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December 22, 2022

Via electronic filing

Blake Hawthorne, Clerk
Supreme Court of Texas

Re: No. 22-1137, *In re Jeff Younger*

Dear Mr. Hawthorne:

The State of Texas, by and through Attorney General Ken Paxton, submits this letter brief as amicus curiae in the above matter.¹ In the State's view, the petition for relief should be granted, and any appropriate administrative or emergency relief should immediately issue to preserve this Court's ability to review relator's claims in an orderly fashion.

The petition seeks relief that this Court may grant. Although styled a petition for a writ of mandamus, relator seeks an order that, in essence, stays the trial court's September 21 memorandum ruling and prohibits that court from taking further actions that will allow or assist relator's former spouse to remove his children to California. As the order seeks to prevent a trial court from taking further action on a cause, it may be more appropriately styled a petition for a writ of prohibition. *Crouch v. Craik*, 369 S.W.2d 311, 314 (Tex. 1963). Such a "writ operates like an injunction issued by a superior court to control, limit or prevent action in a court of inferior jurisdiction." *Holloway v. Fifth Court of Appeals*, 767 S.W.2d 680, 682 (Tex. 1989). The same standard applies whether relator's petition sounds in mandamus, prohibition, or both. *Cf. Bd. of Disciplinary Appeals v. McFall*, 888 S.W.2d 471, 472 (Tex. 1994).

¹ No party participated in the preparation of, and no fee has been or will be paid for, the preparation of this letter brief.

The petition seeks relief that the Court should grant. This Court has repeatedly stated that mandamus (or prohibition) is an appropriate form of relief when the relator can establish that a public official has committed a clear abuse of discretion, and no adequate remedy exists on appeal. *Walker v. Packer*, 827 S.W.2d 833, 842 (Tex. 1992); *In re Williams*, 470 S.W.3d 819, 821 (Tex. 2015) (emphasis added) (citing *Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991)).

This is such a circumstance: a trial court has allowed relator's former partner to move to California with their children over relator's objection. There, she intends to provide the child with potentially irreversible medical interventions that may constitute child abuse under Texas law, Atty Gen. Op. KP-0401—particularly given that a court has previously found that “Mom may have over corrected” for any symptoms of gender confusion exhibited by their child, Pet. 8 (excerpting order). The trial court clearly abused its discretion in permitting relator's former partner to remove the children from the State given the ongoing litigation regarding their well-being. And that error may be irreparable on appeal because California has enacted a law that makes it difficult (if not impossible) for Relator to regain custody of his vulnerable child. Cal. S.B. 107, file:///C:/Users/lcp2/Downloads/20210SB107_90.pdf.

The need for relief in this case is particularly acute because the question presented here is both of constitutional significance and likely to recur over the next nine days. As the California bill itself acknowledges, “[t]he United States Constitution generally requires a state to give full faith and credit to the public acts, records, and judicial proceedings of every other state.” *Id.* § 1. Yet California passed S.B. 107 specifically to deny such treatment to Texas laws and court orders because of policy disagreements with the “far-right, anti-LGBTQ Governor Greg Abbott” and the putative fact that “Texas began investigating, and potentially prosecuting, parents of trans kids who receive gender-affirming care.”² The law is set to go into effect in just nine days, meaning that the enforceability of an unknown number of Texas child-custody orders will be in jeopardy if this Court fails to provide relief.

² Press Release, Senator Wiener's Historic Bill to Provide Refuge for Trans Kids and Their Families Signed Into Law, Sept. 30, 2022, <https://sd11.senate.ca.gov/news/20220930-senator-wiener%E2%80%99s-historic-bill-provide-refuge-trans-kids-and-their-families-signed-law>.

The petition also reflects that relator has a compelling reason to seek relief from this Court in the first instance. *See* Tex. R. App. P. 52.3. Although the State has not been involved in this case to date, the petition reflects that the trial court delayed entering an order necessary to seek further relief for three months. Pet. 2. When time is of the essence through no fault of a relator, as here, this Court has not hesitated to exercise its mandamus authority. *See, e.g., In re Woodfill*, 470 S.W.3d 473, 481 (Tex. 2015) (per curiam); *In re Carlisle*, 209 S.W.3d 93, 95-96 (Tex. 2006) (per curiam); *In re Tex. Senate*, 36 S.W.3d 119, 121 (Tex. 2000); *Sears v. Bayoud*, 786 S.W.2d 248, 250 & n.1 (Tex. 1990). The Court should do so again.

Finally, this Court should immediately issue administrative and emergency relief staying the trial court's order and prohibiting the removal of the children from the State while it considers relator's petition. *See* Tex. R. App. P. 52.10(b). California has directed its courts to assert temporary, emergency jurisdiction over children who are unable to receive controversial medical interventions in other States, S.B. 107, § 5(a), and relator's former partner has indicated that she will seek to have the ongoing matter transferred to California courts if she is permitted to relocate there with their children. M.R. Ex. 2 at 47. This Court has "all powers necessary . . . in aid of its jurisdiction," which may be irretrievably lost if relator does not receive immediate relief to prevent his children's removal from the State. This Court should issue such relief.

Respectfully submitted,

/s/ Judd E. Stone II
JUDD E. STONE II
Solicitor General

CERTIFICATE OF SERVICE

On December 22, 2022, this letter was served on all counsel of record through the Court's e-filing system.

/s/ Judd E. Stone II
JUDD E. STONE II

CERTIFICATE OF COMPLIANCE

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/s/ Judd E. Stone II
JUDD E. STONE II

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