

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

The Woodlands Pride, Inc.; Abilene
Pride Alliance; Extragrams, LLC; 360
Queen Entertainment LLC; Brigitte
Bandit,

Plaintiffs,

v.

Civil Action No. 4:23-cv-02847

Warren Kenneth Paxton, in an official
capacity as Attorney General of Texas;
Montgomery County, Texas; Brett
Ligon, in an official capacity as District
Attorney of Montgomery County; City
of Abilene, Texas; Taylor County,
Texas; James Hicks, in an official
capacity as District Attorney of Taylor
County; Delia Garza, in an official
capacity as County Attorney of Travis
County; Joe D. Gonzales, in an official
capacity as District Attorney of Bexar
County,

Defendants.

**PLAINTIFF EXTRAGRAMS' MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

| | |
|--|----|
| INTRODUCTION | 1 |
| FACTUAL BACKGROUND..... | 2 |
| I. Text of S.B. 12..... | 2 |
| II. Procedural Posture..... | 3 |
| A. District Court Proceedings..... | 3 |
| B. Appeal and Original Fifth Circuit Decision..... | 5 |
| C. Motion for Panel Rehearing and Revised Panel Opinion..... | 6 |
| III. Imminent Harm to Extragrams..... | 8 |
| ARGUMENT | 11 |
| I. Extragrams Continues to Have Standing to Challenge S.B. 12 | 11 |
| A. Extragrams’ Upcoming Shows Are Arguably Proscribed by S.B. 12..... | 12 |
| B. Extragrams’ Injuries Are Traceable to the Attorney General..... | 14 |
| II. Extragrams Is Substantially Likely to Prevail on the Merits | 15 |
| III. Extragrams Will Suffer Irreparable Harm Absent Injunctive Relief | 19 |
| IV. The Balance of the Equities and Public Interest Weigh in Favor of Granting Injunctive Relief..... | 20 |
| V. No Bond Should Be Required | 20 |
| CONCLUSION..... | 20 |

TABLE OF AUTHORITIES

| | Page(s) |
|---|----------------|
| CASES | |
| <i>Ashcroft v. ACLU</i> , 535 U.S. 564 (2002)..... | 6, 17 |
| <i>Book People, Inc. v. Wong</i> , 91 F.4th 318 (5th Cir. 2024) | 15 |
| <i>Brown v. Ent. Merchants Ass’n</i> , 564 U.S. 786 (2011)..... | 17 |
| <i>Dep’t of Com. v. New York</i> , 588 U.S. 752 (2019)..... | 14 |
| <i>Diamond Alternative Energy, LLC v. Env’t Prot. Agency</i> , 606 U.S. 100 (2025)..... | 14, 15 |
| <i>Kaepa, Inc. v. Achilles Corp.</i> , 76 F.3d 624 (5th Cir. 1996) | 20 |
| <i>Lujan v. Def’s. of Wildlife</i> , 504 U.S. 555 (1992)..... | 12 |
| <i>Miller v. California</i> , 413 U.S. 15 (1973)..... | 5, 16, 17, 18 |
| <i>Moody v. NetChoice, LLC</i> , 603 U.S. 707 (2024)..... | 6, 8, 16, 18 |
| <i>Opulent Life Church v. City of Holly Springs</i> , 697 F.3d 279 (5th Cir. 2012) | 20 |
| <i>Reno v. A.C.L.U.</i> , 521 U.S. 844 (1997)..... | 16 |
| <i>Roman Catholic Diocese v. Cuomo</i> , 592 U.S. 14 (2020)..... | 19 |
| <i>Roy v. City of Monroe</i> , 950 F.3d 245 (5th Cir. 2020) | 8, 16, 18, 19 |

Speech First, Inc. v. Fenves,
979 F.3d 319 (5th Cir. 2020)12

Susan B. Anthony List v. Driehaus,
573 U.S. 149 (2014).....12

Texas A&M Queer Empowerment Council v. Mahomes,
772 F. Supp. 3d 792 (S.D. Tex. 2025).....15

Woodlands Pride, Inc. v. Paxton,
157 F.4th 775 (5th Cir. 2025), *opinion withdrawn and superseded on denial of reh’g sub nom. Woodlands Pride v. Paxton*, 168 F.4th 293 (5th Cir. 2026)..6, 19

Woodlands Pride, Inc. v. Paxton,
694 F. Supp. 3d 820 (S.D. Tex. 2023), *vacated and remanded sub nom. Woodlands Pride v. Paxton*, 168 F.4th 293 (5th Cir. 2026).....passim

Woodlands Pride, Inc. v. Paxton,
Case No. 23-20480, Dkt. 91-1 (5th Cir. Feb. 20, 2024).....5

Woodlands Pride v. Paxton,
168 F.4th 293 (5th Cir. 2026)passim

STATUTES

Tex. Health & Safety Code § 769.002.....3

INTRODUCTION

Plaintiff Extragrams brings this Motion for a Temporary Restraining Order and Preliminary Injunction to enjoin Defendant Paxton in his official capacity from enforcing Texas Senate Bill 12 (enacted in 2023, “S.B. 12”) against it because Extragrams has three upcoming drag performances over the next three months that have already been canceled due to the threat of Attorney General enforcement as S.B. 12 takes effect. *See* Exhibit 1 (Declaration of Kerry Lynn Sieff).

On March 13, 2026, Extragrams notified the Attorney General that its performances on March 29, April 26, and May 31 are arguably proscribed by S.B. 12 and the venue has decided to cancel these shows. Extragrams asked if the Attorney General would disavow enforcement against Extragrams, its performers, and venues while this case proceeds with further analysis required by the Fifth Circuit in *Woodlands Pride v. Paxton*, 168 F.4th 293 (5th Cir. 2026), but the Attorney General declined. *See* Exhibit 1-B (Correspondence of Counsel). Extragrams therefore brings this Motion to stop the Attorney General from enforcing S.B. 12 against Extragrams, its performers, and venues.

All Plaintiffs seek a status conference and expedited briefing schedule to submit supplemental briefing that would assist the Court with amending its permanent injunction and declaratory judgment to address Plaintiffs’ facial

challenges to S.B. 12 as directed by the Fifth Circuit.¹ As that analysis occurs, Extragrams has upcoming performances already canceled because of S.B. 12 and seeks emergency relief now based on the specific facts of its upcoming shows, which other Plaintiffs may pursue if similarly imminent cancellations arise.

FACTUAL BACKGROUND

I. Text of S.B. 12

The Court is familiar with S.B. 12 and the facts in this matter after a full trial on the merits and final judgment. *See Woodlands Pride, Inc. v. Paxton*, 694 F. Supp. 3d 820, 831 (S.D. Tex. 2023), *vacated and remanded sub nom. Woodlands Pride v. Paxton*, 168 F.4th 293 (5th Cir. 2026). S.B. 12 proscribes “sexually oriented performance[s],” defined as “visual performance[s]” that (A) feature (i) a performer who is nude or (ii) a performer who engages in “sexual conduct”; and (B) appeal to the prurient interest in sex. *Id.* at 830. S.B. 12 borrows a definition of “nude” from the Texas Business and Commerce Code, which includes anyone who is “entirely unclothed” or “clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the person is female, or any portion of the genitals or buttocks.” *Id.* at 831. The law proscribes five categories of “sexual conduct”: (1) “the exhibition or

¹ The Fifth Circuit made clear that all Defendants other than the Attorney General in his official capacity and the two prosecutors that did not appeal must be dismissed, *Woodlands Pride*, 168 F.4th at 308, and Plaintiffs intend to file a motion seeking such dismissal soon.

representation, actual or simulated, of sexual acts, including vaginal sex, anal sex, and masturbation;” (2) the “exhibition or representation, actual or simulated, of male or female genitals in a lewd state, including a state of sexual stimulation or arousal;” (3) “the exhibition of a device designed and marketed as useful primarily for the sexual stimulation of male or female genitals;” (4) “actual contact or simulated contact occurring between one person and the buttocks, breast, or any part of the genitals of another person;” and (5) “the exhibition of sexual gesticulations using accessories or prosthetics that exaggerate male or female sexual characteristics.” *Id.* at 830. S.B. 12 tasks the Attorney General with enforcement against any person who “controls the premises of a commercial enterprise” and “allows a sexually oriented performance to be presented on the premises in the presence of an individual younger than 18 years of age,” including by imposing \$10,000 fines. Tex. Health & Safety Code § 769.002.

II. Procedural Posture

A. District Court Proceedings

Plaintiffs filed this case on August 2, 2023, Dkt. 1, and filed a motion for temporary restraining order and preliminary injunction on August 9, 2023. Dkt. 10. The Court consolidated the preliminary injunction hearing with the trial on the merits, Dkt. 21, which was held on August 28 and 29, 2023. On August 31, 2023, the Court granted a temporary restraining order on behalf of Extragrams and all other

Plaintiffs that prohibited the Attorney General and other Defendants from enforcing S.B. 12 against them. Dkt. 75. The Court extended the temporary restraining order on September 13, 2023, Dkt. 89, and issued its findings of fact, conclusions of law, and permanent injunction on September 26, 2023. Dkt. 94.

In its decision, this Court found that Extragrams has standing to challenge S.B. 12 because its “shows include drag performers using prosthetics and dancing in ways that are arguably proscribed by S.B. 12.” *Woodlands Pride*, 694 F. Supp. 3d at 841. While the Court found that “Extragram[s] employees have some control over the locations where they host and direct the drag performances,” it also held that “Extragram[s] could likely be in violation of S.B. 12, either under Section One or Section Three, through aiding and abetting liability.” *Id.* The Court found that “S.B. 12 is not severable” because it “relies on the definitions and terms in Section Three throughout the bill.” *Id.* at 842.

On the merits, the Court held that Extragrams and other Plaintiffs showed actual success because S.B. 12 is unconstitutional under five independent grounds. The Court found that “the drag performances described by the Plaintiffs are expressive conduct that warrants First Amendment protection” and “S.B. 12 is a content-based restriction and is subject to strict scrutiny,” which it fails to satisfy for a number of reasons. *Id.* at 844-45. Because S.B. 12 “specifically targets ‘the exhibition of sexual gesticulations using accessories or prosthetics that exaggerate

male or female sexual characteristics,” the Court found that it discriminates based on viewpoint. *Id.* at 847. The Court also held that S.B. 12 is “substantially overbroad” because the law goes “far beyond the established standards provided for by the United States Supreme Court’s *Miller* test and Texas’ statute for indecent exposure.” *Id.* at 848-49 (citing 413 U.S. 15. 93 (1973)). Moreover, the Court found “the vague language and seeming omission of clear guidance makes S.B. 12 vague,” and “section two of S.B. 12 is an impermissible prior restraint on speech.” *Id.* at 850. Because “S.B. 12 impermissibly infringes on the First Amendment and chills free speech,” “the impending chilling effect S.B. 12 will have is an irreparable injury” that “outweighs any hardship on the State of Texas.” *Id.* It was therefore in the public interest to enjoin S.B. 12’s enforcement. *Id.* at 851.

B. Appeal and Original Fifth Circuit Decision

On appeal, the Attorney General filed a motion to stay the district court’s permanent injunction, which the Fifth Circuit carried with the case. *See Woodlands Pride, Inc. v. Paxton*, Case No. 23-20480, Dkt. 91-1 (5th Cir. Feb. 20, 2024). This Court’s injunction therefore remained in effect throughout the two-year appeal.

On November 6, 2025, the Fifth Circuit issued a decision finding that at least one Plaintiff (360 Queen) has standing against the Attorney General but that no Plaintiff has standing against Defendants Montgomery County, Brett Ligon, Taylor County, James Hicks, and the City of Abilene. *Woodlands Pride, Inc. v. Paxton*, 157

F.4th 775, 782 (5th Cir. 2025), *opinion withdrawn and superseded on denial of reh'g sub nom. Woodlands Pride v. Paxton*, 168 F.4th 293 (5th Cir. 2026). Given the intervening precedent in *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024), the Fifth Circuit vacated the injunction and remanded to the district court “to (1) dismiss the claims against Brett Ligon, James Hicks, Montgomery County, Taylor County, and the City of Abilene; and (2) reconsider the plaintiffs’ facial challenge to Section One of S.B. 12 under the *Moody* framework.” *Woodlands Pride*, 157 F.4th at 789.

C. Motion for Panel Rehearing and Revised Panel Opinion

Plaintiffs subsequently filed a petition for panel rehearing because the Fifth Circuit “did not address or disturb an independent ground that the district court relied on to enjoin the Texas Attorney General from enforcing S.B. 12—that ‘the Court finds S.B. 12 to be unconstitutionally vague.’” *Woodlands Pride, Inc. v. Paxton*, Case No. 23-20480, Dkt. 298 at 11 (Dec. 4, 2025). On February 25, 2026, the Fifth Circuit withdrew and substituted its prior opinion. *Woodlands Pride v. Paxton*, 168 F.4th 293 (5th Cir. 2026). In its new decision, the court held that The Woodlands Pride and Abilene Pride Alliance do “not have standing to seek an injunction against any of the appellants” because their drag performances are not “arguably proscribed by S.B. 12.” *Id.* at 302-03. The court noted that because S.B. 12 only prohibits performances that “appeal[] to the prurient interest in sex,” they “at a minimum, must be ‘in some sense erotic’” for purposes of standing. *Id.* at 299 (quoting *Ashcroft*

v. ACLU, 535 U.S. 564, 579 (2002)). Although The Woodlands Pride testified at trial that its performances feature conga lines, twerking, and having performers and audience members “put their hands on each other’s hips,” the Fifth Circuit found these shows to not “appeal to the prurient interest in sex.” *Id.* at 302. Likewise, Abilene Pride Alliance’s performances that involved “dancing, lip syncing, engaging with the audience by hugging, kissing on the cheek, [and] sometimes bumping hips” were not found to be “in some sense erotic.” *Id.* at 302-03.

In contrast, the panel held that 360 Queen’s performances *are* arguably proscribed by S.B. 12. *Id.* at 304. These shows feature “twerking,” “death drops,” performers “wearing a ‘very revealing’ breastplate [and] puls[ing] the breastplate in front of people,” and performers “sit[ting] on customers’ laps while wearing thongs and one performer invit[ing] a ‘handsome’ male customer ‘to spank her on the butt.’” *Id.* The court found these performances to be “in some sense erotic.” *Id.* The court further held that the Attorney General was properly subject to suit under *Ex parte Young* because he has “the ‘particular duty’ to enforce” section one. *Id.* at 305 n.10.

Because the Fifth Circuit held that 360 Queen has standing to sue the Attorney General, it declined to opine whether Extragrams also has standing to sue the Attorney General, nor did it undermine this Court’s holding that it does. Instead, the court merely noted that Extragrams does not have standing against the remaining municipal defendants because it does not hold performances in those jurisdictions. *Id.*

at 306. Similarly, the court did not address whether Brigitte Bandit has standing against the Attorney General. *Id.* at 306-07.

On the merits, the Fifth Circuit did not identify any abuse of discretion in this Court’s factual findings nor any erroneous legal conclusions. Instead, the court noted that *Moody* now requires courts to apply a more specific and thorough two-part test for facial challenges under the First Amendment. *Id.* at 307. The panel also said that it was “unequipped” to “analyze the statute” for facial vagueness, so it “remand[ed] for the district court to do so” in light of *Roy v. City of Monroe*, 950 F.3d 245, 252 (5th Cir. 2020). *Id.* at 308. The mandate issued on March 18, 2026.

III. Imminent Harm to Extragrams

Extragrams is a drag entertainment company based in Austin, Texas that provides customers with personalized, professional, and high-end live entertainment. Ex. 1 ¶¶ 4, 12. Extragrams’ performers wear outfits and engage in dance moves that arguably violate S.B. 12, *id.* ¶¶ 14, 16-18, and they perform in public spaces and at commercial venues where minors are present, *id.* ¶ 13.

As S.B. 12’s enforcement was blocked for the past two and a half years, Extragrams was able to continue and expand its non-obscene drag performances. *Id.* ¶¶ 19-20, 35. S.B. 12 taking effect for the first time has caused immediate fear and confusion for Extragrams, its performers, and clients. *Id.* ¶ 21. Because the law

remains profoundly vague, Extragrams has no way to tell its performers or clients what kind of performances are prohibited under the law. *Id.* ¶¶ 22-23.

Earlier this year, Extragrams was contacted by a hotel in Austin and asked to organize a series of drag brunches at the hotel’s restaurant. *Id.* ¶¶ 8-9, 25-26. These shows were scheduled for March 29, April 26, and May 31. *Id.* ¶¶ 8, 25. Although the intended audience for these drag brunches is primarily adults, they are not strictly 18+ events and minors could be present on the premises of the hotel and the restaurant, which features two patios, including one directly on the street. *Id.* ¶ 26. Because the hotel is open to families and guests of all ages, there would be minors “present on the premises” of the venue and in close proximity to where Extragrams’ performers would perform. *Id.*

The performers at these upcoming brunches would be fully clothed, but they intend to wear leotards that are quite revealing around the butt and low-cut dresses and tops that reveal portions of the breasts below the top of the areola. *Id.* ¶ 27. Extragrams’ performers plan on engaging in high-energy and sometimes provocative dance moves that include twerking, death drops, body undulations, and crawling on the bar on all fours while thrusting and pulsing their hips or breasts. *Id.* ¶ 29. Performers sometimes sit directly on patrons’ laps or crawl onto their tables while shaking, swaying, and gyrating their hips, torso, and head. *Id.* While these performances are not obscene or obscene as to minors, they contain impersonation

of celebrities that can be seen as erotic, as well as dance moves and outfits viewed as sexual by many observers but are already commonly viewed by minors on television or at concerts and other pop culture events. *Id.* ¶¶ 29, 33, 35. Audience members also frequently tip the drag performers with dollar bills and insert cash directly into their bras, dresses, and leotards, and sometimes touch each other or the performers as part of the performance. *Id.* ¶ 31. Extragrams’ performers also engage in gesticulations and dance moves while wearing accessories and prosthetics that exaggerate male and female sexual characteristics, such as a Dolly Parton impersonator who wears a large breastplate while dancing to mimic Dolly’s chest and a drag king who wears a crotch packer to give the illusion of having a penis as he performs a “sexy guy persona with fake muscles, an open shirt, and body rolls, undulations, and dance moves similar to the erotic dancing performed in the popular movie about male strippers, ‘Magic Mike.’” *Id.* ¶ 32.

Extragrams fears that its upcoming performances are arguably proscribed by S.B. 12 and appeal to a prurient interest in sex, as that term is vague and undefined. *Id.* ¶¶ 34-35. The hotel where these drag brunches were scheduled to take place seems to agree, since it informed Extragrams a day after the Fifth Circuit issued its most recent decision that it would need to postpone holding these events. *Id.* ¶ 9. On February 27, 2026, a representative of the hotel group sent Extragrams an article from the *Associated Press* entitled, “Appeals court clears way for Texas drag ban to

take effect in March.” *Id.* ¶ 7. The representative immediately put Extragrams’ upcoming shows on pause and added, “meeting with our partners and directors next week to talk about this.” *Id.* The client representative then notified Extragrams on March 13 that it needed “to table” these brunches indefinitely due to S.B. 12 taking effect. *Id.* ¶¶ 8-9.

Extragrams notified the Attorney General of this cancellation on March 13, 2026, and asked if the Attorney General would disavow enforcement of S.B. 12 at these upcoming events while this litigation continues. The Attorney General has refused to disavow enforcement as of the filing of this Motion. *See Ex. 1-B.*

ARGUMENT

Extragrams is entitled to temporary injunctive relief to protect its constitutional rights as this Court conducts the further analysis required on remand by the Fifth Circuit since Extragrams will be concretely and irreparably harmed by the Attorney General’s threatened enforcement of S.B. 12 absent injunctive relief; Extragrams remains substantially likely to prevail on the merits; and the balance of the equities and public interest weigh in favor of granting the requested relief.

I. Extragrams Continues to Have Standing to Challenge S.B. 12

In partially affirming this Court’s conclusions of law on standing, the Fifth Circuit noted that a “plaintiff must support each element of standing with the manner and degree of evidence required at the successive stages of the litigation.”

Woodlands Pride, 168 F.4th at 301 (quotations and citation omitted). Here, Extragrams has established injury-in-fact through the trial record and its supplemental declaration affixed to this Motion, Ex. 1, showing that it “(1) has an ‘intention to engage in a course of conduct arguably affected with a constitutional interest,’ (2) [its] intended future conduct is ‘arguably . . . proscribed by the policy in question,’ and (3) ‘the threat of future enforcement of the challenged policies is substantial.’” *Speech First, Inc. v. Fenves*, 979 F.3d 319, 330 (5th Cir. 2020) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 161-64 (2014)). This injury is also traceable to the challenged actions of the Attorney General and redressable by injunctive relief against him. *See Lujan v. Def’s. of Wildlife*, 504 U.S. 555, 560–61 (1992).

A. Extragrams’ Upcoming Shows Are Arguably Proscribed by S.B. 12

Based on the trial record, this Court held that Extragrams has standing to challenge the Attorney General’s enforcement of S.B. 12 against it, in part because Extragrams “believes S.B. 12 will cause clients to avoid its services in fear of running afoul of S.B.12.” *Woodlands Pride, Inc.*, 694 F. Supp. 3d at 835, 841. Extragrams’ testimony at trial still amply supports its standing, and its upcoming drag brunches clearly fall within the ambit of shows chilled and censored by S.B. 12, especially since they have already been cancelled as this law takes effect.

Extragrams’ upcoming drag brunches feature outfits that reveal parts of performers’ butts and breasts below the top of the areola, which are similar to the “very revealing” outfits showing parts of performers’ butts and breasts that the Fifth Circuit found sufficient to be arguably proscribed by S.B. 12’s prohibition on nudity. *Woodlands Pride*, 168 F.4th at 304. Extragrams’ performers also plan on engaging in “high-energy and sometimes provocative dance moves that include twerking, death drops, body undulations, and crawling on the bar on all fours while thrusting and pulsing their hips or breasts.” Ex. 1 ¶ 29. Because they wear breastplates and packers while engaging in provocative dance moves, performers risk violating S.B. 12’s prohibitions on “sexual gesticulations using accessories or prosthetics that exaggerate male or female sexual characteristics” as well as “actual or simulated . . . male or female genitals in a lewd state.” *Id.* ¶¶ 29-34. Their dance moves and interactions with each other and audience members also arguably violate S.B. 12’s prohibitions on “simulated . . . sexual acts” and “actual contact or simulated contact occurring between one person and the buttocks, [or] breast[] . . . of another person.” *Id.* ¶¶ 30-31, 34. Many expressive elements at Extragrams’ upcoming drag brunches arguably amount to “sexual conduct” prohibited by S.B. 12 that would be “in some sense erotic” under the Fifth Circuit’s standing analysis. *See Woodlands Pride*, 168 F.4th at 304.

B. Extragrams' Injuries Are Traceable to the Attorney General

Extragrams' injuries are directly traceable to the Attorney General's enforcement authority, regardless of whether Extragrams itself can be said to "control" the premises of a commercial enterprise under the text of S.B. 12. On appeal, the Fifth Circuit rejected the Attorney General's argument that "control" under S.B. 12 requires actual ownership, instead noting that it merely requires "power or influence." *Id.* at 305. This Court previously noted that "Extragram[s] employees have some control over the locations where they host and direct the drag performances," *Woodlands Pride*, 694 F. Supp. 3d at 841, and Extragrams would also retain creative control over its upcoming drag brunches. Ex. 1 ¶ 15.

But even if Extragrams does not fully "control" the premises, the threat of Attorney General enforcement still causes a "predictable effect of Government action on the decisions of third parties" such that Extragrams' client has already canceled the upcoming drag brunches. *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019). Because Article III "requires no more than *de facto* causality, traceability is satisfied" where standing "relies [] on the predictable effect of Government action on the decisions of third parties." *Id.* (internal quotations and citations omitted). Even where a "regulation causes injury to the plaintiff" through a third party, traceability and redressability are met when an injury occurs through "predictable" effects. *Diamond Alternative Energy, LLC v. Env't Prot. Agency*, 606

U.S. 100, 112, 114 (2025); *Book People, Inc. v. Wong*, 91 F.4th 318, 330 (5th Cir. 2024) (“Courts have found that plaintiffs have standing to sue government entities that injure them through another entity”).

Here, it is highly predictable that the threat of Attorney General enforcement of S.B. 12 would cause Extragrams’ client to cancel upcoming performances arguably proscribed by the law instead of facing the risk of \$10,000 fines. Granting the requested relief of enjoining the Attorney General from enforcement would thus provide “at least some” relief to Extragrams, which is all that Article III requires. *Diamond Alternative Energy*, 606 U.S. at 114. While this relief would result in “more revenue” for Extragrams, *see id.*, it would also permit Extragrams to continue engaging in constitutionally protected speech. *See Texas A&M Queer Empowerment Council v. Mahomes*, 772 F. Supp. 3d 792, 802 (S.D. Tex. 2025) (Rosenthal, J.) (“Applying *Hurley*, the court agrees with the conclusion reached in *Woodlands Pride* that drag shows may be protected expressive conduct[.]”).

II. Extragrams Is Substantially Likely to Prevail on the Merits

The Court previously found that Extragrams has shown actual success on the merits that S.B. 12 violates its First and Fourteenth Amendment rights, and the Fifth Circuit did not identify any error in the outcome of the Court’s legal analysis. Instead, the panel’s remand instructions are to “(1) dismiss the claims against Brett Ligon, James Hicks, Montgomery County, Taylor County, and the City of Abilene;

(2) reconsider the plaintiffs’ facial First Amendment challenges to Section One of S.B. 12 under the *Moody* framework; and (3) reconsider the plaintiffs’ facial vagueness challenge to Section One of S.B. 12 in light of *Roy*.” *Woodlands Pride*, 168 F.4th at 308. While Plaintiffs seek a status conference and expedited briefing schedule to assist the Court in conducting a more fulsome analysis based on the Fifth Circuit’s remand instructions, this Court’s ultimate conclusions after a full trial on the merits remain legally sound.

The Fifth Circuit did not disturb this Court’s holding that the expressive elements of Plaintiffs’ non-obscene drag performances are shielded by the First Amendment. *Compare id.* at 305, with *Woodlands Pride*, 694 F. Supp. 3d at 844. The Fifth Circuit also did not address or overrule this Court’s conclusions that S.B. 12 facially discriminates based on content and viewpoint and fails both strict and intermediate scrutiny. *Compare Woodlands Pride*, 169 F.4th at 307-08, with *Woodlands Pride*, 694 F. Supp. 3d at 844-47. On these grounds alone, this Court is well within its discretion to temporarily restrain and enjoin the Attorney General from enforcing S.B. 12. As this Court correctly noted, “the First Amendment protects sexual expression, which is indecent but not obscene,” *id.* at 845 (citing *Reno v. A.C.L.U.*, 521 U.S. 844, 874 (1997)). By borrowing only one prong of the *Miller* test and “exclud[ing] the other relevant prongs,” S.B. 12 sweeps far beyond this. *Id.* While Texas already “has indecent exposure laws and other laws to stop

heinous behavior contemplated by the state,” *id.* at 846, the state has no “free-floating power to restrict the ideas to which children may be exposed,” *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 794 (2011).

In its standing analysis, the Fifth Circuit mentioned that the term “prurient interest” requires material that is “in some sense erotic.” *Woodlands Pride*, 168 F.4th at 299 (quoting *Ashcroft*, 535 U.S. at 579). Critically, the case that the Fifth Circuit relies on for this interpretation examined a law that specifically incorporated all three prongs of *Miller*’s obscenity test. *See Ashcroft*, 535 U.S. at 578-79. In contrast, S.B. 12 relies on “prurience” alone and has no requirement that performances must be “patently offensive” and no protection for works with serious value. This contravenes the Supreme Court’s repeated emphasis “that the serious value ‘requirement is particularly important[.]’” *Id.* at 579 (quoting *Reno*, 521 U.S. at 873). Since S.B. 12 lacks this critical element, it risks “activities such as cheerleading, dancing, live theater, and other common public occurrences [] possibly becom[ing] a civil or criminal violation.” *Woodlands Pride*, 694 F. Supp. 3d at 848.

This Court was thus correct in its conclusions that prohibiting performances that “appeal[] to the prurient interest in sex”—untethered to the other *Miller* factors or other limitations—renders S.B. 12 both overbroad and vague. *See id.* As Extragrams’ current canceled shows demonstrate, many elements of dancing and

performance art common in popular culture may arguably be “prurient” even if they have serious value and are not patently offensive. *See Ex. 1 Id.* ¶¶ 23, 29, 33, 35.

In remanding for further analysis, the Fifth Circuit explained that “*Moody* espoused existing law” and did not substantively change the underlying standard for overbreadth claims, *Woodlands Pride*, 168 F.4th at 308 n.13—whether “a substantial number of [the law’s] applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Moody*, 603 U.S. at 723; accord *Woodlands Pride*, 694 F. Supp. at 847. While *Moody* requires “explor[ing] the laws’ full range of applications,” 603 U.S. at 726, this inquiry is unlikely to change the Court’s conclusion that “S.B. 12 is extremely broad, and the five categories of ‘sexual conduct’ are written to go far beyond the established standards provided for by the United States Supreme Court’s *Miller* test and Texas’ statute for indecent exposure.” *Woodlands Pride*, 694 F. Supp. 3d at 848-49.

The Fifth Circuit’s instruction to conduct more analysis on vagueness in light of *Roy*, 950 F.3d at 252, also does not dispel this Court’s prior holding that “it is not readily known to someone of ‘ordinary intelligence’ how S.B. 12 will be enforced.” *Woodlands Pride*, 694 F. Supp. 3d at 849. While the Court may conduct more analysis on vagueness and take *Roy*’s rule language into account, that case ultimately reiterates the underlying vagueness standard that this Court already found S.B. 12 to meet because it “fails to provide people of ordinary intelligence a reasonable

opportunity to understand what conduct it prohibits” and “authorizes . . . arbitrary and discriminatory enforcement.” *Roy*, 950 F.3d at 252; *accord Woodlands Pride*, 694 F. Supp. 3d at 849-50.

The Court also found that section two of S.B. 12 is as an unconstitutional prior restraint and that the law is not severable since all sections rely on section three and the free-roaming “prurient interest” standard. *See Woodlands Pride*, 694 F. Supp. 3d at 841-42, 850. These conclusions were undisturbed by the Fifth Circuit and are not at issue here since Extragrams’ upcoming drag brunches are at a commercial enterprise and the Travis County Attorney, who enforces sections two and three of the law in Travis County, did not appeal the judgment. *See Woodlands Pride*, 157 F.4th 775, 801 (5th Cir. 2025) (Dennis, J., concurring and dissenting in part).

III. Extragrams Will Suffer Irreparable Harm Absent Injunctive Relief

The Court previously noted that “the loss of a First Amendment right [is] sufficient to show irreparable harm.” *Woodlands Pride*, 694 F.3d at 850 (citing *Roman Catholic Diocese v. Cuomo*, 592 U.S. 14 (2020)). This necessitates prohibiting the Attorney General from enforcing S.B. 12 to suppress Extragrams’ constitutionally protected speech. Absent this relief, Extragrams’ upcoming drag shows will remain canceled, and its speech will be chilled. Ex. 1 ¶¶ 36-37. The stigma and reputational injury of Extragrams’ performances being canceled would also continue harming Extragrams absent injunctive relief. *Id.* ¶¶ 37-38.

IV. The Balance of the Equities and Public Interest Weigh in Favor of Granting Injunctive Relief

Both the balance of the equities and the public interest favor the requested relief because Extragrams' First and Fourteenth Amendment rights would otherwise be infringed. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 298 (5th Cir. 2012) ("Injunctions protecting First Amendment freedoms are always in the public interest."). In contrast, the Attorney General lacks a legitimate interest in the enforcement of an unconstitutional law, particularly where, as here, all obscene performances to which S.B. 12 might apply remain prohibited by Texas law.

V. No Bond Should Be Required

"[T]he amount of security required pursuant to Rule 65(c) is a matter for the discretion of the trial court," and the court "may elect to require no security at all." *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (internal quotations and citations omitted). Because this case concerns constitutional freedoms and the Attorney General will not suffer any monetary harm from the Court's temporary restraining order or preliminary injunction, Extragrams respectfully requests that the Court require no bond.

CONCLUSION

Extragrams asks the Court to temporarily restrain and preliminarily enjoin the Attorney General from enforcing S.B. 12 against it, its performers, and venues.

Dated: March 19, 2026

Respectfully submitted,

By: /s/ Brian Klosterboer

Brian Klosterboer, attorney-in-charge

TX Bar No. 24107833

SDTX No. 3314357

Chloe Kempf

TX Bar No. 24127325

SDTX No. 3852674

Charelle Lett

TX Bar No. 24139900

SDTX No. 3908204

Thomas Buser-Clancy

TX Bar No. 24078344

SDTX No. 1671940

Edgar Saldivar

TX Bar No. 24038188

SDTX No. 618958

Adriana Pinon

TX Bar No. 24089768

SDTX No. 1829959

ACLU FOUNDATION OF TEXAS,
INC.

P.O. Box 8306

Houston, TX 77288

Tel. (713) 942-8146

Fax (713) 942-8966

bklosterboer@aclutx.org

ckempf@aclutx.org

clett@aclutx.com

tbuser-clancy@aclutx.org

esaldivar@aclutx.org

apinon@aclutx.org

Derek R. McDonald

TX Bar No. 00786101

SDTX No. 18546

Maddy Dwertman

TX Bar No. 24092371

SDTX No. 3853795

BAKER BOTTS L.L.P.

401 S. 1st Street, Suite 1300

Austin, TX 78704

Tel. (512) 322-2500

Fax (512) 322-2501

Derek.McDonald@BakerBotts.com

Maddy.Dwertman@BakerBotts.com

Brandt Thomas Roessler

TX Bar No. 24127923

SDTX No. 3853796

BAKER BOTTS L.L.P.

30 Rockefeller Plaza

New York, NY 10112

Tel. (212) 408-2500

Fax (212) 408-2501

Brandt.Roessler@BakerBotts.com

Emily Rohles

TX Bar No. 24125940

SDTX No. 3715273

BAKER BOTTS L.L.P.

910 Louisiana Street

Houston, TX 77002

Tel. (713) 229-1234

Fax (713) 229-1522

Emily.Rohles@BakerBotts.com

Attorneys for Plaintiffs

CERTIFICATE OF CONFERENCE

Plaintiffs notified the Attorney General of their intention to seek the emergency relief requested in this Motion on March 13, 2026. Plaintiffs asked if the Attorney General would agree to disavow enforcing S.B. 12 against Extragrams, its performers, and venues for its upcoming drag performances while this litigation continues, but the Attorney General declined to disavow enforcement before the filing of this Motion. *See* Ex. 1-B. Based on this correspondence, the Attorney General and Plaintiffs differ in their views for how this case should proceed on remand, so the Plaintiffs respectfully request a status conference before the Court, possibly in conjunction with a hearing on this Motion.

/s/Brian Klosterboer
Brian Klosterboer

CERTIFICATE OF SERVICE

The undersigned certifies that on the 19th day of March, 2026, a true and correct copy of the above document was served via the CM/ECF system to all counsel of record and via e-mail to Defendants who have not yet appeared.

/s/Brian Klosterboer
Brian Klosterboer