

CAUSE NO. _____

RODNEY JACKSON and	§	IN THE DISTRICT COURT OF
TEMECIA JACKSON,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS DEPARTMENT OF FAMILY	§	
AND PROTECTIVE SERVICES,	§	
<i>Defendant.</i>	§	____ TH JUDICIAL DISTRICT

Plaintiffs' Original Petition for Declaratory Judgment

TO THE HONORABLE JUDGE:

Plaintiffs, Rodney Jackson and Temecia Jackson (the “Jacksons”), bring this action for declaratory judgment pursuant to the Texas Administrative Procedure Act to challenge administrative rules 40 Tex. Admin. Code § 707.495(a) (“Unilateral Designation Rule”) and 40 Tex. Admin. Code § 707.495(b)(4) (“Unable-to-Determine Rule”) issued by the Texas Department of Family and Protective Services. These rules impair or threaten the Jacksons’ parental rights following the Department’s egregious separation of the parents from their newborn child and failures of process while investigating a claim of alleged medical neglect against them. The agency’s unilateral determination and consequential designation of the Jacksons as likely perpetrators of such neglect continues to impair their rights as parents and impede their rights to engage fully as community leaders.

Introduction

1. Texas parents have the freedom to decide how and where to have their children, whether through hospital births, midwifery care, or home births. Rodney and Temecia Jackson chose

to have their third child at home under the care of a licensed and certified midwife. What started as a beautiful family event and intimate, safe, and healthy birthing experience resulted in a terrifying nightmare. Law enforcement agents forcibly took their daughter, M.J., based on a warrant naming the wrong parents just days after M.J. was born. For twenty-four days, M.J. was denied the love, comfort, and security that her parents yearned to provide. As any mother or father (or medical association) knows, separating a newborn baby from her parents causes irreparable harm. If this harm were not enough, DFPS's application of unlawful rules to the Jacksons following M.J.'s return caused greater harm and extended the consequences of the agency's harmful actions indefinitely. This case challenges DFPS's rules that prevent the Jacksons from fully clearing their names.

2. Mr. and Mrs. Jackson were accused by DFPS of medical neglect of their newborn daughter, M.J., after a pediatrician reported them for taking the advice of a Texas-licensed midwife over and alongside his advice for treatment of physiologic jaundice, a condition presenting in most newborns that midwives like theirs are licensed to treat.
3. DFPS dismissed their case before any hearing was conducted and returned M.J. to her family. Although M.J. was finally safe at home, the Jacksons were subsequently issued a designation by DFPS placing them on a "Central Registry" for child abuse and neglect. It took them several months to receive a hearing on their successful appeal, but then, without any explanation or evidence of abuse or neglect, DFPS changed their designation not to "ruled out" -- as required by law and by the evidence -- but to "unable to determine," that child abuse and neglect occurred. That designation, too, continues to harm the Jacksons.
4. While the Jacksons' successful appeal means their "reason to believe" designation has been removed from DFPS's Central Registry, the unappealable "unable to determine" designation

exposes them to violations of privacy, threats of adverse actions, unfair scrutiny, and/or other real consequences from individuals, organizations, or agencies who could legally access the Jackson's DFPS records. For example, the Texas Family Code permits school administrators, physicians' offices, and local, state, and federal law enforcement to access the Jacksons' DFPS records, which exposes them to genuine fear and threats of adverse actions against them. At several places where they must interface with public systems – hospitals, law enforcements, schools, for example, officials have access to their file that they would not have with a “ruled out” designation, and the discretion to assume that abuse or neglect was *possible*, because it is undetermined.

5. The “unable to determine” designation does not appear in the Family Code but was created by the DFPS administrative rule 40 Tex. Admin. Code § 707.495(b)(4). Although DFPS considers this a “favorable” (and therefore unappealable) determination, the “unable to determine” designation comes with real legal consequences that threaten the fundamental rights of parents to the care, custody, and control of their children.
6. The rules dictating DFPS's process for designating an alleged abuse case as “reason to believe” or “unable to determine” infringe upon the rights of parents in direct violation of the Texas Administrative Procedure Act.

Discovery Control Plan

7. Discovery in this case should be conducted under Texas Rule of Civil Procedure 190.3 as a Level 2 case.
8. Pursuant to Texas Rule of Civil Procedure 47, Plaintiffs seek only nonmonetary relief. Accordingly, this case is not governed by Texas Rule of Civil Procedure 169.

Parties

9. Plaintiff Rodney Jackson Jr. (“Mr. Jackson”) is an individual who resides in Dallas County, Texas, and is the father of R.J., K.J., and M.J.
10. Plaintiff Temecia Jackson (“Mrs. Jackson”) is an individual who resides in Dallas County, Texas, and is the mother of R.J., K.J., and M.J.
11. Defendant Texas Department of Family and Protective Services (“DFPS”) is a state agency that issued the rules being challenged and that designated the Jacksons and imposed the “unable to determine” designation after finding that the evidence did not support a finding or likelihood of medical neglect.

Jurisdiction and Venue

12. Section 2001.038(a) of the Government Code provides district courts with jurisdiction to determine the validity or applicability of a rule in an action for declaratory judgment. This grant of jurisdiction represents a waiver of sovereign immunity where the validity or applicability of an administrative rule is at issue, as it is here.
13. Section 2001.038(b) of the Government Code requires this action to be brought in Travis County.

Factual Background

I. Jackson Family History

14. Mr. and Mrs. Jackson are a married couple and parents to three children, R.J., K.J., M.J. K.J. is currently fourteen years old; R.J. is currently eight years old; and M.J. is currently two years old.

15. Mrs. Jackson gave birth to her two older children in a hospital by cesarean section. As a Black woman who experienced birthing two children in hospitals, where she did not feel her voice was heard, Mrs. Jackson wanted her experience with her third child to be different.¹
16. So, the Jacksons reached out to their midwife, Dr. Cheryl Edinbyrd, a Texas licensed midwife, to inquire about using her services for a vaginal birth. In Texas, midwives, like physicians, can provide the necessary supervision, care, and advice to a woman during normal pregnancy, labor, and the postpartum period; conduct normal delivery of a child; and provide normal newborn care. TX OCC § 203.002 (7).
17. Dr. Edinbyrd provided Mrs. Jackson with prenatal care throughout her pregnancy, and on March 21, 2023, M.J. was born in Mr. and Mrs. Jackson's home with the help of Dr. Edinbyrd and the birthing team. Afterwards, Dr. Edinbyrd got Mrs. Jackson cleaned up, helped her back into bed, sutured her tear from vaginal delivery, and got her to eat. Dr. Edinbyrd also monitored Mrs. Jackson's blood loss and vitals. M.J.'s vitals were also assessed as she did skin to skin with Mr. Jackson. Next, Dr. Edinbyrd completed a newborn exam, and M.J. showed no signs of jaundice. Dr. Edinbyrd gave discharge instructions and left several hours later, after ensuring

¹Black women in Texas are three times more likely to die from pregnancy and childbirth than white women in Texas, regardless of delivery type. Laura G. Fleszar, *Trends in State Level Maternal Mortality by Racial and Ethnic Group in the United States*, JAMA NETWORK (July 3, 2023), <https://jamanetwork.com/journals/jama/fullarticle/2806661>; Black women are more likely to receive cesarean sections than white patients. *State of Maternity Care in U.S. Hospitals: The Leapfrog Group 2025 Report on Trends*, THE LEAPFROG GROUP (March 2025), [MaternityCare-report-2025-FINAL_0.pdf](#); Doctors have suggested that mitigation of negative birthing experiences is possible where patients are informed and empowered to be active participants in their care and have advised patients to ask for second opinions and seek alternative treatment when they feel compelled, including treatment from midwives. Jasmine Smith, *Why Are Black Women 25% More Likely to Have C-Sections?*, Doctor.Org, (Apr. 11, 2025), [Why Are Black Women 25% More Likely to Have C-Sections? - BlackDoctor.org](#); Why Are Black Women 25% More Likely to Have C-Sections? - BlackDoctor.org; Renee Onque, *C-Sections Are Most Common – and Most Dangerous – for Black Parents. Here's How We Change That*, LIVESTRONG, (Nov. 12, 2022), [Racial Disparities in C-Section Rates and Maternal Mortality | livestrong](#).

Mrs. Jackson and M.J. were healthy. Two days later, Dr. Edinbyrd called and checked on the family and the doula scheduled to assist with postpartum care.

II. Mrs. Jackson took M.J. to see a pediatrician for a checkup.

18. On March 24, 2023, Mr. and Mrs. Jackson took M.J. to the doctor's office of Baylor, Scott & White for an appointment with Dr. Anand Bhatt, the pediatrician who had been treating their other children for 12 years, to establish M.J. as a patient. The nurse practitioner who saw M.J. noticed some physical signs of jaundice and so tested M.J.'s blood of bilirubin levels. The Jacksons scheduled a follow-up appointment and left the facility.

III. Dr. Bhatt reported Mr. and Mrs. Jackson for alleged medical neglect of M.J.

19. Later that day, Dr. Bhatt called Mrs. Jackson to inform her that MJ's Bilirubin levels were higher than normal and suggested they take M.J. to the hospital's newborn intensive care unit ("NICU"). During that phone call, Mrs. Jackson told Dr. Bhatt that she would speak to her husband and their midwife, Dr. Edinbyrd. Dr. Edinbyrd explained to the Jackson that, instead of taking M.J. to the hospital, they could pursue an alternative treatment plan that included enhanced nutrition, phototherapy, and monitoring. Mr. and Mrs. Jackson decided to pursue the alternative treatment plan because Mrs. Jackson wanted to be physically present while M.J. received treatment instead of being separated in the NICU.
20. That evening, Dr. Bhatt called Mrs. Jackson, and she did not answer because she was napping and had her phone silenced. Dr. Bhatt never called Mr. Jackson. Instead, Dr. Bhatt called the Desoto Police Department to conduct a welfare check on M.J. While Mrs. Jackson and M.J. were asleep, Desoto Police came to the home and woke Mrs. Jackson out of her sleep. Mrs. Jackson felt terrified. Mr. Jackson then called Dr. Bhatt expressing his frustration that Dr. Bhatt sent the police to his home without contacting him first.

21. Mr. Jackson expressed to Dr. Bhatt that they would be treating M.J. at home under the care of their midwife. Dr. Bhatt asked to speak to Dr. Edinbyrd to coordinate a plan of care. Mr. Jackson sent Dr. Bhatt Dr. Edinbyrd's contact information. That evening, Dr. Bhatt tried calling Dr. Edinbyrd and texted the Jacksons in a group text giving them instructions for treating M.J. at home if they chose not to go to the hospital.
22. In the early hours of the next morning, before having spoken to Dr. Edinbyrd, Dr. Bhatt reported alleged medical neglect of the Jackson's infant daughter, M.J., to DFPS. He gave Mr. Jackson's name to DFPS as an alleged perpetrator but, in lieu of Mrs. Jackson, he named another person as M.J.'s mother, Nichovia Nichols. On a phone call with a DFPS investigator, Dr. Bhatt did not mention he had given them alternative advice for treating M.J. without taking her to the hospital.
23. Later that day, Dr. Edinbyrd called Dr. Bhatt and explained the plan she had for M.J.'s care and Dr. Bhatt stated that he would leave the family in Dr. Edinbyrd's care. To memorialize the phone call, Dr. Edinbyrd started a group text thread with Dr. Bhatt, Mr. Jackson, and Mrs. Jackson where she expressed appreciation to Dr. Bhatt for leaving the family's care in her hands as a Texas-licensed midwife. Dr. Edinbyrd scheduled follow-up visit with Mrs. Jackson and M.J. for March 28, 2023.
24. Dr. Bhatt did not call DFPS after his conversation with Dr. Edinbyrd to communicate that M.J. was receiving appropriate medical care.

IV. DFPS took M.J. from her mother's arms after antagonizing Mr. and Mrs. Jackson with police presence.

25. After Dr. Bhatt's early morning call to DFPS, and before he spoke to Dr. Edinbyrd, the investigator went to the Jackson's house with multiple police units. Police asked the investigator to stand away from the door as they approached the house. After several loud bangs at their door, Mr. and Mrs. Jackson opened their primary door and left the glass screen door closed. The police introduced themselves and explained that they were present because CPS had concerns about their baby. Mr. Jackson spoke to the police and asserted they did not have to speak with CPS without a court order, and the police left.
26. Not long after they left, the investigator returned to the Jackson's home with increased police presence, a Desoto Fire Truck, and a Desoto Ambulance. This time, an officer knocked and rang the doorbell while other officers shined their flashlights into the windows of the home and walked around the perimeter of the home. Communicating through the Ring camera, Mr. Jackson stated that the police could not take his child without a court order. The investigator informed Mr. Jackson that M.J. would be taken either that night or another day, and then she and all emergency personnel left the home. The investigator also texted Mrs. Jackson, "We're not leaving Ms. Nichols," referring to Mrs. Jackson as Ms. Nichols. Mrs. Jackson did not know the name Nichovia Nichols nor did she have any relation with Nichovia Nichols.
27. After leaving the Jacksons' house the second time, the investigator submitted an application for a writ of attachment. In the application, the investigator used Nichovia Nichols's name and detailed information about an unrelated DFPS case that led to the removal of Ms. Nichols's child from her home. This erroneous affidavit was attached to the application for a writ of attachment of M.J. The writ application was granted and executed. DFPS agents and law enforcement did not verify that M.J.'s mother was Mrs. Jackson, not Nichovia Nichols.

28. On March 28, 2023, another investigator arrived at the Jacksons' home with constables. Mr. Jackson started recording them and asking for their badge numbers. Mr. Jackson was then put into handcuffs as the constables went into his home and asked Mrs. Jackson to hand M.J. over. Mrs. Jackson asked to see a court order or any documentation. They refused and only handed over documentation after they took M.J. from Mrs. Jackson's arms. M.J. was brought out to the car, and the investigator was instructed to drive away quickly.
29. Mrs. Jackson called the Desoto Police to find her daughter. The police gave her the number of the DFPS Investigation Supervisor. The Jacksons called the Supervisor and then drove to the DFPS offices. Mrs. Jackson told the Supervisor that the name on the affidavit was not hers and stated that her child had been stolen from her, and she wanted her back. The Supervisor said that the name could be changed but that did not mean they were getting MJ back. The Supervisor then called Dr. Bhatt who confirmed that he provided the Department with the wrong contact information, and that Mrs. Jackson is the mother of M.J.
30. A supplemental affidavit in support of removing M.J. from her family home was filed on March 30, 2023, two days after M.J. had been in DFPS custody. The supplemental affidavit named Mrs. Jackson as M.J.'s mother and did not include Nichovia Nichols' DFPS history.

V. Events that took place while M.J. was in DFPS custody.

31. During the Jacksons' in-person meeting with the Supervisor, Mrs. Jackson stated that she was breastfeeding M.J. The Supervisor told Mrs. Jackson that she could drop off milk at any time. Mrs. Jackson also stated that she wanted M.J. placed with her paternal aunt, Yolanda Culpepper, and requested a home assessment be done at her residence as required for familial placement. M.J. was placed with foster parents despite Mr. and Mrs. Jackson requesting M.J. be placed with Mrs. Culpepper.

32. A couple of days later, a home study was conducted at Mrs. Culpepper's home, but the results were not reported and so another home study was conducted several days later. During this time, the Jacksons had a visit with M.J. During this visit, the Jacksons noticed an extreme rash on M.J.'s vagina and the presence of white and yellow discharge. Mr. and Mrs. Jackson demanded M.J. be taken to see a doctor before being returned to her foster parents. M.J. was taken to the emergency room and it was confirmed that she had a diaper rash. M.J. was returned to her foster parents.
33. On April 6, 2023, a DFPS investigator filed an Affidavit in Support of Investigation for Mr. and Mrs. Jackson's other children, K.J. and R.J. The basis for the investigation was the fact that the Jacksons did not feel comfortable giving DFPS information about their other children after M.J. was forcibly removed from the home, and DFPS searched for K.J.'s school records in two school districts and, not finding any records, incorrectly assumed he had not been enrolled in school. Later in the month DFPS conducted a family interview at Mr. and Mrs. Jackson's residence. Mr. and Mrs. Jackson did not allow K.J. and R.J. to be questioned, but they did allow them to be seen by a DFPS investigator.
34. Also on April 6, 2023, a fourteen-day hearing was held for M.J.'s case. Mr. and Mrs. Jackson arrived at the hearing early, along with Dr. Edinbyrd. Before the hearing began, Judge Andrea Martin announced that the hearing would be reset for April 20, 2023. Judge Martin did not allow the Jacksons, their lawyer, or Dr. Edinbyrd to speak before rescheduling the hearing.
35. On April 20, 2023, DFPS filed a Motion for Nonsuit, M.J. was returned home to her family, and DFPS closed their investigation into the care of M.J. and her brothers, K.J. and R.J.

VI. The Jacksons were assigned DFPS designations under the challenged rules.

36. On May 4, 2023, DFPS sent Mr. and Mrs. Jackson individual letters informing them that DFPS had found “reason to believe” that they medically neglected M.J. and that they would be put on the Central Registry for perpetrators of child abuse or neglect. The Jacksons were not notified that such a designation was possible, nor allowed the opportunity to defend themselves before they were placed on the Central Registry.
37. On May 5, 2023, the Jacksons requested an Administrative Review of Investigative Findings (“ARIF”) by following the directions provided to them by DFPS. The Jacksons did not receive a hearing until January 30, 2024. Mr. and Mrs. Jackson provided the Specialist with a written statement, M.J.’s birth records, M.J.’s records from Dr. Bhatt’s office, a copy of the DFPS case record they received, a letter from Dr. Edinbyrd regarding Mrs. Jackson’s prenatal and postnatal care, a letter from Austin Midwifery Services, a letter from the Association of Texas Midwives, and M.J.’s audiologic report. The Jacksons later provided the Specialist with text messages between Dr. Bhatt, the Jacksons, and Dr. Edinbyrd.
38. On March 5, 2024, the Specialist overturned the Jacksons’ previous designation of “reason to believe” and changed it to “unable to determine.” The letter explained that if the original designation was upheld, the alleged perpetrator would have the right to challenge the decision further by contacting DFPS’s Office of Consumer Affairs. If the alleged perpetrator received a “ruled out” designation they had an opportunity to have their role in the case permanently removed from DFPS systems. The letter contained no direction on what to do if assigned the “unable-to-determine” designation. Since the Jacksons were assigned “unable-to-determine”, they were foreclosed by the rules from pursuing any further administrative relief. When counsel for Mr. and Mrs. Jackson asked the Specialist about her reasoning, she informed them that her reasoning was only available if counsel requested Mr. and Mrs. Jackson’s case records.

39. Counsel requested case records on April 1, 2024. In pursuit of these records, counsel requested updates in July 2024, October 2024, and December 2024. Counsel then filed a Motion to Disclose under section 261.201(b) of the Texas Family Code. The motion was heard and granted on February 13, 2025. Counsel did not receive records until March 14, 2025, almost one year after the administrative review process had changed the Jackson's designation to "unable to determine."

40. The Specialist stated in her "decision summary" that there was not enough evidence to support the allegations of medical neglect against Mr. and Mrs. Jackson. The Specialist further stated that the evidence showed that the Jacksons were actively working with their midwife in agreement with Dr. Bhatt before M.J. was taken from them. The Specialist also stated, "[t]heir decision to treat M.J. at home under medical supervision of their midwife and not in a hospital environment is their right as a parent to ensure M.J. receives the best possible care with minimal interventions." The Specialist's summary also acknowledged the fact that M.J. sustained no complications related to jaundice such as hearing loss or brain damage. The Specialist expressed that there was not a preponderance of the evidence supporting a "reason to believe" designation. However, the Specialist changed the designation to "unable to determine" instead of "ruled out" because DFPS believed "there was a significant concern for risk".

VII. The Negative Impact of the DFPS Investigation on the Jackson's Life

41. Mr. and Mrs. Jackson's lives have been profoundly impacted by the loss of time with the newborn daughter and DFPS's subsequent designation of "reason to believe" and then "unable to determine" if they are perpetrators of neglect.

42. For the past two years, Mrs. Jackson has not returned to work, deciding instead to stay at home with M.J. Mrs. Jackson cannot stand to be away from her daughter. The postpartum period is important for the mother and the baby, and Mrs. Jackson and M.J. were robbed of the first month of postpartum together. Now, Mrs. Jackson fears being at work where she cannot drop everything to be with M.J. if something happens. Mrs. Jackson is also constantly worried that if the smallest thing happens to M.J.—like M.J. falling and cutting her knee—that DFPS will take M.J. away again. Because with an “unable to determine” designation doctors and police officers can request to see people’s DFPS records, Mrs. Jackson is worried about turning to healthcare providers and the police if her family ever needs help. Mrs. Jackson feels as if every parenting decision she makes is under extra scrutiny, with the looming threat of losing her child without justification happening again.
43. Mr. Jackson, who is very involved in his community, has been hesitant to do work in the community over the past two years. Mr. Jackson frequently coaches his children’s sports teams and participates in volunteer work. He is uncomfortable being an active participant in his community after being in the media for child neglect, albeit erroneously. Mr. Jackson had built a strong reputation in his community and felt that it was jeopardized by the DFPS investigation.
44. Mr. Jackson also put his plans for law school on hold when the DFPS investigation happened. He has been worried about being admitted to law school and then the State Bar.
45. Mr. and Mrs. Jackson have also refrained from participating in their other children’s school activities two the past two years, out of fear that the school will request to see their DFPS records. The Jacksons have opted out of taking part in school mystery readings, chaperoning school dances, and volunteering for field day—all activities that in the past they have joined—

over fear that the school will access their records and they will again lose their children with no justification.

46. After the investigation, the Jacksons moved houses because they could not live with all the painful memories in their old home. At their new home, DFPS have had multiple visits asking about a “Rodrick Jackson.” The Jacksons do not know a “Rodrick Jackson.”

Causes of Action

I. Declaratory Judgment Under the Administrative Procedure Act

47. The allegations in paragraphs 1 through 47 above are incorporated as if fully set forth herein.
48. In accordance with the Texas Administrative Procedure Act (APA), Section 2001.038 of the Texas Government Code, Plaintiffs Mr. and Mrs. Jackson seek declaratory judgment that Section 707.495 (a) (the “Unilateral Designation Rule”) and Section 707.495(b)(4) (the “Unable to Determine Rule”) of Chapter 40 of the Texas Administrative Code are invalid agency rules because they violate or threaten to violate the Jacksons’ legal rights to procedural due process under both the Texas Constitution (Article 1, Section 19) and United States Constitutions (Fifth and Fourteenth Amendments) and the Unable to Determine Rule contravenes and/or runs counter to the objectives of Section 261.002(b)(3) of the Texas Family Code. Under the Texas APA, “[t]he validity or applicability of a rule . . . may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right.” Tex. Gov’t Code § 2001.038(a).
49. Under the Texas APA, “rule” means “a state agency statement of general applicability that implements, interprets, or prescribes law or policy; or describes the procedure or practice requirements of a state agency; includes the amendment or repeal of a prior rule; and does not

include a statement regarding only internal management or organization of a state agency and not affecting private rights or procedures.” Tex. Gov’t Code § 2001.003 (6).

A. Agency rule 40 Tex. Admin. Code § 707.495(a) (“Unilateral Designation Rule”) interferes with or threatens to interfere with Mr. and Mrs. Jackson’s Constitutional Procedural Due Process rights.

50. The allegations in paragraphs 1 through 47 above are incorporated as if fully set forth herein.
51. The Unilateral Designation Rule states, “At the end of the investigation, we must assign a disposition to each allegation identified for the investigation in order to:
- (1) Specify the conclusions about the occurrence of abuse or neglect;
 - (2) Derive the overall disposition for the investigation; and
 - (3) Derive the overall role for each person with respect to the abuse or neglect that was investigated.”
52. Contrary to law, the Unilateral Designation Rule results in individuals being listed on the Central Registry without a finding of abuse or neglect. Texas Family Code § 261.002(a). The Unilateral Designation Rule further violates the Jackson’s procedural due process rights because it allowed for them to be designated an adverse DFPS designation without a meaningful opportunity to be heard.
53. When determining whether a person’s procedural due process rights have been violated, courts consider two things: whether petitioners (1) have a liberty or property interest that is entitled to procedural due process protections, and (2) if so, what process is due. *Mosely v. Texas Health and Human Services Commission*, 593 S.W.3d 250 (Tex. 2019).
54. Due process at minimum requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Id.*

55. Courts measure what process is due under a flexible standard that depends on the practical requirements of the circumstances, and includes three factors: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
56. Mr. and Mrs. Jackson have liberty interests that were threatened by Unilateral Designation Rule.
57. "Liberty under [the] law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective." *Bolling v. Sharp*, 347 U.S. 497, 499-500 (1954), supplemented sub nom. *Brown v. Bd. Of Educ. of Topeka, Kan.*, 349 U.S. 294 (1995).
58. By receiving an adverse DFPS designation, the Jacksons have suffered years of harm to their family unit. During the past two years, the Jacksons were first assigned "reason-to-believe" and then "unable-to-determine" by DFPS. Both designations allow third parties to access the Jacksons history with DFPS, including DFPS staff, law enforcement, physicians, and school staff, among others. Texas Family Code § 261.002.; 40 Tex. Admin. Code § 700.203 (a). Any person or entity responsible for the protection, diagnosis, care, supervision, or education of their children may be able to request the Jackson's confidential DFPS documents; including people at the kids' schools or the organizations that govern the recreational sports that their children are involved in where Mr. Jackson volunteers. Under the threat of such access, the Jacksons have been hesitant to participate in their community and at their children's schools.

Mrs. Jackson has refrained from volunteering at her older children's mystery reading and field days at school, two activities she enjoyed partaking in before the DFPS investigation.

59. There is a high risk of an erroneous deprivation of parents' freedom to actively participate in their children's lives through the DFPS's current procedure. Without notice and an opportunity to be heard before receiving an initial designation, people run the risk of finding themselves wrongfully put in the Jacksons' position where third parties can access the person's DFPS records simply because DFPS decided an adverse designation was appropriate even without hearing from the person investigated. As it did for the Jacksons, this can have a chilling effect on a parent's ability to fully engage their freedom interests in Texas. Had the Jacksons been given notice and an opportunity to be heard before being assigned the initial investigation, they could have explained how they were within their rights to seek midwife care for M.J.'s jaundice and therefore, they did not medically neglect M.J. Further, they could have defended themselves from harmful designations like "reason to believe" and "unable to determine" that neglect occurred. By adopting the APA, the State put laws in place that would ensure that its agencies would not create rules that would unlawfully burden its citizens. Tex. Gov't Code § 2001.001. In furtherance of that interest, Texas State legislators have proposed legislation that would require a hearing before a court of competent jurisdiction before adding someone to the Central Registry for child abuse or neglect.²
60. Providing people notice and opportunity to be heard before an initial designation would not entail an overly burdensome fiscal or administrative burden. As evidenced by the Jacksons' case, people who receive an initial "reason to believe" designation may request an Administrative Review of the Findings to have their case reconsidered. After that, they have

² H.B. 2070, 89th Leg., Reg. Sess. (Tex. 2025).

multiple avenues through which to appeal that decision. Tex. Fa. Code § 261.002 (b)(3). After designation, DFPS provides opportunities to be heard. DFPS can use the same resources to provide an opportunity to be heard before designation. In fact, by doing so, DFPS may be able to dispose of cases like the Jacksons', thereby easing their fiscal and administrative burden in reviewing cases post designation assignment.

61. The Unilateral Designation Rule violates the Jacksons' right to procedural due process as it assigns adverse designations to people who have not been heard and carries consequences that may lead to years of harm.

B. Agency rule 40 Tex. Admin. Code § 707.495(b)(4) (“The Unable to Determine Rule”) is invalid because the “unable to determine” designation imposes a restriction on Mr. and Mrs. Jackson that is inconsistent with Texas Family Code § 261.002(b)(3).

62. The allegations in paragraphs 1 through 47 above are incorporated as if fully set forth herein.

156. 40 Tex. Admin. Code § 707.495(b)(1)-(4) states, “(b) We may make any of the following dispositions:

(1) Reason-to-believe. Based on a preponderance of the evidence, we conclude that abuse or neglect has occurred.

(2) Ruled-out. We determine, based on available information, that it is reasonable to conclude that the abuse or neglect has not occurred.

(3) Unable to complete. We could not draw a conclusion whether alleged abuse or neglect occurred, because the family:

(A) Could not be located to begin the investigation or moved and could not be located to finish the investigation; or

(B) was unwilling to cooperate with the investigation.

(4) Unable-to-determine. We conclude that none of the dispositions specified in paragraphs (1)-(3) of this subsection are appropriate.” 707.495(b)(1)-(4).

63. An agency rule is invalid if “the rule: (1) contravenes specific statutory language; (2) runs counter to the general objectives of the statute; or (3) imposes additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions.” *Office of Pub. Util. Counsel v. Public Util. Comm’n*, 104 S.W.3d 225,232 (Tex.App.-Austin 2003, no pet.).
64. The Texas Family Code § 261.002(b) details the Central Registry system. Once an individual is found by the department “to have abused or neglected a child,” they are placed on the Central Registry. Texas Family Code § 261.002(a).
65. A person’s name is removed from the Central Registry if the finding of abuse or neglect is overturned in “(1) an administrative review or an appeal of the review, (2) a review or an appeal of the review conducted by the office of consumer affairs of the department; or (3) a hearing or an appeal conducted by the State Office of Administrative Hearings.” Texas Family Code § 261.002(b)(3).
66. The Family Code does not provide for an unreviewable designation. Under the Family Code, a person is either found a perpetrator of abuse or neglect—and placed on the Central Registry—or not. And those on the Central Registry can be removed if they successfully appeal their case.
67. The “unable-to-determine” designation imposes a third limbo category in which people who have been investigated for abuse or neglect *may not* appeal the agency’s findings. The restriction on appealing in the Unable to Determine Rule is inconsistent with the Family Code which allows for an appeal when an individual receives a designation from the Department other than “ruled out.”

C. Agency rule 40 Tex. Admin. Code § 707.495(b)(4) (“Unable to Determine Rule”) and its application have interfered with or impaired or threatened to interfere with or impair Mr. and Mrs. Jackson’s Constitutional procedural due process rights.

68. The allegations in paragraphs 1 through 47 above are incorporated as if fully set forth herein.
69. The Unable to Determine Rule threatens to infringe upon Mr. and Mrs. Jacksons’ rights to the care, custody, and control of their children because it does not provide the procedural safeguards available to the other designations, in violation of the Jackson’s procedural due process rights under both the Texas and United States Constitutions. If parents are assigned “unable-to-determine” they are not allowed to appeal the designation like they would if they were assigned “reason-to-believe.” Stuck in that designation, parents’ fundamental parental rights are threatened by the third-party access to records the Unable to Determine Rule allows.
70. Mr. and Mrs. Jackson did not have their parental rights terminated at any point in this process. Thus, they were entitled to the care, custody, and control of their children throughout this investigation.
71. Under section 151.001(a) of the Texas Family Code parents have “the right to have physical possession . . . of the child,” “the duty of care, control, protection . . . of the child,” and “the duty to support the child, including providing the child with . . . medical . . . care.” These rights and duties have been routinely protected by the courts. See *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (charting history of precedent supporting this right and stating that “it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children”).
72. There is great risk of an erroneous deprivation of parental rights through the Unable to Determine Rule. The “unable to determine” designation means that parents’ DFPS records are available to other parties. While case files of alleged abuse or neglect are confidential, there are several categories of people who may be granted access to these records, including DFPS

staff, law enforcement, and physicians, among many others. 40 Tex. Admin. Code § 700.203

(a). Any person or entity responsible for the protection, diagnosis, care, supervision, or education of their children may be able to request the Jackson's confidential DFPS documents; including people at the kids' schools or the organizations that govern the recreational sports that their children are involved in where Mr. Jackson volunteers. Under the threat of such access, the Jacksons have stopped participating in their community and at their children's schools. Mrs. Jackson has refrained from volunteering at her older children's mystery reading and field days at school, two activities she enjoyed partaking in before the DFPS investigation. Mr. Jackson has stopped coaching his older children's sports teams and volunteering in the community. The potential use and abuse of these records is evident in *this case*, where DFPS procured a writ of attachment for M.J. incorrectly identifying M.J.'s parents as strangers with a record of alleged abuse or neglect at the agency, a fact that may have been material to the issuance of the erroneous writ.

73. The state has an interest in ensuring that agency determinations are reviewable. If a person is assigned the "reason to believe" designation they are entitled to administrative appeal up to three levels to have that finding reversed. 40 Tex. Admin. Code § 707.843; Tex. Fam. Code § 261.002(b)(3). If a person is assigned the "ruled out" designation they are entitled to have their DFPS record erased if requested within 45 days of notice. 40 Tex. Admin. Code § 707.517; Tex. Fam. Code § 261.315. The effect of an "unable to determine" designation on an alleged perpetrator of child abuse or neglect is that they have no right to an administrative appeal and cannot have their records erased. The "unable to determine" designation was created by DFPS rulemaking, not the Texas legislature, and DFPS prohibits review of the decision. Given that

“unable to determine” carries the consequence of a DFPS record, people should be able to seek review of the decision.

74. A requirement that “unable to determine” designations be reviewable would not yield significant fiscal or administrative burdens. Records show that only 9.9% of investigations result in an “unable to determine” designation. Since the vast majority of alleged perpetrators are either able to appeal the decision until it reaches an administrative law judge or have their records removed, it would not be burdensome for one of these remedies to be granted to those with the “unable to determine” designation. A meaningful administrative appeal of “unable to determine” designations is a necessary due process protection that reduces the risk of erroneous deprivation of parental rights.

Prayer for Relief

75. Plaintiffs Rodney and Temecia Jackson respectfully request the following relief:

- a. Declaratory judgment that 40 Tex. Admin. Code § 707.495(a) is unconstitutional;
- b. Declaratory judgment that 40 Tex. Admin. Code § 707.495(a) is invalid and void because it violates the Texas Administrative Procedure Act;
- c. Declaratory judgment that 40 Tex. Admin. Code § 707.495(b)(4) is unconstitutional;
- d. Declaratory judgment that 40 Tex. Admin. Code § 707.495(b)(4) is invalid and void because it violates the Texas Administrative Procedure Act;
- e. Final Judgment and Order that the Jackson’s designation to be changed to “ruled out” and erase the Jacksons records from the DFPS system;
- f. Costs of court; and

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

Respectfully submitted,

By: /s/ Charelle Lett

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Certificate of Service

I certify that a true copy of the above was served on DFPS Commissioner, Stephanie Muth,
in accordance with the Texas Rules of Civil Procedure on April 22, 2025.

/s/ Charelle Lett

Charelle Lett
Attorney for Plaintiffs