D-1-GN-22-002569

CAUSE NO. _____

PFLAG, INC.; MIRABEL VOE, individually and as parent and next friend of ANTONIO VOE, a minor; WANDA ROE, individually and as parent and next friend of TOMMY ROE, a minor; ADAM BRIGGLE and AMBER BRIGGLE, individually and as parents and next friends of M.B., a minor,	§	
Plaintiffs,	§	
v.	§	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS _____ JUDICIAL DISTRICT
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,	§	459TH, DISTRICT COURT
Defendants.	§	

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

Plaintiffs PFLAG, Inc. ("PFLAG"); Mirabel Voe, individually and as parent and next friend of Antonio Voe, a minor; Wanda Roe, individually and as parent and next friend of Tommy Roe; and, Adam Briggle and Amber Briggle, individually and as parents and next friends of M.B., a minor (collectively, "Plaintiffs")[1] file this Original Petition, Application for Temporary

[1] Plaintiffs M.B., Mirabel Voe, Antonio Voe, Wanda Roe, and Tommy Roe proceed pseudonymously in order to protect their right to privacy, particularly that of M.B., Antonio Voe, and Tommy Roe, who are minors. The Texas Rules of Civil Procedure recognize the need to protect a minor's identity. *See* Tex. R. Civ. P. 21c(a)(3). That goal would not be possible if the identities of M.B., Mirabel Voe, Antonio Voe, Wanda Roe, and Tommy Roe were public. Indeed, not only do Texas rules "require the use of an alias to refer to a minor" but courts "may also use an alias 'to [refer to] the minor's parent or other family member' to protect the minor's identity." *Int. of A.M.L.M.*, No. 13-18-00527-CV, 2019 WL 1187154, at *1 (Tex. App. – Corpus Christi Mar. 14, 2019). Moreover, the disclosure of M.B., Mirabel Voe, Antonio Voe, Wanda Roe, and Tommy Roe's identities "would reveal matters of a highly sensitive and

Restraining Order, Temporary and 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 fiat and 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 has implemented a substantive regulatory change, starting with a statement directing DFPS to carry out the Governor's wishes and subsequently carried out through an unauthorized process that defies both the agency's authority and its longstanding policies and practices.

2. The Governor and Commissioner have circumvented the will of the Legislature and, in so doing, they have run afoul of numerous constitutional and statutory limits on their power.

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personal nature, specifically [M.B., Antonio Voe, and Tommy Roe]'s transgender status and [their] 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.

Additionally, by their actions, Defendants have trampled on the constitutional and statutory rights of transgender children and their parents. 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 have 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 and Commissioner's actions threaten to endanger the health and well-being 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 should be 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.[2] And DFPS has launched investigations into families for child abuse based on reports that the families have followed doctor-recommended treatments for their adolescent children. The Commissioner and DFPS have recently resumed these unlawful investigations, which have already caused lasting harm to Plaintiffs in this case.

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 for declaratory and injunctive relief to remedy these violations of Texas law and of the plaintiffs' rights and to immediately return to

[2] The impact of the Governor's, Attorney General's, and Commissioner's actions on mandatory reporters is not being challenged in this suit, but such claims are raised in *Doe v. Abbott*, Cause No. D-1-GN-22-000977, in the 353rd District Court of Travis County, Texas.

the *status quo ante*. Plaintiffs also seek a temporary restraining order and preliminary injunction only against the Commissioner and DFPS to maintain the *status quo ante* and prevent them from continuing to cause Plaintiffs irreparable harm while this case proceeds.

II. PARTIES

5. Plaintiff PFLAG is the first and largest organization for lesbian, gay, bisexual, transgender, and queer (LGBTQ+) people, their parents and families, and allies. PFLAG is a network comprised of over 250 local chapters throughout the United States, 17 of which are located in the state of Texas. Individuals who identify as LGBTQ+ and their parents, families, and allies join PFLAG directly or through one of its local chapters. Of approximately 250,000 members and supporters nationwide, PFLAG has a roster of more than 600 members in Texas. PFLAG's mission is to create a caring, just, and affirming world for LGBTQ+ people and those who love them. Encouraging and supporting parents and families of transgender and gender expansive people in affirming their children and helping them access the supports and care they need is central to PFLAG's mission. PFLAG asserts its claims in this lawsuit on behalf of its members.[3] The Voe, Roe, and Briggle families are members of PFLAG, and two additional members of PFLAG have submitted declarations in support of this lawsuit. *See* Ex. 1, Decl. of Samantha Poe; Ex. 2, Aff. of Lisa Stanton.

6. Plaintiffs Mirabel Voe, Wanda Roe, and Adam and Amber Briggle are the respective parents and next friends of Antonio Voe, Tommy Roe, and M.B., who are minors (collectively, "Plaintiff Families"). Plaintiffs Antonio Voe, Tommy Roe, and M.B. are

[3] Texas courts readily accept that membership organizations may have standing to sue on behalf of their members, and determine such standing with a three-prong test. *See Texas Ass'n of Businesses v. Texas Air Control Board*, 852 S.W.2d 440 (Tex. 1993); *see also Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977). The three-prong test set forth in *Texas Ass'n of Businesses* allows organization to sue on behalf of their members when: (1) the members would otherwise have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requests requires the participation of individual members in the lawsuit. 852 S.W.2d at 447. Each of these prongs is met here.

transgender; have been diagnosed with gender dysphoria, a medical condition; and have been prescribed medical care for the treatment of gender dysphoria determined by their doctors to be medically necessary. The Plaintiff Families are all residents of Texas.

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 Boulevard, 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 mandatory and proper in Travis County because Plaintiffs challenge the validity or applicability of a rule, and the rule or its threatened application interferes with or

impairs, or threatens to interfere with or impair, a legal right or privilege of the Plaintiffs. Tex. Gov't Code § 2001.038(a), (b). Additionally, venue is proper 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."[4] 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."[5] 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

[4] 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.
[5] *Id.*

(3) supraphysiologic doses of estrogen to males" when used to treat minors with gender dysphoria could constitute child abuse.[6]

16. In summary, Attorney General Paxton's Opinion concluded that the enumerated procedures *could* constitute child abuse. The Paxton Opinion was based on the premise that "elective sex changes to minors often has [sic] the effect of permanently sterilizing those minor children."[7] The Paxton Opinion specifies that it "does not address or apply to *medically necessary* procedures,"[8] though it did not take into account the medical consensus that certain procedures described in the Paxton Opinion—including puberty blockers and hormone therapy—*are* medically necessary when prescribed to treat gender dysphoria.

17. In response to the Paxton Opinion, Governor Abbott sent a letter to DFPS Commissioner Jaime Masters dated February 22, 2022 (the "Abbott Letter" or "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.[9] The Abbott Letter claimed that "a number of so-called 'sex change' procedures constitute child abuse under existing Texas law."[10] 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.[11]

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[6] *Id.*
[7] *Id.* at 2.
[8] *Id.* at 2 (emphasis added).
[9] 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.
[10] *Id.*
[11] *Id.*

18. 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."[12] 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 was passed by the duly elected members of the Legislature.

19. 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]

20. Following the issuance of the Paxton Opinion and the Abbott Letter, on February 22, 2022, DFPS announced that it would "follow Texas law as explained in (the) Attorney General opinion" and comply with the Governor's directive to "investigate[]" any reports of the procedures outlined in the new directives ("DFPS Statement"), again, without any regard to medical necessity.[13]

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

21. 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."[14]

22. 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."[15]

23. On February 24, 2022, DFPS convened a meeting where investigators and supervisors with Child Protective Services (CPS) were told that, for the first time, they would be required to investigate cases involving medical care for transgender youth as "child abuse" in accordance with Paxton's Opinion and Abbott's Letter.

24. Before February 22, CPS investigations teams had discretion to screen out or de-prioritize reports that did not meet the statutory definition of abuse and neglect, nor pose any harm to a child. According to long-established DFPS policy, CPS only "accepts reports for investigation" where "DFPS appears to be the responsible department under the law" and "the child's apparent need for protection warrants an investigation."[16]

25. During the meeting on February 24, CPS investigators were told that they would be required to investigate *all* reports of minors receiving the prescribed treatments of gender dysphoria mentioned in Paxton's Opinion and Abbott's Letter. Investigators were told that they had to treat these "specific cases" differently from all other reports of abuse or neglect and would

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[14] *Id.*

[15] 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.

[16] DFPS Child Protective Services Handbook, Section 2141, available at https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_2140.asp (last visited June 6, 2022).

not be able to "priority none" these investigations or send them to "alternative response"—both of which are available for other reports that DFPS receives. But following Abbott's Letter and DFPS's Statement, DFPS told investigators to speak directly with their supervisors and the agency's general counsel to discuss "dispositioning these specific cases." Unlike all other reports of alleged abuse or neglect, CPS investigators were told that they no longer had discretion to close out investigations of medically necessary care for gender dysphoria.

26. On and after February 24, CPS investigators and supervisors were also instructed in writing not to discuss anything about these "specific cases" in writing, but instead that "[a]ny communication you have regarding these cases needs to be done in a Teams meeting, telephone call, or face to face. Do not send text messages or emails in regards to these specific cases." This instruction was highly irregular and antithetical to DFPS's longstanding policies and practices, since investigators and supervisors are tasked with documenting every aspect of each investigation to safeguard the interests of Texas children.

27. On or around February 24, DFPS opened investigations into families across Texas for allegedly providing their children with the medically necessary treatments referred to in Paxton's Opinion and Abbott's Letter. A DFPS spokesperson told the media that nine investigations were opened statewide.

28. These sudden and substantive changes reflected in DFPS's new rule, and the sudden shift in longstanding agency policies, along with Abbott's Letter, had immediate and harmful effects across the state. Faced with the purported changed definition of "child abuse" under Texas law, some medical providers temporarily discontinued medically necessary care for transgender adolescents with gender dysphoria. Teachers, social workers, and other mandatory reporters were confused about whether they needed to report their students and clients to CPS. Phone calls and

messages to mental health and suicide crisis hotlines skyrocketed across the state, and incidents of bullying and harassment towards transgender students spiked in Texas schools.

29. On March 1, a family under active CPS investigation and a licensed psychologist sued the Governor, Commissioner, and DFPS in Travis County District Court. *See Doe v. Abbott*, Cause No. D-1-GN-22-000977 in the 353rd District Court of Travis County, Texas (referred to hereinafter as the "*Doe v. Abbott* Litigation"). That action resulted in a temporary injunction from the District Court and a temporary order on appeal from the Court of Appeals blocking statewide DFPS investigations based on DFPS's new rule implementing Paxton's Opinion and Abbott's Letter. Instead of dismissing or closing out these cases following those rulings, DFPS put them on pause, effectively freezing them in place.

30. On May 13, the Texas Supreme Court upheld the Court of Appeals' temporary order but narrowed its scope of relief to apply only to the specific plaintiffs in the *Doe v. Abbott* Litigation based on a technical reading of the scope of relief that may be granted under Texas Rule of Appellate Procedure 29.3. The Defendants' appeal of the temporary injunction remains pending at the Court of Appeals. At this time, only the investigation against the Doe family is enjoined.

31. On May 19, DFPS released a statement to the media that "DFPS treats all reports of abuse, neglect, and exploitation seriously and will continue to investigate each to the full extent of the law."[17] Although this statement was vaguely worded, it was reported in the media that investigations were actually continuing following internal discussions among DFPS, the Governor and Attorney General's offices.[18] Families, including Plaintiffs in this case, have since heard from DFPS about investigations moving forward.

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[17] Madeleine Carlisle, *I'm Just Waiting for Someone to Knock on the Door.' Parents of Trans Kids in Texas Fear Family Protective Services Will Target Them*, Time (May 19, 2022), https://time.com/6178947/trans-kids-texas-familes-fear-child-abuse-investigations/

[18] *Id.*

32. As DFPS resumed investigating families of transgender youth for possible treatment with medically indicated health care for gender dysphoria, upon information and belief, CPS investigators and supervisors were once again told not to put anything about these specific cases in writing—again departing from agency procedures. These investigations are not being conducted pursuant to any Texas statute or duly enacted DFPS policy but are being pushed forward under the purported color of law based on Paxton's Opinion and Abbott's Letter. Through the DFPS Statement, Commissioner Masters and DFPS have established a new rule and created a presumption that the medical care described in Paxton's Opinion and Abbott's Letter constitutes "child abuse", without any regard for medical necessity (hereinafter the "new rule" or "new DFPS rule"). Even though Governor Abbott and Attorney General Paxton have no authority to direct DFPS or to change longstanding agency policies, DFPS is still pushing forward investigations that are unlawful and causing irreparable harm, as if Texas law has substantively changed and without adhering to the requirements of the Texas Administrative Procedure Act.

B. Responses to New Child Abuse Directives

33. 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 these actions and warning that they run counter to established protocols for treating gender dysphoria, could force providers to violate their professional ethics, and cause substantial harm to minors and their families in Texas.

34. 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."[19]

35. 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 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."[20]

36. 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."[21]

37. 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

[19] *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.
[20] *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/.
[21] *Id.*

for teenagers experiencing gender incongruence or dysphoria."[22] 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."[23]

38. 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 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."[24]

39. 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

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[22] *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.

[23] Id.

[24] *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.

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."[25]

40. 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 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."[26]

41. On May 2, 2022, legal and medical experts from Yale Law School, the Yale School of Medicine's Child Study Center and Departments of Psychiatry and Pediatrics, and the University of Texas Southwestern issued a detailed report comprehensively examining the Texas Attorney General opinion targeting medical care for transgender youth. The report, "Biased Science: The Texas and Alabama Measures Criminalizing Medical Treatment for Transgender Children and Adolescents Rely on Inaccurate and Misleading Scientific Statements," strongly refutes the misguided scientific claims that inform Paxton's Opinion and highlights that the Paxton Opinion omitted important evidence demonstrating the benefits of treatment for gender dysphoria and exaggerated potential harms, painting "a warped picture" of the scientific evidence.[27] Among

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[25] 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/.

[26] *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.

[27] Susan D. Boulware, M.D.; Rebecca Kamody, PhD; Laura Kuper, PhD; Meredithe McNamara, M.D., M.S., FAAP; Christy Olezeski, PhD; Nathalie Szilagyi, M.D.; and Anne Alstott, J.D., *Biased Science: The Texas and Alabama Measures Criminalizing Medical Treatment for Transgender Children and Adolescents Rely on Inaccurate and Misleading Scientific Claims* (April 28, 2022),

other things, the report by the Yale University and University of Texas Southwestern experts found that:

a. "The Texas Attorney General either misunderstands or deliberately misstates medical protocols and scientific evidence.";

b. "The AG Opinion falsely implies that puberty blockers and hormones are administered to prepubertal children, when, in fact, the standard medical protocols recommend drug treatments only for adolescents (and not prepubertal children).";

c. "The AG Opinion also omits mention of the extensive safeguards established by the standard protocols to ensure that medication is needed and that adolescents and their parents give informed assent and consent, respectively, to treatment when it is determined to be essential care.";

d. "By omitting the evidence demonstrating the substantial benefits of treatment for gender dysphoria, and by focusing on invented and exaggerated harms, the AG Opinion … portray[s] a warped picture of the scientific evidence."; and

e. "The repeated errors and omissions in the AG Opinion are so consistent and so extensive that it is difficult to believe that the opinion represents a good-faith effort to draw legal conclusions based on the best scientific evidence."

42. Defendants' attempts to rewrite Texas law and define medically necessary health care for transgender youth as "child abuse" have also spurred condemnation from current and former DFPS employees. More than half a dozen current employees have resigned or are actively looking for other jobs because they view the targeting of transgender youth and their families as a

https://medicine.yale.edu/childstudy/policy/lgbtq-youth/report%20on%20the%20science%20of%20gender-affirming%20care%20final%20april%2028%202022_437080_54462_v2.pdf.

betrayal of the agency's values and mission.[28] Fifteen current and former DFPS employees submitted an *amicus* brief to the Texas Supreme Court, in which they described how "[t]he February 22 Directive and new DFPS Rules represent a radical departure from the status quo meaning of the term 'abuse' as it has been interpreted by Texas courts and by DFPS and its predecessor agencies throughout history prior to February 22, 2022."[29] As career DFPS employees, *amici* advised the Court that "DFPS is already deeply in crisis and is failing Texas's most vulnerable children, violating their Constitutional rights, and subjecting them to further abuse," and condemned the agency's "politically motivated decision to compel DFPS employees like themselves to investigate non-abusive loving and supportive families who merely rely in good faith on their doctor's advice."

43. 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 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 afraid 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.

44. DFPS has so broadly implemented its new rule affecting the families of transgender and gender nonconforming youth that even parents whose gender nonconforming children are still

[28] Eleanor Klibanoff, *Distraught over orders to investigate trans kids' families, Texas child welfare workers are resigning*, Tex. Trib. (Apr. 11, 2022), https://www.texastribune.org/2022/04/11/texas-trans-child-abuse-investigations/.

[29] Brief of Amici Curiae Current & Former Employees of Tex. DFPS, *In re Abbott*, No. 22-0229 (Mar. 30, 2022), available at https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=5b5a0304-a87e-4482-b153-97bc5350949d

figuring out who they are and/or not receiving any medical care for the treatment of gender dysphoria are scared. Indeed, DFPS has initiated and continued investigations into such families notwithstanding assurances and documentation that their gender nonconforming children are not receiving any medical care for the treatment of gender dysphoria. *See* Ex. 1, Decl. of Samantha Poe.

45. The actions taken by Defendants have already caused severe and irreparable harm to families across the State of Texas, including members of PFLAG and the Voe, Roe, and Briggle families.

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

46. The health care that DFPS now considers child abuse, following the issuance of Abbott's Letter and the Paxton Opinion, is medically necessary, essential, and often lifesaving. This medical care is endorsed and adopted by every major medical organization in the United States. *See generally* Ex. 3, Expert Decl. of Dr. Cassandra C. Brady.

47. 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.

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

49. 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.

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

51. 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.[30]

52. 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.

53. 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.

54. 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

[30] *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 Society 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.").

with their sex assigned at birth. The lack of alignment between one's gender identity and sex assigned at birth can cause significant distress.

55. 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.

56. 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.

57. The World Professional Association for Transgender Health ("WPATH") and the Endocrine Society have published widely accepted guidelines for treating gender dysphoria.[31] 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

[31] Endocrine Society 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").

care is safe, effective, and medically necessary treatment for the health and well-being of youth suffering from gender dysphoria.[32]

58. 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.

59. 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.

60. Under the WPATH Standards of Care and the Endocrine Society Guideline, medical interventions may become medically necessary and appropriate after 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.

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

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

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[32] 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/.

- 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.

63. Puberty-delaying treatment is reversible. When the adolescent discontinues the medication, puberty will resume. Contrary to the assertions in the Paxton Opinion, puberty-delaying treatment does not cause infertility.

64. 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).

65. Under the Endocrine Society Guideline, 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.

66. Gender-affirming hormone therapy is not necessarily sterilizing and many individuals treated with hormone therapy can still biologically conceive children.

67. As with all medications that could impact fertility, transgender adolescents and their parents are counseled on the potential risks of the medical intervention, and treatment is only initiated where parents and adolescents are properly informed and consent to the care.

68. 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.

69. Chest reconstructive surgeries have no impact on fertility.

70. 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.

71. 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. Instead, the process requires extensive mental health evaluation and informed consent procedures.

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

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

74. 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.

75. Many forms of medical treatment carry comparable risks and side effects to those that can be present when treating gender dysphoria. Treatment for gender dysphoria is not uniquely risky.

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

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

77. And notwithstanding some politicized efforts to the contrary, no state in the country prohibits doctors from treating, or parents from consenting to treatment for, minor patients with gender dysphoria.

78. Arkansas and Alabama are the only states to pass laws prohibiting such treatment, but the laws were enjoined in court and do not classify the treatment as a form of child abuse.[33] 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."[34]

79. 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

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[33] *Eknes-Tucker v. Marshall*, Case No.: 2:22-CV-184-LCB, 2022 WL 1521889 (M.D. Ala. May 13, 2022); *Brandt v. Rutledge*, 551 F. Supp. 3d 882 (E.D. Ark. 2021). Arizona recently passed a law, not slated to take effect until 2023, prohibiting the provision of gender-affirming surgeries for minors in that state. The Arizona law, however, is limited only to surgery and does not classify gender-affirming medical care as a form of child abuse.

[34] 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.

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."[35] 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."[36]

80. In Alabama, again based on an extensive preliminary injunction record and after a two-day evidentiary hearing, a federal court enjoined the provisions of S.B. 184 that made it a felony to prescribe or administer puberty blockers and hormone therapies to transgender youth. The court cited the clear legal precedent that "parents have a fundamental right to direct the medical care of their children subject to accepted medical standards" and that "discrimination based on gender-nonconformity equates to sex discrimination."[37] The court found that Defendants "fail[ed] to produce evidence showing that transitioning medications jeopardize the health and safety of minors suffering from gender dysphoria" and that "[p]arents, pediatricians, and psychologists—not the State or this Court—are best qualified to determine whether transitioning medications are in a child's best interest on a case-by-case basis."[38] Without transitioning medications, the minor plaintiffs would "suffer severe medical harm, including anxiety,

[35] *Brandt*, 551 F. Supp. 3d at 891.
[36] *Id.*
[37] *Eknes-Tucker v. Marshall*, Case No.: 2:22-CV-184-LCB, 2022 WL 1521889, at *1 (M.D. Ala. May 13, 2022).
[38] *Id.* at *8.

depression, eating disorders, substance abuse, self-harm, and suicidality," along with "significant deterioration in their familial relationships and educational performance."[39]

VI. PROCEDURAL HISTORY

81. On March 1, 2022, the parents of a transgender adolescent and Dr. Megan Mooney, a psychologist who treats transgender adolescents (collectively, the "*Doe v. Abbott* Plaintiffs"), challenged Governor Abbott's Letter by filing a Petition and Application for Temporary Restraining Order (TRO), Temporary Injunction, and Permanent Injunction, and Request for Declaratory Relief against Greg Abbott, in his official capacity as Governor of the State of Texas, Jaime Masters, in her official capacity as Commissioner of DFPS, and DFPS itself. *See Doe v. Abbott*, Cause No. D-1-GN-22-000977 in the 353rd District Court of Travis County, Texas.

82. The *Doe v. Abbott* Plaintiffs' underlying causes of action included: (1) a claim for a declaratory judgment that the DFPS Statement constitutes an invalid rule under the Texas APA; (2) a claim for a declaratory judgment that the Governor and the Commissioner engaged in ultra vires conduct that exceeded their authority; and (3) claims of various constitutional violations arising from the *Doe v. Abbott* Plaintiffs' fundamental parental rights and other equality and due process guarantees of the Texas Constitution.

83. In their petition, the *Doe v. Abbott* Plaintiffs requested a temporary restraining order, temporary injunction, permanent injunction, and declaratory judgment.

84. Their application for a temporary restraining order was heard on March 2, 2022. Minutes before the hearing, Defendants filed a plea to the jurisdiction but did not request it be set for submission or considered at hearing. At the TRO hearing, neither the trial court nor the parties addressed the merits of the plea to the jurisdiction.

[39] *Id.* at *12.

85. At the conclusion of the hearing, the trial court granted the TRO enjoining Defendants from, *inter alia*, taking any employment action or investigating reports against the *Doe v. Abbott* Plaintiffs based solely on facilitating or providing gender-affirming care to transgender adolescents based on the fact that they are transgender, gender transitioning, or receiving or being prescribed gender-affirming medical treatment. The trial court also set a temporary injunction hearing to consider granting state-wide injunctive relief for March 11, 2022. The trial court did not rule on Defendants' plea to the jurisdiction, which Defendants filed mere minutes before the TRO hearing was set to begin.

86. Within hours of the Court granting the *Doe v. Abbott* Plaintiffs' TRO application, Defendants took an interlocutory appeal to the Third Court of Appeals in Austin, arguing that the trial court's grant of the TRO application "implicitly denied" Defendants' plea to the jurisdiction.

87. On March 3, 2022, the *Doe v. Abbott* Plaintiffs filed an emergency motion to dismiss the appeal for want of jurisdiction, for expedited briefing, and for reinstatement of the TRO under Texas Rule of Appellate Procedure 29.3 ("Rule 29.3"). The *Doe v. Abbott* Plaintiffs argued that, unlike temporary injunctions, TROs are not appealable and that the TRO makes no determination as to the Defendants' plea to the jurisdiction.

88. On March 9, 2022, after reviewing the parties' arguments, the Third Court of Appeals concluded that the TRO was neither an implied ruling on Defendants' jurisdictional plea nor an appealable temporary injunction. *Doe v. Abbott*, No. 03-22-00107-CV, 2022 WL 710093, at *2-3 (Tex. App.—Austin, Mar. 9, 2022) (mem. op.).

89. On March 11, 2022, the trial court held a temporary injunction hearing to consider the *Doe v. Abbott* Plaintiffs' request for statewide relief. The substantial record before the trial court showed that the new DFPS ule and unauthorized actions by Defendants have caused severe

and ongoing harms to transgender youth and those who care for them by triggering unwarranted investigations into families, threatening providers and mandatory reporters with criminal prosecution, cutting off medically necessary health care to adolescents who rely on it, and infringing upon the fundamental rights of parents to direct the custody and care of their minor children.

90. Based on the evidence presented, the trial court entered a temporary injunction and denied Defendants' plea to the jurisdiction. The trial court found that the *Doe v. Abbott* Plaintiffs had met their burden of showing a probable right of relief. The trial court specifically found that "there is substantial likelihood that [the *Doe v. Abbott* 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." *Doe v. Abbott*, No. D-1-GN-22-000977, 2022 WL 831383 *1 (353rd Dist. Ct., Travis Cty., Mar. 11, 2022). The trial court also found that "gender-affirming care was not investigated as child abuse by DFPS until after February 22, 2022." *Id.* As a result, "[t]he series of directives and decisions by the Governor, the [Commissioner], and other decision-makers at DFPS, changed the status quo for transgender children and their families, as well as professionals who offer treatment, throughout the State of Texas." *Id.* Therefore, the trial court found "[t]he Governor's Directive was given the effect of a new law or new agency rule, despite no new legislation, regulation or even stated agency policy" and that "Governor Abbott and Commissioner Masters' actions violate separation of powers by impermissibly encroaching into the legislative domain." *Id.*

91. Immediately following the entry of the orders granting the temporary injunction and denying Defendants' plea to the jurisdiction, Defendants filed a notice of accelerated interlocutory appeal, wherein they asserted that by perfecting the appeal, the temporary injunction

had been superseded pursuant to Texas Civil Practice and Remedies Code § 6.001(b) and Texas Rule of Appellate Procedure 29.1(b).

92. The *Doe v. Abbott* Plaintiffs then moved for temporary relief under Rule 29.3. On March 21, 2022, finding it "necessary to maintain the status quo and preserve the rights of all parties," the Third Court of Appeals reinstated the temporary injunction. *Abbott v. Doe*, No. 03-22-00126-CV, 2022 WL 837956, at *2 (Tex. App.—Austin, Mar. 21, 2022).

93. On March 23, 2022, Defendants petitioned the Texas Supreme Court for a writ of mandamus directing that the Third Court of Appeals vacate its Rule 29.3 order reinstating the temporary injunction entered by the district court.

94. On May 13, 2022, the Texas Supreme Court denied mandamus relief as to the portion of the order applicable to the *Doe v. Abbott* Plaintiffs while the appeal remains pending. *In re Abbott*, No. 22-0229, 2022 WL 1510326, at *4 (Tex. May 13, 2022). However, the Texas Supreme Court found that given Rule 29.3's specific language referencing "the parties' rights," the Third Court of Appeals abused its discretion by affording relief to nonparties throughout the state. Without opining on the District Court's authority to issue a statewide injunction, the Texas Supreme Court held that the Defendants were entitled to mandamus relief as to the portions of the Third Court of Appeals' order that purport to have statewide application. Further, the Court conditionally granted relief with respect to the order's injunction against the Governor because the Governor lacks the authority to undertake—and has not threatened or attempted to undertake—the enforcement actions the order enjoins.

95. In denying further mandamus relief, the Texas Supreme Court upheld the appeals court's order finding that the *Doe v. Abbott* Plaintiffs had established a probable right to recovery on their claims and that "allowing appellants to follow the Governor's directive pending the

outcome of this litigation would result in irreparable harm." *Abbott v. Doe*, No. 03-22-00126-CV, 2022 WL 837956, at *3 (Tex. App.—Austin, Mar. 21, 2022). Declining to reach Defendants' jurisdictional arguments, the Texas Supreme Court also noted that "DFPS's press statement [] suggests that DFPS may have considered itself bound by either the Governor's letter, the Attorney General's Opinion, or both . . . but neither the Governor nor the Attorney General has statutory authority to directly control DFPS's investigatory decisions." *In re Abbott*, No. 22-0229, 2022 WL 1510326, at *3 (Tex. May 13, 2022).

96. On May 25, 2022, Defendants submitted their brief on the merits of their appeal of the trial court's issuance of the temporary injunction and denial of Defendants' plea to jurisdiction to the Third Court of Appeals. The *Doe v. Abbott* Plaintiffs will file their response brief in the coming weeks.

97. At present, there is no injunction or temporary relief for Plaintiffs in this action, and the *Doe v. Abbott* Litigation is currently stayed in the trial court pending resolution of the appeal.

VII. PLAINTIFFS

A. PFLAG

98. Founded in 1973, Plaintiff PFLAG is the first and largest organization for LGBTQ+ people, their parents and families, and allies. Ex. 4, Decl. of Brian K. Bond.

99. PFLAG is a 501(c)(3) nonprofit membership organization whose mission is "to create a caring, just, and affirming world for LGBTQ+ people and those who love them." PFLAG has chapters in every state and the District of Columbia.

100. Supporting LGBTQ+ young people and strengthening their families has been central to PFLAG's work since its founding, and that objective includes encouraging and

supporting parents and families of transgender and gender expansive people in affirming their children and helping them access the social, psychological, and medical supports they need.

101. PFLAG carries out that commitment through supporting the development and work of PFLAG's chapter network, engaging in policy advocacy, forming coalitions with organizations who share PFLAG's goals, developing trainings and educational materials, and engaging with the media. More specifically, it includes working with PFLAG families to encourage love for and support of their transgender and gender expansive children and to help them ensure that the children's needs are met.

102. PFLAG has seventeen chapters across the state of Texas with over 600 members. Those members include parents of transgender adolescents who are directly impacted by the Governor Abbott's Letter and DFPS's new rule and resulting changes in policy and practice.

103. The issuance of the Paxton Opinion caused immediate harm to PFLAG members and constituents, which was only exacerbated by Governor Abbott's Letter and DFPS's new rule as announced in the DFPS Statement and resulting substantive change in its policies and practices. The order to investigate parents for child abuse based solely on helping their children access medically necessary care turned the very thing PFLAG has long held up as critical for LGBTQ+ children—supporting and loving your child for who they are and ensuring they receive care they need to thrive—into a reason to be reported and subjected to an intrusive and traumatic investigation, or worse.

104. In response, PFLAG provided its members with information and support about the opinion and directive. Local PFLAG chapters heard from members who were parents of transgender children and wondered if they would soon be investigated, and these members asked PFLAG for assistance and about their rights as parents. Members of PFLAG had their children's

appointments and access to health care cut off, as providers mistakenly viewed Abbott's Letter and DFPS's new rule as criminalizing medically necessary health care in Texas. Other PFLAG members have left the state, or contemplated leaving Texas, so as not to risk family separation or criminal penalties for providing their children access to the prescribed, medically necessary care they need.

105. PFLAG, its chapters, and its members have experienced the ebb and flow of fear as the *Doe v. Abbott* Litigation resulted in the investigations being halted, only to have the statewide injunction narrowed by the Texas Supreme Court. PFLAG chapters heard from members that the investigations of parent members that had been paused were suddenly restarted and are being pushed forward contrary to Texas law and longstanding DFPS policies. Members who are parents of transgender children who had not yet been investigated live in fear that they soon could be investigated and have their privacy invaded at home and in their children's schools. Members also worry that their right as parents to provide the best possible health care for their children has been usurped by the state and that their children could lose access to lifesaving health care that they need.

106. Given the scope of the Governor's directive, the breadth of DFPS's investigations, and the current lack of a statewide injunction preventing their pursuit, every one of PFLAG's Texas members with a transgender child, or those with children still learning who they are, is at substantial risk of harm. PFLAG has members who are being harmed right now by these actions and have standing to assert claims in their own right, including the Voe, Roe, and Briggle Plaintiffs and the Poe and Stanton families (*see* Ex. 1, Decl. of Samantha Poe; Ex. 2, Aff. of Lisa Stanton), whether because they are facing active investigations, have had their medically necessary health care disrupted, or were otherwise forced to alter their interactions with schools, care

providers, supportive services, or others in order to avoid being reported for child abuse by mandated reporters, all solely because they are or are suspected of seeking the established course of medically necessary care for their transgender children.

107. Other current and future PFLAG members with transgender or nonbinary children face a substantial risk of being harmed by the directive and its implementation because their care for and affirmation of their children may include seeking gender affirming care for them.

108. Abbott's Letter and DFPS's new rule are contrary to PFLAG's mission, subjecting those who affirm their child's gender identity by seeking the established medically necessary care that has been prescribed for them to the peril and stigma of being labeled a "child abuser" and having the child removed from the parent's care. Defendants' actions threaten drastic penalties on PFLAG members for doing the very things PFLAG encourages as in the best interests of transgender and nonbinary children.

109. PFLAG seeks to vindicate these members' interests in challenging Defendants' actions. The directive and its implementation create a default equation of gender-affirming care with child abuse in a manner that harms all of PFLAG's members who affirm their transgender and nonbinary children, no matter the particular circumstances of those members.

B. The Voe Family

110. Plaintiff Mirabel Voe is the proud parent of Plaintiff Antonio Voe, a 16-year-adolescent. Ex. 5, Decl. of Mirabel Voe. The Voe family are members of PFLAG.

111. Texas is the only home Plaintiffs Mirabel and Antonio have ever known. They reside in Texas along with Antonio's older and younger siblings.

112. Antonio is a kind and empathetic young man who enjoys reading, drawing, and running. Before February 2022, he was a straight-A student and a leader in student government.

113. Antonio is transgender. When he was born, his sex was designated as "female," but he is a boy.

114. Growing up, Antonio presented as a tomboy. Indeed, throughout his childhood, Antonio expressed himself and behaved in a manner that did not conform with the stereotypes associated with the sex he was assigned at birth.

115. When Antonio began puberty, physical changes began causing him intense distress.

116. In 2020, Antonio informed his mom that he was transgender.

117. Thereafter, Mirabel and Antonio did research as a family and decided as an initial step that Antonio would socially transition. Antonio began to socially transition by using a name, pronouns, and gender expression that matched his gender identity.

118. After a year of living as his true and authentic self, Antonio felt happier, but the onset of puberty still caused him significant stress.

119. In the summer of 2021, the Voe family began consulting a physician. The physician diagnosed Antonio with gender dysphoria and determined that it was medically necessary for Antonio to begin puberty blockers to help alleviate some of Antonio's symptoms.

120. Then, in January 2022, after six months of sessions with a therapist, Antonio's physician recommended he be provided with additional medical care to treat and alleviate his gender dysphoria.

121. In consultation with Antonio's therapist and physician, and after extensive discussions about the benefits and potential side effects of hormone therapy, this treatment was prescribed by Antonio's doctor in accordance with medical best practices and standards of care.

122. As Antonio was prescribed this medical treatment, his mood and anxiety improved, and he looked forward to a brighter future. Being able to be affirmed as his true self promised Antonio significant relief.

123. DFPS's new rule to investigate medically necessary gender-affirming care as child abuse, following the issuance of Paxton's Opinion and Abbott's Letter, has upended the Voe family's lives.

124. On February 22, the same day as Abbott's Letter, Antonio attempted to die by suicide by ingesting a bottle of aspirin. Antonio said that the political environment, including Abbott's Letter, and being misgendered at school, led him to take these actions.

125. Following the attempt, Antonio was admitted to a local hospital, which referred him to an outpatient psychiatric facility. He was transported to that facility on February 24.

126. While at that outpatient facility, the staff there learned that Antonio had been prescribed hormone therapy for the treatment of gender dysphoria. During a family therapy session, staff at the facility told Antonio and his mom that their family might be reported for "child abuse" because of Abbott's Letter and DFPS's new rule.

127. Antonio was discharged from the psychiatric facility on March 5.

128. On March 11, an investigator from CPS visited the family's home to interview Antonio and Mirabel.

129. Mirabel assumed the investigator was there for the suicide attempt. But the investigator told her that she was only there because Mirabel was an "alleged perpetrator" of child abuse as the parent of a transgender adolescent who had been reported for allegedly providing her son with treatment for gender dysphoria.

130. Being called an "alleged perpetrator" in her own living room was a shock for Mirabel and imposed immense harm and stigma upon Mirabel to know that she had been accused of harming her own child simply for providing him with medically necessary health care.

131. The investigator told her that the report of "child abuse" originated from the outpatient psychiatric facility where Antonio had been seeking help.

132. The investigator interviewed both Antonio and Mirabel and asked them private, intimate, and invasive questions about Antonio's medical treatment for gender dysphoria. The investigator also took pictures of Antonio's arms, torso, back, and legs to see if he had any injuries.

133. The CPS investigator asked Mirabel to sign a release to obtain Antonio's medical records. Mirabel initially signed the release.

134. On March 14, Mirabel received a call from the investigator, who told her that the medical release form was deficient and needed to be signed again. The investigator had tried to send the release to Antonio's health care provider to obtain all of Antonio's private and confidential medical records, but that provider sent it back because of problems with the form. The investigator called Mirabel multiple times and visited her home unannounced, but only Mirabel's oldest child was home at the time.

135. On March 21, the investigator called Mirabel again and asked that she re-sign the form so that DFPS could obtain all of Antonio's medical records. Mirabel said that she would not re-sign the form and was seeking legal counsel.

136. As of today, DFPS's investigation of Mirabel for child abuse remains open.

137. Antonio is receiving mental health care and is recovering from the attempt, but these events have devastated his life. He has been forced to drop out of in-person school and

stay at home so that Mirabel can more closely monitor his health and wellbeing, but she is a single mom who works two jobs. Mirabel loves her son unconditionally, and she can think of nothing worse than losing him.

138. Should DFPS incorrectly issue a finding that Mirabel has committed "child abuse" due to DFPS's new rule based on Abbott's Letter and Paxton's Opinion, Mirabel could be placed on a child abuse registry, have Antonio taken away from her, and be barred from volunteering or participating in her children's activities.

139. Antonio also faces a grave threat to his mental health, and he and his family live in fear that they will face further interrogations and invasions of privacy from DFPS—or be split apart—due to DFPS's new rule following Paxton's Opinion and Abbott's Letter.

140. Threatening or forcing Antonio to forego the ability to obtain the medically necessary medical treatment that he has been prescribed is also life-threatening. Mirabel's only wish is to ensure the health, safety, and wellbeing of her son, and to ensure that he lives to become a happy and successful adult.

C. The Roe Family

141. Plaintiff Wanda Roe is the proud parent of Plaintiff Tommy Roe, a 16-year-adolescent. Ex. 6, Decl. of Wanda Roe; Ex. 7, Decl. of Tommy Roe.

142. For over 12 years, Plaintiffs Wanda and Tommy have called Texas their home. They reside in Texas along with Tommy's three older brothers and stepdad, Wanda's husband.

143. Plaintiff Wanda Roe and the Roe family are members of PFLAG.

144. Tommy is transgender. When he was born, his sex was designated as "female," even though he is a boy.

145. Growing up, Tommy presented as a tomboy. Indeed, throughout his childhood, Tommy expressed himself and behaved in a manner that did not conform with the stereotypes associated with the sex he was assigned at birth.

146. As he got closer to puberty, Tommy started to wonder if everyone felt the same panic and revulsion that he did when he looked at his changing body, a body that seemed wrong and inconsistent with who he is.

147. Researching online, he discovered the term "gender dysphoria," which he realized described the discomfort and distress that he felt.

148. While Tommy knew he was not a girl, he also felt cautious and apprehensive about learning that he was transgender.

149. Tommy worried about the judgment he would face and was aware that states, like his home state of Texas, were seeking to pass laws and policies to take away the rights from transgender people. Tommy had read stories about people getting kicked out of their homes, losing their friends, and facing stigma in their communities.

150. In the end, Tommy could not ignore how right it felt when he thought of himself living as the boy that he is.

151. For Tommy, it brought him a great sense of relief to be able to live as his true self—a boy—and so he became more comfortable telling close friends and one of his older brothers that he was transgender.

152. On or about mid-2020, Tommy informed his mom, Plaintiff Wanda Roe, that he was transgender. Upon learning of this, Wanda hugged Tommy, told him she loved him, and cried. After telling his mom, Tommy told the rest of his brothers and his stepdad.

153. Because she was unfamiliar with what being transgender meant, Wanda sought to become more informed. Wanda sought guidance from a counselor and Tommy's doctor on the best way to support Tommy and ensure his wellbeing.

154. Thereafter, Tommy began to socially transition by presenting as male publicly beyond the few people to whom he had disclosed he was transgender.

155. The Roe family also began consulting medical professionals and Tommy began working with a therapist. Tommy's doctors diagnosed him with gender dysphoria and recommended as appropriate and medically necessary for Tommy to start undergoing gender-affirming hormone therapy.

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

157. As Tommy moved further into puberty, he felt even more distressed and anxious about the conflict between his body and who he is. In public, Tommy would hide behind his mom, worried that someone would misgender him as a girl. Tommy would also worry about whether he was walking femininely or whether his breathing sounded masculine enough. Tommy avoided speaking in class and hid from his family and friends, staying alone in his bedroom, because his voice felt wrong. Even in his room, however, Tommy would still feel uncomfortable, a constant feeling he describes as horrible.

158. Plaintiff Wanda Roe observed the distress and anxiety that Tommy exhibited as he began undergoing puberty.

159. When sophomore year started, Tommy attended high school presenting and living as the boy that he is. This was Tommy's first year of high school that was in-person, as his entire freshman year was virtual due to the COVID-19 pandemic.

160. Being able to present and live as a boy allowed Tommy to thrive, both academically and socially. He felt more confident in his everyday life. Wanda also witnessed Tommy's transformation; being able to present and be perceived as the boy that he is allowed Tommy to go from an uncomfortable, fearful child to a confident, self-assured young man.

161. DFPS's new rule to investigate medically necessary gender-affirming care as a child abuse based on the Paxton Opinion and Abbott Letter has wreaked havoc on the Roe family.

162. Tommy first learned of the Paxton Opinion and Abbott's Letter online. When he first learned of them, Tommy was shocked and upset as he felt this was an attack on him and others like him.

163. On February 24, 2022, Tommy was pulled out of class and called to the school administration's office to meet with a CPS investigator. Coincidentally, earlier that same day, Tommy had texted Wanda about the Paxton Opinion and Abbott Letter.

164. When he was called out of class, Tommy was not told whom he would be speaking with but was simply sent to the office as if he were in trouble. When he arrived, a CPS investigator was waiting for him. Tommy was shocked and confused by what was happening. The only people in the room were Tommy and the CPS investigator.

165. The investigator proceeded to interview Tommy and asked him a series of deeply personal questions. He was told the interview was related to his home life but was not told the reason a call to CPS was made.

166. The questions were very personal and asked about Tommy's family and medical history.

167. Tommy sought to answer the investigator's questions as best he could, but he was nervous and scared. Tommy suspected the investigator was there because of the Paxton Opinion and Abbott Letter, and Tommy did not want it to seem like his family had actually done anything to him because they had not. Tommy also worried that the investigator might try to twist his words.

168. After the interview, Tommy was shaking and upset. He had missed close to half an hour of class time and did not know what to tell others about why he had been called to the office. Tommy texted Wanda that he needed to talk with her but did not text her what had happened because he felt it should be discussed in person.

169. Later that afternoon, Wanda picked Tommy and several of his friends up from school. Before Tommy could tell Wanda what had occurred at school, Wanda received a call from one of her other sons that there was someone waiting outside their home.

170. After dropping off Tommy's friends, Wanda and Tommy arrived at their home. When they arrived, a CPS investigator, who upon information and belief was the same investigator who had interviewed Tommy at school, was waiting outside and asked to speak with Wanda. Wanda and Tommy's stepdad decided to let them into the house.

171. The investigator told Wanda that DFPS had been instructed to prioritize investigations into parents who provide gender-affirming medical care to their children over all other child abuse and neglect cases.

172. The investigator interviewed Wanda, Tommy's stepdad, and Tommy's brothers. Tommy was not present for these interviews, as he was so upset by what was going on that he had to go to his room.

173. The questions related to the Roe family's treatment of Tommy and probed whether they had ever abused him (they have not), forced him to transition (they did not), or forced him to take any drugs in support of his transition (they have not).

174. The investigator also asked about Tommy's medical history. Understanding she had done nothing but be loving and supportive of Tommy, as well as consulted with and relied upon the advice from medical and health professionals, Wanda signed a release to allow DFPS to collect and review Tommy's medical records.

175. The interview lasted for approximately an hour.

176. Following the interview, Wanda secured legal representation and days later revoked the release to allow DFPS to collect and review Tommy's medical records.

177. DFPS's new rule to investigate medically necessary gender-affirming care as a "child abuse" based on the Paxton Opinion and Governor Abbott's Letter has caused the Roe family a significant amount of stress, fear, and anxiety. For example, Tommy has been traumatized by the prospect that he may be separated from his family, while Wanda, Tommy's stepdad, and Tommy's brothers are also filled with anxiety and worry.

178. Since the interview, Wanda has noticed that Tommy appears to be anxious and nervous more often than previously. He now worries that his statements to the investigator

may be used as a pretext to take him away from his family, used to otherwise punish Wanda or his siblings, or that he will not have access to the care his doctors have recommended as medically necessary and that would enable him to live more authentically as himself.

179. Following the interview, Tommy's performance at school took a dive and he became more reserved.

180. Tommy has had difficulty focusing during school and tests, and his grades deteriorated significantly since the investigation. He struggled not only to focus on studying but also struggled in general to pay attention to his surroundings as a direct result of the stress he has experienced because of this investigation.

181. The Roe family found a measure of solace knowing that DFPS's investigation had been stopped as a result of the temporary orders issued in the *Doe v. Abbott* Litigation. However, when the appellate court's order was narrowed to not protect their family, Wanda and Tommy began to fear the worst again.

182. Indeed, in May 2022, DFPS contacted Wanda's attorney again and indicated that it is continuing with its investigation, asking for access to Tommy's doctors and medical records and, consistent with the erroneous framing from the Paxton Opinion, seeking assurances that any form of treatment be reversible.

183. Both Wanda and Tommy feel that the investigation has violated the privacy of their family. The investigation intruded upon Tommy at his school, entered the Roe family's home, and has made Tommy fear that harm may befall his family.

184. The implementation of DFPS's new rule to investigate medically necessary gender-affirming care as a child abuse based on the Paxton Opinion and Abbott Letter has terrorized the Roe family and inflicted ongoing and irreparable harm.

185. Should DFPS incorrectly issue a finding that there is reason to believe that Wanda or the Roe family have committed "child abuse" due to DFPS's new rule as announced in the DFPS Statement 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.

186. The implementation of DFPS's new rule to investigate medically necessary gender-affirming care as child abuse based on the Paxton Opinion and Abbott Letter has caused a significant amount of stress, anxiety, and fear for the Roe family.

187. The Roe family is living in constant fear about what will happen to them due to the actions by DFPS, the Governor, and the Attorney General.

188. Not providing Tommy with the medically necessary health care that he needs is not an option for Wanda, as her utmost desire is to ensure the health, safety, and wellbeing of Tommy, whom she loves and supports.

D. The Briggle Family

189. Plaintiffs Adam and Amber Briggle are the proud parents of Plaintiff M.B., a 14-year-old adolescent. Ex. 8, Aff. of Adam Briggle. Both Briggle parents are members of PFLAG.

190. The Briggles have called Texas their home for nearly 13 years, and Texas is the only home M.B. has ever really known. M.B. is shy, a good student, and is well-liked among his peers. M.B. is also a gifted musician.

191. M.B. is transgender. When he was born, his sex was designated as "female," even though he is a boy.

192. From a very young age, M.B. expressed himself and behaved in a manner that does not conform with the stereotypes associated with the sex he was assigned at birth.

193. M.B.'s parents have been supportive and accepting of him, giving him the space to express himself and explore who he is.

194. When M.B. told his parents that he was a boy, they began to educate themselves about what it means to be transgender, when a person's gender identity differs from the sex they were designated at birth.

195. The Briggles also consulted with doctors and mental health providers about the best way they could support M.B. M.B.'s doctors diagnosed him with gender dysphoria around the age of seven. At that time, M.B.'s doctors did not recommend any medical treatment. However, M.B. is still being seen by his doctors and the Briggles are following the doctors' advice, as any loving and supportive parent would, to ensure their adolescent's health, safety, and well-being.

196. In addition to taking steps to affirm M.B. personally, the Briggles have become very involved in efforts to fight legislative and other government actions that would harm M.B. and other LGBTQ+ youth and to support measures that would protect them. They have been vocal advocates for their son and have worked to help others understand the experiences of transgender youth, including by inviting Texas Attorney General Ken Paxton into their home to share a meal with their family.

197. Following the issuance of the Paxton Opinion, Abbott Letter, and the new rule announced in DFPS's Statement, the Briggles' lives were turned upside down.

198. Within forty-eight (48) hours of Abbott's directive that DFPS begin investigating families, the Briggles were contacted by a CPS investigator. They were terrified at the prospect of their son being taken away from his family, his friends, and the life that he loves.

199. The CPS investigator came to the Briggles' home and asked them very intimate, personal, and invasive questions to determine if the parents had committed "abuse" by affirming M.B.'s identity and following the advice of his medical and mental health care professionals. During her visit, the CPS investigator disclosed to the Briggles that the sole allegation against them is that they have a transgender son and that they allowed their son to undergo "treatment for gender transition."

200. After the CPS investigator left, the Briggle family was shaken, including M.B. Adam Briggle has found it difficult to concentrate at work, has trouble sleeping, and can hardly eat without getting sick to his stomach. Adam and Amber worry about keeping their family intact and keeping M.B. safe and healthy.

201. For over three months, the CPS investigation into the Briggles has been open and is still ongoing. After the Texas Supreme Court's decision limiting the temporary injunction to only those plaintiffs named in the *Doe v. Abbott* Litigation, DFPS has continued its investigation into the Briggles. This is despite the Briggles having been public about M.B.'s transgender identity since 2016 and having never been investigated by DFPS until its change in policy in response to Abbott's Letter.

202. The issuance of the Paxton Opinion and the Abbott Letter, along with DFPS's new rule and substantive policy changes based on the Paxton Opinion and the Abbott Letter, has terrorized the Briggle family and inflicted ongoing and irreparable harm.

203. The implementation of DFPS's new rule to investigate medically necessary gender-affirming care as child abuse based on the Paxton Opinion and Abbott Letter has caused a significant amount of stress, anxiety, and fear for the Briggle family.

204. The Briggles are terrified for M.B.'s physical and mental health, safety, and well-being, and for their family. They live in constant fear every day that one or both of our children will be taken away from them. They are also worried that if M.B. is taken away from them, being separated from his sibling would cause him significant harm.

205. Before the CPS investigation into the Briggle family, M.B. was typically playful, joyful, and happy. Now M.B. is scared, anxious, and worried that he will be removed from his home, taken away from his parents, his sibling, his friends, his school, and the life and activities he loves. M.B. has also had a hard time sleeping, is moodier now, and has stayed home from school. His grades have suffered, which has never before been an issue.

206. In addition, since the Paxton Opinion and Abbott Letter, and the investigation into their family, both M.B. and his sibling have been in therapy to help them cope with the stress of thinking that they will be taken away from their parents.

207. The Briggles further worry about the potential short-term and long-term physical and mental health consequences if they were to not follow the advice, guidance, and counseling of M.B.'s physicians and mental health professionals with respect to medically necessary treatment as is appropriate for his gender dysphoria. They do not want to risk M.B.'s health, safety, or well-being and instead want to make sure that he continues to thrive.

208. The Briggle family is living in constant fear about what will happen to them due to the actions by DFPS, the Governor, and the Attorney General.

209. Since the Paxton Opinion and the Abbott Letter, the Briggles have been called criminals, child abusers, and "groomers" on social media. For the first time, they have installed cameras outside of their home. And since the Governor's Directive, they have been followed in their car, and yelled at by a person in another vehicle.

210. Should DFPS incorrectly issue a finding that the Briggle parents committed "abuse" due to the new rule announced in the DFPS Statement 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.

211. Not providing M.B. with the medically necessary health care that he needs is not an option for the Briggle parents, as their utmost desire is to ensure the health, safety, and wellbeing of M.B., whom they love and support.

VIII. CAUSES OF ACTION

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

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

213. 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).

214. 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.

215. 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).

216. 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).

217. As a state agency, DFPS is required to follow APA rulemaking procedures when adopting or changing rules. The APA's procedural requirements for promulgating agency rules, including public notice, comment, and a reasoned justification for the rule, are mandatory. *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 sets forth a new rule and provides that DFPS *will* implement Abbott's "directive" and *will* 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 a 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)).

218. The DFPS Statement prescribes a new DFPS rule and 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).

219. Prior to the DFPS Statement, DFPS had not promulgated any rule pertaining to the investigation of gender-affirming care as child abuse.[40] The DFPS Commissioner explicitly disavowed pursuing these investigations last 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 adopted a new rule that it *will* conduct

[40] 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* ¶¶ 223-229.

investigations in accordance with the Paxton 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. Before 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 rule and 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))).

220. In addition, DFPS's actions since the Statement evidence a new rule and substantive change in policy. Prior to DFPS's Statement, DFPS had refused to investigate reports regarding the provision of gender-affirming medical treatment as child abuse. *See Doe v. Abbott*, 2022 WL 831383, at *1; *see also* Ex. 2, Aff. of Lisa Stanton. In fact, such reports were treated as "priority none" and closed without further investigation. Now, however, following DFPS's Statement, DFPS has opened investigations into the Voe, Roe, and Briggle families in this suit, the Doe family in the *Doe v. Abbott* Litigation, and at least five other families based on allegations that just a few months before would have been treated as "priority none" and not investigated. Moreover, CPS investigators and supervisors have been told to pursue these cases in a manner that departs from longstanding agency procedures and lacks transparency. For example, upon information and belief, DFPS has instructed CPS investigators and supervisors to not put anything about these specific cases in writing. And despite the *Doe v. Abbott* court's finding that these actions are likely unlawful, DFPS has now resumed investigations into Plaintiffs in this case.

221. In declaring that investigations would be initiated based on a non-binding opinion from the Attorney General and an unauthorized directive from the Governor, and now having resumed them, the Commissioner has 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 new rule announced in the DFPS Statement, 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 and drastic change in DFPS policies. This agency action, therefore, is arbitrary and capricious.

222. 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.

223. DFPS's new rule, based on Abbott's Letter and the Paxton Opinion, and as announced on 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.

224. "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, no pet.).

225. The new rule announced in 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 new rule announced in 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 VIII.E. The new DFPS rule thus conflicts with the obligations imposed on DFPS by its enabling statute and, therefore, is invalid.

226. In addition to conflicting with specific statutory language, the new rule announced in the DFPS Statement also conflicts with the general objectives of DFPS's enabling statute. *See Gulf Coast Coal. Of Cities*, 161 S.W.3d at 711-12. 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 new rule announced in 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.

227. Pursuant to the new rule announced in the DFPS Statement and implementation thereof, the Voe, Roe, and Briggle parents, as well as other parents who are members of PFLAG (together, "Plaintiff Parents"), cannot provide medically necessary and doctor-recommended medical treatment to their adolescent children without exposing themselves to criminal liability. Precisely because this medical treatment is necessary, if the Plaintiff Parents

ceased providing this care, their children 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 Antonio Voe, Tommy Roe, and M.B., as well as other transgender youth whose families are members of PFLAG, by causing them immeasurable anxiety and distress. These young people are now forced to choose between the medical care that they need and exposing their 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 families 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).

228. Every major medical organization in the United States considers the treatment now effectively banned and criminalized by DFPS to be medically necessary. And none of the alleged concerns about the now-prohibited gender dysphoria treatment is unique to the prescribed treatments but is rather targeted only at families who are seeking this care for the treatment of gender dysphoria. Transgender young people and their families are therefore uniquely singled out and threatened by Texas officials. 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.

229. 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 . . . .").

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

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

231. 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.

232. The new rule announced in the DFPS Statement and DFPS's implementation thereof interferes with Plaintiff Parents' fundamental right to care for their children guaranteed by the Texas State Constitution. *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").

233. 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)).

234. 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 parental rights of Plaintiff Parents. 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—let alone one that is compelling—to warrant such a gross and arbitrary invasion of parental rights. The new DFPS rule creates a presumption that certain medical treatments must be uniquely denied to transgender youth, even where those treatments are medically necessary and commonly prescribed for diagnoses other than gender dysphoria. This political interference with essential health care "run[s] roughshod over the important interests of both parent and child." *Stanley v. Illinois*, 405 U.S. 645, 657 (1972).

235. As such, the new DFPS rule must be declared invalid because it conflicts with Plaintiff Parents' fundamental rights as 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

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

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

238. 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.

239. Pursuant to the UDJA, Plaintiffs seek a declaratory judgment of the Court that Abbott's Letter, the DFPS Statement directing DFPS to investigate families for providing their children with medically necessary health care, and DFPS's new rule and substantive change in policy regarding the investigation of gender-affirming care as child abuse:

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.

240. 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).

241. 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.—Austin Jan. 6, 2022, pet. filed) (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.

242. Governor Abbott has exceeded his authority by unilaterally redefining child abuse and then ordering "prompt and thorough investigation[s]" based on his redefinition.[41]

243. 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.

244. 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.[42] 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.

245. 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

[41] 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.
[42] *Id.*

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.").

246. 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 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").

247. In the *Doe v. Abbott* Litigation, the Texas Supreme Court held that "neither the Governor nor the Attorney General has statutory authority to directly control DFPS's investigatory decisions." *In re Abbott*, 2022 WL 1510326 at *3. However, the Court also acknowledged that there are "many informal mechanisms by which a governor or an attorney general may validly seek to influence the behavior of state agencies as part of the normal give-and-take between departments of state government." *Id*. at *2, n. 3.

248. Governor Abbott's Letter went beyond these "informal mechanisms" by which a governor may seek to influence the behavior of a state agency. Indeed, Governor Abbott very clearly stated: "I hereby ***direct*** [DFPS] to conduct a prompt and thorough investigation of any reported instances of [minors being provided gender-affirming care] in the State of Texas."[43] By the plain meaning of the language he used, Governor Abbott sought to directly control DFPS despite having no authority to do so.

249. In addition, the Governor's directive must be viewed within the context that Commissioner Masters's appointment as Commissioner expired in late 2021, and the continuation of her tenure is entirely at the Governor's discretion. Abbott's Letter set forth his clear expectation

[43] 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 (emphasis added).

of what the Commissioner should do going forward, and given her expired term, left her with limited options.

250. And so, despite the Governor's lack of authority, Commissioner Masters and DFPS nonetheless heeded his instruction. The Texas Supreme Court observed that the statement issued by DFPS in response to Abbott's Letter "suggests that DFPS may have considered itself bound by either the Governor's letter, the Attorney General's Opinion, or both." *In re Abbott*, 2022 WL 1510326 at *3. In its response, DFPS referred to Abbott's Letter as a "directive," implying that DFPS was acting solely at the behest of Governor Abbott.

251. Regardless of whether DFPS was statutorily or legally bound by Abbott's Letter, the end result is still the same: Governor Abbott "directed" DFPS to investigate the families of transgender adolescents, and DFPS complied with that "directive." Abbott's Letter thus constituted an *ultra vires* act because, as the Texas Supreme Court has noted, the Governor does not have authority to "direct" DFPS.

Commissioner Masters Has Exceeded Her Authority.

252. 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. Although DFPS is not, in fact, bound by Abbott's Letter—which has no legal force or effect—Commissioner Masters continues to press forward with the investigation of families of transgender adolescents.

253. These actions contravene Commissioner Masters's 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 Section VIII.A. above,

Commissioner Masters has completely ignored the APA's mandatory rulemaking process. Therefore, the issuance and implementation of DFPS's new rule 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 new rule announced in 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.

254. Moreover, the new DFPS rule 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's actions 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.

255. 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 underscoring the *ultra vires* nature of both officials' actions here.

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

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

257. 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:

258. *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).

259. *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.

260. 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).

261. 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)).

262. 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) (citations omitted).

263. 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) (en banc) (the authority to define crimes and prescribe penalties for those crimes is vested exclusively with the Legislature).

264. 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.

265. 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.

266. 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.

267. Texas law mandates 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), *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.

268. 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).

269. 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 must provide definite

guidelines and prescribe sufficient standards to circumscribe the discretion conferred. *See State v. Rhine*, 255 S.W.3d 745, 749 (Tex. App.—Fort Worth 2008, pet. granted), *aff'd*, 297 S.W.3d 301. Such standards must be reasonably clear and acceptable as standards of measurement. Tex. Const. art. II § 1.

270. 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 to include certain gender-affirming care for minors.

271. 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

272. 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, pet. ref'd) (quoting *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018)). Governmental enactments are unconstitutionally void for vagueness when their prohibitions are not clearly defined.

273. Criminal enactments are subject to an even stricter vagueness standard because "the consequences of imprecision are . . . severe." *Vill. of Hoffman Estates v. Flipside,*

Hoffman Estates, Inc., 455 U.S. 489, 498-99 (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.

274. The Abbott Letter and the DFPS Statement announcing a new rule adopting and enforcing an overbroad interpretation of "child abuse" under the Family Code create precisely this type of unconstitutional vagueness. These vague prohibitions leave parents of transgender youth like Plaintiffs Mirabel Voe, Wanda Roe, Adam and Amber Briggle, and those who are members of PFLAG, uncertain how 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 would seemingly fall within this statutory definition. But if parents pursue the medical care necessary for their transgender adolescent's growth, development, and 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 standards will apply.

E. Deprivation of Parental Rights Due Process Claims – By Plaintiff Parents Against Defendants Governor Abbott and Commissioner Masters

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

276. Plaintiff Parents' right to care for their children is a fundamental liberty interest protected by the Texas Constitution and acknowledged by the Legislature. *See Wiley*, 543 S.W.2d at 352; *see also* Tex. Fam. Code § 151.001(a)(11).

277. Under substantive due process, the government may not infringe parental rights unless there exist exceptional circumstances capable of withstanding strict scrutiny. *See Wiley*, 543 S.W.2d at 352. 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).

278. In the present case, there are no exceptional circumstances that would justify Defendants' complete negation of Plaintiff Parents' 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 on Plaintiff Parents' 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 Plaintiff Parents' fundamental due process rights to parent their children.

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

279. The Abbott Letter, DFPS's Statement, and DFPS's implementation of these through its new rule violate 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.

280. The Abbott Letter, incorporated into the DFPS Statement, classifies based on both transgender status and sex. The Abbott Letter 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 the DFPS Statement, explicitly uses sex-based terms, making plain that the discrimination at issue here is based on sex, including failure to conform to sex stereotypes. Moreover, it discriminates against transgender youth, like Antonio Voe, Tommy Roe, M.B., and the children of PFLAG members, because they are transgender. By definition, transgender people undergo "gender transition" and by targeting medical care related to gender transition, Texas officials are discriminating against transgender people as such.

281. As the United States Supreme Court has explained, "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.—Dallas 2021, no pet.) ("[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.") (citing *Bostock*, 140 S. Ct. at 1738-43). Likewise, discrimination based on transgender status is independently unconstitutional. *See Brandt*, 551 F. Supp. 3d at 889 ("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))); *Eknes-Tucker v. Marshall*, 2022 WL 1521889, at *1.

282. The Abbott Letter, DFPS 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. The law also singles out for prohibition only medical treatment for gender dysphoria when many other forms of care carry the same or comparable risk and are supported by the same or less evidence of efficacy. In so doing, the Abbott Letter, DFPS Statement, and DFPS's implementation of these directives through its new rule place a stigma and scarlet letter upon transgender youth and subject them to immense harms. Defendants' actions do nothing to protect transgender youth, yet subject them to invasive investigations simply because of who they are, while triggering an unimaginable choice between being forced to forego medically necessary care or being separated from their families or having their loving parents criminalized.

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

283. In addition to the above-requested relief, Plaintiffs seek: (1) a temporary restraining order and a temporary injunction against Commissioner Masters and DFPS (not Governor Abbott) solely on the grounds that DFPS's new rule, expanding the definition of "child abuse" violates the APA; and (2) a permanent injunction against Commissioner Masters and DFPS (not Governor Abbott) on each of the grounds asserted by Plaintiffs herein.

284. The purpose of a temporary restraining order and temporary injunction 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)

(quoting *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589, 589 (Tex. 1962) (per curiam) (citation omitted)). Until a permanent injunction can be decided on the merits, Plaintiffs are entitled to a temporary restraining order and a temporary injunction pursuant to Texas Civil Practice and Remedies Code section 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.

285. As determined by the Court in *Doe v. Abbott*, "gender-affirming care was not investigated as child abuse by DFPS until after February 22, 2022" and "[t]he series of directives and decisions by the Governor, the [Commissioner], and other decision-makers at DFPS, changed the *status quo* for transgender children and their families, as well as professionals who offer treatment, throughout the State of Texas." *Doe v. Abbott*, 2022 WL 831383, at *1.

286. Moreover, as a result of temporary orders from the Travis County District Court and the Third Court of Appeals, DFPS and Commissioner Masters were "enjoined from investigating reports of child abuse by persons, providers or organizations facilitating or providing gender-affirming care to transgender minors where the only grounds for the purported abuse or neglect are either the facilitation or provision of gender-affirming medical treatment or the fact that the minors are transgender, gender transitioning, or receiving or being prescribed gender-affirming medical treatment; prosecuting or referring for prosecution such reports" until at least mid-May 2022.

287. The Commissioner's and DFPS's actions since the Texas Supreme Court's decision narrowing the Third Court of Appeals' order demonstrate that the agency is continuing to conduct investigations based solely on the suspected provision of gender affirming care for adolescent minors with gender dysphoria, as directed by Abbott's Letter and explained in Paxton's

Opinion. DFPS never conducted these investigations before February 22 but is now violating Plaintiffs' rights and threatening medically necessary health care for transgender youth based on an invalid agency rule.

288. Plaintiffs meet all the elements necessary for temporary injunctive relief with respect to their APA claims. Plaintiffs state a valid cause of action against the Commissioner and DFPS and have a probable right to the relief sought. For the reasons detailed above, a bona fide issue exists as to Plaintiffs' right to ultimate relief because the Commissioner and DFPS violated the APA by adopting and enforcing a new rule, namely a significant expansion of the definition of "child abuse", without following the statutorily required procedures. Plaintiffs have already been injured by these actions and will continue to experience imminent and irreparable harm without injunctive relief.

289. Plaintiffs in this suit have suffered and will continue to suffer probable, imminent, and irreparable harms before a trial on the merits, absent intervention by the Court. Antonio Voe, Tommy Roe, M.B., and transgender youth whose parents are members of PFLAG have already had their lives upended by the Commissioner and DFPS's actions.

290. Antonio Voe attempted death by suicide in response to Texas leaders targeting transgender youth. Following that attempt, he faced intrusive invasions of his and his family's privacy from DFPS. Antonio was questioned and photographed by an investigator at home and his mom was called an "alleged perpetrator" of child abuse, interrogated, and asked to turn over private and confidential medical records for her son. Because of the trauma and harm caused by Defendants' actions, Antonio has stopped going to school in-person and is seeking additional mental health care.

291. Tommy Roe felt his world cave in when he was pulled out of class and questioned by a CPS investigator at school about his medically necessary health care. He suffered the trauma and anxiety of seeing CPS question his mother, stepdad, and brothers in their home. M.B. also suffered this same invasion of his privacy, as his family was questioned by CPS in their home based solely on allegations relating to the medically necessary health care. PFLAG members across Texas have suffered these same harms and are living in fear, anxiety, and apprehension that CPS could at any moment knock on their door or pull their kids out of class to interrogate them about the medically necessary health care that they receive.

292. Plaintiffs who are parents of PFLAG, Mirabel Voe, Wanda Roe, and Adam and Amber Briggle also face lasting harm—the prospect of losing their children. Commissioner Masters and DFPS's efforts to continue investigations into families that love and support their children by providing them with medically necessary care threaten to rip families apart and trample on Plaintiffs' parental rights. Because DFPS is pursuing these investigations contrary to law and in flagrant violation of the APA, Plaintiffs live in fear that their children could be taken away from them with little or no notice. Even an investigation that does not result in a removal can still stay on a parent's record and curtail a parent's rights and freedom. And the worst harm of all is that Plaintiffs fear that their children could attempt to take their own lives because Defendants' actions have baselessly portrayed gender-affirming care as a crime and transgender youth as a burden on their families.

293. Defendants' unlawful actions have also threatened the availability of medically necessary health care for gender dysphoria that Plaintiffs need, which if abruptly discontinued can cause severe physical and emotional harms, including anxiety, depression, and suicidality. If placed on the child abuse registry, Plaintiff Parents like Mirabel Voe, Wanda Roe,

Adam and Amber Briggle, and PFLAG members would be barred from ever working with children, including as volunteers in their community. Plaintiffs also face the prospect of criminal penalties, as threatened in Abbott's Letter.

294. For the 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 the Commissioner's and DFPS's unlawful new rule, preserve the status quo, and ensure justice.

295. In balancing the equities between Plaintiffs and the Commissioner and DFPS, Plaintiffs will suffer probable, imminent, irreparable, and ongoing harm including the deprivation of their medical treatment and their constitutional rights, whereas the injury to the Commissioner and DFPS is nominal pending the outcome of this suit. In fact, enjoining the Commissioner and DFPS's unlawful implementation of Paxton's Opinion and Abbott's Letter will simply allow the agency to follow existing Texas law and longstanding DFPS policies and practices, while not diverting resources to unlawfully investigate loving families for the provision of medically necessary health care.[44]

296. Plaintiffs are willing to post a bond for any temporary injunction if ordered to do so by the Court, but request that the bond be minimal because the Commissioner and DFPS 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.

[44] 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/.

X. CONDITIONS PRECEDENT

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

XI. RELIEF REQUESTED

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

a. A temporary restraining order prohibiting Commissioner Masters and DFPS from implementing or enforcing the new rule announced in the DFPS Statement, implementing the Abbott Letter and the Paxton Opinion, or otherwise investigating for possible child abuse or taking any actions against Plaintiffs and other members of PFLAG solely 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;

b. Upon hearing, a temporary injunction prohibiting Commissioner Masters and DFPS from implementing or enforcing the new rule announced in the DFPS Statement, implementing the Abbott Letter and the Paxton Opinion, or otherwise investigating for possible child abuse or taking any actions against Plaintiffs and other members of PFLAG solely 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;

c. After trial, a permanent injunction prohibiting Commissioner Masters and DFPS from implementing or enforcing the new rule announced in the DFPS Statement, implementing the Abbott Letter and the Paxton Opinion as

announced in the DFPS Statement, or otherwise investigating for possible child abuse or taking any actions against any person, including Plaintiffs and other members of PFLAG, solely 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 Commissioner's and DFPS's new rule, as announced in the DFPS Statement and subsequent actions implementing it, violates the Texas Administrative Procedure Act;

e. Declaratory judgment that Abbott's Letter and the Commissioner's and DFPS's new rule, as announced in the DFPS Statement and subsequent actions implementing it, are *ultra vires* and unconstitutional;

f. Reasonable and necessary attorneys' fees and costs as are equitable and just under Texas Civil Practice and Remedies Code section 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: June 8, 2022

Respectfully submitted:

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**Pro hac vice* forthcoming

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