ACCEPTED
03-22-00107-CV
62289349
THIRD COURT OF APPEALS
AUSTIN, TEXAS
3/3/2022 6:01 PM
JEFFREY D. KYLE
CLERK

No. 03-22-00107-CV

IN THE COURT OF APPEALS
FOR THE THIRD DISTRICT OF TEXAS AT AUSTIN

FILED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS
3/3/2022 6:01:26 PM
JEFFREY D. KYLE
Clerk

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

Appellants,

v.

JANE DOE, individually and as parent and next friend of MARY DOE, a minor; JOHN DOE, individually and as parent and next friend of MARY DOE, a minor; and DR. MEGAN MOONEY,

Appellees.

On Appeal from the 353rd Judicial District of Travis County, Texas
Cause No. D-1-GN-22-000977, Hon. Amy Clark Meachum

APPELLEES' EMERGENCY MOTION TO DISMISS APPEAL FOR WANT OF JURISDICTION, FOR EXPEDITED BRIEFING, AND FOR REINSTATEMENT OF TEMPORARY RESTRAINING ORDER

Brian Klosterboer
State Bar No. 24107833
Andre Segura
State Bar No. 24107112
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS
5225 Katy Fwy., Ste. 350
Houston, Texas 77007
T: (713) 942-8146
bklosterboer@aclutx.org
asegura@aclutx.org

* Additional counsel on signature page.

Derek R. McDonald
State Bar No. 00786101
Maddy R. Dwertman
State Bar No. 24092371
BAKER BOTTS L.L.P.
98 San Jacinto Blvd., Ste. 1500
Austin, Texas 78701
T: (512) 322-2500
derek.mcdonald@bakerbotts.com
maddy.dwertman@bakerbotts.com

Paul D. Castillo
State Bar No. 24049461
Shelly L. Skeen
State Bar No. 24010511
Nicholas "Guilly" Guillory
State Bar No. 24122392
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
3500 Oak Lawn Ave., Unit 500
Dallas, Texas 75219
T: (214) 219-8585
pcastillo@lambdalegal.org
sskeen@lambdalegal.org
nguillory@lambdalegal.org

Pursuant to Texas Rules of Appellate Procedure 29.3 and 42.3, Appellees Jane and John Doe, individually and as parents and next friends of Plaintiff Mary Doe, a minor, and Dr. Megan Mooney (collectively, "Plaintiffs") hereby move on an emergency, expedited basis to dismiss the appeal of Appellants Greg Abbott, in his official capacity as Governor of the State of Texas; Jaime Masters, in her official capacity as Commissioner of the Texas Department of Family and Protective Services; and the Texas Department of Family and Protective Services (collectively, "Defendants"), for want of jurisdiction.[1]

In support thereof, Plaintiffs state as follows:

I. Defendants have no right to an interlocutory appeal of a temporary restraining order.

Defendants seek to appeal the unappealable: a temporary restraining order ("TRO"). This Court, however, has no jurisdiction to entertain an interlocutory appeal of a TRO.

It is well established that "temporary restraining orders are not appealable." *In re Office of Att'y Gen.*, 257 S.W.3d 695, 698 (Tex. 2008) (per curiam) (orig. proceeding); *see also In re Newton*, 146 S.W.3d 648, 652 (Tex. 2004) (orig.

[1] The clerk's record has not yet been filed with this Court . Due to the emergency nature of this motion, Plaintiffs have appended hereto the following documents from the record below: Plaintiffs' Original Petition and Application for Temporary Restraining Order, Temporary Injunction, Permanent Injunction, and Request for Declaratory Relief (App. 1); Order Granting Plaintiffs' Application for Temporary Restraining Order (App. 2); and Defendants' Notice of Appeal (App. 3).

proceeding); *Perry v. New Penn Fin.*, No. 03-17-00500-CV, 2017 WL 5078285, at *1 (Tex. App.—Austin Nov. 2, 2017, no pet.) (mem. op.) ("A temporary restraining order, however, is generally not an appealable judgment."). "No statutory provision permits an appeal from the grant or denial of a temporary restraining order." *Yezak v. Riley*, Nos. 03-20-00466-CV, 03-21-00042-CV, 2021 WL 317635, at *2 (Tex. App.—Austin Jan. 29, 2021) (mem. op.).

Section 51.014 of the Civil Practice & Remedies Code provides the exclusive list of orders from which an interlocutory appeal may be taken; a TRO is not one of them. *See generally* TEX. CIV. PRAC. & REM. CODE § 51.014; *see also Stary v. DeBord*, 967 S.W.2d 352, 352-53 (Tex. 1998) (per curiam) ("Appellate courts have jurisdiction to consider immediate appeals of interlocutory orders only if a statute explicitly provides appellate jurisdiction."). Texas courts "strictly construe" the statute authorizing interlocutory appeals "as a narrow exception to the general rule that only final judgments are appealable." *Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 841 (Tex. 2007) (citation and quotations omitted); *see also Bass v. Waller Cty. Sub-Reg'l Plan. Comm'n*, 514 S.W.3d 908, 912 (Tex. App.—Austin 2017, no pet.); *Bexar Metro. Water Dist. v. City of Bulverde*, 156 S.W.3d 79, 85 (Tex. App.—Austin 2004, pet. denied) ("Because the statute authorizing interlocutory appeals is a narrow exception to the general rule that only final judgments and orders are appealable, [courts] must give it a strict construction.").

Pursuant to its plain terms, the statute *does not* authorize interlocutory appeals of TROs.[2]

To be sure, the TRO at issue here is facially valid and Defendants do not argue otherwise. They cannot. The TRO by its very terms is time-limited and the district court has already set a hearing for March 11, 2022 at 10:00 a.m. to consider Plaintiffs' application for a temporary injunction. *See* App. 2 (Order Granting Plaintiffs' Appl. for TRO). Should such a temporary injunction issue, Defendants may seek appellate review then. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4).

Plaintiffs respectfully ask the Court to set an expedited briefing schedule, requesting a response from Defendants by March 4, 2022 at 5:00 p.m. And, for the reasons set forth herein, the Court should, without delay, grant Plaintiffs' emergency motion and dismiss the appeal for want of jurisdiction so that the trial court can proceed with considering Plaintiffs' application for a temporary injunction. *See* Tex. R. App. P. 42.3.

II. There is no order pertaining to Defendants' Plea to the Jurisdiction for Defendants to appeal.

Defendants argue that appellate review of the otherwise unappealable TRO is warranted because the "Order implicitly denied Defendants' plea to the jurisdiction."

[2] While appellate review may be available through other means in some limited circumstances such as to preserve the court's jurisdiction or when the TRO is void on its face, none of those circumstances are present here.

App. 3. (Defs.' Not. of Appeal), at 1. But nothing in the TRO addresses Defendants' plea to the jurisdiction. To the contrary, the plea to the jurisdiction is still pending before the district court.

Section 51.014(a)(8) of the Texas Civil Practice & Remedies Code authorizes the appeal of an interlocutory order that "grants or denies a plea to the jurisdiction by a governmental unit." TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8). This Court must "strictly construe" such statute. *Tex. A & M Univ. Sys.*, 233 S.W.3d at 841. By its own terms, the statute authorizes appeals of orders only where they grant or deny a plea to the jurisdiction. Here, the TRO makes no mention of Defendants' plea to the jurisdiction. As such, there is no order granting or denying the plea to the jurisdiction for this Court to review.

"It is well established that a trial court faced with a jurisdictional challenge is not necessarily obligated to decide the issue immediately, but possesses some discretion to defer that determination pending further record development, conceivably even until trial on the merits." *Bass*, 514 S.W.3d at 912. Here, Defendants' plea to the jurisdiction was filed mere minutes before the TRO hearing was set to begin and Plaintiffs have not had an opportunity to respond. Indeed, the district court was unaware that a plea to the jurisdiction had been filed until it was mentioned by counsel at the hearing. It does not follow that the issuance of a TRO to preserve the *status quo ante* as to the Plaintiffs constitutes a ruling on the plea to

the jurisdiction. In fact, Defendants did not press the issue of the plea to the jurisdiction at the TRO hearing and did not argue that a ruling on the plea to the jurisdiction was necessary for any decision on Plaintiffs' request for TRO.

Still, Defendants argue that by issuing the TRO the court "implicitly denied" the plea to the jurisdiction. App'x 3 (Defs.' Not. of Appeal), at 1. Not so. On its face, the TRO here does not address the merits of the case or of issuing a temporary injunction. *See* App. 2 (Order Granting Plaintiffs' Appl. for TRO). And "[b]ecause a TRO is merely a precursor to a temporary injunction, it does not constitute a ruling on the merits." *Fernandez v. Pimentel*, 360 S.W.3d 643, 646 (Tex. App.—El Paso 2012, no pet.); *see also Iranian Muslim Org. v. City of San Antonio*, 615 S.W.2d 202, 208 (Tex. 1981); *Pub. Util. Comm'n v. Water Servs., Inc.*, 709 S.W.2d 765, 767 (Tex. App.—Austin 1986, writ dism'd).[3]

Texas courts have applied this same rationale to other interlocutory orders entered while a plea to the jurisdiction is pending.[4] For example, in *West Travis*

---

[3] Although a trial court implicitly denies a jurisdictional challenge by ruling on the *merits* without rejecting the asserted challenge, *Thomas v. Long*, 207 S.W.3d 334, 339-40 (Tex. 2006), as explained herein, a TRO does not address, much less resolve, the merits of the pleadings.

[4] *See*, *e.g.*, *Bass*, 514 S.W.3d at 912-13 (decision to defer, rather than grant or deny, jurisdictional ruling was not reviewable by interlocutory appeal); *Pratt v. Wayne*, No. 13-13-00103-CV, 2013 WL 1189006, at *2 (Tex. App.—Corpus Christi–Edinburg Mar. 12, 2013, pet. denied) (per curiam) (mem. op.) (sanctions and show cause orders did not implicitly deny plea to the jurisdiction); *Tex. Dep't of Public Safety v. Salazar*, No. 03-11-00206-CV, 2011 WL 1469429, at *1 (Tex. App.—Austin Apr. 19, 2011, no pet.) (mem. op.) (order granting motion for continuance of

County Public Utility Agency v. CCNG Development Co., the district court granted a motion to reinstate the case to the court's active docket following the dismissal of the case for want of prosecution and after the defendant agency had filed a plea to the jurisdiction asserting governmental immunity. 514 S.W.3d 770, 772 (Tex. App.—Austin 2017, no pet.). The defendant agency argued that by reinstating the case, the trial court had implicitly ruled on the already docketed plea to the jurisdiction and filed an interlocutory appeal of the reinstatement order. *Id.* at 773. But, as is the case here, the order at issue did not expressly deny or grant the jurisdictional challenge, and the plaintiff had not had an opportunity to respond, either with evidence or argument, to the jurisdictional challenge. *Id.* at 774. As such, the court of appeals concluded that it lacked subject-matter jurisdiction over the interlocutory appeal and dismissed the appeal. *Id.* at 776.

Similarly, in *Fernandez v. Pimentel*, the court extended a TRO *after* the defendant had filed a plea to the jurisdiction. 360 S.W.3d at 645. The defendant, who unlike the Defendants here, pressed for a ruling on the plea to the jurisdiction at the TRO hearing, filed an interlocutory appeal contending that the trial court implicitly denied their plea to the jurisdiction. *Id.* The court of appeals, however, dismissed the appeal after concluding that it "lack[ed] jurisdiction absent a ruling by

---

plea to the jurisdiction and allowing additional discovery did not deny the plea to the jurisdiction, implicitly or otherwise).

the trial judge." *Id.* at 647. In doing so, the court of appeals noted that the trial court could not have implicitly ruled on the plea to the jurisdiction because "the judge never reached the merits of Plaintiffs' claims," but rather "simply extended a TRO," which "does not constitute a ruling on the merits." *Id.* at 646.

Defendants tilt at windmills in appealing the unappealable TRO as if it were a ruling on their plea to the jurisdiction or the merits of the case. But there simply is no order, explicit or implicit, denying Defendants' plea to the jurisdiction for them to appeal. Because the district court has yet to enter an order that grants or denies Defendants' plea to the jurisdiction and has not ruled on the merits of the underlying claims, this Court lacks subject-matter jurisdiction over this interlocutory appeal and therefore should dismiss the appeal.

III. The Court should consider this emergency motion to dismiss on an expedited basis and should set an expedited briefing schedule.

Finally, the Court should consider this motion on an emergency, expedited basis, set an expedited briefing schedule, and dismiss the appeal promptly. By filing this meritless interlocutory appeal, Defendants seek to circumvent the rules of procedure and moot any TRO order maintaining the *status quo ante*, thus hindering the ability of Plaintiffs to obtain any temporary relief. At stake in this case are, *inter alia*, the health, wellbeing, and very lives of vulnerable transgender youth; the ability of parents to support, love, and affirm their children; and the integrity of countless

families across Texas. *See* App. 1 (Plaintiffs' Original Pet. and Appl. for TRO, Temporary Injunction, and Permanent Injunction) ¶¶ 24-34, 66-108.

Here, the hearing for a temporary injunction is set only eight days from now, on March 11, 2022. By filing their interlocutory appeal under section 51.014(a)(8), Defendants seek to stay *all* proceedings at the district court, notwithstanding how unavailing their appeal may be. Thus, expedited consideration of this motion is necessary to prevent the obstruction further proceedings in the district court and the parties' ability to develop the record. It is also necessary to preserve Plaintiffs' ability to maintain the *status quo ante* or to obtain temporary relief to prevent irreparable harm.

Accordingly, Plaintiffs respectfully request that the Court request a response from Defendants to Plaintiffs' motion to dismiss the appeal by March 4, 2022 at 5:00pm. Plaintiffs further respectfully request that Court act on this emergency motion expeditiously and before March 11, 2022.

IV. The Court should reinstate the TRO under its inherent judicial powers.

Further, pursuant to Texas Rule of Appellate Procedure 29.3, the Court should reinstate the TRO while it considers this motion and the underlying appeal. Both the need to preserve the *status quo ante* and to prevent the irreparable harms that Defendants' actions is causing to Plaintiffs counsels this Court to exercise its

inherent judicial powers in such a manner. Such a temporary order is "necessary to preserve the parties' rights until disposition of the appeal." Tex. R. App. P. 29.3.

Under Rule 29.3, Texas intermediate appellate courts have inherent judicial power to preserve the parties' rights during the pendency of an interlocutory appeal. *See Tex. Educ. Agency v. Hous. Indep. Sch. Dist.*, 609 S.W.3d 569, 577 (Tex. App.—Austin 2020, order) (per curiam), *mand. denied*, 619 S.W.3d 679 (Tex. 2021) (orig. proceeding). The Texas Supreme Court has acknowledged this inherent judicial power, holding that a court of appeals had the authority under Rule 29.3 to provide relief notwithstanding the state's automatic right to suspend a temporary injunction. *See Tex. Educ. Agency*, 619 S.W.3d at 692. Indeed, appellate courts have "great flexibility in preserving the status quo based on the unique facts and circumstances presented." *In re Geomet Recycling LLC*, 578 S.W.3d 82, 89 (Tex. 2019) (orig. proceeding).

Moreover, reinstatement of the TRO is necessary to prevent immediate, ongoing, and irreparable harm to the Plaintiffs. Defendants have already "caused a significant amount of stress, anxiety, and fear for" Plaintiffs. App. 1 (Plaintiffs' Original Pet. and Appl. for TRO, Temporary Injunction, and Permanent Injunction), Ex. 1., Jane Doe Decl., ¶ 24. The unlawful Rule creating a presumption of abuse whenever medically necessary treatment for gender dysphoria is provided to transgender youth presents the Doe Plaintiffs and families of transgender youth with

an impossible choice—either the Doe Plaintiffs are subjected to an abuse investigation, finding of reason to believe they have committed abuse, and family separation, or they stop providing medically necessary treatment for Mary Doe's gender dysphoria. This catch-22 threatens immeasurable harm to Mary Doe's health and wellbeing, as well as other transgender youth, and to Jane and John Doe, and countless loving and affirming parents like them.

Accordingly, Plaintiffs respectfully request that the Court exercise its inherent authority under Rule 29.3 and reinstate the TRO while it considers this motion and the underlying appeal to prevent irreparable harm and preserve the parties' rights.

CONCLUSION AND PRAYER

For the foregoing reasons, Plaintiffs respectfully request that Court on an emergency, expedited basis:

(1) request a response to the motion to dismiss by March 4, 2022 at 5:00pm;

(2) dismiss Defendants' appeal for want of jurisdiction; and

(3) exercise its inherent authority to reinstate the temporary restraining order.

Plaintiffs further request that any costs associated solely with Defendants' attempted appeal be assessed against Defendants. Plaintiffs further request such other and further relief as the Court deems proper under the circumstances.

Dated: March 3, 2022

Respectfully submitted:

By: _/s/ Paul D. Castillo_

Paul D. Castillo
Texas State Bar No. 24049461
Shelly L. Skeen
Texas State Bar No. 24010511
Nicholas "Guilly" Guillory
Texas State Bar No. 24122392
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
3500 Oak Lawn Ave, Unit 500
Dallas, Texas 75219
Phone: (214) 219-8585
Fax: (214) 219-4455
pcastillo@lambdalegal.org
sskeen@lambdalegal.org
nguillory@lambdalegal.org

Omar Gonzalez-Pagan*
M. Currey Cook*
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, New York 10005-3919
Phone: (212) 809-8585
ogonzalez-pagan@lambdalegal.org
ccook@lambdalegal.org

Karen L. Loewy*
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
1776 K Street, N.W., 8th Floor
Washington, DC 20006-2304
Phone: 202-804-6245
kloewy@lambdalegal.org

Brian Klosterboer
Texas State Bar No. 24107833
Andre Segura
Texas State Bar No. 24107112
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS
5225 Katy Fwy., Suite 350
Houston, Texas 77007
Phone: (713) 942-8146
Fax: (346) 998-1577
bklosterboer@aclutx.org
asegura@aclutx.org

Chase Strangio*
James Esseks*
Anjana Samant*
Kath Xu*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004
Phone: (917) 345-1742
cstrangio@aclu.org
jesseks@aclu.org
asamant@aclu.org
kxu@aclu.org

Derek R. McDonald
Texas State Bar No. 00786101
Maddy R. Dwertman
Texas State Bar No. 24092371
David B. Goode
Texas State Bar No. 24106014

BAKER BOTTS L.L.P.
98 San Jacinto Boulevard, Suite 1500
Austin, Texas 78701-4078
Phone: (512) 322-2500
Fax: (512) 322-2501
derek.mcdonald@bakerbotts.com
maddy.dwertman@bakerbotts.com

Brandt Thomas Roessler
Texas State Bar No. 24127923
BAKER BOTTS L.L.P.
30 Rockefeller Plaza
New York, New York 10112-4498
Phone: (212) 408-2500
brandt.roessler@bakerbotts.com

Camilla B. Taylor*
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
65 E. Wacker Place, Suite 2000
Chicago, IL 60601-7245
Phone: (312) 663-4413
ctaylor@lambdalegal.org

* Motion for admission *pro hac vice* pending or forthcoming

Attorneys for Plaintiffs

CERTIFICATE OF CONFERENCE

I certify that on March 3, 2022 counsel for Appellees conferred with counsel for Appellants via email and telephone. Counsel for Appellants confirmed that Appellants are opposed to this motion and the relief requested herein.

/s/ Maddy R. Dwertman
Maddy R. Dwertman

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2022, a true and correct copy of the foregoing was served electronically on all known counsel of record by the Court's electronic filing system.

/s/ Paul D. Castillo
Paul D. Castillo

APPENDIX

INDEX

Appendix 1	Plaintiffs' Original Petition and Application for Temporary Restraining Order, Temporary Injunction, Permanent Injunction, and Request for Declaratory Relief
Appendix 2	Order Granting Plaintiffs' Application for Temporary Restraining Order
Appendix 3	Defendants' Notice of Accelerated Interlocutory Appeal

Appendix 1

3/1/2022 9:02 AM
Velva L. Price
District Clerk
Travis County
D-1-GN-22-000977
Ruben Tamez

D-1-GN-22-000977

CAUSE NO. _____

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

PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, PERMANENT INJUNCTION, AND REQEUST FOR DECLARATORY RELIEF

Plaintiffs Jane and John Doe[1], individually and as parents and next friends of Plaintiff Mary Doe, a minor; and Dr. Megan Mooney (collectively, "Plaintiffs") file this Petition and Application

[1] Plaintiffs Jane Doe, John Doe, and Mary Doe proceed pseudonymously in order to protect their right to privacy, particularly that of Mary Doe, who is a minor. The Texas Rules of Civil Procedure recognize the need to protect a minor's identity. *See* Tex. R. Civ. P. 21c(a)(3). Such goal would not be possible if the identities of Jane Doe and John Doe were public. Moreover, the disclosure of the Doe Plaintiffs' identities "would reveal matters of a highly sensitive and personal nature, specifically [Mary Doe]'s transgender status and h[er] diagnosed medical condition—gender dysphoria." *Foster v. Andersen*, No. 18-2552-DDC-KGG, 2019 WL 329548, at *2 (D. Kan. Jan. 25, 2019). "[O]ther courts have recognized the highly personal and sensitive nature of a person's transgender status and thus have permitted transgender litigants to proceed under pseudonym." *Id.* (collecting cases). Furthermore, as courts have recognized, the disclosure of a person's transgender status "exposes them to prejudice, discrimination, distress, harassment, and violence." *Arroyo Gonzalez v. Rossello Nevares*, 305 F. Supp. 3d 327, 332 (D.P.R. 2018); *see also Foster*, 2019 WL 329548, at *2. Such is the case here.

for Temporary Restraining Order, Temporary Injunction, Permanent Injunction, and Request for Declaratory Relief ("Petition") against Defendants Greg Abbott, in his official capacity as Governor of the State of Texas ("Governor Abbott" or the "Governor"), Jaime Masters, in her official capacity as Commissioner of the Texas Department of Family and Protective Services ("Commissioner Masters" or the "Commissioner"), and the Texas Department of Family and Protective Services ("DFPS") (collectively, "Defendants"). In support of their Petition, Plaintiffs respectfully show the following:

I. PRELIMINARY STATEMENT

1. After the Texas legislature failed to pass legislation criminalizing well-established and medically necessary treatment for adolescents with gender dysphoria, the Texas Governor, Attorney General, and Commissioner of the Department of Family and Protective Services have attempted to legislate by press release. Governor Abbott's letter instructing DFPS to investigate the families of transgender children is entirely without Constitutional or statutory authority; and despite this, the Commissioner nonetheless issued a statement directing DFPS to carry out the Governor's wishes and agreeing to follow a nonbinding legal opinion that did not change Texas law.

2. The Governor has circumvented the will of the legislature and, in so doing, he and the Commissioner have run afoul of numerous Constitutional and statutory limits on their power. Additionally, by their actions, Defendants have trampled on the Constitutional rights of transgender children, their parents, and professionals who provide vital care to transgender children. The Defendants have, without Constitutional or statutory authority, acted to create a new definition of "child abuse" that singles out a subset of loving parents for scrutiny, investigation, and potential family separation. Their actions caused terror and anxiety among transgender youth and their families across the Lone Star State and singled out transgender youth and their families

for discrimination and harassment. What is more, the Governor's, Attorney General's, and Commissioner's actions threaten to endanger the health and wellbeing of transgender youth in Texas by depriving them of medically necessary care, while communicating that transgender people and their families are not welcome in Texas.

3. The Governor has also declared that teachers, doctors, and the general public are all required, on pain of criminal penalty, to report to DFPS any person who provides or is suspected of providing medical treatment for gender dysphoria, a recognized condition with well-established treatment protocols. And DFPS has started investigating families for child abuse based on reports that the families have followed doctor-recommended treatments for their adolescent children.

4. The actions of the Governor, the Commissioner, and DFPS violate the Texas Administrative Procedure Act, are *ultra vires* and therefore invalid, violate the separation of powers guaranteed by the Texas Constitution, and violate equality and due process protections guaranteed by the Texas Constitution. Plaintiffs ask the Court to enjoin these violations of Texas law and of the plaintiffs' rights and immediately return to the *status quo ante*.

II. PARTIES

5. Plaintiffs Jane Doe, John Doe, and Mary Doe are all residents of Texas. Plaintiffs Jane Doe and John Doe are the parents and next friends of Plaintiff Mary Doe, who is a minor. Plaintiff Mary Doe is transgender, has been diagnosed with gender dysphoria, a serious medical condition, and is currently receiving medically necessary care for the treatment of her gender dysphoria. Plaintiff Jane Doe is an employee of Defendant DFPS.

6. Plaintiff Dr. Megan Mooney is a clinical psychologist and mandated reporter under Texas law. She has a practice based in Houston, Texas that includes transgender patients, many of whom have been diagnosed with gender dysphoria and are receiving treatment for this condition.

7. Defendant Greg Abbott is the Governor of the State of Texas and is sued in his official capacity only. He may be served at 1100 San Jacinto Blvd., Austin, Texas 78701.

8. Defendant Jaime Masters is the Commissioner of the Texas Department of Family and Protective Services and is sued in her official capacity only. She may be served at 701 West 51st Street, Austin, Texas 78751.

9. Defendant Texas Department of Family and Protective Services is a state agency that is statutorily tasked with promoting safe and healthy families and protecting children and vulnerable adults from abuse, neglect, and exploitation. DFPS fulfills these statutory obligations through investigations, services and referrals, and prevention programs. It may be served at 701 West 51st Street, Austin, Texas 78751.

III. JURISDICTION AND VENUE

10. The subject matter in controversy is within the jurisdictional limits of this Court, and the Court has jurisdiction over this action pursuant to Article V, Section 8, of the Texas Constitution and section 24.007 of the Texas Government Code, as well as the Texas Uniform Declaratory Judgments Act, Texas Civil Practice & Remedies Code sections 37.001 and 37.003, and the Texas Administrative Procedure Act, Texas Government Code section 2001.038.

11. This Court has jurisdiction over the parties because all Defendants reside or have their principal place of business in Texas.

12. Plaintiffs seek non-monetary relief.

13. Venue is proper in Travis County because Defendants have their principal office in Travis County. Tex. Civ. Prac. & Rem. Code § 15.002(a)(3).

IV. DISCOVERY CONTROL PLAN

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

V. FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

---

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

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

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

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

---

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

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

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

B. Responses to New Child Abuse Directives

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

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

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

---

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

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

transgender have access to comprehensive, gender-affirming, and developmentally appropriate health care that is provided in a safe and inclusive clinical space in close consultation with parents."[16]

27. The president of the Texas Pediatric Society explained of the efforts to change the definition of "child abuse" under Texas law: "Evidence-based medical care for transgender and gender diverse children is a complex issue that pediatricians are uniquely qualified to provide. This directive undermines the physician-patient-family relationship and will cause undue harm to children in Texas. TPS opposes the criminalization of evidence-based, gender-affirming care for transgender youth and adolescents. We urge the prioritization of the health and well-being of all youth, including transgender youth."[17]

28. The Endocrine Society condemned the efforts to re-define "child abuse" explaining that these efforts "reject[] evidence-based transgender medical care and will restrict access to care for teenagers experiencing gender incongruence or dysphoria."[18] The Endocrine Society statement went on to explain, "Health care providers should not be punished for providing evidenced-based care that is supported by major international medical groups—including the Endocrine Society, American Medical Association, the American Psychological Association, and the American Academy of Pediatrics—and Clinical Practice Guidelines."[19]

29. The President of the American Psychological Association issued the following statement: "This ill-conceived directive from the Texas governor will put at-risk children at even

---

[16] *AAP, Texas Pediatric Society Oppose Actions in Texas Threatening Health of Transgender Youth*, Am. Acad. Pediatrics (Feb. 24, 2022), https://www.aap.org/en/news-room/news-releases/aap/2022/aap-texas-pediatric-society-oppose-actions-in-texas-threatening-health-of-transgender-youth/.
[17] *Id.*
[18] *Endocrine Society Alarmed at Criminalization of Transgender Medicine*, Endocrine Soc'y (Feb. 23, 2022), https://www.endocrine.org/news-and-advocacy/news-room/2022/endocrine-society-alarmed-at-criminalization-of-transgender-medicine.
[19] Id.

higher risk of anxiety, depression, self-harm, and suicide. Gender-affirming care promotes the health and well-being of transgender youth and is provided by medical and mental health professionals, based on well-established scientific research. The peer-reviewed research suggests that transgender children and youth who are treated with affirmation and receive evidence-based treatments tend to see improvements in their psychological well-being.

Asking licensed medical and mental health professionals to 'turn in' parents who are merely trying to give their children needed and evidence-based care would violate patient confidentiality as well as professional ethics. The American Psychological Association opposes politicized intrusions into the decisions that parents make with medical providers about caring for their children."[20]

30. Prevent Child Abuse America issued the following statement: "Prevent Child Abuse America (PCA America) knows that providing necessary and adequate medical care to your child is not child abuse, and that transgender and non-binary children need access to age-appropriate, individualized medical care just like every other child. Therefore, PCA America opposes legislation and laws that would deny healthcare access to any child, regardless of their gender identity. Such laws threaten the safety and security of our nation's most vulnerable citizens—children and youth."[21]

31. The Ray E. Helfer Society, an international, multi-specialty society of physicians having substantial research and clinical experience with all medical facets of child abuse and neglect, likewise condemned Defendants' actions. The Helfer Society "opposes equating evidence based, gender affirming care for transgender youth with child abuse, and the criminalization of

---

[20] *APA President Condemns Texas Governor's Directive to Report Parents of Transgender Minors*, Am. Psych. Ass'n (Feb. 24, 2022), https://www.apa.org/news/press/releases/2022/02/report-parents-transgender-children.

[21] Melissa Merrick, *A Message from Dr. Melissa Merrick in Response to Texas AG Opinion on Gender-Affirming Care*, Prevent Child Abuse Am. (Feb. 23, 2022), https://preventchildabuse.org/latest-activity/gender-affirming-care/.

such care. The provision of medical and mental health care, consistent with the standard of care, is in no way consistent with our definitions of child abuse."[22]

32. Parents and families across the state of Texas are fearful that if they follow the recommendations of their medical providers to treat their adolescent children's suffering from gender dysphoria, they could face investigation, criminal prosecution and the removal of their children from their custody. As a result, parents are scared to remain in Texas, to send their children to school or to the doctor, and to otherwise meet their basic survival needs. They are also scared that if they do not pursue this medically prescribed and necessary care for their children in order to avoid investigation and criminal prosecution, their children's mental and physical health will suffer dramatically.

33. Upon information and belief, some doctors and other providers have discontinued prescribing medically necessary treatment for gender dysphoria to transgender youth as a result of Defendants' actions, causing patients to suffer physical and mental health consequences.

34. The actions taken by Defendants have already caused severe and irreparable harm to families across the state of Texas, including the Doe family, and have put medical and mental health providers in the impossible position of either following their legal and ethical professional responsibilities or facing criminal prosecution or civil and professional repercussions under Texas law.

---

[22] *Position Statement of the Ray E. Helfer Society On Gender Affirming Care Being Considered Child Abuse and Neglect*, Ray E. Helfer Soc'y (Feb. 2022), https://www.helfersociety.org/assets/docs/Helfer%20Society%20Statement%20On%20Texas%20Transgender%20Action%2002.22.pdf.

C. Treatment for Gender Dysphoria is Well-Established and Medically Necessary.

35. The health care that Governor Abbott has directed DFPS to consider child abuse is actually medically necessary, essential, and often lifesaving medical care that is endorsed and adopted by every major medical organization in the United States.

36. Doctors in Texas use well-established guidelines to diagnose and treat youth with gender dysphoria. Medical treatment for gender dysphoria is prescribed to adolescents only after the onset of puberty and only when doctors determine it to be medically necessary. Parents, doctors, and minors work together to develop a treatment plan consistent with widely accepted protocols supported by every major medical organization in the United States.

37. "Gender identity" refers to a person's internal, innate, and immutable sense of belonging to a particular gender.

38. Although the precise origin of gender identity is unknown, a person's gender identity is a fundamental aspect of human development. There is a general medical consensus that there is a significant biological component to gender identity.

39. Everyone has a gender identity. A person's gender identity is durable and cannot be altered through medical intervention.

40. A person's gender identity usually matches the sex they were designated at birth based on their external genitalia. The terms "sex designated at birth" or "sex assigned at birth" are more precise than the term "biological sex" because there are many biological sex characteristics, including gender identity, and these may not always be in alignment with each other. For example, some people with intersex characteristics may have a chromosomal configuration typically associated with a male sex designation but genital characteristics typically associated with a female sex designation. For these reasons, the Endocrine Society, an international medical organization

of over 18,000 endocrinology researchers and clinicians, warns practitioners that the terms "biological sex" and "biological male or female" are imprecise and should be avoided.[23]

41. Most boys were designated male at birth based on their external genital anatomy, and most girls were designated female at birth based on their external genital anatomy.

42. Transgender youth have a gender identity that differs from the sex assigned to them at birth. A transgender boy is someone who was assigned a female sex at birth but persistently, consistently, and insistently identifies as male. A transgender girl is someone who was assigned a male sex at birth but persistently, consistently, and insistently identifies as female.

43. Some transgender people become aware of having a gender identity that does not match their assigned sex early in childhood. For others, the onset of puberty, and the resulting physical changes in their bodies, leads them to recognize that their gender identity is not aligned with their sex assigned at birth. The lack of alignment between one's gender identity and sex assigned at birth can cause significant distress.

44. According to the American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders ("DSM-V"), "gender dysphoria" is the diagnostic term for the condition experienced by some transgender people of clinically significant distress resulting from the lack of congruence between their gender identity and the sex assigned to them at birth. In order to be diagnosed with gender dysphoria, the incongruence must have persisted for at least six months and be accompanied by clinically significant distress or impairment in social, occupational, or other important areas of functioning.

---

[23] *See* Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society* Clinical Practice Guideline*, 102 J. Clinical Endocrinology & Metabolism 3869, 3875 (2017), https://academic.oup.com/jcem/article/102/11/3869/4157558 [hereinafter "Endocrine Guideline"] ("Biological sex, biological male or female: These terms refer to physical aspects of maleness and femaleness. As these may not be in line with each other (e.g., a person with XY chromosomes may have female-appearing genitalia), the terms biological sex and biological male or female are imprecise and should be avoided.").

45. Being transgender is not itself a medical condition to be cured. But gender dysphoria is a serious medical condition that, if left untreated, can result in debilitating anxiety, severe depression, self-harm, and suicidality.

46. The World Professional Association for Transgender Health ("WPATH") and the Endocrine Society have published widely accepted guidelines for treating gender dysphoria.[24] The medical treatment for gender dysphoria is to eliminate the clinically significant distress by helping a transgender person live in alignment with their gender identity. This treatment is sometimes referred to as "gender transition," "transition related care," or "gender affirming care." These standards of care are recognized by the American Academy of Pediatrics, which agrees that this care is safe, effective, and medically necessary treatment for the health and wellbeing of youth suffering from gender dysphoria.[25]

47. The precise treatment for gender dysphoria for any individual depends on that person's individualized needs, and the guidelines for medical treatment differ depending on whether the treatment is for an adolescent or an adult. No medical treatment is recommended or necessary prior to the onset of puberty, however.

48. Before puberty, gender transition does not include any pharmaceutical or surgical intervention. Instead, it involves social transition, such as using a name and pronouns typically associated with the child's gender identity and dressing consistently with their gender identity.

---

[24] Endocrine Guideline; World Prof'l Ass'n for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People (7th Version, 2012), https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?_t=1613669341 [hereinafter, WPATH SOC].

[25] Jason Rafferty, et al., Am. Academy Pediatrics, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 Pediatrics (2018), https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for; Lee Savio Beers, *American Academy of Pediatrics Speaks Out Against Bills Harming Transgender Youth*, Am. Academy Pediatrics (Mar. 16, 2021), https://www.aap.org/en/news-room/news-releases/aap/2021/american-academy-of-pediatrics-speaks-out-against-bills-harming-transgender-youth/.

49. Under the WPATH Standards of Care and the Endocrine Society Guideline, medical interventions may become medically necessary and appropriate as transgender youth reach puberty. In providing medical treatments to adolescents, pediatric physicians and endocrinologists work in close consultation with qualified mental health professionals experienced in diagnosing and treating gender dysphoria.

50. For many transgender adolescents, going through puberty in accordance with the sex assigned to them at birth can cause extreme distress. Puberty-delaying medication allows transgender adolescents to avoid that, thus minimizing and potentially preventing the heightened gender dysphoria and permanent physical changes that puberty would cause.

51. Under the Endocrine Society Clinical Guideline, transgender adolescents may be eligible for puberty-delaying treatment if:

- A qualified mental health professional has confirmed that:
    - the adolescent has demonstrated a long-lasting and intense pattern of gender nonconformity or gender dysphoria (whether suppressed or expressed),
    - gender dysphoria worsened with the onset of puberty,
    - coexisting psychological, medical, or social problems that could interfere with treatment (e.g., that may compromise treatment adherence) have been addressed, such that the adolescent's situation and functioning are stable enough to start treatment,

      the adolescent has sufficient mental capacity to give informed consent to this (reversible) treatment,
- And the adolescent:

    - has sufficient mental capacity to give informed consent to this (reversible) treatment,
    - the adolescent has been informed of the effects and side effects of treatment (including potential loss of fertility if the individual subsequently continues with sex hormone treatment) and options to preserve fertility,
    - the adolescent has given informed consent and (particularly when the adolescent has not reached the age of legal medical consent, depending on applicable legislation) the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process,
- And a pediatric endocrinologist or other clinician experienced in pubertal assessment:
    - agrees with the indication for gonadotropin-releasing hormone ("GnRH") agonist treatment,
    - has confirmed that puberty has started in the adolescent, and
    - has confirmed that there are no medical contraindications to GnRH agonist treatment.

52. Puberty-delaying treatment is reversible. If an adolescent discontinues the medication, puberty consistent with their assigned sex will resume. Contrary to the assertions in the Paxton Opinion, puberty-delaying treatment does not cause infertility.

53. For some adolescents, it may be medically necessary and appropriate to initiate puberty consistent with the young person's gender identity through gender-affirming hormone

therapy (testosterone for transgender boys, and estrogen and testosterone suppression for transgender girls).

54. Under Endocrine Society Clinical Guidelines, transgender adolescents may be eligible for gender-affirming hormone therapy if:

- A qualified mental health professional has confirmed:
  - the persistence of gender dysphoria,
  - any coexisting psychological, medical, or social problems that could interfere with treatment (e.g., that may compromise treatment adherence) have been addressed, such that the adolescent's environment and functioning are stable enough to start sex hormone treatment,
  - the adolescent has sufficient mental capacity to estimate the consequences of this (partly) irreversible treatment, weigh the benefits and risks, and give informed consent to this (partly) irreversible treatment,
- And the adolescent:
  - has been informed of the partly irreversible effects and side effects of treatment (including potential loss of fertility and options to preserve fertility),
  - has given informed consent and (particularly when the adolescent has not reached the age of legal medical consent, depending on applicable legislation) the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process,

- And a pediatric endocrinologist or other clinician experienced in pubertal induction:
    - agrees with the indication for sex hormone treatment, and
    - has confirmed that there are no medical contraindications to sex hormone treatment.

55. Under the WPATH Standards of Care, transgender young people may also receive medically necessary chest reconstructive surgeries before the age of majority, provided the young person has lived in their affirmed gender for a significant period of time. Genital surgery is not recommended until patients reach the age of majority.

56. Chest reconstructive surgeries have no impact on fertility.

57. Medical treatment recommended for and provided to transgender adolescents with gender dysphoria can substantially reduce lifelong gender dysphoria and can eliminate the medical need for surgery later in life.

58. The treatment protocols for gender dysphoria supported by every major medical organization in the United States are based on extensive research and clinical experience. When existing protocols are followed, no minor is rushed into treatment. The process, instead, requires extensive mental health evaluation and informed consent procedures.

59. Providing gender-affirming medical care can be lifesaving treatment and change the short and long-term health outcomes for transgender youth.

60. All of the treatments used to treat gender dysphoria are also used to treat other conditions in minors with comparable side effects and risks.

61. Many forms of treatment in pediatric medicine and medicine generally are prescribed "off-label". Use of medication for "off-label" non-FDA approved purposes is a common and necessary practice in medicine.

D. Legal Status of Treatment for Gender Dysphoria in the United States

62. No state in the country considers medically recommended treatment for gender dysphoria to be a form of child abuse.

63. No state in the country prohibits doctors from treating, or parents from consenting to treatment for, minor patients with gender dysphoria.

64. Arkansas is the only state to pass a law prohibiting such treatment but the law was enjoined in court before it went into effect and does not classify the treatment as a form of child abuse.[26] When the Arkansas General Assembly passed the bill prohibiting treatment for minors with gender dysphoria, Governor Asa Hutchinson vetoed it, explaining: "I vetoed this bill because it creates new standards of legislative interference with physicians and parents as they deal with some of the most complex and sensitive matters concerning our youths. It is undisputed that the number of minors who struggle with gender incongruity or gender dysphoria is extremely small. But they, too, deserve the guiding hand of their parents and the counseling of medical specialists in making the best decisions for their individual needs. H.B. 1570 puts the state as the definitive oracle of medical care, overriding parents, patients, and health-care experts. While in some instances the state must act to protect life, the state should not presume to jump into the middle of every medical, human and ethical issue. This would be—and is—a vast government overreach."[27]

---

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

[27] Asa Hutchinson, Opinion, *Why I Vetoed My Party's Bill Restricting Health Care for Transgender Youth*, Wash. Post (Apr. 8, 2021), https://www.washingtonpost.com/opinions/asa-hutchinson-veto-transgender-health-bill-youth/2021/04/08/990c43f4-9892-11eb-962b-78c1d8228819_story.html.

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

VI. PLAINTIFFS

The Doe Family

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dr. Megan A. Mooney

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. CAUSES OF ACTION

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

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

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

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

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

112. Under the APA, a rule

> (A) means a state agency statement of general applicability that: (i) implements, interprets, or prescribes law or policy; or (ii) describes the procedure or practice requirements of a state agency; (B) includes the amendment or repeal of a prior rule; and (C) does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures.
>
> *Id.* § 2001.003(6) (line breaks omitted).

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

114. As a state agency, DFPS is required to follow APA rulemaking procedures when adopting or changing rules. APA's mandatory procedural requirements for promulgating agency rules, including public notice, comment, and a reasoned justification for the rule. *See* Tex. Gov't Code §§ 2001.023, .029, .033. To be valid, a rule must be adopted in substantial compliance with these procedures. *See id.* § 2001.035. The February 22, 2022 DFPS Statement conveys the Department's official position with respect to the investigation of gender-affirming care as child abuse. The DFPS Statement, issued in accordance with Abbott's Letter, is a statement of general applicability that is (1) directed at a class of all persons similarly situated and (2) affects the interests of the public at large. The statement provides that DFPS *will* implement the Abbott letter's directive and investigate allegations relating to gender-affirming medical care as "child abuse" according to the new definition formulated by the Paxton Opinion. The DFPS Statement thus applies to and affects the private rights of class of persons—all parents of transgender children—as well as members of the general public. *El Paso Hosp. Dist. v. Tex. Health & Human Servs. Comm'n*, 247 S.W. 3d 709, 714 (Tex. 2008) (holding that statement of Health and Human Services Commission had "general applicability" because it applied to "all hospitals"); *Combs v. Entm't Publ'ns, Inc.*, 292 S.W.3d 712, 721-22 (Tex. App.—Austin 2009, no pet.) (holding that Comptroller's statements constituted "rule" under the APA because it applied to all persons and entities similarly situated"); *see also Teladoc, Inc. v. Tex. Med. Bd.*, 453 S.W.3d 606, 615 (Tex. App.—Austin 2014, pet. denied) ("Agency statements of 'general applicability' refer to those 'that affect the interest of the public at large such that they cannot be given the effect of law without public comment,' as contrasted with statements 'made in determining individual rights.'" (citation omitted)).

115. The DFPS Statement prescribes a new DFPS enforcement policy with respect to the investigation of gender-affirming care to minors as child abuse, which changes DFPS policy and constitutes a rule for purposes of the APA. *See Texas Alcoholic Beverage Comm'n v. Amusement & Music Operators of Texas, Inc*., 997 S.W.2d 651, 657-58 (Tex. App.—Austin 1999, writ dism'd w.o.j.) (holding that memoranda constituted a "rule" because they "set out binding practice requirements" that "substantially changed previous enforcement policy" with respect to eight-liner machines). Prior to the DFPS Statement, DFPS had not promulgated any rule pertaining to the investigation of gender-affirming care as child abuse.[30] The DFPS Commissioner explicitly disavowed pursuing these investigations in September, stating "I will await the opinion issued by the Attorney General's office before I reach any final decisions" relating to investigations of gender affirming care as child abuse. The agency has now made a statement that it *will* conduct investigations in accordance with the Attorney General's opinion, while stating that there were "no pending investigations of child abuse involving the procedures described in [the Paxton Opinion]" when DFPS announced this policy change on February 22. Prior to the Commissioner's announcement, there were *no* pending investigations being pursued by DFPS. But now there are investigations targeting Plaintiffs and the Commissioner's statement prescribed a new policy that greatly expands DFPS's scope of enforcement. *See John Gannon, Inc. v. Tex. Dep't of Transp.*, No. 03-18-00696-CV, 2020 WL 6018646, at *5 (Tex. App.—Austin Oct. 9, 2020, pet. denied) (mem. op.) (agency statements that "advise third parties regarding applicable legal requirements" may "constitute 'rules' under the APA" (quoting *LMV-AL Ventures, LLC v. Texas Dep't of Aging & Disability Servs*., 520 S.W.3d 113, 121 (Tex. App.—Austin 2017, pet. denied))).

[30] Even if DFPS had previously promulgated a rule providing for the investigation of gender-affirming medical care as "child abuse", such a rule would have exceeded the bounds of DFPS's authority. *See infra* paras. 118-125.

116. In declaring that investigations would be initiated based on a non-binding opinion from the Attorney General, the Commissioner entirely bypassed the APA's mandatory procedural requirements for promulgating agency rules. The Commissioner did not provide public notice or an opportunity for and full consideration of comments from the public. Additionally, the Commissioner provided no reasoned justification for the policy change, nor for the implementation of the Abbott letter which goes even further than Paxton's Opinion by making no mention of medical necessity. Neither the non-binding Paxton Opinion nor the Abbott Letter—both of which conflict with well-established medical standards of care—are a legitimate basis for the rule. The rule, therefore, is also arbitrary and capricious.

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

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

118. The DFPS Statement is also invalid because it stands in direct conflict with DFPS's enabling statute and, as such, is an overreach of DFPS's power as established by the legislature.

119. "To establish the rule's facial invalidity, a challenger must show that the rule: (1) contravenes specific statutory language; (2) runs counter to the general objectives of the statute; or (3) imposes burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions." *Gulf Coast Coal. of Cities v. Pub. Util. Comm'n*, 161 S.W.3d 706, 712 (Tex. App.—Austin 2005).

120. The DFPS Statement contravenes specific language in DFPS's enabling statute. Section 40.002 of the Texas Human Resources Code specifies that DFPS "*shall* . . . provide family support and family preservation services *that respect the fundamental right of parents to control*

the education and upbringing of their children." Tex. Hum. Res. Code § 40.002 (emphasis added). As demonstrated herein, the DFPS Statement infringes on the rights of parents to direct the custody and care of their children, including by providing them with needed medical care. *See infra*, Section VII.D. The new DFPS rule thus conflicts with the obligations imposed on DFPS by its enabling statute and, therefore, is, invalid.

121. In addition to conflicting with specific statutory language, the DFPS Statement also conflicts with the general objectives of DFPS's enabling statute. *See Gulf Coast Coal. of Cities*, 161 S.W.3d at711-12. These general objectives are informed by the specific duties imposed on DFPS by the legislature and encompass the objective of protecting children against abuse while respecting parents' fundamental right to control the upbringing of their children. *See* Tex. Hum. Res. Code § 40.002(b). Not only does the DFPS Statement infringe on parents' fundamental rights, it also *causes* immense harm to minor children with gender dysphoria who have a medical need for treatment that is now considered "child abuse" under the new agency rule.

122. Pursuant to the DFPS Statement and implementation thereof, the Doe Parent Plaintiffs cannot provide medically necessary and doctor-recommended medical treatment to their adolescent child without exposing themselves to criminal liability. Precisely because this medical treatment is necessary, if the Does ceased providing this care, Mary will be greatly and irreparably harmed, including by being forced to undergo endogenous puberty with the permanent physical changes that can result. The new DFPS rule, though cloaked under the guise of protecting children, actually *causes* harm where none existed in the first place. Furthermore, the mere *threat* of enforcement has already impacted Mary by causing her immeasurable anxiety and distress: she is forced to choose between the medical care that she needs and exposing her parents to criminal liability and potentially being removed from their care or, alternatively, abstaining from such

medically necessary care and suffering the physical and mental consequences, all in order to protect their family from DFPS investigation. As such, the new DFPS rule cannot be harmonized with DFPS's general objectives as set forth in its enabling statute. *See R.R. Comm'n of Tex. v. Lone Star Gas Co.*, 844 S.W.2d 679, 685 (Tex.1992); *Gerst v. Oak Cliff Sav. & Loan Ass'n*, 432 S.W.2d 702, 706 (Tex. 1968).

123. Every major medical organization in the United States considers the treatment now effectively banned and criminalized by DFPS to be medically necessary. Such a radical disregard of medical science and the medical needs of a subset of minors in Texas cannot be squared with the agency's authority as prescribed by Statute.

124. Finally, nothing in DFPS's enabling statute authorizes it to expand the scope of statutory definitions established by the legislature. The definition of "child abuse" is provided by statute and is not within DFPS's jurisdiction. Because the DFPS Statement is not rooted in any rulemaking authority provided by the legislature, it is invalid. *See Williams v. Tex. State Bd. of Orthotics & Prosthetics*, 150 S.W.3d 563, 568 (Tex. App.-Austin 2004, no pet.) ("An agency rule is invalid if [] the agency had no statutory authority to promulgate it . . . .").

125. This unauthorized expansion of the definition of "child abuse" not only harms the Does, but also altered the duties of mandatory reporters such as Dr. Mooney, subjecting them to criminal liability for failing to report when they are aware that a transgender adolescent is being provided medically necessary treatment for gender dysphoria.

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

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

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

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

129. DFPS's purported interest in preventing transgender children from receiving life-saving and medically recommended treatment for gender dysphoria is far outweighed by parents' rights to determine what medical care is necessary and in the best interests of their child, in consultation with doctors and evidence-based standards of care. A parent's right to control the care of their child is one of the most ancient and natural of all fundamental rights. *See Holick v. Smith*, 685 S.W.2d 18, 20 (Tex. 1985) ("This natural parental right has been characterized as essential, a basic civil right of man, and far more precious than property rights." (citation and quotations omitted)).

130. By, in effect, cutting off the ability of parents to treat their minor adolescent children in accordance with doctor-recommended and clinically appropriate care, the agency's new rule infringes on the Does' parental rights. The agency's new rule substitutes parents' judgment as to what medical care is in the best interests of their children for the judgment of the

government. There is no justification sufficiently compelling to warrant such a gross invasion of parental rights. The DFPS Statement creates a presumption that following clinical guidelines for treating gender dysphoria is incompatible with the best interests of transgender youth, forecloses determinative issues of competence and care, and "run[s] roughshod over the important interests of both parent and child." *Stanley v. Illinois*, 405 U.S. 645, 657 (1972).

131. As such, the DFPS Statement must be declared invalid because it conflicts with Plaintiffs' fundamental rights of parents under the Texas Constitution, as well as other equality and due process guarantees of the Texas Constitution.

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

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

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

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

135. Pursuant to the UDJA, Plaintiffs seek a declaratory judgment of the Court that Abbott's Letter and the DFPS Statement directing DFPS to investigate families for providing their children with medically necessary health care:

a. Is *ultra vires* and exceeds the Governor's and the Commissioner's authority under the Texas Family Code; and

b. Contravenes separation of powers established by Article II of the Texas Constitution.

136. In order to stop the Governor's and Commissioner's *ultra vires* and unconstitutional directives from being enforced, Plaintiffs also seek temporary and permanent injunctive relief pursuant to Texas Civil Practices & Remedies Code §§ 37.011 and 65.011.

137. A government official commits an *ultra vires* act when the officer "act[s] without legal authority or fail[s] to perform a purely ministerial act." *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). An officer acts without legal authority "if he exceeds the bounds of his granted authority or if his acts conflict with the law itself." *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 158 (Tex. 2016).

138. In this case, both Governor Abbott and Commissioner Masters have acted without legal authority in directing DFPS to initiate investigations for any reported instances of the enumerated medical procedures in the Abbott Letter. For the reasons discussed below, there is a "probable right to relief" here on the *ultra vires* claims. *See Abbott v. Harris Cty.*, No. 03-21-00429-CV, 2022 WL 92027, at *10 (Tex. App. Jan. 6, 2022) (finding that plaintiffs had established "a probable right to relief on their claim that the Governor's issuance of [an executive order] constitutes an ultra vires act" in granting injunctive relief).

Governor Abbott Has Exceeded His Authority.

139. Governor Abbott has exceeded his authority by unilaterally redefining child abuse and then ordering "prompt and thorough investigation[s]" based on his redefinition.[31]

[31] Greg Abbott, Letter to Hon. Jaime Masters, Commissioner, Tex. Dep't of Fam. & Protective Servs. (Feb. 22, 2022), https://gov.texas.gov/uploads/files/press/O-MastersJaime202202221358.pdf.

140. In contrast to the Governor's past executive orders, *see, e.g.*, Executive Order GA-38 (citing Tex. Gov't Code. § 418.016), Governor Abbott issued this directive without citing any gubernatorial authority.

141. Instead, the Abbott Letter cites only to the Texas Family Code. The Texas Family Code, however, does not give Governor Abbott any authority to define the contours of "child abuse" or to "direct the agency to "conduct . . . investigation[s]," as he attempted to do in his letter.[32] The Texas Family Code itself defines child abuse and outlines DFPS's investigatory authority. *See* Tex. Fam. Code §§ 261.001, 261.301. These laws also specifically task the DFPS Commissioner with establishing procedures for investigating abuse and neglect, based on the definitions of abuse and neglect under Texas law and in accordance with the APA. Thus, the Governor has no authority to define the contours of what constitutes child abuse under Texas law or to unilaterally change any DFPS procedures. Indeed, even the Paxton Opinion merely identified what *could* be considered "child abuse". Governor Abbott then took that non-binding analysis and directed DFPS to presume, in all cases, that a minor adolescent with gender dysphoria with medical treatment consistent with well-established medical guidelines amounted to abuse.

142. Furthermore, the Texas Constitution makes clear that the Governor only administers the law pursuant to the general grant to "cause the laws to be faithfully executed." Tex. Const. art. 4, § 10. The Governor neither makes the law nor possesses the authority to suspend laws under the Texas Constitution. *See* Tex. Const. art. 1, § 28 ("No power of suspending laws in this State shall be exercised except by the Legislature.").

143. Even where a state agency like DFPS has been delegated the power to make rules, the Governor cannot lawfully order the Commissioner to adopt a particular rule, much less order

[32] *Id.*

her to do so without following the proper rulemaking process. *See* Tex. Hum. Res. Code § 40.027(c)(3) (tasking the Commissioner, not the Governor, with "oversee[ing] the development of rules relating to the matters within the department's jurisdiction").

Commissioner Masters Has Exceeded Her Authority.

144. Commissioner Masters has also exceeded her authority and acted *ultra vires* by implementing Governor Abbott's unlawful redefinition of child abuse. In accordance with the DFPS Statement issued soon after the Abbott Letter, Commissioner Masters has already directed her department to investigate any reports of minors who have undergone the medical procedures outlined in the Abbott Letter.

145. These actions contravene Commissioner Masters' limited statutory authority to "adopt rules and policies for the operation of and the provision of services by the department." Tex. Hum. Res. Code § 40.027(e). As set forth in Count A, Commissioner Masters has completely ignored the APA's mandatory rulemaking process. Therefore, the issuance and implementation of the DFPS Statement is *ultra vires* of the Commissioner's statutory rulemaking authority. *See City of El Paso v. Public Util. Comm'n*, 839 S.W.2d 895, 910 (Tex. App.—Austin 1992) ("[I]f there is no specific express authority for a challenged [agency] action, and if the action is inconsistent with a statutory provision or ascertainable legislative intent, we must conclude that, by performing the act, the agency has exceeded its grant of statutory authority."), *aff'd in part & rev'd in part*, 883 S.W.2d 179 (Tex. 1994). Furthermore, the Commissioner lacked authority to issue the DFPS Statement as new law or policy because it is the legislature's constitutional mandate to "provide for revising, digesting and publishing the laws." Tex. Const. art. 3, § 43.

146. Moreover, the DFPS Statement contradicts DFPS's enabling statute, which requires the department to "provide protective services for children" and "provide family support and family preservation services that respect the fundamental right of parents to control the education

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

174. In addition to the above-requested relief, Plaintiffs seek a temporary restraining order, temporary injunction, and permanent injunction to stop this *ultra vires*, unlawful, and unconstitutional Order from being enforced by Defendants.

175. A temporary restraining order's purpose is to maintain the status quo pending trial. "The status quo is the last actual, peaceable, non-contested status which preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004) (citing *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589, 589 (Tex. 1962) (per curiam)). Until a permanent injunction can be decided on the merits, Plaintiffs are entitled to a temporary restraining order pursuant to Texas Civil Practice & Remedies Code sections 37.011 and 65.011 and Texas Rules of Civil Procedure 680 *et seq.* to preserve the status quo before the unconstitutional enactment of Abbott's Letter and the DFPS Statement, which incorporate and reference the Paxton Opinion.

176. Plaintiffs meet all the elements necessary for immediate injunctive relief with respect to their APA, *ultra vires*, and separation of powers claims described above. Plaintiffs state a valid cause of action against each Defendant and have a probable right to the relief sought. For the reasons detailed above, there is a substantial likelihood that Plaintiffs will prevail after a trial on the merits because the Governor's directive is *ultra vires*, beyond the scope of his authority, and unconstitutional, and the improper rulemaking and implementation by Commissioner Masters and DFPS are similarly unlawful and void. Further, the Governor's and Commissioner's actions violate the separation of powers by impermissibly encroaching into the legislature's domain. Plaintiffs have already been injured by these actions and will continue to experience imminent and irreparable harm without injunctive relief.

177. Plaintiffs in this suit will face imminent and irreparable harms absent intervention by the Court. Specifically, Jane Doe has already been placed on administrative leave at work and is at risk of losing her job, her livelihood, and the means of caring for her family. Jane, John and Mary Doe face the imminent and ongoing deprivation of their constitutional rights. Mary faces the potential loss of her medically necessary care, which if abruptly discontinued can cause severe physical and emotional harms, including anxiety, depression, and suicidality. If placed on the Child Abuse Registry, Jane could lose the ability to practice her profession, and Jane and John Doe would be barred from ever working with children, including as volunteers in their community. Absent intervention by this court, Dr. Mooney could face civil suit by patients for failing to treat them in accordance with professional standards and loss of licensure for failing to follow her professional ethics, if she complies with Defendants' orders and actions. If she does not comply with Defendants' orders, Dr. Mooney could face immediate criminal prosecution.

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

179. In balancing the equities between Plaintiffs and Defendants, Plaintiffs will suffer imminent, irreparable, and ongoing harm including the deprivation of their vocations, their medical

treatment, and their constitutional rights, whereas the injury to Defendants is nominal pending the outcome of this suit. In fact, enjoining the Order will free an already overburdened DFPS.[33]

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

IX. CONDITIONS PRECEDENT

181. All conditions precedent have been performed or have occurred.

X. RELIEF REQUESTED

182. For the foregoing reasons, Plaintiffs request the Court grant the following relief:

a. A temporary restraining order to preserve the *status quo* and restrain Defendants from improperly relying on Abbott's Letter and the Paxton Opinion to investigate and report families based on the fact that their adolescent children are transgender; are transitioning; or have been prescribed or are being provided with medical treatment for their gender dysphoria, while the validity of Abbott's Letter and the Paxton Opinion are determined at a hearing to be held within 14 days;

b. Upon hearing, a temporary injunction prohibiting Defendants from enforcing Abbott's Letter, the Paxton Opinion, or the DFPS Statement, including by: requiring mandatory reporters or the general public to report families with minor children who are transgender or who have a diagnosis of gender dysphoria and are receiving medically recommended treatment for that condition, and investigating families for possible child abuse based

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

on allegations that they have a child that is transgender or that they have a minor child with gender dysphoria who is being treated with medically prescribed treatment for that condition;

c. After trial, a permanent injunction prohibiting Defendants from enforcing Abbott's Letter or the DFPS Statement, including by: requiring mandatory reporters or the general public to report families with minor children who are transgender or who have a diagnosis of gender dysphoria and are receiving medically recommended treatment for that condition, and investigating families for possible child abuse based on allegations that they have a child that is transgender or that they have a minor child with gender dysphoria who is being treated with medically prescribed treatment for that condition;

d. Declaratory judgment that the DFPS Statement violates the Texas Administrative Procedure Act;

e. Declaratory judgment that Abbott's Letter and the DFPS Statement are *ultra vires* and unconstitutional;

f. Reasonable and necessary attorneys' fees and costs as are equitable and just under Tex. Civ. Prac. & Rem. Code § 37.009; and

g. All other relief, general and special, at law and in equity, as the Court may deem necessary and proper.

[Signature Page Follows]

Dated: March 1, 2022

Respectfully submitted:

By: __*/s/ Paul D. Castillo* _____

Paul D. Castillo
Texas State Bar No. 24049461
Shelly L. Skeen
Texas State Bar No. 24010511
Nicholas "Guilly" Guillory
Texas State Bar No. 24122392
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
3500 Oak Lawn Ave, Unit 500
Dallas, Texas 75219
Phone: (214) 219-8585
Fax: (214) 219-4455
pcastillo@lambdalegal.org
sskeen@lambdalegal.org
nguillory@lambdalegal.org

Omar Gonzalez-Pagan*
M. Currey Cook*
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, New York 10005-3919
Phone: (212) 809-8585
ogonzalez-pagan@lambdalegal.org
ccook@lambdalegal.org

Karen L. Loewy*
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
1776 K Street, N.W., 8th Floor
Washington, DC 20006-2304
Phone: 202-804-6245
kloewy@lambdalegal.org

Camilla B. Taylor*
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.
65 E. Wacker Place, Suite 2000
Chicago, IL 60601-7245
Phone: (312) 663-4413
ctaylor@lambdalegal.org

Brian Klosterboer
Texas State Bar No. 24107833
Andre Segura
Texas State Bar No. 24107112
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF TEXAS
5225 Katy Fwy., Suite 350
Houston, Texas 77007
Phone: (713) 942-8146
Fax: (346) 998-1577
bklosterboer@aclutx.org
asegura@aclutx.org

Chase Strangio*
James Esseks*
Anjana Samant*
Kath Xu*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004
Phone: (917) 345-1742
cstrangio@aclu.org
jesseks@aclu.org
asamant@aclu.org
kxu@aclu.org

Derek R. McDonald
Texas State Bar No. 00786101
Maddy R. Dwertman
Texas State Bar No. 24092371
BAKER BOTTS L.L.P.
98 San Jacinto Boulevard, Suite 1500
Austin, Texas 78701-4078
Phone: (512) 322-2500
Fax: (512) 322-2501
derek.mcdonald@bakerbotts.com
maddy.dwertman@bakerbotts.com

Brandt Thomas Roessler
Texas State Bar No. 24127923
BAKER BOTTS L.L.P.

30 Rockefeller Plaza
New York, New York 10112-4498 **Pro hac vice* forthcoming
Phone: (212) 408-2500
brandt.roessler@bakerbotts.com

Attorneys for Plaintiffs

CERTIFICATE OF CONFERENCE

I certify that Plaintiffs have notified Defendants pursuant to the Local Rules of the District Courts of Travis County and will file the certification for requested temporary restraining order hearing.

/s/ Paul D. Castillo
Paul D. Castillo

Exhibit 1

CAUSE NO. _____

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

DECLARATION OF JANE DOE

I, Jane Doe,[1] hereby declare and state as follows:

1. I am over 18 years of age, of sound mind, and in all respects competent to testify. I have personal knowledge of the facts set forth in this Declaration and would testify competently to those facts if called to do so.

2. Along with my husband John Doe, I am a Plaintiff in this action. We are bringing claims on behalf of ourselves and as the parents and next friends of our daughter, Mary Doe.

3. We are residents of Texas.

4. Our daughter, Mary Doe, is 16 years old. We love and support her and only want what is best for her.

5. Mary is transgender. When she was born, she was designated as "male" on her birth certificate, even though she is a girl.

[1] Jane Doe, John Doe, and Mary Doe are pseudonyms. My husband, daughter (who is a minor), and I are proceeding under pseudonyms to protect our right to privacy and ourselves from discrimination, harassment, and violence, as well as retaliation for seeking to protect our rights.

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

7. We have always permitted Mary to express herself and explore who she is.

8. In 2021, Mary informed us that she was transgender.

9. Mary has been under the care of the same pediatrician her entire life. Her pediatrician diagnosed her with gender dysphoria and referred our family to other medical professionals for further evaluation and treatment. These other medical professionals confirmed that Mary suffers from gender dysphoria.

10. We also did research as a family and connected Mary with youth support groups that would permit us to have discussions as a family.

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

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

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

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

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

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

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

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

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

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

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

affirming our transgender daughter's identity and following the advice of medical professionals to initiate treatment for her gender dysphoria.

22. On February 25, 2022, the CPS investigator visited our family home to interview Mary, John, and me. The CPS investigator interviewed John and me together, in the presence of our attorney, but he interviewed Mary, who was also accompanied by different attorney, apart from us. Aside from interviewing us, the CPS investigator asked us to sign releases to obtain Mary's medical records; we refused.

23. During his visit, the CPS investigator disclosed that the sole allegation against our family is that John and I have a transgender daughter and that our daughter may have been provided with medically necessary gender-affirming health care and is "currently transitioning from male to female."

24. The issuance of the Attorney General's opinion and Governor's letter, along with DFPS's implementation of these, has caused a significant amount of stress, anxiety, and fear for our family. For example, Mary has been traumatized by the prospect that she could be separated from her parents and could lose access to the medical treatment that has enabled her to thrive. The stress has taken a noticeable toll on her, and our daughter who is typically joyful and happy, is now moodier, stressed, and overwhelmed. Similarly, John and I are now filled anxiety and worry. I have been unable to sleep, worrying about what we can do and how we can keep our family intact and our daughter safe and healthy. We are living in constant fear about what will happen to our family due to the actions by DFPS, the Governor, and the Attorney General.

25. As a result of DFPS's implementation of the Attorney General's opinion and Governor's letter, I have not only been placed on leave from my employment, but may face termination, which would result not only in the loss of income for our family and a job I genuinely

care about.

26. John and I worry about the potential physical and mental health consequences of depriving Mary of the medical treatment her doctors have prescribed and that she needs. Not providing Mary with the medically necessary health care that she needs is not an option for us. Our primary goal and duty are to ensure Mary's health and wellbeing.

27. We do not believe it is a choice to deprive Mary of the medically necessary and essential health care that she requires and risk her health and wellbeing in order to avoid a finding that there is reason to believe that John and I have committed "abuse" and the consequences that would follow such a finding based on DFPS's implementation of the Attorney General's opinion and Governor's letter.

28. John and I have called Texas our home for nearly 20 years and Texas is the only home Mary has ever known. Even if feasible, moving out of state is not a desirable option, as among other things, it could mean the physical separation of our family, the loss of my employment, and separating Mary from her lifelong health care providers.

29. Texas is our home. We are part of a community that has known Mary all her life and been supportive and affirming. We worry not only about the multitude of harms caused by DFPS's implementation of the Attorney General's opinion and Governor's letter that I have described herein, but also about the effect that the actions by DFPS, the Governor, and the Attorney General will have on other transgender youth, like Mary, and their families. Our family is just as much a part of Texas as any other family, and Mary has the right to be provided with the same affirmation, love, and ability to thrive as any other youth in our state.

30. The actions by DFPS, the Governor, and the Attorney General threaten the health and wellbeing of transgender youth like Mary and the integrity of families like ours. We deserve

better from our state and government.

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

Executed this 28th day of February 2022 in Texas.

Jane Doe

Jane Doe

Exhibit 2

CAUSE NO. _____

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

DECLARATION OF MEGAN A. MOONEY, PH.D.

I, Megan A. Mooney, declare and state as follows:

1. I am over 18 years of age, of sound mind, and in all respects competent to testify. I have personal knowledge of the facts set forth in this Declaration and would testify competently to those facts if called to do so. I am a Plaintiff in this action and I am bringing claims on behalf of myself.

2. I am a licensed psychologist in Texas. For approximately the past 19 years, I have worked with children and families to respond to and mitigate trauma and harm. I am bound by professional codes of ethics to do no harm to my patients.

3. I run a private psychology practice in Houston that serves children, adolescents, and families. Many of my patients are transgender or non-binary young people under the age of 18, including youth with gender dysphoria. According to the American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders ("DSM-V"), gender dysphoria is the diagnostic term for the condition experienced by some transgender people of clinically significant distress resulting from the lack of congruence between their gender identity and the sex assigned

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

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

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

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

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

Background

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

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

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

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

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

employees about mandatory reporting requirements and how to respond to trauma, abuse, and neglect.

12. I am a member of the APA, the Texas Psychological Association ("TPA"), and the Houston Psychological Association. I was president of the TPA in 2020 and served on the board for over seven years. I remain an ex officio member of the TPA board.

13. I teach and train students in psychology at Baylor College of Medicine and the University of Texas Health Sciences Center at Houston. I have also published research and scholarship on trauma faced by LGBTQ+ youth in the Journal of Family Strengths.

14. I am an affiliate member of the National Child Traumatic Stress Network, where I serve on the Sexual Orientation and Gender Identity/Expression (SOGIE) workgroup and helped create resources on LGBTQ+ youth and trauma. I am also part of a working group striving to improve services and treatment for LGBTQ+ youth in foster care in Texas.

15. As someone who works closely with LGBTQ+ young people, I have seen first-hand the trauma and harm they face and the bullying and harassment they experience, especially in schools.[2]

16. In April 2021, I testified against Senate Bill 1646 (Perry), which sought to change the definition of child abuse in Section 261.001 of the Texas Family Code to encompass gender-affirming care, including providing puberty blockers and hormone therapy to transgender youth. This bill was opposed by the TPA, the APA, the Texas Medical Association, the Texas Pediatric

[2] The GLSEN 2019 National School Climate Survey found that 98.8% of LGBTQ+ students had heard negative remarks about gender expression and 87.4% heard negative remarks specifically about transgender people. Joseph G. Kosciw et al., The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools xviii-xix, GLSEN (2020), https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf. In Texas, the vast majority of LGBTQ+ students also regularly heard negative remarks about gender expression and transgender people. School Climate for LGBTQ Students in Texas (State Snapshot), GLSEN (2021), https://www.glsen.org/sites/default/files/2021-01/Texas-Snapshot-2019.pdf.

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

Current Practice and Professional Responsibilities

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

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

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

---

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

20. As part of my ongoing professional obligations, I stay up to date on the latest data on mental health and medical interventions to treat patients with gender dysphoria. I have read numerous studies that document how being able to access gender-affirming care improves the mental health of transgender and non-binary youth and reduces suicidal ideation.[4]

21. As a licensed psychologist, I am required to follow the guidance of the APA and TPA, which recognize the scientific research and medical consensus that gender-affirming care is medically necessary for certain youth with gender dysphoria. The APA has published detailed protocols for providing culturally competent and developmentally appropriate psychological care for transgender and gender non-conforming people.[5] The APA recognizes that "diversity in gender identity and expression is part of the human experience and transgender and gender nonbinary

---

Adolescent Supplement, 70 JAMA Psychiatry 300 (2013), https://pubmed.ncbi.nlm.nih.gov/23303463/; Michelle M. Johns et al., *Trends in Violence Victimization and Suicide Risk by Sexual Identity Among High School Students - Youth Risk Behavior Survey, United States, 2015-2019*, 69 Morbidity & Mortality Weekly Rep. Supp. 19 (2020), https://pubmed.ncbi.nlm.nih.gov/32817596/; Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students - 19 States and Large Urban School Districts, 2017*, 68 Morbidity & Mortality Weekly Rep. 67 (2019), https://pubmed.ncbi.nlm.nih.gov/30677012/.

[4] *See, e.g.*, Amy E. Green et al., *Association of Gender-Affirming Hormone Therapy With Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth*, J. Adolescent Health (2021), https://www.jahonline.org/article/S1054-139X(21)00568-1/fulltext (finding lower rates of depression and suicide among transgender and non-binary youth who receive gender-affirming hormone therapy); Diana M. Turdof et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, 5 JAMA Network Open (2022), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789423 (finding that gender-affirming medical interventions were associated with lower odds of depression and suicidality in transgender and non-binary youth); Laura E. Kuper et al., *Body Dissatisfaction and Mental Health Outcomes of Youth on Gender-Affirming Hormone Therapy*, 145 Pediatrics (2020), https://pubmed.ncbi.nlm.nih.gov/32220906/ (reviewing longitudinal studies and finding hormone therapy to improve mental health outcomes for transgender adolescents); Stephen M. Rosenthal, *Challenges in the care of transgender and gender- diverse youth: an endocrinologist's view*, 17 Nature Reviews Endocrinology 581 (2021), https://www.nature.com/articles/s41574-021-00535-9 (reviewing empirical studies identifying mental health benefits of gender-affirming care); Connor Grannis et al., *Testosterone Treatment, Internalizing Symptoms, and Body Image Dissatisfaction in Transgender Boys*, 132 Psychoneuroendocrinology (2021), https://pubmed.ncbi.nlm.nih.gov/34333318/; Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 Pediatrics (2020), https://pubmed.ncbi.nlm.nih.gov/31974216/.

[5] Guidelines for Psychological Practice With Transgender and Gender Nonconforming People (Am. Psych. Ass'n 2015), https://www.apa.org/practice/guidelines/transgender.pdf.

identities and expressions are healthy, incongruence between one's sex and gender is neither pathological nor a mental health disorder."[6]

22. The APA also recognizes that "[s]ome transgender and gender nonbinary individuals seek gender-affirming medical care (e.g., hormone therapy, surgery) while others do not" and has established that "invalidation and rejection of transgender and gender nonbinary identities and diverse gender expressions by others (e.g., families, therapists, school personnel) are forms of discrimination, stigma, and victimization, which result in psychological distress."[7]

23. In 2019, after a review of the research as well as professional guidelines, TPA crafted a formal statement in which it concluded that "transgender children fare best when caregivers and treatment providers establish an affirming and supportive environment within which they can understand their emerging gender identity."

24. Pursuant to these guidelines, it is my job to support all patients in an exploration of their identity and appropriately diagnose and evaluate them. Many clients that I work with have already experienced trauma, and reporting them to DFPS simply for receiving gender-affirming care from a licensed medical provider would cause immense and irreversible harm.

The Governor's Directive and DFPS Implementation

25. Forcing me to report a client and their parents to DFPS for receiving the health care that they need would be catastrophic. Instead of benefiting my patients' mental health and helping them thrive, I would subject them to trauma and stress. My clients and their families could be investigated for child abuse, and families could be split apart simply for providing young people with the medical care that they need.

---

[6] APA Resolution on Gender Identity Change Efforts 2 (Am. Psych. Ass'n 2021), https://www.apa.org/about/policy/resolution-gender-identity-change-efforts.pdf.
[7] *Id.* at 1-2.

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

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

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

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

Signed on this the 1st day of March, 2022.

Megan A. Mooney, PhD.

Appendix 2

Filed in the District Court
Of Travis County, Texas
At March 2, 2022; 5:15 PM
Velva L. Price, District Clerk

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

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

ORDER GRANTING PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER

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

From the facts set forth in Plaintiffs' Petition, and the declarations attached thereto, the Court finds Plaintiffs will suffer irreparable injury unless Defendants are immediately restrained from enforcing the Governor's letter and the DFPS statement, both issued February 22, 2022 and which make reference to and incorporate Attorney General Paxton's Opinion No. KP-0401. The Court finds Jane Doe has been placed on administrative leave at work and is at risk of losing her job and that Jane, John and Mary Doe face the imminent and ongoing deprivation of their constitutional rights, the potential loss of necessary medical care, and the stigma attached to being the subject of an unfounded child abuse investigation. The Court further finds that if placed on the Child Abuse Registry, Jane Doe could lose the ability to practice her profession and both Jane and John Doe could lose their ability to work with minors and volunteer in their community.

The Court further finds that Plaintiff Mooney could face civil suit by patients for failing to treat them in accordance with professional standards and loss of licensure for failing to follow her professional ethics if she complies with Defendants' orders and actions. If she does not comply with Defendants' orders, Dr. Mooney could face immediate criminal prosecution, as set forth in the Governor's letter.

The Court finds Defendants' wrongful actions cannot be remedied by any award of damages or other adequate remedy at law.

IT IS THEREFORE ORDERED that Defendants are immediately enjoined and restrained from taking any actions against Plaintiffs based solely on the Governor's letter and DFPS statement, both issued February 22, 2022, as well as Attorney General Paxton's Opinion No. KP-0401 which they reference and incorporate. IT IS FURTHER ORDERED that Defendants are enjoined from taking any employment action or investigating reports against these Plaintiffs based solely on facilitating or providing gender-affirming care to transgender minors based on the fact that

the minors are transgender, gender transitioning, or receiving or being prescribed gender-affirming medical treatment.

IT IS FURTHER ORDERED that Plaintiffs' Application for Temporary Injunction be heard before the Honorable Judge Amy Clark Meachum of the 201st Judicial District Court of Travis County, Texas on Friday, March 11, 2022, at 10:00 a.m. o'clock. The hearing will be conducted using Zoom videoconference technology and a link will be provided by the Court in advance of the hearing.

The purpose of the hearing is to determine why a temporary injunction should not be issued as requested by Plaintiffs. The Clerk of the Court is hereby directed to issue a show cause notice to Defendants to appear at the temporary injunction hearing.

At issue for the Temporary Injunction hearing will be the Validity of and Enforcement of the Governor's letter and the DFPS statement, both issued February 22, 2022, as well as Attorney General Paxton's Opinion No. KP-0401, which they reference and incorporate, and whether they violate the constitutional rights of the Plaintiffs and other persons, the Texas Administrative Procedure Act, Texas Gov't Code § 2001.038, or any other applicable laws. The Temporary Injunction hearing will decide whether a statewide Temporary Injunction should be issued to enjoin Defendants from the following: (1) investigating reports of any persons facilitating or providing gender-affirming care to transgender minors solely based on the fact that the minors are transgender, gender transitioning, or receiving or being prescribed gender-affirming medical treatment; (2) prosecuting or referring for prosecution such reports; and (3) imposing reporting requirements on persons who are aware of others who facilitate or provide gender-affirming care to transgender minors solely based on the fact that the minors are transgender, gender transitioning, or receiving or being prescribed gender-affirming medical treatment.

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

This Order shall not be affected unless and until Plaintiffs execute and file with the Clerk a bond in conformity with the law, in the amount of $100.00 dollars.

Signed this 2nd day of March 2022, at 4:55 p.m. in Travis County, Texas.

AMY CLARK MEACHUM
JUDGE PRESIDING

Appendix 3

3/2/2022 6:40 PM
Velva L. Price
District Clerk
Travis County
D-1-GN-22-000977
Selina Hamilton

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

JANE DOE, *et al.*,	§	IN THE DISTRICT COURT
Plaintiffs,	§	
	§	
v.	§	201st JUDICIAL DISTRICT
	§	
GOVERNOR ABBOTT, *et al.*,	§	
	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

DEFENDANTS' NOTICE OF ACCELERATED INTERLOCUTORY APPEAL

Defendants Greg Abbott in his official capacity as Governor of the State of Texas ("Governor Abbott"), Jaime Masters in her official capacity of Commissioner of the Department of Family and Protective Services ("Commissioner Masters"), and the Texas Department of Family and Protective Services ("DFPS") (collectively, "Defendants") respectfully appeal the Court's interlocutory order of March 2, 2022. Said Order implicitly denied Defendants' plea to the jurisdiction and granted Plaintiffs' request for a temporary restraining order. The Order enjoins Defendants from taking any actions against Plaintiffs based solely on the Governor's February 22, 2022 letter and DFPS statement of the same date, as well as Attorney General Opinion No. KP-0401; the Order further enjoins Defendants from taking any employment action or investigating reports against Plaintiffs based solely on facilitating or providing gender-affirming care to transgender minors based on the fact that the minors are transgender, gender transitioning, or receiving or being prescribed gender-affirming medical treatment.

Defendants are entitled to an interlocutory appeal pursuant to Civil Practice and Remedies Code section 51.014(a)(8), which allows for an immediate appeal from an order that denies a plea to the jurisdiction. Defendants appeal to the Third Court of Appeals. This is an accelerated appeal as provided by Texas Rule of Appellate Procedure 28.1. This is not a parental termination or child

protection case, as defined in Rule 28.4.

Pursuant to Texas Civil Practice and Remedies Code § 51.014(b), all further proceedings in this court are stayed pending resolution of Defendants' appeal. Upon filing of this instrument, the March 2, 2022 Order is superseded pursuant to Texas Civil Practice and Remedies Code section 6.001(b) and Texas Rule of Appellate Procedure 29.1(b). Pursuant to section 6.001, as governmental officers/entities, Defendants are not required to file a supersedeas bond for court costs. Defendants' appeal is therefore perfected upon the filing of the notice of appeal.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

SHAWN COWLES
Deputy Attorney General for Civil Litigation

THOMAS A. ALBRIGHT
Chief for General Litigation Division

/s/ Ryan G. Kercher
RYAN G. KERCHER
Texas Bar No. 24060998
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Phone: 512-463-2120
Fax: 512-320-0667
Ryan.Kercher@oag.texas.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served electronically through the electronic-filing manager in compliance with TRCP 21a on March 2, 2022 to:

Brian Klosterboer
Andre Segura
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF TEXAS
5225 Katy Fwy., Ste 350
Houston, TX 77007
Phone: 713-942-8146
bklosterboer@aclutx.org
asegura@aclutx.org

Chase Strangio
James Esseks
Anjana Samant
Kath Xu
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF TEXAS
125 Broad St, 18th Floor
New York, New York 10004
Phone: 917-345-1742
cstrangio@aclu.org
jesseks@aclu.org
asamant@aclu.org
kxu@aclu.org

Derek R. McDonald
Maddy R. Dwertman
BAKER BOTTS L.L.P.
98 San Jacinto Blvd, Ste 1500
Austin, Texas 78701-4078
Phone: 512-322-2500
Derek.mcdonald@bakerbotts.com
Maddy.dwertman@bakerbotts.com

Brandt T. Roessler
BAKER BOTTS L.L.P.
30 Rockerfeller Plaza
New York, New York 10112-4498
Phone: 212-408-2500
Brandt.roessler@bakerbotts.com
Pro hac vice forthcoming

Paul D. Castillo
Shelly L. Skeen
Nicholas "Guilly" Guillory
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
3500 Oak Lawn Ave., Unit 500
Dallas, Texas 75219
Phone: 214-219-8585
pcastillo@lambdalegal.org
sskeen@lambdalegal.org
nguillory@lamdalegal.org

Omar Gonzalez-Pagan
M. Curry Cook
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, New York 10005-3919
Phone: 212-809-8585
Ogonzalez-pagan@lambdalegal.org
ccook@lambdalegal.org

Camilla B. Taylor
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
65 E. Wacker Place, Ste 2000
Chicago, IL 60601-7245
Phone: 312-663-4413
ctaylor@lamdalegal.org

Karen L. Loewy
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
1776 K Street, N.W., 8th Floor
Washington, DC 20006-2304
Phone: 202-804-6245
kloewy@lamdalegal.org

Counsel for Plaintiffs

/s/ *Ryan G. Kercher*
RYAN G. KERCHER

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Katrina Shanks on behalf of Ryan Kercher
Bar No. 24060998
katrina.shanks@oag.texas.gov
Envelope ID: 62246361
Status as of 3/3/2022 2:05 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Katrina Shanks		katrina.shanks@oag.texas.gov	3/2/2022 6:40:19 PM	SENT

Associated Case Party: JANE DOE

Name	BarNumber	Email	TimestampSubmitted	Status
Andre Segura	24107112	asegura@aclutx.org	3/2/2022 6:40:19 PM	SENT
Brian Klosterboer		bklosterboer@aclutx.org	3/2/2022 6:40:19 PM	SENT
Chase Strangio		cstrangio@aclu.org	3/2/2022 6:40:19 PM	SENT
James Esseks		jesseks@aclu.org	3/2/2022 6:40:19 PM	SENT
Anjana Samant		asamant@acclu.org	3/2/2022 6:40:19 PM	SENT
Kath Xu		kxu@aclu.org	3/2/2022 6:40:19 PM	SENT
Shelly Skeen		sskeen@lamdalegal.org	3/2/2022 6:40:19 PM	SENT
Nicholas Guillory		nguillory@lamdalegal.org	3/2/2022 6:40:19 PM	SENT
Nicholas Guillory		nguillory@lambdalegal.org	3/2/2022 6:40:19 PM	SENT
Karen Loewy		kloewy@lambdalegal.org	3/2/2022 6:40:19 PM	SENT
Omar Gonzalez-Pagan		ogonzalez-pagan@lambdalegal.org	3/2/2022 6:40:19 PM	SENT
Camilla Taylor		ctaylor@lambdalegal.org	3/2/2022 6:40:19 PM	SENT
M. Currey Cook		ccook@lambdalegal.org	3/2/2022 6:40:19 PM	SENT
Paul Castillo		pcastillo@lambdalegal.org	3/2/2022 6:40:19 PM	SENT
Shelly Skeen		sskeen@lambdalegal.org	3/2/2022 6:40:19 PM	SENT
Karen L.Loewy		kloewy@lamdalegal.org	3/2/2022 6:40:19 PM	SENT

Associated Case Party: GREG ABBOTT GOVERNOR OF TEXAS

Name

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Katrina Shanks on behalf of Ryan Kercher
Bar No. 24060998
katrina.shanks@oag.texas.gov
Envelope ID: 62246361
Status as of 3/3/2022 2:05 PM CST

Associated Case Party: GREG ABBOTT GOVERNOR OF TEXAS

Ryan Kercher		ryan.kercher@oag.texas.gov	3/2/2022 6:40:19 PM	SENT

Associated Case Party: JOHN DOE

Name	BarNumber	Email	TimestampSubmitted	Status
Omar Gonzalez-Pagan		Ogonzalez-pagan@lamdalegal.org	3/2/2022 6:40:19 PM	SENT
Derek McDonald		Derek.mcdonald@bakerbotts.com	3/2/2022 6:40:19 PM	SENT
Maddy Dwertman		Maddy.dwertman@bakerbotts.com	3/2/2022 6:40:19 PM	SENT
Paul Castillo		pcastillo@lamdalegal.org	3/2/2022 6:40:19 PM	SENT
Camilla Taylor		ctaylor@lamdalegal.org	3/2/2022 6:40:19 PM	SENT
M. curry Cook		ccook@lamdalegal.org	3/2/2022 6:40:19 PM	SENT

VERIFICATION

Before me the undersigned authority, on this day personally appeared Shelly L. Skeen, who being by me sworn, stated as follows:

My name is Shelly L. Skeen. I am over the age of 18 years and am competent to make this verification. I am counsel in this matter for Plaintiffs Jane and John Doe, individually and as parents and next friends of Plaintiff Mary Doe, a minor; and Dr. Megan Mooney (collectively, "Plaintiffs"). Tabs 1 through 3 in the foregoing Appendix are true and correct copies of filings and orders in the underlying case, *Jane Doe, et al. v. Gregory Abbott, et al.*, Cause No. D-1-GN-22-000977, 353rd Judicial District Court, Travis County, Texas.

Shelly L. Skeen

Subscribed and sworn to before me on this 3rd day of March 2022.

SELINA MISIALEK
Notary ID #132212602
My Commission Expires
October 16, 2023

Notary Public, State of Texas

Name: Selina Misialek

Commission Expires: 10/16/2023

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Shelly Skeen
Bar No. 24010511
sskeenlaw@gmail.com
Envelope ID: 62289349
Status as of 3/4/2022 8:09 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Paul Castillo	24049461	pcastillo@lambdalegal.org	3/3/2022 6:01:26 PM	SENT
Derek Raymond McDonald	786101	derek.mcdonald@bakerbotts.com	3/3/2022 6:01:26 PM	SENT
Shelly L. Skeen	24010511	slskeen@gmail.com	3/3/2022 6:01:26 PM	SENT
Andre Segura	24107112	asegura@aclutx.org	3/3/2022 6:01:26 PM	SENT
Brian Klosterboer	24107833	bklosterboer@aclutx.org	3/3/2022 6:01:26 PM	SENT
Ryan Kercher		ryan.kercher@oag.texas.gov	3/3/2022 6:01:26 PM	SENT
Chase Strangio		cstrangio@aclu.org	3/3/2022 6:01:26 PM	SENT
James Esseks		jesseks@aclu.org	3/3/2022 6:01:26 PM	SENT
Anjana Samant		asamant@acclu.org	3/3/2022 6:01:26 PM	SENT
Kath Xu		kxu@aclu.org	3/3/2022 6:01:26 PM	SENT
Maddy Dwertman		Maddy.dwertman@bakerbotts.com	3/3/2022 6:01:26 PM	SENT
Omar Gonzalez-Pagan		Ogonzalez-pagan@lamdalegal.org	3/3/2022 6:01:26 PM	SENT
M. curry Cook		ccook@lamdalegal.org	3/3/2022 6:01:26 PM	SENT
Karen L.Loewy		kloewy@lamdalegal.org	3/3/2022 6:01:26 PM	SENT
Camilla Taylor		ctaylor@lamdalegal.org	3/3/2022 6:01:26 PM	SENT
Nicholas GuillyGuillory		nguillory@lambdalegal.org	3/3/2022 6:01:26 PM	SENT