of which conflict with well-established medical standards of care—are a legitimate basis for the rule and drastic change in DFPS policies. This agency action, therefore, is arbitrary and capricious.

222. A rule that is not properly promulgated under mandatory APA procedures is invalid. *El Paso Hosp. Dist.*, 247 S.W.3d at 715. As such, the DFPS Statement is invalid and should not be given effect, and DFPS enforcement activity implementing the DFPS Statement should be enjoined.

The DFPS Statement Conflicts with DFPS's Enabling Statute, Exceeding its Authority.

223. DFPS's new rule, based on Abbott's Letter and the Paxton Opinion, and as announced on the DFPS Statement, is also invalid because it stands in direct conflict with DFPS's enabling statute and, as such, is an overreach of DFPS's power as established by the legislature.

224. "To establish the rule's facial invalidity, a challenger must show that the rule: (1) contravenes specific statutory language; (2) runs counter to the general objectives of the statute; or (3) imposes burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions." *Gulf Coast Coal. Of Cities v. Pub. Util. Comm'n*, 161 S.W.3d 706, 712 (Tex. App.—Austin 2005, no pet.).

225. The new rule announced in the DFPS Statement contravenes specific language in DFPS's enabling statute. Section 40.002 of the Texas Human Resources Code specifies that DFPS "*shall* . . . provide family support and family preservation services *that respect the fundamental right of parents to control the education and upbringing of their children*." Tex. Hum. Res. Code § 40.002 (emphasis added). As demonstrated herein, the new rule announced in the DFPS Statement infringes on the rights of parents to direct the custody and care of their children, including by providing them with needed medical care. *See infra*, Section VIII.E. The new DFPS rule thus conflicts with the obligations imposed on DFPS by its enabling statute and, therefore, is invalid.

226. In addition to conflicting with specific statutory language, the new rule announced in the DFPS Statement also conflicts with the general objectives of DFPS's enabling statute. *See Gulf Coast Coal. Of Cities*, 161 S.W.3d at 711-12. These general objectives are informed by the specific duties imposed on DFPS by the Legislature and encompass the objective of protecting children against abuse while respecting parents' fundamental right to control the upbringing of their children. *See* Tex. Hum. Res. Code § 40.002(b). Not only does the new rule announced in the DFPS Statement infringe on parents' fundamental rights, it also *causes* immense harm to minor children with gender dysphoria who have a medical need for treatment that is now considered "child abuse" under the new agency rule.

227. Pursuant to the new rule announced in the DFPS Statement and implementation thereof, the Voe, Roe, and Briggle parents, as well as other parents who are members of PFLAG (together, "Plaintiff Parents"), cannot provide medically necessary and doctor-recommended medical treatment to their adolescent children without exposing themselves to criminal liability. Precisely because this medical treatment is necessary, if the Plaintiff Parents

ceased providing this care, their children will be greatly and irreparably harmed, including by being forced to undergo endogenous puberty with the permanent physical changes that can result. The new DFPS rule, though cloaked under the guise of protecting children, actually *causes* harm where none existed in the first place. Furthermore, the mere *threat* of enforcement has already impacted Antonio Voe, Tommy Roe, and M.B., as well as other transgender youth whose families are members of PFLAG, by causing them immeasurable anxiety and distress. These young people are now forced to choose between the medical care that they need and exposing their parents to criminal liability and potentially being removed from their care or, alternatively, abstaining from such medically necessary care and suffering the physical and mental consequences, all in order to protect their families from DFPS investigation. As such, the new DFPS rule cannot be harmonized with DFPS's general objectives as set forth in its enabling statute. *See R.R. Comm'n of Tex. v. Lone Star Gas Co.*, 844 S.W.2d 679, 685 (Tex.1992); *Gerst v. Oak Cliff Sav. & Loan Ass'n*, 432 S.W.2d 702, 706 (Tex. 1968).

228. Every major medical organization in the United States considers the treatment now effectively banned and criminalized by DFPS to be medically necessary. And none of the alleged concerns about the now-prohibited gender dysphoria treatment is unique to the prescribed treatments but is rather targeted only at families who are seeking this care for the treatment of gender dysphoria. Transgender young people and their families are therefore uniquely singled out and threatened by Texas officials. Such a radical disregard of medical science and the medical needs of a subset of minors in Texas cannot be squared with the agency's authority as prescribed by Statute.

229. Finally, nothing in DFPS's enabling statute authorizes it to expand the scope of statutory definitions established by the Legislature. The definition of "child abuse" is provided

by statute and is not within DFPS's jurisdiction. Because the DFPS Statement is not rooted in any rulemaking authority provided by the Legislature, it is invalid. *See Williams v. Tex. State Bd. Of Orthotics & Prosthetics*, 150 S.W.3d 563, 568 (Tex. App.—Austin 2004, no pet.) ("An agency rule is invalid if [] the agency had no statutory authority to promulgate it . . . .").

Implementation of the DFPS Statement Interferes with Plaintiffs' Constitutional Rights.

230. Separate and apart from the procedural and substantive defects set forth above, the new DFPS rule is also invalid because its application interferes with Plaintiffs' fundamental parental rights and other equality and due process guarantees of the Texas Constitution.

231. Under the APA, an action for declaratory judgment can be sustained if a "rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right." Tex. Gov't Code § 2001.038(a). Agency rules that are unconstitutional can be invalidated through declaratory judgment. *See Williams*, 150 S.W.3d at 568.

232. The new rule announced in the DFPS Statement and DFPS's implementation thereof interferes with Plaintiff Parents' fundamental right to care for their children guaranteed by the Texas State Constitution. *Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976). The Texas Legislature has codified its acknowledgement that parents possess fundamental, constitutional rights beyond those expressly provided for by statute. Tex. Fam. Code § 151.001(a)(11) (concluding enumerated list of parental rights and obligations by stating that a parent has "any other right or duty existing between a parent and child by virtue of law").

233. A parent's right to control the care of their child is one of the most ancient and natural of all fundamental rights. *See Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985) ("This natural parental right has been characterized as essential, a basic civil right of man, and far more precious than property rights." (citation and quotations omitted)).

234. By, in effect, cutting off the ability of parents to treat their minor adolescent children in accordance with doctor-recommended and clinically appropriate care, the agency's new rule infringes on the parental rights of Plaintiff Parents. The agency's new rule substitutes parents' judgment as to what medical care is in the best interests of their children for the judgment of the government. There is no justification—let alone one that is compelling—to warrant such a gross and arbitrary invasion of parental rights. The new DFPS rule creates a presumption that certain medical treatments must be uniquely denied to transgender youth, even where those treatments are medically necessary and commonly prescribed for diagnoses other than gender dysphoria. This political interference with essential health care "run[s] roughshod over the important interests of both parent and child." *Stanley v. Illinois*, 405 U.S. 645, 657 (1972).

235. As such, the new DFPS rule must be declared invalid because it conflicts with Plaintiff Parents' fundamental rights as parents under the Texas Constitution, as well as other equality and due process guarantees of the Texas Constitution.

B. *Ultra Vires* Claims – By All Plaintiffs Against Defendants Governor Abbott and Commissioner Masters

236. Plaintiffs incorporate the foregoing paragraphs in support of the following causes of action.

237. Plaintiffs request declaratory relief under the Uniform Declaratory Judgments Act ("UDJA").

238. The UDJA is remedial and intended to settle and afford relief from uncertainty and insecurity with respect to rights under state law and must be liberally construed to achieve that purpose. Tex. Civ. Prac. & Rem. Code. § 37.002. The UDJA waives the sovereign immunity of the State and its officials in actions that challenge the constitutionality of government actions and that seek only equitable relief.

C. Separation of Powers Claims – By All Plaintiffs Against Defendants Governor Abbott and Commissioner Masters

256. Plaintiffs incorporate the foregoing paragraphs in support of the following causes of action.

257. Defendants' actions violate the separation of powers established by Article II of the Texas Constitution. Defendants' actions run afoul of Article II in two ways:

258. *First*, the Governor's directive, which criminalizes conduct by adding a new definition of "child abuse" under Section 261.001 of the Texas Family Code, unduly interferes with the functions of the state Legislature, which possesses *sole* authority to establish criminal offenses and designate applicable penalties. *See Martinez v. State*, 323 S.W.3d 493, 501 (Tex. Crim. App. 2010).

259. *Second*, all Defendants seek to adopt and enforce an overbroad interpretation of "child abuse." They do this in contravention of the plain meaning of the statute, and despite the state Legislature's recent decision not to adopt such a definition. This too represents an overreach by the executive branch into the legislative function.

260. The Texas Constitution prohibits one branch of state government from exercising power inherently belonging to another branch. Tex. Const. art. II, § 1; *see also Gen Servs. Comm'n v. Little-Tex. Insulation Co.*, 39 S.W.3d 591, 600 (Tex. 2001) (superseded by statute on other grounds).

261. A separation of powers constitutional violation occurs when: (1) one branch of government has assumed or has been delegated a power more "properly attached" to another branch, or (2) one branch has unduly interfered with another branch so that the other branch cannot effectively exercise its constitutionally assigned powers. *Jones v. State*, 803 S.W.2d 712, 715 (Tex. Crim. App. 1991) (citing *Rose v. State*, 752 S.W.2d 529, 535 (Tex. Crim. App. 1987)).

262. The "power to make, alter, and repeal laws" lies with the state Legislature, and such power is plenary, "limited only by the express or clearly implied restrictions thereon contained in or necessarily arising from the Constitution." *Diaz v. State*, 68 S.W.3d 680, 685 (Tex. App.—El Paso 2000, pet. denied) (citations omitted).

263. In particular, the Legislature possesses the *sole* authority to establish criminal offenses and designate applicable penalties. *See Martinez,* 323 S.W.3d at 501; *see also Matchett v. State*, 941 S.W.2d 922, 932 (Tex. Crim. App. 1996) (en banc) (the authority to define crimes and prescribe penalties for those crimes is vested exclusively with the Legislature).

264. Governor Abbott's directive unduly interferes with the state Legislature's sole authority to establish criminal offenses and penalties. First, the Abbott Letter outright claims that "a number of so-called 'sex change' procedures constitute child abuse under existing Texas law," despite the fact that the Legislature has failed to pass nearly identical legislation.

265. The Abbott Letter also violates separation of powers by inventing a separate crime when it directs, under the threat of *criminal prosecution*, "all licensed professionals who have direct contact with children" as well as "members of the general public" to report instances of minors who have undergone the medical procedures outlined in the Letter and the Paxton Opinion. This, too, is without legislative approval and represents an overreach by the executive into the core legislative function of establishing crimes and criminal penalties.

266. Second, separate and apart from the criminalization of conduct that has heretofore been legal, all Defendants violate separation of powers by seeking to adopt and enforce an overbroad interpretation of "child abuse" under the Family Code.

267. Texas law mandates that the executive branch and the courts must, in construing statutes, take them as they find them. *See Tex. Highway Comm'n v. El Paso Bldg. &*

Const. Trades Council, 234 S.W.2d 857, 863 (Tex. 1950); *Simmons v. Arnim*, 220 S.W. 66, 70 (Tex. 1920); *City of Port Arthur v. Tillman*, 398 S.W.2d 750, 752 (Tex. 1965). In particular, the other branches are not empowered to "substitute what [they] believe is right or fair for what the legislature has written," *Vandyke v. State*, 538 S.W.3d 561, 569 (Tex. Crim. App. 2017) (citations omitted), or to give meanings to statutory language that contravene their plain meaning or clear legislative intent. *See Burton v. Rogers*, 492 S.W.2d 695 (Tex. Civ. App.—Beaumont 1973, writ granted), *judgment rev'd on other grounds*, 504 S.W.2d 404 (Tex. 1973) (finding that words employed by the Legislature must be taken in their ordinary and popular acceptation). To do otherwise would once again violate the core legislative power to make, alter, and repeal laws.

268. Defendants violate separation of powers when they attempt to create new and novel definitions for "child abuse" under the Family Code. Defendants endeavored to redefine "child abuse" in spite of the state legislature's recent refusal to adopt Senate Bill 1646, which would have included certain treatments for gender dysphoria in adolescents under the definition of child abuse, and bills like it, such as House Bills 68 and 1339. In expanding the definition of child abuse beyond the limits permitted by the plain meaning of the Family Code, and in clear defiance of legislative intent, the Defendants impermissibly invade the legislative field. *See Brazos River Auth. v. City of Graham*, 354 S.W.2d 99, 109 (Tex. 1961).

269. Finally, there has been no delegation of powers from the state Legislature to the executive that would in any way cure the separation of powers violation. While the Legislature may not generally delegate its law-making power to another branch, it may designate some agency to carry out legislation for the purposes of practicality or efficiency. *See Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 466 (Tex. 1997). Separation of powers requires that in statutes delegating such power, the Legislature must provide definite

guidelines and prescribe sufficient standards to circumscribe the discretion conferred. *See State v. Rhine*, 255 S.W.3d 745, 749 (Tex. App.—Fort Worth 2008, pet. granted), *aff'd*, 297 S.W.3d 301. Such standards must be reasonably clear and acceptable as standards of measurement. Tex. Const. art. II § 1.

270. In the instant case, the Texas Family Code provides no such delegation in any way from the state Legislature to the executive of the power to expand—unilaterally and without legislative approval—the definition of "child abuse." Recent decisions by the state Legislature in fact signal that the Legislature does not intend and has explicitly declined to expand the definition of child abuse to include certain gender-affirming care for minors.

271. For the foregoing reasons, Defendants' actions violate state constitutional separation of powers.

D. Due Process Vagueness Claims – By All Plaintiffs Against Defendants Governor Abbott and Commissioner Masters

272. Article 1, Section 19 of the Texas Constitution states: "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." Under this guarantee, a governmental enactment is unconstitutionally vague if it fails to provide a person of ordinary intelligence fair notice of what is prohibited or is so standardless that it authorizes or encourages seriously discriminatory enforcement. *See Ex parte Jarreau*, 623 S.W.3d 468, 472 (Tex. App.—San Antonio 2020, pet. ref'd) (quoting *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018)). Governmental enactments are unconstitutionally void for vagueness when their prohibitions are not clearly defined.

273. Criminal enactments are subject to an even stricter vagueness standard because "the consequences of imprecision are . . . severe." *Vill. of Hoffman Estates v. Flipside,*

Hoffman Estates, Inc., 455 U.S. 489, 498-99 (1982). Each ground—a lack of fair notice and a lack of standards for enforcement—provides an independent basis for a facial vagueness challenge. *Ex parte Jarreau*, 623 S.W.3d at 472.

274. The Abbott Letter and the DFPS Statement announcing a new rule adopting and enforcing an overbroad interpretation of "child abuse" under the Family Code create precisely this type of unconstitutional vagueness. These vague prohibitions leave parents of transgender youth like Plaintiffs Mirabel Voe, Wanda Roe, Adam and Amber Briggle, and those who are members of PFLAG, uncertain how to avoid criminal penalty in their efforts to provide for the medical needs of the children they love. Under the text of the Family Code itself, a parent is liable for neglect for "failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting an immediate danger of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child." Tex. Fam. Code § 261.001(4)(A)(ii)(b). Failing to seek medically necessary treatment for an adolescent's gender dysphoria would seemingly fall within this statutory definition. But if parents pursue the medical care necessary for their transgender adolescent's growth, development, and functioning, Defendants' recent actions make them liable for abuse. These parents are left without fair notice of how their actions will be assessed and what standards will apply.

E. Deprivation of Parental Rights Due Process Claims – By Plaintiff Parents Against Defendants Governor Abbott and Commissioner Masters

275. Plaintiffs incorporate the foregoing paragraphs in support of the following causes of action.

276. Plaintiff Parents' right to care for their children is a fundamental liberty interest protected by the Texas Constitution and acknowledged by the Legislature. *See Wiley*, 543 S.W.2d at 352; *see also* Tex. Fam. Code § 151.001(a)(11).

277. Under substantive due process, the government may not infringe parental rights unless there exist exceptional circumstances capable of withstanding strict scrutiny. *See Wiley*, 543 S.W.2d at 352. The state must have a compelling state interest, and the state action in question "*must* be narrowly drawn to express *only* the legitimate state interests at stake." *Gibson v. J.W.T.*, 815 S.W.2d 863, 868 (Tex. App.—Beaumont 1991, writ granted), *aff'd and remanded In re J.W.T.*, 872 S.W.2d 189 (Tex. 1994) (citations omitted).

278. In the present case, there are no exceptional circumstances that would justify Defendants' complete negation of Plaintiff Parents' fundamental liberty interests in parental autonomy. There is perhaps no right more fundamental than the right of parents to care for their children. *See Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985). Defendants have trampled on Plaintiff Parents' right to care for their children by effectively criminalizing the act of providing medically necessary care to their children in consultation with medical professionals in accordance with applicable standards of care. Defendants' actions cause immeasurable harm to both parents and young people, threaten family separation, and lack any legitimate justification at all, let alone a constitutionally adequate one. This is not a "narrowly drawn" policy that respects Plaintiff Parents' fundamental due process rights to parent their children.

F. Violation of the Guarantee of Equal Rights and Equality Under the Law – By Minor Plaintiffs Against Defendants Governor Abbott and Commissioner Masters

279. The Abbott Letter, DFPS's Statement, and DFPS's implementation of these through its new rule violate the Texas Constitution by denying transgender youth equal protection under law. Under the Texas Constitution, all persons "have equal rights," Tex. Const. art. 1, § 3,

and "[e]quality under the law shall not be denied or abridged because of sex." Tex. Const. art. I, § 3a.

280. The Abbott Letter, incorporated into the DFPS Statement, classifies based on both transgender status and sex. The Abbott Letter specifically designates "*gender*-transitioning procedures" to be abusive and refers to the Paxton Opinion by noting that it deems "'*sex* change' procedures [to] constitute child abuse." The Abbott Letter, incorporated into the DFPS Statement, explicitly uses sex-based terms, making plain that the discrimination at issue here is based on sex, including failure to conform to sex stereotypes. Moreover, it discriminates against transgender youth, like Antonio Voe, Tommy Roe, M.B., and the children of PFLAG members, because they are transgender. By definition, transgender people undergo "gender transition" and by targeting medical care related to gender transition, Texas officials are discriminating against transgender people as such.

281. As the United States Supreme Court has explained, "discrimination based on . . . transgender status necessarily entails discrimination based on sex." *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1747 (2020); *cf. Tarrant Cty. Coll. Dist. v. Sims*, 621 S.W.3d 323, 329 (Tex. App.—Dallas 2021, no pet.) ("[W]e conclude we must follow Bostock and read the TCHRA's prohibition on discrimination 'because of ... sex' as prohibiting discrimination based on an individual's status as a . . . transgender person.") (citing *Bostock*, 140 S. Ct. at 1738-43). Likewise, discrimination based on transgender status is independently unconstitutional. *See Brandt*, 551 F. Supp. 3d at 889 ("The Court concludes that heightened scrutiny applies to Plaintiffs' Equal Protection claims because Act 626 rests on sex-based classifications and because transgender people constitute at least a quasi-suspect class.'" (quoting *Grimm v. Gloucester Cty.*

Sch. Bd., 972 F.3d 586, 607 (4th Cir. 2020))); *Eknes-Tucker v. Marshall*, 2022 WL 1521889, at *1.

282. The Abbott Letter, DFPS Statement, and DFPS's implementation of these directives therefore unlawfully discriminate against transgender youth by deeming the medically necessary care for the treatment of their gender dysphoria as presumptively abuse because they are transgender when the same treatment is permitted for non-transgender youth. The law also singles out for prohibition only medical treatment for gender dysphoria when many other forms of care carry the same or comparable risk and are supported by the same or less evidence of efficacy. In so doing, the Abbott Letter, DFPS Statement, and DFPS's implementation of these directives through its new rule place a stigma and scarlet letter upon transgender youth and subject them to immense harms. Defendants' actions do nothing to protect transgender youth, yet subject them to invasive investigations simply because of who they are, while triggering an unimaginable choice between being forced to forego medically necessary care or being separated from their families or having their loving parents criminalized.

IX. APPLICATION FOR EMERGENCY TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

283. In addition to the above-requested relief, Plaintiffs seek: (1) a temporary restraining order and a temporary injunction against Commissioner Masters and DFPS (not Governor Abbott) solely on the grounds that DFPS's new rule, expanding the definition of "child abuse" violates the APA; and (2) a permanent injunction against Commissioner Masters and DFPS (not Governor Abbott) on each of the grounds asserted by Plaintiffs herein.

284. The purpose of a temporary restraining order and temporary injunction is to maintain the status quo pending trial. The status quo is "the last actual, peaceable, non-contested status which preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004)

(quoting *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589, 589 (Tex. 1962) (per curiam) (citation omitted)). Until a permanent injunction can be decided on the merits, Plaintiffs are entitled to a temporary restraining order and a temporary injunction pursuant to Texas Civil Practice and Remedies Code section 65.011 and Texas Rules of Civil Procedure 680 *et seq.* to preserve the status quo before the unconstitutional enactment of Abbott's Letter and the DFPS Statement, which incorporate and reference the Paxton Opinion.

285. As determined by the Court in *Doe v. Abbott*, "gender-affirming care was not investigated as child abuse by DFPS until after February 22, 2022" and "[t]he series of directives and decisions by the Governor, the [Commissioner], and other decision-makers at DFPS, changed the *status quo* for transgender children and their families, as well as professionals who offer treatment, throughout the State of Texas." *Doe v. Abbott*, 2022 WL 831383, at *1.

286. Moreover, as a result of temporary orders from the Travis County District Court and the Third Court of Appeals, DFPS and Commissioner Masters were "enjoined from investigating reports of child abuse by persons, providers or organizations facilitating or providing gender-affirming care to transgender minors where the only grounds for the purported abuse or neglect are either the facilitation or provision of gender-affirming medical treatment or the fact that the minors are transgender, gender transitioning, or receiving or being prescribed gender-affirming medical treatment; prosecuting or referring for prosecution such reports" until at least mid-May 2022.

287. The Commissioner's and DFPS's actions since the Texas Supreme Court's decision narrowing the Third Court of Appeals' order demonstrate that the agency is continuing to conduct investigations based solely on the suspected provision of gender affirming care for adolescent minors with gender dysphoria, as directed by Abbott's Letter and explained in Paxton's

Opinion. DFPS never conducted these investigations before February 22 but is now violating Plaintiffs' rights and threatening medically necessary health care for transgender youth based on an invalid agency rule.

288. Plaintiffs meet all the elements necessary for temporary injunctive relief with respect to their APA claims. Plaintiffs state a valid cause of action against the Commissioner and DFPS and have a probable right to the relief sought. For the reasons detailed above, a bona fide issue exists as to Plaintiffs' right to ultimate relief because the Commissioner and DFPS violated the APA by adopting and enforcing a new rule, namely a significant expansion of the definition of "child abuse", without following the statutorily required procedures. Plaintiffs have already been injured by these actions and will continue to experience imminent and irreparable harm without injunctive relief.

289. Plaintiffs in this suit have suffered and will continue to suffer probable, imminent, and irreparable harms before a trial on the merits, absent intervention by the Court. Antonio Voe, Tommy Roe, M.B., and transgender youth whose parents are members of PFLAG have already had their lives upended by the Commissioner and DFPS's actions.

290. Antonio Voe attempted death by suicide in response to Texas leaders targeting transgender youth. Following that attempt, he faced intrusive invasions of his and his family's privacy from DFPS. Antonio was questioned and photographed by an investigator at home and his mom was called an "alleged perpetrator" of child abuse, interrogated, and asked to turn over private and confidential medical records for her son. Because of the trauma and harm caused by Defendants' actions, Antonio has stopped going to school in-person and is seeking additional mental health care.

291. Tommy Roe felt his world cave in when he was pulled out of class and questioned by a CPS investigator at school about his medically necessary health care. He suffered the trauma and anxiety of seeing CPS question his mother, stepdad, and brothers in their home. M.B. also suffered this same invasion of his privacy, as his family was questioned by CPS in their home based solely on allegations relating to the medically necessary health care. PFLAG members across Texas have suffered these same harms and are living in fear, anxiety, and apprehension that CPS could at any moment knock on their door or pull their kids out of class to interrogate them about the medically necessary health care that they receive.

292. Plaintiffs who are parents of PFLAG, Mirabel Voe, Wanda Roe, and Adam and Amber Briggle also face lasting harm—the prospect of losing their children. Commissioner Masters and DFPS's efforts to continue investigations into families that love and support their children by providing them with medically necessary care threaten to rip families apart and trample on Plaintiffs' parental rights. Because DFPS is pursuing these investigations contrary to law and in flagrant violation of the APA, Plaintiffs live in fear that their children could be taken away from them with little or no notice. Even an investigation that does not result in a removal can still stay on a parent's record and curtail a parent's rights and freedom. And the worst harm of all is that Plaintiffs fear that their children could attempt to take their own lives because Defendants' actions have baselessly portrayed gender-affirming care as a crime and transgender youth as a burden on their families.

293. Defendants' unlawful actions have also threatened the availability of medically necessary health care for gender dysphoria that Plaintiffs need, which if abruptly discontinued can cause severe physical and emotional harms, including anxiety, depression, and suicidality. If placed on the child abuse registry, Plaintiff Parents like Mirabel Voe, Wanda Roe,

Adam and Amber Briggle, and PFLAG members would be barred from ever working with children, including as volunteers in their community. Plaintiffs also face the prospect of criminal penalties, as threatened in Abbott's Letter.

294. For the reasons above, Plaintiffs request the Court issue a temporary restraining order now and a temporary injunction following a hearing within 14 days and a permanent injunction after a trial on the merits. Since there is no adequate remedy at law that is complete, practical, and efficient to the prompt administration of justice in this case, equitable relief is necessary to enjoin the enforcement of the Commissioner's and DFPS's unlawful new rule, preserve the status quo, and ensure justice.

295. In balancing the equities between Plaintiffs and the Commissioner and DFPS, Plaintiffs will suffer probable, imminent, irreparable, and ongoing harm including the deprivation of their medical treatment and their constitutional rights, whereas the injury to the Commissioner and DFPS is nominal pending the outcome of this suit. In fact, enjoining the Commissioner and DFPS's unlawful implementation of Paxton's Opinion and Abbott's Letter will simply allow the agency to follow existing Texas law and longstanding DFPS policies and practices, while not diverting resources to unlawfully investigate loving families for the provision of medically necessary health care.[44]

296. Plaintiffs are willing to post a bond for any temporary injunction if ordered to do so by the Court, but request that the bond be minimal because the Commissioner and DFPS are acting in a governmental capacity, have no pecuniary interest in the suit, and no monetary damages can be shown. Tex. R. Civ. P. 684.

[44] Reese Oxner & Neelam Bohra, *Texas foster care crisis worsens, with fast-growing numbers of children sleeping in offices, hotels, churches*, Tex. Trib. (July 19, 2021), https://www.texastribune.org/2021/07/19/texas-foster-care-crisis/.

PFLAG, *et al.*	§	**IN THE DISTRICT COURT OF**
Plaintiffs	§	**TRAVIS COUNTY, TEXAS**
v.	§	**____ JUDICIAL DISTRICT**
GREG ABBOTT, *et. al*,	§	
Defendants.	§	

DECLARATION OF SAMANTHA POE

I, Samantha Poe,[1] hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am a member of PFLAG and mother of an adolescent, Whitley, who is currently exploring the idea of transitioning and to whom I will refer to using they/them pronouns.

3. We both reside in Texas along with my older child.

4. Whitley, who is 13 years old and was assigned the sex of "male" at birth, is in midst of exploring what a social transition feels like. I love and support them and only want what is best for them.

5. Whitley is not receiving medical care related to gender identity.

6. Whitley received a diagnosis of gender dysphoria in 2021 from a psychologist. They see a separate psychologist who specializes in Eye Movement Desensitization and

[1] Samantha Poe and Whitley are pseudonyms. My daughter and I are proceeding under pseudonyms to protect our right to privacy and ourselves from discrimination, harassment, and violence for seeking to protect our rights.

Reprocessing ("EMDR") and provides therapy to them related to a traumatic event when Whitley was younger. They also see a psychiatrist and receive additional support by seeing another therapist regularly, as they have done for a few years.

7. Whitley participates in the GLBT-Straight Alliance ("GSA") at their middle school, which supports them. I have done research on other support groups for transgender youth and youth exploring their identity and plan to discuss these groups with Whitley in hopes that they will participate and join other activities this summer organized by our local LGBTQ+ youth organization.

8. I have always permitted Whitley to express themselves and have supported them. Whitley is my child, and I accept them unconditionally. My topmost commitment as a parent is to ensure the health, safety, and wellbeing of my teenager, whom I love and support.

9. Texas Attorney General Paxton's February 18, 2022, opinion and Governor Abbott's February 22, 2022, directive, followed by the Department of Family and Protective Services' ("DFPS") decision to implement them and investigate parents who facilitate the provision of medically necessary gender-affirming health care for their transgender children as "abuse," has substantially disrupted our lives.

10. I am terrified for Whitley's wellbeing, and for our family. I feel betrayed by my home state, which has turned its back on a group of Texas children who already face serious obstacles in society and poor health and life outcomes due to bias and discrimination.

11. Days after Governor Abbot's directive, on February 25, 2022, I was contacted by a DFPS Child Protective Services ("CPS") investigator and informed that my family would be investigated, in accordance with Governor Abbott's directive, to determine if I had committed

"child abuse." CPS immediately requested an interview with the family, and I did not consent. Then CPS proposed a "walk through" of our home, and I did not consent.

I2. Shortly thereafter, in early March 2022, I provided the CPS investigator with a letter from Whitley's psychiatrist, whom Whitley has seen for several years, confirming that Whitley is not receiving any gender-affirming medical care. Although this letter should have ended the investigation and the additional intrusion into our privacy and family integrity and my parental rights, it did not.

I3. After I provided the letter confirming Whitley is not receiving gender-affirming medical care, CPS continued to investigate. Without my prior knowledge, a CPS investigator contacted a teacher at Whitley's middle school to ask about Whitley. The teacher told me they were contacted and that they told the investigator Whitley is well cared for and Whitley's every need is being met. They also shared that they told the investigator that they had called CPS about other students they suspected were suffering from abuse at home, but received no response, and that they were worried about those students and not Whitley.

I4. I worked as a schoolteacher for a number of years throughout my career, including in Texas schools. I have received dozens of trainings on a teacher's obligations as a mandatory reporter, including those in Texas. I know firsthand how important it is for children who are suffering from abuse to be safe at school and to see school personnel as safe people to whom they can disclose if they are experiencing harm by a parent. As a teacher, I relied on CPS to help students who suffered from abuse at home.

I5. The Attorney General's opinion, the Governor's directive, and DFPS's actions have damaged this critical role of teachers and the school as safe spaces. Now with DFPS's decision to persecute parents who are loving and affirming of their children, and Governor Abbott's attempt

to weaponize mandatory reporters, children no longer know whether teachers and school personnel are safe people to share with or whether merely talking about or questioning who they are at school will result in an investigation into their parents. These actions by our top government officials, and the head of our child welfare agency, have caused me to lose faith in a process I trusted as a teacher, parent, and community member. The whole situation has flipped the child welfare system on its head.

16. Given the pending investigation looming over our family, I was extremely relieved when the Travis County District Court issued a statewide injunction in the *Doe v. Abbott* lawsuit. When the Texas Supreme Court recently limited the injunction to only the plaintiffs in *Doe v. Abbott*, my panic and fear for the welfare of Whitley came rushing back.

17. Soon after the statewide injunction was limited, on May 19, 2022, a CPS investigator contacted my attorney and asked me to schedule a "viewing" of Whitley. The investigator proposed that I take Whitley to a public place, such as a public park, so that CPS investigators could observe Whitley from afar. According to them, I could somehow do so without Whitley knowing. I refused. I have no idea what possible purpose this "viewing" could serve other than further harassing my family and intruding into our privacy.

18. All this crystalized for me, that I, unbelievably, really was still subject to investigation and, according to DFPS, I would have to subject my family to additional harm and intrusion into our lives for them to move forward. That would include DFPS making a determination whether I am "abusive" and possibly removing Whitley or closing the case in some other way.

19. Through my attorney, I anxiously await the investigation's next steps, which, as I understand it, may include DFPS seeking a court order to contact or interview Whitley or to obtain

further information or records without my consent. This prospect terrifies me. I have not informed Whitley about the investigation because it is wholly unwarranted, and prior to this most recent call from CPS, I hoped it would not require Whitley's involvement and I could protect them from the harm of unwarranted and invasive, highly personal questions about their exploration of transitioning and whether they are receiving health care. Now it appears it will, unless the investigation is stopped through this litigation by PFLAG on behalf of members like me. My attorney has regularly contacted DFPS and asked them to cease the investigation but has not received a written response to those requests. As of today, DFPS's investigation of my family for child abuse remains open.

20. Also, and most importantly, Whitley has been doing better, which is a positive change. About a year ago, they made an attempt to take their own life due to past trauma, challenges around identity exploration, and societal expectations and response to gender identity. Whitley's EDMR therapist has told me that, in their professional medical opinion, Whitley's participation in the investigation would be traumatic and pose a significant risk of a crisis for them. This would undermine all the substantial progress they have made over the past year.

21. While Whitley has improved so much since last year, the Attorney General's opinion and Governor's directive, along with DFPS's implementation of these, have caused a significant amount of stress, anxiety, and fear for our family. Whitley has been traumatized by the prospect that they could be prevented from obtaining gender-affirming care if that moment presents itself and is necessary and recommended by Whitley's medical providers at some point in the future. Both of my children repeatedly ask me if we must move or if they will be both be removed from my care. The stress has taken a noticeable toll on both of them. Whitley is now

moodier, stressed, and overwhelmed rather than the joyful, happy Whitley I so love to see and was seeing regularly before Attorney General Paxton's opinion and Governor Abbott's directive.

22. For example, approximately one week after the Governor's directive was issued, Whitley suddenly stopped dressing in stereotypically feminine attire at school. When I asked why they had changed their style of dress, they told me that they did not feel safe, and they were afraid that someone would report me to CPS if they continued to wear stereotypically feminine clothing.

23. I am similarly filled with anxiety and worry. I am in constant fear that CPS investigators will show up at Whitley's school or our home and notify Whitley of the investigation, which will cause them further stress and trauma. I was particularly concerned about DFPS's proposal that Whitley would not have to know about a "viewing" by CPS. I believe that there must be trust between a parent and their child, and if I took Whitley to a public place to be secretly observed by a CPS official, it would forever harm our bond and their trust in me to know I had deceived them. Also, it is absurd to think that we would be able to "stage a viewing" without Whitley knowing that something is happening.

24. I have lived in Texas my whole life apart from five years in another state. Whitley and my other child were born in Texas. We do not wish to move out of the state if it can be avoided. Moving would negatively impact my employment and separate Whitley from the doctors and therapists that have provided them so much support. They would also have to change their school, which has been supportive. Texas is our home. We are part of a community, comprised of family and friends that have been supportive and affirming of Whitley's exploration of their identity. Our family is as much a part of Texas as any other family, and Whitley has the same right to be themselves as any other youth in this state.

25. I worry not only about the multitude of harms caused to my own family through implementation of the Attorney General's opinion and Governor's letter. I also worry about the effect that the action by DFPS, the Governor, and the Attorney General will have on transgender youth and their families, including the other members of PFLAG who, like me, have children who are learning about who they are or identify or express themselves in ways that are viewed by society as inconsistent with their sex assigned at birth.

26. The actions by DFPS, the Governor, and the Attorney General threaten the health and wellbeing of transgender and nonbinary youth and those, like Whitley, trying to safely explore their identity, and the integrity of other families like ours.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of June 2022 in Travis County, Texas.

DocuSigned by:
Samantha Poe
3CA948FE517149B...

Samantha Poe

CAUSE NO. _____

PFLAG, Inc., *et al.*,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	TRAVIS COUNTY, TEXAS
v.	§	_____ JUDICIAL DISTRICT
GREG ABBOTT, *et. al*,	§	
Defendants.	§	

AFFIDAVIT OF LISA STANTON

1. "My name is Lisa Stanton. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. I would testify competently to these facts if called to do so.

2. My husband and I, Jeffrey Stanton, have two children.

3. We are members of PFLAG.

4. Jeffrey and I have been married for 18 years and have made Texas our home for the past 11 years.

5. Our daughter, M.S., is 11 years old.[1] Jeffrey and I love and support her and only want what is best for her. We feel the same way about our son, M.S.'s twin brother. Our highest priority is to ensure the health, safety, and wellbeing of our children, whom we love and support with everything we have. We want to give our children all the tools they need to live happy, healthy, and productive lives.

6. M.S. is transgender. When she was born, she was assigned the sex of "male" at

[1] Because M.S. is a minor, we are referring to her by initials only.

birth, even though she is a girl.

7. From the outset, Jeffrey and I noticed differences between M.S. and her brother. M.S. took little interest in the types of toys that boys stereotypically play with and instead, gravitated toward dolls and toys that girls stereotypically play with.

8. As soon as M.S. began speaking, she told her father and I that she was "born in the wrong body." She asked us "why can't I be a girl" and "why did G-d put me in this body?"

9. By the age of two, M.S. was persistently and consistently asking for girl clothes and girl toys and was creating makeshift girl outfits for dress-up at home. As early as I can remember she drew pictures of herself as a girl that included bright colors, flowers, and rainbows. When her father and I tucked the twins in at night, we would say "goodnight boys," but M.S. began asking us to say "goodnight, boys and girls."

10. By the age of three, M.S. was asking questions related to her anatomy.

11. M.S.'s twin brother is living with cerebral palsy and other developmental disabilities that he was diagnosed with shortly after his birth. He is treated by a team of doctors at Texas Children's Hospital in Houston, Texas.

12. When M.S. told us that she was a girl and started asking questions about her body, we asked her brother's physicians questions about how M.S. expressed herself to us. They referred us to a psychologist in childhood pediatrics at Texas Children's Hospital.

13. The psychologist informed us that M.S. was gender nonconforming and told us that she might be transgender. The psychologist and other healthcare providers told Jeffrey and me that it was important to let M.S. explore her gender and to "let her be the one to lead that exploration."

14. Jeffrey and I began to educate ourselves about what it means to be transgender:

when a person's gender identity differs from the sex they were designated at birth. When M.S. was about five years old, one step that M.S.'s team of doctors at Texas Children's Hospital suggested was that we allow M.S. to wear a dress to school. When she wore a dress to school for the very first time, which she was so excited to do, the other students made fun of her. But even though the other kids made fun of her, she said she would rather dress in girls' clothes and be bullied than dress in boys' clothes. After that, her father and I allowed her to wear dresses to school and to grow her hair long.

15. As M.S. continued her therapy, M.S.'s psychologist and team of healthcare providers at Texas Children's Hospital also diagnosed her with gender dysphoria.

16. After a year and a half of therapy, M.S. told us that she wanted to change her name and go by female pronouns and dress in girls' clothes full time. In 2017, my husband and I changed her legal name to M.S. to align with her gender identity. We also corrected her social security records and obtained a social security card in her new name.

17. Prior to our allowing M.S. to transition, she was extremely depressed, anxious, and cried a lot. She would bite her fingernails all the way down and lick around her upper and lower lips so much that the skin stayed red and irritated. When we began allowing her to be her true and authentic self, it was like a light turned on. She was a completely different child; she was happier and healthier—emotionally, mentally, and physically. She stopped biting her nails and licking her lips, and became much more outgoing and enthusiastic about playing with other children, whereas before she had been very withdrawn and disinterested in playing with other children.

18. However, allowing her to transition was a long, arduous, and thoughtful process. Jeffrey and I consulted with many experts, and every doctor or therapist we saw, from her

pediatrician to a neurologist to an endocrinologist and therapists, all agreed that the right thing to do for M.S. was to allow her transition to be who she knew herself to be. The doctors and specialists told us that transgender youth who face rejection and repression are far more likely to attempt suicide and self-harm. Faced with her depression, anxiety, and continued insistence that she was a girl, her father and I considered our decision to allow her to transition, or not, as a matter of life or death. The change in her behavior after we allowed her to transition and change her name was like night and day. M.S. told us that she has always thought of herself as a girl and that she finally "felt right" in her body after we allowed her to transition. We are incredibly grateful to the doctors and therapists who walked us through our decision.

19. After educating ourselves about what it means to be transgender, going through the decision-making process of affirming our child's gender, seeing how it has made such a profound difference in her life for the better, and watching her thrive as her true self, Jeffrey and I decided to advocate for M.S. and kids like her. At first, we were torn over whether to speak publicly about M.S.'s journey. We ultimately decided to speak out to bring awareness about transgender people within the Jewish community, of which we are a part, including in a 2017 article in Houston's Jewish newspaper. Our community is a very important foundation for our lives. We believe the best way to remove stigma is to talk openly about an issue and to empower people with knowledge instead of fear. We also wanted to help other families who find themselves in the same situation. When we were grappling with this, we did not know anyone who was going through anything remotely similar with a child as young as ours. Having a support system is so crucial, so, by telling our story, we were hoping that we could be a resource to anyone in the future who might need it.

20. During the Texas legislative session in 2021, M.S. and I both appeared and

testified against anti-transgender legislation, including legislation that would have prohibited and/or severely restricted medically necessary gender affirming care for transgender youth. M.S. testified that being transgender is "not a choice and that she "would rather die than be a boy." None of the of the anti-gender affirming care legislation passed, which was a huge sigh of relief for us and other families with transgender kids like M.S.

21. M.S. is 11 years old and is not currently undergoing medical treatment for her gender dysphoria. She is currently under the care of a team of physicians and mental health providers. M.S.'s doctors may recommend she take medication to block puberty once she enters puberty. While we do not know for sure when she will enter puberty, her team of doctors has recommended routine checkups to determine when she begins puberty, which could be as soon as the early fall.

22. After the issuance of Attorney General Paxton's opinion dated February 18, 2022 ("Opinion") and Governor Abbott's letter dated February 22, 2022 ("Directive"), directing the Texas Department of Family and Protective Services ("DFPS") to investigate the provision of medically necessary gender-affirming health care as "abuse," our lives have been full of uncertainty, stress, anxiety, and fear.

23. We had a doctor's appointment at Texas Children's Hospital scheduled for one of M.S.'s routine checkups to see if she needs treatment for her gender dysphoria during the third week of March 2022. On Friday March 4, 2022, we received a notification through the portal cancelling M.S.'s appointment. At that point, I did not know that Texas Children's Hospital had stopped providing gender affirming medical care to transgender youth. I tried to reschedule the appointment through the portal, but it would not let me reschedule it.

24. I immediately began to panic because I knew about the Paxton Opinion and the

Governor's Directive. I frantically reached out to several of M.S.'s doctors, asking them what we should do. Based on their advice, my husband and I began to look for healthcare options for M.S. outside of Texas. We contacted health care providers in other states to try to schedule appointments for M.S. but the waiting lists were long and travelling to another state to obtain care would have been expensive and time-consuming. Texas Children's Hospital later announced it would start seeing patients for gender affirming care again and we were able to reschedule M.S.'s March appointment to late April 2022.

25. After Texas Children's Hospital cancelled M.S.'s appointment, Jeffrey and I began making plans to move away from Texas. Jeffrey set up meetings with a potential employer on the east coast and we scheduled an appointment to meet with a realtor to look at places to live. Moving to another part of the country would be an extreme financial hardship for our family; it would be as if my husband and I were both starting over from scratch. Jeffrey has worked in commercial real estate and construction for over twenty years, the last eleven (11) of which in Texas. He has established relationships that he relies upon to make his business successful through hard work, integrity and trust. Picking up and moving at this stage of our lives would require him to build new relationships and new networks as well as trust. That takes time. The same thing holds true for me as a consultant and development officer for nonprofit organizations. Our businesses are similar in that they rely on relationships, networks, hard work, follow-through, integrity, and trust. Separate and aside from our careers, we are a part of, and have established deep roots in the community where we live, and in the Jewish community. I am on three different committees for our synagogue and four nonprofit boards in our community, including the Advisory Board of Volunteer Houston. Moving away when our lives are grounded here would tear us away from the relationships and community we rely upon, feel a part of, and love.

26. Furthermore, M.S.'s and our son's healthcare teams are at Texas Children's Hospital. M.S.'s twin brother who lives with cerebral palsy and other developmental disabilities has a good relationship with his doctors and finally has a psychiatrist that he trusts and has bonded with. It would be devastating to separate him from his care team if we were forced to move out of state. Finding new healthcare providers for M.S. and our son in another city would be a great hardship for them. Moving is a last resort that would change the trajectory not just of our careers, but all of our lives. Nonetheless, we will seriously consider whether and when to move if DFPS opens an investigation into our family for providing gender-affirming treatment to M.S. that her doctors recommend and deem medically necessary.

27. As a result of DFPS's change in policy implementing the Paxton Opinion and the Governor's Directive, my family has gone through extraordinary mental and emotional stress and hardship. The psychological impact has been devastating for the entire family. Our anxiety levels are at an all-time high. I experience terrible headaches and insomnia. I am kept awake at night by anxiety about my family's well-being and am not able to fall asleep without the help of prescription medication, which is not something I have needed before. Jeffrey has difficulty concentrating at work. Each new announcement about executive actions that impact transgender youth and their families creates uncertainty about how we can continue to make the best decisions for M.S. and our family.

28. We are nervous and fearful to take our kids out in public after the Paxton Opinion and Governor's Directive. We have isolated ourselves at home and do not leave the house other than to go to work. We are also fearful that if M.S. sprains her ankle again, which she has done before, taking her to the emergency room near our home could result in a report to DFPS's Child Protective Services division ("CPS") simply because we have a transgender kid.

29. After the Governor issued his Directive, we attended a seminar for parents with transgender kids. During the seminar, the speakers suggested that kids carry a card with them to school that they could hand to a CPS investigator if an investigator came to school to interview them. The card was something the youth could hand to the investigator indicating they were unwilling to speak without a lawyer or their parents present. That evening we printed out the card and sat down with M.S. to give her the card and explain its purpose. She immediately became upset and started crying—we all did. Since then, one of us needs to be with her each night as she falls asleep, or she cannot sleep. While M.S. used to sleep well, now she takes melatonin each night to help her settle down.

30. Jeffrey and I also bought her a cell phone because we want her to be able to contact us if she needs us. M.S. will not leave the house without the phone and worries that it is not fully charged. She does not like to be at home alone or just with her brother, even if it is for a very short time.

31. While M.S. is normally an excellent student, her studies have suffered. M.S. often feels sick and misses school, which she loves. She wants to spend her time and energy focusing on school and her extracurriculars like her music magnet program, advanced choir, and piano lessons, but she has been distracted and is having trouble concentrating. M.S. is also on a private, co-ed swim team and is fearful that she will be forced to give it up, which is something that she loves and helps her manage her anxiety.

32. M.S. is fearful that she will be taken away from us and from her brother. She is also worried that we will be forced to move away from the only home she has ever known. Our son feels the same way.

33. M.S. told us that she feels "othered" and dehumanized by the Paxton Opinion and

the Governor's Directive. Since the opinion and directive came out, M.S. has asked to go to therapy more frequently. For a long time, she only met with her therapist quarterly, but she asked to see her therapist at least five or six times since March. The one thing that we can point to for the sudden change in her is the Paxton Opinion and the Governor's Directive and the fear these have created for families with transgender kids.

34. The threat of being reported to DFPS when we have done nothing but love and support our children causes particular stress for Jeffrey and me because it has happened before. Last summer, our son attended a summer camp in another state. After some negative interactions with other campers, he tried to run away and the camp personnel could not find him for about four and half hours. CPS contacted us stating that they had received a report that our son had left our home in Texas and was missing, despite that our son's brief disappearance occurred in another state while he was not in our physical custody. CPS designated the matter as warranting an "alternative response" given the lack of actual risk to our son and closed it within ten days.

35. When we met with CPS as part of its investigation, CPS informed us that there had been a prior report against us a couple of months before, of which we were unaware. Someone had anonymously reported us for "transgendering" M.S. CPS designated that report as "priority none" without opening a new case and without advising us that a report had been made.

36. Despite our doing nothing wrong, we are extremely fearful of what a third report could do to our family. Our understanding is that CPS keeps records of certain reports in a family's file. When multiple reports are made, it makes it more likely that another later report will result in an investigation. We are also keenly aware that although the agency recognized that our affirming our daughter did not involve any risk of harm to her then, DFPS's change in policy as a result of the Paxton Opinion and the Governor's Directive would foreclose investigators from

exercising the same discretion to designate a similar complaint against us as either "priority none" or warranting an "alternative response" despite our doing nothing different at all.

37. Since the Paxton Opinion and the Governor's Directive, we have faced constant criticism for our parenting and doxing on social media, when all we have ever done is to affirm M.S., take care of our family, contribute to our community, and follow the advice of experts and medical professionals.

38. Our family, like other families with transgender youth in Texas, has been harmed by DFPS's change in policy implementing Paxton's Opinion and the Governor's Directive. Texas Children's Hospital stopped providing gender affirming medical care to transgender youth in early March as a direct result of the Opinion and Directive. When Texas Children's Hospital stopped providing care, it cancelled M.S.'s previously scheduled routine appointment to determine whether gender-affirming treatment was medically necessary for her. We want to be able to continue to follow the advice and recommendations of M.S.'s medical and mental health providers and to provide her with the medically necessary care that she needs, including puberty blockers, if that is what her healthcare team recommends. Our decision to follow the advice of her healthcare team is especially acute because M.S. testified before the Texas Legislature last summer that she would rather die than be a boy. If CPS investigates us, which is more likely given the past two CPS reports, and if M.S. is taken away from us, she will not have access to the medically necessary healthcare she needs.

39. Further Affiant Sayeth Not."

Signed on this the 6th day of June 2022.

Lisa Stanton

State of Texas

County of Harris

Before me, a notary public, on this day personally appeared Lisa Stanton, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Sworn to and subscribed before me on the 6th day of June 2022, by Lisa Stanton.

(Personalized Seal)

Notary Public's Signature

MICHAEL HOFRICHTER
Notary Public, State of Texas
Comm. Expires 01-04-2024
Notary ID 126711608

DISTRICT COURT OF TRAVIS COUNTY
TEXAS

CAUSE NO. _____

PFLAG, Inc., *et al.*,	§	**IN THE DISTRICT COURT OF**
	§	
Plaintiffs,	§	
	§	**TRAVIS COUNTY, TEXAS**
v.	§	**_____ JUDICIAL DISTRICT**
	§	
	§	
GREG ABBOTT, *et. al*,	§	
	§	
Defendants.	§	

AFFIDAVIT OF ADAM BRIGGLE

1. "My name is Adam Briggle. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct. I would testify competently to these facts if called to do so.

2. Along with my wife Amber Briggle, I am a Plaintiff in this case. We are bringing claims on behalf of ourselves and as the parents and next friends of our son, M.B.[1]

3. My wife and I are members of PFLAG, which is also a Plaintiff in this case.

4. My wife and I have two children. We have been married for twenty years and reside in Texas—our home for the past thirteen years.

5. Our son, M.B., is fourteen years old. We love and support him and only want what is best for him. M.B. is a good kid who rarely gets into trouble. He is outgoing, a good student, and is well-liked among his peers. M.B. is also a gifted musician—he plays many instruments and has no problem picking up a new instrument and teaching himself how to play. A few of the instruments M.B. currently plays are the ukulele, cello, guitar, bass guitar, vihuela, and piano.

[1] Because M.B. is a minor, M.B. is proceeding pseudonymously.

M.B. is also a gifted athlete. He has two black belts in Taekwondo, and is an experienced gymnast with multiple medals.

6. M.B. is transgender. When he was born, his sex was designated as "female," even though he is a boy.

7. From a very young age, M.B. expressed himself and behaved in manner that does not conform with the stereotypes associated with the sex he was designated at birth.

8. We have always permitted M.B. to express himself and explore who he is. When M.B. was two years and three months old, he began telling us that he was a boy.

9. Because M.B. persisted in telling us that he was a boy, we began to educate ourselves about what it means to be transgender—when a person's gender identity differs from the sex they were designated at birth.

10. We also consulted with physicians and mental health providers who are experts in their field about the best ways to support M.B. M.B. was diagnosed with gender dysphoria when he was about seven years old. He was also diagnosed with a breathing disorder when he was young. Regardless of whether it is gender dysphoria, a breathing disorder, a cavity, or any other type of healthcare our kids need, we seek out the best advice we can and then follow the recommendations of the experts and specialists who know better than we do. At present, M.B. is under the care of physicians for all of his health care, including his breathing disorder and his gender dysphoria. As any loving and supportive parent would, we are following the advice, guidance and expertise of his health care providers with respect to medically necessary treatment as is appropriate for his gender dysphoria, his breathing disorder, and all of his medical conditions.

11. The most important priority and commitment for Amber and me is to ensure the health, safety, and wellbeing of M.B., and our other child, whom my wife and I love and support

with everything we have. We want to give M.B. and our other child every opportunity to live full and happy lives.

12. In addition to supporting and affirming M.B. personally, my wife and I began to advocate for M.B. and other LGBTQ+ kids like him. In 2016, we invited Texas Attorney General Ken Paxton into our home, to share a meal with us, to meet M.B., and to learn from our respective lived experiences. In 2017, my wife participated in Trans Texas Lobby Day with M.B. at her side, and in 2019, we participated in an open community discussion at City Hall in Denton, Texas in support of a proposed local ordinance which would prohibit discrimination against LGBTQ+ people in housing, employment, and public accommodations. The ordinance passed.

13. Amber has testified twice before the Texas Legislature against the passage of legislation that would harm transgender young people, including in 2021, when she testified before the Texas Senate Committee on State Affairs against proposed bills that would have included the provision of medically necessary gender-affirming health care for transgender youth as child abuse. At the conclusion of the 2021 Texas Legislative sessions, none of the proposed legislation that would have harmed transgender youth or their families by restricting access to medically necessary gender-affirming health care passed.

14. After the issuance of Attorney General Paxton's opinion dated February 18, 2022 ("Opinion"), and Governor Abbott's letter dated February 22, 2022 ("Directive"), directing the Texas Department of Family and Protective Services ("DFPS") to investigate the provision of medically necessary gender-affirming health care as "abuse," my life, my wife's life, M.B.'s life, and our family's lives were turned upside down.

15. Within forty-eight hours of Governor Abbott's Directive to DFPS to begin investigating families, we were contacted by a DFPS Child Protective Services ("CPS")

investigator. Fear and panic washed over us at the prospect of M.B. being taken away from our close and extended family, from his friends, and from the life that he loves.

16. After leaving a message on Friday, February 25, 2022, at Amber's place of business, the CPS investigator contacted us again the following Monday, stating she was thirty minutes away from our home and that she wanted to talk to us. Amber asked the CPS investigator to come to her office instead, which she agreed to do. The CPS investigator showed up at Amber's office. We asked her why she was there. She said DFPS had received a report that we were engaging in "transgender transformation" of M.B. When we asked what that meant, she said CPS was investigating us "because of the Governor's Directive."

17. Later that week, the CPS Investigator came to our home and asked us very intimate, personal, and invasive questions to determine if Amber and I had committed "abuse" by affirming our transgender son's identity and following the advice of his medical and mental health care professionals. The CPS investigator interviewed Amber and me together, in the presence of our attorney, but interviewed M.B., who was also accompanied by a different attorney, apart from us. The interview was conducted in our living room. The CPS investigator asked us to sign releases to obtain M.B.'s medical records, but we refused to sign them.

18. The CPS investigator also went into and inspected every room in our home except M.B. and our other child's bedrooms. When we came to the doorways of our kids' bedrooms I stopped as if to say, that is far enough. The CPS investigator seemed to understand the nonverbal cue and instead of going into their bedrooms, she stood in each doorway and looked inside. The inspection included opening every drawer and cabinet in our kitchen, opening our refrigerator, inspecting our food, opening every drawer and cabinet in our bathrooms, inspecting the medicine in our cabinets, looking in our closets, showing her M.B. and his sibling's artwork on the walls,

never previously investigated by DFPS. The only thing that changed in the nearly six years since we first shared our story was the issuance of the Paxton Opinion and the Governor's Directive.

23. The issuance of the Paxton Opinion and the Governor's Directive, along with DFPS's implementation of the substantive change in DFPS policy in response to both of these, has caused overwhelming fear, stress and anxiety for each of us: me, Amber, M.B., and our other child, as well as other family members of ours who love and support M.B. and us. We are terrified for M.B.'s physical and mental health, safety, and wellbeing, and for our family. We live in constant fear every day that one or both of our children will be taken away from us. We are also worried that if M.B. is taken away from us, the closeness that he has to our other child will be significantly harmed, and that his sibling will not have the opportunity to grow up, laugh with, and learn from M.B. Since the Paxton Opinion and the Governor's Directive, my wife and I have been called criminals, child abusers, and "groomers" on social media. For the first time, we have installed cameras outside of our home. And since the Governor's Directive, I have been followed in our minivan, and yelled at by a person in another vehicle.

24. Prior to the opening of the CPS investigation into our family, M.B. was typically playful, joyful, and happy. Now, M.B. is scared, anxious, and worried that he will be removed from our home, taken away from us, his sibling, friends, school, and the life and activities he loves. M.B. has also had a hard time sleeping, he is moodier, and has stayed home from school. M.B.'s grades have suffered, which has never been an issue before.

25. In addition, since the Paxton Opinion and the Governor's Directive and the investigation into our family, both M.B. and our other child are now in therapy to help them cope with the stress of thinking that they will be taken away from us.

26. My wife and I worry about the potential short-term and long term physical and

GOVERNOR GREG ABBOTT

August 6, 2021

The Honorable Jaime Masters
Commissioner
Texas Department of Family and Protective Services
701 West 51st Street
Austin, Texas 78751

Dear Commissioner Masters:

The Texas Department of Family and Protective Services (DFPS) is responsible for protecting children from abuse. Please issue a determination of whether genital mutilation of a child for purposes of gender transitioning through reassignment surgery constitutes child abuse.

Subjecting a child to genital mutilation through reassignment surgery creates a "genuine threat of substantial harm from physical injury to the child." TEX. FAM. CODE § 261.001(1)(C). This broad definition of "abuse" should cover a surgical procedure that will sterilize the child, such as orchiectomy or hysterectomy, or remove otherwise healthy body parts, such as penectomy or mastectomy. Indeed, Texas already outlaws female genital mutilation of a child, and presumably that also constitutes child abuse. *See* TEX. HEALTH & SAFETY CODE § 167.001.

DFPS's determination should consider making explicit what is already implicit in the statute: that genital mutilation of a child through reassignment surgery is child abuse. The determination should consider whether an exception should be made for medically necessary procedures for a child whose body parts have been affected by illness or trauma; who is born with a medically verifiable genetic disorder of sex development, such as the presence of both ovarian and testicular tissue; or who does not have the normal sex chromosome structure for male or female as determined through genetic testing.

After clarifying whether genital mutilation of a child through reassignment surgery is child abuse, it may be useful to explain the reporting requirements for all licensed professionals who have direct contact with children who may be subject to that abuse, including doctors, nurses, and teachers, as well as the penalties for failure to report such child abuse. *See* TEX. FAM. CODE §§ 261.101(b), 261.109(a-1).

As you know, classifying genital mutilation of a child through reassignment surgery as child abuse would also impose a duty on DFPS to conduct prompt and thorough investigations of the child's parents, while other state agencies would be obliged to investigate the facilities they license. *See id.* § 261.301(a)–(b).

Thank you for your swift response to this issue.

Greg Abbott
Governor

GA:jsd

NO. D-1-GN-22-002569

PFLAG, INC., ET AL., *Plaintiffs*,	**IN THE DISTRICT COURT OF**
v.	**TRAVIS COUNTY, TEXAS**
GREG ABBOTT, ET AL., *Defendants*.	**459th JUDICIAL DISTRICT**

DEFENDANTS' NOTICE OF ACCELERATED INTERLOCUTORY APPEAL

Defendants Greg Abbott in his official capacity as Governor of the State of Texas ("Governor Abbott"), Jaime Masters in her official capacity of Commissioner of the Department of Family and Protective Services ("Commissioner Masters"), and the Texas Department of Family and Protective Services ("DFPS") (collectively, "Defendants") appeal the Court's interlocutory order of July 8, 2022 granting Plaintiffs' Roe and Voe's application for a temporary injunction.

Defendants are entitled to an interlocutory appeal pursuant to Civil Practice and Remedies Code section 51.014(a)(4), which allows for an immediate appeal from an order that grants a temporary injunction. Defendants appeal to the Third Court of Appeals. This is an accelerated appeal as provided by Texas Rule of Appellate Procedure 28.1. This is not a parental termination or child protection case, as defined in Rule 28.4.

Pursuant to Texas Civil Practice and Remedies Code § 51.014(b), all further proceedings in this court are stayed pending resolution of Defendants' appeal. Upon filing of this instrument, the July 8, 2022 Order Granting Plaintiffs' Roe and Voe's Application for Temporary Injunction is superseded pursuant to Texas Civil Practice and Remedies Code section 6.001(b) and Texas

Rule of Appellate Procedure 29.1(b). Pursuant to section 6.001, as governmental officers/entities, Defendants are not required to file a supersedeas bond for court costs. Defendants' appeal is therefore perfected upon the filing of the notice of appeal.

Respectfully Submitted.

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CERTIFICATE OF SERVICE

I, **COURTNEY CORBELLO**, Assistant Attorney General of Texas, hereby certify that a true and correct copy of the foregoing document has been served electronically through the electronic-filing manager in compliance with TRCP 21a on July 8, 2022 to:

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DISTRICT COURT OF TRAVIS COUNTY TEXAS

/s/ Courtney Corbello
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Assistant Attorney General

CAUSE NO. D-1-GN-22-002569

PFLAG, INC.; MIRABEL VOE, individually and as parent and next friend of ANTONIO VOE, a minor; WANDA ROE, individually and as parent and next friend of TOMMY ROE, a minor; ADAM BRIGGLE and AMBER BRIGGLE, individually and as parents and next friends of M.B., a minor, Plaintiffs, v. GREG ABBOTT, sued in his official capacity as Governor of the State of Texas; JAIME MASTERS, sued in her official capacity as Commissioner of the Texas Department of Family and Protective Services; and the TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES Defendants.	§ §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 459th JUDICIAL DISTRICT

ORDER GRANTING PLAINTIFFS VOES' AND ROES' APPLICATIONS FOR TEMPORARY INJUCTION AGAINST JAMIE MASTERS, IN HER OFFICIAL CAPACITY AS THE COMISSIONER OF THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, AND THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

On July 6, 2022, the Court considered the application by Plaintiffs PFLAG, Inc. ("PFLAG"); Mirabel Voe, individually and as parent and next friend of Antonio Voe, a minor; Wanda Roe, individually and as parent and next friend of Tommy Roe; and, Adam Briggle and Amber Briggle, individually and as parents and next friends of M.B., a minor, (collectively, "Plaintiffs") for a Temporary Injunction (the "Application"), as found in Plaintiffs' Original Petition, Application for Temporary Restraining Order, Temporary and Permanent Injunction, and Request for

Declaratory Relief ("Petition") filed against Defendants Greg Abbott, in his official capacity as Governor of the State of Texas; Jaime Masters, in her official capacity as Commissioner of the Texas Department of Family and Protective Services ("Commissioner Masters"); and the Texas Department of Family and Protective Services ("DFPS") (collectively, "Defendants").

Based on the facts set forth in Plaintiffs' Petition, the declarations attached thereto, the testimony, the evidence, and the argument of counsel presented during the July 6, 2022, hearing on Plaintiffs' Application, this Court finds sufficient cause to enter a Temporary Injunction against Commissioner Masters and DFPS on behalf of MIRABEL VOE, individually and as parent and next friend of ANTONIO VOE, a minor and WANDA ROE, individually and as parent and next friend of TOMMY ROE, a minor. The applications for Temporary Injunction on behalf of PFLAG, Inc. and ADAM BRIGGLE and AMBER BRIGGLE, individually and as parents and next friends of M.B., a minor, remain under advisement by the Court and no ruling is issued in this Order.

Plaintiffs VOE and ROE state a valid cause of action against Commissioner Masters and DFPS and have a probable right to the declaratory and permanent injunctive relief they seek. For the reasons detailed in Plaintiffs' Application and accompanying evidence, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits. Commissioner Masters and DFPS implemented a new rule expanding the definition of "child abuse" to presumptively treat the provision of gender-affirming medical care, including puberty blockers and hormone therapy, as necessitating an investigation ("DPFS Rule"). The DFPS Rule operationalized Governor Abbott's February 22, 2022, letter to Commissioner Masters ("Governor Abbott's Directive") and Attorney General Paxton's Opinion No. KP-0401 ("Attorney General Paxton's Opinion"), which DFPS announced in its statement on February 22, 2022. The DFPS Rule was adopted without following

the necessary procedures under the APA, is contrary to DFPS's enabling statute, is beyond the authority provided to the Commissioner and DFPS, and is otherwise contrary to law, as alleged in Plaintiffs' Petition.

The Court further finds that an allegation about the provision of gender-affirming medical care, such as puberty blockers and hormone therapy, without more, was not investigated as child abuse by DFPS until after February 22, 2022. The DFPS Rule changed the *status quo* for transgender children and their families. The DFPS Rule was given the effect of a new law or new agency rule, despite no new legislation, regulation, or even valid agency policy.

It clearly appears to the Court that unless Commissioner Masters and DFPS are immediately enjoined from enforcing the DFPS Rule operationalizing Governor Abbott's Directive and Attorney General Paxton's Opinion, against the VOE and ROE Plaintiffs, who will suffer probable, imminent, and irreparable injury in the interim. Such injury, which cannot be remedied by an award of damages or other adequate remedy at law, includes, but is not limited to: being subjected to an unlawful and unwarranted child abuse investigation; intrusion and interference with parental decision-making; the deprivation or disruption of medically necessary care for the parents' adolescent children; the chilling of the exercise of the right of Texas parents to make medical decisions for their children relying upon the advice and recommendation of their health care providers acting consistent with prevailing medical guidelines; intrusion into the relationship between patients and their health care providers; gross invasions of privacy in the home and school, and the resulting trauma felt by parents, siblings, and other household members; outing an adolescent as transgender; adverse effects on grades and participation in school activities; fear and anxiety associated with the threat of having a child removed from the home; increased incidence of depression and risk of self-harm or suicide; having to uproot their lives and

their families to seek medically necessary care in another state; being placed on the child abuse registry and the consequences that result therefrom; and criminal prosecution and the threat thereof.

The Temporary Injunction being entered by the Court today maintains the status quo prior to February 22, 2022, and should remain in effect until final trial. The PFLAG and BRIGGLE Plaintiffs' Applications for Temporary Relief remain pending before this Court, and the Court will rule as soon as possible after it has had adequate time to consider legal and factual consideration of the record before it.

IT IS THEREFORE ORDERED that, until all issues in this lawsuit are finally and fully determined, Defendants Commissioner Masters and DFPS *are immediately enjoined and restrained from* implementing or enforcing the DFPS Rule, and from implementing Governor Abbott's Directive and the Attorney General's Opinion in the following manners:

(1) investigating MIRABEL VOE or WANDA ROE, individually or as next friends of ANTONIO VOE or TOMMY ROE, for possible child abuse or neglect ***solely*** based on allegations that they have a minor child or are a minor child who is gender transitioning or alleged to be receiving or being prescribed medical treatment for gender dysphoria, and

(2) taking any actions, including investigatory or adverse actions, against Plaintiffs VOE and ROE and their minor children, with open investigations solely based on allegations that they have a child who is transgender, gender nonconforming, gender transitioning, or receiving or being prescribed medical treatment for gender dysphoria, except that DFPS shall have the ability to administratively close or issue a "ruled out" disposition in any of these open investigations based on the information DFPS has to date – if this action requires no additional contact with members of the VOE or ROE families.

IT IS FURTHER ORDERED that a trial on the merits of this case is preferentially set before the Honorable Amy Clark Meachum, Judge of the 201st Judicial District Court of Travis County, Texas, on December 5, 2022, at 9 a.m. in the courtroom of the 201st Judicial District of Travis County, Texas, or in the 201st District Court Virtual/Zoom courtroom under the Texas Supreme Court Emergency Orders related to COVID-19. The Clerk of the Court is hereby directed to issue a show cause notice to Defendants to appear at the trial.

The Clerk of the Court shall forthwith issue a temporary injunction in conformity with the laws and terms of this Order.

Plaintiffs have previously executed with the Clerk a bond in conformity with the law in the amount of $100 dollars, and that bond amount will remain adequate and effective for this Temporary Injunction.

IT IS FURTHER ORDERED that this Order shall not expire until judgment in this case is entered or this Case is otherwise dismissed by the Court.

Signed on July 8, 2022, at 4:55 p.m. in Travis County, Texas.

JUDGE AMY CLARK MEACHUM

DISTRICT COURT OF TRAVIS COUNTY TEXAS

statement from DFPS, what was your reaction?

A. Personally, I was upset. I felt like this was an overreach, and it was placing us in a situation the Department should not be in, in being private, medical decisions between parents, a child, and doctors, and we are not qualified to say that, you know, statements from a doctor and psychiatrist and other medical professionals is not correct.

Q. What is -- the last sentence of this statement reads, If any such allegations are reported to us, they will be investigated under existing policies of child protective investigations? What does that mean to you?

A. To me, that means that they would be treated the same way that any other intakes or reports would be treated.

Q. Did this policy -- or did this statement change anything for DFPS?

A. In a way, yes.

Q. And in what way is that?

A. My perception is that these intakes are not being treated the same as every other case that we receive.

MS. CORBELLO: Your Honor, I'm going to object. Again, she's not qualified, nor does she have foundation to testify how the Department is handling

these investigations as a whole, only as to herself.

MR. KLOSTERBOER: We can still lay more foundation.

THE COURT: No. I -- what is your intention in calling this witness? Are you calling her as a Department representative, or are you calling her as -- in her individual capacity? What is the plaintiffs' position on their calling of this witness?

MR. KLOSTERBOER: She's testifying in her individual capacity.

THE COURT: Then that's overruled.

MS. CORBELLO: Thank you, Your Honor.

Q. (BY MR. KLOSTERBOER) What happened -- so the letter and statement came out February 22nd. What happened in the days following that?

A. To my knowledge, reports started to come in within Region 7.

Q. Did you all have any meetings --

THE COURT: What is Region 7?

THE WITNESS: Region 7 is the central area of the Department of Family and Protective Services. It encompasses a lot of counties. I don't remember all of them, but it's -- I'm -- most of them are Travis, Williamson, Hays, Bell.

THE COURT: Thank you. I just...

messages, we were to use the term "speci-" -- "specific cases" and not discuss them through anything, other than Teams or phone calls.

Q. Were there any parts of that meeting that you did hear any directives or information about the statement, this directive?

A. That we had to be investigating these cases.

Q. And what does that mean to you, that you had to be investigating these cases?

A. We cannot Priority None these cases or PN these cases, which was where I feel the unequal treatment is coming in. If they are supposed to be treated like every other investigation, we should be able to make calls, assess if any child abuse or neglect is likely to be occurring, and close them out.

MS. CORBELLO: Your Honor, I'm going to object. This is now speculation based on a hearsay statement, not what was said to her. Counsel asked what was meant.

THE COURT: No. Sustained. I think you need to break up the question.

Q. (BY MR. KLOSTERBOER) What were you told specifically about the prioritization of these cases?

A. So I have been told about that directly outside of that meeting, that we cannot Priority None

these cases by my leadership.

Q. And in any other -- or in most other types of cases, are you able to Priority None those cases?

A. Yes. The only cases we cannot do that for or attempt to do that with are child death cases or cases that are open with conservatorship.

THE COURT: I want to ask a couple of questions. So in DFPS, there are different priorities; is that correct?

THE WITNESS: Yes, Your Honor.

THE COURT: Just so the parties know, this Court tries a significant amount of DFPS cases, and I might be more familiar with some of these terms than all of you, so I'm going to ask a couple of questions here.

My understanding is there is Priority None, Priority 1, and Priority 2. Is that correct?

THE WITNESS: Yes, Your Honor.

THE COURT: And what you were just describing is, in a child death case or a serious allegation, what does the Department classify those as?

THE WITNESS: So those would likely come in as a Priority 1 case.

THE COURT: Which means?

THE WITNESS: That there is an imminent

danger, and that the Department needs to respond immediately to ensure child safety.

THE COURT: And -- and Priority 2 is what?

THE WITNESS: Priority 2 could be that while, you know, there may have been an incident, that there is no immediate danger, but that the Department needs to look to assess ongoing safety.

THE COURT: And then Priority None is what?

THE WITNESS: Priority None means that it is either, like, not likely that a child is being abused or neglected or will be abused or neglected in the foreseeable future, that it is not within the authority of the Department to investigate, or that -- I'm sorry. I'm blanking -- or that it has already been investigated. Sorry, Your Honor.

THE COURT: Continue.

MR. KLOSTERBOER: Thank you.

Q. (BY MR. KLOSTERBOER) When you said that someone told you that you were not allowed to Priority None these cases, what -- what else did -- did they say?

A. That they also -- sorry. We cannot Priority None these cases, and they are also not eligible for

alternative response. Alternative response is another area of investigations that operates a little bit differently. It's a little less -- well, a little less invasive. They hold meetings with the families, and no dispositions are assigned at the end of the case.

Q. So going back to the meeting that you said happened on February 24th, you said that you came in a little bit late or joined the -- the -- the meeting late. But were there any notes or emails after the meeting?

A. Yes, there were.

Q. And did you bring a copy of any of those today?

A. My attorney did.

MR. KLOSTERBOER: Your Honor, we -- plaintiffs have not seen this either until this morning, and it was provided to defense counsel, as well, the document that --

THE COURT: And I believe Mr. Lackey has provided it to me as well. I think I have these small number, or is there more than this?

MR. LACKEY: Correct, Your Honor. There are two documents, and I have 17 additional copies of each, if they need to be published more widely.

THE COURT: So you need to mark these?

A. If I were to receive any of these cases, I was to not discuss them through email, text, or anything. I was not to use anything specific in email that could be pulled by media if requested.

Q. And -- and you're almost six years working at CPS. Had you ever been explicitly told not to put information about cases in writing?

A. No.

Q. And even when cases of abuse and neglect involved very serious and sensitive allegations, would you all still use email and texts to talk about those cases?

A. Yes, we do.

Q. What did you make of the instructions to not put anything in writing?

A. Seemed very unethical.

Q. And you mentioned that you were also told that you have to keep these cases open. What -- what -- what exactly were you told upfront?

A. Just that we cannot Priority None them, so we had to initiate an investigation.

Q. And can you tell if they were -- when they're talking about this type of case in this meeting, what type of case were they talking about?

A. The cases of gender-affirming care.

Q. And were they specifically focused on the same gender-affirming care that you saw in the statement and the letter from the Governor and the Attorney General opinion?

A. I have no knowledge of what the actually cases are about that are currently open.

Q. Prior to February 22nd, were you -- do you have any personal knowledge about cases involving healthcare for transgender young people that were being investigated?

A. No.

Q. And since February 22nd, are you aware of -- that investigations are happening in two cases involving transgender young people and their healthcare?

A. Yes.

Q. Has there been any formal policy or guidance coming out from the Department about these types of cases?

A. No formal policy changes, and guidance is basically everyone's trying to just keep up with it.

Q. But the way -- what has changed -- or going back to the prioritization system, you said that you've been explicitly told that you cannot Priority None these cases?

A. Yes.
Q. And what's the effect of that?
A. The effect of that is that an investigation has to be initiated, which would result in a disposition being assigned.
Q. And remind us again what kind of cases could be Priority Noned or how you would get to that point.
A. It could be a number of cases. Like any allegation, basically, as long as it's not something that's open with conservatorship or open -- or a child investigation. Sorry. As long as you're able to gather credible information, any type of allegation that comes in is able to be Priority Noned.
Q. But your -- you and your team have now been told that you cannot Priority None cases involving transgender young people and their medical care?
A. Yes.
Q. You also mentioned that they said something about alternative response. What is that?
A. Alternative response is another area than -- of investigations. They operate a little differently, though. They typically don't do pop-up visits. They usually schedule something with the families, and like I said earlier, dispositions are not assigned in alternative response.

make sure it fit the criteria, and I wouldn't be the one to make that final decision. It would have to be someone in alternative response, but I could make the suggestion that it seemed to fit alternative response.

Q. And have you now been told that alternative response is not available for cases involving transgender medical care?

A. Yeah. To my knowledge, yes.

Q. Have you also been told that you have to contact certain leadership within DFPS if you become aware of any case involving transgender young people and their medical care?

A. Yes.

Q. And -- and what does that process look like that you've been told?

A. So we -- like, if I were to receive a case, we would now have to staff with -- up to our program administrator, I believe.

Q. Is that different from how you handle other types of cases?

A. Yes.

Q. How so?

A. I only staff up with upper leadership if it seems that legal intervention is needed typically. But for the majority of cases, it's just my worker staffing

with me, us coming together with the families to see what solutions we could come up with, or if there's any reason for safety interventions, and then kind of go about the case.

Q. You testified that before February 22nd, you weren't personally aware of any cases involving the -- the medical -- specific allegations of the medical care of transgender youth. About how many cases are you aware of now?

A. I know of three within our region. The last update I think that I saw was maybe seven cases across the state.

Q. And how many regions are there in Texas?

A. Technically 12, but one of them -- the 12th one is just state office, so that's located within Region 7, so 11.

Q. Now, you said that you've heard that there might be up to seven cases statewide?

A. I believe so. I believe that's what I saw in a news article.

Q. We actually have a copy of a news article. That's Exhibit 11. We'll come back to that.

When you were told that you had to consult with some of the senior leadership of DFPS, did that also include consulting with any attorneys?

separately.

The goal of alternative response is to plan with the family to see if there's any services the Department can offer or if there's anything that the family could do to work better as a unit.

Q. And that process you've now been told is unavailable to cases involving transgender youth and their medical care?

A. To my knowledge, yes.

Q. And -- and what are the effects of that?

A. The effects of that are that if they can't be Priority Noned and they can't go to alternative response, then they have to go to investigations, which would mean that they would have to have a disposition assigned at the end of the case.

Q. And you're personally aware now of investigations that are happening against transgender young people and their families?

A. Yes.

Q. And do -- are you personally aware of -- or -- and in -- in general, that means that -- or, in general, CPS could be contacting students at their schools?

A. Yes.

Q. Has this been a shift for you personally in

how DFPS conducts -- investigates these cases?

A. I'm not aware of there being a change in how investigations -- like the investigations process is done. To my knowledge, they're being handled like every other investigation would be, once it's to the investigator.

Q. But these cases are being treated differently?

A. Yes, in my opinion.

Q. And these -- these differences have been communicated with you and others on your team?

A. They've been communicated with all of the supervisors within Region 7.

Q. And, once again, DFPS has different regions across the state?

A. Uh-huh.

Q. So you don't know what's happening necessarily all over. But would this kind of change need approval from someone higher up?

MS. CORBELLO: Objection; lack of foundation.

THE COURT: Overruled. If this witness knows, she can answer.

A. To my knowledge, my regional director does not make any final calls on anything. She has to answer to her bosses as well, so no. To my knowledge, she would

not be one to make any changes to anything.

Q. (BY MR. KLOSTERBOER) And do you consider being told that you are not allowed to Priority None these cases, you can't -- they can't go to alternative response, they can't be closed, you can't put anything in writing, do you consider that to be a change in DFPS policy?

A. Yes.

Q. What could happen to the families that are currently being investigated by DFPS?

MS. CORBELLO: Objection; speculation, lack of foundation. She hasn't testified that she knows anything about these investigations.

THE COURT: As the question was asked, I will sustain that objection.

MR. KLOSTERBOER: Withdrawn, Your Honor.

Q. (BY MR. KLOSTERBOER) What's going to come next for you personally?

A. I have resigned from the Department. My last day will be the 31st of this month.

Q. What led you to resign?

A. This is a very stressful job overall, but I've been with the Department for, like I said, almost six years, so I've been here through a lot of highs and lows. And through all of the stresses and challenges

you were being placed on administrative leave?
A. I was contacted by my boss' boss.
Q. What did your -- and -- and your boss' boss, you mean somebody in an administrative capacity at DFPS; is that right?
A. Correct. Uh-huh.
Q. What did your boss' boss state to you?
A. That she was very sorry, but that -- and she didn't agree with the policy, but that -- you know, that I would unfortunately have to be investigated. And during my investigation, I would be on paid administrative leave.
Q. You made reference to a policy. What policy is that?
A. I mean, we don't have a policy, but -- but it did -- the Paxton opinion and Abbott's letter.
Q. What do you understand the Governor's letter to do?
A. To -- it's to investigate families who have transgender children who may be receiving care.
Q. So February 23rd, you were informed that you were being placed on leave and would be under investigation; is that correct?
A. Correct.
Q. You referenced an opinion by Attorney General

Paxton and a letter by Governor Abbott. How did you come to learn about these directives?

A. Just on my own reading the news.

Q. What were your impressions with regards to this opinion and letter?

A. I was really concerned as a parent about how -- what this would mean for my family and for my daughter, as well as what it would mean for -- you know, how I'd be able to do my job.

Q. You just noted that you were concerned about how these would affect how you would go about your job. Did you talk to anybody about what this would mean for your job?

A. Yes.

Q. With whom did you speak?

A. My supervisor.

Q. When did you have contact with your -- your supervisor?

A. On the 23rd.

Q. What were you informed at that point in time?

A. That she was unaware of any policy, and that she would reach out to other people and let me know.

Q. Were you placed on leave thereafter?

A. Yes.

Q. How long thereafter?

A. A couple hours. Less than six hours.
Q. Had you previously spoken with your supervisor about the Department's approach to gender-affirming care?
A. What do you mean by that?
Q. Prior to February 23rd, had you spoken with your supervisor about how the Department would investigate reports of the provision of gender-affirming care?
A. So yes, I had. I had spoken to her on the 22nd, you know, about the Paxton opinion prior to the Abbott letter -- you know, prior to me knowing about the Abbott letter. So I contacted her about the Paxton opinion, and she had heard absolutely nothing. She had had a supervisor meeting the prior week. It was not discussed.
Q. Did you learn anything else from your supervisor when you contacted her on February 22nd about the Paxton opinion?
A. Yes. She said, Oh, that's very weird. We got a -- you know, there was a report that had been, you know, made about gender-affirming care, and it was deemed a CNR, so clearly not reportable.
Q. And that was affirmed to you on February 22nd prior to the issuance of the Abbott letter?

A. Correct.

THE COURT: Can you refresh me on what a CNR is?

THE WITNESS: That means "clearly not reportable," which means that it does not go out for investigation.

Q. (BY MR. GONZALEZ-PAGAN) Prior to February 22nd, had you spoken to your supervisor or anybody else at DFPS regarding it -- the Department's approach to investigations of gender-affirming care?

A. No.

Q. And are you currently on leave pending the outcome of the Agency's investigation?

A. Yes.

Q. What happened after you were placed under investigation?

A. After I was told that this would happen?

Q. Yes.

A. I was completely shocked. Like, I had no idea this was going to happen. I had just been asking about policy. I was -- I was contacted -- I was contacted the fol- -- the following day by an investigator, who said that he was very sorry, and that I would have to be investigated, and that they'd be coming to my home.

And then the following day, which was

the -- on -- on that Friday, whether -- I think that was the 25th, the investigator came to my home.

Q. What happened when the investigator came into your home on February 25th?

A. John and I had gotten counsel, so we had an attorney there for us, and then we also had an attorney for Mary. So we gave information; you know, we answered just basic information to the investigator and then referred him to our attorneys for any other information.

Q. Did the investigator tell you why you were being placed under investigation?

A. Yes.

Q. What is your understanding of the allegations against you?

A. The allegations were two sentences. I don't remember what -- exactly what they said, but it was that -- you know, that we have a daughter who was born male and is, quote, transitioning to female, and that she may be receiving gender-affirming care, and that was it.

Q. Is Mary Doe transgender?

A. Yes.

Q. Prior to being placed on inves- -- on investigation on February 23rd, did anybody at DFPS

in. Please raise your right hand and be sworn.

(Witness sworn in.)

THE COURT: Thank you. You may have a seat. This door swings out.

MIRABEL VOE,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SAMANT:

Q. Good morning.

A. Good morning.

Q. Could you please state your name for the record?

A. Mirabel Voe.

Q. And are you over the age of 18?

A. I am.

Q. How long have you lived in Texas?

A. I was born and raised here my entire life.

Q. Do you have any connection to the lawsuit PFLAG vs. Abbott?

A. I am. I am a plaintiff, I am a parent of a transgender child who is a plaintiff, and I'm a member of PFLAG.

Q. And is Mirabel Voe your real name?

A. It is not. It's a pseudonym.

Q. Why are you proceeding under a pseudonym?

A. I am proceeding under a pseudonym because I have learned of other families who have been vocal about their support of their child who have been ostracized, including attacked, and I want to shield my family and myself from that.

Q. And why are you testifying here today?

A. I am testifying because, again, I am a plaintiff. My family has been investigated by DFPS. I just want to do what I can in order to -- to protect, support, and love my child.

Q. You mentioned one of your child -- one of your children is involved in the lawsuit as well?

A. That is correct.

Q. And what is this child's name?

A. Antonio Voe.

Q. Okay. And how old is Antonio Voe?

A. He is 16.

Q. Is Antonio his real name?

A. It is not.

Q. And why is Antonio using a pseudonym?

A. Again, I do not want his identity to be revealed so that he -- you know, ***{inaudible}*** other people ***{inaudible}*** give him a hard time --

THE REPORTER: I'm sorry. I'm having a little bit of a hard time. I think it's the mask.

had noticed that he was, you know, introverted. And once he was socially transitioning, he -- he was back to his -- his self.

Q. And just to clarify, you said you had noticed he had started to become introverted. When did you notice that that happened?

A. At puberty. On the onset of puberty.

Q. Okay. Did you seek medical advice for Antonio in connection with him being transgender?

A. I did. After a year of allowing him to socially transition, I noticed that with the continuation of puberty, he -- he was still stressed. You know, he was still anxious. And then we decided to -- to seek medical and professional advice.

Q. And did -- the doctor you took him to, did they provide a diagnosis?

A. They did. The pediatrician diagnosed him with gender dysphoria.

Q. And did the pediatrician make any recommendations?

A. The pediatrician recommended that he begin therapy.

Q. And has Antonio seen a therapist?

A. He began seeing a therapist that year and then has since, so the summer of -- of 2021.

A. He was excited. You know, he was excited that he was going to be back with his -- his friends. He was excited that, you know, he was now going to be able to go back to school and everybody know who he truly was. But then I also started noticing that, you know, he -- he continued to be a little anxious. You know, he continued -- it was, you know, kind of a complex situation.

Q. And did there come a time when you -- did there come a time when you found yourself concerned about Antonio's well-being?

A. I did. So as I had mentioned, you know, going back to school, being transgender, you know, I did see, you know, that he had anxiety. But then in February of this year when Ken Paxton issued his opinion and then Abbott issued the directive, it really made a turn for the worse in Antonio's demeanor and Antonio's life and all of our lives.

Q. And did something significant happen with respect to Antonio's health or well-being?

A. Yes. He made an attempt upon his life.

Q. And how did you learn that your son attempted to take his own life?

A. He had been throwing up, so I decided to take him to urgent care, and they -- when we pulled up into

the urgent care, he turned to me and stated that he had ingested an entire -- an entire bottle of aspirin.

Q. Do you recall the date on which this happened?

A. February 22nd.

Q. And when he told you that he had injected an entire bottle -- ingested an entire bottle of aspirin, what was your reaction?

A. So first, you know, I -- we rushed him to -- into the emergency room. And when they began to do the intake and stabilize him, they asked him there, the nurse, in my presence, why he did what he did. And he stated that the political environment, you know, the directive that Abbott had issued, you know, the other issues of being transgender at school, along with just gender dysphoria is what caused him to do what he did.

Q. And what did -- you said that you had taken Antonio to the emergency room, correct?

A. Correct.

Q. Okay. Was Antonio discharged?

A. He stayed in -- at the hospital for two days and then discharged to a psychiatric facility.

Q. And how long was Antonio at the psychia- -- psychiatric facility for?

A. About nine days or so.

Q. And did Antonio receive any therapy there?

A. He did. He had daily group therapy, he had individual therapy, and he had family therapy as well.

Q. And can you describe, what was your life like when Antonio returned home?

A. Well, we were relieved he was home with us, but with the ongoing knowledge of what was happening with the State, you know, that -- we were all beyond anxious. You know, we were stressed beyond measure. We were just making sure that -- wanting to make sure that he was okay.

Q. I wanted to go back quickly. When you took Antonio to the pediatrician, did the pediatrician, upon giving a diagnosis, also give any recommendation of medical care?

A. She did.

Q. Okay. So going back to now once Antonio came home with you after being released from the psychiatric facility, were -- was there a time when the state actually investigated you?

A. Yes. Shortly after Antonio was released -- he was released I believe on the 9th. And on the 11th, a CPS investigator arrived at our home.

MS. CORBELLO: Your Honor, just for the record, I'd -- I'd like to state that at this point plaintiffs have now entered into evidence about the

before you make any offer.

MS. CORBELLO: Yes, Your Honor. Just to be clear, I don't know that we'll be introducing the investigatory files with this witness. So it's up to the Court when you want to have that hearing, but I'll just tell -- say for the Court that it might not be necessary right this second.

THE COURT: Before you make any offer of any of those exhibits, you're going to need to first have a motion of temporary sealing order with the Court. Do you understand?

MS. CORBELLO: Yes, Your Honor. We have -- we have those hard copy and also on file.

THE COURT: Thank you. Now let's proceed.

MS. CORBELLO: Okay.

MS. SAMANT: Thank you, Your Honor.

Q. (BY MS. SAMANT) Ms. Voe, I just want to refresh where we left off before the break. You were -- I had asked you about what -- what life was like when Antonio had been discharged and had come back home with you and your family.

A. Again, we were relieved that he was home. We were relieved that, you know, I can now physically see him, but it was stressful, and our anxiety levels were

through the roof.

Q. And were there -- what in particular were you concerned about at that point?

A. Mostly that there was this looming directive out there from the state that I've only known as home, that because I love my child enough to take him for gender care, that they were labelling me as an abuser, or any parent that was doing this, and that they could potentially come to my home and rip it apart.

Q. And did, in fact, a CPS investigator come to your home?

A. They did.

Q. And what happened when the investigator arrived?

A. She arrived at my home. She knocked on the door. I opened the door assuming at that point that she was there to speak of the attempt and treatment he had received or treatment that we were on for the attempt. But she walked into my living room and stated that they had been instructed to make my case -- or cases such as mine a priority and that I had been reported by the psychiatric facility that my son was at for being an alleged perpetrator of child abuse.

Q. And did -- did the investigator ask you any questions while she was there?

Q. And what did CPS say about the incorrectly-signed medical release, if anything?

A. They asked me -- she continually called and left messages and asked me to resign it. I -- she then showed up at my home unannounced. My child told me at that point -- you know, my oldest child told me at that point that, you know -- or told her that I was working. And so then in the interim, I had learned of the temporary injunction that had been put in place by the courts for these types of cases. And so when I did finally speak to her, I mentioned that I was seeking legal counsel and that I would not be signing the form.

Q. And after you informed her that you wouldn't be signing the form and you were seeking counsel, did CPS continue to try to contact you?

A. They did.

Q. And when did CPS last contact you?

A. I do not know the actual date, but I do know that it was the day that the temporary restraining order hearing had occurred for this case.

Q. In this case?

A. Correct.

Q. Okay. Thank you. And is the investigation still open at this time?

A. It is.

Q. Ms. Voe, how has the investigation impacted your life?

A. It's devastated our lives. You know, again, you know, there's a stigma that comes with being investigated by CPS, you know, by being called a bad parent. Antonio has had to stay home and finish out the school year at home. You know, my youngest is now on -- in therapy as well. Antonio's medication has been increased because his anxiety and his depression, you know, has substantially gone up again. We watch him to make sure there isn't another crisis, because we have this looming over our heads at all times, you know, that CPS could at any point potentially come to our home and take my children away from me.

You know, it's affected us in every aspect that it can medically, physically, emotionally, and, you know, to a certain extent financially. I have a medical condition that flares up with stress, and so because I have two jobs, my second job requires me to stand for long periods of time, and I'm not able to pick up as many shifts as I normally would because my legs are hurting.

My oldest has decided to take -- she quit her full-time job to take a part-time job working from home so that she can always be available as well when

I'm not to make sure that there isn't another crisis with my son.

Q. And what do you hope for your family through this lawsuit?

A. My hope is that we can put this behind us, that my child -- that, one, I will not be labeled a child abuser; two, that my child can continue to receive his medical necessary treatment that has been prescribed to him. My hope is that my child can live his true authentic self, that no other family will have to go through what we go through, that no other child, no matter how they identify, knows that they are valuable, they're -- they're an invaluable part of society, and that no other child will have to think that there is no other recourse than to try and take their life because the State is threatening to take them from a home that loves them and that cares enough to take them for treatment.

MS. SAMANT: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. CORBELLO:

Q. Mirabel, you don't work for D- -- DFPS, right?

A. I do not.

Q. And you don't have any personal knowledge of how DFPS conducts intakes of reports of child abuse, do

his.

Q. And where --

THE COURT: You're going to have to speak way up.

THE WITNESS: Sure.

THE REPORTER: Yeah.

Q. (BY MR. COOK) Where do you live?

A. Washington, D.C.

Q. And where are you employed?

A. PFLAG, Inc.

Q. Is PFLAG a plaintiff in this case?

A. Yes, it is.

Q. What is your role at PFLAG?

A. I'm the executive director.

Q. And what are your job responsibilities as the executive director at PFLAG?

A. I set the strategic priorities for the organization and operations of the organization, manage the staff, and I'm responsible for the budget and fiscal oversight of the organization.

Q. How long have you served as executive director?

A. About three and a half years.

Q. What is PFLAG?

A. PFLAG is the largest and first organization

for LGBTQ+ individuals and their families. We have hundreds of chapters around the country, about 250,000 members, and we focus on support, advoca- -- support, education, and advocacy.

Q. And as executive director, do you make decisions about whether PFLAG participates in litigation?

A. Yes, I do.

Q. Why did you decide to participate in this litigation?

A. When the opinion came out from the AG and then the directive from the Governor and then the actions of the agency involved, we started hearing from parents who are terrified from our chapters across the state, from members across the state, who were fearful for what was going to happen to them and their families, so we were asked to and felt the need to engage on behalf of them.

Q. As executive director, are you familiar with PFLAG's history?

A. Yes.

Q. Okay. How did PFLAG start?

A. So PFLAG started by a mom in 1973 who wanted to rally parents and family around their LGBTQ+ kids. She was a schoolteacher.

Q. Is PFLAG a 501(c)3?
A. Yes, it is.
Q. Okay. What is that?
A. We're a (c)(3), started in 1982, with a focus mostly around support and education in the nonprofit space.
Q. Does PFLAG have articles of incorporation?
A. Yes.
Q. As the executive director, are you familiar with those articles of incorporation?
A. Yes.
MR. COOK: Your Honor, may I approach the witness?
THE COURT: Yes. What exhibit did you hand him?
MR. COOK: Your Honor, I handed Plaintiffs' Exhibit 22 to Mr. Bond.
Q. (BY MR. COOK) Mr. Bond, are you familiar with this document?
A. Yes, I am.
Q. And what is it?
A. It is our articles of incorporation, charter, so forth.
Q. Okay. And does it appear to be a true and accurate copy of PFLAG's articles of incorporation?

Q. Okay. Approximately how many Texas members do you have, counting the ones that joined through their local chapters and directly with national PFLAG?

A. Sure. I think today is approxi- -- probably around a little over 700.

Q. And do you have a sense of how many of those members have children who are transgender?

A. I don't have a specific sense. I know from each and every one that I've heard from and from our chapters across the state there -- there are family members there that have kids, they have transgender kids, they care about transgender kids, and they're focused on that.

Q. Okay. You mentioned earlier that through the systems you have in place with PFLAG, you were hearing from your members in the wake of Attorney General Ken Paxton's opinion, Governor Abbott's directive, and DFPS' implementation of that. What kind of support, if any, has PFLAG provided to Texas members with transgender children?

A. Sure. A considerable amount of support has been on the ground, peer-to-peer support within our chapters, also trying to provide guidance on how to seek additional support or -- or just candidly bringing people together, walking through how to get through

this.

Q. And why did you provide the support that you just described?

A. Because this is important. These are families just trying to keep their kids safe, and these families are terrified.

Q. Today you heard the testimony just now from Mirabel Voe. Is she under investigation by DFPS?

A. Yes.

MS. CORBELLO: Objection; lack of foundation.

MR. COOK: Your Honor, he just said that he heard the testimony from Ms. Voe, and she testified.

THE COURT: Yeah. Overruled.

Q. (BY MS. CORBELLO) Is Ms. Voe a PFLAG member?

A. Yes.

Q. Are you aware of other PFLAG members currently being investigated by DFPS?

A. Yes.

Q. Okay. How so?

A. Through the declarations, through these court proceedings, chapter individuals telling me so.

MS. CORBELLO: Objection as to the hearsay portion of his testimony.

THE COURT: It is hearsay as to that

portion. Sustained.

MR. COOK: Yes, ma'am.

Q. (BY MS. CORBELLO) What sort of structures do you have in place to hear about what your various members are experiencing?

A. Sure. Again, that would be through our support meetings, chapter meetings -- we have a chapter meeting every month and many chapters more than once a month -- through a Facebook page for our families in this area, and then also just any communication when individuals write to us. Those would be the main avenues.

Q. And through the structure that you just described, do you understand through that that you have PFLAG members in Texas who are being investigated by DFPS?

A. I understand both that we have members that are being investigated, but also a lot of our members who are extremely terrified, and I've heard directly from them and some --

MS. CORBELLO: Objection; hearsay.

THE COURT: Okay. So this is hearsay. The question is, is there an exception to hearsay given the associational standing issue? And what is your argument to how you get around the hearsay, which is

definitely hearsay? Is there an exception that would apply?

MR. COOK: Yes, Your Honor. Pursuant to Texas Rules of Evidence 801(d), we are not offering the fact for the truth of the matter asserted. We're really offering that the statement is relevant because it shows the information that he relied upon in making decisions as behalf -- as executive director of PFLAG.

MS. CORBELLO: Your Honor, they -- they simply asked if his members are terrified, not whether he was making decisions on that basis or anything about his decision-making.

MR. COOK: Your Honor, I'm not asking, again, that -- the statement members are terrified is offered for the truth of the matter asserted, only that that statement he relied upon in making decisions and actions -- taking actions on behalf of PFLAG. So we're not offering that for the truth of the matter asserted, so that is an exception to hearsay.

THE COURT: Overruled. You may ask that question. You may answer.

Q. (BY MR. COOK) So, Mr. Bond, I asked how do you -- what structure -- you mentioned that you have structures in place to hear about what's happening with your members. How did you hear about what was

happening with your members in Texas?

A. It was a combination of people reaching out directly to PFLAG national, telling them what was going on. It was a -- it was a combination -- or partially from hearing from my team, who works directly with individuals in Texas, and from our regional director as well. This was not a secret. This was scary. This is what was happening. And we have parents trying to figure out did they need to leave the state. You know, they were getting notifications from doctors that, sorry, we may not be able to help you anymore. I mean, this is about protecting their kids and trying to keep their kids from harm. So that -- that's how we heard about it. Like, what do we do next? How do we protect our families? How do we protect our kids?

Q. And you testified by what was happening. What do you mean by what was happening?

A. By the directive and then the investigations by the agency.

Q. Okay. And that includes members being investigated?

A. Yes.

Q. Now, I'd like to switch to some questions about PFLAG's mission and vision. What is PFLAG's vision?

A. So our -- our -- our mission is to create a caring, just, and affirming world for LGBTQ+ individuals and their families. Our vision is for an equitable world where LGBTQ+ plus individuals are safe, celebrated, empowered, and loved.

Q. As executive director, is it part of your job to ensure PFLAG's mission is carried out?

A. Absolutely.

Q. And what do you do to ensure that PFLAG achieves its mission?

A. Part of that is to ensure that we are adequately supporting our pillars, whether it be around support with our chapter network on the ground, especially with what's going on right now, pillar around education, again, to make sure people know what's going on and to provide multiple avenues for people to be aware of that, and third, it's around advocacy, to speak out in support of individuals' families speaking out in support of their kids.

Q. Why is advocacy around their kids in an integral society part of your mission?

A. I think that once people hear individual stories, their journeys, that they -- they -- we live everywhere, that we're part of their community, the more those stories can be shared and/or share what

into the subject of gender dysphoria?

A. Yes. So I am involved in a study regarding autoimmunity in gender dysphoria and adolescents, as well as publications, mainly regarding the advocacy in this population.

Q. And are these publications peer-reviewed?

A. Peer-reviewed, yes.

Q. Have you presented any posters or symposiums pertaining to gender dysphoria?

A. Yes. Our autoimmunity poster was presented at a conference. And our discussion about advocacy, I've -- I've personally presented at symposiums and panels before at national meetings.

Q. Dr. Brady, you mentioned that you were an assistant professor. What courses do you teach?

A. As an assistant professor, I teach medical school courses and nursing school courses, as well as education courses for our residents and fellows. At the medical school I teach regarding differences of sex development, and I also teach about gender dysphoria across the medical center and at the nursing school.

Q. Dr. Brady, is the prac- -- practice of pediatric endocrinology a -- a -- a specialized practice it takes from general adult endocrinology?

A. Yes. It -- it -- you have to have a general

Q. What is it?
A. It is a statement, I don't know by who, but it was by a representative of the Department stating that there are no -- there were no current investigations at the time of the statement.
Q. And how did you first encounter this statement?
A. It was in a news article. I can't remember exactly when I saw it, but I believe the article was published on the 22nd of that month.
MR. KLOSTERBOER: Your Honor, plaintiffs move to admit Exhibit 3 into evidence.
MS. CORBELLO: No objection with the same understanding about individual versus legal opinions.
THE COURT: The Court still has that same understanding. 3 is admitted.
(Plaintiffs' Exhibit 3 admitted.)
Q. (BY MR. KLOSTERBOER) Ms. Mulanax, in the days following the Governor's letter and this statement, what happened?
A. Cases in regards to specific allegations started to come into Travis County.
Q. Before February 22nd, had you personally encountered any of the cases involving these specific allegations?

A. I had not.
Q. What else happened -- or what -- what guidance, if any, were you given following February 22nd?
A. There was a meeting held on February 24th, just a couple of days after the order came out. I was not present for the entire meeting, but I did get on the tail end, and I also received notes from the meeting, and I spoke with my program director at the time and other supervisors in my unit who were on the meeting stating that we were instructed not to put anything about these cases in writing via email or text message through our work devices, and we were only to staff them through phone calls or in person or through Teams and that we were to refer to them as specific cases I believe was the verbiage.
Q. Could you turn to what's marked as Plaintiffs' Exhibit 15?
A. Uh-huh.
Q. Do you recognize this document?
A. I do.
Q. What is it?
A. These are the meeting notes that I was emailed from my regional director.
Q. And when did you --

A. At the time. Sorry.
Q. When did you receive that email?
A. I believe it was the same day as the meeting was held, so the 24th.
MR. KLOSTERBOER: Your Honor, plaintiffs move to admit Exhibit 15 into evidence.
MS. CORBELLO: Your Honor, we would object on the basis of relevance. Ms. Mulanax has not testified to any knowledge of whether anything within this exhibit is still in effect today. This is a temporary injunction hearing about current and future harm, and this document is, again, from five months ago. It has no relevance as to what's occurring today, at least insomuch as her testimony has provided.
THE COURT: Overruled.
MR. KLOSTERBOER: Your Honor, is Exhibit 15 now admitted?
THE COURT: 15's admitted.
(Plaintiffs' Exhibit 15 admitted.)
MR. KLOSTERBOER: Thank you.
Q. (BY MR. STONE) After this -- the meeting that you held on February 24th, what other guidance, if any, were you given?
A. That these cases were not eligible for priority none status or a PN if it fit the current

policy and that they were also not eligible for administrative closure if it fit the current policy.

Q. How does that compare to the policies that you followed before February 22nd?

A. It is -- in my opinion, it was discriminatory towards these cases because the only other cases prioritized that way were child death investigations or cases involving children in conservatorship.

MS. CORBELLO: Your Honor, I'm going to -- Your Honor, I'm going to object to this question and answer. Ms. Mulanax previously testified she never personally encountered an investigation like this, so I don't know how she's testifying to the policy on them.

THE COURT: Overruled.

Q. (BY MR. STONE) Turning to the policies, can you turn to what's marked as Plaintiffs' Exhibit 16?

A. Okay.

Q. Do you recognize this document?

A. Yes, I do.

Q. What is it?

A. It is part of the CPS handbook stating the foundation for investigations.

MR. KLOSTERBOER: Your Honor, plaintiffs move to admit Exhibit 16 into evidence.

MS. CORBELLO: No objection.

WANDA ROE,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GUILLORY:

Q. What brings you here today?

A. I am a plaintiff in the case. I'm a member of PFLAG. But most importantly for me, I'm here to protect the rights of myself and my son who is transgender.

Q. Wanda Roe is not your real name, correct?

A. It is not.

Q. Is Wanda Roe a pseudonym?

A. It is.

Q. Why are you proceeding under a pseudonym?

A. Because I need to protect the identity of my family to prevent us from being harassed or suffer any violence or retaliation for seeking to protect our rights.

Q. Why do you feel -- hold on. You mentioned your son Tommy. You mentioned your son. For the purposes of the lawsuit, what is his name?

A. His name is Tommy Roe.

Q. Is Tommy Roe a pseudonym?

A. It is.

Q. You mentioned earlier that Tommy is

transgender. What did you do when you learned Tommy was transgender?

A. Well, I cried for a week, but my immediate reaction, because I could see that he was nervous and shaking when he told me, was to hug him, simply hug him and tell him that I loved him and tell him that everything was going to be okay.

I then took the next week to find myself a counselor because I needed to deal with my own issues that were not a part of what Tommy was going through, but also we did go to his primary care physician to discover what we needed to do next.

Q. And what did that primary care physician recommend, if anything?

A. The primary care physician recommended -- or referred Tommy to a gender-affirming specialist.

Q. Have any of these providers made any diagnosis in connection with Tommy being transgender?

A. They have. They diagnosed him with gender dysphoria.

Q. Have these providers made any recommendations pertaining to Tommy's gender dysphoria?

A. They have recommended counseling, and they have recommended gender-affirming therapy in terms of hormone therapy.

Q. Does Tommy live openly as a boy?
A. He does.
Q. What observations have you made from seeing Tommy live authentically as himself?
A. He is so much happier. He used to be -- he's so -- he was almost invisible. He didn't want people to see him or look at him. I didn't understand why. If we were out, he would always walk behind me in my shadow. He never wanted to speak to people directly. He never could make eye contact. And he seemed so sad, just sad all the time. And since he's been able to be himself and present as himself, he has been happier. He comes out of his room. He joins us for family discussions. He's a completely different person.
Q. You mentioned earlier an investigation. How did you learn about the investigation?
A. So I got a text from my son who was at school telling me he had something important to tell me, but he was too upset to discuss it on the phone. I went to pick him up from school. And on the way home from school, we had dropped off some other friends, and another one of my sons called me to say that there was someone waiting for me at my house to investigate me -- or to ask me questions about, you know, a CPS investigation. And that's when Tommy looked at me and

was very upset but did say to me, That's what I was going to talk to you about. I got pulled out of class today and interviewed by a CPS investigator, and that person was waiting -- that same person was waiting for me at my house.

Q. And what did that CPS caseworker tell you?

MS. CORBELLO: Your Honor, at this time I'd like to make a running objection that plaintiffs have now opened the door and waived what this Court has construed as a motion in limine that they filed earlier today.

THE COURT: But now is not the proper time to do that, I don't think. I think the proper time is when you ask your questions or you make an offer. So you're just putting them on notice, and there's no ruling for the Court to make at this time.

MS. CORBELLO: Thank you, Your Honor.

MR. GUILLORY: Your Honor, I'll proceed, but for the record, we're not waiving any arguments made in our motion to exclude, and we will off- -- and if offered during cross, the investigation or the audio recording, we will make specific and timely objections.

THE COURT: Thank you. You may proceed.

Q. (BY MR. GUILLORY) I'll ask the question again. What did the CPS caseworker tell you?

A. She told me that she needed to come into my house and interview everybody that was in my house, living in the household. And I asked why, and she said that a report had been made charging me with child abuse and that the child abuse was because I had been accused of giving gender-affirming care to my son.

Q. Did the caseworker tell you anything about how these investigations were being investigated?

A. She told me that she had to investigate because this -- a report was made, was given top priority over all -- all other CPS cases, that any case involving a parent giving gender-affirming therapy to their minor child was to be prioritized above every other case as directed by Governor Abbott.

Q. And you mentioned that the caseworker said you were being investigated because you had a transgender child. Did she give you any other reason why you were being investigated?

A. No.

Q. Have you heard from CPS since?

A. Yes. I -- we engaged a lawyer, legal representation, after the interview was over. And we received an email asking for a letter from Tommy's doctor stating that hormone therapy was reversible.

Q. Was there any other requirement of that

letter?

A. I don't believe so.

Q. Okay. And when was this request for a physician letter made?

A. Early June.

Q. Okay. How has the CPS investigation affected Tommy?

A. Well, we began to lose him again. He went back into his shell. I mean, it was just devastating. It was -- it has been so harmful to our family and particularly to Tommy. His grades dropped. He was a -- he was a grade A student. His grades dropped. He couldn't focus on anything. And he couldn't finish the school year on campus. He was always looking over his shoulder wondering if someone was going to come and take him out or take him away, so he had to finish up the school year from home.

Q. And how has the CPS investigation affected your family as a whole?

A. It's been awful, absolutely devastating. We are a family that, you know, automatically believes that we live on the right side of the law. We love our community. We chose to live in Texas. We're very much a part of the community around us. I have a son -- autistic son who is very much a part of the special

could reason to believe, which means that we did find evidence of abuse or neglect. We could what we call UTD, unable to determine, which means we know abuse occurred, but we don't know who the perpetrator was. I feel like I'm leaving one out. There's a UTC, which is unable to complete, which means probably the family left, ran, we can't find them.

Q. When you have a ruled-out disposition, how do you treat subsequent complaints involving exactly the same alleged conduct?

A. Yes. So if we have investigated -- and it could be any disposition except for unable complete, but if we have completed an investigation and the exact same complaint come back in, we do not work that case again.

Q. How many medical providers does DFPS have on staff in their investigations division?

A. I have zero medical providers.

Q. How does DFPS then make determinations about the medical necessity of any particular claim?

A. So I -- I mean, our -- first and foremost is to try to find who -- find out who is seeing the child or the youth. Right? Like, who is that doctor? Is it a therapist? Is there anyone as far as the medical field involved with that youth and talk to -- talk to

as medical records and medical treatment records.

THE COURT: Sure. A doctor has that exception, though. It's not -- and a patient can maybe have it, but that's not a hearsay upon hearsay upon hearsay, which is what we're talking about here.

MR. STONE: Your Honor, for the sake --

THE COURT: So I'm just -- I think -- I think she can give a lay answer to the question of what are puberty blockers in her layperson understanding, but where we go next could become a problem.

MR. STONE: We're just going to move on. I -- doesn't matter.

Q. (BY MR. STONE) When did you first -- when did DFPS first receive a report involving the administration of puberty blockers or hormone therapy to a minor?

A. So it was in February of 2022.

Q. Do you remember when in February of 2022?

A. I cannot.

Q. When did DFPS investi- -- DFPS last receive a report of -- involving a minor and the use of hormone -- hormone therapy or puberty blockers?

A. It was in March of 2022, but I can't think of the exact date.

Q. And I'm going to refer to these, as my

investigation, you can't possibly be involved in each and every one of those cases; is that right?

A. That's correct.

Q. And prior to February 22nd, you had not been personally involved in any cases where there were allegations of PBHT being provided to minors; is that true?

A. That is correct.

MR. COOK: No other questions, Your Honor.

THE COURT: Anything else?

MR. STONE: Yeah. Just -- yes, Your Honor, just one thing. We'd like to offer Exhibit 27. I'm --

MS. CORBELLO: It's 31.

MR. STONE: It's 31?

MS. CORBELLO: Yes.

MR. STONE: What we're planning on marking as Exhibit 31.

THE COURT: And have you uploaded it to the Box?

MS. CORBELLO: Yes, Your Honor.

MR. STONE: Yes, Your Honor. This is a business records affidavit for the exhibits that the Court did not admit because of hearsay. But I just

calling?

MR. KLOSTERBOER: Your Honor, the plaintiffs call Dr. Megan Mooney.

THE COURT: Okay. Dr. Mooney will be next, and we will go back up on YouTube.

(Witness sworn)

THE COURT: And while it can be difficult, I'll just remind you, like I have everybody else. I know it's difficult to be on the witness stand, and sometimes we try to speak lower, but try to project if you can.

THE WITNESS: Yes, Your Honor.

MEGAN MOONEY, Ph.D.,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KLOSTERBOER:

Q. Dr. Mooney, would you please state your full name?

A. Dr. Megan Mooney.

Q. And where do you reside?

A. In Houston.

Q. Are you a plaintiff in this case?

A. I am.

Q. What is your occupation?

A. I'm a licensed psychologist.

DePelchin Children's Center in Houston, followed by working at a trauma and grief center for children, and then my private practice.

Q. About how many years now have you been working with children and families?

A. If you include the years spent in graduate school, probably about 25.

Q. Where is your current practice located?

A. It's in Houston.

Q. Do you also have clients who live outside of Houston and Harris County?

A. I do.

Q. What services do you provide your clients in general?

A. In general, individual and family therapy. I'll supervise some assessments.

Q. Are some of your clients, in general, transgender?

A. Yes.

Q. As a part of your practice, do you sometimes diagnose clients with gender dysphoria?

A. Yes.

Q. And even though you're not testifying as an expert, just what is your understanding of what gender dysphoria means?

But I understand what you're saying, and we'll just have to take that question by question.

MS. CORBELLO: Thank you, Your Honor.

THE COURT: Thank you.

MR. KLOSTERBOER: Thank you, Your Honor.

Q. (By Mr. Klosterboer) As a matter of fact, in your practice, do you diagnose, sometimes client -- sorry.

In your practice, do you sometimes make medical referrals for transgender clients who you see who are experiencing gender dysphoria?

A. Yes.

Q. And based on your clinical experience, how are the decisions made with adolescents and their families about whether to seek medical treatment?

A. It is a thoughtful process, a careful process that involves both the assent of the child and the consent of the parent, in consultation with me and, as needed, medical providers.

Q. In your clinical practice and your personal experiences, what are some of the results that you have seen from transgender young people who are able to access medical care to treat gender dysphoria?

A. I have seen and it's well substantiated in research that there are significant positive mental

health benefits of children and adolescents who undergo gender-affirming treatments.

Q. Are you a member of any professional associations?

A. I'm a member of the Houston Psychological Association, the Texas Psychological Association, and the American Psychological Association.

Q. Have those associations taken any stances on medical care and access to it for transgender young people?

A. Both the Texas and American Psychological Associations have supported publicly gender-affirming medical care.

Q. As a licensed psychologist, are you a mandatory reporter under Texas law?

A. I am.

Q. To your knowledge, is everyone in the state of Texas a mandatory reporter?

A. Yes.

Q. What are --

A. Adults specifically. Excuse me.

Q. What are your obligations as a mandatory reporter?

A. If I have a reasonable suspicion of abuse or neglect of a child or a vulnerable adult, to make a

report to statewide intake for DFPS.

Q. And in your career working with young people and families, have you reported child abuse and neglect to DFPS before?

A. Yes.

Q. On February 22nd, when the Governor's letter and DFPS statement came out, what was your reaction?

A. I was very upset, very concerned for both myself as a mandated reporter, and for the children and families across the state of Texas that this would impact.

Q. Why were you upset?

A. It goes against medically necessary research about what gender-affirming care is. It goes against my ethical standards and the guidelines and practice set forth for me by my national association. It concerned me for my practice and what that meant, as well, for the families that I serve.

Q. What did you do after learning about the Governor's letter and DFPS statement after February 22nd -- on or after February 22nd?

A. Once I had also seen information put forth by ACLU Texas about this not being legally binding, I made sure to get that information out as widely as I could to other professionals, both in mental health circles and

educational circles.

Q. As you were sharing that information, did you tell people that you would not be complying with the Governor's order and DFPS's implementation?

MS. CORBELLO: Objection; hearsay.

MR. KLOSTERBOER: Your Honor, it's a statement of the witness herself. I asked if she told anyone.

MS. CORBELLO: That's hearsay, Your Honor.

THE COURT: It also is coming in for other purposes, not for the truth of the matter asserted, but as to -- for motive. So I'm going to overrule that objection.

A. So the question was did I --

Q. (By Mr. Klosterboer) I'll repeat the question.

A. Thank you.

Q. Before filing this lawsuit, did you tell people that you would not comply with the Governor's directive and DFPS implementation?

A. Yes.

Q. And you made that publicly known?

A. Yes.

Q. What are some of the consequences for you as a

mandatory reporter if you do not report what is eventually -- what could be found to be abuse or neglect under Texas law?

A. I mean, there's legal ramifications, as I understand it, and civilly and criminally, as well as a threat to my license and my professional well-being.

Q. Would there be any harms to your practice or professional reputation?

A. By reporting gender-affirming care specifically?

Q. No. The consequences of if you -- if you were not going to comply and the Court found that this type of medical care is abuse or neglect?

A. Oh, yes. Well, I would expect so given that I expected the loss of my license is one of the possible ramifications.

Q. In Governor Abbott's directive on February 22nd, he sent this letter not only -- or who all did he send his letter to?

A. He, I believe, sent it to the executive directors of a number of state agencies, including the one that oversees my license.

Q. And when he sent it -- well, I can refer to it.

MR. KLOSTERBOER: It's now in evidence,

Your Honor. It's Exhibit 2.

Q. (By Mr. Klosterboer) And what's the name of the agency that oversees psychologists in Texas?

A. It's the Behavioral Health Executive Council.

Q. And this letter was sent to the director of that council?

A. Yes, Mr. Darrell Spinks.

Q. What did you make of that when the Governor sent the letter to that executive director?

A. Again, it concerned me. I take it as a directive to mental health providers that we were expected to report this as potential abuse.

Q. And does the Texas Behavioral Health Executive Council, to your knowledge, have authority -- enforcement authority over psychologists in Texas?

A. Yes.

Q. Since filing this lawsuit, have you had any threats about your license?

A. Yes. I received an email that threatened my license directly and accused me of being a child abuser.

Q. When someone makes a threat against your license, are you able to always find out about it?

A. No.

Q. Why is that?

A. My understanding is that there is internal

processes within my licensing board by which they review it for a period of time first and determine whether there's merit to it, and so that process would occur without my knowledge.

Q. We talked about some of the possible penalties if you don't comply with the Governor's directive and DFPS implementation, but what would the harms be to you personally if you were required to report your clients and their families for abuse and neglect for receiving medical care for gender dysphoria?

A. The foundation of the therapeutic relationship is our confidentiality and privacy, and by nature, the families that I might see and that other mental health providers might see are charged with trust with our clients. And having to disclose what I consider medically necessary and professionally upheld standards of care as potential abuse would be devastating to my clients. It would ruin my opportunity to tell them what I hold confidential and true in sessions. I would expect it would have a direct impact on my business.

Q. Would being required to report your clients for receiving this type of medical care violate your ethical obligations?

A. I believe it would.

Q. Could it potentially result in you losing your

from other mental health professionals, as well as families, about the implication of both of these.

Q. And what other reactions have you seen in the community to this directive?

A. I would say generally speaking outright panic. Parents are terrified that CPS is going to come and question their children or take them away. Mental health professionals are scared that we are either violating our standards of the professional codes of conduct or in violation of the law, and it puts medical professionals that I work with all the time in a horrible position of not being able to provide care to children and families.

Q. And from being a member of the community and your personal knowledge, what effects of this have you seen among LGBTQ youth?

A. I would say that what I've seen has also held up again by research in reaction to similar moves, policy and legislatively, that we see direct concern and impacts on the mental health and well-being of young people. We see increased risk of suicidality, increased depression, increased anxiety. That is a common reaction I'm hearing currently, and it is what I've seen in similar situations.

Q. Have you also seen any reaction, personally,

and ongoing deprivation of their constitutional rights and the stigma attached to being the subject of child abuse investigations. Mary faces the potential loss of medically necessary care, which if abruptly discontinued can cause severe and irreparable physical and emotional harms, including anxiety, depression, and suicidality. If placed on the Child Abuse Registry, Jane Doe would lose the ability to practice her profession, and both Jane and John Doe would lose their ability to work with minors and volunteer in the community.

Absent intervention by this Court, Dr. Mooney could face civil suit by patients for failing to treat them in accordance with professional standards and loss of licensure for failing to follow her professional ethics if defendants' directives are enforced. If defendants' directives remain in effect, Dr. Mooney will be required to report her patients who are receiving medically necessary gender-affirming care, in contravention of the code of ethics governing her profession and the medical needs of her patients. If Dr. Mooney does not report her patients, she could face immediate criminal prosecution as set forth in the Governor's letter. Defendants' wrongful actions cannot be remedied by any award of damage or other adequate remedy at law.

GOVERNOR GREG ABBOTT

February 22, 2022

The Honorable Jaime Masters
Commissioner
Texas Department of Family and Protective Services
701 West 51st Street
Austin, Texas 78751

Dear Commissioner Masters:

Consistent with our correspondence in August 2021, the Office of the Attorney General (OAG) has now confirmed in the enclosed opinion that a number of so-called "sex change" procedures constitute child abuse under existing Texas law. Because the Texas Department of Family and Protective Services (DFPS) is responsible for protecting children from abuse, I hereby direct your agency to conduct a prompt and thorough investigation of any reported instances of these abusive procedures in the State of Texas.

As OAG Opinion No. KP-0401 makes clear, it is already against the law to subject Texas children to a wide variety of elective procedures for gender transitioning, including reassignment surgeries that can cause sterilization, mastectomies, removals of otherwise healthy body parts, and administration of puberty-blocking drugs or supraphysiologic doses of testosterone or estrogen. *See* TEX. FAM. CODE § 261.001(1)(A)–(D) (defining "abuse"). Texas law imposes reporting requirements upon all licensed professionals who have direct contact with children who may be subject to such abuse, including doctors, nurses, and teachers, and provides criminal penalties for failure to report such child abuse. *See id.* §§ 261.101(b), 261.109(a-1). There are similar reporting requirements and criminal penalties for members of the general public. *See id.* §§ 261.101(a), 261.109(a).

Texas law also imposes a duty on DFPS to investigate the parents of a child who is subjected to these abusive gender-transitioning procedures, and on other state agencies to investigate licensed facilities where such procedures may occur. *See* TEX. FAM. CODE § 261.301(a)–(b). To protect Texas children from abuse, DFPS and all other state agencies must follow the law as explained in OAG Opinion No. KP-0401.

Sincerely,

Greg Abbott
Governor

Statement on Governor's Letter/AG Opinion

In accordance with Governor Abbott's directive today to Commissioner Masters, we will follow Texas law as explained in Attorney General opinion KP-0401.
At this time, there are no pending investigations of child abuse involving the procedures described in that opinion. If any such allegations are reported to us, they will be investigated under existing policies of Child Protective Investigations.

Agenda for Leadership Meeting 2.24.2022

1. Random Moment Time Studies
   A. Meet our RMTS Coordinator for the Region, Monica Perez
   B. RMTS Communication Expectations- we must respond to Monica when she is reaching out. The worker will be the first contact and then she will within a few hours be following up with the supervisor and then a few hours with the PD and up the chain. Every RMTS that we complete is equivalent to $40k for our agency.
2. Specific Cases
   A. When you get a case that involves the specific allegation we talked about you need to immediately send an email to your PD, your PA, Lisa Guyton, and Gabina DeHoyoz for tracking and to possibly schedule a staffing. We want to be involved to help guide staff and provide assistance as we know these can be difficult.
   B. Any communication you have regarding these cases needs to be done in a Teams meeting, telephone call, or face to face. Do not send text messages or emails in regards to these specific cases.
   C. Our General Counsel for the agency is going to be working on disposition guidelines. We will be working closely with her in the beginning on dispositioning these specific cases.
   D. PA meeting discussion- specific workers? Worker V?
3. Worker V
   A. The audit has been approved and I am hopeful our Worker V position will be posted in the next week. If you have ideas how we can utilize this position in our region please let your PD and PA know.
4. Master Investigator Assistance
   A. Good News in April we will be getting 30 MI's deployed to our region to assist us in case resolution.
   B. They will be paired one on one with our high workloads.
   C. They will be in our region for approximately 3 months.
   D. PD's, PA's and I will meet weekly to discuss progress being made.
   E. Weekly meetings will start in March for planning.
   F. This is a great opportunity for us to really get our region back in a good place. We need to really take full advantage of it.

The caseworker submits the investigation for administrative closure as soon as possible, but no later than seven calendar days, after making the determination.

2314 Allegations Were Already Investigated

CPS October 2020

The caseworker submits an investigation for administrative closure if, at any point in the investigation, the caseworker determines that both of the following apply:

- CPI has already investigated or addressed the same incidents and allegations in a previous case that was closed prior to the date of the new intake.
- There are no new incidents or new allegations in the current case.

DFPS Rules, 40 TAC §707.489(b)(1)(a)

The caseworker does the following:

- Documents the case number of the closed case and explains how information in the new report was addressed in the closed investigation.
- Submits the investigation for administrative closure as soon as possible, but no later than seven calendar days, after making the determination.
- Merges the case with the previous case.

2315 Investigation Is Open for More Than 60 Days

CPS October 2020

If an investigation has been open for more than 60 days from the date of the intake, the supervisor administratively closes the investigation if all the following criteria are met:

- No previous reports of abuse or neglect involve any principal in the investigation.
- DFPS has not received any more reports of abuse or neglect of any alleged victim in the investigation. (A new report does not count, for the purpose of this bullet point, if it involves the same incidents and allegations already under investigation.)
- The supervisor determines, after contacting a professional or another credible source, that the child will be safe without further investigation, response, services, or help.
- CPI determines that no abuse or neglect occurred.
- Closing the case would not put the child at risk of harm.
- All the following apply:
  - The caseworker has interviewed and examined all alleged victims.
  - The final Safety Assessment decision is *Safe*.
  - The Risk Assessment score is *Low* or *Moderate*.

The program director reviews the case and documents the approval through the secondary approval process in IMPACT.

2316 Types of Closure: Comparison Table

CPS September 2019

GOVERNOR GREG ABBOTT

February 22, 2022

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Commissioner
Texas Department of Family and Protective Services
701 West 51st Street
Austin, Texas 78751

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Consistent with our correspondence in August 2021, the Office of the Attorney General (OAG) has now confirmed in the enclosed opinion that a number of so-called "sex change" procedures constitute child abuse under existing Texas law. Because the Texas Department of Family and Protective Services (DFPS) is responsible for protecting children from abuse, I hereby direct your agency to conduct a prompt and thorough investigation of any reported instances of these abusive procedures in the State of Texas.

As OAG Opinion No. KP-0401 makes clear, it is already against the law to subject Texas children to a wide variety of elective procedures for gender transitioning, including reassignment surgeries that can cause sterilization, mastectomies, removals of otherwise healthy body parts, and administration of puberty-blocking drugs or supraphysiologic doses of testosterone or estrogen. *See* TEX. FAM. CODE § 261.001(1)(A)–(D) (defining "abuse"). Texas law imposes reporting requirements upon all licensed professionals who have direct contact with children who may be subject to such abuse, including doctors, nurses, and teachers, and provides criminal penalties for failure to report such child abuse. *See id.* §§ 261.101(b), 261.109(a-1). There are similar reporting requirements and criminal penalties for members of the general public. *See id.* §§ 261.101(a), 261.109(a).

Texas law also imposes a duty on DFPS to investigate the parents of a child who is subjected to these abusive gender-transitioning procedures, and on other state agencies to investigate licensed facilities where such procedures may occur. *See* TEX. FAM. CODE § 261.301(a)–(b). To protect Texas children from abuse, DFPS and all other state agencies must follow the law as explained in OAG Opinion No. KP-0401.

Sincerely,

Greg Abbott

Greg Abbott
Governor

Statement on Governor's Letter/AG Opinion

In accordance with Governor Abbott's directive today to Commissioner Masters, we will follow Texas law as explained in Attorney General opinion KP-0401.
At this time, there are no pending investigations of child abuse involving the procedures described in that opinion. If any such allegations are reported to us, they will be investigated under existing policies of Child Protective Investigations.

Agenda for Leadership Meeting 2.24.2022

1. Random Moment Time Studies
   A. Meet our RMTS Coordinator for the Region, Monica Perez
   B. RMTS Communication Expectations- we must respond to Monica when she is reaching out. The worker will be the first contact and then she will within a few hours be following up with the supervisor and then a few hours with the PD and up the chain. Every RMTS that we complete is equivalent to $40k for our agency.
2. Specific Cases
   A. When you get a case that involves the specific allegation we talked about you need to immediately send an email to your PD, your PA, Lisa Guyton, and Gabina DeHoyoz for tracking and to possibly schedule a staffing. We want to be involved to help guide staff and provide assistance as we know these can be difficult.
   B. Any communication you have regarding these cases needs to be done in a Teams meeting, telephone call, or face to face. Do not send text messages or emails in regards to these specific cases.
   C. Our General Counsel for the agency is going to be working on disposition guidelines. We will be working closely with her in the beginning on dispositioning these specific cases.
   D. PA meeting discussion- specific workers? Worker V?
3. Worker V
   A. The audit has been approved and I am hopeful our Worker V position will be posted in the next week. If you have ideas how we can utilize this position in our region please let your PD and PA know.
4. Master Investigator Assistance
   A. Good News in April we will be getting 30 MI's deployed to our region to assist us in case resolution.
   B. They will be paired one on one with our high workloads.
   C. They will be in our region for approximately 3 months.
   D. PD's, PA's and I will meet weekly to discuss progress being made.
   E. Weekly meetings will start in March for planning.
   F. This is a great opportunity for us to really get our region back in a good place. We need to really take full advantage of it.

PLX 17

Texas Department of Family and Protective Services

COMMISSIONER
Jaime Masters

Wanda Roe
[redacted]

Mailing Date: 07/26/2022

Re: Case# [redacted]5520; Notice of Findings of CPI Investigation

Dear Wanda Roe :

The Department of Family and Protective Services (DFPS) has completed its investigation of alleged abuse or neglect reported on 02/23/2022 involving one or more children in your family and made the following findings:

Alleged Perpetrator	*Alleged Type of Abuse or Neglect*	*Alleged Victim*	*Finding*
Wanda Roe	Medical Neglect	Tommy Roe	Ruled Out
Wanda Roe	Physical Abuse	Tommy Roe	Ruled Out

This investigation is now closed and there will be no further agency involvement with your family unless we receive another report of abuse or neglect, which, by law, we would need to investigate.

How Findings are Determined.

- A finding of "**Ruled Out**" means that, based on the available information, it was reasonable to conclude that the alleged abuse or neglect did not occur.

How Certain Types of Abuse or Neglect are Defined.

Medical Neglect includes the following acts or omissions by a person:

- failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child.

Physical Abuse includes the following acts or omissions by a person:

- physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm; or
- failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child; or

- the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical injury to a child; or
- causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code.

Right to Request Records. You have the right to request a copy of the investigation records. The records will be redacted to remove the identity of the person who reported the alleged abuse or neglect and any other information which you are not entitled by law to receive. Release of records may be delayed or denied if the release would interfere with an ongoing criminal investigation or for other valid legal reason. You may be charged a fee for copies of these records. You may contact me to obtain a copy of the form needed to request these records or you may obtain a copy of this form at:
http://www.dfps.state.tx.us/Child_Protection?About_Child_Protective_Services/faqcpsrecord.asp

Right to Request Role Removal. Since all the allegations against either you or any child in your family have been "ruled out", you have the right to request that we remove information regarding yourself in the role of alleged perpetrator(s) in this investigation. If you decide to request removal of role information, you must complete and submit the enclosed form(s) within 45 calendar days of the "mailing date" listed at the top of this letter.

If you have any questions or concerns regarding the investigation or any of the information discussed in this letter, you may contact me at the address or phone number provided below.

[redacted]

CAUSE NO. D-1-GN-22-002569

PFLAG, INC.; MIRABEL VOE, individually and as parent and next friend of ANTONIO VOE, a minor; WANDA ROE, individually and as parent and next friend of TOMMY ROE, a minor; ADAM BRIGGLE and AMBER BRIGGLE, individually and as parents and next friends of M.B., a minor, Plaintiffs, v. GREG ABBOTT, sued in his official capacity as Governor of the State of Texas; JAIME MASTERS, sued in her official capacity as Commissioner of the Texas Department of Family and Protective Services; and the TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES Defendants.	§ § § § § § § § § § § § § § § § § § §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 459th JUDICIAL DISTRICT

ORDER GRANTING PFLAG, INC.'S AND THE BRIGGLE PLAINTIFFS' APPLICATION FOR TEMPORARY INJUCTION

On July 6, 2022, the Court considered the application by Plaintiffs PFLAG, Inc. ("PFLAG"); Mirabel Voe, individually and as parent and next friend of Antonio Voe, a minor; Wanda Roe, individually and as parent and next friend of Tommy Roe; and, Adam Briggle and Amber Briggle, individually and as parents and next friends of M.B., a minor, (collectively, "Plaintiffs") for a Temporary Injunction (the "Application"), as found in Plaintiffs' Original Petition, Application for Temporary Restraining Order, Temporary and Permanent Injunction, and Request for Declaratory Relief ("Petition") filed against Defendants Greg Abbott, in his official capacity as Governor of the State of Texas; Jaime Masters, in her official capacity as

Commissioner of the Texas Department of Family and Protective Services ("Commissioner Masters"); and the Texas Department of Family and Protective Services ("DFPS") (collectively, "Defendants").

Based on the facts set forth in Plaintiffs' Petition, the declarations attached thereto, the testimony, the evidence, and the argument of counsel presented during the July 6, 2022 hearing on Plaintiffs' Application, this Court previously found sufficient cause to enter a Temporary Injunction against Commissioner Masters and DFPS on behalf of the Voe and Roe Plaintiffs.

During the last two months, the Court has considered the associational standing of PFLAG, as well as the ripeness of the Briggles' claims. Having now considered the applicable law, as well as the testimony, the evidence, and the arguments and briefing of counsel, this Court finds that PFLAG has standing, and the Briggle Plaintiffs claims' are ripe, in order to pursue this matter to final trial. The Court further finds sufficient cause to enter a Temporary Injunction against Commissioner Masters and DFPS on behalf of PFLAG and the Briggle Plaintiffs.

All Plaintiffs state a valid cause of action against Commissioner Masters and DFPS and have a probable right to the declaratory and permanent injunctive relief they seek. For the reasons detailed in Plaintiffs' Application and accompanying evidence, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits. Commissioner Masters and DFPS implemented a new rule expanding the definition of "child abuse" to presumptively treat the provision of gender-affirming medical care, including puberty blockers and hormone therapy, as necessitating an investigation ("DPFS Rule"). The DFPS Rule operationalized Governor Abbott's February 22, 2022, letter to Commissioner Masters ("Governor Abbott's Directive") and Attorney General Paxton's Opinion No. KP-0401 ("Attorney General Paxton's Opinion"), which DFPS announced in its statement on February 22, 2022. The DFPS Rule was adopted without following

the necessary procedures under the APA, is contrary to DFPS's enabling statute, is beyond the authority provided to the Commissioner and DFPS, and is otherwise contrary to law, as alleged in Plaintiffs' Petition.

The Court finds this new rule was improperly promulgated by Defendants and interferes with or impairs – or threatens to interfere with or impair – the legal rights and privileges of PFLAG members and their families, as well as the legal rights and privileges of the Briggle Plaintiffs, as well as the other Plaintiffs in this case. *See* Tex. Gov't Code sec. 2001.038(a).

The Court further finds that an allegation about the provision of gender-affirming medical care, such as puberty blockers and hormone therapy, without more, was not investigated as child abuse by DFPS until after February 22, 2022. The DFPS Rule changed the *status quo* for transgender children and their families. The DFPS Rule was given the effect of a new law or new agency rule, despite no new legislation, regulation, or even valid agency policy.

It clearly appears to the Court that unless Commissioner Masters and DFPS are immediately enjoined from enforcing the DFPS Rule operationalizing Governor Abbott's Directive and Attorney General Paxton's Opinion, members of Plaintiff PFLAG, including the Voe, Roe, and Briggle families (collectively, "Plaintiff Families"), will suffer probable, imminent, and irreparable injury in the interim. Such injury, which cannot be remedied by an award of damages or other adequate remedy at law, includes, but is not limited to: being subjected to an unlawful and unwarranted child abuse investigation; intrusion and interference with parental decision-making; the deprivation or disruption of medically necessary care for the parents' adolescent children; the chilling of the exercise of the right of Texas parents to make medical decisions for their children relying upon the advice and recommendation of their health care providers acting consistent with prevailing medical guidelines; intrusion into the relationship

between patients and their health care providers; gross invasions of privacy in the home and school, and the resulting trauma felt by parents, siblings, and other household members; outing an adolescent as transgender; adverse effects on grades and participation in school activities; fear and anxiety associated with the threat of having a child removed from the home; increased incidence of depression and risk of self-harm or suicide; having to uproot their lives and their families to seek medically necessary care in another state; being placed on the child abuse registry and the consequences that result therefrom; and criminal prosecution and the threat thereof.

The Temporary Injunction being entered by the Court today maintains the status quo prior to February 22, 2022, and should remain in effect while this Court, and potentially the Court of Appeals, and the Supreme Court of Texas, examine the parties' merits and jurisdictional arguments.

IT IS THEREFORE ORDERED that, until all issues in this lawsuit are finally and fully determined, Defendants Commissioner Masters and DFPS are immediately enjoined and restrained from implementing or enforcing the DFPS Rule, and from implementing Governor Abbott's Directive and the Attorney General's Opinion, with regard to members of Plaintiff PFLAG, including but not limited to Plaintiff Families, and that such restraint encompasses but is not limited to:

(1) investigating members of PFLAG, including but not limited to Plaintiff Families, for possible child abuse or neglect ***solely*** based on allegations that they have a minor child who is gender transitioning or alleged to be receiving or being prescribed medical treatment for gender dysphoria, and

(2) taking any actions, including investigatory or adverse actions, against Plaintiff Families and other members of PFLAG with open investigations solely based on allegations that they have

a child who is transgender, gender nonconforming, gender transitioning, or receiving or being prescribed medical treatment for gender dysphoria, except that DFPS shall have the ability to administratively close or issue a "ruled out" disposition in any of these open investigations based on the information DFPS has to date.

IT IS FURTHER ORDERED that in furtherance of the above, Defendants Commissioner Masters, DFPS and its employees, agents, contractors, and attorneys, as well as any individuals or entities in active concert with them, directly or indirectly under their control, or participating with them, who receive actual notice of the Order by personal service or otherwise, and who also receive actual notice that the person(s) reported for suspected child abuse or neglect solely based on allegations that the person(s) have a minor child who is gender transitioning, or receiving or being prescribed gender-affirming medical treatment, including puberty blockers and/or hormone therapy, is a member of Plaintiff PFLAG, shall immediately cease any intake, investigation, or assessment, including ceasing any further contact, communications, or other action related to processing such allegations. As specified above, DFPS shall have the ability to administratively close or issue a "ruled out" disposition in any of these open investigations based on the information DFPS has to date.

IT IS FURTHER ORDERED that a trial on the merits of this case is preferentially set before the Honorable Amy Clark Meachum, Judge of the 201st Judicial District Court of Travis County, Texas on June 12, 2023, at 9:00 a.m. o'clock in the courtroom of the 201st Judicial District of Travis County, Texas. The Clerk of the Court is hereby directed to issue a show cause notice to Defendants to appear at the trial.

The Clerk of the Court shall forthwith issue a temporary injunction in conformity with the laws and terms of this Order.

Plaintiffs have previously executed with the Clerk a bond in conformity with the law in the amount of $100 dollars, and that bond amount will remain adequate and effective for this Temporary Injunction.

IT IS FURTHER ORDERED that this Order shall not expire until judgment in this case is entered or this Case is otherwise dismissed by the Court.

Signed on September 16th, 2022, at 3:00 p.m. in Travis County, Texas.

JUDGE AMY CLARK MEACHUM

DISTRICT COURT OF TRAVIS COUNTY TEXAS

NO. D-1-GN-22-002569

PFLAG, INC., ET AL., *Plaintiffs*,	**IN THE DISTRICT COURT OF**
v.	**TRAVIS COUNTY, TEXAS**
GREG ABBOTT, ET AL., *Defendants*.	**459th JUDICIAL DISTRICT**

DEFENDANTS' NOTICE OF ACCELERATED INTERLOCUTORY APPEAL

Defendants, Jaime Masters in her official capacity of Commissioner of the Department of Family and Protective Services ("Commissioner Masters"), and the Texas Department of Family and Protective Services ("DFPS") (collectively, "Defendants") appeal the Court's interlocutory order of September 16, 2022 granting Plaintiffs' PFLAG and Briggle's application for a temporary injunction.

Defendants are entitled to an interlocutory appeal pursuant to Civil Practice and Remedies Code section 51.014(a)(4), which allows for an immediate appeal from an order that grants a temporary injunction. Defendants appeal to the Third Court of Appeals. This is an accelerated appeal as provided by Texas Rule of Appellate Procedure 28.1. This is not a parental termination or child protection case, as defined in Rule 28.4.

Pursuant to Texas Civil Practice and Remedies Code § 51.014(b), all further proceedings in this court are stayed pending resolution of Defendants' appeal. Upon filing of this instrument, the September 16, 2022 Order Granting Plaintiffs' PFLAG and Briggle's Application for Temporary Injunction is superseded pursuant to Texas Civil Practice and Remedies Code section 6.001(b) and Texas Rule of Appellate Procedure 29.1(b). Pursuant to section 6.001, as

governmental officers/entities, Defendants are not required to file a supersedeas bond for court costs. Defendants' appeal is therefore perfected upon the filing of the notice of appeal.

Respectfully Submitted.

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Attorney General of Texas

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First Assistant Attorney General

GRANT DORFMAN
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I, **COURTNEY CORBELLO**, Assistant Attorney General of Texas, hereby certify that a true and correct copy of the foregoing document has been served electronically through the electronic-filing manager in compliance with TRCP 21a on September 16, 2022 to:

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Andre Segura

Brandt T. Roessler
BAKER BOTTS L.L.P.

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/s/ Courtney Corbello
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Cause No. D-1-GN-22-002569

PFLAG, INC. ET AL., *Plaintiffs,*	**IN THE DISTRICT COURT OF**
v.	**TRAVIS COUNTY, TEXAS**
GREG ABBOTT, ET AL., *Defendants*	**459TH JUDICIAL DISTRICT**

PLAINTIFFS' RESPONSE TO DEFENDANTS' ADVISORY

Plaintiffs PFLAG Inc. ("PFLAG"), Mirabel Voe, individually and as parent and next friend of Antonio Voe, a minor; Wanda Roe, individually and as parent and next friend of Tommy Roe; and Adam Briggle and Amber Briggle, individually and as parents and next friends of M.B., a minor, (collectively, "Plaintiffs"), hereby submit this response to the Advisory filed by Defendants on August 15, 2022 ("Defendants' Advisory").[1]

As evidenced by the Notice of Findings of CPI Investigation (the "Roe Notice"), attached to Defendants' Advisory as **Exhibit A**, DFPS's investigation of the Roe family has been "ruled out," consistent with this Court's July 8, 2022 order granting, in part, Plaintiffs' motion for temporary injunction (the "Temporary Injunction Order"). The Temporary Injunction Order enjoined Defendants Commissioner Masters and DFPS from "taking any action, including investigatory or adverse actions, against Plaintiffs VOE and ROE and their minor children, with open investigations based solely on allegations" of the provision of gender affirming care, "except that DFPS shall have the ability to administratively close or issue a 'ruled out' disposition in any

[1] As of the time of this filing, Plaintiffs' Application for Temporary Injunction with respect to Plaintiffs PFLAG and the Briggles remains pending before the Court. Defendants erroneously state in Defendants' Advisory that "[t]his Court declined to grant a temporary injunction to PFLAG and the Briggles." Defendants' Advisory at 2.

of these open investigations based on the information DFPS has to date." Temporary Injunction Order at 4. Pursuant to the Temporary Injunction Order, DFPS issued the Roe Notice on July 26, 2022, and alerted counsel for the Roe Plaintiffs of the same on August 8, 2022.[2]

Contrary to Defendants' claims, the "ruled out" status of the DFPS investigations does not obviate the need for an injunction against Commissioner Masters and DFPS with respect to the Roe Plaintiffs, nor does it diminish the need for injunctive relief on behalf of Plaintiffs PFLAG and the Briggles. Defendants' suggestion that the harm to the Roes has subsided solely because the investigation has been "ruled out" continues to miss the point. Plaintiffs are not litigating the particulars of each of their investigations, but instead the unlawfully promulgated DFPS Rule which continues to pose a threat of imminent and irreparable harm to the Roes, the Briggles, the Voes, and PFLAG families across the state who seek to provide medically necessary gender-affirming care to their adolescents with gender dysphoria. As set forth in the Roe Notice, the current "ruled out" status does not prevent the opening of further investigations, including investigations related to the same conduct, against the Roe family. The Roe Notice specifies that "[t]his investigation is now closed and there will be no further agency involvement with your family *unless* we receive another report of abuse or neglect, which, *by law, we would need to investigate*." Defendants' Advisory at 5 (emphasis added). The Roe Notice further states: "THE FACT THAT YOUR ROLE AS AN ALLEGED PERPETRATOR IN THIS PARTICULAR INVESTIGATION HAS BEEN RULED OUT OR THAT YOU REQUEST REMOVAL OF THIS ROLE INFORMATION DOES NOT PRECLUDE FURTHER INVOLVEMENT WITH YOUR FAMILY BY DFPS, INCLUDING THE PROVISION OF SERVICES, COURT

[2] As of the time of this filing, the DFPS investigation involving Plaintiff Voe family remains ongoing.

INVOLVEMENT, OR EVEN TERMINATION OF PARENTAL RIGHTS." Defendants' Advisory at 7 (emphasis in original).

As a general matter, there is no language in the Roe Notice that would prevent DFPS from investigating the same conduct that it alleges necessitated the first investigation. Additionally, DFPS policies do not prohibit investigations into allegations against the same parent or guardian that are substantially similar to allegations that have been investigated before. Rather, the fact that a parent or guardian has been previously investigated prevents that person from being eligible for an "abbreviated rule out" disposition under established DFPS policy.[3] This means that if new allegations are reported against the Roes, the Briggles, or other PFLAG members whose cases have previously been "ruled out," those families could face a more extended and intrusive investigation in the future.

Indeed, if the DFPS Rule establishing a presumption that certain treatments for gender dysphoria are categorically "abuse" is not enjoined as to the Plaintiffs, DFPS would be required to investigate further allegations that the Plaintiffs are providing their adolescents with gender affirming care. As evidenced by the still ongoing investigation of the Voe Plaintiff, DFPS is not merely "ruling out" complaints that allege the provision of gender affirming care to the subject children, and thus there remains an ever-present risk, based upon DFPS's own conduct and policies, that DFPS may open a new investigation into any Plaintiff family upon receiving any complaint of gender affirming care. It is the DFPS Rule itself, and not the specifics of any

[3] *See* Child Protective Services Handbook Section 2291.1 - Abbreviated Ruled Out (Oct. 2020), https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_2200.asp#CPS_2291_1 (stating that cases are only eligible for an abbreviated rule out if "No previous investigations or alternative response cases involve any principal in the investigation.").

investigation, that causes the imminent and irreparable harm to the Plaintiffs and therefore the injunctive relief granted by this Court remains necessary.

Even if DFPS stipulated that it would never investigate Plaintiffs for the provision of medically necessary health care for the treatment of gender dysphoria (something that the agency has *not* done), failing to enjoin the unlawful DFPS Rule still causes Plaintiffs imminent and irreparable harm because it threatens their ability to seek medically necessary health care. The care that Plaintiffs seek for their adolescent children would still be subject to a *per se* rule of abuse under the DFPS Rule, which could force any doctor, therapist, or other professional that Plaintiffs encounter to report them or face civil and criminal penalties. These chilling effects upon a family's or child's ability to seek gender affirming care cause immediate, lasting harm. The unlawful DFPS Rule therefore threatens Plaintiffs' adolescents' access to medical care and puts anyone in their family or life—including grandparents, older siblings, and teachers—at risk of investigation or penalties for failing to report abuse.

Given the clear language of the "ruled out" letter and DFPS's own rules and policies, Plaintiffs do not believe the Roe Notice (or any similar "ruled out" notice) warrants any modification to the Temporary Injunction already issued by this Court. Plaintiffs also maintain that temporary injunctive relief is necessary for all Plaintiffs in this case to prevent DFPS and Commissioner Masters from implementing and enforcing an unlawful rule that establishes a presumption of abuse for medically necessary treatment for gender dysphoria. Plaintiffs will endeavor to inform this Court of any further developments regarding any of the Plaintiffs in this matter.

PFLAG, INC, *et al.,*	§	
	§	
Plaintiffs,	§	
	§	**IN THE DISTRICT COURT OF**
v.	§	**TRAVIS COUNTY, TEXAS**
	§	**459th JUDICIAL DISTRICT**
	§	
GREG ABBOTT, *et al.*,	§	
	§	
Defendants.	§	

DECLARATION OF CAROL KOE

I, Carol Koe,[1] hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am a member of PFLAG and reside in Texas with my son, Steve Koe.

3. My son is 13 years old. I love and support him and do everything I can to ensure he is happy and healthy.

4. Steve is in the 8th grade. He is very smart and does well in math and in English. He loves to read, draw, and listen to music. He also loves mechanics, and he likes to work with his hands by taking things apart and putting them back together. Steve works on cars with his dad. He loves cooking and baking and uses these as coping mechanisms. He also likes football and plays as both an offensive and defensive lineman.

[1] Carol Koe and Steve Koe are pseudonyms. My son and I are proceeding under pseudonyms to protect our right to privacy and ourselves from discrimination, harassment, and violence for seeking to protect our rights.

5. Steve is transgender. When he was born, he was assigned the sex of "female" at birth though he is a boy.

6. We are native Texans, and we have Mexican heritage on both sides of the family, with some ancestors living in our area before it was part of Texas. Steve's father is very supportive of him, and we have a large extended family and they have been very supportive of Steve as well. We have lived in the same community for years.

7. A few years ago, Steve began to suffer from depression, and I noticed that he was not himself. I found a therapist for my son to receive treatment for his mental health. After a year of therapy, Steve's mental health continued to deteriorate, and he attempted suicide. He was admitted to a local behavioral health treatment center and treated.

8. Right before this happened, Steve told me he is transgender. He shared with me that it was so difficult to consider coming out as transgender that taking his own life seemed like the only option. While at the treatment center, he also spoke with a physician who recommended he see a gender affirming therapist.

9. After being released, I sought out a gender affirming therapist and Steve's pediatrician recommended an endocrinologist.

10. My son's two therapists diagnosed him with gender dysphoria, and his endocrinologist and pediatrician recommended necessary medical treatment for Steve, including puberty blockers and hormones.

11. The effects of affirming who my son is have been remarkable. After facing so much depression and distress, he is finally himself again. During that difficult time, Steve had to be homeschooled, but he was finally able to return to public school. He enjoys playing football and

has been having a great school year. I have seen him make friends and laugh again. He is finally comfortable with himself and happy.

12. To further support my son, in June of 2022, we decided to pursue a legal name and gender marker change. In support of that petition, I filed paperwork in our home county indicating that medical professionals had recommended my son receive gender affirming medical care.

13. On the morning of August 30, 2022, my son was pulled out of class and called to the school office. He did not know why he was being asked out of class and worried that there was an emergency or something bad was happening to someone in our family. At the school office, he was put in a conference room with an investigator with the Texas Department of Family and Protective Services ("DFPS"). When the DFPS investigator contacted the school, she referred to my son by his birth name and sex assigned at birth.

14. My son had no idea why he was being interviewed, but the investigator told him that I was being investigated for "child abuse." For nearly an hour, she asked my son personal questions about himself, his most intimate thoughts, his family, his diagnosis, his medical history, and current health care—all the while keeping him separated from his classmates and keeping him out of class. At one point, she asked him if he was taking any "performance enhancing drugs." The investigator also asked Steve about his suicide attempt and told him that she would be coming to visit me and Steve's father to continue her investigation. The investigator did not tell Steve whether she was recording the conversation and Steve does not know if a recording was made.

15. As soon as the interview was over, Steve was so upset that he could not go back to class. He called me immediately and told me that the DFPS investigator was on her way to my apartment. Steve told me he had a "melt down" and became very fearful and upset that something might happen to me or his dad because of who he is. Steve sought the assistance of a guidance

counselor at school and sat by himself in the school library until I could pick him up. He was so overwhelmed by what happened he could not go to class and has now missed class for three other days because of the stress and anxiety of the DFPS investigator questioning him, myself, and his father.

16. When the investigator arrived at my apartment, she first told me I was being investigated for "child abuse" for seeking testosterone treatment for my child and that it was "illegal" to do so. I told her that there was no such law in Texas and that I had only sought medically necessary care that was in the best interest of my child. She asked me similarly probing questions to the ones she asked my son about medical treatment, including which doctors he visits and what treatment he receives. The investigator asked me to sign medical release forms for Steve's medical records, which I did. I have since hired attorneys to represent myself and my son. I revoked the medical release forms on Friday, September 2, 2022 and learned that my son's doctors had almost given all of his medical records to DFPS.

17. After meeting with me for about 45 minutes, the investigator went directly to Steve's father's place of work and interviewed him for about the same amount of time, asking him similar personal questions.

18. Since this investigation started, Steve has had frequent panic attacks. This investigation has substantially disrupted my son's education. Ever since being questioned by the DFPS investigator, Steve has been unable to fully return to class. The trauma of the investigation and returning to the location where he was interviewed have caused him to experience anxiety attacks and required me to pick him up early from school every day for three days after the interview. This is extremely upsetting given he has been doing so well in school this year both

socially and in his classes. The trauma this investigation has added to my son's life is unwarranted and unnecessary.

19. Steve's peers at school have also noticed his absences and asked questions about why Steve was so abruptly pulled out of class. This investigation has exposed my son to scrutiny at school and Steve now feels less safe in a learning environment where he used to thrive. I want what is best for my son and do not want him to be denied medically necessary treatment or targeted or investigated simply for being who he is.

20. On September 6, the DFPS investigator told my attorney in writing that she "was not referring to a law" regarding gender-affirming care when she interviewed me but was "asking [Carol Koe] if she was aware of the new regulations and practices recently passed." The investigator clarified that the allegation against me is for "physical abuse" relating to gender-affirming care.

21. I worry that this same experience could happen to other Texas families. My son has been doing so well and has so much love and support around him. This intrusion into our lives, our privacy, and my right as a parent to direct my child's upbringing has been disruptive and traumatic and I don't want other Texas families to go through a traumatic experience like ours. I worry that other parents will hesitate to seek out the care and support that their transgender children may need out of fear that someone will report them to DFPS if the threat for baseless investigations remains.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of September 2022 in Texas.

DISTRICT COURT OF TRAVIS COUNTY TEXAS

DocuSigned by:
Carol Koe
08403A59049F447...
Carol Koe

PFLAG, INC, *et al.,*	§	**IN THE DISTRICT COURT OF**
	§	
Plaintiffs,	§	
	§	**TRAVIS COUNTY, TEXAS**
v.	§	**459th JUDICIAL DISTRICT**
	§	
	§	
GREG ABBOTT, *et al.*,	§	
	§	
Defendants.	§	

SUPPLEMENTAL DECLARATION OF SAMANTHA POE

I, Samantha Poe,[1] hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and fully capable of making this declaration. I have personal knowledge of the facts set forth in this declaration, they are true and correct, and I would testify competently to those facts if called to do so.

2. I am a member of PFLAG and mother of an adolescent, Whitley, who is currently exploring the idea of transitioning and to whom I will refer using they/them pronouns.

3. We both reside in Texas along with my older child.

4. Whitley, who recently turned 14 years old and was assigned the sex of "male" at birth, is in midst of exploring what a social transition feels like. I love and support them and only want what is best for them.

5. Whitley is not receiving medical care related to gender identity.

6. I submitted a declaration in support of Plaintiffs' original petition in this matter. In my June 6, 2022, declaration, I described my contact with the Texas Department of Family and

[1] Samantha Poe and Whitley are pseudonyms. My daughter and I are proceeding under pseudonyms to protect our right to privacy and ourselves from discrimination, harassment, and violence for seeking to protect our rights.

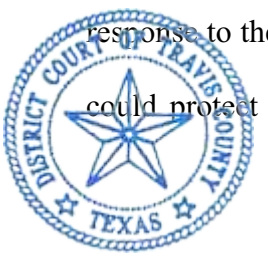
Protective Services ("DFPS") as the agency investigated me for "child abuse" after receiving a report that I provide gender affirming health care to my child. I also described the resulting fears, anxiety, and disruption to my life and my family caused by the investigation.

7. As of today's date, my DFPS case remains open, and I was recently contacted by DFPS with new requests of me and my child. These requests have caused further harm as DFPS's investigation against me enters its seventh month.

8. I was first contacted by a DFPS Child Protective Services ("CPS") investigator in late February 2022. Although I provided a letter to CPS from my child's psychiatrist in early March 2022 confirming to DFPS that my child was not receiving any kind of medical care related to their gender identity, DFPS has not closed my case.

9. On August 25, my attorney spoke with someone from DFPS's Office of General Counsel who made a new request that I consent for them to interview my child or, in the alternative, to provide proof Whitley is "well-adjusted." These new requirements follow multiple requests by my attorney over the past few months for DFPS to close my case without additional requirements given the nature of the allegation and the fact that my child is not receiving medical care related to their gender identity.

10. These new requests follow numerous other attempts to unnecessarily intrude into my and my child's privacy and interfere with my rights as a parent. At the outset of the investigation, DFPS requested an interview with my family. I did not consent due to the baseless nature of the allegation and my desire to protect my child, who, in early 2021, tried to take their own life due to past trauma, challenges around identity exploration, and societal expectations and response to their gender identity. I assumed that the investigation would be closed quickly, and I could protect my child from additional stress and worry about what might happen to me and



whether they would be removed from my care. Significantly, therapists working with my child warned me that having contact with DFPS and learning I was being investigated may destabilize and cause harm to Whitley, who, immediately prior to Governor Greg Abbott's Directive and Attorney General Ken Paxton's opinion regarding gender affirming health care for transgender minors, had been doing very well.

11. After I refused the request for a family interview, DFPS asked, alternatively, to do a "walk through" of my home. Again, I did not consent.

12. Shortly after these initial requests, I provided the March 2022 letter confirming my child was not receiving medical care related to their gender identity. After receiving the letter, a CPS investigator, without my prior knowledge, contacted a teacher at Whitley's middle school to ask about Whitley. The teacher told me they were contacted and that they told the investigator Whitley is well cared for and Whitley's every need is being met. My attorney contacted DFPS to ask about the status of the investigation on March 15, 16, and 22, April 4, and May 16 and 19 and received a "nothing to update" or "the matter needs to be staffed with a supervisor" in response.

13. In my mind there was no question that the case would then be closed, but after the Texas Supreme Court limited the temporary injunction in *Doe v. Abbott* to the plaintiffs in that case, on May 19, 2022, a CPS investigator contacted my attorney. The investigator asked me to schedule a "viewing" of Whitley by a CPS worker. I refused.

14. After the July 6 temporary injunction hearing in this case, my attorney contacted DFPS on July 9 and August 16 and asked them to close the investigation but did not receive a response to the July request. On August 21, she was contacted via email by an attorney from DFPS's Office of General Counsel and arranged a phone call for August 25. That person asked that I consent for someone from DFPS to see my child or for some third party to confirm they are

"well adjusted." These requests come six months after confirmation my child is not receiving medical care and independent confirmation by one of Whitley's teachers that they were doing well.

15. As I shared in my June 6 declaration, I had not informed Whitley about the DFPS investigation because it is wholly unwarranted, and I wanted to protect them. I felt conflicted and like I was in an impossible bind given I was betraying Whitley's trust by withholding information.

16. With the investigation still looming and school about to start, I was concerned that Whitley might hear from someone at school about the investigation, CPS might contact them at school, or DFPS would again reach out to a teacher or principal. I wanted to make sure that if Whitley heard about the investigation, that they heard it from me first. On the advice of therapists and friends, I decided it best to be completely honest with Whitley given there was no end in sight to the investigation and it had been going on for so long.

17. After I told Whitley, they seemed worried but was, at least, encouraged by the fact that there are people helping our family stop the investigation. Very unfortunately, however, my initial concern (and one shared by Whitley's therapist) about harm to Whitley if they were exposed to the investigation proved true. During the second week of school, two weeks after I told Whitley about the investigation, the school counselor called me to inform me that Whitely would need to come home due to expressing suicidal ideation "because of the investigation." In addition to immediately arranging the care and therapeutic support they needed, I again attempted to console Whitley with the fact that we have many folks on our side and assured them that I will always be here for them.

18. I hope to see Whitley return to the happy, joyful child I know they can be. I don't see a path forward to that place with DFPS continuing to pursue a baseless investigation and adding new demands unless the investigation is halted by this court.

19. If our family can still be under investigation, now more than six months after providing information that our child is not receiving medical care related to their gender identity, I continue to worry what that might mean for other transgender youth or youth who are exploring the idea of transitioning and their families who are the subject of unfounded allegations that they are harming their children.

20. I am very exhausted and frustrated at this point. This investigation has been so drawn out that I feel like it is never going to go away until either I give up my civil liberties or the state comes and takes them and my child. And most importantly, my child is now starting another school year with the uncertainty of this investigation surrounding their family – carrying a safety card and wondering if someone at school might report them. My biggest fear is they will start to blame themself for the fact that I am at risk of being declared a "child abuser" because they are being true to who they are and because I support and love them.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of September 2022 in Travis County, Texas.

DocuSigned by:
Samantha Poe
3CA948FE517149B...

Samantha Poe

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