No. 24-0892

In the Supreme Court of Texas

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS,
Appellant,

v.

PFLAG, INC.,
Appellee.

On Direct Appeal from the
261st Judicial District Court, Travis County

REPLY BRIEF

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The Legislature empowered the Office of the Attorney General to issue civil investigative demands to assist in investigating violations of the Deceptive Trade Practices Act. Tex. Bus. & Com. Code § 17.61 (DTPA).

The decision below vitiates this vital tool by imposing procedural and substantive barriers to its use. The trial court erred procedurally by requiring OAG to proceed through the year-long process of ordinary civil litigation—including briefing and rulings regarding a temporary restraining order, temporary injunction, summary judgment, and a bench trial—to resolve a discovery dispute.

The trial court erred substantively by denying enforcement of the CID based on erroneous requirements, including evaluating burden and relevancy only after crediting the testimony of PFLAG's witness (without opportunity for discovery by OAG to challenge this testimony), not requiring a privilege log, and applying a nonexistent First Amendment privilege against disclosure of "private communications."

Fundamentally, the trial court and PFLAG lose sight of OAG's broad authority to issue CIDs, which it can do to "investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950).

The decision below should be reversed and CIDs restored as an investigatory tool, as the Legislature created them.

I. The Trial Court Erred by Conducting a Full Merits Trial on OAG's Entitlement to Pre-suit Investigatory Discovery.

CIDs are a discovery tool employed by OAG to aid in investigations. Whether OAG is entitled to this discovery (or whether the CID should be modified or set aside) should—like any other discovery dispute—be resolved expeditiously at a hearing by a trial court, without separate briefing and hearings regarding temporary relief, summary judgment, and a trial on the merits.[1]

Federal district courts considering petitions to set aside or modify CIDs almost always do so on the pleadings, without supplemental briefing, summary judgment, or the opportunity for discovery.[2] *See, e.g.*, *Finnell v. U.S. Dep't of Just.*, 535 F. Supp. 410, 414 (D. Kan. 1982) (ordering enforcement and denying discovery because it was unnecessary and "would needlessly delay this matter").

Texas law similarly does not provide for a full trial process to resolve discovery disputes. A third party who receives a discovery request—like PFLAG did in this investigation—is entitled to seek protection from the court. Tex. R. Civ. P. 176.6(e),

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[1] Such "hearings" can (and likely should) "take place entirely on paper." *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 781–82 (Tex. 2005); *see also Martin v. Martin, Martin & Richards, Inc.*, 989 S.W.2d 357, 359 (Tex. 1998) ("[T]he term 'hearing' does not necessarily contemplate either a personal appearance before the court or an oral presentation to the court.").

[2] The federal courts permit "limit[ed] discovery" in response to CIDs only in "extraordinary circumstances." *United States v. Markwood*, 48 F.3d 969, 982 (6th Cir. 1995) (discussing authorities); *see also id* at 983 ("The Circuits appear to agree that the summary nature of enforcement proceedings must be preserved by limiting discovery."). When discovery is permitted, it is "usually in the form of interrogatories." *Finnell*, 535 F. Supp. at 414. In the ordinary case, at least, no discovery would be appropriate in a petition to set aside or enforce a CID.

192.6; *see also In re Garza*, 544 S.W.3d 836, 842 (Tex. 2018) (orig. proceeding) ("[*B*]*oth* the potential deponent *and* any other person affected by the discovery request are entitled to seek protection by filing motions for protection."). But a recipient of a discovery request has no right to demand a temporary injunction, summary judgment, or a full bench trial regarding the discovery dispute.

Injunctive relief—like a temporary restraining order or temporary injunction—is unnecessary when a party objects to discovery because a party who seeks a protective order need not comply "unless ordered to do so by the court." Tex. R. Civ. P. 176.6(e). Enforcing a CID similarly requires OAG to "petition for an order of the court for enforcement." Tex. Bus. & Com. Code § 17.62(b).[3]

PFLAG reasons that because traditional lawsuits are instituted by "petitions," any "petition" must necessarily institute a traditional lawsuit. PFLAG Br. 27. Not only does PFLAG's argument rest on a logical fallacy,[4] but it proves too much. Rule 202, for example, allows a private litigant to file a "petition" for pre-suit discovery, Tex. R. Civ. P. 202.2, in order to conduct "preliminary investigations of 'potential' or 'anticipated' claims," *In re DePinho*, 505 S.W.3d 621, 624 (Tex. 2016) (orig. proceeding); *see also id.* ("[A] party filing a Rule 202 petition often does not have the facts to establish its claims."). Yet despite beginning with a "petition," Rule 202

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[3] And if there were any concern, a court could order that a party need not comply with the CID while the petition to set it aside is pending, as the district court did in this case. Tex. Bus. & Com. Code § 17.61(h).

[4] *Indem. Ins. Co. of N. Am. v. W & T Offshore, Inc.*, 756 F.3d 347, 355 n.5 (5th Cir. 2014) (noting the "'affirming the consequent' fallacy"). That all lawsuits begin with petitions does not mean that all petitions begin lawsuits.

petitions are resolved like any other discovery dispute: Following a hearing, the district court determines whether the discovery is warranted and issues a final ruling. Tex. R. Civ. P. 202.3, 202.4.

But under PFLAG's reasoning, a Rule 202 petition must be treated like "any other petition filed before the district court," including summary-judgment briefing and "hearings on emergency and temporary relief, followed by a trial on the merits." PFLAG Br. 47. PFLAG is wrong: there is no "trial on the merits" of a Rule 202 petition, just as there is no "trial on the merits" of a petition to set aside a CID or of any other discovery objection.

Nor does PFLAG seriously grapple with the implications of treating a petition to set aside or enforce a CID like "any another petition" subject to a "full merits trial." If PFLAG's petition to set aside the CID were treated like "any other petition," then OAG would have been entitled to discovery using the ordinary tools, *see* Tex. R. Civ. P. 190–205, 215. Conducting discovery to adjudicate a party's right to discovery quickly becomes farcical.

The proceedings below show an extraordinary waste of time and resources. Resolving OAG's request for discovery to aid an investigation in the public interest took more than a year in the trial court and generated a several-hundred-page Reporter's Record and a more-than-1,500-page Clerk's Record. If similar proceedings are necessary on every occasion a party resists a CID, then this investigatory tool—which is designed to adjudicate discovery issues "summarily and with dispatch"—is practically useless. *In re Off. of Inspector Gen., R.R. Ret. Bd.*, 933 F.2d 276, 277 (5th Cir. 1991) (orig. proceeding).

In this case, the district court should have received any necessary evidence at the March evidentiary hearing and issued a decision shortly afterwards. Texas procedure does not require—or even allow—temporary restraining orders, temporary injunctions, summary judgment, or a full trial on the merits to determine whether a party is entitled to discovery. The enforceability of a CID, like a Rule 202 petition and like discovery objections generally, should be decided expeditiously at a single hearing, not be forced to undergo the full trial process.

Although PFLAG relegates this procedural issue to three pages at the end of its brief, PFLAG Br. 46–48, it is every bit as important as the substantive standard and may well be more important. If PFLAG were correct that OAG must file hundreds of pages of briefing, appear at multiple evidentiary hearings, and litigate for more than a year to enforce a CID, then the substantive standard for enforcement would be virtually irrelevant because CIDs would be practically useless for investigatory purposes. Accordingly, regardless of how the Court rules on the substantive question of the enforceability of the CID, it should reject the lengthy procedures the district court used to resolve parties' dispute.

II. The Trial Court Applied the Wrong Standards for Enforcement or Modification of a CID.

The trial court's application of the substantive standards for enforcement or modification of a CID was equally flawed, as is PFLAG's defense of it. The court could not set aside or modify the CID without "good cause," Tex. Bus. & Com. Code § 17.61(g). But as OAG's opening brief demonstrated, its CID satisfied

statutory and judicial requirements for enforcement, and there was no good cause to set aside or modify it. Appellant's Br. 26–33.

A. PFLAG mischaracterizes the requirement to show "good cause" under the DTPA.

As detailed in its opening brief, OAG is investigating medical providers for committing insurance fraud by mischaracterizing medical treatments in order to avoid SB 14's prohibition on drug-induced gender transitions. Appellant's Br. 3–4. OAG learned that PFLAG's CEO, Brian K. Bond, filed an affidavit referring to "contingency plans, "alternative avenues to maintain care in Texas," and "affirming general practitioners," in the event that SB 14 was allowed to take effect. Appellant's Br. 5 (citing CR.69–70).

Because OAG "believes that [PFLAG] may be in possession, custody, or control of [documents] relevant to the subject matter of [its] investigation," Tex. Bus. & Com. Code § 17.61(a), it served a CID on PFLAG to obtain documents related to Bond's affidavit, such as documents "that form the basis of, or relate to, Brian K. Bond's personal knowledge of the information," documents referencing "contingency plans" and "alternative avenues to maintain care, and Bond's communications regarding the preparation of the affidavit, CR.65, which are relevant to the subject matter of OAG's investigation. OAG later prepared a revised CID, clarifying that it does not seek disclosure of the identity of PFLAG's members. CR.432-38.

The only basis to set aside or modify this CID is "good cause," Tex. Bus. & Com. Code § 17.61(g), which the trial court failed to define. PFLAG suggests that "good cause" is entirely within a trial court's discretion. PFLAG Br. 30–31 (arguing

that any court's determination of good cause "would always meet the standard").[5] But parallel federal law confirms that "good cause" to set aside or modify a CID is difficult to show and that no good cause exists if statutory and constitutional requirements are met. *See* Appellant's Br. 22–25 (collecting cases and explaining the "good cause" standard). Agencies are "to be given wide latitude when issuing CIDs." *Associated Container Transp. (Australia) Ltd. v. United States*, 705 F.2d 53, 58 (2d Cir. 1983). As explained further, OAG's CID satisfied all such requirements, and neither PFLAG nor the trial court's arguments to the contrary are persuasive.

B. The trial court erred by resolving the merits of the investigation before permitting OAG to investigate.

The trial court's procedural errors contributed to its substantive errors. Following the trial, Judge Meachum credited the testimony of PFLAG's CEO, Brian Bond, that his affidavit had an entirely innocuous meaning and that PFLAG has not assisted any doctors with wrongdoing. *See* App'x Ex. A at 4-5 (order crediting Bond's testimony); PFLAG Br. 35-36 (repeating its denial of wrongdoing).

Because there was no discovery, OAG had no ability to impeach or otherwise challenge Bond's testimony—this entire case involves a discovery dispute over whether OAG can even *obtain* PFLAG's documents. Nevertheless, crediting

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[5] A court's determination of "good cause" to permit an extension of a filing under Texas Civil Practice and Remedies Code section 150.002(c) has no relevance to the meaning of "good cause" to set aside an administrative subpoena. *See, e.g.*, *Morton Salt*, 338 U.S. at 642-43 permitting administrative subpoenas to "investigate merely on suspicion that the law is being violated, or even just because [he] wants assurance that it is not").

PFLAG's claims of innocence, the trial court concluded that because PFLAG had no knowledge of wrongful conduct, the materials sought by OAG were irrelevant, "overly burdensome," and a "fishing expedition" and denied access to them. App'x Ex. A at 12–17.

This process reversed the proper order. In ordinary civil litigation, it would be absurd to suggest that a judge should hear testimony and determine whether the defendant is liable *before* deciding whether the plaintiff's requested discovery is irrelevant and unduly burdensome. It brings to mind the Queen of Hearts: "Sentence first—verdict afterwards." PFLAG's denial of any wrongdoing is precisely *why* OAG is entitled to discovery: to test the veracity of PFLAG's claims of innocence. PFLAG's denial is not a ground to *refuse* investigation.

The trial court did not truly find that the materials in question were irrelevant to OAG's investigation (or overly burdensome)—the trial court found, in effect, that OAG should not be using these investigatory tools at all. *See* App'x Ex. A at 8 ¶ 26 ("Mr. Bond's statements in the *Loe* affidavit do not describe efforts to use deception to obtain or offer care."). This was error: the court should not have analyzed relevance and burden (or otherwise ruled on the enforceability of the CID) based on its belief in PFLAG's good faith and assumptions about what OAG's investigation would uncover. Because they were infected by this legal error, these findings do not justify setting aside or modifying the CID.

C. PFLAG misreads OAG's authority for DTPA CIDs and the DTPA's requirements.

Both PFLAG and the trial court misread the DTPA's CID requirements.

1. PFLAG misreads the DTPA's broad grant of authority to issue CIDs.

Section 17.61(a) provides OAG with broad authority to issue CIDs to investigate "possible violation[s]" of the DTPA:

> Whenever the consumer protection division believes that any person may be in possession, custody, or control of the original copy of any documentary material relevant to the subject matter of an investigation of a possible violation of this subchapter, an authorized agent of the division may execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying.

Tex. Bus. & Com. Code § 17.61(a). In this case, OAG properly served a CID because it believes that PFLAG "may be in possession, custody, or control" of documents "relevant to the subject matter of an investigation of a possible violation," specifically documents that identify "affirming practitioners" who may be engaging in fraudulent billing practices to evade SB 14.

PFLAG raises multiple arguments in an effort to narrow this broad authority, but none persuade.

First, PFLAG argues that it "was not an appropriate recipient of the Demands because it does not engage in trade or commerce or sell or lease goods or services" and is thus "outside of the DTPA." PFLAG Br. 43. But section 17.61(a) anticipates that third parties may receive CIDs if they are believed to possess documents relevant to the subject matter of an investigation of potential DTPA violations. OAG can serve a civil investigative demand on "*any person*" it believes "may be in possession, custody, or control of the original copy of any documentary material relevant to the

subject matter of an investigation of a possible violation," not merely the suspected violator. Tex. Bus. & Com. Code § 17.61(a) (emphasis added).

"Any person" is not limited to persons engaged in trade or commerce. The Legislature could have chosen to add that language, but it did not. Applying that limitation would require rewriting section 17.61 by adding words to those used by the Legislature—something courts may not do "in the absence of 'extraordinary circumstances' and 'unmistakable' textual guidance." *Whole Woman's Health v. Jackson*, 642 S.W.3d 569, 577 (Tex. 2022). There are no such circumstances and guidance here. The Court should adhere to the plain text of the statute, which grants OAG broad authority to issue CIDs. PFLAG's citation (at 43) to *Amstadt v. U.S. Brass Corp.* is irrelevant—that case concerns whether consumers could bring a private DTPA suit against "upstream manufacturers and suppliers," not which persons can receive CIDs from OAG. 919 S.W.2d 644, 649–50 (Tex. 1996).

Second, PFLAG also argues that section 17.61(c) of the DTPA restricts the scope of CIDs, asserting that "[t]he DTPA limits the information that can be sought by CIDs to 'documentary material which would be discoverable under the Texas Rules of Civil Procedure.'" PFLAG Br. 32 (citing Tex. Bus. & Com. Code § 17.61(c)). But statutes must be read as whole, *Silguero v. CSL Plasma, Inc.*, 579 S.W.3d 53, 59 (Tex. 2019), and the surrounding provisions are a "core contextual consideration[]" when interpreting the meaning of a law, *Brown v. City of Houston*, 660 S.W.3d 749, 754 (Tex. 2023). Here, when read in full, section 17.61(c) expands rather than limits the permissible scope of a CID:

> A civil investigative demand *may contain* a requirement or disclosure of documentary material which would be discoverable under the Texas Rules of Civil Procedure.

Tex. Bus. & Com. Code § 17.61(c) (emphasis added). The phrase "may contain" is permissive, not mandatory. *See Dallas Cnty. Cmty. Coll. Dist. v. Bolton*, 185 S.W.3d 868, 874 (Tex. 2005) (noting "the permissive word 'may'"); Tex. Gov't Code § 311.016 ("'May' creates discretionary authority or grants permission or a power."). PFLAG effectively rewrites the provision to read "may only contain," materially changing its meaning.

This reading of "may contain" as permissive, not limiting, is reinforced when compared to the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Com. Code §§ 15.01 *et seq.* That Act allows broader CIDs (which, unlike CIDs under the DTPA, may require "giving of oral testimony"), but it limits demands to material that "would be discoverable under the Texas Rules of Civil Procedure":

> A demand may require the production of documentary material, the submission of answers to written interrogatories, or the giving of oral testimony *only if* the material or information sought would be discoverable under the Texas Rules of Civil Procedure or other state law relating to discovery.

Tex. Bus. & Com. Code § 15.10(d)(1) (emphasis added). The Legislature's use of "only if," a clear indication of limitation, shows that it knows how to enact such a limitation and that its use of permissive language in section 17.61(c) was intentional. This legislatively drawn distinction should be recognized and respected by this Court.

2. The CID adequately stated the "general subject matter of the investigation" required by the DTPA.

PFLAG, like the trial court, contends that the CID failed to meet the DTPA's statutory requirements because it did not adequately state the "general subject matter of the investigation." PFLAG Br. 32–33. This complaint is puzzling: PFLAG appears to complain that the CID used the word "misrepresentation" rather than "fraud." PFLAG Br. 33 n.10. The CID's statement that it concerns "misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures" fully captures "investigating insurance fraud." *Id.*

OAG's investigation does not concern, as PFLAG contends, "breach of the accepted standard of medical care." *Id.* (quoting *Sorokolit v. Rhodes*, 889 S.W.2d 239, 242 (Tex. 1994)). Instead, OAG suspects that PFLAG has knowledge of "contingency plans" that include having medical practitioners deliberately use the wrong billing codes for visits and procedures in order to provide "alternative avenues to maintain care" after the effective date of SB 14. *See* Appellant's Br. 3–4 (discussing doctors engaged in this misconduct). In other words, OAG seeks to investigate "misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures," as the CID states. No greater specificity was required.

3. The CID sought information relevant to OAG's investigation.

As explained in the CID, OAG was investigating "misrepresentations regarding Gender Transitioning and Reassignment Treatments and Procedures." CR. 394, 423; Appellant's Br. at 28. The documents sought were relevant to this investigation.

As a general matter, relevance is a broad standard, even more so with respect to CIDs. In that context, "relevant" requires only that the document be "relevant to the subject matter of an investigation," Tex. Bus. & Com. Code § 17.61(a), not relevant in the sense of "mak[ing] a fact [of consequence in determining the action] more or less probable than it would be without the evidence," Tex. R. Evid. 401. There is no "action" being determined yet, so the Rule 401 relevance standard could not apply.

Courts adjudicating relevance challenges to CIDs thus order production of documents unless "'there is no reasonable possibility that the category of materials the government seeks will produce information relevant to the general subject' of the government's investigation." *Blue Cross and Blue Shield of Ohio v. Klein*, 117 F.3d 1420, at *3 (6th Cir. 1997) (quoting *United States v. R. Enters., Inc.*, 498 U.S. 292, 301 (1991)). The documents OAG seeks from PFLAG satisfy this standard.

D. The trial court erred in concluding the CID violated the First and Fourth Amendments.

PFLAG's constitutional arguments regarding the First and Fourth Amendments are not supported by precedent. Decisions on both confirm that the CID complied with all constitutional requirements.

1. No First Amendment "private communications" privilege exists.

The trial court created and applied a new evidentiary privilege, holding that the First Amendment protects against any disclosure of "private communications." App'x Ex. A at 11 ¶ 11. Neither the trial court nor PFLAG (at 39-40) cite any precedent supporting such a novel privilege. The sole case PFLAG cites does not address

private communications—it concerns only the First Amendment's protection against disclosure of membership and "donor lists." *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 376 (Tex. 1998) (orig. proceeding). But OAG does not seek the identity of PFLAG's members, and the revised CID expressly permits the redaction and anonymization of identifying membership information. CR.144–46, 186 (redline showing comparison).

There is no general privilege against disclosure of "private communications"—private communications such as emails and texts make up a significant portion of discoverable material in most litigation. State and federal law recognize discrete privileges for *certain* communications—such as those between penitent and priest, attorney and client, and husband and wife—but those narrow protections for specific private communications only confirm that no general "private communications" privilege exists.

PFLAG and its members may dislike that OAG is entitled to conduct investigations that may require reviewing communications that PFLAG desires to keep "private," but the First Amendment does not provide it with a broad right to refuse to participate in the ordinary course of discovery.

2. The Fourth Amendment has no bearing on the CID.

Regarding the Fourth Amendment, PFLAG merely repeats its other arguments, urging that because the CID failed to meet the DTPA's statutory requirements, it necessarily violated the Fourth Amendment. PFLAG Br. 41. But as explained *supra* and in OAG's opening brief, the CID satisfied all requirements.

Furthermore, the Fourth Amendment's application to administrative subpoenas "at the most guards against abuse only by way of too much indefiniteness or breadth in the things required to be" produced. *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 208 (1946). Because the CID was clearly articulated and not overbroad, it did not violate the Fourth Amendment.

E. PFLAG does not defend additional errors by the trial court.

Several errors by the trial court are not defended by PFLAG. PFLAG ignores OAG's explanation—discussed in its opening brief—regarding the trial court's error in finding that certain requested information was "more readily available from other sources." As OAG explained: "[W]hile OAG may be aware of certain doctors committing insurance fraud to circumvent SB 14, it does not claim to have knowledge of *all* such doctors or clinics." Appellant's Br. 32.

Despite echoing the trial court that the CID would be "better directed to actual medical providers," PFLAG Br. 36, PFLAG fails to explain how OAG could identify those providers without the very information the CID seeks to uncover. To be clear, OAG intends to pursue any medical providers working to circumvent SB 14 by defrauding insurers. Identifying those medical providers is precisely why this discovery is proper.

Nor does PFLAG defend the trial court's mishandling of allegedly privileged information. Appellant's Br. 30. Although PFLAG invokes the same "kinds of protections that the Texas Rules of Civil Procedure provide," PFLAG Br. 36, those rules prescribe a clear process for asserting privilege claims, including the submission of a privilege log and *in camera* review. Tex. R. Civ. P. 193.3, 193.4. The CID

expressly permits PFLAG to submit a privilege log identifying any documents it deems privileged, including the grounds for asserting privilege and a description of each document's subject matter. CR.396, 435. That process was not followed here. The trial court instead directed that "PFLAG is not required to produce privileged information and documents," App'x Ex. A at 12, without reviewing any documents or requiring the creation of a privilege log.

PFLAG cannot pick and choose, simultaneously claiming all the benefits of the Rules of Civil Procedure while refusing to follow their requirements for asserting privilege. It offers no defense of the trial court's refusal to follow these rules regarding privileged documents.

* * *

CIDs are a broad and flexible investigatory tool. The trial court erred by limiting OAG's CID based on crediting PFLAG's assertions of innocence, misreading the DTPA's provisions regarding CIDs, incorrectly analyzing relevance, not applying standard procedures regarding assertions of privilege, and creating a new "private communications" privilege that lacks any basis in the First Amendment. As a result, the trial court's order should be reversed and enforcement of the revised CID ordered.

III. The Trial Court's Injunction Was Overbroad and Improper.

Injunctive relief was improper in this case for several reasons. As explained above, *supra* pp.2-5, CID enforcement proceedings in Texas and under federal law do not involve injunctive relief. Like any other discovery dispute, such as a Rule 202 proceeding, the relief is limited to ordering or blocking the production of documents.

The result of a CID challenge should be either an order to produce documents or an order setting aside the CID, resolving the entire dispute. Like Rule 202 proceedings, petitions to set aside or enforce a CID are ancillary proceedings in which substantive claims—such as requests for permanent injunctive relief—cannot be asserted. *E.g.*, *Rodriguez v. Cantu*, 581 S.W.3d 859, 869 (Tex. App.—Corpus Christi–Edinburg 2019, orig. proceeding) (collecting cases).

In this case, the district court not only severely limited the documents that OAG could receive in response to its CID but permanently enjoined OAG from seeking documents from PFLAG in any other manner or any other form of document request, in any other investigation or litigation, in perpetuity. App'x Ex. A at 19. Not only is such a request procedurally improper in a proceeding to set aside or enforce a CID, but the district court did not address the requirements for entry of permanent injunction, much less make findings satisfying them. *See Huynh v. Blanchard*, 694 S.W.3d 648, 674 (Tex. 2024) ("To be entitled to a permanent injunction, a party must prove (1) a wrongful act, (2) imminent harm, (3) an irreparable injury, and (4) the absence of an adequate remedy at law.") (quoting *Pike v. Tex. EMC Mgmt.*, LLC, 610 S.W.3d 763, 792 (Tex. 2020)). These requirements could not be satisfied—if OAG served future CIDs on PFLAG, it could petition to set them aside, a fully adequate remedy at law.

It is difficult to imagine that an injunction prohibiting hypothetical future discovery could ever be justified, particularly when that third party is also a frequent litigant against the State. *See, e.g.*, *State v. Loe*, 692 S.W.3d 215 (Tex. 2024). The injunction should be vacated.

Prayer

The Court should vacate the district court's injunction against the State, reverse the trial court's rulings, remand with instructions for the trial court to enter an order enforcing the revised CID, and award OAG any other relief to which it may be entitled.

Respectfully submitted.

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