

No. 24-0892

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# In the Supreme Court of Texas

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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS,  
*Appellant,*

*v.*

PFLAG, INC.,  
*Appellee.*

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On Direct Appeal from the  
261<sup>st</sup> Judicial District Court, Travis County

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## BRIEF FOR APPELLANT

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## STATEMENT OF THE CASE

*Nature of the Case:* The Office of the Attorney General (“OAG”) is investigating whether medical providers are violating the state’s ban on transgender treatments for minors, including whether they are defrauding insurers in violation of the Deceptive Trade Practices Act (“DTPA”), Tex. Bus. & Com. Code §§ 17.41-.63. After PFLAG admitted in a court declaration that it had conversations with stakeholders on how to evade the state ban, CR.66, OAG issued a Civil Investigative Demand (“CID”) and Demand for Sworn Written Statement seeking related information under Texas Business & Commerce Code section 17.61, CR.60, CR.77. PFLAG sued OAG seeking to block the CID. CR.6. OAG counter-petitioned to enforce a revised version of its CID. CR.381.

*Trial Court:* 261st Judicial District Court, Travis County  
The Honorable Amy Clark-Meachum

*Course of Proceedings:* After holding four hearings, including multiple evidentiary hearings, and issuing a temporary injunction, the trial court held a “final trial on the merits” for all pending issues on June 10, 2024. At issue were two competing outcomes: that in PFLAG’s motion for summary judgment, which was to respond to no CID at all, or an extremely limited version, CR.651; and OAG’s mirror-image petition to enforce its revised CID, CR.591. After trial, on September 13, 2024, the trial court ordered PFLAG to produce documents consistent with the limitations on the CID in PFLAG’s own “proposed final judgment order,” but refused to issue a final judgment. CR.1555. On October 21, 2024, OAG filed a Statement of Jurisdiction with this Court arguing that the trial court’s September 13 order constituted an effective denial of its petition to enforce its CID and seeking to file a direct appeal with this Court. Statement of Juris., *Off. of the Att’y Gen. of the State of Tex. v. PFLAG, Inc.*, 24-0892 (Tex. Oct. 21, 2024). On February 7, 2025, this Court issued an order abating this appeal and directing the trial court to enter a final judgment on

OAG's CID by March 10, 2025. Abatement Order, *Off. of the Att'y Gen. of the State of Tex. v. PFLAG, Inc.*, 24-0892 (Tex. Feb. 7, 2025).

*Disposition in the  
Trial Court:*

On March 10, 2025, the trial court issued a final declaratory judgment and injunction granting PFLAG's request to modify the CID, denying OAG's petition to enforce its own revised version of the CID, and declaring that OAG's revised CID exceeded OAG's authority under the DTPA and that OAG's CID violated the First and Fourth Amendments to the U.S. Constitution. The trial court permanently enjoined OAG from seeking any private communications from PFLAG, from demanding any documents from PFLAG other than pursuant to the trial court's order, and from taking any adverse action against PFLAG related to the CID. App'x Ex. A.

## **STATEMENT OF JURISDICTION**

On February 7, 2025, the Court noted it would have probable jurisdiction over this direct appeal once a final order was issued, because under Texas Business & Commerce Code section 17.62(c), “[a]ny final order” on a party’s compliance with a CID is “subject to appeal to the Texas Supreme Court.” On March 10, 2025, the trial court issued a final order modifying OAG’s CID and denying OAG’s petition to enforce a revised version of the CID, satisfying this provision.

## **ISSUES PRESENTED**

The issues presented are:

1. Whether a “petition to . . . modify or set aside [a civil investigative] demand” under Texas Business & Commerce Code section 17.61(g), or a “petition for an order of the court for enforcement of” a CID under Texas Business & Commerce Code section 17.62(b), contemplates a summary proceeding, or whether it instead requires a traditional lawsuit with summary judgment and a trial on the merits.
2. What constitutes “good cause” to set aside or modify a CID issued under Texas Business & Commerce Code section 17.61?

## INTRODUCTION

This case is a stark example of judicial overreach. The Texas Office of the Attorney General served a Civil Investigative Demand (CID) to PFLAG, a national LGBTQ+ advocacy organization, seeking information relevant to an insurance fraud investigation under the Texas Deceptive Trade Practices Act (DTPA). PFLAG responded by suing in Travis County district court, seeking to modify or set aside the CID. What followed was anything but a routine CID challenge.

Rather than focusing on the legal framework governing CIDs—whether to set aside or enforce it—the trial court instead rushed to issue sweeping prohibitions on the Attorney General’s authority, styling its ruling as a TRO and then temporary injunction (instead of the final merits ruling it actually was) that conveniently allowed it to retain jurisdiction. The Attorney General repeatedly urged the court to adjudicate promptly its counterpetition to enforce the CID, emphasizing the legal mandate that CID challenges be resolved efficiently and without delay. The Attorney General also sought permission to serve a revised CID that addressed PFLAG’s initial First Amendment concerns. Yet the Attorney General could not serve even this revised CID due to the sweeping terms of the temporary injunction.

While there is no state precedent on this exact statute, the text of the DTPA and analogous federal precedent both require CID challenges to be handled expeditiously. *See, e.g.,* Tex. Bus. & Com. Code § 17.46(c)(2) (“In construing this subchapter [the DTPA] the court shall not be prohibited from considering relevant and pertinent decisions of courts in other jurisdictions.”); *In re Off. of Inspector Gen., R.R. Ret. Bd.*, 933 F.2d 276, 277 (5th Cir. 1991) (holding administrative subpoena

challenges must be “handled *summarily* and with dispatch” (emphasis added)). Yet the trial court here refused to act. It instead conducted four separate hearings and a merits trial, delayed its ruling for months, and ultimately issued a partial decision that strategically prevented appellate review. After this Court finally compelled the trial court to enter a final judgment, it simply echoed the rationale of its earlier injunction—after more than a year of unnecessary litigation.

The trial court’s procedural missteps were compounded by its flawed substantive ruling. The DTPA permits the issuance of CIDs to “any person [that] may be in possession, custody, or control of the original copy of any documentary material relevant to the subject matter of an investigation of a possible violation of” the DTPA. Tex. Bus. & Com. Code § 17.61(a). This is a very low threshold that the CIDs in question easily meet. A CID can only be set aside for “good cause,” which is determined based on compliance with the DTPA’s statutory requirements and other judicially created standards. Tex. Bus. & Com. Code § 17.61(g); *United States v. Markwood*, 48 F.3d 969, 976–77 (6th Cir. 1995). Both the original and revised CIDs at issue here easily clear both hurdles. Moreover, the revised CID cures PFLAG’s purported constitutional concerns.

This Court should reverse the trial court’s erroneous decision. What should have been a straightforward and prompt resolution instead became an unjustified restriction on the Attorney General’s investigative authority, depriving the State of Texas of its ability to enforce consumer protection laws. The integrity of the CID process demands correction.

## STATEMENT OF FACTS

### **I. OAG’s Authority to Investigate the Illegal Provision of Gender Transitioning Treatments for Minors and Related Insurance Fraud.**

On June 2, 2023, the Legislature signed SB-14 into law, which prohibits certain medical procedures and treatments when performed “[f]or the purpose of transitioning a child’s biological sex,” including through surgery and by drugs. Tex. Health & Safety Code § 161.702. SB-14 went into effect on September 1, 2023 and this Court affirmed its constitutionality in *State v. Loe*, 692 S.W.3d 215 (Tex. 2024).

SB-14 tasks the Texas Office of the Attorney General (OAG) with enforcing SB-14. Tex. Health & Safety Code § 161.706. OAG has in turn assigned that investigation and enforcement authority to its Consumer Protection Division (CPD). CPD is also tasked with enforcing the DTPA, which broadly prohibits “[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce” under the DTPA. Tex. Bus. & Com. Code § 17.46(a).

During the course of its investigation into potential violations of SB-14, OAG became aware of information suggesting that medical providers and other persons are evading SB-14’s strictures by committing various forms of fraud, including insurance fraud. CR.11 ¶ 5. Specifically, in order to avoid SB-14’s prohibition on drug-induced gender transitions, OAG is aware of information showing that providers may be fraudulently prescribing hormones under the guise of treating an “endocrine disorder,” or something else separate from gender dysphoria. *Id.*

For example, a group of medical providers known as “QueerDoc” has admitted that some insurers “automatically reject payment for ‘gender-incongruent’

treatments.” CR.114. QueerDoc, however, “do[es] [not] agree with this.” *Id.* Therefore, QueerDoc issues “prescriptions under the diagnosis of ‘endocrine disorder’” instead of “gender dysphoria.” *Id.* Other investigative reporting appears to indicate that at least some medical providers are misrepresenting their own patients’ statuses in order to prescribe a gender-transition related treatment. For example, one medical provider known as “Plume” allegedly met with a patient who denied he had been “experiencing gender dysphoria for six months or more,” but Plume nevertheless “falsely claim[ed] [in a letter] that [he] was experiencing significant and ongoing gender dysphoria” and recommended “testicle removal.” CR.117.

It is squarely within OAG and CPD’s authority to police this activity under the DTPA. If medical providers are providing fraudulent information to either consumers or insurers about why they are prescribing certain treatments, such as hormones, that is classic false, misleading, or deceptive behavior actionable under the DTPA. Accordingly, CPD has already commenced investigations into various medical providers who may be committing these kinds of acts, and is currently suing multiple doctors in North Texas for violating both SB-14 and the DTPA by prescribing testosterone to minor females, then fraudulently billing those treatments to insurance as treatments for endocrine disorder or other ailments. *See, e.g.,* App’x Ex. A at 9 (taking judicial notice of lawsuits against Dr. Lau and Dr. Cooper in Collin County).

## **II. PFLAG and its Involvement in Texas Courts.**

PFLAG is a national LGBTQ+ advocacy organization that is incorporated in California and has 18 affiliated chapters in Texas. CR.381 ¶ 2. PFLAG has filed or participated in at least three Texas lawsuits challenging SB-14 and related issues:

*Loe*; *Muth v. Voe*, No. 24-0384 (consolidated); and this case. While all three lawsuits involve OAG, CPD was not involved in defending either the *Loe* or *Voe* suits.

On July 11, 2023, PFLAG’s CEO Brian K. Bond filed a sworn affidavit in the trial court in the *Loe* case to support PFLAG’s standing to challenge SB-14. CR.66. In that affidavit, Bond stated that he had spoken to various parties about “contingency plans,” “alternative avenues to maintain care in Texas,” and “affirming general practitioners,” in case SB-14 was allowed to go into effect. CR.69–70.

### **III. OAG’s Investigation into PFLAG’s Statements.**

After SB-14 went into effect on September 1, 2023, CPD began investigating whether any doctors had continued to illegally provide gender transitioning treatments after that date. As part of that investigation, on or around January 30, 2024, CPD became aware of the Bond affidavit. (CPD did not become aware of this affidavit earlier, because it was not involved in defending the *Loe* lawsuit and did not commence its investigation until after it was filed.) After reviewing the Bond affidavit, CPD came to believe that Plaintiff PFLAG likely had information relevant to whether specific providers were in fact engaged in false, misleading, or deceptive activity. Specifically, Mr. Bond’s statements appear to indicate that PFLAG has knowledge of various entities seeking to use subterfuge to evade SB-14 (i.e., through a “contingency plan” or “alternative avenue” for treatment), which would likely violate the DTPA and other Texas laws.

On February 5, 2024, CPD issued a CID under Texas Business & Commerce Code section 17.61 to PFLAG demanding documents relevant to Mr. Bond’s statements. CR.65. Although CPD does not believe that PFLAG *itself* is violating the

DTPA, CPD nevertheless has the authority to issue the CID because it can demand documents from “*any* person” that may possess documents relevant to a DTPA violation—not from just those suspected of a violation. Tex. Bus. & Com. Code § 17.61(a) (emphasis added). This original CID sought eight categories of documents. CR.65. The first six of these categories related expressly to the Bond affidavit, including documents and communications that formed the basis of Bond’s personal knowledge in the affidavit, communications relating to the “contingency plans” or “alternative avenues to maintain care” referenced in the affidavit, and any health care providers that would provide such care that PFLAG was aware of. *Id.* The latter two categories sought PFLAG’s agreements with its Texas chapters and the bylaws of PFLAG and its Texas chapters. *Id.* Consistent with the DTPA’s requirements, the CID had a return date for documents of February 26, 2024. CR.60; Tex. Bus. & Com. Code § 17.61(b)(3). On the same day, CPD also issued a Demand for Sworn Written Statement (DSWS) under Texas Business & Commerce Code section 17.60(1). CR.77. The DSWS demanded PFLAG provide written answers to certain questions related to the Bond affidavit, much like responses to interrogatories. OAG does not seek to enforce the DSWS on appeal.

On February 19, 2024, counsel for PFLAG sought an “extension of both response dates until at least Monday, March 4, 2024.” CR.95. The next day, CPD granted a “one-week extension.” CR.94.

## IV. Procedural History

### A. PFLAG sues and obtains a broad TRO and temporary injunction.

On February 28, 2024, PFLAG filed its Original Verified Petition to Set Aside Civil Investigative Demands, for Declaratory Judgment, and Application for Temporary Restraining Order and Temporary and Permanent Injunctive Relief in Travis County district court. CR.6. That filing alleged four core bases for the requested relief.

*First*, and most prominently, PFLAG’s filing claimed that the original CID “violate[d] PFLAG and its members’ rights to freedom of association and speech,” CR.38, in particular because PFLAG claimed that the original CID sought PFLAG’s membership lists and other membership information. *Second*, PFLAG contended that the original CID was “not authorized” under the DTPA. CR.30. *Third*, PFLAG contended that the original CID was an impermissible attempt to “seek discovery” in separate, stayed litigation in *Loe* and *PFLAG v. Abbott* (now known as *Muth v. Voe*). CR.32. *Fourth*, PFLAG contended that the original CID “violate[d] the freedom from unlawful search and seizure” as set forth in the Fourth Amendment and the Texas Constitution. CR.50.

On March 1, 2024, the trial court heard arguments from counsel and granted a TRO that afternoon. CR.121. The TRO granted broad-reaching relief, including restraining OAG “from taking any adverse action in relation to the [CID] and [DSWS] against PFLAG . . . and such restraint encompasses but is not limited to restraining [OAG] from taking any affirmative steps to revoke, suspend, forfeit, dissolve, or void the ability of PFLAG or any of its chapters to operate in Texas during the pendency

of this case.” CR.122–23. The court set a hearing on the temporary injunction for March 25, 2024. CR.123.

On March 19, 2024, OAG filed a Motion to Modify and Clarify the Court’s March 1, 2024 Temporary Restraining Order. CR.140. OAG sought the court’s leave to withdraw its original CID and reissue a revised CID that expressly disclaimed any effort to seek membership information and permitted PFLAG to redact and anonymize any information that could identify PFLAG’s members. *Id.* It also reduced the number of document requests to seven and made various other changes to further limit the amount of member-specific information that OAG sought. CR.144–46, 156. OAG informed the court that its TRO could “reasonably be construed as barring the Attorney General from issuing the new and distinct Demands (in tandem with withdrawing [the] original investigatory demands.”). CR.142–43. As such, rather than simply serving the revised CID, OAG sought the court’s leave to do so and sought to clarify that the court’s TRO did not prohibit them from doing so. *Id.* On March 22, 2025, OAG additionally filed a plea to the jurisdiction and supplemental TRO response, which argued among other issues that there was no evidence that its CID was served against PFLAG in “retaliation” for PFLAG’s suits in *Loe* and *Voe*. CR.224.

At the March 25, 2024 temporary injunction hearing, the court heard argument on the revised CID but refused to grant OAG leave to serve it or substitute it. *See* 1-RR-25 (trial court refusing to consider permitting the revised CID). The court also heard testimony from PFLAG witness Aaron Ridings. *Id.* Later that day, the court issued a temporary injunction based on perceived constitutional violations in the

*original* CID—saying nothing of the revised version. CR.337. The temporary injunction order employed the same vague and overbroad language as the TRO.<sup>1</sup> CR.339–40. The order further set the case for a final trial on the merits on June 10, 2024.

On March 27, 2024, OAG confirmed to PFLAG that it had officially withdrawn any portions of the original CID that could be construed as requiring PFLAG to reveal member identities. When OAG asked PFLAG’s position on OAG seeking to narrow its demands and issue a revised CID, PFLAG opposed, arguing that allowing OAG to seek *less* of its information “would disrupt the status quo.” CR.503–04.

**B. OAG files a counterpetition seeking to file and enforce its revised CID.**

On April 12, 2024, OAG filed a counterclaim for enforcement of its revised CID (and revised DSWS, which is no longer at issue) pursuant to Texas Business & Commerce Code section 17.62(b). CR.381. OAG argued that, once membership information had been disclaimed, PFLAG had no legal basis to set aside the CID or to argue against enforcement. At a May 8, 2024 hearing on the counterclaim, OAG emphasized to the court that it construed the court’s TRO and temporary injunction as granting the ultimate relief sought by PFLAG; that no further proceedings were necessary or appropriate on the CID challenge; and that the court should summarily rule on OAG’s counterclaim to allow the case to go forward on appeal. *See, e.g.*, 2-RR-10

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<sup>1</sup> OAG appealed the temporary injunction, but stayed the case based on its expectation that the trial court would issue a final judgment quickly and moot the interlocutory appeal. That appeal became moot when the trial court issued its final judgment on March 10, 2025.

(OAG’s counsel arguing PFLAG already has “a final disposition on their side of the case” and requesting the court “just deny our counterclaim; then everything here is settled and the appeals court can take it all”). The court declined this invitation, too.

On May 17, 2024, OAG filed a protective motion for summary judgment on its counterclaim, in advance of the upcoming trial. CR.591. OAG reiterated that the case did “not present any triable issues of fact” and that neither summary judgment briefing nor a merits trial were necessary or appropriate to adjudicate a CID. *Id.* at ¶¶1–3. Rather, analogous federal precedent clearly established that CID challenges are not subject to “normal litigation rules” and should be handled “summarily and with dispatch,” without discovery or trial. *Id.* (quoting *In re Off. of Inspector Gen. R.R. Ret. Bd.*, 933 F.2d at 277). Nevertheless, OAG filed the MSJ to preserve its rights. *Id.* On May 20, 2024, PFLAG filed its own motion for partial summary judgment and motion for summary judgment denying OAG’s counterclaim for enforcement.

**C. The trial court holds an unnecessary merits trial and refuses to rule.**

On June 10, 2024, the trial court held a merits trial over OAG’s objections. PFLAG called two witnesses: its CEO Brian Bond, whose affidavit was at issue, and Sam Weeks, a former OAG employee who had signed the CID issued to PFLAG. OAG did not call any witnesses, maintaining its position that PFLAG already had “the opportunity to develop factual information” at the temporary injunction hearing, that “nothing material has changed since then,” and that “all the other issues here are simply legal issues for the Court to determine.” 3-RR-11. OAG similarly

reiterated its position that a trial was inappropriate to determine a simple CID challenge. *Id.*

Several weeks passed. On July 29, 2024, OAG filed a letter with the court arguing that the case “present[ed] urgent circumstances that require prompt judicial action,” namely that OAG was entirely restrained from carrying out its legislatively authorized investigatory duties pending a final ruling. OAG asked the court to issue a final judgment by August 12, which was the opening brief deadline in OAG’s interlocutory appeal of the temporary injunction. CR.1534. Instead, the court set a hearing for September 16, 2024, without stating the hearing’s purpose. On August 6, 2024, OAG filed another letter with the trial court urging it to rule before OAG’s appellate briefing deadline of August 12, 2024, which the trial court ignored. CR.1542.

**D. The trial court issues a vague partial ruling on PFLAG’s petition and refuses to rule on OAG’s counterpetition; OAG files a direct appeal with this Court.**

On September 13, 2024, the trial court issued a letter to the parties “granting the modifications of the [original] CID set out in PFLAG’s proposed final judgment,” ordering PFLAG to respond to the modified CID as ordered, and resetting the September 16 hearing to October 14, 2024. CR.1555. The trial court refused to rule on OAG’s counterclaim to enforce, despite OAG’s repeated requests that the court do so in a summary fashion and despite the fact that OAG’s counterclaim to enforce was a mirror image of PFLAG’s suit seeking to set aside or modify the CID. OAG interpreted this as an inappropriate attempt to retain jurisdiction over the case

and block it from appealing a ruling, including the overbroad temporary injunction still in place. Because the trial court had determined in its temporary injunction that there was “a substantial likelihood that [PFLAG] w[ould] prevail after a trial on the merits,” then adopted PFLAG’s “proposed final judgment order” without alteration, OAG interpreted this September 13 letter as an effective denial of OAG’s counterpetition to enforce.

As such, on October 21, 2024, OAG filed its Statement of Jurisdiction with this Court, arguing that the trial court effectively issued a final order denying its petition to enforce the revised CID and seeking this Court’s direct appellate jurisdiction under Tex. Bus. & Com. Code § 17.62(c). Statement of Juris., *Off. of the Att’y Gen. of the State of Tex. v. PFLAG, Inc.*, 24-0892 (Tex. Oct. 21, 2024). On February 7, 2025, this Court abated this appeal and ordered the trial court to issue a final judgment order on OAG’s counterpetition by March 10, 2025. Abatement Order, *Off. of the Att’y Gen. of the State of Tex. v. PFLAG, Inc.*, 24-0892 (Tex. Feb. 7, 2025).

On March 10, 2025, the trial court issued a sweeping final judgment granting virtually all the relief sought by PFLAG and denying OAG’s counterpetition to enforce the revised CID. App’x Ex. A. The order acknowledged that OAG had repeatedly sought leave to file or serve a revised CID, *see e.g. id.* ¶ 36 (“Defendants proposed modifications to the Demands in attachments to various court filings”), but refused to consider the revised CID and instead based its ruling on the original CID that OAG had repeatedly disavowed.

The court also made several erroneous legal rulings, including that “[t]here is no basis in Texas law for an expedited proceeding” on a CID challenge and they can

only be decided “through a motion for summary judgment or a trial on the merits,” *id.* ¶ 2; that OAG did not meet its burden for enforcement, even though the court never actually *cited* the legal burden for enforcement in the DTPA; that the CID failed to adequately state “the statutory basis for the demands and the general subject matter of the investigation,” *id.* ¶ 5; and that the CID sought information that was irrelevant to CPD’s investigation into SB-14 related insurance fraud, *id.* at 12. Based on these erroneous rulings, the court ruled that PFLAG could not have relevant information to an insurance fraud investigation because it is not in the insurance or medical business, and ruled that the CID sought information that was “more readily available from other sources and [that the CID was] overly burdensome.” *Id.* The court further ruled that “private communications” are protected from discovery under the First Amendment, *id.*, and that OAG’s attempt to obtain attorney-client privileged documents was harassing (even though both the original and revised CIDs expressly provided for a privilege log to withhold such communications). *See, e.g., id.* at 13.

Based on these rulings, the court modified the CID to only require PFLAG to produce the bylaws of the national and Texas chapters, “non-privileged documents showing what was meant by ‘contingency plans’ and/or ‘alternative avenues to maintain care,’” and “any list of ‘health care providers’ providing gender-affirming care to minors in Texas after September 1, 2023.” *Id.* at 12–16. Notably, the court did not require that PFLAG maintain any sort of privilege log to identify which documents it would withhold based on privilege, depriving OAG of its right to review and challenge those privilege assertions. Based on its decision to modify the CID and

extend PFLAG's return dates, the court denied OAG's petition to enforce its revised demands because PFLAG complied with the orders of the court to respond to the modified CID, and PFLAG was not required to respond to the revised CID. *Id.* at 17–18.

The court further issued a long string of declaratory judgments, declaring that the original CID “failed to identify both the specific section and subsection of the statute under which the alleged violations were being investigated,” “failed to identify the general subject matter of the investigation,” and “sought information and documents that were not discoverable.” *Id.* at 18. The court further declared that the original CID sought membership information and private communications protected by “the U.S. Constitution and the Texas Constitution,” and sought information “not reasonably relevant to the purported purpose of the investigation” in violation of the Fourth Amendment and the Texas Constitution. *Id.* at 18–19.

Finally, the trial court made its sweeping temporary injunction permanent. It ordered that OAG was permanently restrained from serving document demands on PFLAG “that would reveal the identities or private communications of PFLAG,” from demanding information or documents relating to the CID “other than those specifically modified by this Court Order,” and from taking “any adverse action in relation to the [CID] against PFLAG,” which includes “any affirmative steps to revoke, suspend, forfeit, dissolve, or void the ability of PFLAG or any of its chapters to operate in Texas.” *Id.* at 19. This injunction was unlimited in time and prohibits OAG from requesting any documents from PFLAG broadly relating to the issues in the CID, including gender transitioning and SB-14, even under alternate

investigative authorities, such as section 12.151 and 12.152 of the Texas Business Organizations Code.

After the parties notified this Court of the final judgment, the Court set a briefing schedule, implicitly noting probable jurisdiction.

## SUMMARY OF THE ARGUMENT

I. The district court erred in requiring this CID challenge to be fully adjudicated via summary judgment briefing and a merits trial, and letting it drag on for over a year. The DTPA's CID provisions require swift adjudication and minimal procedural burdens for CID challenges or petitions to enforce. The DTPA directs interpreting courts to "consider[] relevant and pertinent decisions of courts in other jurisdictions," Tex. Bus. Com. Code § 17.46(c)(2), and this Court has noted that various "Texas CID provisions" throughout Texas law "are patterned" after analogous CID provisions in federal law. *State v. Lowry*, 802 S.W.2d 669, 672 (Tex. 1991). Several federal circuit courts have "consistently recognized the summary nature of administrative subpoena enforcement proceedings." *Burlington N. R. R. v. Office of Inspector Gen., R.R. Ret. Bd.*, 983 F.2d 631, 637 (5th Cir. 1993); accord *Markwood*, 48 F.3d at 982 (holding the ordinary rules of procedure "are simply inapplicable" to such challenges); *FTC v. Texaco*, 555 F.2d 862, 871, 872 (D.C. Cir. 1977) (holding the "court's role" in CID challenges is "a strictly limited one" designed to further the "important governmental interest in the expeditious investigation of possible unlawful activity"). This is consistent with the language of the DTPA, which authorizes CID recipients to challenge it via a "petition to . . . modify or set aside the demand," *not* to initiate a traditional lawsuit, and which authorizes a streamlined

review process via direct appeal to this Court. Tex. Bus. & Com. Code §§ 17.61(g), 17.62(c).

II. PFLAG failed to demonstrate “good cause,” which is the only basis to set aside or modify a CID under the DTPA. Tex. Bus. & Com. Code § 17.61(g). While the DTPA does not define “good cause,” and there is no interpreting case law, analogous federal case law has determined a two-step process to decide whether to set aside or enforce a CID: first, determine “whether the agency has met the statutory requirements pertaining to the issuance and enforcement of the subpoena”; and second, “consider whether the agency has satisfied or complied with the judicially-created standards for enforcement.” *Markwood*, 48 F.3d at 976–77.

The original and revised CIDs satisfy both standards. The CIDs contain all four statutory elements required under the DTPA: they “state the statute and section under which the alleged violation is being investigated, and the general subject matter of the investigation”; they describe the documents sought “with reasonable specificity”; they “prescribe a return date”; and they “identify” the OAG employee who will receive and review the documents. Tex. Bus. & Com. Code § 17.61(b). They also sought information relevant to OAG’s investigation into insurance fraud, consistent with Tex. Bus. & Com. Code § 17.61(c).

The CIDs also satisfy various judicial standards to issue a CID in the U.S. Supreme Court and the Fifth Circuit. For example, because they seek relevant information, complied with the DTPA’s statutory requirements, and were neither unreasonably broad nor burdensome, they pass the Fifth Circuit’s “reasonable relevance” test. *Consumer Fin. Prot. Bureau v. Source for Pub. Data, L.P.*, 903 F.3d 456, 459 (5th

Cir. 2018) (holding a CID should be enforced if “(1) the subpoena is within the statutory authority of the agency; (2) the information sought is reasonably relevant to the inquiry; and (3) the demand is not unreasonably broad or burdensome”). Similarly, for these reasons and because the CIDs seek information not already in OAG’s possession, the CIDs comply with the test to enforce an administrative subpoena set forth by the U.S. Supreme Court in *United States v. Powell*, 379 U.S. 48, 57–58 (1964) (holding an administrative subpoena should be enforced if “the investigation will be conducted pursuant to a legitimate purpose”; “the inquiry may be relevant to the purpose”; “the information sought is not already within the Commissioner’s possession”; and, “the administrative steps required by the [administrative subpoena statute] have been followed”).

Furthermore, the revised CID does not pose any constitutional concerns. The revised CID does not request any membership information from PFLAG, and the “private communications” it seeks are not protected by the First Amendment or the Texas Constitution—indeed, private communications are a fairly run-of-the-mill discovery request. *Cf. In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 377 (Tex. 1998) (holding disclosure of “the identities [of a membership association’s] contributors” would violate the First Amendment, but making no comment on private communications). And neither the original nor the revised CID sought Fourth Amendment protected information. The U.S. Supreme Court has held that the Fourth Amendment “if applicable, at the most guards against abuse only by way of too much indefiniteness or breadth in the things required to be” produced. *Okla. Press Pub. Co. v. Walling*, 327 U.S. 186, 208 (1946). Moreover, “[i]t is not necessary

. . . that a specific charge or complaint of violation of law be pending.” *Id.* at 208-09; see also *Schade v. Tex. Workers’ Comp. Comm’n*, 150 S.W.3d 542, 550 (Tex.App.—Austin 2004) (“[W]e find that the Fourth Amendment and its Texas counterpart at most guard against abuse only by way of too much indefiniteness or breadth in the things required” to be produced). Because the CIDS were neither indefinite nor overbroad, they do not violate the Fourth Amendment or the Texas Constitution’s search and seizure provision.

**III.** The district court also committed reversible error when it permanently enjoined the Attorney General from performing his legitimate investigatory and enforcement functions against PFLAG or its 18 Texas chapters for an unlimited amount of time. “[I]njunctions must be narrowly drawn and precise.” *Holubec v. Brandenberger*, 111 S.W.3d 32, 40 (Tex. 2003) (quoting *Brown v. Petrolite Corp.*, 965 F.2d 38, 51 (5th Cir. 1992)). But this injunction was neither. It broadly prohibits the Attorney General from undertaking any future efforts to examine PFLAG’s records, including under other statutes not even before the trial court, such as Tex. Bus. Orgs. Code §§ 12.151 and 12.152. It is also vague, prohibiting “any adverse action in retaliation” against PFLAG as relates to the CIDs. Because of its overbreadth and ambiguity, and because it lacks a legal basis in light of the CIDs’ compliance with the DTPA’s statutory and judicial requirements, the injunction should be vacated.

### **STANDARD OF REVIEW**

Although a trial court’s ultimate decision to grant an injunction is reviewed for “abuse of discretion,” its underlying legal conclusions are reviewed *de novo*. *Texas Educ. Agency v. Hous. ISD*, 660 S.W.3d 108, 116 (Tex. 2023). So too are rulings on

statutory interpretation and conclusions of law. *Youngkin v. Hines*, 546 S.W.3d 675, 680 (Tex. 2018); *Sm. Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 683 (Tex. 2020).

## ARGUMENT

### **I. CIDs Were Meant to Be Adjudicated Quickly, Not After Lengthy Evidentiary Hearings and a Merits Trial.**

As an initial matter, the procedural history of this case—including several unwarranted “evidentiary” hearings, a trial on the merits, and a final judgment issued more than a year after the initial CID challenge was filed—violated OAG’s right to a quick adjudication on its pre-investigative administrative subpoena. The language of the DTPA’s CID statute, the language of the federal CID statutes it was modeled after, and case law from several federal courts interpreting those analogous federal statutes all demonstrate that challenges to administrative subpoenas like CIDs are meant to be “handled *summarily* and with dispatch.” *In re Off. of Inspector Gen., R.R. Ret. Bd.*, 933 F.2d at 277 (emphasis added) (explaining how analogous federal tools work).

The DTPA expressly directs courts to rely on interpretations of analogous provisions in other laws and by other jurisdictions. For example, DTPA section 17.46(c)(2) directs that “[i]n construing this subchapter [the DTPA] the court shall not be prohibited from considering relevant and pertinent decisions of courts in other jurisdictions.” Tex. Bus. Com. Code § 17.46(c)(2). Several provisions of the DTPA also instruct courts to interpret the DTPA in harmony with the Federal Trade Commission Act (FTCA). *See, e.g., id.* § 17.46(c)(1) (“It is the intent of the legislature that in construing Subsection (a) of this section in suits brought under [the DTPA]

the courts to the extent possible will be guided by . . . the interpretations given by . . . federal courts to Section 5(a)(1) of the [FTCA].”); *id.* § 17.49(b) (“Nothing in this subchapter [the DTPA] shall apply to acts or practices authorized under specific rules or regulations promulgated by the Federal Trade Commission under Section 5(a)(1) of the [FTCA].”). Furthermore, this Court has held that the various “Texas CID provisions” throughout Texas law “are patterned” after analogous CID provisions in federal law, including the Sherman Act and the Federal Antitrust Civil Process Act (FACPA), which is itself patterned on the FTCA’s CID provision. *State v. Lowry*, 802 S.W.2d 669, 672 (Tex. 1991); *see also generally Hous. Indus. v. Kaufman*, No. CIV.A. H-95-5237, 1996 WL 580418 (S.D. Tex. Mar. 7, 1996) (interpreting FACPA’s CID provision in light of holdings on the FTCA’s CID provision).

Federal courts, particularly in the Fifth Circuit, have “consistently recognized the summary nature of administrative subpoena enforcement proceedings.” *Burlington N. R. Co.*, 983 F.2d at 637. And “it is settled that the requirements for judicial enforcement of an administrative subpoena are minimal.” *Id.* (citing *Okla. Press Publ’g Co.*, 327 U.S. at 216, and *United States v. Sec. State Bank & Tr.*, 473 F.2d 638, 641 (5th Cir.1973)). When addressing challenges to FTCA CIDs, federal courts have held that the “court’s role” is “a strictly limited one” designed to further the “important governmental interest in the expeditious investigation of possible unlawful activity.” *Texaco*, 555 F.2d at 871–72. In such CID challenges, the ordinary rules of procedure, including discovery, “are simply inapplicable,” because treating a CID challenge as a traditional litigation “destroy[s] the summary nature of [the] proceedings.” *Markwood*, 48 F.3d at 982, 983. For this reason, challenges to CIDs and other

similar administrative subpoenas are commonly resolved in a matter of weeks, not months or a full year. *See, e.g., FTC v. O'Connell Assocs., Inc.*, 828 F. Supp. 165, 167 (E.D.N.Y. 1993) (action initiated in June; final order granting enforcement issued in July). Other state courts interpreting their own state laws' CID provisions have similarly addressed CID challenges in a summary fashion. *See, e.g., Kohn v. State ex. rel Humphrey*, 336 N.W.2d 292, 295 (Minn. 1983) (State issued administrative subpoena to target on June 29, and by September 8 the District Court had granted motion to compel compliance).

The language of the DTPA's CID provision, section 17.61, is consistent with these federal and state court rulings. The DTPA provides that if a recipient of a CID wants a judicial order confirming that it need not comply with the CID, its only remedy is to file a "petition to . . . modify or set aside the demand," Tex. Bus. & Com. Code § 17.61(g)—*not* to initiate, as PFLAG has here, a traditional lawsuit replete with applications for a TRO, temporary injunction, and declaratory judgment. That is particularly obvious because the Legislature expressly indicated that the Rules of Civil Procedure do not apply to CIDs; rather, CIDs may seek information "which *would be* discoverable under the Texas Rules of Civil Procedure." *Id.* § 17.61(c) (emphasis added). The necessary upshot is that a CID and the forms of relief available to a CID recipient are not directly governed by the ordinary Rules of Civil Procedure. *Accord Markwood*, 48 F.3d at 982 (holding the Federal Rules of Civil Procedure "are simply inapplicable to the pre-complaint enforcement of an administrative subpoena," and that "discovery is generally disallowed absent 'extraordinary circumstances'"). Indeed, the DTPA even requires a streamlined, expedited review

process for CIDs, authorizing their appeal directly to this Court instead of to an intermediate court of appeals. *See* Tex. Bus. & Com. Code § 17.62(c).

It was therefore reversible error for the trial court in this case to rule that “[t]here is no basis in Texas law for an expedited proceeding” on a CID challenge or petition to enforce, and that “[t]he only way a trial court can summarily rule on either petition is through a motion for summary judgment or a trial on the merits.” App’x Ex. A at 9–10. To the contrary: It violates established precedent and the language of the DTPA to require several evidentiary hearings, hold a merits trial with testifying witnesses, and wait 14 months to issue a lengthy series of findings of law and fact, all just to address the enforcement of an administrative subpoena. Instead, they must be adjudicated promptly, without discovery unless strictly necessary in the most extreme situations, and decide *only* whether the low-threshold procedural requirements to serve and enforce a CID have been met.

## **II. PFLAG Failed to Show “Good Cause” to Set Aside or Modify OAG’s Revised CID.**

The only basis to set aside or modify a CID is “good cause.” Tex. Bus. & Com. Code § 17.61(g). While lacking a statutory definition, the CID provision of the DTPA and the case law clarify that this is a daunting threshold to meet. PFLAG has failed to show good cause here—rather, this was a run-of-the-mill CID that sought discoverable information and should have been promptly enforced. As such, the trial court should have granted OAG’s petition to enforce its revised CID.

**A. The standard for “good cause” is high under Texas law and analogous federal precedent.**

Under the DTPA, a CID may be served on “any person [that] may be in possession, custody, or control of the original copy of any documentary material relevant to the subject matter of an investigation of a possible violation of” the DTPA. Tex. Bus. & Com. Code § 17.61(a). The DTPA intentionally casts a broad net. So long as a person or entity *may* be in possession of something *relevant* to the *investigation* of a *potential* DTPA violation, a CID is proper. The CID recipient itself need not be suspected of committing fraudulent acts in trade or commerce—rather, so long as the CID recipient may be in possession of material relevant to an investigation involving trade or commerce, the CID has been issued for a valid statutory purpose. This is clear from the statute’s use of the phrase *any* person—not just a person suspected of fraudulent business activity.

While no precedential opinion of any court has addressed the meaning of “good cause” in the DTPA specifically, several courts have held that, as a general rule, administrative agencies are “to be given wide latitude when issuing CIDs.” *Hous. Indus.*, 1996 WL 580418, at \*1 (quoting *Associated Container Transp. (Australia) Ltd. v. United States*, 705 F.2d 53, 58 (2d Cir. 1983)). Federal courts have largely agreed on a two-step inquiry to determine whether to set aside or enforce a CID. The Sixth Circuit explained in *Markwood* that the court must first “decide whether the agency has met the statutory requirements pertaining to the issuance and enforcement of the subpoena.” 48 F.3d at 976–77. Second, the court “must consider whether the

agency has satisfied or complied with the judicially-created standards for enforcement of the subpoena.” *Id.* at 977.

The DTPA’s statutory requirements to serve a CID are fairly minimal. It requires that the CID “state the statute and section under which the alleged violation is being investigated, and the general subject matter of the investigation”; describe the class or classes of documentary material to be produced with “reasonable specificity”; list a “return date” for any documents produced; and “identify the persons authorized by the consumer protection division” who will receive and review the documents. Tex. Bus. & Com. Code § 17.61(b). It further permits the CID to require the disclosure of any documents “which would be discoverable under the Texas Rules of Civil Procedure.” *Id.* § 17.61(c). It stands to reason that “good cause” to modify or set aside a CID, as noted in section 17.61(g), could be present when any of these four requirements are not met, or if there is an independent legal violation that forbids granting the CID.

Various courts have also established judicial standards to enforce a subpoena. For example, in a case setting aside a CID from the CFPB (which has a near-identical CID statute to the DTPA), the Fifth Circuit held that the standard to enforce a CID is “reasonable relevance,” and that courts should enforce a CID if “(1) the subpoena is within the statutory authority of the agency; (2) the information sought is reasonably relevant to the inquiry; and (3) the demand is not unreasonably broad or burdensome.” *Consumer Fin. Prot. Bureau*, 903 F.3d at 459. There, the Fifth Circuit declined to enforce the CID because the CFPB “fail[ed] to identify the conduct under

investigation or the provision of the law at issue,” which was a statutory requirement for that particular law. *Id.*

Similarly, the U.S. Supreme Court has held that an administrative subpoena should be enforced if “the investigation will be conducted pursuant to a legitimate purpose”; “the inquiry may be relevant to the purpose”; “the information sought is not already within the Commissioner’s possession”; and, “the administrative steps required by the [administrative subpoena statute] have been followed.” *Powell*, 379 U.S. at 57–58.<sup>2</sup> The Court analogized the inquiry to that of a Grand Jury, favorably quoting an earlier opinion stating that a similar pre-litigation investigatory body had the ability to “investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.” *Id.* at 57 (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 642–43 (1950)).

In sum, a petition to set aside or enforce a CID does not invite a comprehensive lawsuit with discovery into the investigating agency’s motives, basis for investigation, and proof of ultimate guilt. Rather, it is a relatively hands-off inquiry into whether the CID statute’s minimum issuing requirements have been met, and whether any additional judicial standards have gone unfulfilled.

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<sup>2</sup> Ironically, while the trial court held there “is no basis in Texas law for applying the ‘*Powell*’ factors—the standard advocated by [OAG]”—it was actually *PFLAG* that supported their use. *See, e.g.*, 2-RR-147 147:24–148:15. Had the trial court been aware of PFLAG’s endorsement of the *Powell* standard, it might have been more inclined to adopt it. Regardless, OAG does not dispute the *Powell* factors’ relevance to this inquiry.

**B. PFLAG failed to show good cause to modify or set aside the revised CID, so the court should have granted OAG’s petition to enforce.**

Contrary to the trial court’s ruling, there was no good cause to modify OAG’s revised CID for several reasons: the revised CID satisfied the DTPA’s statutory requirements; it satisfied any additional judicial standards set forth by various case law; and the revised CID violated neither the First nor the Fourth Amendments.

**1. OAG satisfied the statutory requirements to issue a CID under the DTPA.**

Both OAG’s original and revised CIDs satisfied the DTPA’s requirements to issue a CID, and the trial court’s contrary finding had no basis in law or fact. The trial court did not dispute that OAG’s CID<sup>3</sup> met the requirements to “prescribe a return date,” nor to identify the OAG employee to receive and review any returned documents. *Cf.* Tex. Bus. & Com. Code §§ 17.61(b)(3), (4). However, the trial court did rule that the CID “failed to identify both the specific section and subsection of the statute under which the alleged violations were being investigated,” “failed to identify the general subject matter of the investigation, such that PFLAG could determine whether the information and documents sought were discoverable,” and “sought information and documents that were not discoverable . . . , such as

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<sup>3</sup> As explained throughout this brief, OAG’s original CID should not have been at issue in the trial court’s final judgment order, as OAG had repeatedly disclaimed it and sought the court’s leave to serve or file a revised CID. Nevertheless, the trial court’s order rejected that and insisted on ruling on OAG’s original CID, *see* App’x Ex. A at 6 ¶ 11, though the court later commented that even the revised CID violated the First Amendment, *id.* at 7 ¶ 20.

privileged documents.” App’x Ex. A at 18. Taking each in turn, none of these rulings were correct.

*First*, both the original and the revised CID stated the specific section of the DTPA being investigated, and the trial court’s ruling that the CID must also identify the “subsection” has no basis in the statute or the case law. Both versions of the CID clearly state that the CID was issued in connection with “an investigation or actual or possible violations of DTPA section 17.46 for issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.” CR.394, 432. This satisfies the DTPA’s requirement that the CID “state the statute and section under which the alleged violation is being investigated.” Tex. Bus. & Com. Code § 17.61(b)(1). The CID identifies the DTPA as the statute and 17.46 as the section underpinning OAG’s investigation. Nothing in the DTPA requires that an additional *subsection* be listed—such a requirement would be absurd, since some DTPA provisions do not even contain subsections. *Cf. Consumer Fin. Prot. Bureau*, 903 F.3d at 458–59 (refusing to enforce a CID that invoked a general violation of Fair Credit Reporting Act and failed to identify any conduct that may violate the law).

*Second*, both the original and the revised CID stated the “general subject matter of the investigation,” as required by section 17.61(b)(1). They state that the investigation is looking into “issues related to misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.” CR.394, 432. The subject matter is made even clearer by the demands themselves, which seek documents relating to “contingency plans,” “alternative avenues to maintain care”

and other documents relating to gender transitioning treatments for minors. Nothing more is required—after all, the statute asks only for the *general* subject matter, not a treatise on the details of OAG’s investigation. Such a requirement would undermine the investigation to begin with and likely require the disclosure of privileged material. *See, e.g., A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 677–78 (Tex. 1995) (orig. proceeding) (explaining that such information is protected law enforcement material).

*Third*, the documents sought were clearly relevant and discoverable, and the court’s ruling on privileged material had no reasonable basis. The bar for discoverability is remarkably low—the party seeking discovery need merely show that the material “is not privileged and is relevant to the subject matter of the pending action” (or here, the pending investigation). Tex. R. Civ. P. 192.3(a). Furthermore, the court’s finding that PFLAG could not identify whether such information and documents “were discoverable under the Texas Rules of Civil Procedure” is both wrong and directly undercut by the next sentence, which finds that the demands “sought information and documents that were *not* discoverable.” App’x Ex. A at 18. Only one of those statements can be true: either the trial court understood the CID’s scope enough to determine (albeit incorrectly) that the requested documents were not discoverable or it issued a legal determination about a set of documents it could allegedly not identify.

The information sought by OAG directly related to its investigation into potential insurance fraud—specifically, whether certain doctors were misclassifying gender transitioning treatments for minors as treatments for other medical conditions,

such as endocrine disorders, to circumvent legal restrictions. At the time OAG issued this CID in early 2024, OAG was aware of multiple medical providers who had either admitted to such fraudulent practices or been accused of doing so; however, OAG had yet to determine whether these providers had committed insurance fraud with regard to *Texas minors* after SB 14’s effective date. *See* CR.111 (describing QueerDoc and Plume).

When PFLAG’s CEO publicly acknowledged discussions about “contingency plans,” “alternative avenues to maintain care in Texas,” and “affirming general practitioners,” CR.69–70, OAG had legitimate concerns that medical providers might be attempting to evade the law through improper billing practices. In response, OAG issued its CID (later revised) narrowly seeking documents related to the CEO’s knowledge of such contingency plans and alternative avenues for care post-SB 14. These documents, to the extent they exist, are clearly relevant to OAG’s investigation.

In ruling otherwise, the trial court took an improperly narrow view of relevance. For example, the court reasoned that because PFLAG “does not provide medical care” and “has never billed an insurance provider for medical care,” it could not possess relevant information regarding OAG’s investigation into “potential insurance fraud.” App’x Ex. A at 12. But this conclusion is flawed—PFLAG does not need to be a medical provider or an insurance company to have knowledge of doctors or clinics potentially circumventing SB 14 through fraudulent billing practices. Under this logic, finance documents from a bank are off-limits unless the fraud is related to banking. That cannot be right. Organizations like PFLAG frequently interact with

medical professionals, other advocacy groups, and affected patients, positioning them as potential sources of critical information.

Additionally, the court's privilege ruling was both incorrect and procedurally improper. The trial court reached its determination *without reviewing a single document*. From the outset, OAG's original and revised CIDs explicitly permitted PFLAG to create a privilege log identifying any documents it deemed privileged, stating the grounds for such privilege, and describing the subject matter. CR.396, 435. Yet, rather than requiring PFLAG to produce a privilege log as standard procedure dictates, the trial court categorically excused PFLAG from doing so and broadly barred OAG from obtaining entire categories of documents. App'x Ex. A at 12–16.

This sweeping exclusion was baseless and improper. It deprived OAG of relevant, non-privileged materials central to its investigation, undermining fundamental principles of discovery.

## **2. OAG satisfied all judicial standards to issue a CID.**

In addition to meeting the DTPA's statutory requirements, OAG's original and revised CIDs both satisfy the various overlapping judicial standards set forth in *CFPB* and *Powell*. In the *CFPB* case, the Fifth Circuit laid out a three-factor "reasonable relevance" test, which asks whether: "(1) the subpoena is within the statutory authority of the agency; (2) the information sought is reasonably relevant to the inquiry; and (3) the demand is not unreasonably broad or burdensome." *CFPB*, 903 F.3d at 459. For the first factor, OAG's original and revised CIDs were "within the statutory authority of" OAG because they satisfied the statutory requirements of the DTPA's CID provision. *See supra* Section II.B.1. As explained in the same prior

section, both CIDs also sought information relevant to the inquiry under the Texas Rules of Civil Procedure, which satisfies *CFPB*'s second factor.

Third and finally, the trial court was incorrect when it held several of the requests were unreasonably broad and burdensome on PFLAG. App'x Ex. A at 10 ¶ 7; 12. "Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest." *Texaco, Inc.*, 555 F.2d at 882. "[A] subpoena is not unreasonably burdensome unless 'compliance threatens to unduly disrupt or seriously hinder normal operations of a business.'" *FTC v. Jim Walter Corp.*, 651 F.2d 251, 258 (5th Cir. 1981) (quoting *FTC v. Rockefeller*, 591 F.2d 182, 190 (2d Cir. 1979)). OAG's revised CID seeks seven narrowly tailored categories of documents, all directly relating to OAG's investigation and potentially even overlapping. CR.156; *cf. Diagnostic Healthcare Servs., Inc. v. Dep't of Health & Human Servs.*, No. 4:24-MC-01535, 2025 WL 672862, at \*5 (S.D. Tex. Mar. 1, 2025) (finding an administrative subpoena was not unduly broad or burdensome when "tailored to five specific categories of documents that directly relate to the focus of [the] investigation"). Furthermore, the time frame was narrow, seeking only documents from March 8, 2023, to February 2024. CR.395, 434. This imposed no extraordinary burden on PFLAG; rather, it was a standard, limited document request. Thus, OAG's original and revised CIDs satisfied *CFPB*'s third prong.

OAG's CIDs similarly met the four requirements set forth by the U.S. Supreme Court in *Powell* to enforce an administrative subpoena: if "the investigation will be conducted pursuant to a legitimate purpose"; "the inquiry may be relevant to the purpose"; "the information sought is not already within the Commissioner's

possession”; and, “the administrative steps required by the [administrative subpoena statute] have been followed.” *Powell*, 379 U.S. at 57–58. For reasons discussed above, the CIDs comply with steps one, two, and four because the CIDs were relevant to OAG’s legitimate investigation into insurance fraud, which falls within the scope of the DTPA, and the CIDs complied with the DTPA’s statutory requirements.

Regarding step three, OAG did not possess any of the information sought at the time it served the original CID (or sought permission to issue the revised CID). In fact, little to none of that information is *currently* available to OAG. The court held otherwise, noting that several months *after* the CIDs were served or filed, OAG initiated three lawsuits against Texas doctors for insurance fraud and violations of SB 14. App’x Ex. A at 9 ¶ 38.

But while OAG may be aware of certain doctors committing insurance fraud to circumvent SB 14, it does not claim to have knowledge of *all* such doctors or clinics. OAG identified some violators through its access to the Texas Prescription Monitoring Program (PMP) records, which “collect[] and monitor[] outpatient prescription data for all . . . controlled substances dispensed by a pharmacy in Texas.”<sup>4</sup> However, this data does not cover two key categories of illegal gender transitioning treatments: prescriptions issued in Texas but fulfilled across state lines, and treatments administered privately in clinics without use of a pharmacy. Additionally, the PMP

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<sup>4</sup> Texas Prescription Monitoring Program, *About the Texas PMP*, <https://txpmp.org/about>.

does not track insurance billing codes, which are central to this investigation. As such, to the extent PFLAG has knowledge of any such doctors or clinics providing “alternative routes to care” in Texas, it possesses knowledge that OAG does not, satisfying step three of the *Powell* test.

**3. None of the requested documents in the revised CID implicate the First Amendment.**

The trial court was wrong to withhold entire categories of documents on the basis that the First Amendment protects them. As an initial matter, since PFLAG filed this challenge to OAG’s original CID, OAG has repeatedly disclaimed any attempt to seek membership lists from PFLAG, which is the only category that could even arguably be a problem. For example, on March 1, 2024, OAG filed a Motion to Modify and Clarify that formally sought to withdraw the original CID and replace it with a revised CID that unequivocally disclaimed any request for documents and information that could identify PFLAG members. CR.140. The only reason OAG never independently served this revised CID is because the court had enjoined OAG “from taking any adverse action in relation to the Civil Investigative Demand,” which OAG construed as forbidding it from serving additional CIDs during the litigation. CR.122; *see also* CR.143 (“[T]he breadth and ambiguity in [the] Court’s Order has the effect of foreclosing the Attorney General from pursuing legitimate investigatory and enforcement activities . . . , including issuing the new Demands in tandem with withdrawing the demands restrained by the March 1 Order.”). However, OAG repeatedly asked the court to either permit it to file its revised CID expressly

disclaiming PFLAG's membership information or to construe the original CID as not applying to such membership information. *See, e.g.*, CR.386–88, CR.1436–37.

As such, the only information actually at issue that the trial court held is protected by the First Amendment is PFLAG's private communications. But contrary to the trial court's ruling, there is no First Amendment privilege protecting a group's private communications from disclosure or discovery. While the trial court cites no authority for its proposition that "private communications are protected by the rights to free expression, assembly, and association," App'x Ex. A at 11 ¶ 11, PFLAG cited one case in support to the trial court: this Court's case *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 ("*BACALA*"). But *BACALA* was a lawsuit about the disclosure of "the identities of [*BACALA*'s] contributors"—in other words, its donor lists, which for *BACALA* were the functional equivalent of members. *Id.* at 372. It is a membership list case, not a private communications case, and has no bearing on the latter.

Moreover, it is not apparent how sharing "personal communications" would reveal anything sensitive given that OAG has conceded it does not seek to identify PFLAG members and had explicitly advised PFLAG to redact communications to protect such identities. The production of any of PFLAG's communications would therefore have no bearing on its right to free expression or assembly, and does not implicate the First Amendment.

**4. None of the documents sought by OAG in its original or revised CIDs implicate the Fourth Amendment.**

The trial court also erred in holding OAG’s CIDs “infringe the right to be free from unreasonable search and seizure under both the U.S. Constitution and the Texas Constitution.” App’x Ex. A at 11 ¶ 12. Because “there is no significant difference in the text of Article I, Section 9 [the Texas Constitution’s protection against unreasonable search and seizure] and the Fourth Amendment,” case law on the Fourth Amendment is instructive for both the federal and state inquiries. *Holder v. State*, 595 S.W.3d 691, 702 (Tex. Crim. App. 2020).

The Fourth Amendment has an extremely limited role as regards administrative subpoenas. The U.S. Supreme Court has held that the Fourth Amendment “if applicable, at the most guards against abuse only by way of too much indefiniteness or breadth in the things required to be” produced. *Oklahoma Press Publ’g Co.*, 327 U.S. at 208. Moreover, “[i]t is not necessary . . . that a specific charge or complaint of violation of law be pending.” *Id.* at 208-09; *see also Schade*, 150 S.W.3d at 550 (“[W]e find that the Fourth Amendment and its Texas counterpart at most guard against abuse only by way of too much indefiniteness or breadth in the things required” to be produced). As explained above, *supra* sections II.B.1, 2, the CIDs are neither indefinite nor broad. Rather, they refer directly to highly specific information that PFLAG put at issue in separate litigation. Furthermore, the Fifth Circuit has held that an administrative subpoena complies with the requirements of the Fourth Amendment so long as it complies with that Circuit’s three-factor “reasonable relevance” test, which OAG’s CIDs in this case do. *United States v. Zadeh*, 820 F.3d

746, 756 (5th Cir. 2016) (rejecting a Fourth Amendment challenge and holding the district court “did not err in applying the reasonable relevance standard”).

### **III. This Court Should Vacate the Trial Court’s Injunction.**

In addition to the trial court’s many erroneous findings of fact and law and its incorrect declaratory judgments, the court also permanently enjoined OAG from demanding information or documents “that would reveal the identities or private communications of PFLAG,” from “demanding information or documents from PFLAG relating to the [CIDs] other than those specifically modified by this Court Order,” and taking “any adverse action in relation to the [CID] against PFLAG,” including “but not limited to taking any affirmative steps to revoke, suspend, forfeit, dissolve, or void the ability of PFLAG or its chapters to operate in Texas.” App’x Ex. A at 19. There is no timeline for this injunction, so in effect, OAG may not seek documents from PFLAG or taking anything that could be perceived as “adverse action” against it in perpetuity.

This injunction is improper because it is sweeping, unlimited in time, and enjoins OAG from pursuing legitimate other investigatory avenues against PFLAG and its Texas chapters in perpetuity. “[I]njunctions must be narrowly drawn and precise.” *Holubec*, 111 S.W.3d at 40 (quoting *Brown*, 965 F.2d at 51). But the trial court’s injunction here is neither.

This Court just rejected a similarly overbroad injunction in the *Annunciation House* case. There, the district court “imposed a precompliance requirement on the attorney general with respect to future efforts to request to examine Annunciation House’s records,” and “claimed for itself the exclusive authority for the next two

years to supervise such precompliance.” *Paxton v. Annunciation House, Inc.*, No. 24-0573, 2025 WL 1536224, at \*25 (Tex. May 30, 2025). The Court noted this “injunction’s unusual and broad scope.” *Id.* Here, the injunction’s scope is even broader—it is unlimited in time and provides no opportunity for OAG to seek even precompliance review, let alone issue new document demands to PFLAG.

Furthermore, the wording of the injunction against OAG is unusually vague. It prohibits “any adverse action in retaliation” against PFLAG as relates to the CIDs. App’x Ex. A at 19. But there are other legal pathways for OAG to seek to review PFLAG’s documents and potentially seek to revoke the charter of PFLAG or its Texas chapters based on failure to comply, such as the recently upheld sections 12.151 and 12.152 of the Texas Business Organizations Code. *Annunciation House*, 2025 WL 1536224, at \*24 (holding Tex. Bus. Orgs. Code §§ 12.151 and 12.152, which authorize OAG to request documents for any entity registered in Texas, are not facially unconstitutional). The breadth and ambiguity of the trial court’s injunction effectively forecloses OAG from pursuing these legitimate investigatory and enforcement activities against PFLAG and its Texas chapters, and should be vacated.

## PRAYER

The Court should vacate the district court's injunction against the State, reverse the trial court's rulings, remand with instructions for the trial court to enter an order enforcing OAG's revised CID, and award the State any other relief to which it is entitled.

Respectfully submitted.

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## **CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this document contains 10,125 words, excluding exempted text.

/s/ *Abigail E. Smith*

ABIGAIL E. SMITH

**In the Supreme Court of Texas**

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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS,  
*Appellant,*

*v.*  
PFLAG, INC.,

---

*Appellee.*

On Direct Appeal from the  
261st Judicial District Court, Travis County

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**APPENDIX**

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|                                                    |     |
|----------------------------------------------------|-----|
|                                                    | Tab |
| 1. Final Declaratory Judgment and Injunction ..... | A   |

**TAB A: FINAL DECLARATORY JUDGMENT AND  
INJUNCTION**



## **PROCEDURAL HISTORY AND BACKGROUND**

PFLAG is a national, nonprofit membership organization that provides support, education, and advocacy for LGBTQ+ people and their families in furtherance of its mission to create a more caring, just, and affirming world for LGBTQ+ people and those who love them. Tr. of Bench Trial on Merits (“Trial Transcript”) at 44:2-20; 45:2-19. PFLAG’s members in Texas include families with transgender youth who need access to medically necessary gender-affirming medical care. *Id.* at 63:17-64:16. The core of the support PFLAG provides to PFLAG members is peer-to-peer support groups, run by volunteers, in which members are supported in sharing deeply personal information about themselves and their families. *Id.* at 51:16-52:8. PFLAG has also advocated for these members by joining litigation on their behalf in *PFLAG, Inc. v. Abbott*, Cause No. D-1-GN-22-002569 (in the 459th District Court of Travis County, Texas), challenging the State’s treatment of gender-affirming medical care as child abuse, and *Loe v. Texas*, Cause No. D-1-GN-23-003616 (in the 201st District Court of Travis County, Texas), challenging the constitutionality of Senate Bill 14 (“SB14”), which prohibits physicians and other healthcare providers from providing, prescribing, administering, or dispensing gender-affirming medical care to transgender minors in Texas. *Id.* at 58:25-59:21.

PFLAG does not provide medical care; it does not offer any goods or services related to medical care; it does not provide any specific resources to medical providers, including as to how to bill for medical care; and it has never billed an insurance provider for medical care. *Id.* at 47:25-48:8. The only goods PFLAG sells in Texas are branded merchandise on its website—T-shirts and mugs, for example. *Id.* at 48:9-12.

On February 9, 2024, the OAG’s Consumer Protection Division served PFLAG with a Civil Investigative Demand (“CID”) and a Notice of Demand for Sworn Written Statement (“DSWS”). The Demands instruct PFLAG to provide information and documents purportedly related to the OAG’s “investigation of actual or possible violations” of Section 17.46 of the Texas Deceptive Trade Practices-Consumer Protection Act (“DTPA”) for issues related to alleged “misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law.”

The CID seeks documentary material for six requests, while the DSWS seeks nine information requests to be answered under oath. The Demands each attach two exhibits: (1) the Affidavit of Brian K. Bond, Chief Executive Officer of PFLAG, executed on July 11, 2023, and submitted in support of an application for temporary injunction in *Loe v. Texas* (“Exhibit B1”), and (2) a list of medical providers, some of whom provide or have provided gender-affirming care to transgender adolescents, including medical providers outside of Texas (“Exhibit B2”). Five of the eight requests in the CID and seven of the nine requests in the DSWS relate specifically to Exhibit B1. One of the eight requests in the CID and none of the nine requests in the DSWS relate specifically to Exhibit B2.

On February 28, 2024, PFLAG filed its Petition. The Court granted Plaintiff’s Application for Temporary Restraining Order (“TRO”) on March 1, extended the TRO until March 29, and granted Plaintiff’s Application for Temporary Injunction (“TI”) on March 25. Among other orders,

the TI extended the return date of the Demands “until the conclusion of the litigation.” Defendants filed an appeal of the TI on April 12. On April 17, the Texas Court of Appeals, Third District, temporarily ordered the TI to be reinstated pursuant to Texas Rule of Appellate Procedure 29.3.

Meanwhile, on April 12, 2024, Defendants filed their Counterclaim seeking to enforce the Demands. In their Counterclaim, Defendants assert that the Demands were issued in connection with an investigation into whether providers are fraudulently prescribing hormones under the guise of treating an “endocrine disorder,” when in fact the hormones are intended to treat “gender dysphoria” or another medical condition. Countercl. at ¶ 6. Defendants also assert that PFLAG likely had “information related to insurance fraud.” Countercl. at ¶ 7. In the Counterclaim, Defendants proposed modifications to the Demands which would “withdraw any portion of the original Demands that could be construed as requiring PFLAG to reveal member identities[.]” See Exhibits 3-6 to Countercl. (“Proposed Modifications”).

This Court held a bench trial on June 10, 2024, and took the matter under advisement. While the Court was considering and researching the matter in the summer of 2024, a new and uncertain appellate structure was taking effect in the State of Texas involving pending matters regarding the State of Texas and its agencies. After the Third Court of Appeals reinstated the Court’s Temporary Injunction, the OAG filed an unopposed motion to abate the appeal. This unopposed abatement was granted by the Third Court of Appeals on August 16, 2024. Pursuant to a Supreme Court of Texas Transfer Order issued August 26, 2024, the appeal of the Temporary Injunction was transferred to the 15<sup>th</sup> Court of Appeals on September 1, 2024. The 15<sup>th</sup> Court sought a status report, but no indication was given by the 15<sup>th</sup> Court of Appeals whether the abatement would continue forward, nor was the case reinstated. No additional action appears to have been taken at the intermediate appellate level.

This Court issued a Letter Ruling on September 13, 2024; the Letter stated that after careful consideration of the merits, the evidence, the pleadings, and arguments of counsel, the Court was granting the proposed modifications of the CID as set out in PFLAG’s motion, and set the matter for an entry hearing on the Declaratory Judgment and Injunction during the week of October 14, 2024. PFLAG sent the OAG certain documents on October 11, 2024, pursuant to the Court’s Letter; the Court intended to review the documents produced, hear any follow-up arguments, and rule on the nature and scope of the Injunction at that hearing.

Even though the September 13, 2024, Letter addressed only a portion of the claims and issues before the Court and ordered some records to be produced, Defendants appealed this Court’s Letter Ruling directly to the Texas Supreme Court on October 10, 2024. On February 7, 2025, the Texas Supreme Court abated that appeal, explaining that “[w]ithout addressing the merits of the complaint that jurisdiction is lacking, the Court notes that the alleged jurisdictional defect may be cured by the trial court’s entry of a final order on the Attorney General’s petition for enforcement.” The Texas Supreme Court instructed this Court to sign and enter a final order on the OAG’s petition to enforce while also encouraging it “to render a final judgment while the direct appeal is abated, to streamline appellate review.” The Texas Supreme Court removed the case from its active docket until March 10, 2025, “by which time the trial court must file the written final order with the clerk of this Court and the parties must file a status report.”

The Court's busy hearing and trial calendar, as well as responsibilities as the Local Administrative Judge in Travis County, did not allow a follow-up hearing to be held during the weeks allotted by the Supreme Court, so the Court hereby rules based on the record before the Court, and finds as follows:

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**I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**FINDINGS OF FACT**

On March 25, 2024, the Court held a Temporary Injunction hearing in this matter. One witness was presented to the Court: Aaron Ridings, Executive Vice President of Plaintiff PFLAG. Based on the specificity and consistency of their testimony, which was sworn under oath and on penalty of perjury and which has not been directly contested, the Court finds the testimony of Mx. Ridings credible. On June 10, 2024, the Court held a trial in this matter. Two witnesses were presented to the Court: (1) Brian Bond, CEO of Plaintiff PFLAG, and (2) Sam Weeks, an investigator with Defendant the Office of the Attorney General of the State of Texas ("OAG"). Based on the specificity and consistency of his testimony, which was sworn under oath and on penalty of perjury and which has not been directly contested, the Court finds the testimony of Mr. Bond credible. Based on the specificity and consistency of his testimony, which was sworn under oath and on penalty of perjury and which has not been directly contested, the Court finds the testimony of Mr. Weeks credible.

**PFLAG**

1. PFLAG is a national, nonprofit membership organization that provides support, education, and advocacy for LGBTQ+ people and their families in furtherance of its mission to create a more caring, just, and affirming world for LGBTQ+ people and those who love them. Trial Tr. at 43:18-44:5, Trial Pl. Ex 5.
2. PFLAG has over 1,600 members in Texas, and those members include families with transgender youth, some of whom have sought access to medically necessary gender-affirming medical care. T.I. Hr. Tr. at 41:24-42:1, 42:17-22; *see id.* at 45:16-46:1, 46:13-25.
3. The core of the support PFLAG provides to PFLAG members is peer-to-peer support groups, run by volunteer chapter leaders, in which members are supported in sharing deeply personal information about themselves and their families. These meetings have an expectation of confidentiality. Trial Tr. at 45:2-7, 51:14-52:16, 56:12-16.

**PFLAG's Participation in Texas Litigation**

4. As part of PFLAG's advocacy in furtherance of its mission, PFLAG has been a plaintiff in two lawsuits relating to the rights of transgender adolescents and their families in Texas, *PFLAG, Inc. v. Abbott*, Cause No. D-1-GN-22-002569 in the District Court of Travis

County and *Loe v. Texas*, Cause No. D-1-GN-23-003616 in the District Court of Travis County. Trial Tr. at 56:16-22, 58:25-59:3.

5. As an organizational representative of PFLAG, Mr. Bond submitted an affidavit in support of Plaintiffs' Verified Original Petition in *Loe v. Texas*. See Ex. B1 to CID and DSWs (*Loe v. Texas* Bond Aff.). In his affidavit, he described PFLAG's decision to participate in a lawsuit to try to block SB14, which prohibits medical professionals in Texas from providing gender-affirming medical care to minors, from taking effect. See *Loe v. Texas* Bond Aff. ¶¶ 13-20.
6. At the time of Mr. Bond's July 11, 2023, affidavit, SB14 had yet to go into effect and the provision of gender-affirming medical care for adolescents was still lawful in Texas. Trial Tr. at 61:11-21.
7. The concerns raised by PFLAG member families in Texas with transgender and nonbinary adolescents surrounding the passage of SB14 were some of the reasons Mr. Bond cited for PFLAG's involvement in the challenge to the law. *Loe v. Texas* Bond Aff. ¶¶ 13-20; Trial Tr. at 67:15-22.
8. In the affidavit, Mr. Bond stated: "PFLAG members had been actively engaged in fighting against SB14's passage, voicing their opposition regularly at the statehouse. Given the hostility of the climate in Texas towards transgender people in general, and toward youth in particular, its passage was met with both resignation at its predictability and tremendous fear. New families showed up in droves for chapter meetings and support groups, seeking information and support. Chapters planned and participated in events to provide comfort to and celebrate the unbreakable joy of the gender diverse community. PFLAG families with transgender and nonbinary adolescents shared their contingency plans—those with the resources to move or seek care out of state have begun firming up their plans to do so, while the vast majority without those resources have been asking chapters for alternative avenues to maintain care in Texas." *Loe v. Texas* Bond Aff. ¶ 13.
9. PFLAG does not provide medical care or any medically related goods or services. PFLAG does not provide any specific resources to medical providers, including as to how to bill for medical care, and it has never billed an insurance provider for medical care. Trial Tr. at 47:19-48:18. PFLAG does not provide any resources to its members regarding billing for medical care and has no communications with its members about how to bill insurance for gender-affirming medical care. Brian Bond's Affidavit in *Loe v. Texas* did not refer to anything related to insurance billing practices. Mr. Bond's Affidavit did not refer to discussions regarding fraudulent conduct, including insurance fraud, with PFLAG members or staff. The communications Mr. Bond had regarding PFLAG Texas members and gender-affirming medical care at the time of the *Loe* Affidavit related solely to PFLAG members' concerns about the passage of SB14 and what would happen if it were allowed to go into effect. Trial Tr. at 61:19-67:14, 70:20-73:17; *Loe v. Texas* Bond Aff.

## **The Demands**

10. On February 9, 2024, the OAG's Consumer Protection Division served PFLAG with a Civil Investigative Demand and a Notice of Demand for Sworn Written Statement (together, the "Demands"). The Demands instructed PFLAG to provide information and documents purportedly related to the OAG's "investigation of actual or possible violations" of Section 17.46 of the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA") for issues related to alleged "misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures and Texas law." Trial Pl. Ex. 1, Civil Investigative Demand ("CID"); Trial Pl. Ex. 2, Notice of Demand for Sworn Written Statement ("DSWS"). The Demands did not provide any additional explanation of the purpose of the investigation or PFLAG's connection to the investigation. *Id.* The Demands did not state what alleged misrepresentations were being investigated, who was suspected of making the alleged misrepresentations, to whom the alleged misrepresentations were made, or when they were made. *Id.*
11. No other Civil Investigative Demand or Notice of Demand for Sworn Written Statement has been served on PFLAG.
12. The Demands sought information and documents related to the "contingency plans" and "alternative avenues to maintain care" described in Mr. Bond's *Loe* affidavit. The Demands also sought documents and communications between "any PFLAG representative regarding, relating to, or referencing" a list of medical providers set forth in Exhibit B2 to the Demands. *See* CID; DSWS.
13. In the definitions and instructions, the Demands sought information and documents from March 8, 2023—the date on which SB14 was introduced in the Texas legislature—through the date of production and a broad range of information and documents that would reveal the identities and private communications of PFLAG members in Texas. For example, the Demands sought for PFLAG to "[i]dentify from whom PFLAG learned about such 'contingency plans' or 'alternative avenues,'" and then the Demands defined "identify" to require a person's "complete name, any alias(es), social security number, date of birth, occupation, title(s), job responsibilities, street and mailing address for both home and business at the time in question at the time of responding (if different), home, cellular, and business telephone numbers, and personal and business email addresses." The Demands sought privileged information and documents and prohibited any form of redaction. *See* CID.
14. PFLAG was never a target of the OAG's underlying investigation. *See* T. I. Hr. Tr. at 17:8-18:19; Trial Tr. at 39:16-18; 155:22-156:20.
15. The only evidence in the trial record as to the purpose of the OAG's investigation in connection with which the Demands were issued are the Demands themselves, Mr. Weeks' affidavit filed in support of the Defendants' opposition to PFLAG's request for a TRO, and Mr. Weeks' testimony.
16. Defendants' purported justification for the Demands centered on Mr. Bond's statements in

his affidavit supporting the *Loe* matter.

17. The Defendants' position is that the OAG issued the Demands as a part of its investigation into potentially fraudulent insurance billing practices. *See* Defs.' Countercl. For Enforcement of the Demands ("Countercl.") at ¶ 7 ("On or around January 30, 2024, the Attorney General's Office became aware that PFLAG likely possessed information relevant to providers misrepresenting the purpose of and condition treated by their written prescription for hormone treatments. In other words, PFLAG likely possess information related to insurance fraud.").

### **After the Demands**

18. PFLAG filed "a petition to extend the return date for, or to modify or set aside the demand" under the Deceptive Trade Practices Act (DTPA) to challenge the Civil Investigative Demands and a Notice of Demand for Sworn Written Statement. Tex. Bus. & Com. Code § 17.61(g).
19. Defendants filed a counterclaim for enforcement of the Demands pursuant to Tex. Bus. & Com. Code § 17.62(b). *See* Countercl. ¶ 27.
20. The Defendants' counterclaim proposed modifications to the Demands, which would have allowed for the redaction of individual member information. *See* Trial Defs. Ex. 3 and Ex. 4. Even with the proposed modifications, however, the Demands still sought private communications of PFLAG and its members related to Brian Bond's affidavit in *Loe v. Texas* and PFLAG's support of families with transgender adolescents in Texas, among other items, and a sworn statement from Brian Bond regarding the same. *Id.*
21. Defendants acknowledge that although they filed a plea to the jurisdiction, they did not set their PTJ for hearing and did not ask that it be heard by the court prior to trial. Trial Tr. at 17:20-18:8.
22. The parties were given a full opportunity to make their record and both acknowledged that they were able to do so. Trial Tr. 158:10-17.
23. The issuance of the Demands caused PFLAG members and volunteers to express fear and change their behavior, including in the following ways: members conveyed fear that their communications would be made available to the OAG's office; in-person meeting attendance decreased; some members who did attend PFLAG meetings chose to share less during the meetings; some volunteers stepped back from the organization; some chapters changed certain aspects of their meetings, including moving in-person meeting locations and no longer taking attendance; and some members became worried about engaging in new projects or engaging with people who presented as new potential PFLAG members. Trial Tr. at 73:18-76:2; T.I. Hr. Tr. at 49:1151:6.
24. Mr. Bond's statements in the *Loe* affidavit relating to "contingency plans," "alternative avenues to maintain care," and "affirming general practitioners" were based on information Mr. Bond received during regular meetings with PFLAG staff and conversations with chapter leaders, as well as what he heard of the *Loe* family plaintiffs' experiences. Mr.

Bond's references to "contingency plans," "alternative avenues to maintain care," and "affirming general practitioners" referred solely to families moving out of state either entirely or partially, accessing medically necessary care outside of the state of Texas, or to primary care doctors continuing to provide gender-affirming medical care after the passage of SB14, but before its effective date. Trial Tr. at 64:17-67:22.

25. These references did not relate to plans to access gender-affirming medical care from providers in Texas after SB14's effective date. Trial Tr. at 61:19-67:14.
26. Mr. Bond's statements in the *Loe* affidavit do not describe efforts to use deception to obtain or offer care. *Id.*
27. PFLAG does not provide medical care or any medically related goods or services. PFLAG does not provide any specific resources to medical providers, including as to how to bill for medical care, and it has never billed an insurance provider for medical care. PFLAG does not provide any resources to its members regarding billing for medical care and has no communications with its members about how to bill insurance for gender-affirming medical care. Trial Tr. at 47:19-48:18.
28. PFLAG does not have any communications relating to its members in Texas with any of the entities identified in Exhibit B2 to the Demands, which are the targets of the OAG's investigation. Trial Tr. at 71:4-73:17.
29. Defendants did not produce evidence to suggest that PFLAG likely possessed information relevant to the OAG's investigation into potential fraud related to insurance billing practices.
30. Defendants described in their Counterclaim and in the affidavit of Sam Weeks attached to their TRO Response that internet research led an investigator at the OAG to conclude that "providers may be fraudulently prescribing hormones under the guise of treating an 'endocrine disorder,' when in fact the hormones are intended to treat 'gender dysphoria' or another medical condition." Countercl. at ¶ 6; Defendant TRO Response, Aff. of Sam Weeks. Defendants' assertion was based on online statements from two providers, neither of which are in Texas. The statements do not relate to providing medical care to minors in Texas after the implementation of SB14. *See* Ex. 1 and Ex. 2 to Defs.' Resp. To Pl.'s Application for TRO; Trial Tr. at 116:12-117:23, 120:18-121:7; 126:24-130:10.
31. Mr. Weeks' knowledge of the investigation upon which his affidavit in support of the Demands is based was "administrative" and "rudimentary." Trial Tr. at 136:6-137:12.
32. Mr. Weeks could not justify the legitimacy of the OAG's investigation into PFLAG. Mr. Weeks did not have knowledge of the Civil Investigative Demand at issue in this case. Trial Tr. at 134:9-135:5. He did not have knowledge of the *Loe v. Texas* case, of Mr. Bond's affidavit in *Loe* upon which the Demands were based, or that his own affidavit was used to support Defendant's Response to Plaintiff's Petition. *Id.* at 105:7-106:7; 139:1-140:7; 142:1-13.
33. Mr. Weeks saw exhibits upon which his affidavit was based for the first time on the day he

signed the petition. Trial Tr. at 120:18-121:7

34. Mr. Weeks did not provide any further information to justify the legitimacy of the OAG's investigation and in fact refused to answer questions regarding the justification for issuing the Demands. There is no evidence before the court, through Mr. Weeks or otherwise, as to why the OAG sought the relevant information from third-party PFLAG rather than through another source. *See* Trial Tr. at 118:17-19; 120:18-121:7; 122:17-123:8; 125:24-125:2; 130:21-23; 140:24-141:7.
35. Plaintiff's ability to cross examine Mr. Weeks was severely limited by objections lodged by counsel for the Defendants. As the representatives of the Office of the Attorney General, the Court gave them wide birth to assert privilege where they represented that it existed.
36. Defendants proposed modifications to the Demands in attachments to various court filings, but modified Demands were never served on PFLAG. Trial Tr. at 91:23-92:17; 162:20-25.

### **Post-Trial Developments**

37. The Court takes judicial notice that since the June 10, 2024 trial in this matter, the OAG has filed lawsuits against three Texas physicians for alleged violations of SB 14 and the DTPA. The defendant physicians are Dr. May Lau (District Court of Collin County, 493<sup>rd</sup> Judicial District, Cause No. 493-07676-2024), Dr. M. Brett Cooper (District Court of Collin County, 493<sup>rd</sup> Judicial District, Cause No. 493-08026-2024), and Dr. Hector Granados (District Court of Kaufman County, 422<sup>nd</sup> District, Cause No. 118832-422).<sup>1</sup>
38. The lawsuits brought against Drs. Lau, Cooper, and Granados evidence that the OAG already has other avenues in which it can seek to access medical records and other documents to investigate persons allegedly evading the mandates of SB14 and committing fraud—the purpose of the Demands sent to PFLAG.
39. In accordance with the Court's September 13, 2024 Letter Ruling, on October 11, 2024, PFLAG produced documents to the OAG responsive to the CID as modified pursuant to PFLAG's proposed final judgment.

### **CONCLUSIONS OF LAW**

1. PFLAG followed the proper procedure under the Deceptive Trade Practices Act ("DTPA") to challenge the Civil Investigative Demands and a Notice of Demand for Sworn Written Statement by timely filing "a petition to extend the return date for, or to modify or set aside the demand." Tex. Bus. & Com. Code § 17.61(g). The Defendants extended the return date of the Demands to March 4, 2024 and PFLAG filed its petition on February 28, 2025—within 20 days of the Demands' service on February 9, 2024.
2. There is no basis in Texas law for an expedited proceeding to adjudicate a petition to extend the return date for, or to modify or set aside a demand filed pursuant to Tex. Bus. & Com.

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<sup>1</sup> The Court can take judicial notice of these publicly filed suits.

Code § 17.61(g) or a petition for enforcement filed pursuant to Tex. Bus. & Com. Code § 17.62(b). The only way a trial court can summarily rule on either petition is through a motion for summary judgement or a trial on the merits.

3. There is no basis in Texas law for applying the “*Powell*” factors—the standard advocated by Defendants—to assess the enforceability of either a Civil Investigative Demand or a Demand for a Sworn Written Statement.
4. Even if the *Powell* factors applied, Defendants would not have met their burden for enforcement. The Defendants have not shown that the relevant investigation is being conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purposes, that the information sought is not already within the OAG’s possession, and that the administrative steps required have been followed. There is no basis for the standard advocated by the OAG.
5. Civil Investigative Demands and Demands for a Sworn Written Statement must provide sufficient clarity regarding the statutory basis for the demands and the general subject matter of the investigation to which they allegedly relate. A recipient must be able to assess or challenge a defendant’s authority to have issued the demands in the first instance and to determine whether the information and documents they seek can meet a relevance standard. *See Consumer Fin. Prot. Bureau v. Source for Pub. Data, L.P.*, 903 F.3d 456, 459 (5th Cir. 2018). Because a demand’s validity is measured by the purposes stated therein, the sufficiency of the statement of their purpose “is an important statutory requirement.” *Id.* at 459 (quotation omitted).
6. Section 17.61 and Section 17.60 of the Texas Business and Commerce Code authorize this Court to set aside or modify civil investigative demands and demands for sworn written statements upon a showing of good cause.
7. Section 17.61 and 17.60 of the Texas Business and Commerce Code only authorize the State of Texas to request information and documents which would be discoverable under the Texas Rules of Civil Procedure. The Demands seek information irrelevant to the OAG’s investigation into alleged insurance fraud that is available from other sources and is overly burdensome.
8. Under Section 17.60(1) of the Texas Business and Commerce Code, the State of Texas may only demand sworn written statements from “the person” suspected of violating the DTPA and not from third parties.
9. Because PFLAG was not the target of the OAG’s investigation, PFLAG is not obligated to respond to the Demand for a Sworn Written Statement.
10. PFLAG’s participation in the lawsuits *PFLAG, Inc. v. Abbott* and *Loe v. Texas* is constitutionally protected activity and advocacy.

11. PFLAG member names, identifying information, and private communications are protected by the rights to free expression, assembly, and association under both the U.S. Constitution and the Texas Constitution.
12. In seeking information and documents that are not reasonably relevant to the purported purpose of the investigation and in failing to comply with the requirements of the DTPA, the Demands infringe the right to be free from unreasonable search and seizure under both the U.S. Constitution and the Texas Constitution.
13. A petition to enforce can succeed only against a party that has “fail[ed] to comply with a directive of the consumer protection division.” PFLAG has not failed to comply.
14. During the pendency of this litigation, PFLAG’s obligation to respond to the Demands was suspended by temporary orders issued by this Court and the Court of Appeals. The only exception was the Court’s September 13, 2024, Letter Ruling that PFLAG respond to narrowed versions of certain requests contained in the Civil Investigative Demand.
15. PFLAG complied with the Court’s September 13, 2024, Letter Ruling by producing responsive documents to the OAG.
16. Through the provision of Mr. Bond’s affidavit, the provision of sworn testimony of Mr. Bond at trial, and its production of documents, PFLAG has complied with its obligations in relation to the Demands.
17. Defendants have failed to establish the relevance of or need for any additional information in response to the remaining requests in the demands.

## **II. PFLAG’S REQUEST TO SET ASIDE OR IN THE ALTERNATIVE MODIFY THE DEMANDS**

### **The Civil Investigative Demand**

Section 17.61(g) of the Texas Business and Commerce Code authorizes this Court to set aside or modify the CID upon a showing of good cause.

This Court FINDS that PFLAG has shown good cause to modify the CID.

**IT IS FURTHER ORDERED** that the CID is hereby modified pursuant to Section 17.61(g) of the Texas Business and Commerce Code as follows:

### **The Demands Generally**

The Demands may only request information and documents “which would be discoverable under the Texas Rules of Civil Procedure.” See Tex. Bus. & Com. Code § 17.61(c). Pursuant to the Texas Rules of Civil Procedure, information that is not relevant is not discoverable. Tex. R. Civ. P. 192.3(a). “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Tex. R. Evid. 401.

The information sought from PFLAG—a nonprofit membership organization that does not provide medical care, does not offer any goods or services related to medical care, does not provide any specific resources to medical providers, including as to how to bill for medical care, and it has never billed an insurance provider for medical care—is not relevant to the OAG’s investigation into potential insurance fraud.

To the extent any of the information sought is relevant, it is more readily available from other sources and overly burdensome in this context.

Accordingly, the Court FINDS that the Demands seek information and documents beyond the Texas Rules of Civil Procedure and are therefore *ultra vires*.

### **Definitions and Instructions**

Applying the included definitions and instructions, the Demands sought a broad range of information and documents that would reveal the identities and private communications of PFLAG members in Texas. In Defendants’ proposed modifications to the Demands, the definitions and instructions would allow for the redaction of individual member information. Even with the proposed modifications, however, the Demands would have still sought private communications of PFLAG and its members related to Brian Bond’s affidavit in *Loe v. Texas* and PFLAG’s support of families with transgender adolescents in Texas.

Accordingly, the Court FINDS that the Demands even with the modifications proposed by Defendants seek privileged information and documents, including the free speech, assembly and association privileges and attorney-client communications and attorney-work product privileges.

**IT IS FURTHER ORDERED** that PFLAG is not required to produce privileged information and documents in response to the Demands.

### **Specific CID Requests**

#### CID Request 1:

“All Documents and Communications that form the basis of, or relate to, Brian K. Bond’s personal knowledge of the information contained in the affidavit attached hereto as ‘EXHIBIT B1.’”

The Court FINDS that this request:

- Seeks information that is not relevant to Defendants’ investigation.
- Does not seek information that is likely to lead to the discovery of admissible evidence.

- To the extent it actually seeks information regarding billing codes used in connection with gender-affirming medical care, seeks information that is more readily available from sources other than PFLAG, which is a third-party in the context of any medical care.
- Amounts to a fishing expedition.
- Is overbroad because:
  - The request seeks all Documents and Communications that form the basis of, or relate to, all of the information contained in a very lengthy affidavit, instead of specifying certain portions of the affidavit.
  - The term “relate to”, in the context of an affidavit that describes PFLAG’s entire history, organization, and mission, covers far more than information related to Defendants’ investigation.
  - The request is unlimited in time—the affidavit covers time spanning the entire history of PFLAG.
- Is vague and ambiguous as to what is meant by personal knowledge.
- Is harassing to the extent it intentionally seeks attorney-client privileged communications.

**IT IS FURTHER ORDERED** that: PFLAG shall not be required to respond CID Request 1

CID Request 2:

“All Communications to, or from, any PFLAG representative regarding, relating to, or referencing, ‘contingency plans’ and/or ‘alternative avenues to maintain care,’ as those phrases are used in the affidavit attached hereto as ‘EXHIBIT B1’”

The Court FINDS that this request:

- Seeks information that is not relevant to Defendants’ investigation.
- Does not seek information that is likely to lead to the discovery of admissible evidence.
- To the extent it actually seeks information regarding billing codes used in connection with providing gender-affirming medical care to minors in Texas, seeks information that is more readily available from sources other than PFLAG, which is a third-party in the context of any medical care.
- Amounts to a fishing expedition.
- Is overbroad because:
  - The request covers “any PFLAG representative” rather than being narrowed to particular custodians.
- The request is unlimited in time.
- The request vague and ambiguous as to “personal knowledge”
- The request is harassing to the extent it intentionally seeks attorney-client privileged communications.

**THE COURT HAS PREVIOUSLY ORDERED** that: PFLAG provide non-privileged documents showing what was meant by ‘contingency plans’ and/or ‘alternative avenues to maintain care,’ as those phrases are used in the affidavit, sent to or from Brian Bond between March 8, 2023 and July 11, 2023 (the date of the Affidavit).

CID Request 3:

“All recommendations, referrals, and/or lists of pediatric and/or adolescent ‘health care providers’ (as that term is used in paragraph 13 of the affidavit attached hereto as ‘EXHIBIT B1’) in Texas, that PFLAG (or any of its representatives) has created, maintained, received, or distributed since March 8, 2023”

The Court FINDS that this request:

- Seeks information that is not relevant to Defendants’ investigation.
- Does not seek information that is likely to lead to the discovery of admissible evidence.
- To the extent it actually seeks information regarding billing codes used in connection with the provision of gender-affirming medical care to minors in Texas, seeks information that is more readily available from sources other than PFLAG, which is a third-party in the context of any medical care.
- Amounts to a fishing expedition.
- Is overbroad because:
  - It is not reasonably narrow in time, including to the extent it seeks information beginning before gender-affirming medical care for minors was banned in Texas.
  - It requests not only documents PFLAG created, maintained, or distributed, but also those it received, without any limitation as to specific custodians.
- Is vague as to what sort of recommendations, referrals, or lists would be responsive.

**THE COURT HAS PREVIOUSLY ORDERED** that: PFLAG provide any list of ‘health care providers’ providing gender-affirming care to minors in Texas after September 1, 2023, which PFLAG has created, maintained, or distributed.

CID Request 4:

“All Communications to, or from, Brian K. Bond regarding, or relating to, the contents and preparation of the affidavit attached hereto as ‘EXHIBIT B1’”

The Court FINDS that this request:

- Seeks information that is not relevant to Defendants’ investigation.
- Does not seek information that is likely to lead to the discovery of admissible evidence.
- To the extent it actually seeks information regarding billing codes used in connection with the provision of gender-affirming medical care to minors in Texas, seeks information that is more readily available from sources other than PFLAG, which is a third-party in the context of any medical care.
- Amounts to a fishing expedition.
- Is harassing to the extent it intentionally seeks attorney-client privileged communications.

**IT IS FURTHER ORDERED** that PFLAG shall not be required to respond to CID Request 4.

CID Request 5:

“In reference to the affidavit attached hereto as ‘EXHIBIT B1’ produce all Documents, meeting minutes, and Communications that support Brian K. Bond’s sworn statement that ‘PFLAG families with transgender and nonbinary adolescents ... have been asking chapters for alternative avenues to maintain care in Texas.’”

The Court FINDS that this request:

- Seeks information that is not relevant to Defendants’ investigation.
- Does not seek information that is likely to lead to the discovery of admissible evidence.
- To the extent it actually seeks information regarding billing codes used in connection with the provision of gender-affirming medical care to minors in Texas, seeks information that is more readily available from sources other than PFLAG, which is a third-party in the context of any medical care.
- Amounts to a fishing expedition.
- Is harassing to the extent it intentionally seeks information protected by the attorney-client privilege and the U.S. and Texas constitutions.

**IT IS FURTHER ORDERED** that PFLAG shall not be required to respond to CID Request 5.

CID Request 6:

“All Communications to, or from, any PFLAG representative regarding, relating to, or referencing any of the individuals or entities identified in the document attached here to as ‘EXHIBIT B2’ since March 8, 2023.”

The Court FINDS that this request:

- Seeks information that is not relevant to Defendants’ investigation, including, potentially, news articles and press releases.
- Does not seek information that is likely to lead to the discovery of admissible evidence.
- To the extent it actually seeks information regarding billing codes used in connection with the provision of gender-affirming medical care to minors in Texas, seeks information that is more readily available from sources other than PFLAG, which is a third-party in the context of any medical care. The OAG can go, and apparently has gone, directly to the listed organizations to request documents. There is no basis for now going to a third party when they have not said that the information is unavailable from a third party.
- Amounts to a fishing expedition.
- Is overly broad because:
  - It seeks communications regardless of whether they relate to gender-affirming medical care.
  - It seeks communications regardless of whether they relate to the treatment of minors.
  - It seeks communications regardless of whether they relate to the treatment of people in Texas.

- Is harassing to the extent it intentionally seeks information protected by the U.S. and Texas Constitutions.

**IT IS FURTHER ORDERED** that PFLAG shall not be required to respond to CID Request 6.

CID Request 7.

“Any and all contractual and charter agreements between PFLAG’s Texas chapters and national chapter.”

The Court FINDS that this request:

- Seeks information that is not relevant to Defendants’ investigation.
- Does not seek information that is likely to lead to the discovery of admissible evidence.
- Amounts to a fishing expedition.

**IT IS FURTHER ORDERED** that PFLAG shall not be required to respond to CID Request 7.

CID Request 8.

OAG requests:

“The governing documents and bylaws of PFLAG’s Texas chapters and national chapter.”

The Court FINDS that this request:

- Seeks information that is not relevant to Defendants’ investigation.
- Does not seek information that is likely to lead to the discovery of admissible evidence.
- Amounts to a fishing expedition.

**THE COURT HAS PREVIOUSLY ORDERED** that: PFLAG provide the governing documents and bylaws in its possession.

**The Demand for Sworn Written Statement**

Tex. Bus. & Com. Code § 17.60 states that when the Consumer Protection Division either has reason to believe a person is engaging in a deceptive trade practice or reasonably believes it is in the public interest to ascertain whether a person is doing so, “the division may: (1) require the person to file on the prescribed forms a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged violation and such other data and information as the consumer protection division deems necessary.” *Id.* (emphasis added). Unlike § 17.61(a), which allows CIDs to be sent to “any person” believed to have relevant information, § 17.60(1) makes clear that demands for sworn written statements may only be sent to “the person” suspected of violating the DTPA.

Based on Defendants’ representations, the Court FINDS that PFLAG is not the target of the underlying investigation by the OAG. The DTPA does not authorize Defendants to take actions

pursuant to § 17.60 against a person who is not the target of an investigation by the Consumer Protection Division. Therefore, the DSWS served on PFLAG is *ultra vires*.

This Court FINDS that PFLAG has shown good cause to set aside the DSWS.

**IT IS FURTHER ORDERED** that the DSWS is hereby set aside pursuant to Section 17.61(g) of the Texas Business and Commerce Code.

### **III. PFLAG’S PETITION TO EXTEND RETURN DATES**

Section 17.61(g) of the Texas Business and Commerce Code authorizes this Court to “extend the return date for” the Demands upon a showing of good cause.

This Court FINDS that PFLAG has shown good cause to extend the return date for the CID and that the petition to extend the return date for the DSWS is moot.

As set forth in the Court’s September 13, 2024, Letter Ruling:

**IT IS FURTHER ORDERED** that PFLAG had until October 11, 2024, to produce the responsive CID documents as modified by the Court in this Order to the Consumer Protection Division.

### **IV. OAG’S PETITION TO ENFORCE DEMANDS**

The Demands were served upon PFLAG on February 9, 2024. The OAG extended the return date of the Demands until March 4, 2024. Twenty days following service of the Demands is February 29, 2024. Thus, February 29 is the shorter period under the DTPA by which PFLAG had to file its Petition. *See* Tex. Bus. & Com. Code § 17.61(g).

The OAG concedes that it had granted an extension related to the Demands to March 4, 2024. After the filing of PFLAG’s Petition, the OAG now contends that it could not extend the return date for purposes of Section 17.61(g). This Court is unpersuaded; setting the Demands’ return dates is entirely within the OAG’s power. Alternatively, the Court exercises its equitable authority to prevent the arbitrary abuse of process. *See Kramer v. Kastleman*, 508 S.W.3d 211, 217 (Tex. 2017); *cf. Sec. & Exch. Comm’n v. ESM Gov’t Sec., Inc.*, 645 F.2d 310, 316-17 (5th Cir. 1981).

PFLAG’s Petition was filed on February 28, 2024—the day before the statutory period expired for PFLAG to file “a petition to extend the return date for, or to modify or set aside the demand, stating good cause[.]” The Court finds that PFLAG filed its Petition within the time period required by Section 17.61(g) of the Texas Business and Commerce Code.

Successive court orders from this Court and the Third Court of Appeals temporarily shielded PFLAG from having to respond to the Demands and extended the return date for them until the end of this litigation. *See* Tex. Bus. & Com. Code § 17.61(h) (“A person on whom a demand is served under this second shall comply with the terms of the demand *unless otherwise provided by a court order.*”) (emphasis added). As set forth above and in the Court’s September 13, 2024, Letter Ruling, the Court has modified and extended the return date for the Demands pursuant to Section 17.61(g) of the Texas Business and Commerce Code.

A petition to enforce is only available when a person “fails to comply with a directive of the consumer protection division.” Tex. Bus. & Com. Code § 17.62.

This Court FINDS that PFLAG has not “fail[ed] to comply” with Demands under Section 17.62(b) of the Texas Business and Commerce Code. Instead, PFLAG timely filed a petition to set aside or modify the Demands pursuant to Section 17.61(g) of the Texas Business and Commerce Code and was shielded by court orders extending the time to respond to the Demands. Pursuant to the Court’s September 13, 2024, Letter Ruling, PFLAG produced documents responsive to the CID as modified by the Court to the Consumer Protection Division on October 11, 2024.

**IT IS FURTHER ORDERED THAT** the Counterclaim filed by Defendants to enforce the Demands is hereby **DENIED** because PFLAG has been required to comply with the CID as modified by the Court and has never “fail[ed] to comply” with the Demands. All other relief requested by the OAG in its Petition to Enforce is denied.

## **V. DECLARATORY JUDGMENT**

It is the judgment of this Court that most of the Demands exceeded the OAG’s authority under the DTPA for the following reasons:

1. The Demands failed to identify both the specific section and subsection of the statute under which the alleged violations were being investigated;
2. The Demands failed to identify the general subject matter of the investigation, such that PFLAG could determine whether the information and documents sought were discoverable under the Texas Rules of Civil Procedure;
3. The Demands sought information and documents that were not discoverable under the Texas Rules of Civil Procedure, such as privileged documents; and
4. The Demands included a demand for a sworn written statement to PFLAG, which was not the target of the investigation.

It is the judgment of this Court that PFLAG, having filed its Petition seeking to modify or set aside the Demands and by obtaining injunctive relief, did not fail to comply with the Demands. During the pendency of this proceeding, PFLAG’s obligation to comply with the Demands was suspended.

It is the judgment of this Court that in seeking information and documents including PFLAG member names, identifying information, and private communications, the Demands seek

information and documents protected by the rights to free expression, assembly, and association under both the U.S. Constitution and the Texas Constitution.

It is the judgment of this Court that in seeking information and documents that are not reasonably relevant to the purported purpose of the investigation and some of the documents sought are already in the OAG's possession, and in failing to comply with the requirements of the DTPA, the Demands infringe the right to be free from unreasonable search and seizure under both the U.S. Constitution and the Texas Constitution.

## **VI. PERMANENT INJUNCTION**

The Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect:

- Defendants OAG and the Attorney General, and their respective officers, agents, servants, employees, 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.

Each of you are hereby RESTRAINED and ENJOINED from taking any and all of the following actions:

- Demanding information or documents from PFLAG in response to the Demands that would reveal the identities or private communications of PFLAG, its officers, members, chapters, agents, servants, employees, attorneys, and associated persons, including but not limited to, volunteers and donors.
- Demanding information or documents from PFLAG relating to the Demands other than those specifically modified by this Court Order.
- Taking any adverse action in relation to the Demands against PFLAG, its officers, chapters, agents, servants, employees, and attorneys, and upon and its members, and such restraint encompasses but is not limited to taking any affirmative steps to revoke, suspend, forfeit, dissolve, or void the ability of PFLAG or any of its chapters to operate in Texas, except as provided above.

**VII. OTHER ORDERS**

This Order shall issue and become effective immediately in full force and effect. This is a final and appealable Order.

SIGNED in Austin, Travis County, Texas, on this 10<sup>th</sup> day of March 2025, at 2:30 P.M.



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JUDGE AMY CLARK MEACHUM

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